30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES,1990)

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O.A/T.A No. 220/2000
R.A/C.P No.
E.P/M.A No. 86/01

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SECTION OFFICER (Judl.)
19.12.17

FORM NO. 4
(*See Rule 42*)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET
APPLICATION NO. 220/2000 OF 199

Applicant(s) Shri Birbal Prasad.

Respondent(s) Union of India & ors.

Advocate for Applicant(s) Mr. BK. Sharma
Mr. S. Sarma

Advocate for Respondent(s) C.G.S.C.

Notes of the Registry	Date	Order of the Tribunal
Application is in order and within time, F. of Rs. 50/- deposited vide IPO/BD No. 497392 Dated 6.6.2000	16.6.00	Present: Hon'ble Mr D.C. Verma, Judicial Member Learned counsel Mr S. Sarma for the applicant and Mr A. Deb Roy, learned SR. C.G.S.C. for the respondents. The application is taken up for disposal at the admission stage itself. Heard the learned counsel for the parties. Hearing concluded. The O.A. is disposed of as per order dictated separately. No costs. Member(J)
14/6/00 [redacted] 14/6/2000 Note.- Requisite 5 copies filed. BOO 30.6.2000. Copy of the Judgment has been sent to the D/sec. for issuing the same to the applicant as well as to the Sr. CGSC. for the Respdn.	trd	

Notes of the Registry	Date	Order of the Tribunal

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Original Application Nos. 216/2000, 220/2000 and 222/2000.

Date of decision : This the 16th day of June, 2000.

Hon'ble Sri D.C.Verma, Member (J).

O.A. No. 216/2000

Sri Animesh Deka & 2 Ors.

O.A.No.220/2000

Shri Birbal Prasad

O.A.No.222/2000

Shri Visheto Sumi and 65 Ors.

.....Applicants

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

-versus-

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

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

.....

O R D E R (ORAL)

D.C. VERMA (JUDICIAL MEMBER)

As all the three O.A.s involve common questions of law and facts, a common order is being passed.

2. The three applicants in O.A.No.216/2000 have claimed the benefit of the scheme for grant of temporary status as has been granted to the other similarly situated employees in other departments. In support of the claim, the applicants have filed earlier orders of the Tribunal which are annexed with the O.A. The copy of orders passed by the Hon'ble Supreme Court in Writ Petition No.1280/89 has also been filed. Accordingly, as per direction of the Apex Court a Scheme has been framed by the respondents. The present applicants belong to

Telecom Civil Sub-division.

The applicant in O.A. No. 220/2000 is of Central Telegraph Office, Guwahati and he has also claimed the benefit of the scheme for grant of temporary status.

In O.A. No. 222/2000 the applicant No.1 is a casual worker under the Nagaland SSA, Kohima. The applicant No.2 is All India Telecom Employees Union, Line Staff and Group-D, Nagaland Division and in this O.A. he represents the interests of 66 casual workers reflected in Annexure-A to the O.A.

3. The submission of the learned counsel for the applicants in all the three OAs is that similar O.A.s have already been decided by this Bench of the Tribunal namely in O.A. No. 200/2000. Copy of the order dated 8.6.2000 has been produced for persual. The submission of the learned counsel for the applicants is that present applicants are similarly situated and are covered by the scheme. The benefit of the scheme has already been given to the similarly situated workers of the Department of Telecommunication. He further submits that casual workers of the Department of Posts who were emplpyed on 29.11.89 were found eligible to be conferred temporary status on satisfying other eligibility conditions. The stipulated date i.e. 29.11.89 was extended upto 10.9.1993 prusuant to a judgement of the Ernakulam Bench of the Tribunal delivered on 13.3.1995 in O.A. No. 750/94. The Govt. of India, in pursuance to the said judgement of the Ernakulam Bench issued letter on 1.11.1995 by which the benefit of conferring temporary status to the casual labourers were extended upto 1993. As regard the cut off date the learned counsel has submitted that the same has been further extended vide order dated 1.9.1999, Annexure 8 to the O.A. No. 222/2000. Annexure-8 provides, on the subject of regularisation and grant of temporary status

Contd...

to casual workers of the department of Telecommuncation, for granting of temporary status to the casual labourers eligible as on 1.8.1998.

