

5/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 275/02
R.A/C.P No.
E.P/M.A No. 141/02

1. Orders Sheet.....^{OA} Pg. 1..... to 3
NO 141/02 order page 1 to 2
2. Judgment/Order dtd. 29.12.2003..... Pg. 1..... to 3 *RD*
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A..... *275/02* Pg. 1..... to 30
5. E.P/M.P. *141/02*..... Pg. 1..... to 2
6. R.A/C.P..... Pg..... to.....
7. W.S..... Pg. 1..... to 20
8. Rejoinder..... Pg..... to.....
9. Reply..... Pg..... to.....
10. Any other Papers..... Pg..... 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.)

bahta
29/11/07

(SEE RULE 42⁴)

GENERAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Original Application No. 275 / 2002

Misc Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicants. Smt. Lakshmi Appaoo

-Vs-

Respondant(s) UOI & ORS

Advocate for the Appellant(s) Mr J. Hussain IAS, S. Seal

Advocate for the Respondant(s) CGSC

Notes of the Registry	Date	Order of the Tribunal
	28.8.02	Heard learned counsel for the parties. Application is admitted. Call for records. Returnable by four weeks. List on 26.9.02 for orders.
	26.9	Not present. Written statement not filed. List on 11/11/2002
	11.10.02	List on 20.11.02 for order.

28.8.02

Heard learned counsel for the parties.
Application is admitted. Call for records. Returnable by four weeks.
List on 26.9.02 for orders.

K. C. Sharma
Member

[Signature]
Vice-Chairman

1m

26.9

Not present. Written statement not filed. List on 11/11/2002

[Signature]
26.9

11.10.02

List on 20.11.02 for order.

K. C. Sharma
Member

[Signature]
Vice-Chairman

pg

This application has been filed by the applicant with I.P.O Rs. 50/- vide NO. 73 576838 dated 26.8.2002 and also requests received in full of ~~same~~

Laid before Hon'ble Court for orders.

[Signature]
27/9/02
General Bench

Notice issued to the Respondents vide D.No- 2570 to 2573 Dtd. 16.9.02.

[Signature]
2.9.02


20.11.02

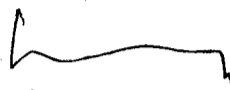
List on 18.12.2002 to enable the respondents to file written statement, if any.

The counsel for the applicant is ordered to serve a copy of the application to Mr. B.C. Pathak, learned Addl. C.G.S.C. in the meantime.

No. written statement has been filed.

34
17.12.02


Member


Vice-Chairman

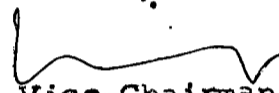
mb

18.12.2002

Stand out. List on 22.1.2003 for orders.

No. written statement has been filed.

34
21.1.03


Vice-Chairman

mb

22.1.2003

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

The Hon'ble Mr. S.K. Saha Hajra, Member (A).

List the matter on 19.2.2003 to enable the respondents to submit its written statement. Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents is also to obtain necessary instructions as the steps so far taken for consideration the case of the applicant for compassionate appointment.

No. written statement has been filed.

34
18.2.03


Member


Vice-Chairman

mb

31.3.03

w/s submitted

by Respondent Nos. 1, 2, 3 & 4.

34

19.2.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. S. Biswas, Administrative Member.

As agreed by the learned counsel for the parties, the matter may be posted for hearing on 1.4.2003. The respondents may file written statement within four weeks from today.

Written statement filed by the respondents No- 1, 2, 3 and 4.

31.8.03

Member

Vice-Chairman

mb

1.4.2003

Miss B. Seal, learned counsel appearing on behalf of the applicant stated that she has received written statement only yesterday and she wants to file rejoinder. Put up again on 9.5.2003 to enable the applicant to file rejoinder. Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents is requested to obtain necessary instructions on the matter.

No. rejoinder has been filed.

8.5.03

Vice-Chairman

mb

9.5.03

Heard counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets.

The application is disposed of in terms of the order. No order as to costs.

Vice-Chairman

20.5.2003

Copy of the judgment has been sent to the office for issuing the writ to the applicant as well as to Addl. C.G.S.C. for the Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. / R.A. No. 275 of 2002.

9-5-2003.

DATE OF DECISION
PLACE OF DATE

... Smt Lakhmi Apparao APPLICANT(S).

... Sri I. Hussain ADVOCATE FOR THE
APPLICANT(S).

- VERSUS -

... Union of India & Ors. RESPONDENT(S).

... Sri B.C.Pathak, Adl. C.G.S.C. ADVOCATE FOR THE
RESPONDENT(S).

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 Ho'ble Vice-Chairman.



4

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 275 of 2002.

Date of Order : This the 9th Day of May, 2003. -

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

Smt. Lakhmi Apparao,
Wife of late Esarapo Apparao,
Resident of Wireless Compound,
Bharat Sansar Nigam Limited,
P.O. Dispur, Guwahati. . . . Applicant

By Advocate Sri I.Hussain.

- Versus -

1. Union of India,
represented by the Secretary,
Department of Telecommunications,
New Delhi.
2. The Chief General Manager,
Bharat Sansar Nigam Ltd.,
North Eastern Circle,
Ulubari, Guwahati-7.
3. The Executive Engineer,
Bharat Sansar Nigam Ltd.,
Telecom Civil Division,
Guwahati.
4. The Assistant Engineer(C),
Bharat Sansar Nigam Ltd.,
Civil Sub Division No.II,
Guwahati. . . . Respondents.

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

ORDER (CRAL)

CHOWDHURY J.(V.C)

This is an application under Section 19 of the Administrative Tribunals Act 1985 seeking for an appropriate direction from this Tribunal for absorption of the applicant in the following circumstances.

The applicant in this application asserted that her husband Esarapo Apparao was engaged as Sewer (Sweeper) on casual basis by the respondents in the year 1991. While working as such her husband met with an untimely death in the year 1998 leaving behind the applicant and two minor children. The department came to rescue of the family of

the applicant by engaging her. According to applicant she is engaged under the respondents and getting the consolidated monthly allowance of Rs.500/- with effect from May 2002 instead of Rs.70/- per day paid to her earlier. By this application the applicant prayed for her regularisation and absorption.

2. The respondents contested the case and submitted the written statement. The respondents did not dispute the statement made in Annexure-3 but asserted that by the said communication the authority only sought for sanction and approval of the higher authority. However, in the paper book the department annexed the communication dated 3.5.2001 sent by the Superintending Engineer, BSNL to the Executive Engineer asking for some details. Therefore the contention of the applicant that she was engaged by the department immediately after the death of her husband in 1998 cannot be ruled out. Mr B.C.Pathak, learned Addl.C.G.S.C contended that the applicant cannot claim the benefit of compassionate appointment on the score that her husband was working under the department as he was only a casual worker. Therefore, the scheme of compassionate appointment cannot be given. Mr I.Hussain, learned counsel for the applicant on the other hand submitted that the claim of the applicant is not based on the policy of compassionate appointment but he is also seeking for a direction for engagement of the applicant on any other available post, in view of the fact that she is rendering services since 1998. The issue is not as to whether the applicant can be appointed on compassionate ground on the death of her husband Esarapo Apparao, she is basically concerned about her livelihood. The materials on record indicate that she is working under the respondents. It seems that respondents also are

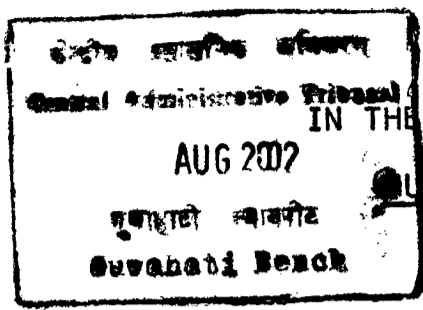
not totally oblivious of the application and hardship of the applicant. As a matter of fact the respondents had kept her on roll and engaged her in some capacity. Considering the facts and circumstances I am of the opinion that it is a fit case in which a direction need to be issued to the applicant to submit a fresh representation before the authority narrating all the facts within a month from the date of receipt of this order and on filing of such representation the authority shall consider her case with commiseration and take appropriate steps for her absorption in the post of Safaiwala or any other vacant post where she can be considered. The respondents are directed to complete the above exercise expeditiously preferably within six months from the date of receipt of her representation.

Subject to observation made the application stands disposed of. There shall, however, be no order as to costs.



