

(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI.

ORDER SHEET

Contempt APPLICATION NO. 31 OF 2001
in O.A 248/2000
APPLICANT (S) Tikaram Joshi
RESPONDENT (S) Shyoma Ghosh & others
ADVOCATE FOR APPLICANT(S) S.C. Borah,
J.I. Borbhuyan & B. Sinha
ADVOCATE FOR RESPONDENT(S) A Deb Roy, Sr. C.A.F.

Notes of the Registry

dated

Order of the Tribunal

This Contempt petition has been filed by the counsel for the petitioner praying for wilful and deliberate violation of the order dated 29.11.2000 passed by this Hon'ble Court in O.A. 248/2000.

8.8.01

Issue notice to show cause as to why the contempt petition shall not be initiated.
List on 5/9/01 for order.

K. C. Ghosh
Member

[Signature]
Vice-Chairman

mb

8.9.01

Mr. A. Deb Roy, learned Sr. C.G.S.C. informed that the respondents had made an application before High Court, so requested the matter to be listed later.

List on 27/9/01 for order.

K. C. Ghosh
Member

mb

27.9.01

Heard Mr. B.C. Pathak, learned Addl. C.G. S.C. for the respondents.

It has been stated that against the order dated 29.11.2000 passed in O.A. 248/2000 the respondents has filed a writ petition in the High Court. The High Court ^{had issued} ~~was directed~~ issue notice of motion and stayed the operation of the order dated 29.11.2000. In this circumstances, the C.P. stands dropped and disposed.

K. C. Ghosh
Member

[Signature]
Vice-Chairman

mb

Revised before the Hon'ble Court for further orders.

[Signature]
6/9/01
Section Officer

[Signature]

Notice prepared and sent to SLS for enis lli Respondent No 1 to 4 by Regd Adl vide D/No 300/300 dtd 13/8/01

[Signature]
13/8/01

Show cause has not been
filed.

28
26.9.07

11.10.2007

Copy of the order
has been sent to the
Officer for issuing the
same to the L/Advocate
for the applicant as well
as to the Respond No.
4 by post.

[Signature]

Application for the copy.	Date fixed for notices the requisite number of stamps and fees.	Date of delivery of the requisite stamps and fees.	Date on which the copy was ready for delivery.	(24) Date of mailing copy to the office.
9-9-2001	20-9-2001	20-9-2001	21-9-2001	21-9-2001

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND,
MEGHALAYA, MANIPUR AND TRIPURA)
SHILLONG BENCH
CIVIL APPELLATE SIDE**

Appeal from W.P(C) No 213 (R) 2001 of 2001

Civil Rule
Union of India & ors

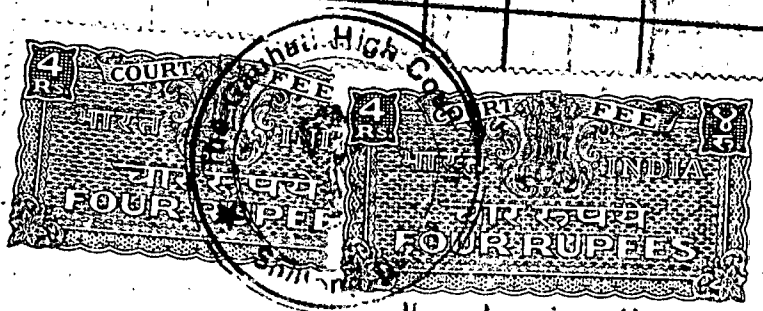
Versus

Shri T. Karam Soshi

Appellant
Petitioner
Respondent
Opposite-Party

For Appellant Mr. P. Dey Adv C.G.S.C
For Petitioner Mr. R. Jha
For Respondent
For Opposite-Party

Noting by Office or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signatures
1	2	3	4



Attested by
[Signature]
A. S. (M. J. J. J.)
D.O. C. G. M. P. S. J. J. J.

