

**CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH, AHMEDABAD.**

**OA No.229/2018 with MA Nos.190/2018 & 03/2021**

**This the 07<sup>th</sup> day of June, 2021.**

**Coram : Hon'ble Shri Jayesh V.Bhairavia, Member (J)  
Hon'ble Dr. A.K.Dubey, Member (A)**

1. Mr. Sureshkumar D. Dave  
Son of Ambalal Dave,  
Age about 52 years,  
Resident of New Gujarat Housing Board,  
Block No.30, Room No.643. G.I.D.C.  
Taluka : Padra, Vapi  
District : Valsad – 396 125
2. Mr. Balwantbhai K. Vankar  
Son of Mr. Kodarbhai Vankar  
Age about 51 years,  
Chanod Colony, Near Shiv Mandir,  
Tal. Pardi, G.I.D.C., Vapi,  
District : Valsad 396125. .... Applicants

(By Advocate : Shri P.H.Pathak)

**Versus**

1. Union of India,  
Notice to be served through  
The Secretary, Govt. of India  
Ministry of Communication & IT,  
New Delhi 110 001.
2. General Manager  
Valsad Telecom District (BSNL)  
Valsad 396 001.
3. Chief General Manager  
Bharat Sanchar Nigam Ltd.  
Gujarat Circle,  
Telecom Bhavan, CG Road,  
Ahmedabad – 380 006. .... Respondents.

( By Advocate : Ms.R.R.Patel )

**O R D E R**

Per : Hon'ble Shri J.V. Bhairavia, Member (J)

1. Considering the reasons and grounds stated in the MA No.190/2018 for condonation of delay, the same is allowed.
2. Instant OA has been preferred seeking direction to the respondents to grant Temporary Status, benefits of regularization to the applicants as well benefits of the equality of pay and consequential benefits. The applicants also seek following reliefs:-

*“(A) Pending admission and final disposal of this application, be pleased to direct the respondent No.3 to grant equality of pay to the applicants, i.e. pay the salary payable to class IV employee with permissible allowances to the applicants forthwith.*

*(B) Pending admission and final disposal of this application be pleased to direct the respondent Nos.1 & 2 to consider the case of the applicants for granted of temporary status and regularization as per the scheme in light of the order annexed of Veerendra Chaudhary & Ors.,*

*(C) Any other relief this Tribunal deem fit and proper, in interest of justice.”*

3. Learned counsel Shri P.H.Pathak submits that the applicants herein are working as Casual Labour with the respondents since 1990. Their services were illegally terminated in the year 1992. Aggrieved by this illegal termination, they approached Labour Court and filed Reference No.01/1996 whereupon the Labour Court directed the respondent to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who had been continuously

working for more than one year in the post of Telegraphs Department.

The respondent had challenged the order of the Labour Court before Hon'ble High Court of Gujarat by filing SCA Nos.10497/2002 & 10818/2002 but the same were dismissed by Hon'ble High Court vide order dated 13.02.2008. Then respondents preferred Special Leave Appeal (Civil) No.16153/2006 which also yielded into dismissal.

- 3.1.** The respondent No. 2 issued an order dated 18.07.2008 for payment of arrears to the applicants. (Annexure A/3).
- 3.2.** The applicants were eligible for Temporary Status, regularization and consequential benefits as per the scheme framed by the Department (Annexure A/4).

However, the benefit under the scheme was not extended to them, hence OA No. 20/2011 was preferred by the applicants and this Tribunal, vide its Order dated 03.12.2015 (Annexure A/6) disposed of the said OA with the observation therein that applicants had right to be absorbed on a rational basis under the Scheme that was in operation, and that the respondents needed to consider them for absorption in accordance with Rules, and directed the respondents to consider their case within a period of four months. The Review Application No. 61/2016 filed by the respondents was dismissed on 20.03.2017 by this Tribunal. Since the respondents have not

considered the case of the applicants pursuant to the direction issued by this Tribunal, as also not extended the benefit under the scheme, the applicants had filed present OA, i.e. OA No. 229/2018 for the prayer as stated hereinabove.

**3.3** In the meantime, the respondents had filed SCA No.9636/2018 before the Hon'ble High Court of Gujarat against the order passed by this Tribunal in OA No.20/2011 as also in Review Application No.61/2016 dated 20.3.2017.

