CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH

[Patna, this Friday, the 18th Day of July, 2008]

.....

C O R A M

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

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1. **OA 143 of 2006**

1. Kailash Kumar Manjhi, s/o Shri Nathu Prasad Manjhi.
2. Suresh Paswan, s/o Shri Janak Paswan.
3. Dinesh Das, s/o Shri Basant Das.
4. Suraj Kumar Patewa, s/o Shri Jaydeo Prasad.
5. Dilip Kumar Malakar, s/o Sri Siya Sharan Malakar.
6. Arun Kumar Thakur, s/o Shri M.L.Thakur.
7. Sanjay Sah, s/o Shri Sudarshan Sah.
8. Baij Nath Prasad, s/o Shri Laxman Ram.
9. Subhash Choudhary, s/o Shri Sita Ram Choudhary.
10. Dilip Kumar Sen, s/o Shri Shyamal Sen.
11. Santosh Kumar Malakar, s/o Shri Devendra Prasad.
12. Tarkeshwar Bhagat, s/o Shri Bharth Mali.
13. Jitendra Prasad, s/o Shri Kamata Bhagat.
14. Dharmendra Prasad, s/o Shri Madhusudhan Bhagar.
15. Arbind Kumar, s/o Shri Ram Sarup Roy.
16. Kumar Saroj, s/o Shri Rajendra Ray.
17. Om Prakash Ray, s/o Shri Ramji Ray.
18. Niteya Nand Ray, s/o Shri Sita Ram Ray.
19. Prabhu Kumar, s/o Shri R.P.Mahato.
20. Bipin Kumar, s/o Shri Panna Lal Prasad Singh.
21. Indradev Choudhary, s/o Shri Siri Choudhary.
22. Raju Choudhary, s/o Shri Jalandhar Choudhary.

.....APPLICANTS.

By Advocate :- Shri A.N.Jha.

Vs.

1. Union of India through the Secretary, Ministry of Communication, Department of Telecom, Sanchar Bhavan, New Delhi.

2. The Chief General Manager [Telecom], B.S.N.L., Meghdoot Bhavan, Bihar Circle, Patna-800 001.

3. The General Manager Telecom District, B.S.N.L., Katihar Division, Katihar [Bihar].

4. The Divisional Engineer [Administration], Office of the G.M.T.D., Katihar Division Katihar.

5. The Sub-Divisional Officer [Telegraph], Katihar Sub-Division, Katihar [Bihar].

6. The Principal General Manager [Telecom Cell], Patna-800 001 [Bihar]
.....RESPONDENTS.

By Advocate :- Shri G.K.Agarwal, ASC.

2. **OA 144 of 2006**

1. Ajay Kumar, s/o Shri Harilal Das.
2. Md. Farrok, s/o Md. Sarfarajuddin.
3. Hari Mohan Das, s/o Shri Kuldip Das.
4. Md. Maksud Alam, s/o Md. Sarfarajuddin.
5. Asim Kumar, s/o Shri Shashi Bhushan Pd. Singh.
6. Sudhir Thakur, s/o Shri Pairy Thakur.
7. Kailash Mandal, s/o Shri Bindeshwar Mandal.
8. Smt. Kiran Kumari, w/o Shri Mahesh Prasad.
9. Ranjit Kumar Das, s/o Shri Ramjee Das.
10. Dilip Kumar, s/o Shri Anandi Das.
11. Rakesh Kumar, s/o Shri Rameshwar Das.
12. Bidyakar Kumar, s/o Shri Naresh Mohan Das.
13. Ranjeet Kumar das, s/o Shri Saudagar Das.
14. Mister Deo Kumar, s/o Shri Kanhaya Pd. Singh.

.....APPLICANTS.

By Advocate :- Shri A.N.Jha.

Vs.

1. Union of India through the Secretary, Ministry of Communication, Department of Telecom, Sanchar Bhavan, New Delhi.

2. The Chief General Manager [Telecom], B.S.N.L., Meghdoot Bhavan, Bihar Circle, Patna-800 001.

3. The General Manager Telecom District, B.S.N.L., Katihar Division, Katihar [Bihar].

4. The Telecom District Engineer [Admn.], Office of the G.M.T.D., Katihar Division, Katihar [Bihar].

5. The Principal General Manager [Telecom Cell], Bihar Circle, Patna-800 001. [Bihar].
.....RESPONDENTS.

By Advocate :- Shri G.K.Agarwal, ASC.