Noting by Office or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signatures
1	2	3	4

1000.2.1

B E F O R E

THE HON'BLE MR.JUSTICE A.K.PATNAIK
THE HON'BLE MR.JUSTICE N.S.SINGH

7.9.2001

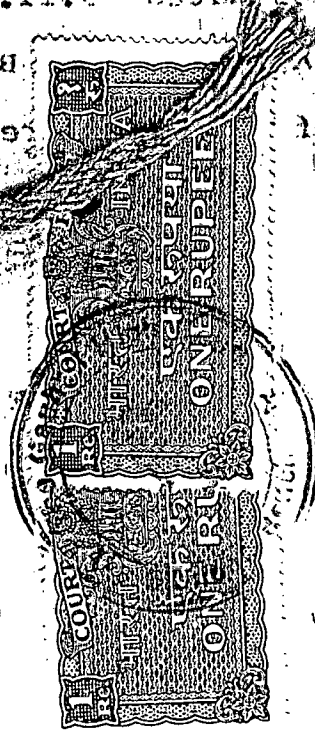
Heard Mr.P.Dey, learned Additional C.G.S.C. appearing for the petitioners.

This is a writ petition against the judgment and order dated 29.11.2000 passed by the Central Administrative Tribunal, Gauhati Bench in O.A.No.248 of 2000.

It is submitted by the learned Addl. C.G.S.C. that the respondent did not fulfill the requirements mentioned in office memoranda dated 27.3.1976, 29.6.1978 and Memo dated 22.1.1993 inasmuch as, he was a temporary Central Government employee and was a casual employee, and yet by the impugned order, the Central Administrative Tribunal, Gauhati Bench observed that the respondent fulfilled the requirements of the aforesaid office memoranda dated 27.3.1976, 29.6.1978 and 22.1.1993.

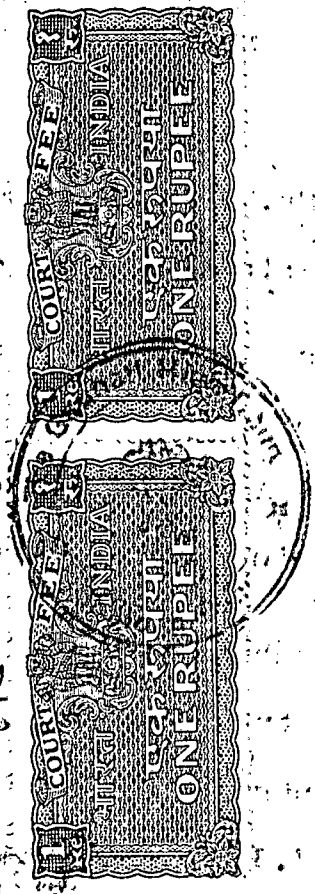
Let usual notice issue calling upon the respondent to show cause as to why an appropriate Rule should not be issued as prayed for, or why such further or other order or orders should not be passed as to this Court may deem fit and proper.

Notice be made returnable within 6(six) weeks.



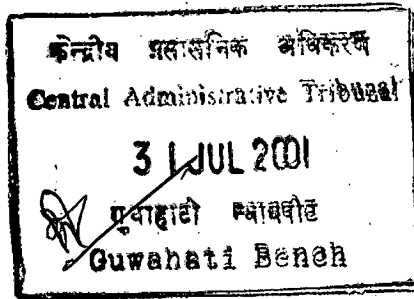
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Noting, by Office or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signatures
1	2	3	4
		<p><u>7.9.2001</u></p>	<p>Notice be served by Regd. with A/D by 10.9.2001.</p> <p>The prayer for interim order shall be considered on the returnable date. In the meanwhile, the impugned judgment and order dated 29.11.2000 passed by the C.A.T., Gauhati Bench in O.A. No.248 of 2000 shall remain suspended.</p> <p style="text-align: right;">Sd/ H. P. THAKUR JUDGE.</p> <p style="text-align: center;">Certified to be true</p> <p style="text-align: center;">5/9/01 Superintendent Gauhati High Court Shillong Bench</p> <p style="text-align: left;">Attested by S. B. S. S. S. S. S. B. S. S. S. S. S.</p>



~~Handwritten text, possibly a signature or date, crossed out with a thick black line.~~

Attested by
S. B. S. S. S. S.
S. B. S. S. S. S. S.



Filed by the
Petitioner/
Applicant
H. Singh
B. S. Choudhury
31/7/2001
Bevora L.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI.

(CIVIL CONTEMPT JURISDICTION)

CONTEMPT PETITION NO. 31 /2001

IN THE MATTER OF:

An application under Section 17 of the Central Administrative Tribunal Act, 1985 read with Rule 24 of the CAT(Procedure) Rules, 1987.

