

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 161/2000

R.A/C.P No.

E.P/M.A No.

1. Orders Sheet OA-161/2000Pg. 1to 3
2. Judgment/Order dtd. 12/02/2001Pg. 1to 5 allowed
3. Judgment & Order dtd.Received from H.C/Supreme Court
4. O.A.161/2000Pg. 1to 30
5. E.P/M.P.NILPg.to
6. R.A/C.P.NILPg.to
7. W.S.Pg. 1to 8
8. RejoinderPg.to
9. Reply. Not a casePg. 1to 4
10. Any other PapersPg.to
11. Memo of Appearance
12. Additional Affidavit
13. Written Arguments
14. Amendment Reply by Respondents
15. Amendment Reply filed by the Applicant
16. Counter Reply

SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 161/2000

OF 199

Applicant(s) Sri Anil Das

Respondent(s) Union of India and ors.

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

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

Notes of the Registry	Date	Order of the Tribunal
<p>Application in form and within time.</p> <p>G. F. of Rs. 500 deposited vide IPO Bd No. 994214</p> <p>Dated 4.6.2000</p> <p>NY 15700</p> <p>22-5-2000</p> <p>Service of notices prepared and sent to D. Section for issuing of the same to the respondents through Regd. post with A.D. vide D.Nos. 1413 to 1416 Dtd. 22.5.2000</p>	<p>10.5.2000</p> <p>pg</p> <p>16.5.00</p> <p>trd</p>	<p>On the prayer of Mr M.Chanda on behalf of Mr S.Sarma, learned counsel for the applicant the case is adjourned to 16.5.2000 for admission.</p> <p>Member(J)</p> <p>Heard Mr. S.Sarma, learned counsel for the applicant. Issue notice to show cause to the respondents as to why the application shall not be admitted. Notice returnable on 19.6.2000.</p> <p>List on 19.6.2000 for further</p> <p>Member(J)</p>

Notes of the Registry

Date

Order of the Tribunal

27/06/00

Notice duly served on
Resdts No 384.

19.6.00

There is no Bench today.
Adjourned to 6.7.00.

6.7.00

Present: Hon'ble Mr. S. Biswas,
Administrative Member.At the request of Mr. U. K. Nair,
on behalf of Mr. B. S. Basumatary, learned
Addl. C. G. S. C., two weeks time is allowed
for filing of written statement. List
on 24.7.00 for filing of written state-
ment and further orders.S. Biswas
Member (A)

lm

24-11-2000

Re: Cause reply
by the respondents.

24.7.00

No Bench is available. Adjourned
to 9.8.00.

9.8.00

No Bench is available. Adjourned
to 5-9-00.2) Vakalatnama
has been filed in
M. A. Deb Roy, Sr. C. G. S. C.

5.9.00

No Bench. Adjourned to 20.11.00.

20.11.00

On the prayer of Mr. A. Deb Roy, lear-
ned Sr. C. G. S. C. the case is adjourned
to 30.11.2000 for filing written state-
ment.No Rejoinder has been
filed.

Vice-Chairman

pg

30.11.00

Reply to show cause filed.

List on 20.12.00 for hearing. The
applicant may file rejoinder, if any,
within 7 days from today.

Vice-Chairman

pg

20.12.00

No Bench. Adjourned to 17.1.01.

Notes of the Registry	Date	Order of the Tribunal
<p><u>17-1-2001</u></p> <p>Rejoinder has been filed by the applicant Advocate.</p>	<p>17.1.01</p> <p>lm</p> <p>24.1.</p>	<p>At the request of Mr.A.Deb Roy, Sr.C.G.S.C. case is adjourned for hearing on 24.1.01.</p> <p><i>11/1/01</i> Member</p> <p>Hearing Called off, Judgment reversed.</p> <p><i>24.1.</i></p>
<p><u>15.2.2001</u></p> <p>Copy of the order has been sent to the Office for issuing the same to the Sr.C.G.S.C. for the Resp.</p> <p><i>Y.L.</i></p>	<p>2</p> <p>12.2.01</p> <p>pg</p>	<p>Judgment and order pronounced, kept in separate sheets. The application is allowed in terms of the order. No order as to costs.</p> <p><i>h</i> Vice-Chairman</p>

Notes of the Registry	Date	Order of the Tribunal

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./XXXX No. 161/2000 of

DATE OF DECISION 12-2-2001.

Sri Anil Das

PETITIONER(S)

Mr. S. Sarma

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Union of India & Ors.

RESPONDENT(S)

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

ADVOCATE FOR THE
RESPONDENTS

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

THE HON'BLE

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 Vice-Chairman

X

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.161 of 2000.

Date of decision : This the 12th day of February, 2001.

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

Sri Anil Das
Son of Nila Kanta Das
P.O. and P.S. Marigaon,
Village-Mori Agaram
District-Marigaon

...Applicant

By Advocate Mr. S. Sarma.

-versus-

1. The Union of India, represented by
Secretary to the Govt. of India,
Ministry of Telecommunication,
New Delhi.
2. The Chief General Manager,
Assam Telecom Circle,
Ulubari,
Guwahati-781007.
3. The Telecom District Engineer,
Department of Telecommunication,
Nagaon,
Assam.
4. Sub Divisional Engineer,
GT Telecom,
Marigaon,
Assam

...Respondents

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

O R D E R

CHOWDHURY J. V.C.

This is a second round of litigation so far this applicant is concerned. The applicant knocked the door of this Tribunal by filing the O.A. No. 24/96 wherein he challenged the oral order of termination as well as well as refusal of the authority to allow him to discharge his lawful duty. The applicant was appointed in the department of Telecommunication, Marigaon, Assam on casual basis in the month of August, 1994. He continued to work as such uninterruptedly upto October 1995. On 4.10.1995 his service

Contd..

was terminated without any written order. The applicant first represented to the authority and thereafter moved this Bench by aforementioned O.A. After hearing the parties the said O.A. was finally disposed of on 28.1.99 directing the respondents to consider the case of the applicant within a period specified therein. Pursuant to the direction made by the Tribunal in O.A. No. 24/96 the applicant submitted his representation narrating all the facts. By order dated 26.5.99, the Sub Divisional Engineer, Marigaon, turned down his representation on the ground that the applicant was illegally engaged after the DOTs banned order in regards to engagement of casual mazdoor and therefore his claim for reinstatement as Temporary casual mazdoor could not be covered by DOT's Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989. Hence this application questioning the legality and validity of the aforementioned order.