(D.N.CHOWDHURY)
VICE CHAIRMAN

NS
27/8/02



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : AT GUWAHATI

O. A. No. 275 OF 2002

Smt. Lakhmi Apparo ... Applicant.

- Vs. -

The Union of India & Ors. Respondents.

I N D E X

<u>S1. No.</u>	<u>Particulars</u>	<u>Page No.</u>
1.	Original Application with Verification.	1 to 15
2.	<u>Annexure No. 1</u> ; Copy of Death Certificate.	16
3.	<u>Annexure No. 2</u> : Copy of common Judgment dtd. 31.8.99.	17 to 25
4.	<u>Annexure No. 3</u> : Copy of Letter dated 31.8.98 of the Respondent No.3.	26
5.	<u>Annexure No. 4</u> : Copy of the order dated 25.9.2000 issued by S.D.E. (Admn.)	27
6.	<u>Annexure No. 5</u> : Copy of representation dtd. 22.11.99.	28
7.	<u>Annexure No. 6</u> : Type d copy of the Letter dtd. 31.5.2001 of the Sp Supdt. Engineer written to E.E.	29 to 30
8.	Notice.	

Filed
S. Seal
Advocate.

Filed by the
Applicant-
Smti Lakhmi Apparao
through
Soheli Seal to
Advocate
27-8-02

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH ::: AT GUWAHATI

(An application under Section 19 of the
Central Administrative Tribunal Act, 1985)

ORIGINAL APPLICATION NO. _____/2002.

Smt. Lakhmi Apparao Applicant.

-Versus-

The Union of India and Others
... Respondents.

DETAILS OF APPLICANT :

i) Name of Applicant : Smt. Lakhmi Apparao,
Wife of late Esarapo Apparao,
Resident of Wireless Compound,
Bharat Sansar Nigam Limited,
P.O. Dispur, Guwahati.

ii) Designation : Sewar, Casual Basis,
Bharat Sansar Nigam Ltd.,
Civil Sub Division No. II,
Guwahati.

PARTICULARS OF
RESPONDENTS :

1. The Union of India,
represented by the
Secretary, Department of
Telecommunications,
New Delhi.

2. The

2. The Chief General Manager,
Bharat Sansar Nigam Ltd.,
North Eastern Circle,
Ulubari, Guwahati - 7.

3. The Executive Engineer,
Bharat Sansar Nigam Ltd.,
Telecom Civil Division,
Guwahati.

4. The Assistant Engineer, (C),
Bharat Sansar Nigam Ltd.,
Civil Sub Division No. II,
Guwahati.

..... Respondents.

I. Particulars of
Orders against which
application is made.

i) Against non granting of
temporary status/regulari-
sation of the service as
has been given to other such
similarly situated casual
employees in violation of
Judgment dated 31.8.99
passed by the Hon'ble +
Tribunal in O.A. No. 12
107/1998 and batch.

ii) Non consideration of appli-
cants' prayer for his ^{or} ~~her~~
appointment against Temporari-
status as compassionate

~~ground~~ ~~.....~~

ground due to death of applicant's husband in harness.

iii) Action of the Respondent No.3 in reducing the monthly allowances to Rs. 500/- per month w.e.f. May, 2002 instead of Rs. 70/- per day paid to applicant earlier.

2. JURISDICTION OF THE TRIBUNAL :

The Applicant further declares that the subject matter of this case is within the jurisdiction of the Central Administrative Tribunal, Guwahati.

3. LIMITATION :

This application is made within prescribed time under Section 21 of the Central Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE :

4.1. That the applicant is a Citizen of India and as such is entitled to the rights, privileges and protections guaranteed under the Constitution of India and other laws of the Country.

4.2. That...

4.2. That, the applicant's husband Esarapo Apparao was appointed as Sewer (Sweeper) on Casual basis in December, 1991 and was working under the Respondent No.3 continuously. While serving as such he expired due to some serious ailments on 20.5.98 at his residence at Guwahati, leaving behind the applicant and two minor childrens.

The copy of the Death Certificate issued by the Guwahati Municipal Corporation is annexed herewith and marked as Annexure No.1.

4.3. That the applicant states that, after death of her husband, she was appointed as Sewer (Sweeper) on Casual basis w.e.f. 21.5.98 under the Respondent No. 3 and she was being paid daily wage of Rs. 70/- per day. However, no formal appointment order was issued to her by the Respondents.

4.4. That the applicant states that after her appointment she enrolled herself as a Member of All India Telecom Employees Union, Civil Wing Branch which happens to be a Union to safeguard the interest of its members and for furtherance of their common aims and objectives,

4.5. In...

4.5. In the aforesaid Union was representing to the Respondents for regularisation of Services and for other service benefits for its members from time to time. But no action was taken by the authorities for consideration of their greivances. As such the Union filed an application on 12.9.98 before this Hon'ble Tribunal vide Original Application No. 142 of 1998 with a prayer for regularisation of their services as per Government rules and procedure inforce in the said application the name of the present applicant was at Sl. No. 16 of the list of members of the Union which was reflected in the body of the application. It be mentioned herein that, many other similarly situated temporary/casual employees also approached this Hon'ble Tribunal by number of original applications with prayer for regularisation of their service. This Hon'ble Tribunal was pleased to issue notices upon the Respondents and directed the Respondents not to oust the applicants from service.

4.6. That, on receipt of the notices, the Respondents also submitted their written statements etc. and all the applications were clubed and heard together and after hearing the parties this Hon'ble Tribunal vide a common judgment and order dated 31.8.99 directed the Respondents to examine the case of each applicant on filing individual representations

within..

within a period of one month of receipt of the order and further ~~directed the~~ directed the Respondents to pass reasoned order on merit of each case within a period of 6 months thereafter. The Hon'ble Tribunal also observed that interim order passed shall remain in force till disposal of the representation.

The copy of the common Judgment dated 31.8.99 passed by the Hon'ble Tribunal is annexed herewith and marked as Annexure No. 2.

4.7. That the applicant states that, initially she was not paid any wage and as such the Respondent No. 3 vide a letter dated 31.8.98 informed the Respondent No.3 as regards engagement of the applicant after death of her husband and continuation of her in service on temporary basis. In the said letter it was reflected that, her name was in the list of applicants in case No. 142 of 1998.

The copy of letter dated 31.8.98 of the Respondent No.3 is annexed herewith and marked as Annexure No. 3.

4.8. That...

4.8. That the applicant states that, after examining the representations of the applicants (Total 29 applicants of O.A. No. 142/98) ; the Chief General Manager, Kamrup Telecom District vide an order dated 22.9.2000 appeared the proposal for granting temporary status to 29 casual labourers. The aforesaid order was formally circulated under signature of the Sub-Divisional Engineer (Admn.) vide dated 25.9.2000.

The copy of the order dated 25.9.2000 issued by the S.D.E (Admn.) is annexed herewith and marked as Annexure No. 4.

4.9. That, earlier, the applicant also submitted a representation dated 22.11.98 to the Executive Engineer, Telecom Divil Division, Guwahati with a prayer for her appointment on compassionate ground with copy to Assistant Engineer (C) T.C. S.D. - II, Guwahati. In the said representation the period of service of the applicant's husband was inadvertently typed "service Dec. '91 to 12.5.98" which should have been "since Dec. '91 to 19.5.98. But no action has been taken to grant temporary status/regularisation of her service till date.

The...

17

: 8 :

The copy of representation
dated 22.11.99 is annexed and
marked as Annexure No. 5.

4.10. That the applicant states that, in the meantime all the applicants who were eligible including the applicants of O.A. No. 142/98 except the present applicant have been given temporary status. But no reasons have been shown by the Respondents as regards denying of granting temporary status to the applicant due to reasons best known to them.

4.11. That the applicant states that, in the meantime the Telecom Department has been made into a Govt. Limited Company w.e.f. 4.10.2000 and ^{renamed} ~~remained~~ as Bharat Sanchar Nigam Limited and presently it is known as such for all practical purposes and is responsible for all the acts and deeds of the earlier telecom Department.

4.12. That, the applicant states that, she again approached the Respondent authorities with a prayer for her appointment on temporary basis either as per order of the Hon'ble Tribunal as have been given to other casual employees or on compassionate ground. Thereafter, the Superintending Engineer vide

a....

: 9 :

a letter dated 31.5.2001 informed the Executive Engineer that, the case of the applicant should be on "compassionate ground" instead of confirming T.S.M. as per her husband's service since 1991 to 19.5.98 who expired on 20.5.98. As such the Superintending Engineer asked Executive Engineer to forwarded all the documents as per format. But the applicant has got no knowledge if the Executive Engineer has sent the particulars/documents as asked for.

