

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

4

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 313/2020

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SECTION OFFICER (Judl.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 GUWAHATI BENCH: GUWAHATI, 5 (FORM NO. 4)
 ORDER SHEET. (See Rule-42)

APPLICATION NO. 313/2000

Applicant(s) Kaondarpa Das and another

Respondent(s) UOI and ors.

Advocate for Applicant(s) Mr. B.K. Sharma

Mr. S. Sarma

Advocate for Respondent(s) Mr. U.K. GOWRAM

C. G. S.

Notes of the Registry

DATE

ORDER OF THE TRIBUNAL

28.9.00

present : The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman.

Heard Mr S.Sarma, learned counsel for the applicants and Mr A.Leb Roy, learned Sr. C.G.S.C for the respondents.

Application is admitted. Issue usual notice. Call for the records.

List on 14.11.2000 for written statement and further orders.

Pendency of this application shall not stand on the way of the respondents to consider the case of the applicants in the light of existing policy of the respondents

Vice-Chairman

pg

14.11.00

On the prayer of Mr. A. Deb Roy, learned Sr. C.G.S.C. the case is adjourned to 12.12.2000 for filing of written statement.

List on 12.12.2000 for written statement and further orders.

Vice-Chairman

Note: mer from case

Notice not yet served

NS 28/9/2000

Request CR received

Notice prepared and sent to D/S for issuing notices to respondents No 1 to 3 vide D/No 2072 to 2074 dated 29/9/00

NS 28/9/2000

15/11/00
 12-12-00

NO S.B. Adjourned to 4.11.2001

NS 12-12-00

12-12-00

(2)

- ① Service report are still awaited.
- ② No. w/s has been filed.

H-1. There was a rejoinder filed to 12.1.2001.
 Mo. A.K. Roy
 11.1.

3/11
 13.11.2000.

17.1.01

At the request of Mr.A.Deb Roy, Sr.C.G.S.C. four weeks time is allowed for filing of written statement. List on 12.2.01 for filing of written statement and further orders.

11.11.2000
 Vice-Member

- ① Notice served by hand on R.No. 273, Respondant No.1, are awaited.

12.2. no. s. b. Adv. ordered to 21.3.2001.
 Mo. A.K. Roy
 12.2

- ② No. w/s has been filed.
- 3/1
 3.1.2001

21.3.01

List on 25.4.01 to enable the respondents to file written statement.

No. w/s has been filed.

3/16
 16.1.2001

16.1.2001
 Vice-Chairman

No written statement has been filed.

pg

25.4.2001

Four weeks time allowed to the respondents to file written statement. List for orders on 30.5.01.

3/20
 20.3.01

20.3.01
 Vice-Chairman

NO N/S has been filed.

nkm

30.5.01

List the case again on 11-7-2001 in presence of Mr.A.Deb Roy, Sr.C.G.S.C. for the respondents who is away for attending Circuit Benches at Imphal and Kohima.

NS
 24/4/01

11.7.2001
 Vice-Chairman

5.7.2001
 w/s has been submitted by the Respondents.

bb

11.7.01

Written statement has been filed. The applicant may file rejoinder if any, within 2 weeks. List on 1.8.10 for orders.

written statement has been filed.

10.7.01
 Vice-Chairman

3/10
 10.7.01

lm

(2)

Notes of the Registry	Date	Order of the Tribunal
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1.8.01

Written statement has been filed. The case may now be listed for hearing on 31.8.01.

Vice-Chairman

lm

31.8.

Advised to 6.9.2001

Mlo

A.K. 2
31.8

6.9.01

The matter came up for hearing today. Mr A. Deb Roy, learned Sr.C.G.S.C referring to the written statement filed by the respondents stated that the applicants have been found to be ineligible. The written statement filed by the respondents is very ^{sketchy} clumsy which does not give any facts. As the applicants have been found to be ineligible the respondents are directed to give them a reasoned reply as mentioned in para 2 of the written statement. The respondents may also file a detailed written statement so that the applicants may get opportunity to file their rejoinder.

List on 10.10.2001 for hearing.

K. U. Shaha

Member

pg

10.10.01

List on 16.10.01 to enable the respondents to produce the connected records

[Signature]
Vice-Chairman

pg

As per order dt 6.9.01 respondent No. Detailed written Statement has been filed.

[Signature]
9.10.01

Written Statement has been filed.

