IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

.....

O.A.No.222 of 1997

O.A.No.252 of 1997

O.A.No.326 of 2000

And

O.A.No.189 of 2002

DATE OF DECISION: 20.06.2008

1. Shri Prabir Dutta & Another (O.A.No.222/1997) .....Applicant(s)
2. Shri Prabir Dutta & Another (O.A.No.252/1997)
3. Shri Binod Kumar Roy & Another (O.A.No.326/2000)
4. Shri Binod Kumar Roy & Another (O.A.No.189/2002)

Mr S. Sarma and Ms B. Devi — Advocate(s) for the Applicant (s)

- Versus -

Union of India and others — Respondent(s)

Ms U. Das for BSNL — Advocate(s) for the Respondent(s)

CORAM:

THE HON'BLE SHRI MANORANJAN MOHANTY, VICE-CHAIRMAN

THE HON'BLE SHRI KHUSHIRAM, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the Judgment? ~~Yes~~/No
2. Whether to be referred to the Reporter or not? ~~Yes~~/No
3. Whether to be forwarded for including in the Digest Being compiled at Jodhpur Bench and other Benches? ~~Yes~~/No
4. Whether their Lordships wish to see the fair copy of the Judgment? ~~Yes~~/No

Vice-Chairman/Member

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.222 of 1997

With

Original Application No.252 of 1997,

Original Application No.326 of 2000

And

Original Application No.189 of 2002

Date of Order: This the 20th day of June 2008

The Hon'ble Shri M.R. Mohanty, Vice-Chairman

The Hon'ble Shri Khushiram, Administrative Member

I. O.A.No.222/1997

1. Prabir Dutta
Circle Secretary,
All India Telecom Employees' Union,
Line Staff and Gr.-D,
N.E. Circle, Shillong.

2. Binod Kumar Roy
C/o Prabir Dutta,
Carrier Station, VFT,
Telephone Exchange,
Shillong-793001. .....Applicants

By Advocates Mr S. Sarma & Ms B. Devi.

- versus -

1. Union of India, represented by the
Secretary,
Government of India,
Ministry of Communication,
New Delhi.

2. Director General
Department of Telecommunication,
New Delhi.

3. Chairman, Telecom Commission
Sansar Bhawan,
New Delhi.

4. Chief General Manager (Telecom)
N.E. Circle,
Shillong. ..... Respondents

By Advocate Ms U. Das.

II. O.A.No.252/1997

1. Prabir Dutta
Circle Secretary,
All India Telecom Employees' Union,
Line Staff and Gr.-D,
N.E. Circle, Shillong.

2. Suk. Bahadur Gurung
F/Name L.K. Gurung,
C/o P. Dutta,
Carrier Station,
Telephone Exchange,
Shillong-793001. ..... Applicants

By Advocates Mr S. Sarma & Ms B. Devi.

- versus -

1. Union of India, represented by the
Secretary,
Government of India,
Ministry of Communication,
New Delhi.

2. Director General
Department of Telecommunication,
New Delhi.

3. Chairman, Telecom Commission,
Sansar Bhawan,
New Delhi.

4. Chief General Manager Telecom
N.E. Circle,
Shillong-793001. ..... Respondents

By Advocate Ms U. Das.

III. O.A.No.326/2000

1. Sri Binod Kumar Roy
C/o Prabir Dutta,
Carrier Station, VST,
Telephone Exchange, Shillong.

2. All India Telecom Employees Union
Line Staff and Group 'D'.
N.E. Circle, Shillong. Represented by
Circle Secretary,
Prabir Dutta. .....Applicants

By Advocates Mr S. Sarma and Ms B. Devi

- versus -

1. The Union of India, represented by the
Secretary to the Ministry of Communication,
New Delhi.

2. The Director General
Department of Telecommunication,
New Delhi.

3. The Chief General Manager
N.E. Telecom Circle,
Shillong-793001. ..... Respondents

By Advocate Ms U. Das.

IV. O.A.No.189/2002

1. Sri Binod Kumar Roy,
C/o Prabir Dutta,
Carrier Station, VFT,
Telephone Exchange, Shillong.

2. All India Telecom Employees Union
Line Staff and Group 'D',
N.E. Circle, Shillong, represented by
Circle Secretary,
Sri Prabir Dutta. ..... Applicants

By Advocates Mr S. Sarma and Ms B. Devi

- versus -

1. The Union of India, represented by the
Secretary to the Ministry of Communication,
New Delhi.

2. The Director General
Department of Telecommunication,
New Delhi.

3. The Chief General Manager
N.E. Telecom Circle,
Shillong-793001. ..... Respondents

By Advocate Ms U. Das.