The typed copy of the letter dated 31.5.2001 of the Superintending Engineer to written to Executive Engineer is annexed as Annexure No. 6.

4.13. That the applicant states that she had been given wage @ Rs. 70/- per day as Casual Labourer since her appointment. But the Respondent No.4 all of a sudden and without any prior notice discontinued the daily wage of Rs. 70/- per day paid to the applicant and arbitrarily fixed an amount of Rs.500/- to be paid to her per month w.e.f. May, 2002. It be mentioned herein that, no written order has been served on her to this effect and she has been told verbally about the arrangement. Having no alternative she is continuing her duties in this meager salary since May, 2002 and she with her two minor children are on verge of starvation.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION :

i) For that, the applicant having served under the Respondents for last couple of years on Casual basis against vacant post, has accrued a right for temporary status/regulation as per rules and procedure in force and respondents are duty bound to grant temporary status/regularisation of the applicant.

ii) For that, this Hon'ble Tribunal directed the Respondent authorities for grant temporary status to the applicant of the Original Application. But while doing so, they have not considered the case of the present applicant without any valid reason and deprived her from getting the benefits as per direction of this Hon'ble Tribunal. The Respondents~~are~~ are duty bound to implement the directions of this Tribunal and having not done so in case of the present application is violation of the direction of this Tribunal and this Hon'ble Tribunal may be pleased to interfere into the matter to protect the interest of the applicant.

iii) For that, alternatively the Respondents could have grant^{ed} temporary status/regularise the service of the applicant on compassionate basis also for which various correspondances have been

made...

made by the Respondents on prayer of the applicant. But till date no concrete step has been taken by them to grant temporary status/regularisation of her services. The Respondents are duty bound to grant temporary status to the applicant because of her husband's untimely death and on consideration of the fact that the applicant is to maintain her family with two childrens and is having no other source of income. The action of the Respondents are against the established rules and procedure for appointment of a person on compassionate ground.

iv) For that, the Respondent authorities more particularly the Respondent No. 4 has acted in a very arbitrary manner in stoppage of daily wage of Rs. 70/- per day which was paid earlier and granting only Rs. 500/- per month without any apparant reason. The action of the Respondents have taken away the right to livelihood of the applicant and pushed her to acute povebty which should not be allowed to go unchecked and interference of this Hon'ble Tribunal is bonafidely required in this instant case.

v) For that, during pendency of this application an interim order is required to be passed by this Hon'ble Tribunal directing the

Respondents...

Respondents to allow the applicant to serve under them and to restore per daily wage of Rs. 70/- per day instead of Rs. 500/- per month that is being paid at present. Otherwise, the Respondents may throw her out from service and in that event she will face irreparable loss and injury.

6. DETAILS OF THE REMEDIES EXHAUSTED :

The applicant declares that he filed several representations before the authorities for regularisation ^{of} her service which have been mentioned in the head facts of the case but the authorities/ Respondents have not yet considered ^{his} case for regularisation and hence he approached this Hon'ble Tribunal.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT/TRIBUNAL :

The applicant declares that no case is filed or pending in any Court or Tribunal regarding the present case.

8. RELIEF SOUGHT FOR :

In view of the facts and circumstances narrated above, the applicant prays for the following reliefs :-

i) This....

: 13 :

f) This Hon'ble Tribunal may be pleased to direct the Respondents to grant temporary status to the applicant as Sweer (Sweeper) and then to appoint her on regular basis in terms of the Judgment dated 31.8.99 passed by this Hon'ble Tribunal in O.A. No. 107/98 and batch and pay her salary etc as per rules.

ii) Alternatively, this Hon'ble Tribunal may be pleased to direct the Respondents to grant temporary status then regularise applicants' service as Sewar (Sweeper) on compassionate ground on the basis of letter dated 31.5.2001 (vide Annexure No.6) with immediate effect and to pay her salary etc. as per rules and procedure.

iii) This Hon'ble Tribunal may be pleased to direct the Respondents to restore applicant's original wage @ Rs. 70/- per day instead of Rs. 500/- being paid to her since May, 2002 and to pay her arrear wage till the same is restored.

70
30

2,100

iv) This Hon'ble Tribunal may be pleased to direct the Respondents to allow the applicant to continue on Casual basis till her service is regularised or given temporary status.

: 15/ :

9. INTERIM RELIEF IF ANY PRAYED FOR :-

That the applicant prays that, pending disposal of this application the Respondents may be directed.

f) To restore her original wage of Rs. 70/- per day to the applicants w.e.f. May, 2002 instead of Rs. 500/- that is being paid presently.

ii) To direct the Respondents to allow the applicant to serve as Sewar (Sweeper) as before under the Respondents and to pay her daily wage regularly as prayed above.

10. DETAILS OF POSTAL ORDER :

- 1. No. of I.P.O. : 762576838
- 2. Name of P.O. : Gunaabati
- 3. Date of Issue : 26-8-02

11. LIST OF ENCLOSURES :

As per Index.

Verification..

: 15 :

Verification

I, Smt. Lakhmi Apparo aged about 28 years, wife of late E. Apparo, resident of Wirless Compound, P.O. Dispur, Guwahati, Assam do hereby verify and declare that the statements made in paragraphs 1, 2, 3, 4, 5, 6, 7,

are true to my knowledge and those made in paragraphs 5, 4 *partly* are being matters of records true to my information derived therefrom which I believe to be true and the rests are my humble submissions made before this Hon'ble Court.

And I hereunto met my hand to this verification on this the th day of August, 2002 at Guwahati.



RTI of the applicant
Smt. Lakhmi Apparo



1964

25

GOVERNMENT OF ASSAM
(অসম চৰকাৰ)
DIRECTORATE OF HEALTH SERVICES
(স্বাস্থ্য সেৱা সঞ্চালকালয়)
CERTIFICATE OF DEATH
(মৃত্যুৰ প্ৰমাণ পত্ৰ)

ISSUED UNDER SECTION 12 of the Registration of Births and Deaths Act 1969
ISSUED UNDER SECTION 17

(জন্ম আৰু মৃত্যুৰ পঞ্জীয়ন আইন ১৯৬৯ ৰ ১২/১৭ অংশত লিপিবদ্ধ)

908

This is to Certify that the following information has been taken from the original record of Death which is in the register for The merged Govt 1998 Registration Unit of District Assam of the State of Assam.

ইয়াৰ দ্বাৰা প্ৰমাণিত কৰা হয় যে নিম্ন লিখিত তথ্য অসম ৰাজ্যৰ Assam জিলাৰ Assam পৌৰসভাৰ Assam মৌজাৰ অন্তৰ্গত Assam পঞ্জীয়ন গোটেৰ পঞ্জীৰ মূল অভিলেখৰ পৰা সংগ্ৰহ কৰা হৈছে।

Name/নাম : E APPA RAO Nationality/জাতি INDIAN
Sex/লিঙ্গ : Male Permanent Address/স্থায়ী ঠিকনা Basistha Rd. Dibrugarh
Date of Death/মৃত্যুৰ তাৰিখ 20th May 1998 (Nineteen Ninety Eight) Registration No./পঞ্জীয়ন নং 3511
Place of Death/মৃত্যুৰ স্থান Gauhati Date of Registration/পঞ্জীয়নৰ তাৰিখ 27/10/1998
Name of Father/Mother/Husband/পিতৃ/মাতৃ/স্বামীৰ নাম Late Chand Babu Permanent Residential Address/পিতৃ/মাতৃৰ স্থায়ী ঠিকনা Basistha Rd. Dibrugarh

Signature of issuing authority [Signature] Chief Registrar/মুখ্য পঞ্জীয়ক
Designation/পদবী [Signature] Date/তাৰিখ 28/10/98

Attested
S. Seal
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.107 of 1998 and others

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

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

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

1. O.A.No.107/1998

Shri Subal Nath and 27 othersApplicants

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

-versus-

The Union of India and othersRespondents

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

.....

2. O.A.No.112/1998

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

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

-versus-

The Union of India and othersRespondents

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

.....

3. O.A.No.114/1998

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

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

-versus-

The Union of India and othersRespondents

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

.....

4. O.A.No.118/1998

Shri Bhuban Kalita and 4 othersApplicants

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

-versus-

The Union of India and othersRespondents

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

.....