**3.4** During the pendency of this OA, the said SCA No. 9636/2018 preferred by the respondent came to be dismissed by the Hon'ble High Court of Gujarat vide its order dated 07.08.2018 and imposed the cost of Rs. 1 Lakh against the respondents for frivolous litigation. Therefore, the respondents are under legal obligation to extent benefit under the scheme to grant temporary status and further regularisation of the service of applicants. However, the respondents had denied the said benefits to the applicants.

**3.5** It is stated that other group of employees who were also not granted benefit of temporary status etc. had approached to the Court of Law and after rejection of SLP by the Hon'ble Supreme Court, the respondent have implemented the judgment in favour of similarly placed employees, i.e. Mr. Virendra Choudhry & Ors. as also in case of one Shri R. K. Shaikh. In this regard, applicant had placed reliance

on orders dated 20.11.2015 & 17.06.2015 issued by the respondents (Ann. A/8 & 9). The counsel for the applicants therefore submits that for the reason best known to the respondents discriminatory treatment had been given to the applicants which is violated Article 14 & 16 of the Constitution of India.

**3.6** It is submitted that though the applicants are entitled and eligible to get benefits of Temporary Status and they are required to be regularised, quite arbitrarily, the respondents have not extended such benefits to the applicants. Therefore, learned counsel for the applicants submit that as prayer sought in this OA, the respondents are required to be directed to consider the case of the applicants for grant of TS and other consequential benefits expeditiously.

**4.** Per contra, Respondents have filed their reply and denied the claim of the applicants. Learned counsel Ms.R.R.Patel, appearing for the respondents submits that the prayer sought in this OA are almost similar to the previous OA, No.20/2011 (Annexure R/1). The respondents object the maintainability of the present OA for the reason that the present OA is barred by principles of *res judicata*.

**4.1** It is stated that the OA No.20/2011 preferred by the applicants was disposed of by this Tribunal vide order dated 03.12.2015 (Annexure A/6) with direction to the respondents to consider the matter of the applicants for grant of Temporary Status and other benefits. The said

order was assailed by the respondents before the Hon'ble High Court of Gujarat by preferring SCA No.9636/2018. The said SCA was disposed of vide order dated 07.08.2018. The SLP filed thereon too came to be dismissed by Hon'ble Supreme Court vide order dated 27.01.2020 (Annexure R/2).

- 4.2** On dismissal of SLP filed by the respondents, the case of the applicants had been considered by the respondents for grant of Temporary Status under TSM Scheme 1989 as also their claim for regularisation pursuant to and in compliance of the direction issued by this Tribunal in OA No.20/2011. Since they did not fulfill the eligibility condition for grant of the benefits of TSM Scheme, 1989, the respondents by detailed reasoned speaking order dated 19.09.2020 (Annexure R/3) rejected the claim of the applicants. The applicants have also acknowledged the receipt of the said decision/ office order. (Annexure R/4).
  
- 4.3** It is submitted by the learned standing counsel for the respondents that the applicants were engaged in 1990 as casual labourers/ workers and they were dis-engaged in 1992. They had preferred a reference in 1996 and were reinstated in 2008. The Scheme i.e. "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, dated 1.10.1989" (Annexure A/4) was introduced for grant of Temporary Status to the casual labourers in terms of the para 5 of the said scheme. The applicants herein were not in engagement as on

01.10.1989 and resultantly, could not have rendered of service of 240 days as on 01.10.1989 as per the requirement of para 5 of the Scheme. Therefore, the applicants were not found to be eligible for the conferment of Temporary Status.

The learned counsel for the respondents further submits that the aforesaid aspects have been reinforced by the Hon'ble Apex Court in Civil Appeal No.6176/2008, BSNL V/s. Shri Nayara Na Thimmappa Madivel dated 17.10.2008 (Annexure R/5). It is further submitted that in the said decision, Hon'ble Apex Court further held that the said TSM Scheme was one time measure and not a continuous one. Therefore, applicants are not entitled for the relief of grant of Temporary Status, she argued.

**4.4** It is submitted that the applicants are not entitled to claim equality of pay as par with last four regular employees. The applicants herein claiming grant of Temporary Status under the then operating one time scheme is absolutely erroneous; it is absurd on the part of the applicants to claim salary at par with Class-IV employees. As such, Class-IV are on the regular establishment and their working, nature of duties, timings are not comparable to that of the applicant. The applicants herein are casual labour who would be entitled to wages as quantified from time to time on the basis of their engagement. Therefore, the claim of the applicants to grant salary at par with

Class-IV employees is thoroughly unjustified and baseless and they are not entitled for any relief.

