

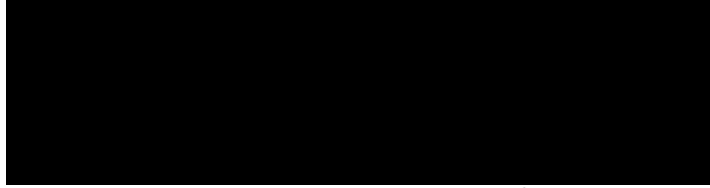
CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

O.A.No. 350/337/2022

Date of order: 22.04.2024

**Present :Hon'ble Mr. Anindo Majumdar, Administrative Member
Hon'ble Mr Rajnish Kumar Rai, Judicial Member**

Karu Mehra, son of Late Bal Gobinda Mehra,



.....Applicant

- V E R S U S -

1. Union of India, service through the Secretary, Department of Telecommunication, Jogagog Bhawan, New Delhi Pin-110001;
2. Chief General Manager, Telecom, West Bengal Circle 1, Council House Street, 2nd Floor, Kolkata – 700 001;
3. The G.M., Telecom, Asansol, Asansol Telecom District, Asansol-713304;
4. The D.G.M., O/o the G.M. Telecom Asansol Telecom District Durgapur Division, Durgapur-713216;
5. Sub-Divisional Engineer Bharat Sanchar Nigam Limited, Industries Exchange, Durgapur - 713201

.....Respondents

For the Applicant : Mr. N. Roy, counsel

For the Respondents : Mr. T.K. Chatterjee, counsel
Mr. R. Mukherjee, counsel
Ms. S. Bhaduri, counsel



ORDER**Rajnish Kumar Rai, Judicial Member**

In the instant O.A., the applicant is claiming the following reliefs:-

“a) To issue direction upon the respondent to cancel, set aside the impugned order dated 29.09.2021 forthwith;

b) To issue further direction upon the concerned respondents, their men, agents and subordinate officer to regularize the employment of the petitioner from casual Mazdoor to Temporary Mazdur then regular Mazdur as per decision taken by the concerned authority time to time;

c) To issue direction upon the respondent/such further or other order be passed and/or directions be given as Your Lordships may deem fit and proper.”

2. This is the second round of litigation. The case of the applicant is that he is working as a Casual Mazdoor under the Department of Telecommunications, Government of India since 20.05.1996 and after formation of BSNL in 2000, he was instructed to continue his work with BSNL and he is continuing with his work as a Casual Mazdoor in BSNL till date. Grievance of the applicant is that some Casual Mazdoors who were junior to the applicant, were granted temporary status and regularized but he was left out of such consideration arbitrarily by the authorities.

On earlier occasion, the applicant had filed an O.A.No.1233 of 2016 before this Tribunal praying for conferment of the status of Temporary Mazdoor then regularize his services as per decision taken by the competent authorities from time to time. The said O.A. was disposed of on 03.03.2020 with the following directions

:-

*“7. Accordingly, the competent respondent authority is hereby directed to consider the representations of the applicant as at A-13 and A-18 of the O.A., if received at his end, within a period of 12 weeks from the date of receipt of a copy of this order. The decision arrived at should be taken in accordance with law and, particularly in the light of the ratio held in **Uma Devi(supra)**, **Jagjit Singh(supra)** as well as the order of **CAT, Ernakular Bench in D. Ravi & Ors.(supra)**. The claim of the applicant that incumbents engaged after him in DOT have been granted temporary status and regularized while his case was ignored, should be particularly examined by the authority concerned. Decision arrived at should be conveyed in the reasoned and speaking order to the applicant forthwith thereafter.”*



Learned counsel for the applicant submitted that the respondents have not considered his representation as per the aforesaid judgment of the Hon'ble Tribunal to its letter and spirit and arbitrarily rejected his case vide impugned order dated 29.09.2021 (Annexure A/19 to the O.A.). Learned counsel for the applicant further submitted that several batches of Casual labourers who were junior to him were granted temporary status but he was not considered for grant of temporary status and regularization by the respondents, therefore, the impugned order dated 29.09.2021 is discriminatory, biased and illegal.

3. The respondents have filed written reply denying the claim of the applicant. Relying on their reply, Learned Counsel for the respondents has submitted that the applicant was never appointed as Casual Mazdoor through local Employment Exchange to DOT which was the norm at the relevant point of time. Learned Counsel for the respondents has invited our attention to the rejection order dated 29.09.2021 and submitted that as stated in the said order, there was a complete ban on the engagement of Casual labours as per Department of Telecommunication Circular No.269-4/93-STN-II/(Pt.) dated 12.02.1999 which was continued to be followed by BSNL on its creation w.e.f. 01.10.2000 from Department of Telecommunication, Government of India. Learned Counsel for the respondents submitted that the claim of the applicant that 31 Casual Labourers whose list was submitted along with his representation, were given temporary status after him, is not correct. In the impugned order dated 29.09.2021, the respondent authority has clearly stated that *"In the BSNL regime, no casual labourer has been given TSM status as per the records readily available in this office and the recognized post in BSNL starts with ATT erstwhile RM as per BLNL structure only. Further the casual labourers and TSMs appointed in DOT period prior to formation of BSNL have been inherited by BSNL on*



legacy process.” Learned Counsel for the respondents, therefore, submitted that the claim of the applicant is not maintainable.