Attested
S. Sarma
Advocate

O.A.No.120/1998

Shri Kamala Kanta Das and 6 othersApplicant
By Advocates Mr J.L. Sarkar, Mr M. Chanda
and Ms N.D. Goswami.

-versus-

The Union of India and othersRespondents
By Advocate Mr B.C. Pathak, Addl. C.G.S.C.
.....

6. O.A.No.131/1998

All India Telecom Employees Union and
anotherApplicants
By Advocates Mr B.K. Sharma, Mr S. Sarma
and Mr U.K. Nair.

-versus-

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

7. O.A.No.135/98

All India Telecom Employees Union,
Line Staff and Group 'D' and
6 othersApplicants
By Advocates Mr B.K. Sharma, Mr S. Sarma
and Mr U.K. Nair.

-versus-

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.
.....

8. O.A.No.136/1998

All India Telecom Employees Union,
Line Staff and Group 'D' and
6 othersApplicants
By Advocates Mr B.K. Sharma, Mr S. Sarma
and Mr U.K. Nair.

-versus-

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.
.....

9. O.A.No.141/1998

All India Telecom Employees Union,
Line Staff and Group 'D' and anotherApplicants
By Advocates Mr B.K. Sharma, Mr S. Sarma
and Mr U.K. Nair.

-versus-

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.
.....

SL

*Attested
S. Seal
Advocate*

10. O.A.No.142/1998

All India Telecom Employees Union,
Civil Wing Branch.Applicants
By Advocate Mr B. Malakar

-versus-

The Union of India and othersRespondents
By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

11. O.A.No.145/1998

Shri Dhani Ram Deka and 10 othersApplicants
By Advocate Mr I. Hussain.

-versus-

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

12. O.A.No.192/1998

All India Telecom Employees Union,
Line Staff and Group 'D' and anotherApplicants
By Advocates Mr B.K. Sharma, Mr S. Sarma
and Mr U.K. Nair.

-versus-

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

13. O.A.No.223/1998

All India Telecom Employees Union,
Line Staff and Group 'D' and anotherApplicants
By Advocates Mr B.K. Sharma and Mr S. Sarma.

-versus-

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

14. O.A.No.269/1998

All India Telecom Employees Union,
Line Staff and Group 'D' and anotherApplicants
By Advocates Mr B.K. Sharma, Mr S. Sarma,
Mr U.K. Nair and Mr D.K. Sharma.

-versus-

The Union of India and othersRespondents
By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

Handwritten signature

*Attested
S. Seal
Advocate*

15. O.A.No.293/1998

All India Telecom Employees Union,
Line Staff and Group 'D' and anotherApplicants
By Advocates Mr B.K. Sharma, Mr S. Sarma
and Mr D.K. Sarma.

-versus-

The Union of India and othersRespondents
By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

.....

O R D E R

BARUAH.J. (V.C.)

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

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

[Handwritten signature]

*Attested
S. Sarma
Advocate*

30

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

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

82

Affected
S. Seal
Advocate

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

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

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

XB

*Affected
S. Red
Advocate*

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

XL

Attested
S. Seal
Advocate

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

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

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

Attested
S. S. and
Advocate

definite conclusion. We, therefore, feel that the matter ²⁴ should be re-examined by the respondents themselves taking into consideration of the submissions of the learned counsel for the applicants.

8. In view of the above we dispose of these applications with direction to the respondents to examine the case of each applicant. The applicants may file representations individually within a period of one month from the date of receipt of the order and, if such representations are filed individually, the respondents shall scrutinize and examine each case in consultation with the records and thereafter pass a reasoned order on merits of each case within a period of six months thereafter. The interim order passed in any of the cases shall remain in force till the disposal of the representations.

9. No order as to costs.

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

*Attended
S. S. Advocate*

11/11/11

GOVT. OF INDIA
DEPARTMENT OF TELECOMMUNICATIONS.
OFFICE OF THE ASSISTANT ENGINEER, TELECOM CIVIL SUB DIVISION NO. II
GUWAHATI.

No. 112/TCSD-II/GH/97-98/147

dtd: 1/9/98

To,

The Executive Engineer
Telecom Civil Division.
Guwahati.

Subj:- Engagement of ~~XXXXXXXXXX~~ ^{Sewer} Sweep Women on Contract basis.

With reference to above mentioned subject this is to inform you that earlier one Sweepman was engaged on Casual basis and was working since last 2 years. In the month of May'98 due to the demise of the said ^{Sweepman} sweepman his wife was temporarily engaged by this office, but no payment was made and the lady is still working.

It was also seen that her name was published in the CAT, No. 142/98/1896

You are requested kindly to intimate the undersigned whether the said lady shall be engaged on contract basis

M. M. D. S.
31/8/98
Assistant Engineer (C)
Telecom Civil Sub-Div. No. II
Guwahati.

Affected
S. S. S. S.
Associate

-27-

Ann. No. 4
36

DEPARTMENT OF TELECOM. SERVICES
OFFICE OF THE GENERAL MANAGER, TELECOM.
KAMRUP TELECOM. DISTRICT
GUWAHATI: 781 007

GM/EST-179/TSM/00-01/67

Dated at Guwahati-7, the 25th Sept., 2000

In pursuance of the Chief General Manager, Telecom., Assam Circle, Guwahati approval order contained in letter No. ESTP-9/12/P/KCD/15 Dtd. 22.09.2000, a list of 29 (Twenty-nine) Casual Labourers is enclosed herewith for issuance of order conferring Temporary Status to those Casual Labourers as per Casual Labourers (Grant of Temporary Status) Scheme, 1989 as amended from time to time after observing usual formalities.

The date of effect of granting Temporary Status to those Casual Labourers will be from 01.09.1999 as per order under DO F.NO. letter No. 269-13/99-STN-II Dtd. 01.09.1999.

A specimen format for granting Temporary Status is enclosed herewith so that uniform order can be issued from all Units.

Formal order conferring Temporary Status to those Casual Labourers mentioned in the enclosed list may be issued under intimation to all concerned.

This order is issued with the concurrence of GMFD/GH.

- Encls:
1. List of 29 Casual Labourers
 2. A Specimen Format for granting TSM.

Sd/-
(A. C. Datta)
Sub-Divisional Engineer (Admn.)

Copy to:

01. The Chief General Manager, Telecom., Assam Circle, Guwahati for favour of information.
- 02-03. The Area Manager, Telecom. (East)/(West).
- 00-04. The Dy. General Manager (P&A).
- 07-11. The D.E. (Ext-I)/(Ext-II)/(Ext-III)/(Ext-IV)/(CC-GH)/(CC-DIS)/(E-103)/(Plg.)
- 02-10. The S.D.O.P. (C-I)/(NMT)/(North (Paaja)/(Ada)/(Ulu).
- 13-22. The SDE (Opn.-BJR)/(CC-Dis)/(MC)/(PP)/(C-W-I).
23. SDOT (Kamrup).
24. PA (Engg.) to AMT (East).
15. The Sr. A.O. (Cash), O/O the GMFD/GH.
26. CSS, Pay Bill.
27. Spare.

A. C. Datta
For G. M. T. D. GH-7

*Attended
S. Seal
Advocate*

ANNEXURE No. 5

To,

The Executive Engineer,
Telecom Civil Division,
Guwahati.

Through Proper Channel.

Sub. : Regularisation of Group 'D' Post.

Sir,

With due respect, I would like to inform you that my husband was working since Dec. '91 to 12.5.98 and was died on 20.5.98. After then I have been working as a Sweerman in the department till now.

Therefore, I request your honour, kindly regularised me in the same post, for which I shall be grateful to you.

Thanking you,

Yours faithfully,

Dated, the Gauhati
22.11.98.

(LAKSHMI APPARAO)
Sweerman.

copy to :-

- 1. The A.E(C), T.C.S.D-II,
Guwahati.

(LAKSHMI APPARAO)

*Attest
S. Seal
Advocate*

ANNEXURE No. 6.

BHARAT SANCHAR B NIGAM LIMITED
(A Government of India Enterprises)
OFFICE OF THE SUPERINTENDING ENGINEER (CIVIL)
CIVIL CIRCLE :: ULUBARI :: GUWAHATI- 7
Fax No. 0361-524599 :: Telephone No.0361-454444

No. 8(3)00/BSNL/CC/GH/396

Dated 3.5.2001.

To,

The Executive Engineer (D),
BSNL, Civil Division,
Guwahati - 781 001.

Sub. : Confirming of Temporary status to Casual
labour - case of Smt. Lakhmi Apparo wife
of late Esarapo Apparo.

