

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3058 of 2018

Hemant Kumar, Son of Sri Yamuna Ram, Resident of Village & P.O. Tara Nagar, P.S.- Bihta, District- Patna (Bihar), Ex-Daily rated Mazdoor, Bharat Sanchar Nigam Limited, office of Sub Divisional Engineer (Cable), Kankarbagh, Patna (Bihar).

... .. Petitioner/s

Versus

1. The Union of India through the chief Managing Director, Bharat Sanchar Nigam Limited New Delhi.
2. The Principal General Manager Telecomm, Bharat Sanchar Nigam Limited, Office of Chief General Manager, Telecomm, Bihar Circle, Patna.
3. The Assistant General Manager (Administration), Office of Principal General Manager, Telecomm District Bharat Sanchar Nigam Limited, Patna.
4. The Divisional Engineer, Phones (Administration), Office of Principal General Manager, Telecomm District Bharat Sanchar Nigam Limited, Patna.
5. The Area Manager (East) P.T. Division, Rajendra Nagar, Bharat Sanchar Nigam Limited, Patna.
6. The Sub Division Engineer (Cable), Bharat Sanchar Nigam Limited, Kankarbagh, Patna- 800020.
7. The Sub Divisional Officer, Telephone, Bharat Sanchar Nigam Limited, Giridih.
8. The Assistant Engineer, Bharat Sanchar Nigam Limited (Cable), Jharia.
9. The Divisional Engineer, Phones, Bharat Sanchar Nigam Limited, Kankarbagh, Patna- 800020.
10. The Sub Divisional Officer, Phone (West), Bharat Sanchar Nigam Limited, Kankarbagh, Patna- 800020.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Munna Pd Dixit (M.P. Dixit) Mr. S.K. Dixit Mr. Sanjay Kumar Chaubey Mrs. Swati Kumari Mr. Sunil Kumar Mr. Shailendra Kumar
For the Respondent/s	:	Mr. Sachchida Nand Singh

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 24-07-2018

Heard the parties.



2. After two rounds of litigation before the Central Administrative Tribunal, this is the second round of the petitioner before this Court in a writ proceeding in order to establish his claim for grant of temporary status and his eventual absorption against Group-D Post at par with similarly situated persons.

3. In the present writ application filed under Article 226 of the Constitution of India, the petitioner assails an order dated 24.11.2017, passed by the Central Administrative Tribunal, Patna Bench, on O.A. No. 225 of 2014, whereby the petitioner's claim for grant of temporary status/regularization has been rejected. Before the Tribunal, the petitioner had assailed an order dated 10.07.2013, passed by the Office of the Principal General Manager, Telecom, District-Patna in compliance of an earlier order of the Tribunal dated 24.07.2012 on O.A. No. 592 of 2010, whereby the petitioner's claim for grant of temporary status was rejected on the ground that the other persons who, according to the petitioner, were similarly situated, had fulfilled the criteria laid down by the Department of Telecommunication, whereas the petitioner did not. This is to be noted at the outset that the petitioner's claim for grant of temporary status and consequential absorption against Group-D



Post at par with similarly situated persons, has been denied by the respondents which decision has been found to be valid by the Central Administrative Tribunal in the impugned order, based on the sole ground that the documents which the petitioner had been relying on for establishing his claim were not verified and were not found to be genuine. This has been the plea of the respondents in the proceeding before the Tribunal, which plea has been taken in the present writ proceedings also, despite reliance of the petitioner on an information furnished to him under the Right to Information Act, 2005 by the Office of the Principal General Manager, Telecom, District Patna.

4. It was because the respondents were resisting the correctness of an information gathered by the petitioner under the Right to Information Act that this Court had to direct the personal appearance of Assistant General Manager (Legal) by an order dated 19.06.2018. In compliance of the said order, Mr. Ajay Shankar Prasad, Assistant General Manager (Legal), appeared before this Court and has produced before this Court the original documents, copies of which were supplied under the Right to Information Act through the letter dated 04.11.2009 (Annexure 17 of the O.A. No. 225 of 2014). The said documents contain “new cases of casual labourers whose work records



were verified by the Controlling Officer and counter signed by the D.E.” This is not in dispute that name of the petitioner figures in the said list at item no. 11, which goes to suggest that the petitioner had worked as casual labourer continuously from 1988-89 to 1999-2000. The said documents contain names of other persons namely, Shrawan Kumar, Md. Quayum Ansari, Balkeshwar Prasad and Umesh Prasad, in whose respect there is no dispute that after having been given temporary status, the respondents have absorbed them against Group-D Post. The documents supplied to the petitioner under the Right to Information Act through Annexure-17, are the photocopies of the original documents which have been produced before this Court by the Assistant General Manager (Legal), BSNL, Patna.

5. A perusal of the said documents leaves no scope of any doubt that the case of the petitioner is at par with Shrawan Kumar, Md. Quayum Ansari, Balkeshwar Prasad and Umesh Prasad, who have been granted temporary status and subsequently absorbed against the Group-D Post. We have mentioned at the very outset these facts so as to clear any cloud over the admitted facts of the case of the petitioner of being at par with those, who have been absorbed against Group-D Post, after grant of temporary status to them.