-AND-

IN THE MATTER OF:

Wilful and deliberate violation of the Order dated 29/11/2000 passed in OA No. 248/2000(Shri Tikaram Joshi -vs- Union of India & Ors.)

-AND-

IN THE MATTER OF:

Shri Tikaram Joshi
Ex-DRM, in the office of the
Sub-Divisional Officer, Phone,
Shillong, Meghalaya.

.. Petitioner
-Versus- Applicant

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1. Symal Ghosh

Secretary to the Government of
India, Ministry of Communication,
New Delhi.

2. Shri M.C. Joshi,

the Chief General Manager,
N.E. Telecom Circle, Shillong.

3. *Shri C.V. Ratnam a.*

The Telecom District Manager,
Meghalaya, Shillong.

4. A.K. Karmakar,

the Sub-Divisional Officer,
Phones, (East) Telecom Department,
Shillong, Meghalaya.

..Contemners/Respondents

The humble petition on behalf of the
abovenamed petitioner-

MOST RESPECTFULLY SHEWETH:

1. That the petitioner was working as a daily rated Mazdoor in the office of the respondent No. 4 the Sub-Divisional Officer, Phones(East), Telecom Department, Shillong and he was sponsored by the Employment Exchange vide sponsored No.154/84/5196 dated 24/8/1984. The petitioner was appointed as a daily Rated Mazdoor in July, 1984 under the establishment of respondent No.4 and he rendered services of 1458 days in the office of the respondent No.4.

..3

2. That the petitioner states that he was stated to have been transferred to the establishment of the Sub-Divisional Officer, Telecom Tura in November, 1988 but he neither received any such transfer order nor any transfer order was communicated to the petitioner. The petitioner was not aware of any such transfer order to Tura. Your petitioner had suffered from serious illness since 1988 and was under Constant medical treatment for about one year and 10 months and he could not attend the office and the petitioner after recovery moved the authority for his engagement as well as redeployment. He submitted a representation to the authority who in turn forwarded the same to the higher authority but the petitioner was not allowed to join in the duty. The petitioner referred to the policy of the authority for granting temporary status to the casual labourers who have been working since 1985. The petitioner after failing to get any remedy from the concerned authority moved the Hon'ble Tribunal by filing an application which was numbered and registered as OA No. 257/1997, and the same was disposed of with a direction to the respondents to consider the ~~xxxxxx~~ representation of the petitioner. The petitioner again moved the Hon'ble Tribunal by filing another application being OA No. 300 of 1998 and the Hon'ble Tribunal again directed the respondents to consider the representation of the petitioner within the time specified. The respondents by the impugned

order dated 23/5/2000 disposed of the representation turning down the claim of the applicant for regularisation on the ground of long absence duty. Being aggrieved and dissatisfied the petitioner again filed another application before the Hon'ble Tribunal which was numbered as O.A. No. 248/2000 and the Hon'ble Tribunal after hearing the parties on 29/11/2000 was pleased to set aside the impugned order dated 23/5/2000 and the respondents were directed to consider the case of the petitioner for granting a temporary status afresh within a month from the date of receipt of a certified copy of the order.

Copy of the said order dated 29/11/2000 is annexed hereto as Annexure- 1.

3. That inspite of receipt of the copy of the said order by all the respondents, the respondents had not taken any action to allow the petitioner to join in the post and grant the temporary status in the light of the judgment dated 29/11/2000 passed by the Hon'ble Tribunal.

4. That the petitioner states that he approached respondents No.2,3 and 4 with a request to comply the judgment and order dated 29/11/2000 thereby allowing the petitioner to join in the post and to grant the temporary status to the petitioner to join

as directed by this Hon'ble Tribunal but the respondents turning a deaf ear to the request of the petitioner and defying the order of this Hon'ble Tribunal so as to frustrate the claim of the petitioner. This is a clear case of ~~xxx~~ contempt of this Hon'ble Tribunal for wilful and deliberate violation of the orders of the Hon'ble Tribunal.

5. That the petitioner states that Rule 24 of the CAT (Procedure) Rules 1987 empowers of the Hon'ble Tribunal to pass appropriate order towards implementation of the orders of the Hon'ble Tribunal and to secure ends of justice. The petitioner apart from invoking the contempt jurisdiction of the Hon'ble Tribunal has also invoked its power under Rule 24 of the said Rules for appropriate relief.