Ref. : Your Office letter No. 16(8)99/GHCD/Vol.II/
744 dated 9.5.2001.

On scrutiny of the above case which you had forwarded to this office under your above referred letter the following points have been found.

1. The subject should on "Compassionate ground" instead of conforming T.S.M. to Smt. Lakhmi Apparo as per husband Late E. Apparo had worked since 1991 to 19.5.98 and expired on 20.5.98. This is as per paid vouchers enclosed along with the above referred letter along with the statement No. 2 SL.

2. Proper format on compassionate ground and check list thereof should be forwarded to this office for onwards transmission of the case of O/o C.E (C) for consideration.

3. The death certificate of the expired worker should be from the competent authority and an attested copy should be enclosed.

4. Report...

Attested
S. S. S. S.
Advocate

Ax. No. 6 (...2)

4. Report of Welfare Officer, declaration of unemployed, declaration of no objection ~~xxx~~ from other family members should be submitted.
5. Declaration of maintenance of family members by the applicant along with details of the family members should be submitted.

Over and above any other relevant certificate as per check list annexure A and B should be furnished while forwarding the case to the office.

The following documents are returned herewith for re-submission to this office after compliance of the above noted points as early as possible.

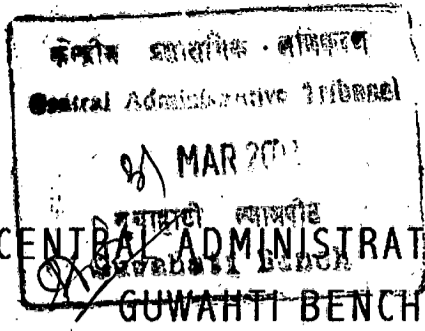
Sd/- I HegibTe.

9.5.2001

Superintending Engineer,
BSNL, Civil Circle,
Guwahati.

Encl. : 64 sheets
from Sl. No. 1 to 64,

Attested
S. Seal
Advocate



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. NO.275/2002

Filed by
B. C. Pathak
31/3/02
Addl. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench : Guwahati

Smti. Lakhmi Apparao ... Applicant

-versus-

Union of India and others ... Respondents

Written statements filed by the respondent No.1,2,3 and 4)

The written statements of the abovenoted respondents are as follows:

1. That the copy of the O.A. No.275/2002 (referred to as the "application") has been served on the respondents. The respondents have gone through the same and understood the contents thereof. The interest of the respondent No.1 is different from the interest of the respondent No.2,3 and 4. The respective liability and legal status of them are also changed by operation of law as indicated hereinbelow. However, the respondent No. 2,3 and 4 are representing the respondent No.1 as assignees and successors only for the limited purpose.

①

2. That the statements made in the application, which are not specifically admitted by the respondents, are hereby denied.

28/9/02

D. Anuram

OA 364
366
372
4

3. That before traversing the various paragraphs of the application, the respondents beg to give a brief resume of the case and its background as under :

The husband of the applicant worked for only two years as seweraman on casual basis. At the time of his death he was a casual labourer under the respondents. He was not even conferred with temporary status. After the death of the husband, the applicant alongwith some others joined as one of the applicants in O.A.142/98 which was disposed of by this Hon'ble Tribunal on 31.8.99 with a direction to examine their cases individually on the basis of records and if they could fulfill the criteria as required by the scheme of 1989, they were directed to be conferred with temporary status and then to regularize as provided in the said scheme. The case of the applicant was examined and it was found that she was not engaged in job by the respondents. As she could not come within the zone of consideration, her case was rejected under the said scheme. The said scheme was operative only upto 1.8.98, hence the case for consideration of the applicant under the scheme of 1989 as casual labourer can not be considered. On the other hand, the applicant also cannot be considered for compassionate appointment under the scheme of 1998 as her husband was not a "Government servant" within the meaning of the term of the said scheme for compassionate appointment. Moreover, the Hon'ble Supreme Court in **State of Haryana & others -vs- Rani Devi and others** as reported in JT 1996(6)SC 646 also has made in clear that that the scheme is extended to the Government servant appointed on regular basis and not one working on daily wage or casual or apprentice or adhoc or contract or re-employment basis.

The present application is the second round of litigation. The applicant sought relief by this instant application for granting her relief both under the scheme of 1989 for conferment of temporary status and /or to regularize her services on compassionate basis under the scheme of 1998 for the death of her husband. But, the applicant by a Misc. Petition, registered as the M.P. No. 141/2002 made a prayer to this Hon'ble Tribunal to allow her to seek relief only for compassionate appointment under the scheme of 1998 and not for conferment of temporary status

(33)
42

under the scheme of 1989. The prayer of the applicant has been allowed by this Hon'ble Tribunal. As the prayer of the applicant has been limited to only for consideration for appointment on compassionate ground, the applicant is not entitled to be considered for such compassionate appointment as the applicant in this case also does not come within the zone of consideration. Moreover, compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future. Hence the application has been filed without any cause of action and therefore the same is liable to be dismissed with cost.

It is also pertinent to state here that the present application is also not maintainable and is liable to be dismissed with cost.

The respondents also state that there has been change of status of the respondents subsequently which are explained hereinbelow :

(a) The Govt. of India, Ministry of Communication, Department of Telecom, as a matter of government policy decision, brought some changes whereby the status of the petitioners were completely changed/alterd giving rise to various legal complications/ implications. In pursuance to the New Telecom Policy, 1999, Govt. of India with a view to corporatise the provisions, functions of the Department of Telecommunications (DoT) formed a company named and styled as the " Bharat Sanchar Nigam Limited" (hereinafter referred to as the "BSNL") with its detailed Memorandum of Association and the Articles of Association. The said company was registered with the Registrar of Companies under the Companies Act, 1956 on 15.9.2000. The necessary Certificate of Incorporation and the Certificate of Commencement of Business were also duly issued by the authorities. Thereafter, when the BSNL came into existence as a separate, distinct legal entity having its Board of Directors as the absolute and supreme authority to regulate the affairs of the said BSNL, the Govt. of India, Ministry of Communications, Deptt. Of Telecom. Services, brought out the Office Memorandum No. 2-31/2000-Resig dt.30.9.2000. By this O.M. the Govt. of India has transferred and assigned all the assets and liabilities and all the existing

and subsisting contracts, agreements and Memoranda of Understanding of the Deptt. Of Telecommunications, Deptt. of Telecom. Services and the Deptt. Of Telecom. Operations to the said BSNL with effect from 1.10.2000. By the said O.M. the Govt. of India also made it clear that they have retained the function of policy formulation, licensing, wireless spectrum management, administrative control of PSUs, Standardization and Validation of equipment and P & D etc. By the said O.M. it was also made clear that the BSNL would be solely responsible for such contracts or agreements etc. and shall sue or be sued in such cases. The O.M. also made it clear that the BSNL shall conduct all such court cases as assign or successor in interest of the Government/ Deptt. Of Telecommunications and also implement such judgments, orders etc. in accordance with rules, regulations, directions of statutes. By the said O.M. it has also been made clear that in respect of matter relating to personnel (Govt. servants) pending before various Administrative Tribunals, High Courts and Supreme Court, the BSNL will defend as assigns or successor in interest as per existing rules till the time employees are on deemed deputation with the Company. This O.M. however, does not speak anything about the cases of the Casual labourers. A casual labourer is not a civil servant within the meaning of Article 310 and 311 of the Constitution of India or under rule 2(b) of the Central Civil Services (Pension) Rules, 1972.

The copies of the Certificate of Incorporation, Certificate of commencement of business, O.M. dt.30.9.2000 are annexed as ANNEXURE-1, 2 and 3 respectively.

(b) That the BSNL is a State within the meaning of the Article 12 of the Constitution of India as it is an instrumentality /agency of the Govt. of India having deep and pervasive control over it. Unless the Govt. of India by issuing notification under section 14 (2) of the Central Administrative Tribunal Act, 1985 brings BSNL within the jurisdiction of the Central Administrative Tribunal, the Tribunal shall not have jurisdiction to try such matter related to conditions of service of employees of the BSNL from 1.10.2000 onwards. The Tribunal also can not exercise its power under section 14 (2) and (3) automatically.