[Signature]
15.11.01

Notes of the Registry	Date	Order of the Tribunal
	16.10.2001	<p>Mr. B.C. Pathak, learned Addl. C.G. S.C. prays for time to produce records. Prayer accepted. List on 16.11.01 for hearing.</p> <p style="text-align: right;"><i>1 C C Sharma</i> Member</p>
<p><i>W/S has been filed by the respondents</i></p> <p><i>NG</i> <i>4/12/01</i></p>	bb	<p>By order dated 6.9.2001 the respondents were directed to produce the relevant records. Sri A. Deb Roy, learned Sr. C.G.S.C. expressed his inability to produce the records today and seeks for adjournment. Mr. S. Sarma, learned counsel for the applicant has no objection to the prayer of Mr. A. Deb Roy. Accordingly the case is adjourned to 5.12.2001 for production of records. List on 5.12.2001 for hearing.</p> <p style="text-align: right;"><i>1 C C Sharma</i> Member</p>
	5.12.01	<p>On the prayer of the learned counsel for the applicant the case is adjourned to 7.12.2001 for hearing.</p> <p style="text-align: center;"><i>(Signature)</i> Member (J)</p> <p style="text-align: right;"><i>1 C C Sharma</i> Member (A)</p>
	pg	

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JA 313/2000

Notes of the Registry

Date

Order of the Tribunal

26.12.2001

Copy of the order has been sent to the office for issuing the same to the L/Ps for the parties.

31/12/01

7.12.2001

bb

Heard counsel for the parties. Judgment delivered in open Court, kept separate sheets. The application is allowed in terms of the order. No order as to costs.

Member (J)

K. L. Sharma
Member (A)

es of the Registry

Date

Order of the Tribunal

A

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 313/2000 & 327/2000

Date of Decision. 7.12.2001...

--- Mr. Kandarpa Das & another (O.A.313/2000)
Mr. Pradip Sahu & Others. (O.A.327/2000) --- Petitioner(S)

--- Mr. Sarma -----

Advocate for the
Petitioner(s)

-Versus-

--- Union of India & Others. -----

Respondent(s)

--- Mr. A. Deb Roy, sr. C.G.S.c. -----

Advocate for the
Respondent(s)

THE HON'BLE MR. K. K. SHARMA, ADMINISTRATIVE MEMBER.

THE HON'BLE MRS. BHARATI RAY, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble : Administrative Member.

U. U. Sharma

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application Nos. 313/2000 & 327/2000.

Date of Order : This the 7th Day of December, 2001.

THE HON'BLE MR. K.K.SHARMA, ADMINISTRATIVE MEMBER.

THE HON'BLE MRS. BHARATI RAY, JUDICIAL MEMBER.

O.A.313/2000

1. Sri Kandarpa Das
Son of Upen Das
Resident of Sualkuchi, Kamrup.
2. Sri Kamal Kalita
Son of Nipen Kalita
Resident of Nalbari, Assam. ... Applicants.

By Advocate Mr.S.Sarma.

- Versus -

1. Union of India,
Represented by the Secretary to the
Government of India, Ministry of Communication,
Sansar Bhawan, New Delhi- 1.
2. The Chief General Manager, Telecom
Assam Telecom Circle, Guwahati.
3. The Divisional Engineer, (Store)
Circle Telecom Store Depot
Assam Circle. ... Respondents.

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

O.A.327/2000.

1. Sri Pradip Sahu,
At present working under Telecom District Manager
Dibrugarh.
2. The All India Telecom Employees Union L.S & Gr- D
Represented by its Circle Secretary, Sri J.N.Mishra.
.. Applicants.

By Advocate Mr.S.Sarma.

- Versus -

1. Union of India
Represented by the Secretary to the
Ministry of Communication, New Delhi.
2. The Chief General Manager
Assam Telecom Circle, Guwahati.

U U Sharma

3. The Telecom District Manager,
Dibrugarh, Telecom Division,
Assam.

... Respondents.

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

O R D E R

K.K.SHARMA, ADMN.MEMBER :

Both these applications are taken up together as the issue involved in these cases are same. The issue in these applications is for grant of temporary status. In O.A.313/2000 there are two applicants, while in O.A. 327/2000 there are 35 applicants. All these applicants had come earlier before this Tribunal in a series of O.A.s and This Tribunal decided the series of O.A.s by a common order dated 31.8.1999 in O.A.107/2000 & Others (Annexure -6).

2. The applicants are casual workers and working under TDM Nagaon, and The Divisional Engineer, (Store), Circle Telecom Store Depot, Assam Circle. In the order dated 31.8.1999 direction was given to the applicants to file representations individually within a period of one month from the receipt of the order and the respondents were also directed to scrutinise and examine the representations in consultation with their records and to pass a reasoned order. Accordingly, the applicants filed representations which had been disposed by the respondents rejecting their claims by passing an identical order. The

K. K. Sharma

Contd...3

said order was passed on 9.8.2000 informing the applicants that on verification of the relevant documents, it was found that the applicants had not worked the requisite number of days in any preceeding year. Para 3 of the written statement filed by the respondents have been stated as under :

"That with regard to the statements in para 1 of the application, the respondents state that the petitioner's case was indeed considered and examined by the verification committee set up for the purpose. The committee worked out the engagement particulars of the applicants on the basis of authentic official records including payment particulars and based on the findings it was found that some of the applicants are not entitled for the benefit of the Temporary Status scheme. Accordingly applicants are informed by the GM/Dibrugarh office that they were not eligible for temporary status. The order dated 9.8.2000 was issued after thorough scrutiny and proper verification of the applicant's cases."