4. The three applicants of O.A. No. 216/2000 calimed to have been initially appointed in the year 1995. The applicant of O.A. No. 220/200 claimed to have been appointed in the year 1993 and all the applicants in O.A. No. 222/2000 reflected in Annexure-A to the O.A. have been appointed between 1.2.1994 and February 1998. Thus, applicants of all the three OAs were appointed prior to August, 1998. Consequently cases of the applicants is required to be considered in the light of the scheme, for grant of temporary status as the case may be.

5. In view of the above, all the three OAs are decided as per the direction given below :

All the applicants including those reflected in Annexure-A to the O.A. No. 222/2000 shall individually make representation to the respondents giving date of their engagement and details of their working and other relevant details required for the purpose within a period of one month from the date of this order, to the respondents. The respondents are directed to scrutinise and examine each individual case, with the records of the department and thereafter pass a reasoned and speaking order on merits of each case within a period of six months from the date of receipt of the representation. The order passed on the representations shall be communicated to each applicant separately.

6. The O.A. stands disposed of as per the direction given above. No order as to costs.

Sd/MEMBER(J)

[illegible] TRIBUNAL
GUWAHATI [illegible]

Title of the [illegible] O.A. No. 220 [illegible]

BETWEEN

Sri [illegible] Applicant.

AND

Union of India [illegible] Respondents

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Filed by : Reg.

File : C:\WS7\BIRBAL Date

Filed by Sd/- Advocate Sarma 14/6/2000

[illegible]

[illegible] Tribunal Act [illegible]

[illegible] No. 220 [illegible]

Between

[illegible]

AND

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

DETAILS OF THE APPLICATION.

1. PARTICULARS OF ORDER AGAINST WHICH THIS APPLICATION IS MADE

[illegible] the complaints in not considering the case [illegible] the said order as well as subsequent [illegible] fication [illegible]

[illegible]

2. [illegible]

That the Applicant declares [illegible] this [illegible] this [illegible] Tribunal.

3. [illegible]

The Applicant declares that [illegible] and [illegible] Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE

4.1 That the [illegible] and [illegible] rights and privileges [illegible] the Constitution of India and laws framed thereunder.

4.2 That the applicant [illegible] worker (S.Faiwala) in the in the year 1980 in the [illegible] the [illegible] Supdt Cent [illegible] Telegraph Office [illegible] Mustar [illegible] was appointed as Mustar [illegible] 1980. After [illegible] appointment was [illegible] was [illegible] to The applicant [illegible] Mustar [illegible] G.M. staff [illegible] and [illegible] appointment [illegible] The other [illegible] the applicant in [illegible] was [illegible] th

scale but in the year 1997 he got a arrear of Rs. 14,872/- after the recommendation of 5th Central Pay Commission.

4.3 That the applicant initially appointed as a Muster Roll worker in the year 1992 and their services were put under the casual establishment in the year 1992 and as such he is entitled to get the benefit of the scheme prepared pursuant to a verdict of Hon'ble Supreme Court. The applicant begs to state that since 1992, each year he has been continuously working for more than 240 days and as such he fulfills all the required qualifications as described in the scheme and its subsequent clarifications issued from time to time. Till date he has been working as casual worker (Safaiwala) but the respondents have not yet granted him temporary status and other benefits as described in the scheme as well as its subsequent clarifications.

4.4 That the applicant begs to state that some of the casual workers of the Department of Post had approached this Hon'ble Supreme Court and the Hon'ble Supreme Court after hearing the parties was pleased to issue a direction to the official Respondents thereto to prepare a scheme. Claiming similar benefit another set of casual workers working in the Telecommunication department also approached the Hon'ble Supreme Court seeking a similar direction and the said matter was also disposed of by a similar order and direction has been issued to the Respondents to prepare a scheme on rational basis for the casual workers who has been working continuously for one year and who have completed 240 days of continuous service.

A copy of the order of the Hon'ble Supreme Court is annexed herewith and marked as Annexure-4.

4.5 That the applicant begs to state that the respondents there-

after issued an order vide No. 269-10/89-STN dated 7.11.89 by which a scheme in the name and style "casual labourers" (grant of temporary status and regularisation scheme 1989) has been communicated to all heads of Departments. As per the said scheme certain benefit have been granted to the casual workers such as conferment of temporary status, wages and daily rates etc.

A copy of the order dated 7.11.89 is annexed herewith and marked as Annexure-2.