6. That this application has been filed bonafide and to secure the ends of justice.

In the premises aforesaid it is most respectfully prayed that the Hon'ble Tribunal may be pleased to issue Notice calling upon the Respondents to show cause as to why Contemot of court proceedings should not be drawn up against each and every one of them for

wilful and deliberate violation of the judgment and order dtd. 29/11/2000 passed in OA No. 248/2000 and as to why appropriate orders/direction shall not be issued towards compliance of the order dtd. 29/11/2000 and upon hearing the parties on the cause/causes that may be pleased to punish the contemners and further be pleased to pass appropriate order towards implementation of the said order and/or be pleased to pass such further order/s as the Hon'ble Tribunal may deem fit and proper.

And for this act of your kindness the petitioner as in duty bound shall ever pray.

.. Affidavit..

A F F I D A V I T

I, Sri Tika Ram Joshi, Son of Dhaneswar Joshi, aged about 35 years, Ex-DRM Office of the Sub-Divisional Officer, Phones, Shillong, P.O. Shillong, District-East Khañi Hills, Meghalaya, do hereby solemnly affirm and state as follows:

1. That I am the petitioner in the accompanying application, I am fully conversant with the facts and circumstances of the case.

2. That the statements made in this affidavit and in paragraphs - 1, 3, 4 and 5 are true to my knowledge, those made in paragraphs - 2 - being matters of record are true to my information derived therefrom which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this affidavit on this 31st day of July, 2001 at Guwahati.

Identified by me

S.
Advocate

Tika Ram Joshi

Deponent

Solemnly affirmed and declared before me by the deponent who is identified by Sri *B. Sinha*.

— Advocate, on this 31st day of July, 2001.

Biswadev Sinha
31/07/2001

DRAFT CHARGE

The contemners/Respondents are guilty of contempt of the Hon'ble Tribunal for wilful and deliberate violation of the order dated 29/11/2000 passed in O.A.No. 248/2000 and accordingly they are liable for contempt of court proceedings and appropriate punishment.

Biswinder Singh

M

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Annexure - 1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 248 of 2000

Dated of decision: This the 29th day of November, 2000

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

Shri Tikaram Joshi,

Ex-DRM, in the office of the

Sub-Divisional Office, Phone,

Shillong, Meghalaya,

.. Applicant

By Advocates Mr. J.I.Borbhuyan and

Mr. B. Sinha.

-Versus-

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

2. The Chief General Manager,
N.E.Telecom Circle, Shillong.

3. The Telecom District Manager,
Meghalaya, Shillong.

4. The Sub-Divisional Officer,
Phone (East) Telecom Department,
Shillong, Meghalaya.

.. Respondents

By Advocate Mr A. Deb Roy Sr. CGSC.

.....

ORDER(ORAL)

CHOWDHURY.J.(V.C.)

The controversy raised in this application relates to absorption of retrenched staff on the strength of the

office Memorandum No. 28017/2/92.Estt(D) dated 22.1.1993 issued by the Government of India, Ministry of Personnel, P.G. and Pensions (Department of Personnel and Training) pertaining to the retrenched staff- Extension of the facility of alternate appointment of regular employees who have not completed three years of service.

2 . The Government of India earlier formulated a policy in the years 1976 and 1978 according to which all retrenched temporary Central Government employees who were recruited through the employment exchange or through other recruiting agencies and have put in at least three years regular continuous service before retrenchment were eligible for redeployment in the same organisation or elsewhere. The applicant in this application has also sought for a direction from this Tribunal for consideration of his case in the light of the Government policy. The above policy was subsequently extended to those persons who have not completed three years of service vide O.M. dated 22/1/1993 which is reproduced below:

"The undersigned is directed to infer to Department of personnel (Administration OM No. 42014/1/75-Estt(D) Ol.III dated the 27th March, 1976 and 29th June, 1978 according to which all retrenched temporary Central Government employees who were recruited through the employment exchange or through other recruiting agencies and have put in at least 3 years regular continuous service before retrenchment are

-3-

are eligible for redeployment in the same organisation or elsewhere.

The question of extending this facility to similar retrenched Central Govt. employees who have put in less than 3 years of regular continuous service was examined after consultation with the staff side. It has been decided that the existing schemes contained in EPEAR OM dated 27/3/76 and 29/6/78 bid would be extended to cover all temporary employees recruited regularly through the prescribed channels of recruitment such as staff selection Commission, Employment Exchange etc. including those who have not completed 3 years of regular continuous service at the time of regular retrenchment. The modified scheme would have retrospective effect from 1st January, 1992.