3. Though the respondents have mentioned that some of the applicants ^{are} not entitled to the benefit of temporary status, yet as argued by Mr.S.Sarma, learned counsel for the applicant all applicants had been issued identical letters rejecting their claims. Mr.Sarma has produced minutes of the verification committee in respect of the applicant which shows that many of the applicants had actually worked for more than 240 days in a calender year. As such the impugned order dated 9.8.2000 does not appear to be corrct. By the aforesaid judgment of this Tribunal dated 31.8.1999 the respondents had been directed to pass a reasoned order

11/11/2000

on the basis of the documents produced before them. It cannot be inferred that the respondents have verified the records properly ^{or U} and have ^U not passed a reasoned order.

4. Mr.A.Deb Roy, learned Sr.C.G.S.C. has also been heard. He submits that the process of the verification is still going on. U

5. Upon hearing learned ^{only} counsel for the parties and on consideration of the facts and materials on records, we are of the view that ends of justice will be met if a direction is given to the applicants ^U to place the same records produced before us before the respondents within 15 days from the receipt of this order, so that the respondents can re-consider each and every case on the basis of the records produced before them and pass a detailed order. In case, the records produced before them is not accepted as correct, the respondents will pass a reasoned order U
U The respondents are directed to dispose of the representations of the applicants. The respondents will complete the exercise within a period of 3 months from the date of production of records by the applicants.

Subject to the observation made above, the applications are treated as allowed.

There shall, however, be no order as to costs.

Bharati Ray
(MRS.BHARATI RAY)
JUDICIAL MEMBER

K.K.Sharma
(MR.K.K.SHARMA)
ADMINISTRATIVE MEMBER

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case :

O.A. No... 313of 2000

BETWEEN

Shri Kandarpa Das & Ors. Applicant.

AND

Union of India & ors. Respondents.

I N D E X

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11.	Annexure-9	

Filed by :

Regn.No.:

File :WS 7/kandarpa

Date :

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

(An application under section 19 of the Central Administrative Tribunal Act.1985)

D.A. No. of 20000

Between

- 1. Sri Kandarpa Das,
son of Upen Das,
resident of Sualkuchi, Kamrup. *3-1-95*
- 2. Sri Kamal Kalita,
son of Nipen Kalita,
resident of Nalbari. Assam. *May-96*

... Applicants.

- AND -

- 1. Union of India, represented by the Secretary to the Government of India, Ministry of Communication, Sansar Bhawan, New Delhi-1.
- 2. The Chief General Manager, Telecom , Assam Telecom Circle Guwahati.
- 3. The Divisional Engineer, (Store) Circle Telecom Store Depot, Assam Circle .

... Respondents

DETAILS OF THE APPLICATION,

- 1. PARTICULARS OF ORDER AGAINST WHICH THIS APPLICATION IS MADE.

The present application is directed against the orders dated 26.8.99 passed by the respondents No 3 i.e. The Divisional Engineer, (Store), Circle Telecom Store Depot, by which the representation filed by the applicants have been rejected. The applicant through this application prays for an appropriate direction to the respondents to extend the benefit of the scheme



as well as its subsequent clarifications by granting temporary status and subsequent consideration for regularisation against the sanctioned vacancies which are going to be filled up by outsiders.

2. JURISDICTION OF THE TRIBUNAL

That the Applicant declares that the subject matter of the present application is well within the Jurisdiction of this Hon'ble Tribunal.

3. LIMITATION

The Applicants declares that the present application have been filed within the limitation period prescribed under Section 21 of the Administrative Tribunal Act 1985.

4. FACTS OF THE CASE

4.1 That the applicants are citizens of India and as such they is entitled to all the rights and privileges as guaranteed under the Constitution of India and laws framed thereunder.

4.2 That the applicants were initially engaged under the respon- dent No 3 on casual basis on 3.1.95 and May 1996. After such ap- pointment they were allowed to work as regular Gr-D employee and they used to get their pay under the departmental pay bill i,e, ACG - 17 . Although they have been engaged as casual worker but in fact their such appointments were against the clear vacancy under the regular establishment of the respondent No-3.

The cause of action and relief sought for by the appli- cants are similar and hence they pray for joining together in a single application invoking Rule 4(5)(a) of Central Administra-

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the Tribunal (Procedure) Rules 1987.