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ORDER

KHUSHIRAM, ADMINISTRATIVE MEMBER

These cases pertain to the prayer made on behalf of several individuals for grant of temporary status and regularization to some of the persons engaged in an erstwhile Central Government Department (now named Bharat Sansar Nigam Ltd.).

2. O.A.No.222 of 1997 was filed under Section 19 of the Administrative Tribunals Act, 1985, on 26.09.1997, representing the following individuals:

1. Pritam Chetri
2. Mahadev Thapa
3. Binod Kumar Roy
4. Jitendra Singh
5. Biswa Ranjan Das Gupta
6. Suresh Roy
7. Abdul Roof Talukdar
8. Narayan Dey
9. Mahesh Roy
10. Ramnath Roy
11. Rejendra Roy
12. Lakhinder Roy
13. Ganesh Paswan
14. Dinesh Paswan
15. Arun Roy
16. Yogendra Yadav
17. Arjun Roy
18. Surendra Prasad Roy
19. Junilal Roy
20. Raju Sarma
21. Ganesh Singh
22. Ganesh Roy

23. Prantosh Roy
24. Miss Sadhana Das
25. Ajit Kumar Patar
26. Kanchan Chakraborty

3. Similarly O.A.No.252 of 1997 was filed, on 19.11.1997, representing the following individuals:

1. Manoj Sen
2. Dambar Bahadur Gurung
3. Ram Janam Roy
4. Satyanarayana Roy
5. Dhanki Ray
6. Suk Bahadur Gurung
7. Shivlal Joshi

4. Another O.A.No.107 of 1998 covering similar prayers (as that was made in O.A.Nos.222/1997 & 252/1997) was disposed of on 31.08.1999 by this Tribunal.

5. Treating O.A.No.222/1997 and O.A.No.252/1997 to be covered by the aforesaid order dated 31.08.1999 of this Tribunal rendered in O.A.No.107/1998; both the aforesaid cases (O.A.Nos.222/1997 & 252/1997) were disposed of on 20.09.1999 asking the Respondents to examine the case of the individuals on their representations.

6. Not being satisfied with the negative view taken by the Respondents, O.A.No.326 of 2000 was filed on 29.09.2000 and the said case was disposed of on 28.05.2001. Relevant portion of the order dated 28.05.2001 is extracted hereinbelow:

> "the respondents are directed to consider their cases. They are thus ordered to examine and scrutinize each case individually and to consider their case on merit for granting them temporary status as per law and thereafter consider their cases for absorption against the available vacancies or against the future vacancies as per

unit seniority. The respondents are directed to complete the exercise as early as possible preferably within 3 months from the date of receipt of the order. The application is thus allowed. There shall however, be no order as to costs."

Thus the matter stood remitted back to the Department for examination and orders.

7. Not being satisfied with the orders passed by the Respondents, O.A.No.189 of 2002 was filed on 14.06.2002 and the same was disposed of on 12.09.2002. Relevant portion of the order dated 12.09.2002 is extracted below:

"the respondents are directed to consider the cases of the applicants for grant of temporary status in conformity with the direction issued in earlier judgment rendered by this Tribunal in O.A.326/2000 with utmost expedition preferably within a period of two months from the receipt of the order."

8. The subject matter of these cases were carried to the Hon'ble Gauhati High Court in W.P.(C) No.32 (SH) 2003. Relevant portion of the order passed by the Hon'ble Gauhati High Court is extracted below:

"In view of the above observations, the impugned order is set aside and the matter is remanded back to the learned CAT to hear the matter afresh and dispose of the same upon hearing the learned counsel for both the sides."

9. After remand of the cases from Hon'ble Gauhati High Court, notices were issued to the parties. Despite notices, the Applicants side did not appear for rehearing of the matter. In the said premises, with the aid and assistance of Ms U. Das, learned Counsel for the Respondents/BSNL, we proceeded with the matters; heard her and perused the materials placed on record and disposing of the same by this common order.

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10. By a close analysis of the matter, we have found that the cases of the individuals named in both the cases are not covered by the Scheme for conferment of temporary status and regularization. On the date of commencement of the Scheme (called Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989) i.e. 01.10.1989, the individuals named in the O.A.s were not in employment/engagement under the Respondent Organization. They have placed no materials on record to show that they were entitled to be covered by the Scheme for conferment of temporary status and regularization. It appears that the services of those persons were terminated long before the Scheme in question came into force i.e. 01.10.1989.

11. The Department of Telecommunication had subsequently issued some clarification vide O.M. dated 17.12.1993 extending the benefit under the Scheme of 1989 to the casual employees who worked during the period from 31.03.1985 to 22.06.1988. Thus the claim for regularization, on the basis of the aforesaid O.M. dated 17.12.1993, have been examined in the following paragraphs.