4. Heard Learned Counsel for the parties and perused the pleadings and record.

5. Considering the relevant record and pleadings as well as the impugned order dated 29.09.2021 which has been passed in compliance of the Tribunal’s order dated 03.03.2020 in O.A.No.1233 of 2016 whereby direction was given to consider the representation of the applicant in the light of ratio held in the case of Uma Devi, Jagjit Singh as well as the order of C.A.T., Ernakulam Bench in D. Ravi & Others, we find that the case of the applicant was rejected on the ground that he was not employed as a Casual Labour in the department. In Para 7 of the reply the respondents have averred that the applicant was not working as Casual Labour from 1996, so, there is no question of acceptance or rejection of the claim of the applicant. The contention of the respondents is that the applicant was not appointed as a Casual Mazdoor through local Employment Exchange to DOT which was a norm at the relevant time, therefore, his claim of regularization cannot be considered. Moreover, the cases which were relied upon by the applicant pertain to Casual Labours who were employed initially by DOT and to those Casual Labours who completed continuous work of 8 hours or more than 240 days in a calendar year and those cases are not similar to the case of the applicant, therefore, the case of the applicant cannot be considered for regularization.

6. In earlier round of litigation in O.A.No.1233 of 2016 , this Tribunal in Para 6 of the order dated 03.03.2020 observed as under :-

*“6. Both Ld. Counsel, however, would agree that given the fact that the applicant is working till date and that representations made by the applicant are admittedly pending for disposal, this O.A. may be disposed of by directing the respondent authorities to decide on the prayer of the applicant in terms of the ratio in **Uma Devi (supra), Jagjit Singh(supra)** as well as the order of **CAT, Ernakulam Bench in D. Ravi & ors (supra).**”*



From perusal of the above order, it appears that the respondents admitted/agreed that till the date of hearing of the said case, the applicant was working. This fact is further corroborated by the document at Annexure A/1 page 16 and 17 of the O.A. wherefrom it appears that Identity Card was issued to the applicant on 21.02.2014.

7. In the Rejoinder Affidavit, the applicant has further denied the statement of the respondents made in Para 7 of the reply that he was not working in the department from 1996. A document issued by the BSNL authorities on 09.03.2007 is annexed at page 22 of the O.A. which reflects that the applicant was working in the department since 20.05.1996.

8. Considering the entire facts and circumstances of this case and the ratio laid down by Hon'ble Supreme Court in **Uma Devi** with regard to one time exercise for regularization of casual labourers who are working for more than 10 years, we find sufficient force in the arguments advanced by the Learned Counsel for the applicant that the applicant should be considered for regularization as he worked in the department for a long time as casual labour. This Tribunal in earlier round of litigation had directed the respondents to consider the representation of the applicant in the light of the judgment of Hon'ble Supreme Court in case of **Secretary, State of Karnataka Vs Uma Devi & Others [2006(4) SCC 1**, vide order dated 03.03.2020. However, the said judgment was not taken into consideration as would be reflected from the speaking order dated 29.09.2021 wherein the respondents have stated that the applicant was not similarly situated.

9. The ground for rejection of the prayer of the applicant as would appear from the speaking order dated 29.,09.2021 that "*no casual labour has been given TSM as per the records readily available in this office*" is not acceptable as from perusal of Annexure A/9 i.e. Office Order dated 26.02.2010, it appears that in compliance to the 3rd



Circle Council Meeting with regard to question at item No.11/07-08 i.e. *“Problems related with Casual/Contractual Labourers in West Bengal Telecom Circle”* it was replied that *“Process of regularization of the enlisted casual labourers should immediately be taken up and the list of Casual Labourers of Krishnanagar needs to be finalised’*. Moreover, a list of Casual Labourers whose cases were left out for regularization was forwarded by the D.G.M(Admn.) to the Assistant Director General , BSNL vide letter dated 01.12.2003(Annexure A/8) wherein the name of the applicant was listed.

10. In view of the above, it appears that the respondents have summarily rejected the case of the applicant for regularization without going into the facts and grounds raised in the earlier original application and without taking into consideration the observation of the Tribunal made in the order dated 03.03.2020 in O.A.No.350/1233/2016. We are, therefore, of the opinion that the impugned order dated 29.09.2021 is not sustainable and is liable to be quashed.

11. Accordingly the impugned order dated 29.09.2021 is quashed and set aside. The respondents are directed to reconsider the claim of the applicant for regularization afresh as per the minutes of the 3rd Circle Council Meeting circulated to all SSA Heads under West Bengal Telecom Circle vide letter dated 26.02.2010 (Annexure A/9) issued on behalf of the CGM, Telecom, West Bengal Circle, Kolkata and pass a detailed reasoned and speaking order after giving the applicant an opportunity of personal hearing within a period of 3 months from the date of receipt of a copy of this order.

With the above observations, the O.A. stands disposed of. No order as to costs.

(Rajnish Kumar Rai)
Judicial Member

(Anindo Majumdar)
Administrative Member