It is indicative from the facts that the Govt. of India has conferred jurisdiction on the Tribunal by subsequent notifications to bring some societies like Kendriya Vidyalay Sangathan and autonomous bodies/corporations like University Grants Commission, ESIC etc. The writ petitioners crave the leave of this Hon'ble Court to allow them to place such records and rules at the time of hearing of the case. Some Benches of the Tribunal has already taken such views in such matter and held that the Tribunal shall have no jurisdiction over the BSNL. In cases (O.A. No.198/2001 and O.A 289/2001 (series)), the Calcutta and this Hon'ble Bench of the Tribunal has held that the Tribunal has no jurisdiction over the BSNL .

A copy of the order dt.1.3.2001 and 3.9.2002 passed in the O.A.No.198/2001 and 289/2001 are annexed herewith as ANNEXURE-4 and 5 respectively.

4. That with regard to the statements made in para 1,2,3,4.1 and 4.2 of the application the answering respondents reasserts and reiterates the foregoing statements made herein above and state that the application is liable to be dismissed as devoid of any merit.
5. That with regard to the statements made in para 4.3 and 4.7, the respondents state that this two statements are contradictory, false and confusing ones. Moreover, the applicant has given up her claim for consideration of her case under the scheme of 1089 by filing the M.P No.141/2002 and hence she is not entitled any such benefit. In this connection the respondents also state that the applicant was not engaged as casual basis or otherwise by the respondents. The claim of the applicant is baseless. The letter as in Annexure-3 is nothing but a communication seeking sanction or approval of the action of the subordinate authority by the higher and competent authority. Such action was never approved /sanctioned by the competent authority of the

respondents and therefore the applicant can acquire any right from the illegal action of the officer without any authority or power. Moreover, the Govt. of India has banned any kind of recruitment in any post and the engagement of casual labour has been banned since long back. The respondents crave the leave of this Hon'ble Tribunal to allow them to produce such circular orders at the time of hearing of the case.

6. That with regard to the statements made in para 4.4 , the respondents state that the applicant can not be a member of the said Association as per restriction imposed by the CCS(RSA) Rules, 1993. In this connection, it is pertinent mention here that the matter was agitated while this Hon'ble Tribunal heard the O.A.107/98 (Series) and passed the common order on 31.8.99, this matter was left out and considering this disputed question, the Hon'ble Tribunal issued the direction to both the applicants and the respondents to examine the cases individually and by giving them personal hearing the applicants were directed to submit the representation/claim individually and not collectively or with the help/representation of any union/association.
7. That with regard to the statements made in para^{4.5,} 4.6 , 4.7, 4.8 and 4.10 the respondents reassert the foregoing statements and state that the Hon'ble Tribunal in some cases where some applicants were currently in engagement at the particular point of time, directed the respondents to not to disengage such applicants. But the applicant in this case was not at all in engagement, hence in her case such direction had no application at all. The respondents however considered cases of hundreds of applicants in different applications and also conferred temporary status to those who could fulfil the required criteria under the scheme of 1989.
8. That with regard to the statements made in para 4.9, the respondents reiterate the foregoing statements made in this written statements and also state that as stated hereinabove, the applicant is not entitled to

compassionate appointment under the scheme of 1998 as she does not fulfil the required criteria.

9. That with regard to the statements made in para 4.11, the respondents state that there are no such provisions in the MOU or the Memo. Of Association of the BSNL to bind the BSNL for the pre-incorporation contracts or agreements or any other liabilities of the DOT. The applicant is put to strict proof thereof to show in the court that there are such provisions that the BSNL is otherwise liable for DOT in such matter.

10. That with regard to the statements made in para 4.12 and 4.13, the respondents state that the superintending Engineer, might have written the said letter to help out the applicant on humanitarian grounds. But where there are definite schemes/rules for regulating the appointment / recruitment/engagement, the superintending Engineer perhaps acted without knowing the law. Such illegal action of the said authority will not confer any right to the applicant. The in this regard is well settled by the Hon'ble Supreme Court.

Regarding the alleged payment made to the applicant, the respondents state that when the applicant was not engaged at all, there cannot be any payment made to her. There is no regard of such payment with the respondents. Hence, the allegations are false and made with ulterior motive for wrongful gain.

11. That with regard to the statements made in para 5.i to 5.v, the respondents state that in view of the facts and circumstances of the case and the provisions of law, the grounds as shown by the applicant are not tenable in law and the application is liable to be dismissed with cost.

12. That the respondents have no comment to offer to the statements made in para 6 and 7 of the application.

13. That with regard to the statements made in para 8.i to 8.iv and the 9.i and 9.ii, the respondents state that under the facts and circumstances of the case and the provisions of law, the application is liable to be dismissed with cost considering it to be devoid of any merit.

In the premises aforesaid , it is therefore prayed that Your Lordships would be pleased to hear the parties , peruse the records and after hearing the parties and perusing the records, may also be pleased to dismiss the application with cost.

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

I, Shri S.C.Das, at present working as the Asstt. Director (Legal) in the Office of the Chief General Manager, Assam Circle, Guwahati, being competent and duly authorized to sign this verification for and on behalf of all the respondents, do here by solemnly affirm and state that the statements made in para 1, 2, 4 to 13 — are true to my knowledge and belief, those made in para 3 — being matter of records, are true to my information derived therefrom, and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this 29th day of March, 2003 at Guwahati.

S. C. Das

(S C Das)

Deponent

Assistant Director Telecom (Leg) Guwahati-7, Assam
 On the Chief General Manager, Assam Circle, Guwahati-7, Assam

-9-
-6- 62
-8-

ANNEXURE :

7 (39)
48

ANNEXURE : 1

ANNEXURE : 1



सत्यमेव जयते

प्रारूप एक
Form 1

निगमन का प्रमाण पत्र
Certificate of Incorporation

सं०..... 55-107739 राक..... 19..... 22

No. 55-107739 of 2000-2001

मैं एतद् द्वारा प्रमाणित करता हूँ कि आज..... भारत संचार निगम लिमिटेड

कम्पनी अधिनियम 1956 (1956 का 1) के अधीन निर्मात की गई है और यह कम्पनी परिसीमित है।

I hereby Certify that BHARAT SANCHAR NIGAM LIMITED

is this day incorporated under the Companies Act, 1956 (No. of 1956) and that the Company is limited.

मेरे हस्ताक्षर से आज ता०..... 24 भाद्रपद, 1922 को दिया गया।

Given under my hand at..... NEW DELHI this..... FIFTEENTH

day of SEPTEMBER Two Thousand.....

(राकेश चन्द्रा)
कम्पनी रजिस्ट्रार
Registrar of Companies
रा. रा. क्षेत्र दिल्ली एवं हरियाणा
N.C.T. of Delhi & Haryana

Advocate
Date:

COMPANY NO. 55-107739



सत्यमेव जयते

Certificate for Commencement of Business

व्यापार प्रारम्भ करने का प्रमाण-पत्र

Pursuant to section 149 (3) of the Companies Act, 1956

कम्पनी अधिनियम 1956 की धारा 149 (3) के अनुसरण में

I hereby certify that the..... **BHARAT SANCHAR NIGAM LIMITED**

में एतद् द्वारा प्रमाणित करता हूँ कि..... **भारत संचार निगम लिमिटेड**

which was incorporated under the Companies Act, 1956 on

जो कि कम्पनी अधिनियम, 1956 के अन्तर्गत पंजीकृत की गई थी दिनांक..... 24 भाद्रपद, 1922

the..... **FIFTEENTH**..... day of..... **SEPTEMBER**..... 2000

and which has filed duly verified declaration in the

और जिस ने कि यथावत् निर्धारित प्रपत्र में सत्यापित घोषणा पत्र प्रस्तुत

prescribed form that the conditions of section

कर दिया है कि उस ने धारा 149 (2) (क) से (ग)

149 (2) (a) to (c) of the said Act, have been complied with is entitled

जो सभी शर्तों को अनुपालन कर दिया है, अतः व्यापार आरम्भ करने का

to commence business

अधिकारी है।

Given under my hand at NEW DELHI

मेरे हस्ताक्षर से आज दिनांक..... 28 भाद्रपद, 1922

this..... **NINTEENTH**..... day of..... **SEPTEMBER**

TWO THOUSAND.....

को जारी किया गया।

(टी.पी. रामा)

उप कम्पनी रजिस्ट्रार

Dy. Registrar of Companies

रा. रा. क्षेत्र दिल्ली एवं हरियाणा

N.C.T. of Delhi & Haryana

ANNEXURE 2

ANNEXURE : 2

nts

NO.