4.3 That the applicants initially appointed as Casual Worker in the year 1995 and 1996 and as such they were working for a long time. However, the respondents without giving any opportunity of hearing converted their service condition terminating their casual services w,e,f, April 1999 and presently they are working under the contractors on daily basis. Since the applicants fulfill all the required criteria described in the schemes and subsequent clarifications, as such they are entitled to get the benefit of the said schemes prepared pursuant to a verdict of Hon'ble Supreme Court. The applicants beg to state that since their appointment, each year they have been continuously working for more than 240 days and as such they fulfill all the required qualifications as described in the scheme and its subsequent clarifications issued from time to time. Till date they have been working as daily waged worker but the Respondents have not yet granted them temporary status and other benefits as described in the scheme as well as its subsequent clarifications.

4.4 That the Applicants beg 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 have been working continuously for one year and who have completed 240 days of continuous service. For better appreciation of the

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CT

factual position the operative part of the said judgment and order dated 17.4.90 is quoted below :

" 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 contest at the time of hearing though they have filed a counter affidavit."

A copy of the order of the Hon'ble Supreme Court is annexed herewith and marked as Annexure-1.

4.5 That the applicants beg to state that the Respondents thereafter issued an order vide No. 269-10/89-STN dated 7.11.89 by which a scheme in the name and style "casual laborers" (grant of temporary status and regularisation scheme 1989) has been commu-

licated 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 applicants state that as per the direction contained in Annexure-1 judgment of the Hon'ble Supreme Court and Annexure-2 schemes they are entitled to get the benefit including temporary status and subsequent regularisation. The applicants fulfill required qualifications mentioned in the said judgment and as such are entitled to all the benefits as described in the aforesaid scheme.

4.7 That the applicants beg 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.

The applicants crave leave of the Hon'ble Tribunal to produce the said copy of the order dated 17.12.93 at the time of hearing of the case.

4.8. That some of the later recruitees approached the Hon'ble Central Administrative Tribunal, Ernakulam Bench, by way of filing O.A. No.750/94 and pursuant to an order dated 13.3.95 passed by the said Hon'ble Tribunal the respondents have issued an order dated 1.11.1995, extending the said cut-off date up to recruitees of 10.9.1993.

A copy of the order dated 1.11.95 is annexed herewith and marked as ANNEXURE-3.

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4.9 That the applicants beg 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 order dated 1.9.99 issued by the Government of India Department of Telecommunication by which the benefit of the scheme has been extended the recruits up to 1.8.98.

A copy of the said order dated 1.9.99 is annexed and marked as Annexure-4.

4.10 That the applicants beg to state that some of the similarly situated employees like that of the Applicants had approached this Hon'ble Tribunal by way of filing OA No. 299/96 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-5.

4.10 That the applicants 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 applicants beg to state that under similar facts

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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 judgment 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-6.

4.12 That the applicant beg to state that their cases are covered by the aforesaid judgment 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 applicants have 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 their cases 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 applicants beg to state that earlier they approached the Hon'ble Tribunal by way of filing O.A No. 168 of 1999. The Hon'ble Tribunal was pleased to dispose of the said OA by a judgment and order dated 31.5.99 directing the respondents

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to consider their cases if they fulfill the qualification prescribed in the said scheme. Accordingly the applicants submitted representations to the respondents for such consideration.

Copies of the judgment and order dated 31.5.99 and the representation dated 10.6.99 is annexed herewith and marked as ANNEXURES 7 and 8 respectively.

4.14. That the applicants beg to state that the respondents thereafter issued an order dated 26.8.99 separately to both the applicants rejecting their claim made by them through the representation. The ground stated by the respondents in the said order is basically regarding the date of their entry in to the service. In fact both the applicants entered in the service of the respondents on 3.1.95 and may 1996 and they continued till the date of their termination of services i,e, April 1999 and their cases are covered by the order dated 1.9.99 issued modifying the Annexure-2 scheme.

A copy of one the such orders dated 26.8.99 is annexed herewith and marked as Annexure- 9.

4.15. That the applicants beg to state that the respondents have failed to take into consideration the subsequent order passed and in view of the matter they ought to have extended the said benefits to the applicants. In fact the respondents in view of judgment and order dated 31.8.99 passed in similar matters (O.A. No 107/98 & ors) have modified the date of effect of the scheme and passed the order dated 1.9.99 extending the period of eligibility up to 1.8.98 and acting on the said order dated 1.9.99. others even juniors to the applicants have been granted the benefits. Hence similar treatment is required to be granted to the applicants.

4.16. That the applicants beg to state that the respon-

dents have acted illegally in issuing the order dated 26.8.99 (Annexure-9) , in view of the fact that the employees entered even one year later to applicants have been granted with temporary status very recently. However, the applicants could not obtain the copy of the said list as well as the order granting temporary status and hence pray before the Hon'ble Tribunal for a direction to the respondents to produce all the lists as well as such orders at the time of hearing of the case.