2. Mr. S. Sarma, learned counsel appearing on behalf of the applicant that the impugned order suffers from vice of non-application of mind. Mr. S. Sarma referred letter No. 269-4/93-STN-II dated 12.2.1989 circulated with the letter No. 269-13/99-STN-II dated 12.2.1989 on the subject of Regularisation/grant of temporary status to Casual Labourers which was conveyed by the Assistant Director General by his communication dated 1.9.1999. By the aforementioned communication the Government of India conveyed the approval of the two items, namely, (i) to grant of temporary status to the casual labourers eligible as on 1.8.98 (ii) to regularise the service of casual labourers with temporary status who are eligible as on 31.3.1997. The said communication also clarified that in case of grant of temporary status to casual labourers the order dated 12.2.99 would be effected with effect from the date of issue of the order dated 1.9.99 and in

case of regularisation to the temporary status mazdoor eligible as on 31.3.1997. The order was to come into effect with effect from 1.4.1997. Mr. Sarma submitted that there was no distinguishable reason for rejecting the claim of the applicant. The learned counsel Mr. Sarma submitted that in view of the consistent decision of the Apex Court on the issue as well as the decisions rendered by the Tribunal in the like cases there is no justification for refusing the benefit of temporary status to the applicant. Mr. Sarma, learned counsel also referred to the judgement of the Ernakulam Bench of the Tribunal passed on 13.3.1995 in O.A.750/95 and submitted that the benefit was extended to the casual labourers of the department of Post. Mr. A. Deb Roy, learned Sr. C.G.S.C. appearing on behalf of the respondents relying upon the written statement submitted that the applicant might have worked as daily basis mazdoor being locally engaged by the local office of Marigaon Sub-Division on purely temporary basis. But such engagement of the applicant has no reference in the TDM office, Nagaon and Head Office of the Telecom District for examination and settlement of the claim. Neither the Marigaon office nor the applicant could produce the records of continuous service as claimed by the applicant. It was also mentioned that the applicant expressed his disinclination to go to other station as required by the local authority and since the applicant was not a departmental person and whose service conduct was under supervision and management of local authority denied the office decorum as such he had shown wilful dereliction of duties and in subordination. It was also stated since the applicant violated the discipline of the office by in subordination and dereliction of duties his oral termination cannot be said to be inappropriate. In the said written statement it was also stated that his termination was made on the ground of surplus and the applicant refused to carry out his duties in other

section/station adamantly. The stand of the respondents seemingly shifted from time to time. In the impugned order the respondents took two grounds namely (i) he was illegally engaged after the DOTs ban order and (ii) claim for reinstatement as Temporary Casual Mazdoor is not covered by the DOT's Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989. The aforesaid two grounds cited by the respondents speaks only of the non-application of mind. It is not the claim of the applicant that during the ban period he served the department since the ban period continued between 1985 and 1988. The applicant claimed and the department also admitted that he was appointed in 1994 i.e. after the ban period. So also the applicant was not asking for temporary status on the basis of 1989 scheme. The department from time to time introduced scheme, one such scheme was mentioned in the communication dated 1.9.1999. By which the Central Government conveys approval on the two items, one is grant of temporary status to the Casual Labourers eligible as on 1.8.98 and another for regularisation of CASual Labourers with temporary status who are eligible as on 31.3.97. Therefore there is no ground for denying the claim of the applicant and the impugned order 26.5.1999 is unsustainable in law. Accordingly the impugned order dated 26.5.1999 is set aside. The respondents being public authority avoided its responsibility for considering the case of the applicant on the ground that neither the Marigaon office nor the applicant could produce the record of continuous service as claimed by the applicant. The Marigaon office is under the control of the respondents and therefore it is difficult to accept the said plea of the respondents.

3. Considering all the aspects of the matter I am of the considered opinion it is a case in which the respondent authority is required to reconsider the whole issued on the ^{of Granting Temp Status as per P.O.}

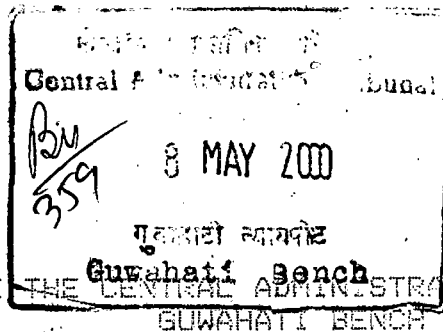
basis of materials on record. The applicant may also present at the time of examining the records and the respondents shall thereafter consider the case of the applicant for grant of temporary status and regularisation as per law. The above exercise shall be completed by the respondents within a period of three months from the date of receipt of a certified copy of this order.

4. The application is allowed. There shall be however, no order as to costs.



(D.N.CHOWDHURY)
Vice-Chairman

trd



(An Application under Section 19 of the Administrative Tribunals Act, 1985.)

Title of the Case : O.A. No. 161 /20000

Sri Anil Das : Applicant

-versus-

Union of India & Ors. : Respondents

I N D E X

Sl. No.	Particulars of the documents	Page No.
1.	Application	1-14
2.	Verification	15
3.	Annexure-A	16
4.	Annexure-B	17
5.	Annexure-C	19
6.	Annexure-D	20
7.	Annexure-E	22
8.	Annexure-F	24
9.	Annexure - G	25.
10.	Annexure - H,	27
11.	Annexure - I, J, K	28, 29, 30
Date :		Filed by :
File : ANIL		S. Sarma
		Advocate

19

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. _____/2000

BETWEEN

Sri Anil Das
Son of Nila Kanta Das
P.O. and P.S. Marigaon,
Village-Mori Agaram
District-Marigaon

....Applicant

-AND-

1. The Union of India,
represented by Secretary to the
Govt. of India,
Ministry of Telecommunication,
New Delhi
2. The Chief General Manager,
Assam Telecom Circle,
Ulubari,
Guwahati-781007.
3. The Telecom District Engineer,
Department of Telecommunication,
Nagaon,
Assam
4. Sub Divisional Engineer,
GT Telecom,
Marigaon,
Assam

.... Respondents

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION IS MADE :

The instant application is directed against the order dated 26.5.99 issued by the Sub Divisional Engineer, Marigaon, rejecting the representation of the applicant arbitrarily, which was submitted by him following the judgement and order dated 28.1.1999 passed in O.A. No. 24/96. This application is also directed against the action of the respondents in terminating the service of the applicant and not granting the temporary status in the light of the scheme as well as the verdict of the Hon'ble Supreme Court.

Sumit

2. JURISDICTION OF THE TRIBUNAL

The applicant declares that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION:

The applicant further declares that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985. However, the circumstances leading to the filing of the instant application has been explained under the Head - 'Facts of the Case' and which may be taken into.

4. FACTS OF THE CASE

4.1 That, the applicant is a citizen of India and a permanent resident of Assam as such he is entitled to all the rights and protection guaranteed under the Constitution of India.

4.2 That the applicant belongs to poorer section and in search of employment therefore he could not prosecute his studies after passing Class X and was compelled to go for a job for earning livelihood for the dependent members of his family.

