

FORM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUJARATI BENCH

ORDER SHEET

Ords. App./Misc. Petn./Cont. Petn./Rev. Appl. 52/04.....

In O.A. 12/2003

Name of the Applicant(s) Smti Tripti Das

Name of the Respondent(s) H. C. I. Qrs.

Advocate for the Applicant M. Chanda, G.N. Chakraborty
S. Nath

Counsel for the Railway/C.G.S.C.

OFFICE NOTE	DATE	ORDER OF THE TRIBUNAL
This Contempt petition has been filed by the counsel for the applicant claiming for initiation of a contempt proceeding against the alleged contemners for non-compliance of the order dt. 26.9.03 passed by this Hon'ble Tribunal in O.A. 12/03.	23.11.04	Issue notice to show cause as to why contempt proceeding shall not be initiated against the alleged contemners. Returnable by four weeks.
		List on 24.12.04 for show cause and order.
		<i>K. D. Pathak Member</i>
		On the prayer of Mr. B.C. Pathak, learned counsel for the respondents, List on 20.1.2005 for order.
		<i>K. D. Pathak Member (A)</i>
		Heard learned counsel for the parties. A bare reading of the affidavit filed by Shri B.K. Mishra, Respondent No. 2 is grossly contemptuous in nature. In Para 4(a), line 14 to 18 of the affidavit has been apparently prima facie twisted. Besides this in para-
		<i>Q. contd/-</i>

20.1.05. graph 4 (d), the contemner in the Contempt petition has tried to challenge the findings of the Tribunal regarding completion of 240 days in the garb of findings of Verification Committee. The contemner goes to the extent of ^{Say} same that these findings of the ^{are} Tribunal was without consideration of the materials on record. On the top of it the contemners goes to the extent of submitting in paragraph 4 (e) that Hon'ble High Court passed the order per incuriam. It is therefore, considered necessary that Shri B.K. Mishra, General Manager, Telecom, Kamrup District, B.S.N.L, Ulubari, Guwahati shall personally appear before the Tribunal, without fail, on the next date of hearing and show cause as to why action should not be taken for the commission of gross contempt by him. Stand over to 8.2.05.

Received copy of the order dated 20.1.05.

Gogoi
27/1/05

(Respondent)

lm

U.P. Bhattacharya
Member

R.
Vice-Chairman

8.2.05.

Present: Hon'ble Mr.M.K.Gupta, Member(J)

Vide order dated 20th January, 2005 The Tribunal directed Shri B.K.Mishra, General Manager, Telecom, Kamrup District, B.S.N.L. Ulubari, Guwahati to appear in person without fail. Despite such order he is not present in the Court to-day.

There is no justification for his non-appearance. Mr. B.C.Pathak, Addl.C.G.S.C. for his absence I find communication informing that his mother died on 2nd February, 2005 and as such he would not be able to appear before this Tribunal.

In view of the above I find justification for his absence. Mr.D.Baruah learned counsel for the Respondents undertake to inform Mr.B.K.Mishra, General Manager, Telecom, Kamrup District, BSNL, Ulubari, Guwahati, ^{to appear} on 10th February, 2005 positively. It is made clear that if he is not present on the next date, the necessary ^{coercive} action would be taken in terms of Act and Rules. Adjourned to 10th Feb, 2005.

Received copy of the order dated 8/2/05 for the respondent

Dilip Baruah
Advocate 8/2/05

lm

R.W.
Member(J)

Notes of the Registry | Date | Orders of the Tribunal

10.2.05.

Present: Hon'ble Mr. M. K. Gupta, Member (J)
Hon'ble Mr. K. V. Prahладan, Administrative Member.

Vide Order dated 26th September, 2003, impugned order dated 26.3.02, which was subject matter in O.A. No. 12/03, was quashed and set aside and the Respondents were directed to take up the action for grant of Temporary status to the applicant forthwith.