4.6 That the Applicant states that as per the direction contained in Annexure-1 judgment of the Hon'ble Supreme Court and Annexure-2 schemes he is entitled to take a benefit including temporary status and subsequent regularisation. The Applicant fulfills all the required qualifications mentioned in the said judgment and as such is entitled to all the benefits as described in the aforesaid scheme.

4.7 That the applicant begs to state that after issuance of Annexure-2 schemes dated 7.11.89 the respondents issued an order vide No. 269-4/93-STN-II dated 17.12.93 by which the benefit conferred to the casual workers by the said scheme has been clarified.

4.8 That the applicant begs to state that of the respondents thereafter have issued various orders by which modification/clarifications has been made in the aforesaid Annexure-2 scheme dated 7.11.89. By the aforesaid clarifications the Respondents have made the scheme applicable to almost all the casual workers who have completed 240 days continuous service in a year. To that effect mention may be made of the dated 1.9.99 issued by the Government of India Department of Telecommunication

by which the benefit of the scheme has been extended the recruitees up to 1.8.98.

A copy of the said order dated 1.9.99 is annexed and marked as Annexure-3.

4.9 That the applicant begs to state that some of the similarly situated employees like that of the Applicant had approached this Hon'ble Tribunal by way of filing OA No. 299/93 and 302/96 and the Hon'ble Tribunal was pleased to passed an order dated 13.8.97 directing the Respondent to extend the benefit of the said scheme.

A copy of the order dated 13.8.97 is annexed herewith and marked as Annexure-4.

4.10 That the applicant being aggrieved by the said action submitted numbers of representations to the concerned authority i.e. respondent No. 2 for grant of temporary status and regularisation but till date nothing has been done so far in this matter. The applicant instead of annexing all the representations begs to produce all the representations at the time of hearing of the case.

4.11 That the applicant begs to state that under similar facts situation numbers of casual workers had approached this Hon'ble Tribunal by way of filing various OAs and the Hon'ble Tribunal after hearing the parties to the proceeding was pleased to dispose of the said OAs by a common judgement and order dated 31.8.99 directing to the Respondents to consider their cases in the light of Hon'ble Apex Court verdict as well as the scheme and its subsequent clarifications issued from time to time.

A copy of the said judgment and order dated 31.8.99 is annexed herewith and marked as Annexure-5.

4.12 That the applicant begs to state that his case is covered by the aforesaid judgement of this Hon'ble Tribunal. It is stated that pursuant to the aforesaid judgment and order dated 31.8.99 the respondents have initiated a large scale proceeding for fill up at least 900 posts of DRM under Assam Circle. However, the respondents have only taken into consideration those casual labourers who had approached this Hon'ble Tribunal and in whose favour the Hon'ble Tribunal has given the direction. The applicant has been pursuing the matter before the respondents but the respondents have shown their helplessness in absence of any order of this Hon'ble Tribunal. It is therefore the applicant has come under the protective hands of this Hon'ble Tribunal, praying for an appropriate direction from this Hon'ble Tribunal to the Respondents to consider his case for grant of temporary status and regularisation in accordance with the verdict of the Hon'ble Apex Court as well as the scheme and its subsequent clarifications issued from time to time.

4.13 That the applicant begs to state that the respondents have acted illegally in not considering the case of the applicant only on the ground of not having an order from this Hon'ble Tribunal. The law is well settled that in a given case if any law is laid down for one set of employees, same is applicable to all the similarly situated employees. However, in the present case the respondents have acted illegally in differentiating the applicant with others and for that the entire action of the respondents is liable to be set aside and quashed.

4.14 That the applicant begs to state that as per the direction of the Hon'ble Apex Court (Annexure-1) he is entitled to all the benefits described in the Annexure-2 schemes dated 7.11.89. The direction of the Hon'ble Apex Court is very clear and respondents now cannot shift their burden by taking the ground of not having any order from this Hon'ble Tribunal. The judgment and order of the Hon'ble Apex Court is applicable to all the casual employees working under the Telecommunication departments and as such the applicant is also entitled to all the benefits as has been granted to others similarly situated employees like that of him.

