

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.478 of 2018

In
Civil Writ Jurisdiction Case No.2336 of 2018

=====

Nand Kishore Das Son of 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 Mathura 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

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr.Suraj Narain Yadav, Advocate Ms.Pooja Shree, Advocate Ms.Annu Shree, Advocate
For the Opposite Party/s	:	Mr.Harendra Prasad Singh, Advocate Mr.Santosh Kumar, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 17-04-2019

The original writ petitioner is seeking review of the judgment dated 27.02.2018 passed in C.W.J.C.No. 2336 of 2018 by which this Court has up-held the judgment dated 01.08.2017 of the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as 'the Tribunal') passed in O. A. No. 329



of 2014 and refused to direct the respondents to consider the case of the petitioner for regularization.

Learned counsel representing the petitioner has sought to impress upon this Court by contending that the long absence and break in service for five years in case of the petitioner was not for his own fault rather the petitioner was not allowed to work by the respondents.

It is the submission of learned counsel for the petitioner that the learned Tribunal as well as this Court in the writ application could not consider the fact that the Tribunal had by its judgment in O. A. No. 590 of 2009 directed the respondents to consider the case of the petitioner for regularization as per rules and applicable scheme of the regularization contained in Letter no. ST/38-1/TSM/2000 dated 05.10.2007 but the case of the petitioner was not considered in the light of the scheme of the regularization as per direction of the Tribunal.

In course of hearing learned counsel submits that in its judgment the learned Tribunal has observed that in terms of exception allowed in the case of **Secretary, State of Karnataka and Others Vs. Uma Devi and Others** reported in (2006) SCC (L & S) 753 read with the judgment in the case of **State of Karnataka Vs. M.L. Kesari** reported in (2010) 9SCC 247,



petitioner's case for regularization deserves a consideration. It is with this finding that the Chief General Manager, Telecom, Circle Patna was directed to reconsider the case of the petitioner as per rules and applicable scheme keeping in view the observations made in the letter no. ST/38-1/TSM/2000 dated 05.10.2007. It is submitted that the petitioner has been discriminated and has been refused similar treatment like others who were given the benefit of regularization.

On the other hand, learned counsel representing the BSNL submits that the order dated 13.02.2014 passed by the Chief General Manager, Telecom, BSNL as contained in Annexure 'P/10' to the writ application is a well reasoned and a speaking order which goes through each and every submissions of the petitioner.

It is submitted that the petitioner was engaged on contractual basis as a motor driver for running the new vehicle along with four others vide letter dated 01.12.1993 for a period of three months. His contractual engagement had been extended till the regular recruitment is made vide letter dated 03.03.1994. The new Jeep which was being driven by the petitioner met with a serious accident causing death of one of the officers and the vehicle was badly damaged that is not in running condition. Since



the vehicle was not in running condition, the deployment of the petitioner was not required and so his engagement was discontinued. After expiry of 5 years the petitioner came with the order dated 30.03.1999 passed by the Tribunal in O. A. No. 109 of 1996 in which the learned Tribunal had directed to consider the case of the petitioner for his deployment as casual motor driver till the regular appointment is made. It is in this background the petitioner was redeployed on 22.04.1999. Hence, the case of the petitioner is not identical to his other colleagues mentioned in letter dated 01.12.1993. The petitioner was reengaged after a break of 5 years by virtue of the Court's order. It is, thus, submitted that the deployment of the petitioner is not based on the requirement of the respondent rather it is absolutely a litigious deployment. Hence, no case of discrimination may be said to be made out by the petitioner.

Having heard learned counsel for the petitioner and learned counsel representing the BSNL, we find that the petitioner is unable to make out a case for review. It is apparent that the applicant was never appointed against the sanctioned vacancy and further this Court is convinced that the petitioner was given fresh engagement with effect from 24.02.1999 after a break in service for five years only by virtue of the order of the Tribunal which was



clearly providing that his engagement will be as a casual motor driver till regular appointment is made. The petitioner cannot claim any right to be regularized in the given facts and circumstances of the case.

We find no merit in this application. The application is accordingly, dismissed.

(Amreshwar Pratap Sahi, CJ)

(Rajeev Ranjan Prasad, J)

avin/-

AFR/NAFR	
CAV DATE	10.04.2019
Uploading Date	17.04.2019
Transmission Date	