4.3 That the applicant was appointed in the Department of Telecommunication, Marigaon, Assam on casual basis after completing all requirement, in the month of August, 1994. The applicant was continuing in the said post uninterruptedly upto October 1995 and was performing his duties upto the satisfaction of all concerned. Suddenly in October, 1995 (4.10.95) the services of the applicant was terminated arbitrarily by an oral order by the Respondents. The Respondents while terminating the service of the applicant did not take into account of the spell and length of service rendered by the applicant in the light of the scheme made for regularisation of Group 'D' employees pursuant to Apex Court's verdict. It is pertinent to mention here that the

Signature

applicant prior to his such appointment was working under the respondents on Muster Roll basis w,e,f, 1989 and the respondents have used to pay him under the muster roll pay bills(ACG-17). However, the applicant to that effect do not have any record and hence prays before the Hon'ble Tribunal for a direction to produce the pay bills and other relevant records pertaining to his such muster roll service at the time of hearing of the case.

A copy of certificate dated 20.9.98 issued by the Sub-Divisional Engineer GT Telecom, Morigaon, is annexed herewith and marked as Annexure-A.

4.4 That the applicant begs to state that the respondents have acted arbitrarily and with malafide intention while terminating his services. The applicant was given assurance that he would be accommodated in line work (Outdoor duty) in the same department, but the same has not been materialised till date. It is further stated that the Respondents has meted with a malafide intention to accommodate another person under the pressure of th Union and the applicant has been made scape goat of the situation. The applicant made several oral prayers and when his prayers were rejected has made a representation on 17.10.95 making a prayer for reinstatement in service but the same has been denied. The respondents have never chosen to reply the same. Being aggrieved by the arbitrary and illegal action of the Respondents the applicant made one more representation dated 1.11.95 but the same also had fallen to the deaf ears of the Respondents.

Copies of the said representation dated 17.10.95 and 1.11.95 are annexed herewith and marked as ANNEXURE B & ANNEXURE C respectively.

4.8 That pursuant to the services rendered by the applicant on muster roll and casual basis for the said period i,e, w,e,f, 1989

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to 1995 (Till the date of termination), the applicant in the natural course expected that his services would be regularised by the Respondents in due course. It was also the expectation of the applicant that he would be conferred with temporary status with all consequential benefits in as much as he conforms to the requirements of conferment of temporary status with all consequential benefits. Consequently his services ought not to have been terminated. It will be pertinent to mention here that the casual employees who had entered the services of the Respondents with that of the applicant and even after his such entry have since been regularised or conferred temporary status under the relevant scheme pursuant to a decision of the Apex Court and they are all enjoying the benefits of the said Apex Court's decision as per the scheme prepared by the Respondents. However, the applicant has neither been favoured with regularisation of his services nor has been conferred with temporary status, rather his service has been terminated in the year 1995 and in spite of his repeated representations he has not been favoured with any reply and thus he has got no other alternative remedy than to come under the protective hands of this Hon'ble Tribunal for redressal of his grievances by way of filing O.A. No 40 of 1996.

4.6 That the applicant states that he was made numerous representations urging upon the authorities for his reinstatement and conferment of temporary status and benefit thereof as have accrued to the applicant pursuant to the decision of the Apex Court and the scheme prepared by the Respondents, but till now he has not been favoured with a reply as stated above. It will be pertinent to mention here that some of the casual employees like that the applicant had filed Writ Petition (C) No. 1288/89 (Ram Gopal & Ors Vs. Union of India & Ors.) before the Apex Court urging for

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regularisation of their services. Along with the said Writ Petition some other Writ Petitions had also been filed by similarly circumstanced casual employees of the Department of Telecommunication. The Hon'ble Supreme Court in the light of the decision rendered in daily rated casual labourers Vs. U.O.I. & Ors. reported in (1988) 1 SCC 122 concerning the casual employees of the Department of Posts, passed judgement in conformity and in the light of the said judgement. Under the said judgement, the respondents were directed to prepare a scheme on a rational basis for absorbing as far as practicable the casual labourers, including the petitioners therein who have continuously worked for more than one year in the Telecom Department. The Apex Court also directed for doing the needful within six months from the date of judgement.

A copy of the judgement dated 17.4.91 passed by the Apex Court is annexed herewith and marked as Annexure-D.

4.7 That pursuant to the aforesaid judgement, the Department has prepared a scheme called Casual labourer (Grant of Temporary status and regularisation) Scheme dated 7.11.89. It is further stated by the applicant that his case is squarely covered under the said scheme and he is entitled to conferment of temporary status with all consequential benefits like that of other casual employees. However, the applicant has not even been replied to his representation and his services has been illegally terminated to accommodate others and consequently he is out of employment.

A copy of the Scheme 1989 is annexed herewith as ANNEXURE-E.

4.8 That although the case of the applicant has not been considered and his services have been illegally terminated in 1995,

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persons who were appointed along with the applicant or even after him have been granted temporary status. For instance in the office of the Telecom District Engineer, Bongaigaon, Assam almost 21 casual employees like that of the applicant have been conferred temporary status vide letter No. P.75/PT/GM/Pt-II/94-95/87 dated 4.1.95. Pursuant to the said order dated 4.1.95 the employees are continuously working with the benefits of temporary status with consequential benefits, whereas the applicant who is also similarly situated with the above stated employees has not even allowed to continue in his service, and his services have been terminated without any notice and reasons. Thus the applicant has been illegally deprived of the same benefits in violation of the Apex Court's judgement as well as the scheme prepared by the Respondents. The action of the Respondents in terminating in services of the applicant has resulted in hostile discrimination and the same is founded on mala fide and violative of Article 14 and 16 of the Constitution of India.

A copy of the said letter dated 4.1.95 is annexed as ANNEXURE-F.

4.9 That the applicant states that in view of the aforesaid scheme of 1989 he can claim his regularisation in the services and temporary status as a matter of right and he has got a right to be considered for such regularisation under the scheme which was formulated pursuant to the decision of the Apex Court. But the respondents not to speak of consideration of his case have not been replied to his representations mentioned above. Be it stated here that apart from the aforesaid representations the applicant has also approached higher authorities and has also made oral representation before the concerned authorities. He has been visiting the officers of the respondents but all in vein.

signature

All his representation have fallen into the deaf ears of the respondents.

4.10 That the applicant begs to state that there is no earthly reason as to why he should not be considered for conferment of temporary status with all consequential benefits in the light of the aforesaid scheme of 1989 as well as the verdict of the Hon'ble Supreme Court. It is also note worthy to mention here that other juniors to the applicant have been granted with the benefit of the said scheme and they are presently enjoying with the benefit of temporary status.

4.11 That the applicant begs to state that the termination of his service without any written order is violative of relevant provisions of law and also violative of the principles of natural justice. It is also violative of dicta laid down by the Apex Court and the scheme prepared by the respondents in pursuance of the said Apex Court's judgement. Thus under no circumstances his services could have been terminated by the respondents and appropriate direction from the Hon'ble Tribunal is called for reinstatement with all consequential benefits under the scheme, by setting aside the oral order of termination.