**5.** The applicants have filed their rejoinder. It is stated that the respondents have not stated correct facts as per record and settled position of law. The respondents have not complied with the directions issued by this Tribunal in true spirit. This Tribunal in its earlier order categorically recorded that the similarly placed two sets of employees were granted Temporary Status and absorbed by the respondents. The contention of the respondents with regard to prayer sought in this OA being multiple relief, is misconceived since the applicants are entitled to the minimum of pay as per the judgment of the Hon'ble Apex Court. By relying upon the judgment passed by the Hon'ble Apex Court in the case of Commissioner, Karnataka Housing Board v/s. C.Muddaiah, reported in 2007 (7) SCC 689, it is stated that respondents ought to have considered the claim as per the direction of this Tribunal in its true spirit.

**5.1** It is stated that this Tribunal in its earlier order passed in OA No.20/2011 had also observed that such a scheme was in operation with the respondents and therefore, respondents were directed to consider them for absorption within time framed. The respondents have also failed to take into consideration that the Hon'ble High Court had imposed heavy costs while disposing of their SCA No.9636/2018 as the said SCA was frivolous attempt on the part of

the respondents to deprive the labourers of minimum wages and protection under the law. Though there was no stay against the order passed by this Tribunal, the respondents arbitrarily and with a view to deprive the applicants of benefits of the scheme did not comply with the direction of this tribunal and instead, filed the SCA before the Hon'ble High Court.

**5.2** It is further stated that the Temporary Status Scheme is an ongoing Scheme as held by this Tribunal, upheld by the Division Bench of the Hon'ble High Court and confirmed by the Division Bench of the Hon'ble Supreme Court. The order relied upon by the respondents was set aside by the Hon'ble High Court and remanded back to the Tribunal. Further, the judgment relied upon by the respondents i.e. BSNL V/s. K.G. Selvaraj & Ors. is also not applicable in the present case.

**5.3** Lastly, the counsel for the applicants submits that the present OA was filed in the year 2018 seeking the relief for direction to the respondents to grant the benefits of the Temporary Status / absorption applicants as per direction issued in earlier OA i.e. OA No.20/2011. During the pendency of this OA, the respondents in their reply placed on record their decision dated 19.9.2020 whereby the claim of the applicants had been rejected. Therefore, the applicants had to file an MA No. 03/2021 for amendment in the prayer clause of this OA, to avoid repetition of litigation.

6. On the other hand, the counsel for the respondents argued that pursuant to the direction issued by this Tribunal in OA No.20/2011, the case of the applicant had been considered in terms of Temporary Status Scheme and the applicants were not found fit / eligible to claim such benefits and accordingly, by a detailed and reasoned speaking order dated 19.09.2020 (Annexure R/3), the claim of the applicants was been rejected. Therefore, the main grievance raised in the present OA with regard to non compliance of the order passed by this Tribunal, has now been resolved and the prayer sought herein has become infructuous as the cause of filing of this OA does not survive. The decision dated 19.9.2020 is based on service record of the applicants and detailed reason has been assigned for rejecting the claim of the applicant which constitutes a fresh cause of action and the same cannot be allowed to be challenged in the present OA. Since the cause for filing of this OA does not exist, the MA filed by the applicants also required to be dismissed.
7. Heard the parties and perused the material on record.
8. It is noticed that earlier the applicants herein had filed OA No.20/2011 wherein they sought multiple reliefs including the reliefs for declaration that the applicants were illegally denied the benefits of grant of Temporary Status as also the status of regular Mazdoor and further, for direction to grant them Temporary Status and to absorb them as Regular Mazdoor. The said OA was disposed of vide order

dated 03.05.2015 with directions to the respondents to consider the matter within a period of two months. It was made clear therein that the applicants had claimed multiple reliefs in the said OA, but the other reliefs had not been granted. As noted hereinabove, the respondents filed the Review Application which was dismissed by this Tribunal on 20.3.2017 and aggrieved by the same, the respondents filed SCA No.9636/2018 before Hon'ble High Court of Gujarat. The said SCA was dismissed vide order dated 07.08.2018. For sake of brevity, the same is reproduced herein below :