3. All the Ministries/departments are requested to bring the above scheme to the notice of all concerned including those in the attached and subordinate offices for guidance and necessary actions"

The applicant was working as a daily rated Mazdoor under the respondent No.4, the Sub-Divisional Officer, Phone's (East) Telecom Department, Shillong. The applicant stated that he was sponsored by the Employment Exchange vide Sponsored No. 154/84/5196 dated 24/8/1984 and he was appointed Daily Rated Mazdoor in July 1984 under the

the establishment of respondent No.4. According to the applicant he worked in the establishment under respondent No.4 and rendered services of 1458 days since ~~the~~ his appointment in 1984. The applicant stated that while working as a Daily Rated Mazdoor under the respondent No.4, he was stated to have been transferred to the establishment of the Sub-Divisional Officer, Telecom, Tura in November 1988. The applicant has specifically stated in the application that he neither received any such transfer order nor any transfer order was communicated to him. He was not aware of any such transfer order to Tura. He has also stated that he had suffered from serious illness since 1988 and was under constant medical treatment for nearly one year and ten months and for this reason he could not attend the office. For this purpose the applicant has annexed some of the medical certificates. The applicant, after recovery, moved the authority ~~where~~ ~~for~~ for his engagement as well as redeployment. The applicant also submitted a representation to the authority who in turn forwarded the same to the higher authority. He was, however, not allowed to join in the duty. The applicant also referred to the policy of the respondents for granting temporary status to the casual labourers who have been working since 1985, wherein the name of the applicant was also shown. It also appears that in some of the States a one time relaxation was provided for recruiting Daily Rated Mazdoors in the N.E. Telecom Circle. The applicant, after failing to get any remedy from the authority moved this Tribunal by

filing an application which was numbered and registered as O.A. No. 257 of 1997, which was disposed of directing the respondents to consider ~~th~~ his representation, if any, The applicant again moved this Tribunal in O.A. No. 300 of 1998. The Tribunal again directed the respondents to consider the representation of the applicant within the time specified. The respondents now by the impugned order dated 23/5/2000 disposed of the representation turning down the claim of the applicant for regularisation on the ground of long absence from duty.

3. I have heard Mr B Sinha, learned counsel for the applicant and Mr A. Deb Roy, learned Sr. CGSC Mr. A. Deb Roy referring to the written statement stated that the applicant remained absent from 1988, therefore, since he was not in employment his case could not be considered.

4. There is no dispute as to the rendering of service by the applicant under the respondents on and from July 1984 to November, 1988. In one of the communications bearing No.E-38/TSM/238 dated 3/4/1998, Annexure- 9 to the application, from the Senior Sub-Divisional Engineer (Administration) a list of eleven retrenched Mazdoors was submitted and it also mentioned that the applicant served for about 1457 days in the office of the Sub-Divisional Engineer(East) Shillong. In the order dated 23/5/2000 it was also admitted that the applicant continuously worked from May 1985 to November, 1988 for a total period of 1307 days. In the said order, however, the respondents stated that as per report given by the SDOP, Shillong vide his letter No.E-24/17 dated 28/1/1992 the applicant was transferred to SDOP, Tura

in November, 1988, but the applicant failed to report for duty at Tuta as Daily Rated Mazdoor and that the discontinuance of engagement was beyond the permissible limit. It was also stated that there was no provision in the recruitment rules for re engagement/ or regularisation after such prolonged absence. It was also mentioned in the order that there was no provision in the rules for condonation of such long absence. Accordingly the applicant's representation was turned down.

5. The O.M. mentioned above pertains to re-engagement or regularisation of those persons who were retrenched. The Government policies are all relatable to retrenched employees. Assuming that the applicant was transferred to Tura in November, 1988 and he failed to report at Tura as Daily Rated Mazdoor, even in that event the applicant would become a retrenched employee because the applicant's relation with the employer terminated the moment the applicant did not join his duty. Under Section 2(oo) of the Industrial disputes Act, the expression retrenchment means the termination by the employer of the services of a workman for any reason whatsoever, other than as a punishment inflicted by way of disciplinary action, but does not include voluntary retirement of a workman or retirement of a workman on reaching the age of superannuation etc. The word retrenchment is of wider connotation which covers termination of services by the employer for whatsoever the reason. After the applicant refused to join at Tura, naturally his name was struck off.