The aforesaid order was affirmed by the High Court by dismissing B.S.N.L's Writ Petition (C) No. 724/04 vide order dated 10.2.04. Subsequently, Review Petition No. 41/2004 was also preferred by the B.S.N.L. and the question regarding Jurisdiction of this Tribunal, as well as certain other contentions were raised, which did not find any favour and accordingly the said Review Petition was dismissed vide order dated 28.5.04 with the following observations:

"It is an admitted fact that in the previous litigation before the Central Administrative Tribunal, the Tribunal has reached to the finding that the respondent had worked for more than 240 days. That order having not been challenged, has attained finality and in the subsequent proceeding the question of number of days worked could not have been raised.

It is then submitted by the learned counsel for the review petitioner that the Central Administrative Tribunal had no Jurisdiction to entertain the petition filed before it as the appellant Company has not been brought within the jurisdiction of the Central Administrative Tribunal. Learned counsel for the applicant/review petitioner has frankly admitted that the question of jurisdiction of the Central Administrative Tribunal had never been raised before the Tribunal either in the written statement filed before the Tribunal nor in argument before it or argue before us. Thus, for the first time, the question cannot be permitted to be raised before this Court in a review petition, when

contd/

Received copy
Bhatia/
10.2.2005
(Respondent)
Received
for
10/2/05
(Applicant)

Notes of the Registry Date Order of the Tribunal

10.2.05.

the decision on the said question would require investigation of factual situation. In view thereof the review petition is dismissed."

Thereafter, the present Contempt Petition was instituted alleging non-compliance of the direction issued by this Tribunal which stood ^{impart} by dismissing of respondents Writ Petition as well as Review Petition. Despite the aforesaid aspect the Respondent No.2 Shri B.K.Mishra, General Manager Telecom, Kamrup District, B.S.N.L., Ulubari, who filed reply on behalf of respondents used certain adverse and unwarranted remarks, though a communication dated 8th September, 2004 was also filed, which specifically stated that the competent authority had "decided not to go in for any further litigation in this regard."

Vide order dated 20.1.05 the Tribunal directed the aforesaid officer to appear before this Tribunal in person, particularly for the reasons that the observation was made by him in the said reply that the Gauhati High Court passed the final order, which is per incuriam. He also challenged the findings recorded by this Tribunal stating that the same was returned "without consideration of the materials on record".

In view of the above, Shri B.K.Mishra General Manager, Telecom, appears before this Tribunal to-day and stated that he was not the competent authority to comply the aforesaid direction passed by this Tribunal and it required sanction of the C.M.D., B.S.N.L. who is located at New Delhi.

We have noticed that Respondents have specifically stated that the competent authority had decided not to go in for any further litigation in matter, yet there is no compliance of the direction.

contd/-

Notes of the Registry | Date | Order of the Tribunal

10.2.05

We do not find any justification for non-compliance of the direction, particularly when it had attained finality, as noted herein above.

Therefore, a last and final opportunity is granted to Respondents to implement and comply the order dated 26.9.03 passed by this Tribunal within a period of 7 (seven) days from to-day and report compliance on 17th February, 2005. Failing which Mr. A.K. Sinha, Chairman cum-Managing Director, Telecom, B.S.N.L. New Delhi shall appear in person before this Tribunal on the said date.

List on 17.2.2005.


K. P. Prahadan
Member (A)


Member (J)

lm

17.2.05.

Present: Hon'ble Mr. M.K. Gupta,
Member (J)

Hon'ble Mr. K.V. Prahadan, Member (A)

Pursuant to direction of this Tribunal dated 26.9.03, and an appeal filed before the Gauhati High Court, which was dismissed vide order dated 10.2.04, the Respondents have placed on record the order dated 15th Feb., 2005 granting temporary status to the applicant. Copy of the said order is taken on record. Mr. M. Chanda learned counsel for the applicant states that he is satisfied with the said order, nothing survives. Accordingly, C.P. is closed. Notice are discharged.


K. P. Prahadan
Member (A)


Member (J)

lm

16-2-05
Copy of the order dt.
10-2-05 handed over
to the Addl. CG Secy on
10-2-05 and L/Adv. Bar
The application on 11-2-05
no compliance report
was also submitted by
the respondents.