4.15 That the applicant begs to state that presently he is the only earning members of his family and the respondents are making a move to terminate his services in absence of any order from this Hon'ble Tribunal. It is therefore the applicant prays for an appropriate interim order directing the respondents not to terminate his service during the pendency of this OA. It is noteworthy to mention here that till date he has been working as casual worker under the respondent No. 5 and other the said respondents there are as many as 4 vacancies are in existence under the Group D Establishment (Safaiwala) one of which posts are being occupied by the present applicant. It is therefore the balance of convenience lies very much in favour of the applicant in passing the aforesaid interim as prayed for and there is every likelihood that in case his interest is not protected by way of passing an appropriate interim order as prayed for, the respondents may disengage him causing irreparable loss and injury.

5. GROUNDS WITH LEGAL PROPROVISIONS

5.1 For that the entire action on the part of the respondents in

[illegible] grant of the temporary stay [illegible] the application [illegible] ting the provisions contained in the Ar[illegible] judgment passed by the [illegible] and art[illegible] same are liable to be set aside and quashed.

5.2 For the sake of the argument it is [illegible] applicant not at par with the other [illegible] who the benefit of the scheme has already been given violative of Article 14 and 16 of the Constitution of [illegible] The respondents being a model employer should have extended [illegible] benefit to the applicant without resorting to [illegible] this Hon'ble Tribunal, more so when themselves allowed the said benefit to one out of the employees [illegible] case the respondents cannot differentiate their employees [illegible] regard to employment [illegible] the entire action of the Respondents illegal [illegible] sustainable in the eye of law.

5.3 For that the respondents have [illegible] considering the case of the applicant [illegible] in view of order dated 1.9.99 as [illegible] judgment [illegible] dated 01.9.99 passed in similar [illegible] are to be set aside and quashed with a further direction to the respondents to extend the benefits of the said [illegible] to the [illegible] including all other [illegible] sequential benefit.

5.4 For the in any view of the [illegible] the action on the part of the Respondents is not sustainable in the eye of law and liable to be set aside and quashed.

The applicant reserves [illegible] Tribunal to advance more grounds both legal [illegible] time of

hearing of this case.

6. DETAILS OF THE REMEDIES EXHAUSTED.

That the applicant declares that he has exhausted all the possible departmental remedies towards the redressal of the grievances in regard to which the present application has been made and presently he has got no other alternative than to approached this Hon'ble Tribunal.

7. MATTER PENDING WITH ANY OTHER COURTS

That the applicant declares that the matter regarding this application is not pending in any other Court of Law or any other authority or any other branch of the Hon'ble Tribunal.

8. RELIEF SOUGHT:

Under the facts and circumstances stand above the applicant prays that the instant application be admitted, records be call for and upon hearing the parties on the cause or causes that may be shown and on perusal of records be pleased to grant the following reliefs.

8.1 To direct the Responderts to extend the benefit of the scheme and to grant him temporary status as has been granted to the other similarly situated employees like that of him with retrospective effect with all consequential service benefits including arrear salary and seniority etc.

8.2. To direct the respondents to allow the applicant to continue in his present post after granting temporary status and regularisation.

8.3 Cost of the application.

8.4 Any other relief/reliefs to which the present Applicant is

entitled to under the facts and circumstances of the case and as may be deemed fit and proper by the Hon'ble Tribunal.

9. INTERIM ORDER PRAYED FOR:

Under the facts and circumstances of the case the applicant prays for interim order directing the respondents not to disengage him from his current employment and to allow him to continue in service pending disposal of this application.

10. THE APPLICATION IS FILED THROUGH ADVOCATE.

11. PARTICULARS OF THE POSTAL ORDER :

(I) I.P.O. No.: 497342 (ii) Date: 6-6-2000.

(iii) payable at Guwahati

12. LIST OF ENCLOSURES : As stated in the Index.

VERIFICATION

I, Shri [illegible] Basfore, aged about [illegible] years, presently [illegible] (Safaiwala) under Chief Supdt. Central T[illegible] Offi[illegible], Guwahati-1 do hereby solemnly affirm and state that the statement made in this petition from paragraph 1,2,3,41-43,46-47,410,412-416 & 5 to 12 are true to my knowledge and those made in paragraphs 44,45,48,49 and 411 are [illegible] records of records informations derived therefrom which I believe to be true and the rest are my humble submission [illegible] Hon'ble Tribunal.

I am the applicant No. 1 in the present [illegible] and I have been authorised by the other applicants [illegible] this verification.

And I sign this verification [illegible] 12th day, [illegible].

B

A

L.T.I.

