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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS. 653, 654 & 842 OF 1994

Cuttack, this the 10th day of August-2000

Sri Das Iswar Kua (in OA 653/94)
Kshirodra Patel (in OA 654/94)
Mangilal Dilla (in OA 842/94) ... Applicants

Vrs.

Chief General Manager, Telecom,
Orissa Circle and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
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ORIGINAL APPLICATION NOS.653, 654 & 842 OF 1994
Cuttack, this the 10th day of August, 2000

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

.....

In OA 653/94

Sri Das Iswar Kua
aged about 25 years
son of Sri Luhura Kua, residing at Mahesdihi, PO-Sundargarh,
P.S-Sundargarh, District-Sundargarh, last employed in the
office of the Telecom District Engineer, Rourkela-2.

In OA 654/94

Kshirodra Patel,
aged about 26 years,
son of Tikeswar Patel,
residing at Bhugurapali,
PO-Samasingha, Via-Kalabira,
District-Sambalpur, last employed in the
office of the Telecom District engineer,
Rourkela-2.

In OA 842/94

Mangilal Dilla
son of Lambodar Dilla
residing at Khadangudehi,
PO-Bagdehi,
PS-Laikera,
District-Sambalpur, Orissa,
last employed in the office of
the Telecom District Engineer,
Rourkela

APPLICANTS

Advocates for applicants - M/s S.S.Mohanty
S.Sahoo
P.K.Das.

Vrs.

1. Chief General Manager, Telecom Orissa Circle,
Bhubaneswar.
2. Telecom District Engineer, Rourkela-2.
3. Union of India, represented through its Secretary,
Ministry of Communication, New Delhi. ...Respondents
Advocate for respondents - Mr.Ashok Mohanty
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

These three cases have been heard together. The facts of these cases are similar though not identical. The respondents have filed similar counters and the points for decisions are the same. Therefore, one order will govern these three cases though facts of each case are indicated separately.

2. In OA No.653/94 the applicant has prayed for a direction to the respondents to re-engage him as Casual Mazdoor and to continue as such till his regularisation. The facts of this case, according to the applicant, are that he was employed as Casual Mazdoor on 1.2.1986 and worked continuously as such upto 27.3.1987. A copy of the Muster Roll is at Annexure-1. It is stated that pursuant to the decision of the Hon'ble Supreme Court in Daily Rated Casual Labour, P & T Department v. Union of India, AIR 1987 SC 2342, Chief General Manager, Telecom, Orissa Circle (respondent no.1) is considering the case of the applicant for absorption in regular and permanent cadre in accordance with the Scheme for regularisation. For this purpose, the Telecom District Engineer, Rourkela (respondent no. 2) has prepared a seniority list in which the applicant's name is shown against serial no. 15. The applicant has stated that while his case is pending regularisation, he is entitled to be considered for re-engagement as casual worker. But without engaging him, other persons whose names do not find place in the seniority list at Annexure-2 are being engaged as casual labourers. The applicant apprehends that if he is excluded for a long period he will lose his seniority for the purpose of regularisation. As the seniority list has been prepared on

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the basis of total number of days worked by a particular casual labourer. It is further stated that casual labourers are being employed and their wage payment for the first three months of 1994 has ranged between Rs.63, 216/- and Rs.8,81,293/-. It is further stated that every month ^{when} casual labourers are employed excluding the applicant the cause of action has arisen and the last such exclusion has taken place on 1.9.1994. In the context of the above facts, the applicant has come up with the prayer referred to earlier.