4.12 That the applicant after termination of his service was all along assured verbally by the respondents whenever he visited the officers that needful would be done in the matter and it was a matter of time only before the applicant could be reinstated in service and conferred with the benefits of the Apex Court's decision as well as the scheme formulated by the respondents. The applicant kept on pursuing the matter and as a last resort he has came under the protective hands of this Hon'ble Tribunal by way of filing O.A. No 240 of 1996. It was under the assurance of the Respondents the applicant kept on hoping with reasonable expecta-

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tion that his case would also be considered along with other similarly situated employees, but contrary to such reasonable expectation, he found that his services have been terminated by the respondents under the pressure and threat of Union people and to accommodate another in his place. Under these circumstances the applicant having found no other alternative and efficacious remedy had approached this Hon'ble Tribunal for redressal of his grievances immediately after his such termination. The applicant belongs to lower stream of society and his dependent family members are living in a very precarious predicament due to financial hardship and because of his aforesaid termination, the entire family members have been facing tremendous hardship. As stated above the applicant having no other alternative had approached this Hon'ble Tribunal by way of filing OA No. 24/96. The said original application was disposed of by order dated 28.1.99 with a direction to the respondents to dispose of the representation within a stipulated period. The stand of the respondents in that O.A. was that the applicant did not want to perform outdoor duties and to that effect the applicant filed his rejoinder controverting that statement, and making it clear that he is ready to work anywhere under the respondents. The Hon'ble Tribunal while directing the respondents to consider his representation gave a clear cut direction to consider the case of the applicant in the light of his statement in the rejoinder.

The applicant craves leave of this Hon'ble Tribunal to rely and refer the statements made in the earlier O.A. No.24/96 and rejoinder at the time of hearing of the case.

A copy of the order dated 28.1.99 passed in O.A. No.24/96 is annexed herewith and marked as Annexure-6.

4.13. That on receipt of the order dated 28.1.99 the respondent No.4 issued an order dated 11.4.99 by which applicant has been asked to submit the documents regarding his engagement in the office. Immediately on receipt the order dated 11.4.99 the applicant submitted all the relevant documents pertaining to his service as Office Peon, through his representation dated 21.4.99.

Copies of the order dated 11.4.99 and 21.4.99 are annexed herewith and marked as Annexure-H and 01 respectively.

4.14. That after submission of the aforesaid representation dated 21.4.99 the respondent No.4 issued order vide No.6-5/MGN/7/99-2000 dated 26.5.99 by which claim of the applicant has been rejected on the ground that his appointment has been made during the ban period. However, the respondents in the said impugned order has not controverted the appointment as well as continuation of his service under the said Department. In the said order the only contention raised is regarding the period of engagement which was covered by so called ban period.

A copy of the order dated 26.5.99 is annexed herewith and marked as Annexure-I.

4.15. That the applicant begs to state that the contention raised by the respondents is baseless and without any application of mind. In fact by order vide No.269-4/93-STN-II dated 22.6.88 ban has been imposed on recruitment and engagement of the casual labourers. However, certain relaxations have been granted to the heads of the Division in regard to recruitment and engagement of Casual Workers. The case of the applicant is also covered under the aforesaid relaxation and because of such relaxation he was continuing under the respondents for such a long time.

4.16. That the applicant begs to state that although he was

Submitted

recruited during the so called ban period but the same has been made after following the due process of selection as well as giving the relaxation mentioned above. It is noteworthy to mention here that the scheme dated 7.11.89 came in to force w.e.f. 7.11.89 and the said scheme has been prepared during the so called ban period, hence just after the issuance of 7.11.89 scheme the earlier order regarding ban on recruitment automatically became null and void. It is further stated that not only the 7.11.89 scheme nullified the aforesaid order on ban on recruitment but also 7.11.89 scheme has been further modified from time to time and the said modification orders have also nullified the said ban order on recruitment. In fact almost all the recruitments of casual labour has been made during the ban period by the competent officers of the respondents and as per the said ban order none of them has been punished for such action. It is therefore, the contention raised by the respondents regarding the ban period is baseless and the said order dated 26.5.99 is liable to be set aside and quashed.

4.16. That the applicant begs to state that after issuance of 7.11.89 scheme a huge modification has been made by the respondents by issuing various orders and the aforesaid scheme has been made applicable to almost all the casual workers who have completed at least completed one year of continuous service. In fact the Hon'ble Supreme Court in its verdict has given a clear cut direction for preparation of a scheme for regularisation on rational basis considering the case of workers who have completed one year of continuous service without specifying any cut off date. However, the respondents have acted illegally in specifying cut off date in the aforesaid scheme. Very recently the Govt. of India, Ministry of Telecommunication have issued an order dated

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1.9.99 by which the aforesaid scheme dated 7.11.89 has been made applicable to the recent recruitees.

A copy of the order dated 1.9.99 is annexed herewith and marked as Annexure-K.

4.17. That the applicant begs to state that his case is covered by the aforesaid schemes as well as verdict of the Hon'ble Supreme Court. It will not be out of place to mention here that the claiming of the similar benefit Nos. of casual workers like that of the applicant had approached the Hon'ble Tribunal and the Hon'ble Tribunal after hearing was pleased to dispose of the said O.As by a common order dated 31.8.99 directing the respondents to consider their cases sympathetically. Pursuant to the aforesaid common order dated 31.8.99 the respondents have initiated the process for granting Temporary Status under the aforesaid scheme dated 7.11.89 and its subsequent clarification as mention above.

The applicant craves leave of this Hon'ble Tribunal to produce the aforesaid order dated 31.8.99 passed in the O.A. No.107/98 and Others at the time of the hearing of this case.

4.18. That the applicant begs to state that his case is also covered by the aforesaid order dated 31.8.99 passed by the Hon'ble Tribunal in other connected matter. It is further stated that presently almost 1000 (one thousand) posts of DRM (Daily Rated Mazdoor) have been sanctioned by the higher authority and it is also learned that junior to the applicant has been given preference ignoring his case violating the Article 14 and 16 of the Constitution of India.

4.19. That the applicant begs to state that the Hon'ble Apex Court in its various verdict has given emphasis on regularisation of casual labourers like that of the applicant more specifi-

22/11/99

cally who have completed more than 240 days of continuous service. It is further stated that the denial of such benefits to the present applicant as per the impugned order dated 26.5.99 is that the present applicant was recruited during the so called ban period. In fact the order on ban on recruitment has become null and void after issuance of aforesaid scheme dated 7.11.89 and its subsequent clarification as mentioned above. Hence the impugned order is not sustainable and liable to be set aside and quashed.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS

5.1 For that the applicant has been illegally deprived of the benefits of the Apex Court's decision and the scheme formulated by the respondents and thus appropriate direction be issued to the Respondents.

5.2 For that there is gross violation of the Article 14 of the Constitution of India in as much as the applicant has been singled out for differential treatment under similar circumstances.

5.3 For that the termination of the services of the applicant was most illegal as the same is not sustainable in the eye of law and violative of the decision of Apex Court and also Scheme and its subsequent clarifications issued by the Respondents.

5.4. For that the action of the respondents are not sustainable in the eye of law in issuing the impugned order dated 26.5.99 as the same has been issued without proper verification of records as well as orders and hence same is liable to be set aside and quashed.