12. The order of the Tribunal was challenged before the Shillong Bench of the Hon'ble Gauhati High Court in W.P.(C) No.32(SH) 2003. The Hon'ble High Court, by order dated 24.07.2007, remanded the case to this Tribunal "to re-examine the rival contentions and give a clear finding as to whether the applicants claim is covered by 1989 Scheme and if so whether they are entitled to the relief claimed by them."

13. In the common order dated 20.09.1999 passed in O.A.No.222/1997 and O.A.No.252/1997, this Tribunal had observed as under:

> "..... we dispose of these two applications with a similar directions as given in O.A.No.107/98 and others. Accordingly the respondents are directed to examine the case of each applicant. The applicants may file representations individually within a period of one month from the date of receipt of the order and, if such representations are filed individually, the respondents shall scrutinize and examine each case in consultation with the records and thereafter pass a reasoned order on merits of each case within a period of six months thereafter. The interim order passed in any of the cases shall remain in force till the disposal of the representations."

14. From the records placed before us, it is not clear as to whether any of the Applicants of O.A.No.222/1997 and O.A. No.252/1997 filed any representation(s) before the Respondents as was directed by this Tribunal vide its order dated 20.09.1999. In the absence of such record of proof produced by the Applicants, it is difficult to examine the eligibility of the Applicants for grant of temporary status/regularization. It is also not clear as to whether the Applicants (Shri Prabir Dutta, Circle Secretary, All India Telecom Employees' Union Line Staff and Gr.-D, N.E. Circle, Shillong) and Binod Kumar Roy (C/o Prabir Dutta, Carrier Station, VFT, Telephone Exchange, Shillong) ever cared to direct the concerned individuals to file any representation with the Respondents as was directed by this Tribunal. The Applicants have alleged that differential treatment has been meted out to the casual labourers (as enumerated in Annexure-A to the O.A.) in comparison to the casual labourers of the department of Telecommunication who were granted the benefit of the aforesaid scheme for temporary status and in the present O.A. the Applicants have prayed for a direction to the Respondents to extend the benefit

of the aforesaid scheme to them as well. However, the persons mentioned in Annexure-A to the O.A. have neither appeared before this Tribunal, nor is it evident as to whether any of them have filed any representation before the Respondents.

15. The Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989 of the Department of Telecommunication was issued on 07.11.1989. According to the Scheme the conferment of temporary status on casual labourers was possible only in respect of those casual labourers "currently employed and who have rendered a continuous service of at least one year" as on 01.10.1989. Since the services of the Applicants were terminated/discontinued with effect from 01.09.1987, obviously, they were not in employment with the Department of Telecommunication on 07.11.1989/01.10.1989.

16. From Annexure-A filed by the Applicants in O.A. No.222/1997, it is apparent that out of the 26 persons named therein, 23 of them were engaged before 24.01.1987 and they were discontinued on 01.09.1987. Therefore, they are not entitled to the benefit of the Scheme circulated on 07.11.1989.

17. Since the person at Sl.No.24 (Ms Sadhana Das) was engaged/employed on 01.02.1988, she had completed more than 240 days of service on 07.11.1989 when the Scheme was floated. Since the remaining 2 persons, Shri Ajit Kumar Patar and Shri Kanchan Chakraborty were employed on 01.01.1991 and 08.01.1991 respectively, they are not entitled to the benefit of the Scheme

circulated on 07.11.1989; since they were neither in service nor had they rendered 240 days of continuous service on the crucial date/07.11.1989. Therefore, their claims have no merit and are hereby rejected.

18. In the case of the individual named at Sl.No.24 (Ms Sadhana Das, employed on 01.02.1988) it is seen that she has not filed any representation before the Respondents as was directed by this Tribunal. It is not known as to whether her claim was examined by the Respondents in the absence of any representation as per direction of the Tribunal.

19. In the light of the foregoing discussions, since the directions of the Tribunal issued vide order dated 20.09.1999 have not been complied with by the Applicants, the case cannot be adjudicated upon in the absence of material evidence and proof of service of representation to establish the claim of the Applicants for conferment of temporary status/regularization. Accordingly their claims are rejected.

20. In O.A.No.252/1997, out of the 7 persons, six persons were employed prior to 01.10.1987 and since their services were terminated/discontinued with effect from 01.09.1987, they were not in employment on the crucial date of 07.11.1989. Therefore, they do not have any claim. The person named at serial No.7 (Shivlal Joshi) was engaged on 08.02.1990 i.e. after the introduction of the Scheme and, therefore, he is also not entitled to the benefit of the Scheme.

21. As a consequence, none of these Applicants qualifies for grant of temporary status or regularization and their claims, as raised, are rejected. No costs.

20-6-08
(KHUSHIRAM)
ADMINISTRATIVE MEMBER

20/06/08
(M. R. MOHANTY)
VICE-CHAIRMAN

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