3. The applicant in OA No. 654 of 1994 has stated that he was employed as Casual Mazdoor on 1.3.1986 and continuously worked as such upto 30.4.1987. A copy of the Muster Roll is at Annexure-1. It is further stated that pursuant to the decision of the Hon'ble Supreme Court reported in AIR 1987 SC 2342 (supra), the Chief General Manager, Telecom, Orissa Circle, Bhubaneswar (respondent no.1) is considering the case of the applicant for his absorption into regular and permanent cadre in accordance with the scheme for regularisation. For this purpose, the Telecom District Engineer, Rourkela (respondent no.2) has prepared a seniority list which is at Annexure-2. In this list the applicant's name has been shown against serial no. 12. The applicant has stated that while his case is pending for regularisation he is entitled to be appointed as casual mazdoor till he is regularised. But ignoring his case, other persons whose names do not appear in the seniority list are being engaged. The applicant apprehends that by his continuous exclusion he will lose his seniority and chance of regularisation because seniority list is based on the total number of days a particular person is engaged. It is further stated that casual labourers are being engaged even now and in the first three months of 1994 the quantum of

wage payment for such casual labourers has ranged between rupees sixtythree thousand & odd and rupees eight lakh and odd. The applicant has further stated that every month when casual labourers are engaged and the applicant is ignored, a fresh cause of action arise. The applicant has been making representations time and again but without any result. Copies of his two such representations are at Annexures 3 and 4. In the context of the above fact, the applicant has prayed for a direction to the respondents to re-engage him as casual mazdoor and to continue him as such till his regularisation.

4. The applicant in OA No.842/94 has prayed for a direction to the respondents to engage him as casual mazdoor and to continue him as such till his regularisation. His case is that he was engaged as casual mazdoor on 1.6.1985 and continuously worked as such upto 30.4.1987. A copy of the Muster Roll is at Annexure-1. It is stated that in pursuance of the decision of the Hon'ble Supreme Court reported in AIR 1987 SC 2342(supra), the C.G.M.T., Orissa Circle (respondent no.1) is considering the case of the applicant for his absorption into regular and permanent cadre in accordance with the scheme for regularisation. For this purpose Telecom District Engineer, Rourkela (respondent no.2) has drawn up a seniority list at Annexure-2 in which the applicant's name is shown against serial no. 6. While the case of the applicant is pending for regularisation and he is entitled to be engaged as casual worker, the respondents are engaging outsiders whose names do not appear at Annexure-2 as casual labourers ignoring the case of the applicant. The applicant apprehends that if his case is ignored for long then he will lose his seniority as also chance for regularisation because the seniority list has been drawn up on the basis of total number of days worked by a casual worker. The applicant has indicated the amount of

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wage payment made to casual workers in the first three months of the year 1994. It is further stated that the applicant made a representation on 16.4.1994 for his re-engagement. This representation is at Annexure-3 but there was no response. In the context of the above facts, the applicant has come up with the prayers referred to earlier.

5. The respondents have filed identical counters opposing the prayer of the applicants in these three cases. It has been stated that these applications are barred by limitation as the last engagement of the applicants as casual mazdoors, according to the averments made by the applicants, was till 27.3.1987, 30.4.1987 and 30.4.1987 respectively. It is further stated that the applicants had admittedly left the casual engagement voluntarily and permanently since April/March 1987 leading to break in engagement as casual labourers for more than eight years which is not condonable as per the departmental instruction dated 21.10.1992 at Annexure-1. The applicants were not sponsored by the Employment Exchange nor were they engaged as Casual Mazdoors in pursuance of any notification calling for applications. They were also not issued with any appointment order when they were engaged in 1986 nor was any termination order issued to them. They were picked up from open market for casual engagement on daily rated basis purely on need basis for execution of certain works which at that time were being executed departmentally. At present no such line and cable works are being executed departmentally. The same are being executed through engagement of contractors as per a policy decision dispensing with casual labourers engagement. The departmental instruction dated 18.7.1985 in this regard is at Annexure-R/2.