5.5. For that when the similarly situated and juniors of the applicant have been granted temporary status under the scheme, there is no earthly reasons as to why the applicant should not be

done

granted the same benefit as that of his colleagues.

5.6. For that the respondents cannot apply the scheme as well as the dictum laid down by the Apex Court on pick and chose basis and the respondents having done so, same is violative of Constitutional provisions and the applicant is entitled to the reliefs sight for in this application.

5.7. For that in any view of the matter, the inaction on the part of the respondents are not sustainable by this Hon'ble Tribunal.

5.8. For that when the applicant has complete more than 240 days work continuously in the office of the Respondents for which he was squarely covered by the guidelines of the scheme prepared pursuant to Apex Court's decision, there is no earthly reason as to why he should not be given temporary status by the Respondents.

The applicant prays before this Hon'ble Tribunal to advance more grounds at the time of hearing of the instant application.

6. DETAILS OF REMEDIES EXHAUSTED

The applicant declares that he has no other alternative remedy other than approaching this Hon'ble Tribunal.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which the application has been made before any other court of law, or any other authority and/or other Bench of the Tribunal and/or any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR :

Under the facts and circumstances stated above, the applicant prays that the instant application be admitted, records be called for and upon hearing the parties on the cause or causes that may be shown and on perusal of the records, be pleased to allow the application by granting the following reliefs :

- 8.1 To set aside and quash the order dated 26.5.99 and* direct the respondents to allow all the benefits as admissible under the relevant scheme as has been granted to others.
- 8.2 To direct the respondents to regularise the service of the applicant with retrospective effect and/or alternatively to confer the benefits to which he is entitled under the Apex Court's decision as well as the Scheme formulated by the Respondents.
- 8.3 To set aside and quash the oral order of termination.
- 8.4 Costs of the Application.
- 8.5 Any other relief or reliefs to which the applicant is entitled under law and equity.

9 INTERIM ORDER PRAYED FOR

The applicant prays for an interim order from this Hon'ble tribunal directing the Respondents to allow the applicant to continue in service as before.

10 The application has been filed through advocate.

11. PARTICULARS OF THE IPO

- | | |
|-----------------|-------------|
| I. I.P.O.No. | : OG 494214 |
| II. Date | : 4/4/2000 |
| III. Payable at | : Guwahati |

12. LIST OF ENCLOSURES

As stated in the Index.

VERIFICATION

I, Sri Anil Das, son of Nila Kanta Das, aged about 27 years, resident of village Aragaon, P.O. & P.S. Marigaon in the district of Morigaon, applicant in the instant application, do hereby verify the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice and I have not suppressed any material facts.

And I sign this verification on this the 8th day of ~~May~~ May, 2000.

Signature

WITN 4134

(ANIL DAS)

ANNEXURE-A

Department of Telecommunication

Office of the...

Certified that Shri Anil Das, S/o Sri Nila Kanta Das,
of Vill. Aragaon, has been working as office peon at Marigaon C-
DOT-512 Exchange from August, '94 till date.

Sd/- 20.9.95

Sub Divisional Engineer,
of Telecom
Marigaon (Assam)

Attested

Sd/-

Seal illegible.

To
The Office In Charge
Telecommunication
Morigaon.

Dtd. 17.10.95.

Sub : MY TERMINATION FROM THE POST OF OFFICE PEON.

Sir,

With due respect I beg to state that, I am the office peon who was worked from August, 1994 to October, 1995 in your office.

Sir, you know that I am your poor employee who has got no land, land for farming and unemployed youth under schedule caste (Keoth) residing nearby your office, Marigaon areas. Looking at my financial position, that time, Respected Mr. Roy has appointed me as a office peon and allowed me to work continuously. Along with this period I have also worked under you from 28.9.95 to 4.10.95 continuously. On 4.10.95 with a malafide intention and fraudulently one Sri Dulal Nath of Raibari Gaon appointed in my place assuring as to allot me line work with the plea that Union people might agitate the matter. Me along with my mother made several prayers with tears but till date unhumanly I have not given the job. Sir, at least, as a last resort I have given this written application praying that I may be appointed as an office peon within 10 days.

Otherwise I will have to approach before law.

Sincerely yours.

Sd/- Anil Das

S/o Sri Nila Kanta Das

Vill: Aragaon

P.O. Marigaon.

Mouza- Morigaon

Dist. Morigaon (Assam)

P.S. Morigaon.

Copy for necessary action
and favourable considerations-

1. Engineer, Telecom Deptt.

Nowgaon, Assam.

2. Labour Officer,

Telecom Morigaon.

Assam.

Enclosures.

Certificate regarding my work issued by

O/C is enclosed herewith.

ANNEXURE-C.

TO

THE OFFICE IN CHARGE

MORIGAON TELECOM, ASSAM

DTD.1.11.95.

Ref. APPLICATION DTD.7.10.95 WITH REGARDS TO MY
TERMINATION AND NON REPLYING TO THE SAME.

Sir,

With due respect and profound submission I beg to state that I have made an appeal to your Goodself for replacing of my service by one Sri Dulal Nath as office peon, whereas I have served at your Goodself's office from August 1994 to Oct.1995.

Sir, after 15 days from the date of my filing this aforesaid application I could not get any result from you and being aggrieved I have given application for necessary making same prayer.

That is my humble submission before your Goodself.

Sincerely yours

Sd/- Anil Das,

Vill Aragaon, P.O. Morigaon

P.S. Morigaon, Dist-Morigaon, Assam.

This is for your favourable consideration and necessary action.

Copy to : Respected Engineer, Telecom.

Nowgaon, Assam.

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 1290 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 than 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 than four years while the others have served for two or three years. Instead of regularising them in employment their services have been terminated on 30th 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 :

Alister
K. S. K. S. K.

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

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

Sd/-

(Ranganath Mishra) J.

New Delhi

April 17, 1990.

Sd/-

(Kuldeep Singh) J.

Handwritten signatures and initials:
A. H. ...
S. ...
A. H. ...

ANNEXURE-E

CIRCULAR NO. 1
GOVERNMENT OF INDIA
DEPARTMENT OF TELECOMMUNICATIONS

STN SECTION

No. 269-10/89-STN

New Delhi 7.11.89

To

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

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

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

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

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

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

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

4. The scheme finalised in the Annexure has the concurrence of Member (Finance) of the Telecom Commission vide No SMF/78/98 dated 27.9.89.

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

sd/=

ASSISTANT DIRECTOR GENERAL (STN).

Copy to.

P.S. to MDS (C).

P.S. to Chairman Commission.

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

All recognised Unions/Associations/Federations.

sd/=

ASSISTANT DIRECTOR GENERAL (STN).

GOVERNMENT OF INDIA
OFFICE OF THE TELECOM DISTRICT ENGINEERS, BONGAIGAON-783390

No. E-75/PT & OM/Pt-II/94-95/87 Dated at Bongaigaon, the 04.01.95.