O R D E R

Shankar Prasad, M[A] :- A common order will govern both these OAs as they arise out of similar facts. By this OA these applicants seek the following

reliefs :-

"8[a] The respondents may be directed to engage the applicants as early as possible as DRMs and also consider the case of temporary status and regularization of their services at par their juniors.

[b] The respondents may be further directed to extend the benefits of the order dt. 27.11.2002 passed in OA 711 of 2000, OA 712 of 2000 & OA 205 of 2001 and include/enlist the names of the applicants in the seniority/gradation list at the proper place.

[c] Any other order/direction as deemed fit and proper may be passed in the circumstances of the case.

[d] Cost incidental to the proceeding be awarded."

2. These applicants were working as casual labourers under the Telephone district Katihar. It is stated in para 4.3 & 4.4 of the OA that their names were not included in the gradation list of casual labour published in the month of July, 1994 and February, 2004 but the names of many of the casual labourers who had worked for fewer days had been included. It is stated in para 4.7 & 4.8 that when they represented in this regard, their services were terminated particularly after formation of BSNL without handing the courtesy of termination letter. They have not been extended the benefits of the Scheme framed pursuant to decisions of Apex Court given in cases following Daily Rated Casual Labour Vs. UOI; 1988 [1] SCC 122.

Even though the CGM, Telecom Circle had asked for detailed information vide his letter of August, 1998 and there were reminders information was not sent. They are entitled to have the benefit of DOT letter dated 29.09.2000 which has been circulated CGM BSNL's letter dated 24.10.2000 [Annexure-26]. Some similarly situated persons had filed OAs 711 of 2000, 712 of 2000 and 205 of 2001. These were decided vide order dated 27.11.2002. The Tribunal disposed off the OAs by giving a direction that the cases of applicants, some of whom had already been conferred temporary status, be examined in the light of decision in OA 599 of 1996 and

other OAs. CCPAs were also filed. The Tribunal asked the respondents to examine the claim as per the documents annexed with the rejoinder and dismissed the contempt petition. These orders were complied vide order dated 22.09.2004 [Annexure-31]

It is further contended that many of the juniors are still working It is stated in para 3 of the OA that the OA is filed within the period of limitation.

3. Respondents BSNL have raised a preliminary objection that these OAs are not maintainable.

4. We have heard the learned counsels.

5. We note at the outset that vide letter dated 22.09.2004 GM[T], Katihar has merely forwarded the earlier letter dated 19.02.2002 and that this is not an order engaging these persons. The said letter is reproduced as it sets out the factual position :-

"Sub.:- regularization of Casual Labourers and submission of left out cases regarding.
Ref.:- Your No. ST/38-1/KTR/2001 dtd. 08.02.2002.

In compliance to your letter referred above, parawise report is given below as required please.

Para-1 The required Annexure as per proforma I, II & III duly signed by the IFA and Head of SSA had been sent earlier vide this office letter No.RE-79/Part III/29 dtd. 31.05.2001.

However, the detailed report already submitted vide this office letter dtd. 21.12.2001 as referred in the above mentioned letter has been further cross checked and corrected as per the present status as on 15.02.2002. The same is being submitted duly signed by the IFA and the Head of the SSA only with requisite certificate.

Para-2 Complied as per Para-1 above.

Para-3 The verification of year wise old records and vouchers pertaining to the individual labourers by the nominated Committee took time and accordingly the first report

could be submitted on 21.12.2001.

Para-4 The detail as as on 15.02.2002 are given as below :-

[1] Sanctioned post :- 228.

[2] Working :- 169.

OC	+ OBC	+ SC	+ ST	= Total
91	29	33	16	169

[3] Vacant Post :- 59.

OC	+ OBC	+ SC	+ ST	= Total
31	16	08	04	59

[4] Left Out Cases :- 22

OC	+ OBC	+ SC	+ ST	= Total
16	NIL	04	02	22

[5] Out of earlier 59 left out cases 37 have been regularised the break-up wise details is below :-

Sl.	OC	+ OBC	+ SC	+ ST	= Total	Remarks
1	11	04	12	NIL	27	Against the vacancy of Katihar SSA.
2.	03	01	06	NIL	10	Against the vacancy of Eastern Telecom Region.