ANNEXURE-1.

Absorption of Casual Labours
Supreme Court directive Department of Telecom take back all Casual Mazdoors who have been disengaged after 07.9.88.

In the Supreme Court of India
Civil Original Jurisdiction.

Writ Petition (C) No 1290 of 1989.

Ram Gopal & ors. ..... Petitioners.

-versus-

Union of India & ors. ..... Respondents.

With

Writ Petition Nos 1246, 1248 of 1988 176 , 177 and 1248 of 1988.

Jant Singh & ors etc. etc. ..... Petitioners.

-versus-

Union of India & ors. .....Respondents.

ORDER

We have heard counsel for the petitioners. Though a counter affidavit has been filed no one turns up for the Union of India even when we have waited for more then 12 minutes for appearance of counsel for the Union of India .

The principal allegation in these petitions under Art 32 of the Constitution on behalf of the petitioners is that they are working under the Telecom Department of the Union of India as Casual Labourers and one of them was in employment for more then four years while the others have served for two or three years.Instead of regularising them in employment their services have been terminated on 30 th September 1988. It is contended that the principle of the decision of this Court in Daily Rated Casual Labour Vs. Union of India & ors. 1988 (1) Section (122) squarely applies to the petitioner though that was rendered in case of Casual Employees of Posts and Telegraphs Department. It is also contended by the counsel that the decision rendered in that case also relates to the Telecom Department as earlier Posts and Telegraphs Department was covering both sections and now Telecom has become a separate department. We find from paragraph 4 of the reported decision that communication issued to General Managers Telecom have been referred to which support the stand of the petitioners.

By the said Judgment this Court said :

" We direct the respondents to prepare a scheme on a rational basis for absorbing as far possible the casual labourers who have been continuously working for more than one year in the

posts and Telegraphs Department".

We find the though in paragraph 3 of the writ petition, it has been asserted by the petitioners that they have been working more than one year, the counter affidavit does not dispute that petition. No distinction can be drawn between the petitioners as a class of employees and those who were before this court in the reported decision. On principles , therefore the benefits of the decision must be taken to apply to the petitioners. We accordingly direct that the respondents shall prepare a scheme on a rational basis absorbing as far as practical who have continuously worked for more than one year in the Telecom Deptt. and this should be done within six months from now. After the scheme is formulated on a rational basis, the claim of the petitioners in terms of the scheme should be worked out. The writ petitions are also disposed of accordingly. There will be no order as to costs on account of the facts that the respondents counsel has not chosen to appear and contact at the time of hearing though they have filed a counter affidavit.

Sd/- Sd/-

(Ranganath Mishra) J. (Kuldeep Singh) J.

New Delhi

April 17, 1990.

ANNEXURE-2.

CIRCULAR NO. 1
GOVERNMENT OF INDIA
DEPARTMENT OF TELECOMMUNICATIONS

STN SECTION

No. 269-10/89-STN New Delhi 7.11.89

To

The Chief General Managers, Telecom Circles
M.T.H.I New Delhi/Bombay, Metro Dist.Madras/
Calcutta.
Heads of all other Administrative Units.

Subject : Casual Labourers (Grant of Temporary Status and Regularisation) Scheme.

Subsequent to the issue of instruction regarding regularisation of casual labourers vide this office letter No.269-29/87-STC dated 18.11.88 a scheme for conferring temporary status on casual labourers who are currently employed and have rendered a continuous service of at least one year has been approved by the Telecom Commission. Details of the scheme are furnished in the Annexure.

2. Immediate action may kindly be taken to confer temporary status on all eligible casual labourers in accordance with the above scheme.

3. In this connection , your kind attention is invited to letter No.270-6/84-STN dated 30.5.85 wherein instructions were issued to stop fresh recruitment and employment of casual labourers for any type of work in Telecom Circles/Districts. Casual labourers could be engaged after 30.3.85 in projects and Electrification circles only for specific works and on completion of the work the casual labourers so engaged were required to be retrenched. These instructions were reiterated in D.O letters No.270-6/84-STN dated 22.4.87 and 22.5.87 from member(pers.and Secretary of the Telecom Department) respectively. According to the instructions subsequently issued vide this office letter No.270-6/84-STN dated 22.6.88 fresh specific periods in Projects and Electrification Circles also should not be resorted to.