In continuation to this office letter of even No. dtd. 24.12.94 and in pursuance of orders contained vide DOT/ND's letter No.269-4/93-STN-II dated 17.12.93 communicated vide CGMT/Gh's letter No.Rectt-3/10/Pt-III dated 4.1.94, the following casual Mazdoors of this Telecom Distt. who were engaged by the Circle during the period from 31.3.85 to 22.6.88 and who were.... Circle during the period from 31.3.85 to 22.6.88 and who are still continuing for such works in the circle where they were initially engaged and who are not absent for the last more than 365 days counting from the date of issue of DOT's above order are brought under the scheme of TEMPORARY STATUS with effect from 17.12.1993.

The names of casual Mazdoors conferred Temporary Status are mentioned below :-

Sl.No.	Name of C/Mazdoors Community	Date of entry as C/Mazdoor	Office in which working
1.	Sri Rohit Ali OC	01.08.87	SDOT/BCN
2.	Sri Tirat Ch.Brahma ST	01.06.86	-do-
3.	Sri Ramesh Kalita OC	01.01.87	-do-
4.	Sri Dilip Kr.Mahato OC	01.01.88	-do-
5.	Md. Abdul Kayam OC	01.08.87	-do-
6.	Sri Badal Sil Sarma OC	01.08.87	-do-
7.	Sri Satrughana Prasad Singh OC	01.06.87	-do-
8.	Md.Abdul Barik OC	01.05.88	-do-
9.	Sri K.Barman OC	01.02.88	-do-
10.	Sri Donen Basumatary SC	01.01.88	-do-
11.	Sri Gour Gopal sarkar SC	01.01.87	-do-
12.	Sri Sankar mallik SC	01.06.87	-do-
13.	Sri Ram Naresh Thakur OC	01.11.84	SDOT/NER
14.	Sri Phukan Ch.Boro ST	08.10.84	-do-
15.	Sri Sadhan Ch.Das OC	01.05.88	SDOT/BCN
16.	Sri Gobinda Paul OC	01.01.88	SDOT/KKG
17.	Sri Madan Basfore SC	01.05.85	SDOT/NER
18.	Sri Lubash Barman OC	01.01.86	SDOT/BCN
19.	Sri Omkar Bhowmik OC	01.01.88	-do-
20.	Sri Jogen Ch.Deka OC	01.05.88	-do-
21.	Sri Sarbeswar Rajbonshi OC	01.01.88	SDOT/NER.

Sd/-
Telecom District Engineer,
Bongaigaon.

Copy forwarded for information and necessary action to :

1.
13. Spare.

Sd/-
Telecom District Engineer,
Bongaigaon.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No....

Date of Order of January, 1989.

Hon'ble Mr. Justice D.N. Baruah, Vice Chairman.
Hon'ble Shri G.L. Sanglyine, Administrative Member.

Sri Anil Das
S/o Nila kanta Das
P.O. and P.O. Marigaon
Village- Marigaon.
Dist. Marigaon.

Applicant.

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

-versus-

1. The Union of India,
represented by Secretary to the
Government of India, Ministry of Telecommunication.
New Delhi.
2. The Chief General Manager,
Assam Telecom Circle,
Ulubari, Guwahati-7.
3. The Telecom District Engineer
Department of Telecommunication, Nowgaon
Assam.
4. Sub Divisional Engineer
GT Telecom, Marigaon,
Assam

Respondents.

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

ORDER

BARUAH J. (V.C.).

This application has been filed by the applicant challenging the oral order of termination and also refusal of the authority to allow the applicant to discharge his duty as casual worker. The facts are :

The applicant was engaged Casual Mazdoor in the office of the Sub-Divisional Engineer, Telecom, Marigaon in the month of August, 1994. He continued to work as such for more than a year i.e. up to October, 1995. Then suddenly the authority namely respondent Sub Divisional Engineer, GT, Telecom, Marigaon, Assam, verbally terminated his casual engagement with effect from 4.10.95. The applicant was not allowed thereafter to work as casual Mazdoor. The applicant being aggrieved submitted Annexures B and C representations dated 17.10.95 and 1.11.95 before

*Attest
B.K.S.*

the 4th respondent. As nothing was done the applicant has approached this Tribunal by filing the present application.

2. In due course respondents have entered appearance and filed written statement. the short case of the applicant is that his engagement as casual mazdoor in the said department was unreasonably terminated. this averment has not been admitted by the respondents. In para 6 of the written statement in reply to para 4.4 of the Original Application the respondents have denied all the claims of the applicant made in the said paragraph. It is further denied that the action of the respondents are arbitrary and acted malafide in terminating the casual engagement. It has been averred that the applicant refused to work in outdoor duties of telephone lines, and also refused to go on transfer to other stations leaving Marigaon when he was asked to do so. This led to the termination of the engagement as casual mazdoor. From the averment made in the written statement it is clear that the service of the applicant was not terminated due to paucity of work, it was because of his failure to comply with the direction given by the authority. This has however disputed by the applicant. Rejoinder has also been filed by the applicant denying the averment made by the respondents. In the rejoinder applicant has stated that he is still ready to go anywhere. The representations of the applicant have not yet been disposed of. Therefore it is difficult for the Tribunal to decide the matter in view of the disputed facts. Most unfortunately records have not been produced before the Tribunal. In these circumstances we feel it will be expedient if the matter is properly examined by the respondents specially respondent No.4, before whom representations were pending. Therefore we disposed of this application with direction to the 4th respondent to dispose of the representations already filed. The applicant may also file a fresh representation giving details of his claims within 15 days from the date of receipt of this order. If such representation is filed that shall also be considered along with other representations within two months thereafter. If no fresh representation is filed then two months from the date of receipt of this order while disposing of the representations the 4th respondent shall take in to consideration of the stand taken by the applicant in his rejoinder that he is ready to serve anywhere and willing to go on the transfer. If the applicant is still aggrieved, he may approach the appropriate authority.

3. With the directions made above, the application is disposed of.

Considering the facts and circumstances of the case, we however, make no order as to costs.

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

Alatid
9
m

Dept. of Telecom
O/o the SDE (GR) Morigaon

No. G-5/MGN/99-2000/2, Dated 11.4.99.

To,

Sri Anil Das
S/o Sri Nila Kanta Das
P.O. Morigaon,
Dist : Morigaon.

Sub: Hon'ble CAT's order on the case No.OA-24/1996.

With reference to the subject cited above it is to be intimated you that no official records are found regarding your engagement in this office.

So, you are instructed to submit records and other relevant particulars in support of your demand if any, to enable us to send the same to the higher authority.

Sd/-

Sub Divisional Engineer(Group)
Morigaon
Pin-782105.

Copy to:

SDE (HRD)
O/o the TDM, Nagaon for information.

To

The Hon'ble Sub Divisional Engineer(Gr),
Telecom Deptt., Morigaon (Assam)

Dated 21.4.99.

Sub : Submission of work certificate.