12

15

17

49

57

61

66

697

75

New Delhi, the 30th September, 2000.OFFICE MEMORANDUM

Subject:- Transfer and assigning of existing and subsisting contracts, agreements and Memoranda of Understanding of the Department of Telecommunications, Department of Telecom. Services and Department of Telecom. Operations to Bharat Sanchar Nigam Limited.

In pursuance of New Telecom Policy 1999, the Government of India has decided to corporatise the service provision, functions of Department of Telecommunications (DoT). Accordingly, the undersigned is directed to state that the Government of India has decided to transfer the business of providing telecom services in the country currently run and entrusted with the Department of Telecom Services (DTS) and the Department of Telecom Operations (DTO) as was provided earlier by the Department of Telecommunications to the newly formed Company viz., Bharat Sanchar Nigam Limited (the Company) with effect from 1st October 2000. The Company has been incorporated as a company with limited liability by shares under the Companies Act, 1956 with its registered and corporate office in New Delhi.

2. The Department of Telecom. Services and Department of Telecom. Operations concerned with providing telecom services in the country and maintaining the telecom network/telecom factories were separated and carved out of the Department of Telecommunications as a precursor to corporatisation. It is proposed to transfer the business of providing telecom. services and running the telecom factories to the newly set up Company, viz., Bharat Sanchar Nigam Limited w.e.f. 1st October 2000. The Government has decided to retain the functions of policy formulation, licensing, wireless spectrum management, administrative control of PSUs, standardisation & validation of equipment and R & D etc. These would be responsibility of Department of Telecommunications (DoT) and Telecom Commission.

3. Government of India has decided to transfer all assets and liabilities, (except certain assets which will be retained by Department of Telecommunications required for the units and offices under control of DoT, to be worked out later on), to the Company with effect from 1st October 2000. All the existing contracts, agreements and MoUs entered into by Department of Telecommunications, Department of Telecom Services and the Department of Telecom Operations with various suppliers, contractors, vendors, companies and

-12 = 64 65

② 42

(16)
~~12~~
- 11 -

5

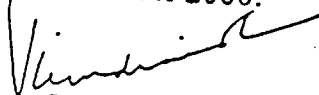
individuals in respect of supply of apparatus and plants, materials, purchase of land and buildings and supply of services, subsisting on date of transfer of business and/or required for operations of the Company and with subscribers of all types of services to be provided by the Company, will also stand transferred and assigned to the Company with effect from 1st October, 2000. The Company will be solely responsible for honouring these contracts, agreements and MoUs for their due performance and in case of disputes to sue and be sued as the successor/assignee under the contract, agreement and MoU.

* 4. The Company, Bharat Sanchar Nigam Limited will file suitable required appearances/memos in all pending cases before the Courts, Tribunals, Arbitrators, Adjudicators in all matters except issues of licensing and policymaking which are with the Department of Telecommunications. The Company may get substituted or become an additional party as the case may be, or just conduct the cases as assigns or successor in interest of the Government/Department of Telecommunications, as permissible. This may, in so far practicable, be completed by 31st December 2000.

5. In respect of matters relating to personnel (Government servants) pending before various Administrative Tribunals, High Courts and Supreme Court the Company will defend as assigns or successor in interest as per existing rules till the time employees are on deemed deputation with the Company.

6. Any judgement/order/award delivered by an Authority/Tribunal/Court/Arbitrator in respect of all the matters described there shall be implemented in letter and spirit by the Company, in accordance with rules, regulations, directions and statutes.

7. These instructions will come into force with effect from 1st October 2000.


(VINOD VAISH)

Secretary to the Government of India

To
To

1. The Secretary DoT and Chairman Telecom Commission.
2. The Secretary, DTS.
3. The Secretary, DTO and Member(Prodn.) Telecom Commission.
4. Member(Finance) Telecom Commission.
5. Member(Services) Telecom Commission.
6. Member(Technology), Telecom Commission.
7. Additional Secretary(T) and Secretary Telecom Commission
8. Joint Secretary(T), DoT.

9. Joint Secretary(A), DoT.
10. OSD Corporatisation (DoT) with request to bring it to the notice of the Board of Directors of Bharat Sanchar Nigam Limited.
11. All Chief General Managers of Telecom Circles, Metro Districts, Project Circles, Maintenance Regions, Telecom Stores, Railway Electrification Projects with request to communicate these orders to all units working under their administrative control.
12. All Principal Chief Engineers / Chief Engineers - Civil and Electrical Wings, with request to communicate these orders to all units working under their administrative control.
13. Chief Architects - Chennai, Calcutta and Mumbai, with request to communicate these orders to all units working under their administrative control.
14. All Chief General Managers - Telecom Factories, with request to communicate these orders to all units working under their administrative control.
15. Sr.DDG(TEC)
16. Sr.DDsG- (BW)/(ARCH.)/(ELECT.)
17. Sr.DDG(ML) - with request to communicate these orders to all PSUs working under their administrative control.
18. Sr.DDG(IC & A)
19. Executive Director, C-DOT.
20. Sr.DDG(Vigilance), DoT
20. DDG(Pers.)

Copy to:-

1. PS to Minister of Communications
2. PS to Minister of State for Communications
3. All Advisers, DoT.

Copy also to:-

1. Bharat Sanchar Nigam Limited.

77 - 76 - 14 -
DOCUMENT - 6 - 14 -
- 13 -

(8) (15) 44

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

ANNEXURE 4
ANNEXURE 4

O. A. 198 of 2001

Presently Hon'ble Mr. Justice R.H. Roy, Vice-Chairman
Hon'ble Mr. S.P. Singh, Administrative Member

BLSWANATH BANERJEE
VS.

UNION OF INDIA & ORS.

For the applicant : Mr. B.K. Mandal, counsel
For the Respondents : Mr. N.S. Banerjee, counsel

Heard on : 1.3.2001 Order on : 1.3.2001

ORDER

R.N. Roy, V.C.

Ld. counsel for both sides are present. This case is relating to the Department of Telecom which has now become a corporate body. Bharat Sanchar Nigam Limited is definitely a corporate body under the Government of India within the meaning of Article 12 of the Constitution. But that has not been notified till today and therefore, this court has no jurisdiction to entertain such petition.

2. Accordingly, the O.A. is disposed of as 'not maintainable'.
The applicant may approach the appropriate forum in respect of his grievances made in this O.A. No order as to costs.

MENDRICKA



VICE-CHAIRMAN

Countersigned by
Sd/-
Secretary
Central Administrative Tribunal
Calcutta Bench

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH. ANNEXURE : 5

Original Applications No. 289/2001, 364/2001, 366/2001, 372/2001, 403/2001, 109/2002 and 160/2002.

Date of Order : This the 3rd Day of September, 2002.

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

The Hon'ble Mr K.K.Sharma, Administrative Member.

54

O.A. 289 of 2001

- 1. Sri Dondi Ram Gayan,
 - 2. Sri Gobin Nath,
 - 3. Sri Joy Gopal Das,
 - 4. Sri Kandeswar Konwar.
 - 5. Md Abdul Gafar Choudhury,
 - 6. Sri Thanu Ram Jha,
 - 7. Md. Abul Kalam and
 - 8. Sri Anup Bora
- By Advocate Sri S.Sarma.

. . . Applicants

- Versus -

Union of India & Ors.

. . . Respondents

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

O.A. 364 of 2001

Sri Dep Kumar Rai
By Advocate Sri S.Sarma.

. . . Applicant

- Versus -

Union of India & Ors.

. . . Respondents.

By Sri B.C.Pathak, Addl.C.G.S.C.

O.A. 366 of 2001

Sri Jun Das,
By Advocate Sri S.Sarma.

. . . Applicant

- Versus -

Union of India & Ors.

. . . Respondents

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

O.A. 372 of 2001.

Sri Khitish Deb Nath
By Advocate Sri S.Sarma

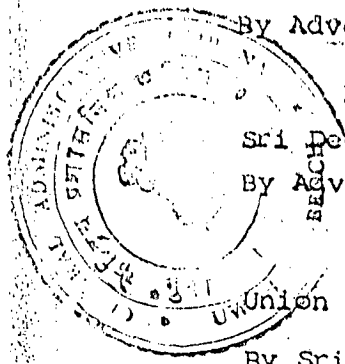
. . . Applicant

- Versus -

Union of India & Ors.

. . . Respondents.