*“1 This writ petition is frivolous attempt on the part of the Bharat SancharNigam Limited (B.S.N.L) filed against the workman with a prayer to quash and set aside the judgment and order dated 03.12.2015 passed in O.A No. 20 of 2011 as well as order dated 20.03.2017 passed in Review Application No. 61 of 2016, whereby the Tribunal categorically recorded that the consequences of the Labour Court's order in similar such cases were confirmed by the High Court and by the Supreme Court in Special Leave Petition (SLP) filed by the B.S.N.L and after dismissal of the SLP, it was concretized as under:*

- “(a) the concerned person has a right to be absorbed on a rational basis under a Scheme;*
- (b) such a Scheme is in operation with the respondents;*
- (c) therefore it will be for the respondents to consider them for absorption in accordance with the rules within a time frame.”*

*2. Though many fold prayers/reliefs were claimed before the Tribunal, in para 6 direction was given to respondent to consider the matter within a period of two months and further observed as under:*

*“We find that allied benefits cannot only be monetary in nature. When employee enters into services, his further enhancement of career is also a part of his life and livelihood and thus, protected, will be included in allied benefits.”*

*Accordingly, case of the present respondent was to be considered.*

*3 Learned counsel appearing for the B.S.N.L, however would raise many fold grievances that certain directions and issues which were*

*subject matter of the writ petition before this Court and S.L.P before the Hon'ble Supreme Court, were not qua the present respondent and therefore such directions ought not to have been issued in the case of the respondent. Such submissions are not only misplaced, but misconceived and this writ petition is one more case on behalf of the B.S.N.L just to wriggle out from the earlier orders passed by the Labour Court, confirmed in the High Court and up to the Supreme Court. Accordingly, we are not inclined to interfere with the orders impugned as the respondent herein is also entitled to be considered under the Scheme as he is similarly situated workman.*

*4.Though we have not summoned respondents by issuing notice, but precious time of the Court is wasted and therefore, cost of Rs. 1 lakh to be paid by the petitioner B.S.N.L to be deposited in the Gujarat High Court Legal Services Committee.”*

9. It is noticed that since the respondents had not complied with the direction issued by this Tribunal as well as the order passed by the Hon'ble High Court, again the applicants approached this Tribunal by way of present OA seeking relief for direction to the respondents to consider their claim for Temporary Status and consequential benefits of regular Mazdoor. This Tribunal had issued noticed on 05.06.2018. This Tribunal time and again directed the respondents to file their reply as also directed to consider the claim of the applicant.
10. During the pendency of this OA, the respondents being aggrieved with the order passed by the Hon'ble High Court of Gujarat in SCA No.9636/2018, had filed the SLP (Civil) Dairy No.(s).46576/2019 along with IA No.10487/2020 –condonation of delay in filing before Hon'ble Apex Court and the same was dismissed vide order dated 27.01.2020 (Annexure R/2).

On dismissal of the said SLP of the respondents, the case of the applicant was considered by the respondents and as noted

hereinabove, vide speaking order dated 19.9.2020 the claim of the applicant for granted of Temporary Status and consequential benefits have been rejected mainly on the ground that the applicants were not fulfilling the eligibility condition stipulated in para 5 of the TS Scheme 1989. Copy of the said decision has been placed on record by the respondents along with their reply and it has been contended that since the respondents had complied with the direction issued by this Tribunal, the grievance raised in this OA and prayer sought in this OA stood redressed. The respondents also objected the MA No.3/2021 filed by the applicants for amendment of the prayer clause to the effect that the decision dated 19.9.2020 passed by the respondents be quashed and set aside mainly on the ground that the cause is totally changed since the respondents had considered the case of the applicants and rejected the same by assigning detailed reasons in their speaking order. Since the respondents had considered the claim of the applicants and rejected the same vide order dated 19.9.2020, the relief sought in this OA does not survive. Consequently, the prayer sought in MA No.3/2021 for amendment amount to change the nature of the present OA, Thus, the said MA is dismissed.

- 11.** In view of the aforesaid factual matrix, it can be seen that the grievance raised in the present OA for non consideration of the claim of the applicants pursuant to the order passed by this Tribunal in OA

No.20/2011 is redressed by the respondents in the light of issuance of the speaking order dated 19.9.2020.

**12.** Under the circumstances, the prayer sought in this OA does not survive. At this stage, it is made clear that it is open for the applicants to file separate OA, if they are aggrieved by the speaking order dated 19.9.2020 passed by the respondents. Accordingly, the OA stands disposed of. There shall be no order as to costs.

**(A.K.Dubey)**  
**Member (A)**

**(J.V.Bhairavia)**  
**Member (J)**

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