4.17. That the applicants beg to state that presently they are the only earning members of their family and the respondents are making a move to terminate their services in absence of any order from this Hon'ble Tribunal. It is therefore the applicants pray for an appropriate interim order directing the respondents to consider their cases during the pendency of this OA and for that purpose the applicants if direction is issued shall file representation etc.. It is noteworthy to mention here that the respondents are now taking various steps for consideration of the cases of the casual employees and in case the interim order is not passed they will suffer irreparable loss and injury.

5. GROUND WITH LEGAL PROVISIONS

5.1 For that the entire action on the part of the respondents in not granting the temporary status to the applicant violating the provisions contained in the Annexure-1 judgment and order passed by the Hon'ble Apex Court is illegal and arbitrary and same are liable to be set aside and quashed.

5.2 For that action of the respondents in treating the applicants not at par with the other similarly situated employees to whom the benefit of the scheme has already been granted is violative

of Article 14 and 16 of the Constitution of India. The respondents being a model employer should have extended the said benefit to the applicants without requiring him to approach this Hon'ble Tribunal, more so whereas themselves have allowed the said benefit to one set of their employees. In any case the respondents cannot differentiate their employees in regard to employment as has been done in the instant case. Hence the entire action of the respondents is illegal and not sustainable in the eye of law.

5.3 For that the respondents have acted illegally in not considering the case of the applicants for grant of temporary status and in passing the impugned order dated 26.8.99 (Annexure-9) in view of order dated 1.9.99 (Annexure-4) as well as judgment and order dated 31.8.99 passed in similar matters and hence same is liable to set aside and quashed with a further direction to the Respondents to extend the benefits of the said scheme to the applicants including all other consequential benefits.

5.4 For that in any view of the matter 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 applicants crave leave of this Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of this case.

6. DETAILS OF THE REMEDIES EXHAUSTED.

That the applicants declares that they have exhausted all the possible departmental remedies towards the redressal of the

grievances in regard to which the present application has been made and presently they have got no other alternative than to approached this Hon'ble Tribunal.

7. MATTER PENDING WITH ANY OTHER COURTS

That the applicants declare 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 applicants pray 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 Respondents to extend the benefit of the scheme and to grant them 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 arrears salary and seniority by setting aside Annexure-9 order dated 26.8.99.

8.2. To direct the respondents to allow the applicants to continue as Gr-D worker after granting temporary status and regularisation.

8.3. To direct the respondents to consider their regularisation against the vacant posts now falling vacant or against any other vacant posts.

8.4 Cost of the application.

8.5 Any other relief/reliefs to which the present applicants are

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 applicants pray for interim order directing the respondents to consider their cases for grant of temporary status taking into consideration the order dated 1.9.99 and if need be they may be directed to file representation for such consideration during the pendency of the case.

10. THE APPLICATION IS FILED THROUGH ADVOCATE:

11. PARTICULARS OF THE POSTAL ORDER :

(i) I.P.O. No.:

(ii) Date:

(iii) payable at Guwahati

12. LIST OF ENCLOSURES :

As stated in the Index.

VERIFICATION

I, Shri Kandarpa Das, S/o Sri Upen Das, aged about 29 years, resident of Sualkuchi, Kamrup, do here by solemnly affirm and state that the statement made in this petition from paragraph _____ are true to my knowledge and those made in paragraphs _____ are matters records of records informations derived therefrom which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal.

I am the applicant No 1 in the present application and I have been authorised by the others applicants to swear this verification.

And I sign this verification on 28th day of September 2000.

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Absorption of Casual Labours
Supreme Court directive Department of Telecom take back all
Casual Mazdoors who have been disengaged after 30.3.85.

In the Supreme Court of India
Civil Original Jurisdiction.

Writ Petition (C) No 1280 of 1989.

Ram Gopal & ors. Petitioners.

-versus-

Union of India & ors Respondents.

With

Writ Petition Nos 1246, 1248 of 1986 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 10 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 foe 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

Advocate
Advocate

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/-

(Ranganath Mishra) J.

New Delhi

April 17, 1998.

Sd/-

(Kuldeep Singh) J.

Advocate
Advocate
Advocate

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

Attested
[Signature]
Advocate.

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/IPS/Admn. I/CSE/PAT/SPB-I/SR Secs.

All recognised Unions/Associations/Federations.

sd/=

ASSISTANT DIRECTOR GENERAL (STN).

Attested

Advocates.

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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. Outside 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.

Attested

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Advocate

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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.

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Advocate

ANNEXURE-..3.
EXTRACT.

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

NO.66-52/92-SPB/I

dated 1.11.95.