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



- 2 - -15 -
- 16 - - 16 -

(46)

O.A. 403 of 2001

1. Md Nurmahammad Ali,
2. Md Sahabuddin Ahmed,
3. Md Alamid Choudhury,
4. Md Marimurraman Ali,
5. Sri Benudhar Das and
6. Md. Tafik Ali . . . Applicants
By Advocate Sri B.Malakar
- Versus -

Union of India & Ors. . . Respondents.
By Sri A.Deb Roy, Sr.C.G.S.C.

O.A. 109 of 2002

Sri Dilip Kumar Tante . . . Applicant
By Advocate Sri N.Borah.
- Versus -

Union of India & Ors. . . Respondents
By Sri A.Deb Roy, Sr.C.G.S.C.

O.A. 160 of 2002

Th. Subendra Singh
2. All India Telecom Employees Union
Line Staff and Group-D,
Manipur Division, Imphal
represented by Divisional Secretary,
Sri M.Kulla Singh . . . Applicants.

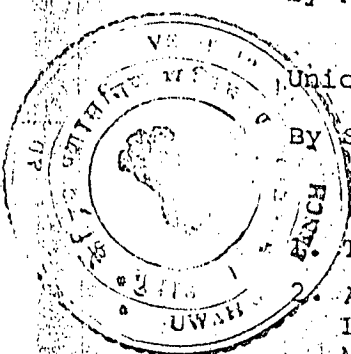
By Advocate Sri S.Sarma.
- Versus -
Union of India & Ors. . . Respondents.

By Sri B.C.Pathak, Addl.C.G.S.C.

ORDER

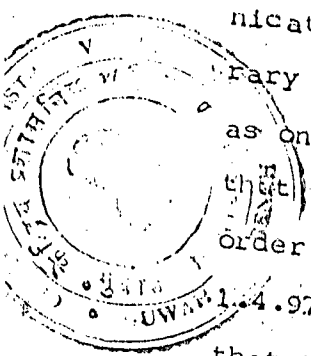
CHOWDHURY J.(V.C)

The issue involved in these cases pertains to conferment of temporary status in the light of the scheme prepared by the Telecom Department pursuant to the decision of the Supreme Court in Ram Gopal and others vs. Union of India and others dated 17.4.90 in Writ Petition(C) No. 1280 of 1989. Keeping in mind the plight of the casual



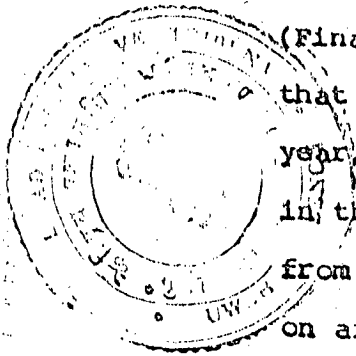
56

labourers the Supreme Court in the above mentioned case directed the authority to prepare a scheme on rational basis for absorbing as far as possible casual labourers those who continuously worked for more than one year in the telecom department. The department of Telecom also followed the suit and prepared a scheme of conferment of temporary status on casual labourers who were employed and have rendered continuous service for more than one year in the telecom department. Accordingly the scheme known as "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme 1989" was prepared. By order dated 1.9.99 the Government of India, Department of Telecommunications mentioned about its approval on grant of temporary status to the casual labourers who were eligible as on 31.3.97. By the said communication it was clarified that the grant of temporary status to the casual labourers order dated 12.2.99 would be affective with effect from 1.4.97. By the said communication it was also clarified that the persons would be eligible for conferment of temporary status who were eligible as on 1.8.98. It may be mentioned that the said communication was issued to the authorities for judging the eligibility on 1.8.98 and did not naturally mean that one was to be in service on the date prescribed. on the date prescribed. insisted was to attain the eligibility/ Numerous applications were filed before us for conferment of temporary status in the light of the scheme. In some of the cases we directed the authority to consider the cases and to pass appropriate order. In some of the cases the authority passed orders rejecting their claim. Against which the aggrieved person moved this Tribunal by way of these applications. In some of the applications written



47

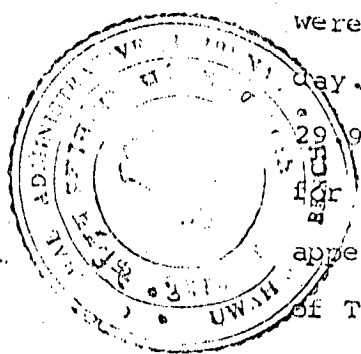
statements were filed and some documents also annexed. On assessment of documents it appears that there was no conformity with the findings reached by the authority alongwith the records produced regarding their engagements. In some cases records indicated that they were engaged for more than 240 days, whereas in the finding they were shown that they did not served for 240 days. In our opinion the matters requires a fresh re-consideration by a responsible authority so that cases of eligible casual labourers are fairly considered. To cite example with the case of O.A.372/2001 the Verification Committee report dated 12.3.02 was shown to us. The Committee consisting of S.C.Tapadar, D.E.(Admn), N.K.Das, C.A.O (Finance) and G.C.Sharma, ADT(Legal) verified and mentioned that the applicant did not complete 240 days in a calender year, whereas again column No. of days yearwise/monthwise in the Annexure the authority referred to his engagement from August 97 to August 98 which comes around 240 days on arithmetical calculation. By another verification committee meeting dated 12.3.2002 consisting of M.C.Pator, D.E(Admn), N.K.Das, C.A.O(Finance) and S.C.Das, ADT(Legal) Circle Office, Guwahati. The committee stated that the applicant completed 45 days in 1994, 20 days in 1995, 24 days in 1996, 15 days in 1997 and one day in April, 1998. The documents contradict itself. We are of the opinion that such type of enquiry or verification committee does not inspire confidence, it was seemingly done in sloven and slip shod fashion. On the other hand it should be entrusted to a responsible authority who would act rationally and responsively. After all it involves to the livelihood of persons concerned and the commitments of the Government.



W

We have perused background story of the scheme which itself reflected the approval of the authority for absorption of those people for giving the benefit of Government of India at the instance of the Supreme Court. The Council for the respondents however pointed out that there is a big change in the administrative ^{set up} of the Telecom department. Referring to the new telecom policy of the Government of India 1999, whereby it decided to corporatise the Telecom department ^{through} Bharat Sanchar Nigam Limited and stated that the matters are now within the domain of the BSNL. We are basically concerned in these applications as to the absorption of those casual labourers who were worked under the telecom department as on 1.8.98 and who were eligible for grant of temporary status as on that day. The office memorandum No.269 94/98 STN.II dated 29.9.2000 itself indicated the commitment of the authority for regularisation of the casual labourers. It also appears from the communication issued by the department of Telecommunication dated 3.9.2002 ^{13.5.02} which expressed its concern for resolving the situation. Mr B.C.Pathak, learned Addl.C.C.S.C sought to raise a question of maintainability in some of the cases where BSNL is a party. BSNL since not notified under Section 14(2), the Tribunal has no jurisdiction to entertain the matter. In these applications the real issue is absorption of the casual labourers those who worked under the telecom department from 1.8.98. The respondents, more particularly, Telecom department committed to its policy for regularisation of such employees. In the circumstances we are of the opinion it will be a fit case to issue appropriate direction to the department of Telecom and the Chief General Manager, Assam Telecom Circle, Guwahati to take appropriate steps for considering the case of these applicants afresh by constituting a responsible committee to go through it ^{all} once for ^{all} and

SB

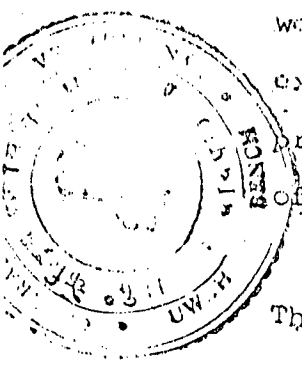


25.9.

Wavy signature line

scan their records and if in the end it found these people really fulfilled the requirement it will issue appropriate direction to the concerned authority for conferment of temporary status and their absorption as per the scheme. It is expected that the authority shall take appropriate steps after verifying the records and pass appropriate order by notifying these persons concerned. This exercise shall not be confined only to the applicants and the authority shall also deal with the cases left out from the process and examine their case independently. The matters are old one therefore we expect that the authority shall act with utmost expedition and complete the exercise as early as possible preferably within four months from the date of receipt of this order.

With these the applications stand disposed of. There shall, however, be no order as to costs.



Sd/ VICE CHAIRMAN
Sd/ MEMBER (Adm)

TRUE COPY

A. K. Jaiswal
Section Officer (Adm) 28/10/2022
Central Administrative Tribunal
Gandhinagar, Gandhinagar
AS 28/10/2022