Received the copy for
B.C. Baruwa
2/2/2005
Received
2/2/2005
B.C. Baruwa
2/2/2005

22 NOV 2004

TRIBUNAL IN THE CENTRAL ADMINISTRATIVE
GUWAHATI BENCH: GUWAHATI

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

Contempt Petition No. 52 /2004

In O.A. No. 12 of 2003.

In the matter of:

Smti Tripti Das.

... Petitioners.

- Versus -

Union of India and Others.

... Alleged Contemnors.

-And -

In the matter of

An application under section 17 of the
Administrative Tribunals Act, 1985 praying
for initiation of a Contempt proceeding
against the alleged contemnors for non-
compliance of the order dated 26.09.2003
passed in O.A.No.12/2003.

- And -

In the matter of:

1) Smti. Tripti Das.

W/o- Shri Sudip Das.

C/o- Sandip Kr. Das,

Varsha Para, Godrej Gali.

R.G. Baruah Road

Guwahati-18.

... Petitioner.

- Versus -

2
Filed by the Petitioner
Subroto D. Das
Advocate
22/11/04

1) Sri B.K.Sinha,

Chief General Manager Telecom,

Bharat Sanchar Nigam Limited,

Soniram Bora Path,

Ulubari,

Guwahati-781007.

2) Sri B.K.Mishra,

General Manager Telecom

Bharat Sanchar Nigam Limited,

Soniram Bora Path,

Ulubari,

Guwahati-781007.

... Alleged Contemnors.

The humble petitioners above named-

Most respectfully sheweth: -

1. That your petitioner being aggrieved due to her illegal rejection pertaining to conferment of temporary status, approached this Hon'ble tribunal through O.A. No. 12/2003.
2. That the Hon'ble Tribunal after hearing the contentions of the parties was pleased to dispose of the applications under order dated 26.09.2003 passed in O.A. No. 12/2003 directing the respondents as follows:

" As such the communication dated 26.3.2002 is accordingly set aside and quashed. The respondents are ordered to take follow up the action for conferment of temporary status to the applicant forthwith.

The application is accordingly allowed with cost of Rs. 1000/-".

(Copy of the judgment and order dated 26.09.03 is annexed hereto as Annexure-I).

3. That your petitioner thereafter approached the alleged contemnors for implementation of the judgment and further submitted letter dated 03.11.03 from M.Chanda, Advocate for early implementation of the Judgment and Order dated 26.09.2003 in O.A. No. 12/2003.

(A Copy of the letter dated 3.11.2003 is enclosed herewith and marked as Annexure-II).

4. That thereafter the alleged contemnors filed a Writ Petition which was registered as the WP (C) No. 724 of 2004 before the Hon'ble Gauhati High Court against the judgment and order dated 26.09.2003 of the Hon'ble Tribunal passed in O.A. No. 12/03, praying for setting aside and quashing the said order dated 26.09.2003 of the Hon'ble Tribunal. The Hon'ble High Court after hearing both the parties dismissed the writ petition following which the Respondents Union of India again filed a Review Application which was registered as the Review Application No. 41/04 and the same is also dismissed.
5. That the Hon'ble High Court after hearing the parties dismissed the writ petition by a order dated 10.02.2004 passed in WP (C) No. 724/04 and the operative part of the order are quoted below: -

“As per the notification issued under No. DY 2423 of 1995 dated 09.10.1995 and Govt. of India, department of Telecommunication No. 269-1399-STN II dated 01.09.1999, it has been decided under the scheme that the full time casual labour recruited after 29.11.89 and upto 01.09.1993 may also be considered for grant of benefits under the scheme. In view of the modification in the scheme, the casual labourers who have been appointed during the period 29.11.1989 to 01.09.1993 are also entitled to get the benefit under the scheme. The respondent having been

appointed after 29.11.1989 and before 01.09.1993 was rightly given the benefit under the scheme and we do not find any infirmity in the order passed by the learned Central Administrative Tribunal. Accordingly the appeal is dismissed".