Sir,

With due respect I beg to state that vide your office letter No."G-5/MGN|9-2000/2 dtd. 11.4.1999, I have been asked to submit certificate showing my work.

Sir, in reference to the above, I am submitting a true copy of certificate showing my service as office peon under the Telecommunication Department w.e.f. August 1994 to 20.9.1995 for your kind consideration and necessary action thereof.

This is ~~my~~ my humble prayer before your honour.

Thanking you.

Yours faithfully,

Sd/-

SRI ANIL DAS
S/o Sri Nila Kanta Das,
Vill-Morigaon (Aragaoon)
P.S.Morigaon,
Dist. Morigaon (Assam)

Received.

Sd/-

SDE(Grp)
MORIGAON
Pin 782107.

GOVT. OF INDIA
DEPARTMENT OF TELECOMMUNICATIONS

Office of the sub Divisional Engineer, GP, Morigaon

No. G-5/MGN/7/99-2000

Dated at Morigaon, the 26th May/99.

To

Sri Anil Das
S/o Sri Nila Kanta Das
P.O. Morigaon,
Dist : Morigaon.

Sub: Your application dated 21.4.99 and as per Hon'ble
CAT's order on case No.OA-24/96.

Reference to your application, it is seen that you were illegally engaged after the DOT's banned order in regards to engagement of casual mazdoor and therefore, your claim for reinstatement as Ty. casual mazdoor is not covered by DOT's casual labourers (Grant of Ty. Status and Regularisation) Scheme 1989.

Hence, your application in pursuance of above mentioned case is hereby disposed.

1985-88
Baw
Sd/-
Sub Divisional Engineer
(GP)
Morigaon.

Copy to :-

The Telecom District Engineer, Morigaon for
favour of his kind information.

Sd/-
Sub Divisional Engineer
(GP)
Morigaon.

189

42

~~19~~

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

New Delhi

Dated 1.7.99

To

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

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

Sir,

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

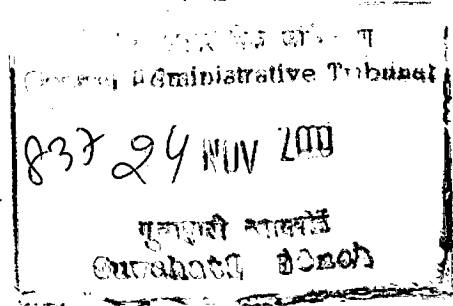
In the above referred letter, this office has conveyed
approval on the two items, one is grant of temporary status to the
Casual Labourers eligible as on 1.8.98 and another on regularisa-
tion of Casual Labourers with temporary status who are eligible as
on 31.3.97. Some doubts have been raised regarding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

Yours faithfully,

(HARDAS SINGH)
ASSISTANT DIRECTOR GENERAL (STN)

All recognised unions/Federations/Associations.

RECEIVED
12.7.99



Filed by
24/11/2000
(A. DEBROY)
S. C. J. C.
C. A. T. Guwahati Bench

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

O.A. No. 161 OF 2000 .

Shri Anil Das

-VS-

Union of India and others.

- And -

In the matter of :

Show cause reply submitted by the
Respondents

1. That with regard to the statement ~~made~~ in the respondents beg to state that the Hon'ble CAT/Guwahati judgement/ordered dated 28.01.99 passed in O.A. No. 29/96 was implemented as directed.

2. That with regard to the statement made in the para^{4.3} the respondents beg to deny all the claims of the applicant categorically and submit that it may happen that the applicant worked as daily basis mazdoor being locally engaged by the local office of Marigaon Sub-Division on purely temporary basis. But such engagement of the applicant has no reference in TDM/Office, Nagaon, the Head Office of the Telecom District where such nomenclature is for scrutiny and for settlement in accordance with the directives of the higher authority from time to time.

The respondents submit that the name of applicant neither recorded as casual labour worked during the period as stated by the applicant even in the office of Marigaon, the office of his engagement nor forwarded to this office. No engagement particulars in respect of the applicant is reported to be available in the office of his engagement. The respondent submit that the claim of the applicant for permanent absorption in the Telecom Department is with out valid ground and is deemed the prescribed rules of the department. Since Department of Telecommunications, the H^o of the Telecom Department has not passed its directives to recruit casual labourers worked during the specific period of time when the applicant has placed his claim for engagement in the job.

3. That with regard to the statement made in para 4.4 the respondents beg to state^{that as stated} by the applicant, the respondents ~~submit that they~~ had never acted arbitrarily and ~~with~~ with malafide intention in terminating the applicant on the job of casual labourer. Engagement of casual labour on regular basis is not within the power of any authority as there is complete ban on such engagement. Under the said circumstances the local authority asked the applicant to discontinue his engagement without proper sanction from competent authority.

Further, the statement of the applicant that the respondents acted with malafide intention to accommodate another person under the pressure of the Union is not accepted

by the respondents. The respondents beg to submit the fact that the respondents is abided by rules to recruit mazdoors and that should be on ^{seniority} ~~seriously~~ basis as per the panel list and respondents cannot act arbitrarily in recruitment of such labourers. In the instant case of the respondents have done nothing of the violation of the departmental procedure and recruitment is done as per directives of the department of Telecommunications.

4. That with regard to the statement made in para 4.5 the respondents beg to state that the respondents do not admit the claim of the applicant that the applicant ought to be terminated and also that the casual employees entered the service with the applicant and even after entry of the applicant have become regularised in the service. Denying categorically the claims of the applicant, the respondents submit the contention that with full regard to the order of the Hon'ble Apex Court the Department of Telecommunications is passing from time to time directives with various units regarding the policies of recruitment of casual labourers under National Scheme . Regarding termination of the applicant, it is to state that the applicant was engaged purely on temporary basis without any sanction from higher authority and as the applicant was considered to the surplus hand for Morigaon office his service was no longer required.

Contd.....

5. That with regard to the statement made in para 4.6 the respondents denying the claim of the applicant for absorption submit that without the month wise engagement particulars in support of the continuous service in the department. The applicant claim for regularisation is unjustified and without basis. Neither the Morigaon office nor the applicant could produce the record of continuous service as claimed by the applicant. Further, it is to add that the applicant had refused to work as per suitability of the local office of Morigaon and declined to go to other station as required by the local authority since the applicant who was a non-departmental person and whose service conduct was under supervision and management of local authority denied the office decorum as such he had willfully showed dereliction of duties and in subordination as per disciplinary code of the department cannot claim protection under the precedence of the Hon'ble Apex Court judgement which is a legal assurance for remedy given to those persons who have not violated the departmental codified rules. Under the above facts, the respondents believe that the National Scheme of regularisation of casual labourers in departmental service is not applicable to the applicant.

6. That with regard to the statement made in para 4.7 and 4.8, the respondents admit a part of the statement that department has prepared a scheme for regularisation of casual labourers and the other part of the statement of the said paragraph has been denied by the respondents.

