OA 311/98 - Bkalita vs UOI

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.107 of 1998 and others

Date of decision: This the 31st day of August 1999

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

1. O.A.No.107/1998

Shri Subal Nath and 27 others .....Applicants

By Advocates Mr J.L. Sarkar and Mr M. Chanda

-versus-

The Union of India and others .....Respondents

By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

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2. O.A.No.112/1998

All India Telecom Employees Union,
Line Staff and Group 'D' and another .....Applicants

By Advocates Mr B.K. Sharma and Mr S. Sarma

-versus-

The Union of India and others .....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

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3. O.A.No.114/1998

All India Telecom Employees Union,
Line Staff and Group 'D' and another .....Applicants

By Advocates Mr B.K. Sharma and Mr S. Sarma

-versus-

The Union of India and others .....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

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4. O.A.No.118/1998

Shri Bhuban Kalita and 4 others .....Applicants

By Advocates Mr J.L. Sarkar, Mr M. Chanda
and Ms N.D. Goswami.

-versus-

The Union of India and others .....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

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5. O.A.No.120/1998

Shri Kamala Kanta Das and 6 others .....Applicant

By Advocates Mr J.L. Sarkar, Mr M. Chanda and Ms N.D. Goswami.

-versus-

The Union of India and others .....Respondents

By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

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6. O.A.No.131/1998

All India Telecom Employees Union and another .....Applicants

By Advocates Mr B.K. Sharma, Mr S. Sarma and Mr U.K. Nair.

-versus-

The Union of India and others .....Respondents

By Advocate Mr B.C. Patha, Addl. C.G.S.C.

O.A.No.135/98 ....

7. All India Telecom Employees Union, Line Staff and Group 'D' and 6 others .....Applicants

By Advocates Mr B.K. Sharma, Mr S. Sarma and Mr U.K. Nair.

-versus-

The Union of India and others .....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

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8. O.A.No.136/1998

All India Telecom Employees Union, Line Staff and Group 'D' and 6 others .....Applicants

By Advocates Mr B.K. Sharma, Mr S. Sarma and Mr U.K. Nair.

-versus-

The Union of India and others .....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

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9. O.A.No.141/1998

All India Telecom Employees Union, Line Staff and Group 'D' and another .....Applicants

By Advocates Mr B.K. Sharma, Mr S. Sarma and Mr U.K. Nair.

-versus-

The Union of India and others .....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

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10. O.A.No.142/1998

All India Telecom Employees Union,
Civil Wing Branch. .....Applicants

By Advocate Mr B. Malakar

-versus-

The Union of India and others .....Respondents

By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

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11. O.A.No.145/1998

Shri Dhani Ram Deka and 10 others .....Applicants

By Advocate Mr I. Hussain.

-versus-

The Union of India and others .....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

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12. O.A.No.192/1998

All India Telecom Employees Union,
Line Staff and Group 'D' and another .....Applicants

By Advocates Mr B.K. Sharma, Mr S. Sarma
and Mr U.K. Nair.

-versus-

The Union of India and others .....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

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13. O.A.No.223/1998

All India Telecom Employees Union,
Line Staff and Group 'D' and another .....Applicants

By Advocates Mr B.K. Sharma and Mr S. Sarma.

-versus-

The Union of India and others .....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

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14. O.A.No.269/1998

All India Telecom Employees Union,
Line Staff and Group 'D' and another .....Applicants

By Advocates Mr B.K. Sharma, Mr S. Sarma,
Mr U.K. Nair and Mr D.K. Sharma.

-versus-

The Union of India and others .....Respondents

By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

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15. O.A.No.293/1998

All India Telecom Employees Union,
Line Staff and Group 'D' and another .....Applicants

By Advocates Mr B.K. Sharma, Mr S. Sarma
and Mr D.K. Sarma.

-versus-

The Union of India and others .....Respondents

By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

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O R D E R

BARUAH.J. (V.C.)

All the above applications involve common questions of law and similar facts. Therefore, we propose to dispose of all the above applications by a common order.

2. The All India Telecom Employees Union is a recognised union of the Telecommunication Department. This union takes up the cause of the members of the said union. Some of the applications were submitted by the said union, namely, the Line Staff and Group 'D' employees and some other applications were filed by the casual employees individually. Those applications were filed as the casual employees engaged in the Telecommunication Department came to know that the services of the casual Mazdoors under the respondents were likely to be terminated with effect from 1.6.1998. The applicants, in these applications, pray that the respondents be directed not to implement the decision of terminating the services of the casual Mazdoors, but to grant them similar benefits as had been granted to the employees under the Department of Posts and to extend the

benefits of the Scheme, namely, Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of 7.11.1989, to the casual Mazdoors concerned. Of the aforesaid O.A.s, however, in O.A.No.269/1998 there is no prayer against the order of termination. In O.A.No.141/1998, the prayer is against the cancellation of the temporary status earlier granted to the applicants having considered their length of service and they being fully covered by the Scheme. According to the applicants of this O.A. the cancellation was made without giving any notice to them in complete violation of the principles of natural justice and the rules holding the field.