After that the Respondents Union of India again filed a Review Application which were registered as the review application No. 41/04 and the same is also dismissed on 28.05.2004.

(Copy of the Judgment and order dated 10.02.04 and dismissal of review application dated 28.05.2004 is annexed hereto as Annexure- III and IV respectively).

6. That the petitioner again submitted a copy of the judgment and order dated 10.02.2004 of the Hon'ble High Court and prayed for implementation of the judgment and order dated 26.09.2003 of the Hon'ble Tribunal passed in O.A. No.12/2003 in view of the order dated 10.02.2004 of the Hon'ble High Court, whereby the writ petition under WP (C) No. 724/04 was dismissed.
7. That the alleged contemnors deliberately and willfully did not initiate any action for implementation of the judgment and order dated 26.09.2003 passed in O.A. No. 12/2003 by the Hon'ble Tribunal although a time lag of more than 9 months have been passed even after the passing of the order dated 10.02.2004 of the Hon'ble High Court which amounts to contempt of court. Therefore the Hon'ble Tribunal be pleased to initiate a contempt proceeding against the alleged contemnors for willful violation of the order of the Hon'ble Tribunal dated 26.09.2003 in O.A. No 12/2003 and further be pleased to impose punishment upon the alleged contemnors for willful and deliberate violation of the order of the Tribunal in accordance with law.

Under the facts and circumstances stated above, the Hon'ble Tribunal be pleased to initiate Contempt proceeding against the alleged contemnors for willful non-compliance of the order dated 26.09.2003 passed in O.A.

No. 12 of 2003 and be pleased to impose punishment upon the alleged contemners in accordance with law and further be pleased to pass any other order or orders as deemed fit and proper by the Hon'ble Tribunal.

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

AFFIDAVIT

I, Smt. Tripti Das, W/O Shri Sudeep kumar Das, aged about 40 years resident of Varsha Para, R.G.baruah Road, Godrej Goli, Guwahati-18, Assam, do hereby solemnly declare as follows: -

1. That I am the petitioner in the above contempt petition and to swear of this affidavit and as such I am well acquainted with the facts and circumstances of the case and also competent to sign this affidavit.
2. That the statement made in para 1 to 7 are true to my knowledge and belief and I have not suppressed any material fact.
3. That this Affidavit is made for the purpose of filing contempt petition before the Hon'ble Central Administrative Tribunal, Guwahati Bench for non-compliance of the Hon'ble Tribunal's order dated 26.09.2003 passed in O.A. No.12/2003.

And I sign this Affidavit on this 22nd day of November, 2004.

Identified by

Surajit Choudhury.
Advocate

Tripti Das.

Deponent

The above named deponent

Solemnly affirmed and declared
this affidavit before Shri Subrata
Nath, Advocate on 2nd day
of November, 2004, who is
identified by Surajit Choudhury
Advocate.

Subrata Nath.
Advocate.
22/11/04.

DRAFT CHARGE

Laid down before the Hon'ble Central Administrative Tribunal, Guwahati for initiating a contempt proceeding against the contemnors for willful disobedience and deliberate non-compliance of order of the Hon'ble tribunal dated 26.09.2003 passed in O.A. No 12/2003 and to impose punishment upon the alleged contemnors for willful disobedience and deliberate non-compliance of the Hon'ble Tribunal's order dated 26.09.2003.

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original application No. 12 of 2003.

Date of Order: This the 26th Day of September, 2003.

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

Smti. Tripti Das,
Wife of Sri Sudip Kumar Das,
resident of Udal Bakra, Rodalipath,
P.O. Udalbakra,
P.S. Dispur, Dist. Kamrup.

Wife of Sudip Kumar Das
resident of Udal Bakra
P.O. Udalbakra
P.S. Dispur, Dist. Kamrup.

...Applicant

By Advocate Sri M.Chanda.

- Versus -

1. Union of India,
represented by the Secretary to the
Government of India, Ministry of Communication,
Bharat Sanchar Nigam Ltd.,
New Delhi.

2. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Ulubari, Guwahati.

The District Telecom Manager,
Guwahati.

The S.D.O. (East),
Guwahati.

5. Sri M.C.Patar,
Divisional Engineer (Admn)
Office of the General Manager (Telecom),
KTD, Guwahati.

6. Sri N.K.Das,
Chief Accounts Officer,
Office of the GMT/KTD,
Guwahati.

7. Sri S.Das,
ATD (Legal),
Office of the Chief General Manager ,telecom,
Guwahati. ... Respondents

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

ORDER (ORAL)

CHOWDHURY J. (V.C.)

The issue relates to confirmation of temporary status. By the impugned order dated 26.3.2002 the respondents communicated the decision on the basis of the report submitted by Verification Committee. The applicant was accordingly informed the decision to the effect that she did not complete 240 days work in any calendar year since the applicant was working since April 1992 till May 1993.

True copy
Smti.
Advocate
29/10/03

2. Mr. M.Chanda, learned counsel appearing for the applicant submitted that she had rendered 240 days of service in the calender year of 1992-93. Mr. A.Deb Roy, learned Sr.C.G.S.C however disputed the contention of the applicant and submitted that the applicant had not rendered 240 days of service in any calender year reiterating the decision of the verification committee. Mr Chanda, learned counsel for the applicant however, bring it to my notice about the decision rendered by this Tribunal on 2.5.1997 in O.A.217/94 and the subsequent decision rendered by this Tribunal on 13.3.2000 in O.A.261/98. The observations made in para 7 of the judgment in O.A.217/94 is reproduced below :

"On perusal of the application and the written statement, we find that the applicant was appointed in the year 1991 and she worked more than 240 days and on the date of commencement of the scheme she was serving as per engagement. It may be mentioned here that the learned Addl.C.G.S.C has not referred to any other document other than the scheme.

Considering all the aspects of the matter we have no hesitation to come to the conclusion that the applicant was a casual labour."

The other observations made in para 5 of the judgment passed in O.A.261/98 is also reproduced below :

"Taking into account the facts and circumstances of the case and the reasons given in the Tribunal's order and the reasons wit which we respectfully agree, we reiterate the above order and make it clear that the scheme prepared by the respondents under the heading of "Casual labourers (Grant of Temporary Status and Regularisation) Scheme 1989, would be fully applicable to the services of the applicant as casual labourer with effect from 1.2.1991. Accordingly, the respondents are given further two months to fully comply with the directions of the Tribunal in O.A.217/94."

From the facts above and materials on record it appears that the applicant has rendered 240 days service during the calender year 1991 and 1992. From the materials on record it is also found that the applicant was entitled for confirmation of temporary status. The aforementioned judgment were not

challenged by the respondents in any other forum and the same has attained its finality. There is no scope for the respondents to hold that the applicant did not complete 240 days in any calender year. As such the communication dated 26.3.2002 is accordingly set aside and quashed. The respondents are ordered to take follow up action for conferment of temporary status to the applicant forthwith.

The application is accordingly allowed with cost of Rs.1000/-.

Sd/ VICE CHAIRMAN



pg

TRUE COPY

পরিতিপি

22/10/03
Section Officer (J)
C.A.T. GUWAHATI BRANCH
Guwahati-781005

11/11/03
পুরো গুৱাত
D.P.C. Receipt
CIO The General Manager (B.T. & T. B.T.)
B.T. & T. B.T. Telecom Sector, T.S. B.T.
Kamrup Telecom District, Gauhati

Manik Chanda
Advocate

- 11 -

Anspresso → II
Regd. No. 522998
Bye Lane - 7
Lachit Nagar
Guwahati - 781 007

Ref. No.

Date 3/11/2003

To

The District Telecom Manager
Kamrup Telecom District
Bharat Sanchar Nigam Limited
Soniram Bora Path
Ulubari
Guwahati-781007

Sub : Judgment and order dated 26.09.2003 in O.A. No. 12/2003 passed by the Hon'ble
CAT, Guwahati.