I am directed to refer to the scheme on the above subject issued by this office vide letter No 45-95/87 SPB-I dated 12.4.91 and 66-9/91-SPB-I dated 30.11.92 as per which full time casual labourers who were in employment as on 29.11.89 were eligible to be conferred "temporary status" on satisfying other eligibility conditions.

The question of extending the benefit of the scheme to those full time casual labourers who were engaged /recruited after 29.11.89 has been considered in the office in the light of the judgement of the CAT Earnakulam Bench delivered on 13.3.95 in O.A. No 750/94 .

It has been decided the full time casual labourers recruited after 29.11.89 and up to 10.9.93 may also be considered for the grant of benefit under the scheme.

This issue with the approval of I.S and F.A. vide Dy. No 2423/95 dated 9.10.95.

Atteste
u Des
Advocate.

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

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[Signature]
Advocate.

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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

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[Signature]
Advocate.

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

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,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.

Attest
[Signature]
Sd/-
Sd/-

ANNEXURE.5

No.269-13/99-STN-II
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.

Sub: 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/Fedarations/Associations.

(HARDAS SINGH)
ASSISTANT DIRECTOR GENERAL (STN)

Attested
[Signature]
Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.107 of 1998 and others.
Date of decision : This the 31 st day of August 1999.

The Hon'ble 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 Advocate 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 -
Union of India and others. Respondents.
By Advocate Mr.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 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.
.....
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.
.....
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 -

Attested
[Signature]
Advocate.

The Union of India and others. Respondents.
By Advocate Mr. B.C. Patha, Addl.C.G.S.C.

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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.142/1998

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.

.....

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.

.....

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.

.....

Attested
u.Das,
Advocate.

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.
.....

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 and 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. Sr.C.G.S.C.

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 and Mr.S.Sarma,
and Mr.D.K.Sharma.
- versus -
The Union of India and others .. Respondents.
By Advocate Mr.B.C.Pathak, Addl. Sr.C.G.S.C.
.....

ORDER

BARUAH, J. (V.C.)

All the above applicants involve common question 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 applicants were submitted by the said union, namely the Line Staff and Group-D employees and some other application 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

Advocate
Advocate

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 7.11.1998, to the casual Mazdoors concerned 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 services 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 their service in different office in the Department of Telecommunication under Assam Circle and N.E. Circle. The Govt. 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 7/11/89 and it came in to operation with effect from 1989. Certain casual employees had been given the benefits 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 D.A. 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 29.11.89 were granted the benefits of temporary status on satisfying the eligibility criteria. The benefits were further extended to the casual labourers of the Department of Posts as on 10.9.93 pursuant to the judgement of the Ernakulam

Attested
U/S
Advocate

Bench of the Tribunal passed on 13.3.1995 in O.A. No.750/1994. The present applicants claim that the benefits 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. No.s 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.As.

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.As 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 servant are not eligible to become members or office bearers to the staff union. Further, the respondents have stated that the names of the casual employees

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[Signature]
Advocate.

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.As 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 can not 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. No.302 and 229 of 1996. The applicants do 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

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 Advocate.

the applicants and also Mr. A. Deb Roy, learned Sr. C.G.S.C. and Mr. B. C. Pathak, learned Sr. 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 up to 1989 and then extended up to 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 submits that the respondents can not 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 directions 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 in to 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 scrutinise 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

Attested

W.D.M.
Advocate,

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)

Attested

W.D. on
Advocate.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 163 of 1999, 167 of 1999 & 168 of 1999.

Date of Order: This the 31st Day of May 1999.

HON'BLE MR. JUSTICE D.N. BARUAH, VICE-CHAIRMAN

HON'BLE MR. G.L. SANGLYINE, ADMINISTRATIVE MEMBER

O.A. 163 of 99

1. Shri Anu Kharkhunger, Casual Worker, At present working under Microwave Project, Division Shillong, N.E. Task Force)
2. All India Telecom Employees Union, Line Staff and Group 'D' employees, Assam Circle, Guwahati.

-Vs-

1. Union of India & Ors.

By Advocate Mr. B.K. Sharma, Mr. S. Sarma for the applicant

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

O.A. No. 167 of 1999

1. Shri Sujit Das
Casual Worker,
At present working under S.D.O.T. Haflong,
(Sub-Divisional Officer of the Telecom)
2. All India Telecom Employees Union,
Line Staff and Group 'D' employees,
Assam Circle, Guwahati.
(Represented by Shri J.N. Mishra, Circle Secretary)

Applicants.

-Vs-

1. Union of India & Ors.

Mr. B.K. Sharma, Mr. S. Sarma, Advocate for the respondents.

Mr. B.C. Pathak Addl. C.G.S.C. for the respondents.

O.A. No. 168 of 99

1. Shri Naba Kumar Das
2. Sri Kaudarpa Das
3. Shri Tinku Mandal
4. Shri Kaml Kalita.

All of them are presently working as Casual Worker, under the Divisional Engineer.