3. The applicants state that the casual Mazdoors have been continuing in their service in different offices of the Department of Telecommunication under Assam Circle and N.E. Circle. The Government of India, Ministry of Communication, made a scheme known as Casual Labourers (Grant of Temporary Status and Regularisation) Scheme. This Scheme was communicated by letter No.269-10/89-STN dated 7.11.1989 and it came into operation with effect from 1.10.1989. Certain casual employees had been given the benefit under the said Scheme, such as, conferment of temporary status, wages and daily wages with reference to the minimum pay scale of regular Group 'D' employees including DA and HRA. Later on, by letter dated 17.12.1993 the Government of India clarified that the benefits of the Scheme should be confined to the casual employees who were engaged during the period from 31.3.1985 to 22.6.1988. However, in the Department of Posts, those casual labourers who were engaged as on 29.11.1989 were granted the benefit of temporary status on satisfying the eligibility criteria. The benefits were further extended

to the casual labourers of the Department of Posts as on 10.9.1993 pursuant to the judgment of the Ernakulam Bench of the Tribunal passed on 13.3.1995 in O.A.No.750/1994. The present applicants claim that the benefit extended to the casual employees working under the Department of Posts are liable to be extended to the casual employees working in the Telecom Department in view of the fact that they are similarly situated. As nothing was done in their favour by the authority they approached this Tribunal by filing O.A.Nos.302 and 229 of 1996. This Tribunal by order dated 13.8.1997 directed the respondents to give similar benefits to the applicants in those two applications as was given to the casual labourers working in the Department of Posts. It may be mentioned here that some of the casual employees in the present O.A.s were applicants in O.A.Nos.302 and 229 of 1996. The applicants state that instead of complying with the direction given by this Tribunal, their services were terminated with effect from 1.6.1998 by oral order. According to the applicants such order was illegal and contrary to the rules. Situated thus, the applicants have approached this Tribunal by filing the present O.A.s.

4. At the time of admission of the applications, this Tribunal passed interim orders. On the strength of the interim orders passed by this Tribunal some of the applicants are still working. However, there has been complaint from the applicants of some of the O.A.s that in spite of the interim orders those were not given effect to and the authority remained silent.

5. The contention of the respondents in all the above O.A.s is that the Association had no authority to

represent the so called casual employees as the casual employees are not members of the Union Line Staff and Group 'D'. The casual employees not being regular Government servants are not eligible to become members or office bearers of the staff union. Further, the respondents have stated that the names of the casual employees furnished in the applications are not verifiable, because of the lack of particulars. The records, according to the respondents, reveal that some of the casual employees were never engaged by the Department. In fact, enquiries into their engagement as casual employees are in progress. The respondents justify the action to dispense with the services of the casual employees on the ground that they were engaged purely on temporary basis for special requirement of specific work. The respondents further state that the casual employees were to be disengaged when there was no further need for continuation of their services. Besides, the respondents also state that the present applicants in the O.A.s were engaged by persons having no authority and without following the formal procedure for appointment/engagement. According to the respondents such casual employees are not entitled to re-engagement or regularisation and they cannot get the benefit of the Scheme of 1989 as this Scheme was retrospective and not prospective. The Scheme is applicable only to the casual employees who were engaged before the Scheme came into effect. The respondents further state that the casual employees of the Telecommunication Department are not similarly placed as those of the Department of Posts. The respondents also state that they have approached the Hon'ble Gauhati High Court against the order of the

Tribunal dated 13.8.1997 passed in O.A.Nos.302 and 229 of 1996. The applicants does not dispute the fact that against the order of the Tribunal dated 13.8.1997 passed in O.A.Nos.302 and 229 of 1996 the respondents have filed writ applications before the Hon'ble Gauhati High Court. However, according to the applicants, no interim order has been passed against the order of the Tribunal.

6. We have heard Mr B.K.Sharma, Mr J.L. Sarkar, Mr I. Hussain and Mr B. Malakar, learned counsel appearing on behalf of the applicants and also Mr A. Deb Roy, learned Sr. C.G.S.C. and Mr B.C. Pathak, learned Addl. C.G.S.C. appearing on behalf of the respondents. The learned counsel for the applicants dispute the claim of the respondents that the Scheme was retrospective and not prospective and they also submit that it was upto 1989 and then extended upto 1993 and thereafter by subsequent circulars. According to the learned counsel for the applicants the Scheme is also applicable to the present applicants. The learned counsel for the applicants further submit that they have documents to show in that connection. The learned counsel for the applicants also submit that the respondents cannot put any cut off date for implementation of the Scheme, inasmuch as the Apex Court has not given any such cut off date and had issued direction for conferment of temporary status and subsequent regularisation to those casual workers who have completed 240 days of service in a year.

7. On hearing the learned counsel for the parties we feel that the applications require further examination regarding the factual position. Due to the paucity of material it is not possible for this Tribunal to come to a

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definite conclusion. We, therefore, feel that the matter should be re-examined by the respondents themselves taking into consideration of the submissions of the learned counsel for the applicants.

8. In view of the above we dispose of these applications with direction to the respondents 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.

9. No order as to costs.

SD/-VICE-CHAIRMAN
SD/-MEMBER(A)

HKM