3.2. In view of the above instructions normally no casual labourers engaged after 30.3.85 would be available for consideration for conferring temporary status. In the unlikely event of there being any case of casual labourers engaged after 30.3.85 requiring consideration for conferment of temporary status. Such cases should be referred to the Telecom Commission with relevant details and particulars regarding the action taken against the officer under whose authorisation/approval the irregular engagement/non retrenchment was resorted to.

3.3. No Casual Labourer who has been recruited after 30.3.85 should be granted temporary status without specific approval from this office.

4. The scheme finalised in the Annexure has the concurrence of Member (Finance) of the Telecom Commission vide No

SMF/78/98 dated 27.9.89.

5 Necessary instructions for expeditious implementation of the scheme may kindly be issued and payment for arrears of wages relating to the period from 1.10.89 arranged before 31.12.89.

sd/=

ASSISTANT DIRECTOR GENERAL (STN).

Copy to.

P.S. to MDS (C).

P.S. to Chairman Commission.

Member (S) / Adviser (HRD). GM (IR) for information.
MCG/SEA/TE -II/IFS/Admn. I/CSE/PAT/SPB-I/SR Secs.

All recognised Unions/Associations/Federations.

sd/=

ASSISTANT DIRECTOR GENERAL (STN).

25

ANNEXURE

CASUAL LABOURERS (GRANT OF TEMPORARY STATUS AND REGULARISATION) SCHEME.

1. This scheme shall be called "Casual Labourers(Grant of Temporary Status and Regularisation) Scheme of Department of Telecommunication. 1989"

2. This scheme will come in force with effect from 1.10.89. onwards.

3. This scheme is applicable to the casual labourers employed by the Department of Telecommunications.

4. The provisions in the scheme would be as under.

A) Vacancies in the group D cadres in various offices of the Department of Telecommunications would be exclusively filled by regularisation of casual labourers and no outsiders would be appointed to the cadre except in the case of appointment on compassionate grounds, till the absorption of all existing casual labourers fulfilling the eligibility qualification prescribed in the relevant Recruitment Rules. However regular Group D staff rendered surplus for any reason will have prior claim for absorption against the existing/future vacancies. In the case of illiterate casual labourers, the regularisation will be considered only against those posts in respect of which illiteracy will not be an impediment in the performance of duties. They would be allowed age relaxation equivalent to the period for which they had worked continuously as actual labour for the purpose of the age limit prescribed for appointment to the group D cadre, if required. Out side recruitment for filling up the vacancies in Gr. D will be permitted only under the condition when eligible casual labourers are NOT available.

B) Till regular Group D vacancies are available to absorb all the casual labourers to whom this scheme is applicable, the casual labourers would be conferred a Temporary Status as per the details given below.

Temporary Status.

i) Temporary status would be conferred on all the casual labourers currently employed and who have rendered a continuous service at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in case of offices observing five day week). Such casual labourers will be designated as Temporary Mazdoor.

ii) Such conferment of temporary status would be without reference to the creation / availability of regular Gr. D posts.

iii) Conferment of temporary status on a casual labourers would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on a need basis. He may be deployed any where within the recruitment unit/territorial circles on the basis of availability of work.

iv) Such casual labourers who acquire temporary status will not, however be brought on to the permanent establishment unless they are selected through regular selection process for Gr. posts.

6. Temporary status would entitle the casual labourers to the following benefits :

i) Wages at daily rates with reference to the minimum of the pay scale of regular Gr,D officials including DA,HRA, and CCA.

ii) Benefits in respect of increments in pay scale will be admissible for every one year of service subject to performance of duty for at least 240 days (206 days in administrative offices observing 5 days week) in the year.

iii) Leave entitlement will be on a pro-rata basis one day for every 10 days of week.Casual leave or any other leave will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularisation. They will not be entitled to the benefit of encasement of leave on termination of services for any reason or their quitting service.

iv) Counting of 50 % of service rendered under Temporary Status for the purpose of retirement benefit after their regularisation.

v) After rendering three years continuous service on attainment of temporary status, the casual labourers would be treated at par with the regular Gr. D employees for the purpose of contribution to General Provident Fund and would also further be eligible for the grant of Festival Advance/ food advance on the same condition as are applicable to temporary Gr.D employees, provided they furnish two sureties from permanent Govt. servants of this Department.

vi) Until they are regularised they will be entitled to Productivity linked bonus only at rates as applicable to casual labour.