On the own showing of the respondents the applicant was not dismissed or removed from service as a measure of disciplinary action. In the circumstances, the applicant can only be treated as a retrenched employee and therefore, the case of the applicant can not be refused on the ground of limitation. A retrenched employee is a person whose service is cut down by the employer for whatsoever reason. In this context, it would be appropriate to recall the following observation of the Supreme court in State Bank of India Vs. N. Sundara Money (1976)1 SCC 822 at para 9 (826-27): "A breakdown of Section 2(oo) unmistakably expands the Semantics of retrenchment. 'Termination for any reason whatsoever' are the key words, Whatever, the reason, every termination spells retrenchment. So the sole question is has the employee's service been terminated? Verbal apparear apart, the substance is deceive. A termination takes place where a term expires either by the active step of master or running out of the stipulated term. To protect the weak against strong this policy of comprehensive defination has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced' (Emphasis supplied). In Delhi Cloth and General Mills Co Ltd. Vs. Shambhu Nath Mukherjee and others (AIR 1978 SC 8) the Supreme court held that 'Striking off the name of the workman from the rolls by the management.

is termination of his service. Such termination of service is retrenchment within the meaning of 2(oo) of the Act. L Robert D Souza Vs. The Executive Engineer, Southern Railway and another (AIR 1982 SC 854) is apposite in this connection wherein the Supreme court opined that 'It termination of a workman is brought about for any reason whatsoever it would be retrenchment except if the case falls within any of the excepted categories, i.e. (i) termination by way of punishment (ii) voluntary retirement of the workman (iii) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf or termination of the service of the service on ground of continued illhealth. Once the case does not fall in any of the excepted categories termination of service even if it be according to automatic discharge from service under agreement would nonetheless be retrenchment within the meaning of expression in S.2(oo). It must as a corollary follow that if the name of the workman is struck off the roll that itself would constitute retrenchment." Robert D!Souza was gangman in Southern Railway. By the impugned letter he was informed that his services were deemed to have been terminated from 19/9/1974 from which date he was said to have been absented himself.

6. In this case the respondents did not produce any record as to how the respondents dealt with the absence of

of the applicant. In the written statement the respondents stated that the applicant abandoned the job of casual labourer in November, 1988 by not joining the job under the SDOT/Tura and he ceased to be casual labourer in the records of the respondents. The grounds cited by the respondents does not fall in any of the excepted category cited in clause (a), (b), (bb) and (c) of Section 2(oo) of the Act. The applicant, therefore, is a "Retrenched Staff" for all intents and purposes of the Scheme who had completed above four years service under the respondents in November, 1988. There was no justification in refusing the claim of the applicant on the ground of limitation as mentioned in the order of the General Manager dated 23/5/2000. The respondent authority, fell into grave error in repudiating the claim of the applicant by overlooking the relevant and lawful considerations. The relevant consideration under the Scheme was the length/duration of the services rendered by the applicant and the fact of the matter that the applicant was a retrenched staff.

7. The respondents while turning down the representation of the applicant disregarded the letter and spirit of the policy laid down by the Government of India from time to time for redeployment and/or granting temporary status ~~to~~ to those who were recruited and put in at least three years of regular service or less before retrenchment. The policy of the Central Government in this regard has its own meaning, formulated from time to time, to meet th

the constitutional ~~xxxxxxxxxxxxxxxxxxxxxxxx~~ requirements the mandates of human rights, and the spirit of Article 7 of the International Covenant of Economic, Social and Cultural Rights 1966 which called upon all State parties to ensure fair wages and equal wages for equal work.

8. As alluded earlier, the applicant fulfilled the requirement mentioned in the office memorandum dated 27th March, 1976 29th June, 1978 as well as the memo dated 22nd January, 1993 as a retrenched staff, who rendered continuous service over four years before retrenchment and therefore his case required a fair consideration under the Scheme. The Respondents in the circumstances flawed in its decision making process by rejecting the representation of the applicant vide the impugned order dtd. 23/5/2000. The same is therefore, set aside. The respondents are accordingly directed to consider the case of the applicant for granting a temporary status afresh in the light of the observations made above with utmost dispatch at the most within a month from the date of receipt of a certified copy of this order.

9. The application is accordingly allowed, There shall however, be no order as to costs in the facts and circumstances of the case.

sd/- D.N. Chowdhury
Vice Chairman