Sir,

Enclosed please find herewith a photocopy of the judgment and order dated 26.09.03
passed by the Hon'ble CAT, Guwahati Bench in O.A. No. 12/2003 (Smti Tripti Das Vs. Union
of India & Ors.) pertaining to conferment of Temporary status to the applicant. The judgment is
self contained.

This is for your necessary action and implementation please.

Enclo : As stated above.

Yours sincerely,

(Manik Chanda)

4/11/03
मेरी पूरी वार्ता
कृपया कृपया लेखें
O/A No. 12/2003 (26.09.2003)
OIO The District Manager
Kamrup Telecom District
Guwahati-781007

True copy
Manik Chanda
Advocate

the copy.	Date fixed for notifying the requisite number of stamps and folios.	Date of delivery of the requisite stamps and folios.	Date on which the copy was ready for delivery.	Date of making over the copy to the applicant.
16/2/2012	16/2/2012	16/2/2012	16/2/2012	16/2/2012

- 12 -

Annexure III

IN THE GAUHATI HIGH COURT

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from

Civil Rule

W. P (c) No. 724 of 2004

Appellant

Petitioner

Bharat Sanchar Nigam Limited & ors

versus

Shri. Tripti Das

Respondent

Opposite Party

Appellant

Mr. B. C. Pathak

For

Mr. D. Barua

Mr. B. Pathak

Respondent

For

Opposite Party

Noticed by Officer or

True Copy
Smti.
Advocate

Gauhati High Court

In the matter of:

1. M/s. Bharat Sanchar Nigam Limited (A govt. of India Enterprise)
Represented by the Chairman-cum-Managing Director,
Sanchar Bhawan, New Delhi-110001.
2. The Chief General Manager
M/s Bharat Sanchar Nigam Limited, Assam Circle, Ulubari,
Guwahati-7

3
- 3 -

3. The Telecom District Manager,
Guwahati.

4. The S.D.O (East),
Guwahati.

... Petitioners

-versus-

Smti. Tripti Das,
W/o. Sudeep Kumar Das,
Resident of Udal Bakra, Rodali
Path, P.O. Udalbakra, P.S.
Dispur, District - Kamrup,
Assam.

... Respondent

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			WP(G) NO. 724/04

BEFORE

**HON'BLE THE CHIEF JUSTICE MR.P.P.NAOLEKAR
THE HON'BLE MR.JUSTICE AMITAVA ROY.**

10.02.2004

Heard Mr.B.C.Pathak, learned counsel for the petitioner and Mr.M. Chanda, learned counsel for the respondent.

It is submitted by the learned counsel for the petitioner that under the scheme, the temporary status can only be conferred on the casual labourers who have been in service on the date of the scheme came into force i.e. 1.10.1989 under the Casual Labourer (Grant of Temporary Status and Regularization) Scheme. As per the learned counsel for the petitioner the respondent having been engaged as casual labour only in the month of April, 1992 the benefit under the scheme could not have been given.

Learned counsel for the Respondent Mr.M.Chanda has pointed to us the clarification and amendments to the scheme of grant of temporary status. As per the Notification issued under No. DY/2423 of 1995 dated 09.10.1995 and Govt of India, Department of Telecommunication No.269-1399-STN II dated 01.09.1999, it has been decided under the scheme that the full time casual labour recruited after 29.11.89 and upto 01.09.93 may also be considered for grant of benefits under the scheme. In view of the modification in the scheme, the casual labourers who have been appointed during the period 29.11.89 to 01.09.93 are also entitled to get the benefit under the scheme. The respondent having been appointed after 29.11.89 and before 01.09.93 was rightly given the benefit under the scheme and we do not find any infirmity in the order passed by the learned Central Administrative Tribunal. Accordingly, the appeal is dismissed.

S. D. Amitava Roy
Judge

Chief Justice

CERTIFIED TO BE TRUE COPY

M. Chanda

Date 17th day of Feb. 2004.

Superintendent (Covering Section)

Gauhati High Court

Authorised U/ 76, Act I, 1872

17/2/04

PAN 8254
17/2/04

एवं आवेदक की
तारीख
Date of application for
the copy.