7. No benefits other than the specified above will be admissible to casual labourers with temporary status.

8. Despite conferment of temporary status,the offices of a casual labour may be dispensed within accordance with the relevant provisions of the industrial Disputes Act.1947 on the ground of availability of work. A casual labourer with temporary status can quite service by giving one months notice.

9. If a labourer with temporary status commits a misconduct and the same is proved in an enquiry after giving him reasonable opportunity, his services will be dispensed with. They will not be entitled to the benefit of encasement of leave on termination of services.

10. The Department of Telecommunications will have the power to make amendments in the scheme and/or to issue instructions in details within the framing of the scheme.

@ @ @

No.269-13/99
Government of India
Department of Telecommunications
Sanchar Bhawan
STN-II Section

New Delhi

Dated 1.9.99

To

All Chief General Managers Telecom. Circles,
All Chief General Managers Telephones District,
All Heads of other Administrative offices,
All the IFAs in Telecom. Circles/Districts and
other Administrative Units.

Subject: Regularisation/grant of temporary status to Casual Labourers - regarding.

*****

Sir,

I am directed to refer to letter No.269-4/93-STN-II dated 12.2.99 circulated with letter No.269-13/99-STN-II dated 12.2.99 on the subject mentioned above.

In the above referred letter, this office has conveyed approval on the two items, one is grant of temporary status to the Casual Labourers eligible as on 1.8.98 and another on regularisation of Casual Labourers with temporary status who are eligible as on 31.3.97. Some doubts have been raised regarding date of effect of these decision. It is therefore clarified that in case of grant of temporary status to the Casual Labourers, the order dated 12.2.99 will be effected w.e.f. the date of issue of this order and in case of regularisation to the temporary status Mazdoors eligible as on 31.3.97, this order will be effected w.e.f. 1.4.97.

Yours faithfully,

(HARDAS SINGH)
ASSISTANT DIRECTOR GENERAL(STN)

All recognised Unions/Federations/Associations.

ANNEXURE-4.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.299 of 1996.

and

302 of 1996.

Date of order : This the 13th day of August,1997.

Justice Shri D.N.Baruah, Vice-Chairman.

O.A.No.299 of 1996

All India Telecom Employees Union,
Line Staff and Group-D,
Assam Circle, Guwahati & Others. ..... Applicants.

- Versus -

Union of India & Ors. ..... Respondents.

O.A. No.302 of 1996.

All India Telecom Employees Union,
Line Staff and Group-D
Assam Circle, Guwahati & Others. ..... Applicants.

- Versus -

Union of India & Ors. ..... Respondents.

Advocate for the applicants :Shri B.K. Sharma
Shri S. Sharma

Advocate for the respondents : Shri A.K. Choudhury
Addl.C.G.S.C.

ORDER

BARUAH J.(V.C.)

Both the applications involve common question of law and similar facts. In both the applications the applicants have

prayed for a direction to the respondents to give them certain benefits which are being given to their counter parts working in the Postal Department. The facts of the cases are :

1. O.A. No.302/96 has been filed by All India Telecom Employees Union, Line Staff and Group-D, Assam Circle, Guwahati, represented by the Secretary Shri J.N.Mishra and also by Shri Upen Pradhan, a casual labourer in the office of the Divisional Engineer, Guwahati. In O.A. 299/96, the case has been filed by the same Union and the applicant No.2 is also a casual labourer. The applicant No.1 in O.A. No.299/96 represents the interest of the casual labourers referred to Annexure-A to the Original Application and the applicant No.2 is one of the labourers in Annexure-A. Their grievances are :

2. They are working as casual labourers in the Department of Telecom under Ministry of Communication. They are similarly situated with the casual labourers working in the Department of Postal Department under the same Ministry. Similarly the members of the applicant No 1 are also casual labourers working in the telecom Department. They are also similarly situated with their counter parts in the Postal Department.They are working as casual labourers. However the benefits which had been extended to the casual labourers working in the Postal Department under the Ministry of Communications have not been given to the casual labourers of the applicants Unions. The applicants state that pursuant to the judgment of the Apex Court in daily rated casual labourers employed under Postal Department vs. Union of India & Ors. reported in (1988) in sec.122 the Apex Court directed the department to prepare a scheme for absorption of the casual labourers who were continuously working in the department for more than one year for giving certain benefits. Accordingly a scheme was prepared by the Department of Posts granting benefit