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The respondents have further stated that the applicants have not produced any evidence that they had at any time after May 1987 exercised their right of getting re-engagement and the respondents rejected it or that they were prevented from doing the work due to illness or non-availability of work. It is further stated that the Department of Telecommunication in their orders dated 30.3.1985 and 22.6.1988 at Annexures R/3 and R/4 banned engagement of casual labourers in general and also in respect of casual mazdoors under the Co-axial Cable Project Circles and Railway Electrification Circles. Further these works are being done now through engagement of contractors in accordance with the instruction dated 18.7.1985 at Annexure-R/2. The respondents have specifically denied that at present casual mazdoors whose names appear in Annexure-2 have been taken back in service. They have also stated that they have not engaged any new casual mazdoor. It is further stated that at present many casual mazdoors are working in the Department as casual labourers. They have been engaged prior to 30.3.1985 and are waiting for regularisation. They could not be regularised due to want of vacancies as the departmental works are now being carried out by contractors. These applicants were neither engaged prior to 31.3.1985 nor are they continuing as such in the Department at present and as such the question of their regularisation does not arise. It is further stated that there are no sanctioned posts even to regularise the surplus casual daily rated mazdoors who were engaged prior to 30.3.1985 and such persons are waiting for regularisation and therefore the case of the applicants cannot be considered. The respondents have further stated that the working particulars given by the applicants in Annexure-1 of their respective applications are not authenticated by any officer. It is stated that

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Casual Mazdoors engaged for long periods are issued with Mazdoor Identity Cards with photographs signed by duly authorised departmental officers. But these applicants have not been issued with such Identity Cards. Even conceding for the argument's sake that these applicants were engaged in 1986-87 as daily rated mazdoors as claimed by them, the respondents have stated that they voluntarily abandoned their engagement and therefore their cases cannot be considered for regularisation. The respondents have further stated that the Hon'ble Supreme Court in the case of State of Haryana and others v. Piara Singh and others, AIR 1992 SC 2130, and the case of New Delhi Development Horticulture Employees Union v. Delhi Administration, JT 1992(1) SC 394, and in the case of Director, Institute of Management Development U.P. v. Smt. Puspa Srivastav, AIR 1992 SC 2070, have held that regularisation can be done only against a vacant post and that too in accordance with rules. As the applicants did not come through Employment Exchange and no appointment order was issued to them, they are not entitled to be regularised. As regards the list at Annexure-2 the respondents have stated that this list contains names of such persons who were engaged as casual labourers after 30.3.1985. According to the ban order issued by the Department of Telecommunications, engagement of casual labourers after 30.3.1985 was unauthorised as it is violative of the ban order. On that ground, it is stated that they cannot be re-engaged on the basis of inclusion of their names in Annexure-2. Lastly, the respondents have stated that the Department of Telecommunications had issued a scheme entitled Casual Labourers (Grant of Temporary Status and Regularisation) Scheme in their letter dated 7.11.1989. A copy of the Scheme is at Annexure-R/5.

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The respondents have further stated that one Pitambar Nanda whose name appears in the list at Annexure-2 was engaged as daily rated mazdoor on voucher payment during 1992 on need basis with breaks pursuant to the direction of the Tribunal in MA No.65 of 1991 (arising out of OA No. 18/89) in the facts and circumstances of that case. The decision of the Tribunal is applicable to Shri Nanda only and cannot be extended to any other person like the applicant. Shri Nanda had also abandoned his daily wage basis engagement since 12.1.1995. But in pursuance of the direction of the Tribunal, he was engaged temporarily in a position meant for regular mazdoor. After further abandonment the work has been entrusted to a regular departmental mazdoor. The respondents have also stated that under the Scheme only those casual labourers who have been granted temporary status can be regularised and the applicants are not entitled for being granted temporary status as they were not engaged prior to the ban order dated 30.3.1985 and they are also not in continuous engagement and they have a break of more than one year which is condonable limit. On the above grounds, the respondents have opposed the prayer of the applicants.