As such at present 59-37=22 are the left out cases. Break-up in details of left out cases is mentioned at sl.4 of Para-4.

[6] In addition to 22 left out cases as mentioned above there are 17 cases of MOC and 17 are CAT cases for which necessary action is in process.

Para-5 The difficulty for regularizing the Mazdoor either from 01.10.2000 or from 01.04.2001 is enumerated below :-

[i] The verification of judiciousness of the records of the individual labourers.

[ii] Verifications of 240 working days prior to 01.08.1998 from the old records and vouchers.

[iii] The actual eligibility as per records for Katihar SSA because of the formation of Katihar SSA after bifurcation from Darbhanga SSA and then further bifurcation of Katihar SSA and Saharsa SSA.

Para 6 As per findings of the Committee based on scrutiny of the old records and vouchers pertaining to the individual labourers the detailed report [refer] enclosed photocopy] indicate that most of the Mazdoors have not completed 240 days attendance before 01.08.1998.

It is also pointed out that all the Mazdoors who have completed 240 days as on 01.08.1998 as per available records and reports of the Committee on the subject have been regularised.

Para -7 Casual Mazdoors who have completed 240 days attendance in a year as on 01.08.1998 and continuing there after have been regularised. TSM has been conferred w.e.f. 01.08.1998 and regularization has been given w.e.f. 01.10.2000.

Para-8 There are left out cases, which are enumerated below :-

[i] Left out - 22

OC	+	OBC	+	SC	+	ST	=	Total
16		-		04		02		22

[ii] MOC Cases - 17.

[iii] CAT Cases - 17."

6. The learned counsel for the applicant contends that he is seeking a direction as granted in case of similarly situated persons. A Three Judge Bench of the Apex Court in Bhoop Singh Vs. UOI & Ors.; 1992 [2] SLJ 103 [SC] had held -

"6. It is expected of a government servant who had a legitimate claim to approach the Court for the relief he seeks

within a reasonable period, assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set up after it has been functioning on a certain basis for year. During the interregnum those who have been working gain or more experience and acquire rights which cannot be defeated casually by collateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim. Apart from the consequential benefits of reinstatement without actually working, the impact on the administrative set-up and on other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained and is not attributable to the claimant. This is a material fact to be given due weight while considering the argument of discrimination in the present case for deciding whether the petitioner is in the same class as those who challenged their dismissal several years earlier and were consequently granted the relief of reinstatement, in our opinion, the lapse of a much longer unexplained period of several years in the case of the petitioner is a strong reason to not classify him with the other dismissed constables who approached the Court earlier and got reinstatement. It was clear to the petitioner latest in 1978 when the second batch of petitions were filed that the petitioner also will have to file a petition for getting reinstatement. Even then he chose to wait till 1989. Dharampal's case also being decided in 1987. The argument of discrimination is, therefore, not available to the petitioner.

7. There is another aspect of the matter. Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others

that he is not interested in claiming that relief. Others are then justified in acting on that belief. This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed. Accepting the petitioner's contention would upset the entire service jurisprudence and we are unable to construe Dharampal in the manner suggested by the petitioner. Article 14 or the principle of non-discrimination is an equitable principle and, therefore, any relief claimed on that basis must itself be founded on equity and not be alien to that concept. In our opinion, grant of relief to the petitioner, in the present case, would be incquitable instead of its refusal being discriminatory as asserted by learned counsel for the petitioner. We are further of the view that these circumstances also justify refusal of the relief claimed under Article 136 of the Constitution."

7. 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."

8. 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."

9. 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.

10. 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. under Section 14(2) of AT Act.

11. The Tribunal lacks jurisdiction. I accordingly 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]/M[A]

skj.

"True Copy"

Certified that the ... copy of the document/... OA/RA/TA/CP/MA/PT No. 143 & 144 of ... in the matter appearing ... registry and ... rules with no ...

28/8/08

28/8/08

(B. Bhagat)

Section Officer (Jud.)
CENTRAL ADMN. TRIBUNAL
PATNA BENCH, PATNA