6. Let's now notice brief facts of the case. As has clearly been mentioned, it is the petitioner's claim that he was engaged as casual labourer in the year 1988. Through the letter dated 19.08.1998, the Office of the Chief General Manager, Telecom, Bihar Circle, Patna, had called for information regarding casual labourers from all the General Managers. Annexure 5, which is the copy of letter dated 06.07.2001, addressed by the Area Manager (East) to D.E. Phones (Administration), contains verification of genuineness of work record of Daily-rated Mazdoors. In the list of Daily-rated Majdoors contained in the said letter dated 06.07.2001, the name of the petitioner figures at serial no. 9. The list contains names of other casual labourers also viz. Shrawan Kumar, Md. Quayum Ansari, Balkeshwar Prasad and Umesh Prasad, with whom he (petitioner) claims parity, which was sent for the purpose of grant of temporary status and consequent absorption against Group-D Post. Since no decision was being taken in respect of grant of temporary status, the petitioner had earlier approached this Court by filing writ application giving rise to C.W.J.C. No. 1183 of 2006, which came to be disposed of by an order dated 14.02.2007 with a direction to the competent authority to take a final decision in respect of the petitioner's claim. In the light of the said order



dated 14.02.2007, the AGM. (Admin), Office of the Principal General Manager, Telecom District, Patna, passed his speaking order dated 19.05.2010, rejecting the claim of the petitioner as not eligible for regularization, recording his opinion that the documents submitted by the petitioner were not genuine. The petitioner, thereafter, approached the Central Administrative Tribunal by filing the application giving rise to O.A. No. 592 of 2010, questioning the speaking order dated 19.05.2010. The Central Administrative Tribunal, Patna Bench, disposed of the said O.A. No. 592 of 2010 by an order dated 24.07.2012, remitting the matter back to the respondents, with a direction to examine the petitioner's claim afresh in respect of his claim of parity with other employees, as noted above. Paragraph 12 of the said decision is relevant for the present adjudication and is, therefore, being reproduced hereinbelow:-

“The contention of the applicant persistently has been that similarly situated persons were given the benefit of conferment of Temporary Status and regularization but he was left out. This aspect has not been dealt with by the concerned respondent in the speaking order dated 19.05.2010 despite the specific direction by the Hon'ble High Court in CWJC No. 1183 of 2006. It has not been



indicated whether earlier the persons given the benefit of TS and regularization stood on a different footing or in their case the benefit was given erroneously. The matter has, therefore, perforce to be remitted to the respondents with a direction to examine afresh this aspect and to take a decision on the prayer of the applicant for conferment of Temporary Status/regularization as early as possible.”

7. In the background of the order of the Tribunal, the Assistant General Manager (Admn.) passed an order dated 10.07.2013 again rejecting the petitioner’s case, as has been noticed at the very outset, on the ground that whereas the persons with whom the petitioner claimed parity did fulfill the criteria laid down by the DOT, the petitioner did not. This challenge to the said order dated 10.07.2013 by the petitioner before the Central Administrative Tribunal has not been sustained by the Tribunal by the impugned judgment and order dated 24.11.2017. It is evident from the impugned judgment that the respondents had taken specific plea in their written statement before the Tribunal that the applicant, though had annexed the work certificate issued by the S.D.O., Giridih with effect from April 1988 to December 1995 with muster roll



number, but the same was not verified by the concerned Circle Division. The respondents also took a plea in their written statements that the applicant did not produce any valid reason that how he reached Patna from Giridih and performed his duties from the very next date. They also took a plea that the competent authority had asked the applicant to prove the genuineness of the said certificate but he failed to produce any document, and other documents produced by the applicant were not properly verified. Noticing the said stand of the respondents, the Tribunal dismissed the claim of the petitioner, sustaining the objection of the respondents that the petitioner failed to prove the genuineness of the certificate/documents.

8. In view of our discussion above, there is no dispute that the petitioner has worked as a casual labourer from 1988 to 2000 as confirmed from the the original documents produced by Mr. Ajay Shankar Prasad, Assistant General Manager (Legal). This is also not in dispute that the case of the petitioner is at par with other similarly situated persons, whose services have been absorbed against Group-D Post. The logic given by the respondents and accepted by the Tribunal that it would not have been possible for the petitioner to come from Giridih and join at Patna on the very next day, is not sustainable



at all, in view of the verification of the work already carried out by the competent authority, based on which other similarly situated persons were granted temporary status and subsequent absorption against Group-D Post.

9. In view of discussions as above, we find substance in the submission made by Mr. M.P. Dixit, learned counsel, appearing on behalf of the petitioner, that denial by the respondents of the petitioner's right to be treated fairly and equally with other similarly situated persons, is discriminatory and violative of Articles 14 and 16 of the Constitution of India

10. In view of discussion as above, we find reasons for interfering with the impugned order dated 24.11.20017, passed by the Central Administrative Tribunal. The said decision is unsustainable and is accordingly quashed.

11. As a consequence of quashing of the order and in view of discussions as above, we direct the Principal General Manager, Telecom, BSNL, Office of the Chief General Manager, Telecom, Bihar Circle, Patna (respondent no.2), to pass appropriate order by giving the petitioner all benefits in terms of grant of temporary status and his absorption against Group-D Post, as has been done in the case(s) of similarly situated persons, namely, Shrawan Kumar, Md. Quayum



Ansari, Balkeshwar Prasad and Umesh Prasad. The petitioner shall also be entitled for all consequential reliefs. All benefits should be given to the petitioner with effect from the date such benefits have been granted to the similarly situated persons, as discussed above.

12. The respondent no.2 shall be obliged to pass necessary orders and grant all benefits, which the petitioner has been found entitled to, under the present order, within a period of 03 months from the date of receipt/production of a copy of this order.

13. The writ application is accordingly allowed.

14. No order as to cost(s).

15. Let the original documents produced by the AGM (Legal), be returned to Mr. Sachchida Nand Singh, learned counsel for the BSNL.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

HR/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	18.08.2018
Transmission Date	