6. The applicants have filed rejoinders to the counters of the respondents. The applicants in the rejoinders have stated that Annexure-R/1 dated 21.10.1991 is not applicable to their cases as their service relates to the period from 1985 to 1987. It has also been stated that the applicants have not left the engagement voluntarily or permanently. They presented themselves for being engaged, but respondent no.2 refused to engage them. The applicants in OA Nos.653 and 654 of 1994 were removed from Muster Roll in pursuance of the notice at Annexure-5 enclosed to the Rejoinder. The applicant in OA No.842 of 1994 has averred in his rejoinder that similarly his name was also removed

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from the Muster Roll. But notwithstanding this, the applicants in OA Nos. 653 and 654 of 1994 have stated that they continued in service till 27.3.1987 and 30.4.1987 respectively. It is further stated that of the persons listed in annexure-5 those against serial nos. 2, 4, 9, 11, 16, 18 and 20 have already been re-absorbed. It is further stated that large number of casual mazdoors are being employed every month in maintenance work. The applicants have enclosed at Annexure-6 a letter dated 21.4.1994 from the office of respondent no. 2 to the Employment Exchange Officer, Bhubaneswar, asking for names from SC/ST candidates for being engaged in Group-D posts. It has also been stated that the instructions at Annexure-R/2, Annexure-R/3 and Annexure-R/4 are irrelevant as the applicants have been given engagement during 1985 to 1987 notwithstanding such alleged ban. As regards the existence of large number of casual workers engaged prior to 30.3.1985 the applicants have stated that they do not seek to affect the seniority of those engaged prior to 30.3.1985. They want only re-engagement as retrenched casual workers and regularisation in their turn. It is also stated that Annexure-1 showing the period of engagement of the applicants bears the signature of S.I., Telecom and therefore, is an official document. The respondents have falsely denied the correctness of the document at Annexure-1 enclosed to the three applications. The applicants have further stated that the Scheme at Annexure-R/5 is prospective in nature and is inapplicable to the case of the applicants. Lastly, it has been stated that the cases of these three applicants are exactly the same as the case of Pitambar Nanda and therefore like Pitambar Nanda they also should be ordered to be re-engaged and regularised in their turn. On the above grounds, the applicants in their rejoinders have reiterated their prayer in the O.As.

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7. We have heard Shri S.S.Mohanty, the learned counsel for the petitioners and Shri Ashok Mohanty, the learned Senior Standing Counsel appearing for the respondents and have also perused the records. The learned counsel for the petitioners has filed a memo enclosing certain letters of the Department with copy to the other side and these have also been taken note of. The learned counsel for the petitioners has relied on the decision dated 8.12.1989 of the Tribunal in OA No.18/89. We have also perused this record.

8. The prayers made by the applicants in these three cases which are identical have to be considered in the light of the aforesaid pleadings of the parties and the submissions made by the learned counsels for both sides. The applicants have asked for their re-engagement and eventual regularisation in their turn. The position of law is well settled that regularisation can only be done only against vacant posts and in terms of the Recruitment Rules for the post against whom a casual worker is sought to be regularised. The respondents have stated that there are large number of casual labourers who have been engaged prior to 30.3.1985 waiting to be regularised and the applicants who have been engaged after 30.3.1985 and in violation of the ban order cannot be straightaway regularised over the heads of persons who are waiting to be regularised and who have been engaged prior to the dates of first engagement of the applicants. It is also to be noted that the applicants also have not prayed for regularisation straightaway. They only want re-engagement as casual labourers and eventual regularisation when their turn comes. In view of this, the main prayer of the applicants is for their re-engagement as casual workers. The respondents have stated that the applicants were engaged from open market and their names did