-Vs-

1. Union of India & Ors.

represented by Mr. B.K. Sharma, Mr. S. Sarma, Advocate for the respondents.

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[Signature]
Advocate.

[Signature]

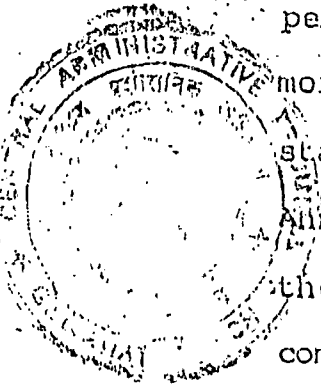


By Advocate Mr. B.K. Sharma, Mr. S. Sanna for the applicant.
By Advocate Mr. B.S. Basumatary, for the respondents.

ORDER.

BARUAH J(VC):

These Original Applications involve common questions of law and similar facts. Therefore, we propose to dispose of these application by this common order. The applicants are casual labourers in the Department of Telecommunication and posted at different stations in the Assam Circle and N.E. Circle. Some of the applicants have been working for more than ten years. The Government of India prepared a scheme for granting temporary status to the casual labourers. The scheme is known as Casual Labour (Grant of Temporary Status and Regularisation) Scheme, 1989. As per the said scheme those casual employees who had completed more than 240 days of service should be given temporary status. Later on, the Office Memorandum dated 12-2-1999, Annexure 10 in O.A.No.163 of 1989, was issued extending the benefit of the said scheme to those persons who completed the requisite period up to 31-3-1997. As per the said office Memorandum dated. 12.2.99 the applicants who had completed requisite period of service in 1997 are also entitled to get the temporary status. The applicant's grievance is that they have not been granted temporary status. According to the applicants as per the Office Memorandum dated. 12.2.99 the applicants are entitled to get the temporary status and subsequent regularisation of their services. As the applicants were denied temporary status they have approached this Tribunal without submitting any representation.



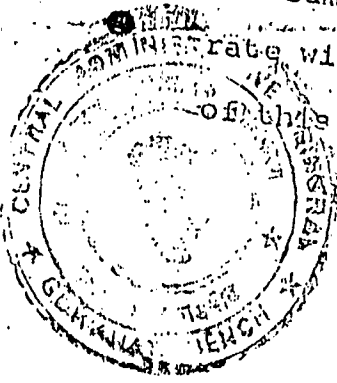
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uom
Advocate.

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contd/-

We have heard Mr. S. Sharma, learned counsel for the applicants and Mr. B. C. Pathak learned Adl. C.G.S.C. as well as Mr. B. S. Basumatary for the respondents. As per the decision of the Apex Court dated 17-4-99 (Annexure 1) the case of the applicants is required to be considered. The applicants have approached this Tribunal without submitting any representation. Normally this Tribunal may not entertain any application if departmental remedy is not exhausted. As the facts are not available before us we dispose of the Applications with direction to the applicants to submit representation within a period of one month from to-day. If such representation is filed the respondents shall consider the same as per observations made above. If the applicants are entitled to get the temporary status as under the scheme and if any guideline they shall consider the same, This must be done as early as possible at any rate within a period of 3 months from the date of receipt of this order.

Application is disposed of. No order as to costs.



Sd/-
Member (A)

Sd/-
Vice-Chairman
Central Administrative Tribunal
Guwahati Bench

Certified to be true Copy
प्रमाणित प्रतिलिपि
[Signature]
Section Officer (A) 8/6/99
जनसम प्रशासकी (अधिकाधिक शाखा)
Central Administrative Tribunal
केन्द्रीय प्रशासनिक अदालत
Gowahati Bench, Guwahati-6
गुवाहाटी बेंच, गुवाहाटी-6

Atte:
[Signature]
Advocate.

10-6-99

To,
The Chief General Manager,

Sub :- Order dated 31.5.99 passed in O.A. Nos 163, 167 & 168/99.

Sir,

With due deference and profound submission I beg to state the few following lines before your Honour for kind consideration and necessary action thereof.

That being aggrieved by the non granting of temporary status and regularisation of my services, I was constrained to move the Hon'ble Tribunal by way of filing O.A. mentioned above with a prayer for grant of temporary status and regularisation. The Hon'ble Tribunal having found prima facie case was pleased to dispose of the said OAs with a direction to dispose of the representation with a speaking order and hence this representation. (Copy enclosed).

That I am a casual worker working under your organisation since long. My juniors have been granted with temporary status as per the scheme of grant of temporary status and regularisation. It is pertinent to mention here that some of the casual workers have already approached this Hon'ble Tribunal by way of filing various OAs and the same has been allowed by the Hon'ble Tribunal. Even some juniors mainly under the SDOT Kamrup as well as SDOT Rangia have been granted with temporary status and thereafter their service have been regularised much before.

