

## CENTRAL ADMINISTRATIVE TRIBUNAL

## PATNA BENCH

O.A.NO.: 186 OF 2006

[Patna, this, Friday, the 18<sup>th</sup> Day of July, 2008]

## C O R A M

HON'BLE MR. SHANKAR PRASAD, MEMBER [ADMN.]


1. Binod Kumar Pandit, s/o Shri Lakshman Pandit.
2. Devendra Kumar Pandit, s/o Shri Doodhari Pandit.
3. Md. Sarfraj Alam Bakshi, s/o Md. Rasul Bakshi.
4. Mahesh Kumar Pandit, s/o Shri Hiralal Pandit.
5. Ashok Kumar Pandit, s/o Shri Turant Lal Pandit.
6. Braj Kishore Paswan, s/o Shri Sitaram Paswan.
7. Ashok Kumar Paswan, s/o Shri Laxmi Paswan.
8. Md. Aftab Alam Bakshi, s/o Md. Rashul Bakshi.
9. Ram Sevak Paswan, s/o Shri Kant Paswan.
10. Ashok Kumar Paswan, s/o Late Ram Bilash Paswan.

.....APPLICANTS.By Advocate :- Shri A.N.Jha.

Vs.

1. Union of India through the Secretary, Ministry of Communication, Deptt. Of Telecommunication, Sanchar Bhavan, New Delhi.
2. The Chief General Manager [Telecom], Bihar Circle, Patna-800 001 [Bihar].
3. The General Manager, Telecom District, Darbhanga Division, Darbhanga [Bihar].
4. The Telecom District Manager, Samastipur.
5. The Principal General Manager [Telecom Cell], Patna-800 001 [Bihar].

.....RESPONDENTS.By Advocate :- Shri G.K.Agarwal, ASC.O R D E R

Shankar Prasad, M[A] :- In this second round of litigation the applicants challenge the individual orders dated 14.10.2005 passed by TDM, Samastipur BSNL in respect of these applicants. They seek the quashing of these orders and a direction to respondents to extend to them the benefit of orders passed in OA 599 of 1996 and 32 other OAs. 

2. The applicants were engaged as casual labour. They had earlier preferred OA 327 of 2002. The same was disposed off vide order dated 19.04.2002 with the following direction :-


“4. After hearing the learned counsel for the parties, we are of the considered opinion that this original application can well be disposed of by giving certain directions to the concerned respondents and in that view the OA stands disposed of with the directions to the concerned respondents i.e. Respondent no.3 as to examine the case of the applicants individually with regard to rendering their services and if their cases are identical in the light of the directions so given in OA 599 of 1996 disposed of with 32 other cases, the same may be disposed of within a period of 4 months from the date of receipt/production of this order by passing reasoned speaking order in accordance with law. However, we are not expressing our views on the merits of the case.”

3. A perusal of the impugned orders in respect of Binod Kumar Pandit shows that the claim has been examined in terms of each of the Schemes dated 17.12.1990, 17.12.1993 and 12.02.1999 and it has been concluded that the applicant is not entitled to the benefit as he does not fulfill the conditions.

4. We have heard the learned counsels.

5. We also note that there is a fundamental change after the decision of Constitution Bench of Apex Court in State of Karnataka Vs. Uma Devi [3], 2006 [4] SCC 1. The Apex Court in para 45 of its decision had held -

“It is also clarified that those decisions which run counter to the principle, settled in this decision, or in which directions run counter to what we have held herein, will stand denuded of their status as precedents.”

6. The Patna Bench in OA 521 of 2000 & 33 others after considering this decision and other decisions has held as under :- 

“39. We finally come to the following conclusions :-

[i] Order for regularization/absorption, in sanctioned vacant posts, cannot be ordered in favour of casual labourers with or without temporary status, or of a temporary worker appointed on adhoc basis without following the rules and law prescribed for regular appointment to such post from open market in accordance with the constitutional scheme. Such prayers are rejected.

[ii] If the services of a casual labourer have been terminated as no longer required, a direction for his re-engagement cannot be granted. Such prayers are refused. However, the departments concerned should not terminate services of a casual labourer even if the work he is doing is further required to be done, with a view to appoint another casual labourer for the same work, unless the working casual labourer, for some reason, is rendered, or considered, incapable to do the work.

[iii] Prayer for enhancement of hours of work, i.e., making a part time casual labourer to be a full time casual labourer also cannot be allowed on the ground as already dismissed earlier. Such prayers are also refused.


[iv] The claim of the casual labourers of the Postal Department to be appointed to a group 'D' post under the “2002 Rules”, is presently refused as being premature as nothing has been shown, in course of arguments also, to claim that such casual labourers, with or without temporary status, had become ripe for consideration to be so appointed but had not been so considered.

[v] Grant of temporary status to a worker who has been working continuously on a work/project and whose engagement is required for more period, may be considered by the respondents under the parameters laid down in OA 192 of 2004, as further clarified in this order. The grant of temporary

status however, will not entitle a casual labourer to claim absorption/regularisation to a sanctioned post nor in future, could he claim further engagement on completion of the work/project for which he has been employed and in which temporary status has been granted to him. The services of a casual labourer under temporary status may be terminated, when no longer required to be engaged on such work/project either on its completion or regular appointment to the post having been made to carry out the same work/project or on account of incapacity of the casual labourer to do the work. This however, should be done in accordance with law.

[vi] The respondents are directed to consider cases of such casual labourers in a concerned application who have been continuing to work as such. In case the prayer is by a casual labourer whose services have been terminated, such prayer should be considered by the respondents in the concerned Application if such termination had been with a period of 1 ½ years of the filing of the Application. In exceptional and deserving cases the respondents may consider such prayer with a further grace period of one year, but not beyond that. The prayer for such relief in any application would be considered to be too stale to be considered beyond the aforesaid period.”

7. The learned counsel for the applicants has placed reliance on the Full Bench decision in Sushil Kumar Tewari & Ors. Vs. UOI & Ors.; 1997-2001 ATFBJ Pg.30 and B.N.Sharma Vs. UOI; 2004[2] ATJ 11. In both these cases the employees were on roll of the new entity and had filed the OAs for conferment of benefits which were admissible to them before their absorption. Admittedly, these petitioners are not on roll.

8. The Telecommunication services were corporatised w.e.f. 01.10.2000. BSNL is a separate corporate entity. Employees, whose services had been discontinued prior to that date, can now seek re-engagement only with BSNL. BSNL has not been notified. 

5.

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9. The Tribunal lacks jurisdiction. I accordingly/<sup>do</sup> not express any view on the other aspects namely [a] limitation [b] whether decision in another case provides a cause of action [c] whether somebody who has been discontinued can maintain an OA. Copies of OA be returned to applicant for presentation before the proper forum *after retaining one copy for record purposes.*

*Shankar Prasad*  
[Shankar Prasad]/M[A]

skj.