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not come either in response to any requisition to the Employment Exchange or any notice inviting applications from general public for engagement as casual labourers. The respondents have also questioned the authenticity of Annexure-1 to the O.As. showing the period of engagement of these applicants as casual labourers. The respondents have, however, not questioned the authenticity of Annexure-2. They have pointed out Annexure-2 is a revised seniority list of casual workers engaged after 30.3.1985. In this list the names of all the three applicants find place. Therefore, the list at Annexure-2 must be held to be authentic. According to this list, the applicant in OA No.653/94 has worked for 278 days in 1986 and 102 days in 1987, totalling 380 days. The applicant in OA No.654/94 has worked in total 417 days of which 301 days in 1986 and 116 days in 1987. The applicant in OA No.842/96 has worked for 457 days of which 85 days in 1985, 262 days in 1986, and 110 days in 1987. From this list itself it appears that these applicants have worked as casual workers for the number of days indicated at Annexure-2. It also appears from Annexure-5 enclosed to the rejoinder that two of them, the applicants in OA Nos.653 and 654 of 1994 have been given notice on 27.5.1986 indicating their names are removed from the enrolment of Muster Roll with effect from 30.6.1986. In this letter it has also been mentioned that the applicants may be called back when his services will be required by the Department. The applicant in OA 842/94 has stated that his name was also removed from the Muster Roll in the similar fashion. From this it is clear that at least the applicants in OA Nos. 653 and 654 of 1994 have not voluntarily abandoned their engagement and left the job. They have been given one month's notice in the letter at Annexure-5 and have been removed. This contention of the respondents that these two

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17 applicants have voluntarily given up their engagement is therefore held to be without any merit and is rejected. So far as the applicant in OA No.842 of 1994 is concerned, even though he has not produced any notice as in annexure-5 it cannot be held in the face of the notice at Annexure-5 in respect of the other two applicants that the applicant in OA No.842/94 voluntarily gave up his engagement and absented himself.

9. The stand taken by the respondents that the applicants' names did not come from the Employment Exchange or in response to the notice inviting applications. This consideration is not relevant for the purpose of their re-engagement because their original engagement is from the open market. As retrenched casual workers they have a right to be considered for re-engagement when casual labourers are engaged and they should have preference over fresh faces. The respondents have pointed out that the Department of Telecommunications in their circular dated 30.3.1985 at Annexure-3 have decided that fresh recruitment and employment of casual labourers for any type of works should be stopped forthwith in Telecom Circles and Districts and the casual labourers already in employment should be utilised only for work of casual nature, all installation works of temporary nature and certain other types of works. Subsequently in order dated 18.7.1985 at Annexure-R/2 it has been indicated that certain types of works should be got done by contractors only. The applicants have mentioned in the rejoinders that these circulars are not applicable to them because they have been engaged during 1985 to 1987. This contention is without any merit because the applicants in paragraph 4.1 of their applications have mentioned that they have been engaged on 1.2.1986, 1.3.1986 and 1.6.1985 respectively. In the face of this specific averment made by the applicants in their OAs, it cannot be held that all of

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them have been working from 1985 to 1987 and the applicant in OA No.842/94 has been working prior to 30.3.1985. Therefore, the contention of the applicants that they have been working prior to 30.3.1985 is not borne out by their own pleadings and is rejected.

10.A retrenched casual labourer has a right to be considered for re-engagement. In the notice at Annexure-5 issued to the two applicants in OA Nos. 653 and 654 of 1994 it has been specifically mentioned that they will be called to work when there is need. The respondents have stated that at present no casual workers are being engaged by them and all works are being done through contractors' labourers. The applicants in the rejoinders have enclosed a requisition to the Employment Exchange calling for names for engagement in Group-D posts. That requisition does not help the case of the applicants in any way because that requisition has been issued by the Telecom District Engineer, Bhubaneswar, whereas the applicants had worked under Telecom District Engineer, Rourkela. Moreover, this requisition is for filling up of regular Group-D posts in SC/ST quota in Bhubaneswar Telecom District. This is not a requisition for engagement of casual workers. The applicants have stated in their rejoinders that of the persons whose names were removed from Muster Roll in pursuance of Annexure-5 several persons whose names appear against serial nos.2,4,9, 11,16,19 and 20 have already been re-absorbed. Of these persons we find that names of persons in serial nos.2,4,9, 11 and 16 are also there in the seniority list at Annexure-2 and names of some of them are below the names of the applicant in OA No.842/94 in the seniority list at Annexure-2. This document at Annexure-5 has however been filed by the applicants with the rejoinders and the respondents have not had opportunity to explain or counter this document. In any case, in the letter at