That in this connection mention may be made of scheme circulated vide 7.11.89 letter issued by your Honour by which temporary status has been granted to many of us excluding me. My office record/as well as documents pertaining to my date of engagement has been produced in the court. From the same it is crystal clear that my case is required to be considered against the said scheme. It is pertinent to mention here that now a new order has come and as per the said order dated 12.2.99 my case is required to be considered for grant of temporary status and regularisation.

That in view of the aforesaid facts and circumstances I pray before your Honour to consider my case for grant of temporary status and regularisation with immediate effect.

Thanking you.

Sincerely yours.

.....
Sd/=

- Copy to .
- 1. The Director Dept. of Telecommunication.
Sanchar Bhawan New Delhi.

M. Das
Advocate.

- 38 -

ANNEXURE-9

DEPARTMENT OF TELECOMMUNICATIONS
Office of the Divisional Engineer (Store),
Circle Telecom Store Depot, Assam Circle,
Dispur, Guwahati-6.

No: E-4/99-2000/37 Dated, Guwahati the 26-8-99

To

Sri Kandarpa Das

Sub:-

Engagement of casual labourer- Grant of Ty, status.

Ref:-

Your representation dated 10-6-99 & Chief General Manager Telecom, Guwahati letter No. STES-21/222/30 dated 20-8-99

Your representation dated 10-6-99 on the above subject has been examined in view of the common judgement and order dated 31-5-99 passed by the Hon'ble Tribunal Guwahati Bench in O.A.No.163/99, 167/99 and 168/99.

The points raised in your representation are discussed as follows:-

(i)

You were engaged by the Deptt. for casual nature of job after the imposition of ban on recruitment of casual labourer and have been dis-engaged on 8-3-99. You were not working in the Deptt. on the date of filing the O.A.No.168/99.

(ii)

Your engagement as casual labourer in defiance of ban order is irregular and without jurisdiction. No selection procedure was followed at the time of initial engagement. This amounts to back-door entry in violation of all departmental rules and procedures. No right can accrue from such irregular and unlawful engagement.

(iii)

The casual labourers (Grant of Ty, status) scheme, 1989 is an one time measure for the casual labourers who were in engagement and ~~have~~ have completed atleast one year on the date of introduction of the scheme, i.e. 7-11-89. The scheme does not cover any casual labourer who entered the deptt. irregularly after 22-6-88.

(iv)

Temporary status has not been conferred on any casual labourers entering the department after 22-6-88. Specific cases of irregular confirmation if any, can be cited for ~~exam~~ examination and action thereon.

(v)

From the department of Telecom/New Delhi letter dated 12-2-99, it is evident that this is not applicable to you.

Your representation is accordingly disposed of with the information that your request for continued engagement, grant of Ty, status and regularisation can not be acceded to as the same is not covered by any departmental rules/instructions/schemes.

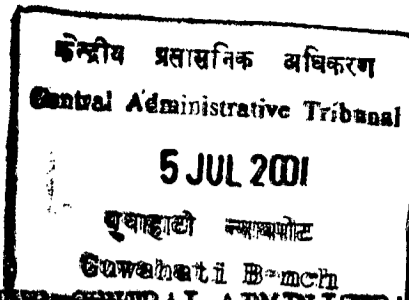
Copy to:-

Divisional Engineer (Store)
Circle Telecom Store Depot
Assam Circle, Guwahati-6

Attested

The C.G.M.T. Assam Circle, Guwahati-7 for favour of information w.r. to letter No. STES-21/222/30 dt. 20.8.99

became



IN THE ~~CENTRAL~~ ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH ::: GUWAHATI

Filed by
22/6/01
(A. DEB ROY)
Sr. C. G. S. C.
C. A. T. Guwahati Bench

O.A. NO. 313 OF 2000

Shri Kandarpa Das & Others

- Vs -

Union of India & Others.

- And -

In the matter of :

Written statement submitted by the
respondents.

The respondents beg to submit the written
statement as follows :

1. That the respondents beg to state that a three
Member Verification Committee has been constituted to examine
and verify all the documents as well as other proof from
various units/offices and for personal interview with the
casual workers.
2. That the three Member Committee submitted its
report and according to findings of the Verification Committee
the applicants are not eligible for grant of TSM.

The applicants ^{will be} were also informed about their
ineligibility by reasoned orders.

In view of aforesaid premises the application
be dismissed.

V E R I F I C A T I O N

I, Sri Ganesh Chandra Sarma, A.S.H.

Director Telecom. (Legal) being authorised do hereby verify and

declare that the statements made in this written statement
are true to my knowledge, information and believe and I
have not suppressed any material fact.

And I sign this verification on this 29 th
day of June, 2001.

Ganesh Ch. Sarma,
Declarant.