In the Central Administrative Tribunal
Principal Bench, New Delhi.

Regn.Nos. Date: 15.11.1991.

1. OA-2370/89
2. OA- 248/90
3. OA- 502/90
4. OA-694/90

1. Shri Gopal Sharma
2. Shri Bhaskar Prasad & Anr.
3. Shri Amar Lal
4. Shri Bhawani Prasad & Ors. .... Applicants

Versus

Union of India through the Secy., Ministry of Communications & Others .... Respondents

For the applicants .... Smt. Rani Chhabra, Counsel

For respondents in 2,3,&4 .... Shri P.P. Khurana, Counsel

For respondents in 1 .... Shri M.L. Verma, Counsel

Coram: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Mr. B.N. Dhoundiyal, Administrative Member.

1. Whether reporters of local papers may be allowed to see the judgement? Yes

2. To be referred to the reporter or not? Yes

(Judgement of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice-Chairman)

In these applications filed under Section 19 of the Administrative Tribunals Act, 1985, common questions of fact and law have been raised and it is proposed to deal with them in a common judgement. The applicant in OA-2370/89 has worked as a Casual Driver. The applicants in the other three applications have worked as casual labourers. The periods of service rendered by the

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applicants have been mentioned in the applications. One common feature in these applications is that admittedly, all the applicants have worked for more than 240 days as casual labourers. The period of service ranges from 1985 to 1988. Another common feature is that they were engaged as casual labourers after 30.3.1985.

2. The applicants in OA-2370/89, OA-502/90, and OA-694/90 have been continuing in service on the basis of the stay orders passed by the Tribunal. In regard to th applicants in OA-248/90, the Tribunal has passed an interim order directing the respondents to consider their engagement in case they are to recruit more persons for similar jobs.

3. The respondents issued a circular letter on 22.4.1987 directing all departments of the Telecommunications to retrench all the casual workers who were recruited after 31.3.1985. This has been challenged in the present proceedings before us.

4. The applicants are seeking regularisation of their services and regular pay-scales as in the case of regular employees. These are being opposed by the respondents on the ground that there is no work to accommodate the applicants and absorb them in regular posts, and that they are not covered by the scheme prepared by the

respondents for regularising casual labourers entitled "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Department of Telecommunications, 1989".

5. We have carefully gone through the records of these cases and have considered the rival contentions.

6. In the leading case of Daily-rated casual labour employed under the P & T Department Vs. Union of India & Others, A.I.R. 1987, S.C. 2342, the Supreme Court held that the State cannot deny to the casual labourers at least the minimum pay in the pay-scales of regularly employed workmen even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees. The Supreme Court noted that many of the casual labourers in the P & T Department had not been regularly recruited but that many of them have been working continuously for more than one year with the department. They were rendering the same kind of service which was being rendered by the regular employees doing the same type of work. The Supreme Court observed that this practice amounts to exploitation of labour. The Supreme Court referred to its earlier decision in Dhirendra Chamoli Vs. State of U.P. 1986 (1) SCC 637, wherein a similar view had been taken in respect of the

employees working in the Nehru Yuvak Kendras, who were considered to be performing the same duties as Class IV employees. The Supreme Court, therefore, directed the Government and other authorities to pay wages to workers who were employed as Casual labourers belonging to the casual categories of employees in the Postal and Telegraphs Department at the rates equivalent to the minimum of the pay-scales of the regularly employed workers in the corresponding cadres, but without any increments. The Supreme Court also directed the authorities to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers, who have been continuously working for more than one year in the Posts and Telegraphs Department.

7. The scheme known as Casual Labourers (grant of temporary status for regularisation) scheme has been formulated and put into operation from 1.10.1989. A copy of the same was placed for the consideration of the Supreme Court in Jagrit Mazdoor Union Vs. Mahanagar Telephone Nigam Ltd., 1989 (2) SCALE 1455. The Supreme Court found that the scheme was comprehensive and apart from provision for conferment of temporary

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status, it also specified the benefits available on conferment of such status. A similar scheme has also been prepared for the Postal employees working in the Department of Posts. In J.M. Union's case, the Supreme Court further observed that temporary status would be available to the casual labourers in the Postal Department on completion of one year of continuous service with at least 240 days of work (206 days in the case of offices observing 5 days' week) and on conferment of temporary status, the House Rent Allowance and City Compensation Allowance shall be admissible. After one year's of continuous service with temporary status, the casual labourers shall be treated at par with temporary Group 'D' employees of the Department of P & T and would, thereby be entitled to such benefits as are admissible to Group 'D' employees working on regular basis.

8. The judgement of the Supreme Court in the case of Daily Rated Casual Labour employed under the P & T Department was delivered on 27.10.1987. Subsequently, a Misc. Petition was filed in the Supreme Court (CWP No.7351/88 in W.P. No.302/86, The National Federation and Another Vs. Union of India and Others) wherein the Supreme Court passed an order on 26.9.1988 giving

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extension of time to the respondent to comply with the order dated October, 1987 by six months. The Supreme Court further directed as follows:-

"In the meantime, no employee in respect of whom the order dated October, 1987 has been passed by this Court, shall be discharged from service." (emphasis added).

9. Following the decision of the Supreme Court in the aforesaid case, this Tribunal has granted relief in numerous cases. Reference may be made to the decision dated 4th M , 1988 in OA-529/88 of the Principal Bench of this Tribunal (Sunder Lal & Others Vs. Union of India & Others) delivered by a Bench presided over by Shri K. Madhava Reddy, the then Chairman. In that case, the respondents had terminated the services of the applicants on the basis of a decision taken by them to retrench the Daily Rated Mazdoors who had been appointed after 1.4.1985. There was also a direction to fill up the resultant vacancies. The applicants had put in nearly 3 years of service. In view of the leading decision of the Supreme Court mentioned above, the Tribunal held that the administrative decision to retrench all those who were employed after 1.4.1985, was not legally sustainable. The Tribunal quashed the impugned order of termination and directed the respondents to reinstate the applicants with immediate effect and to consider them for absorption in

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accordance with the scheme, which was under preparation.

10. In the light of the foregoing discussion, we are of the opinion that the applicants in these applications are entitled to succeed. All of them have worked for more than one year. The cut-off date fixed by the respondents in their circular letter dated 22.4.1987 regarding further engagement of casual employees, is arbitrary and not legally sustainable. In this respect, we follow the decision of the Principal Bench of the Tribunal in Sunder Lal's case, mentioned above.

11. In the facts and circumstances, the applications are disposed of with the following orders and directions:-

(i) We hold that the applicants in these applications are entitled to temporary status in accordance with para.5(1) of the scheme prepared by the respondents for regularising casual labourers and granting temporary status to them. They shall be brought on to the permanent establishment, in accordance with the provisions of the scheme. We further hold that the services of the applicants shall not be terminated in the meanwhile.

(ii) Till the applicants are so regularised, they shall be paid the minimum pay in the pay-scale of regularly employed workmen in the respective posts. They would also be entitled to all the

benefits and privileges envisaged in the judgement of the Supreme Court in Jagrit Mazdoor Union's case, mentioned above.

(iii) In the facts and circumstances, we do not direct payment of back wages to the applicants.

(iv) The interim orders passed on 28.11.1989 in OA-2370/89, on 22.2.1990 in OA-248/90, on 27.3.1990 in OA-502/90, and on 23.4.90 in OA-694/90, are hereby made absolute.

(v) There will be no order as to costs.

Let a copy of this order be placed in all the four case files.

(B.N. Dhoundiyal)
Administrative Member

(P.K. Kartha)
Vice-Chairman(Judl.)