

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2336 of 2018

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Nand Kishor Das, S/o Sri Bharamdeo Das, resident of Village- Bokhara Bujurg,
P.O.- Jarang Rampur, P.S.- Bhagwanpur, District- Vaishali.

.... Petitioner/s

Versus

1. The Union of India, through the CMD, Corporate Office, Bharat Sanchar Bhawan, Harish Chander Mathur Lane, Janpath, New Delhi.
2. The Chief General Manager, Bihar Telecom Circle, Patna.
3. The GM (MS- O&M), Bihar, Telecom Circle 1st Floor, CTO Building, Budh Marg, Patna- 1.
4. The GM (MS- O&M), Bihar, Telecom Circle 1st Floor, CTO Building, Budh Marg, Patna- 1.
5. The DGM (MS- Admn), O/o GM (NOW- CM), Bihar Telecom Circle 1st Floor, CTO Building, Budh Marg, Patna- 1.
6. The DE (MS- Tech) NMS, CTO Building, Budh Marg, Patna- 1.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Hemant Kumar Karn, Adv.
Mr. Jayant Kumar Karn, Adv.
For the Respondent/s : Mr. Harendra Prasad Singh, Adv.
Mr. Santosh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 27-02-2018

O.A. 329 of 2014 has been dismissed by the Central Administrative Tribunal, Patna Bench, Patna by its order dated 01.08.2017. The Tribunal refused to interfere with the order dated 13.02.2014 which was an order passed by the Chief General Manager, in terms of an earlier direction issued by the Central Administrative Tribunal, for consideration of the case of the present petitioner for regularization. The order of rejection is a very detailed order and has



been brought on record as Annexure-P/10 to the writ application.

Petitioner decided to assail the order by filing an O.A. Besides taking note of the past litigations and the orders passed by the Tribunal from time to time, the Tribunal took note of the reasons for rejection of the claim of the petitioner by the Chief General Manager which is evident from paragraph 8 of the order, which reads as under:-

“After order of this Tribunal, the competent authority, in terms of reference, again considered the case of the applicant, vide order dated 13.02.2014, and observed that the applicant is not eligible in the prevailing situation to be considered for regularization. So, the only consideration before this Tribunal is to see on which ground, the Chief General Manager, Telecom has rejected the claim of the applicant and if it is legally tenable in the eyes of law. The grounds of rejection as reflected by the competent authority may be summarized as below:-

(a) The case of the applicant with their other colleagues mentioned under letter No.CGM/PRO/Vehicle/92-93 dated 1.12.1993 cannot be treated as the same, because the applicant was re-engaged after a break of five years by virtue of court order only.

(b) Keeping in view the court order, the applicant's case of regularization had been sent to BSNL HQ on 21.6.2002 but BSNL HQ, vide letter dated 24.9.2003, did not approve for regularization.

(c) After break of five years, (which cannot be



condoned), his fresh engagement was made w.e.f. 22.4.1999 on the basis of order of this CAT, otherwise, there was complete ban on engagement of casual labour. Hence he is not entitled for regularization.

(d) Litigious engagement on 22.4.1999 in the light of order of court cannot be taken as an exception, as held by Hon'ble Supreme Court in Uma Devi's case.

(e) The applicant was initially engaged as contractual motor driver for a period of three months vide letter dated 1.12.1993 which was extended till regular appointment was made, vide order dated 3.3.1994.

(f) The vehicle which was being driven by the applicant and for which he was engaged, met with an accident and the vehicle was badly damaged and was not in running condition. Hence, his deployment was not continued because he was engaged on contractual basis for driving the vehicle which was not in running condition. So, there was no requirement of a driver.

(g) Vide order dated 30.3.1999, this Tribunal directed to consider the applicant's case for his deployment as casual motor driver till regular appointment was made.

(h) The scheme for grant of TSM status and regularization is governed by order of DOT letter dated 17.12.1993 and 12.2.1999."

The Tribunal also took note of the fact that on the basis



of O.A. 109 of 1996 the petitioner was allowed to continue as a daily wager till his regular appointment is made. In the said O.A., it was also prayed that he was only interested to work as casual labour and no plea for regularization was made.

Thereafter, O.A.590 of 2009 was filed pleading discrimination. Plea was taken that similarly placed persons and even juniors have been regularized. Case of the present petitioner was not considered so the Tribunal gave a direction for consideration in accordance with the rules and the scheme for regularization. This aspect of the matter thereafter was considered by the Tribunal in following words in paragraph 10 of the order, which reads as under:-

“Now, the department clarifies that the applicant is not similarly placed with other persons who were regularized, as due to his long absence and break in service for five years, he was treated as a fresh engagement w.e.f. 24.2.1999 whereas his other counterparts having completed 10 years of service were regularized. That apart, the persons who have not been regularized till 10th April, 2006 cannot be regularized unless they fulfil all the criteria and mandate as envisaged by Hon’ble Supreme Court in the Constitutional Bench judgment of Secretary, State of Karnataka and Others vs. Uma Devi and Others [2006 SCC (L&S) 753]. The applicant was never appointed against a sanctioned vacancy or was not selected following a due process of selection, as envisaged by the rules. Since the initial appointment



was for stopgap arrangement for a limited period, no right accrue in favour of the applicant even though he continued for a long spell and more under the protection of judicial umbrella. Since there is no vehicle and no requirement of a driver, the applicant could not have been engaged even as a part time worker, and only due to Tribunal's interim protection, the applicant continued in service in spite of non-requirement by the department. Since there is nothing wrong in the impugned order dated 13.2.2014 [Annexure A/10], and as the Chief General Manager, Telecom has assigned cogent reason for not extending regularization to such type of casual labour, no interference is called for. Hence ordered."

The Tribunal, in the above circumstances, refused to interfere with the decision of the respondent B.S.N.L. especially the reasons assigned by the Chief General Manager. We after having patiently heard counsel for the petitioner we do not find any illegality or infirmity which could compel us to interfere or alter with the order of the Tribunal in any manner.

As a last effort, counsel for the petitioner submits that the petitioner is a very poor person, he has no alternative employment and engagement and, therefore, at least the respondents be directed to consider engaging him on daily wage.

Such a prayer is not required to be considered by us for



the reason that is not the ambit and scope of the judicial review of the order of the Central Administrative Tribunal. The CAT Bench order is not required to be interfered with, who refused to pass order in favour of the petitioner, for such a prayer.

The writ application stands dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28.02.2018
Transmission Date	N/A