The respondents submit that the applicant is not entitled to be absorbed in the department as per the scheme implemented by the respondents. Neither the respondents admit that the respondents have done any illegalities by terminating the applicant reason of which is clarified in the foregoing paragraph of the written statement. It is also not admitted by the respondents that the casual labourers entered into the department along with the applicant have become regularised in the department as stated by the applicant. The respondents beg to submit the fact that the Annexure dated 04-01-95 of the applicant reveals that the panel list of the casual labourers has prepared for regularisation is properly made and no case of supersession or exclusion of name of casual labourers in the panel list has taken place. Name of any casual labourer engaged after 22.06.88 is not supposed to come in the list. In the instant case, the applicant was engaged in August '94 as per his statement.

7. That as regards the contents of paragraph 4.9 and 4.10 of the O.A. this answering Respondents does not any comments.

8. That with regard to statement made in para 4.11, the respondents denying all the claims of the applicant submit that since the applicant has violated the discipline of the office with in sub-ordination and dereliction of the duties on oral instruction that termination of the job is not an inappropriate measure following the situation while the applicant is not within the jurisdiction of the codified rules of the department as being a non departmental

person.

9. That with regard to the statement made in para 4.12 the applicant's contention that his service was terminated by the respondents under the pressure and treat of the union people to accommodate another person is quite baseless and false. Termination of the applicant was necessary as his engagement in Morigaon office is found to be surplus and the applicant refuse to carryout duties in other section/station adamantly. It is further stated that the judgement and order of Hon'ble CATs in O.A. No. 24/96 was implemented.

10. That with regard to the statement made in para 4.13 and 4.14, neither the Morigaon office nor the applicant could submit any engagement particulars as to no of days worked in each month, wage etc. as a support for consideration for absorption of applicant within the guidelines of casual mazdoors recruitment under relaxation.

11. That with regard to the statement made in para 4.15 the respondents contention is that ban ~~exists~~ on recruitment of casual mazdoors as per DOTs order is till exists w.e.f. 30.03.85. However, the DOT issues relaxation of such engagement time to time which are regularized with proper approval from DOT. Even if, such engagement is considered on relaxation of ban, the terms and conditions for ~~regularization~~ regularization of such engagement must be fulfilled. The applicant might have worked for contingent nature of work as and when required for which recording of engagement particulars not mandatory.

12. That with regard to the statement made in para. ^{4.16} the applicant's submission that he was recruited by following due process of selection as well as giving relaxation is not correct. For engaging flying labour for contingent nature of work against which the applicant might have been engaged is not at all required to undergo selection process. Further, there was total ban on recruitment of casual labour for regular nature of job and same still exists.

13. That with regard to the statement made in para 4.16 (a) the respondent beg to state that if any engagement of ~~an~~ casual mazdoors was made in the department in relaxation of ban that has been made as per the guidelines of the DOT. Neither the Morigaon office nor the applicant could furnish relevant dates in support of his claim.

14. That as regards the contents of paragraph 4.17 of the O.A. this answering Respondents does not make any comments.

15. That with regard to the statement made in para 4.18, same as 4.16 (a) as above.

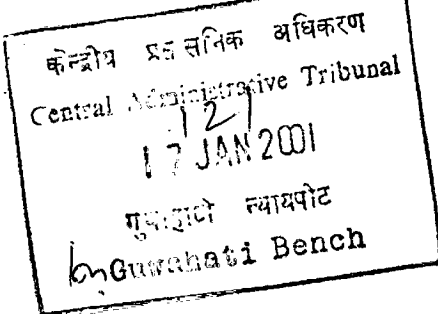
16. That with regard to the statement made in para 4.19, ~~though some~~ the respondents beg to state though some relaxation has been given by the department time to time, the ban on recruitment is not null and void as stated. Denial of benefit to the applicant is due to non fulfillment of eligibility criteria.

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

I, G.C. Sarma, Asstt. Director Telecom (Legal),
Guwahati being authorised do hereby solemnly declare
that the statements made in this show cause reply is true
to my knowledge, information and belief.

And I sign this verification on this 20th day
of November, 2000.

Ganesh Ch Sarma.
Declarant.



Filed by
Shankar Ad
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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH::

O.A NO 161 OF 2000.

Sri Anil Das Petitioner.

- VS -

U. O. I. & Ors. Respondents.

IN THE MATTER OF

Reply to the Written Statement
submitted by the Respondents.

The Applicants beg to submit the reply as follows.

1. That the applicant has received the copy of the written statement and have gone through the same. The statements which are not specifically admitted hereinbelow may be treated as total denial.

2. That with regard to the statements made in paragraph 1 of the written statement the Applicant begs to state that the respondents have not complied with the Judgment and Order dated 28.1.99 passed in O.A. 24 of 1996.

3. That with regard to the statements made in paragraph 2 of the Written Statement, while denying the statement made therein the Applicant begs to state that the respondents are not sure about their stand. From the impugned order dated 26.5.99 it can be ascertained that the applicant was engaged as Casual Mazdoor. The

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stand of the respondents are contradictory. In this para the respondents have disputed the very existence of the applicant as Casual Worker but the same does not reflect in the impugned order. The respondents have now by filing the written statement tried to improve their stand.

4. That with regard to the statements made in paragraph 3 of the written statement submitted by the Respondents the Applicant while reiterating the statement made in the O.A begs to state that the termination of his service was the net result of union activities. The aforesaid action on the part of the respondents are in complete violation of the Apex Court Judgment.

5. That with regard to the statement made in para 4 of the Written Statement the applicant while denying the contentions made therein begs to state that the respondents after narrating the grounds have virtually termed him as a "surplus" employee, which is not the stand of the respondents in the impugned order.

6. That with regard to the statement made in para 5, 6, 7, 8 and 9 of the written statement the applicant while denying the statement made above as well as in the O.A begs to state that the scheme has been prepared for granting temporary status to the casual workers who does not fall under the regular establishment. Services of the similarly situated employees' like that of

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applicant have been regularised.

7. That the applicant in reply to the statement made in para 10 of the written statement begs to state that as per the direction of the respondents, he has submitted all the relevant records.

8. That with regard to the statement made in para 11 to 16 of written statement begs to state that in fact the order imposing ban has been lifted by issuing relaxations. The case of the applicant is covered by the Scheme of 1989 taking into his entry into the service in the year 1989 (April).

In view of the above facts and circumstances the Applicant prays before this Hon'ble Tribunal that appropriate direction may be issued to the Respondents for extending the benefit of temporary status to them with retrospective effect with all consequential service benefits including arrear salary, seniority, etc.

Verification...

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VERIFICATION

I Shri Anil Das, age about 28 years, son of Sri Nilakanta Das, resident of Vill Aragaon, P.O and , P.S Marigaon, Dist, Marigaon, do hereby solemnly affirm and verify that the statements made in paragraph X are true to my knowledge and those made in paragraphs 1-8 are matters of records which are believe to be true and rest are my humble submission before this Hon'ble Tribunal.

And I sign this verification on this the 16th day of Jan 2001.

Urfan nish-