Attested

to the casual labourers who had rendered 240 days of service in a year. Thereafter many writ petitions had been filed by the casual labourers , working under the department of Telecommunication before the Apex Court praying for directing to give similar benefits to them as was extended to the casual labourers of Department of Posts. Those cases were disposed of in similar terms as in the judgment of Daily Rated Casual Labourers(Supra). The Apex Court, after considering the entire matter directed the Department to give the similar benefit to the casual labourers working under the Telecom Department in similar manner. Pursuant to the said judgment the Ministry of Communication prepared a scheme known as "Casual Labourers (Grant of Temporary Status and regularisation)Scheme" on 7.11.89. Under the said scheme certain benefit had been granted to the casual labourers such as conferment of temporary Status, Wages and Daily Rates with reference to the minimum of the pay scale etc. Thereafter, by a letter dated 17.3.93 certain clarification was issued in respect of the scheme in which it had been stipulated that the benefits of the scheme should be confined to the casual labourers engaged during the period from 31.3.1985 to 22.6.1988. On the other hand the casual labourers worked in the Department of Posts as on 21.11.1989 were eligible for temporary Status. The time fixed as 21.11.1989 had been further extended pursuant to a judgment of the Ernakulam Bench of the Tribunal dated 13.3.1995 passed in O.A.No.750/94 . Pursuant to that judgment, the Govt.of India issued a letter dated 1.11.95 conferring the benefit of Temporary Status to the casual labourers. The present applicants being employees under the Telecom Department under the Ministry of Communication also urged before the concerned authorities that they should also be given same benefit. In this connection the casual employees submitted a representation dated 29.12.1995 before the Chairman

,Telecom Commission, New Delhi but to the knowledge of the applicant the said representation has not been disposed of. Hence the present application.

3. O.A.299/96 is also of similar facts. The grievances of the applicants are also same.

4. Heard both sides, Mr.B.K.Sharma, learned Counsel, appearing on behalf of the applicants in both the cases submits that the Apex Court having been granted the benefit of temporary status and regularisation to the casual labourers, should also be made available to the casual labourers working under Telecom Department under the same Ministry. Mr.Sharma further submits that the action in not giving the benefits to the applicants is unfair and unreasonable. Mr.A.K.Choudhury, learned Addl.C.G.S.C for respondents does not dispute the submission of Mr.Sharma. He submits that the entire matter relating to the regularisation of casual labourers are being discussed in the J.C.M level at New Delhi, however, no discision has yet been taken.In view of the above, I am of the opinion that the present applicants who are similarly situated are also entitled to get the benefit of the scheme of casual labourers (grant of temporary Status and Regularisation) prepared by the Department of Telecom. Therefore, I direct the respondents to give the similar benefit as has been extended to the casual labourers working under the Department of Posts as per Annexure-3(in O.A.302/96) and Annexure-4 (in O.A.No.299/96) to the applicants respectively and this must be done as early as possible and at any rate within a period of 3 months from the date of receipt copy of this order.

However,considering the entire facts and circumstances of the case I make no order as to costs.

Sd/- Vice Chairman.

ANNEXURE - 5

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.

....

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.

....

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.

....

4. O.A.No.118/1998

Shri Dhuban Kalita and 4 others .....Applicants

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

-versus-

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

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

....

5. O.A.No.120/1998

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

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

-versus-

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

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

....

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.

....

7. O.A.No.135/98

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.

....

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.

....

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.

....

10. O.A.No.142/1990

All India Telecom Employees Union, Civil Wing Branch.

By Advocate Mr B. Malakar .....Applicants

-versus-

The Union of India and others

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

11. O.A.No.145/1990

Shri Dhani Ram Deka and 10 others

By Advocate Mr I. Hussain. .....Applicants

-versus-

The Union of India and others

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

12. O.A.No.192/1990

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

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

-versus-

The Union of India and others

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

13. O.A.No.223/1990

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

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

-versus-

The Union of India and others

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

O.A.No.269/1990

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

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

-versus-

The Union of India and others

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

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.

.....

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 1.6.1990. 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 application 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

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 hereafter. 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)

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Certified to be true Copy
प्रमाणित प्रतिलिपि

30/9/93

Deputy Registrar (J)
Central Administrative Tribunal
Guwahati Bench