

CAMP AT AURANGABAD

ORIGINAL APPLICATION NO. 1166/ 1997

WEDNESDAY, THE EIGHTH DAY OF AUGUST, 2001

CORAM:

**SHRI JUSTICE BIRENDRA DIKSHIT. VICECHAIRMAN.
SHRI M.P. SINGH. MEMBER (A)**

1. Shri Manoj Balvant Kulkarni.
Adult, working as Casual labourer,
R/at Patve Galli,
At P.O. Chopada, Dist- Jalgaon,
Jalgaon-425 107.
2. Shri Premchand Sopan Lokhande,
Adult, Casual Labourer,
R/at Post, Bhadoli,
Dist-Jalgaon.
3. Shri Ramesh Pundlik Bari (Katole)
Son of Pundlik Bupdu Bari,
Age: Adult, Casual Labourer,
R/at Shirsoli (P.N.)
Jalgaon.
4. Shri Shantaram Shamrao Sonawane,
Son of Shamrao Bhadu Sonawane,
Age: Adult, Casual Labourer,
R/at Post Asoda, Jalgaon.
5. Shri Sopan Shantaram Choudhari,
Son of Shantaram Pundlik Choudhari,
Adult, Casual Labourer,
R/at Post Asogda, Dist. Jalgaon.
6. Shri Sanjay Madhukar Chaudhari,
Son of Madhukar Mahadu Chaudhari,
Age: Adult, Casual Labourer
At Post Asoda, Jalgaon.
7. Shri Raghunath Jagannath Choudhari,
Age: Adult, Casual Labaourer,
R/at Post Asoda, Jalgaon,
(Son of Jagnath Tapiram Chaudhari).

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8. Shri Chhagan Dhondu Koli,
Son of Dhondu Vasant Koli,
Adult, Casual Labourer,
R/at Post Asoda, Dist-jalgaon.
9. Shri Vasudeo Devram Chaudhari,
Son of Devram Kisan Chaudhari,
Adult, Casual Labourer,
R/at Post Asoda, a Dist-Jalgaon.
10. Shri Nivrutti Pandurang Sonawane,
Son of Pandurang Shripat Sonawane,
Adult, Casual Labourer,
R/at Post Bhadli, Dist-Jalgaon.
11. Shri Dilip Waman Patil,
Son of Waman Natthu Patil,
Adult, Casual Labourer,
R/at Post Shelgaon,
Post Sholane, Dist-Jalgaon.
12. Shri Pitamber Shankar Koli,
Son of Shankar Rajaram Koli,
At Post Asoda, Dist Jalgaon,
Age: Adult, Casual Labourer.
13. Shri Uvaraj Tukaram Koli,
Son of Tukaram Jivlu Koli,
Adult, Casual Labourer,
R/at Post Bhadli, Dist-Jalgaon.
14. Shri Arjun Tulsiram patil,
Son of Tulsiram Shamrao Patil,
At Post Asoda, Dist-jalgaon,
Age: Adult, Casual Labourer.
15. Shri Hemlal Eknath Mahajan,
Son of Eknath Khushal Mahajan,
Age: Adult, Casual Labourer,
R/at Asoda, Dist-Jalgaon.
16. Shri Bhoju Rajaram Narkhede,
Son of Rajaram Vishnu Narkhede,
Age: Adult, Casual Labourer,
R/at Post Asoda, Dist-Jalgaon.

17. Tryamabak Punju Koli,
At Post, Asoda, Dist-Jalgaon.

18. Narayan Onkar Borole,
At Post Asoda, Tal & Dist Jalgaon. ... Applicants
By Advocate Shri S.P. Kulkarni.

Vs.

1. Union of India through its
Secretary (Ex-officio) i.e.
Director General (Telecom)
Department of Telecommunication,
Ministry of Communication,
Government of India,
Dak Tar Bhawan, 20, Sansad Marg,
New Delhi-110 001 (INDIA).

2. Chief General manager Telecom,
Maharashtra Telecom Circle, having
his office in C.T.O. Building,
Hutatma Chowk, Fort,
Mumbai-400 001.

3. Telecom District Manager,
having his office at Telecom Bhawan,
At P.O. Jalgaon,
Jalgaon-425 001, Maharashtra.

4. Assistant Engineer, (Cable),
Telecom Department,
Jalgaon-425 001.

5. Sub-Divisional Officer (Phones)
Telecom Department,
Dhule-424 001. ... Respondents

By Advocate Shri V.S. Masurkar.

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ORDER (ORAL)

Hon'ble Shri Justice Birendra Dikshit. Vice Chairman.

By this OA the applicants who are casual labourers have challenged the order dated 28.9.91 and 30.9.91 whereby the services of the applicants are dispensed with by the respondents. The applicants are claiming that their services have been wrongly terminated. Being aggrieved, by orders of termination, the All India Telecom Employees'Union (Line Staff & Gr. IDI), Maharashtra Circle Branch representing applicants and others preferred OA No.1059/92 on 27.11.92. The applicants joined together with the applicants of that OA. That OA was dismissed by this Tribunal on 15.7.97 on merits in absence of applicants. The operative part of that OA reads as under:

"In the facts and circumstances of the case, for want of jurisdiction it is not possible to entertain this O.A. The O.A. is disposed of for want of jurisdiction. However, liberty is given to the applicant to approach the appropriate forum."

Subsequently, application numbered as M.P. 51/98 was moved by respondents in that OA, as according to them, there was an error in the judgment. The error in statement pointed out by respondents of that case was wrongly incorporated. The respondents wanted that instead of words "Department challenged the said order" in para 2 of
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order the following words "Reference has been made before the Central Government Industrial Tribunal by the Labour Commissioner" may be substituted.

2. This Tribunal, after hearing the applicants, while disposing of the MP observed that "we do not want to interfere with the facts recorded in para 2 of the orders dated 15.7.97". The MP 51/98 was rejected.

3. The applicants have once again challenged same orders by this OA which were the subject matter of challenge in the above mentioned OA 1059/92.

4. As the OA has been ^{filed} on 5.12.1997 an objection has been taken by the learned counsel for the respondents that second OA challenging same orders, which were challenged in OA No.1092/92, is not maintainable after a lapse of five years. The learned counsel for the applicants contended that as this Tribunal issued notice on this OA being *prima facie* satisfied therefore, the applicants could not seek remedy before any other forum for last so many years and therefore, their case be examined on merit. The objection of learned counsel for the respondents is based on principle of *estoppel* i.e. bar of *res judicata*. When once the Tribunal had expressed its opinion giving liberty to the applicants to approach appropriate forum holding that this Tribunal has no jurisdiction and dismissed the OA for want of

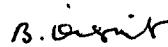
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jurisdiction, we are of the opinion that the same matter cannot be re-agitated by the applicants.

5. The learned counsel for applicant has also argued in alternative that this court may make such observations so that in case applicants take recourse to any other appropriate forum, then the applicants may not be non-suited on the ground of delay and laches. We cannot express any opinion in this respect as it is for the Court or the Tribunal, which applicants approach, to consider this aspect. The applicants have to make out case before that Court or Tribunal and it will be exclusively in the domain of that court or Tribunal to look into this aspect, if raised. We cannot make any observation to this effect, Any observation of the kind prayed for will amount to usurping the jurisdiction of that court or Tribunal, which will be bad in law.

6. For the reasons aforesaid, the OA fails and is accordingly dismissed. There shall be no order as to costs.


(M.P. SINGH)
MEMBER (A)


(BIRENDRA DIKSHIT)
VICE CHAIRMAN