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Annexure-5 itself it has been mentioned that the persons whose names have been removed from the Muster Roll would be called back for engagement if there is need of work for them. In case some of these persons at Annexure-5 like those mentioned in serial nos.2,4,9 and 16 have been re-engaged, even though their initial engagement was after 30.3.1985, then on the same logic the applicants' cases should also be considered for re-engagement as and when the respondents engage casual workers. The respondents have stated that at present they are not engaging any casual workers. This has been contested by the applicants. We have no material before us besides the averments and denial with regard to engagement of casual workers by the respondents. In view of this, the prayer of the applicants for being re-engaged as casual labourers is disposed of with a direction that in case respondent no.2 engages any fresh casual mazdoors, then before doing that he must consider re-engagement of these applicants because of their status as retrenched casual mazdoors.

11. The respondents have stated that the period of break in engagement of the applicants is more than seven years and this period cannot be condoned. For the purpose of their re-engagement as casual mazdoors the question of condonation of break would not arise and that would have to be done strictly in accordance with the order dated 21.10.1992 at Annexure-R/1. The applicants have also stated in their rejoinders that the person whose name appears against serial no.11 at Annexure-5 has been re-absorbed. This is one Pitambar Nanda about whom the respondents have stated that he was re-engaged in pursuance of the direction of the Tribunal in MA No.65/91 arising out of OA No. 18/89, but he again gave up his engagement since

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12.1.1995. We have perused the record of OA No.18/89 in which Pitambar Nanda who was engaged after 30.3.1985 came up with a prayer for a direction to the respondents to absorb him in the Department and for regularising his services by allowing him to continue in his post. The OA was disposed of in order dated 8.12.1989 with the direction to the Department that the applicant should be considered for being absorbed after framing of the Scheme for the purpose in pursuance of the decision of the Hon'ble Supreme Court in the case of Daily Rated Casual Labour, P.& T. Department v. Union of India (supra). After the passing of the orders, as there was delay in framing of the scheme, the applicant filed MA No.65/91 praying for a direction to the respondents to absorb the applicant within a time frame fixed by the Court. In order dated 25.6.1991 the Tribunal directed that as no scheme has yet been framed, the Department is directed to provide employment to the applicant within a month pending regular absorption. According to the respondents, Pitambar Nanda had not been regularised because even after re-engagement he had abandoned his engagement in January 1995. In view of this, the direction of the Tribunal in the case of Pitambar Nanda (supra) is not relevant for the present purpose.

12. Before parting with this case two more points have to be mentioned. Firstly, the casual labourers are engaged for doing work which is temporary, seasonal and intermittent in nature and it is not open for the Tribunal to direct the departmental authorities to engage a particular person as casual mazdoor if there is no need for such engagement. But if such engagement is made, then the retrenched casual workers will be given priority over fresh appointees. Respondent no.2 should therefore give priority to the applicants in these three cases over fresh recruits if and when he engages casual mazdoors.

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13. The second point is that the learned counsel for the petitioners in his memo filed after hearing is over has enclosed certain documents which have been perused. As these documents have been filed after hearing is over the respondents did not have any opportunity to make any averment with regard to these documents. Whatever it may be, from the letter dated 7.1.1993 filed as one of those documents it is noted that as per Department of Telecommunications, New Delhi's letter No.49014 dated 8.4.1991 casual workers engaged before 7.6.1988 and who are in service as on 8.4.1991 can be considered for regular appointment to Group-D posts. This letter dated 8.4.1991 has not been produced and therefore we are unable to know the details of this order, if any. We, however, make it clear that the order passed by us in these cases in accordance with the instructions and documents produced and pleadings made will not prejudice the cases of the applicants who have been initially engaged after 30.3.1985 if they are entitled to be absorbed in accordance with any other subsequent instruction issued by the Department.

14. In the result, the three Original Applications are disposed of in terms of the observations and directions given above but without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

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(SOMNATH SOM)
10.8.2000
VICE-CHAIRMAN