स्टाम्प और फोलिओ की अपेक्षित
मौल्य सूचित करने की निश्चित
तारीख
Date fixed for notifying
the requisite number of
stamps and folios.

अपेक्षित स्टाम्प और फोलिओ
देने की तारीख
Date of delivery of the
requisite stamps and
folios.

तारीख, जबकि देने के लिए
प्रतिलिपि तैयार थी
Date on which the copy
was ready for delivery.

आवेदक को प्रतिलिपि देने की
तारीख
Date of making over the
copy to the applicant.

IN THE GAUHATI HIGH COURT

Annexure 14

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from

Civil Rule

R. P. No. 41 of 2004

Appellant

Petitioner

Bharat Samachar Nigam Limited

versus

Smti. Trupti Das

Respondent

Opposite Party

Appellant for Mr. B. C. Nath Court
Petitioner for Mr. B. G. Nath High Court

Respondent
for
Opposite Party

True copy
from
Advocate

-AND-

In the matter of:

W.P(C) No. 724/2004

Bharat Sanchar Nigam Limited,
represented through the Chief
General Manager, Assam Circle,
Guwahati.

... Petitioners

-Versus-

Smti. Tripti Das,
W/o. Sudeep Kumar Das,
Resident of Udal Bakra, Rodali
Path, P.O. Udalbakra, P.S.
Dispur, District - Kamrup,
Assam.

Gauhati High Court

...Respondent

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
	2	3	

**REVIEW APPLICATION NO.41/04
IN W.P(C) NO.724/04**

**BEFORE
HON'BLE THE CHIEF JUSTICE MR.P.P.NAOLEKAR
THE HON'BLE MR.JUSTICE AMITAVA ROY**

28.05.04

Heard Mr.B.C.Pathak, learned counsel for the review petitioner.

By this petition, review of the judgment and order dated 10.02.2004 passed by this Court in W.P(C) No.724/04 has been sought on the ground that the respondent herein has worked with the appellant for less than 240 days in a year and, therefore, the Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Gauhati High Court the Department of Telecommunication, 1989, has no application to the case of the respondent.

~~A~~ It is an admitted fact that in the previous litigation before the Central Administrative Tribunal, the Tribunal has reached to the finding that the respondent had worked for more than 240 days. That order having not been challenged, has attained finality and in the subsequent proceeding the question of number of days worked could not have been raised.

It is then submitted by the learned counsel for the review petitioner that the Central Administrative Tribunal

? High Court-8/01-80,000 21-8-2001
had no jurisdiction to entertain the petition filed before it as the appellant Company has not been brought within the jurisdiction of the Central Administrative Tribunal. Learned

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			<p>counsel for the applicant/review petitioner has frankly admitted that the question of jurisdiction of the Central Administrative Tribunal <u>had never been raised before the Tribunal either in the written statement filed before the Tribunal nor in argument before it or argued before us</u>. Thus, for the first time, the question cannot be permitted to be raised before this Court in a review petition, when the decision on the said question would require investigation of factual situation. In view thereof the review petition is <u>dismissed</u>.</p>

Gauhati High Court

Tome Copy
Advocate

21 DEC 2004

संवादात्मक अधिकारी

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

C.P. No. 52/2004
(In O.A. No.12/2003)

Smti. Tripti Das

...Petitioner

-versus-

Shri B.K Sinha & Another

...Respondents

(Affidavit-in-reply filed by Shri B.K. Mishra, the Respondent
No.2)

I, Shri B.K. Mishra, son of
late K. N. Nethra Bansi Panu..., aged about ...47 years,
resident of Q.N.M. 13 A.I. Tijpuri, P.D.T. Colony, Panu, Guwahati,
do hereby solemnly affirm and state as follows:

1. That at present I am working as the General Manager, Telecom, Kamrup Telecom District, Bharat Sanchar Nigam Limited, Ulubari, Guwahati-7. I have been implicated as the respondent No.2 in the instant petition and as such I am fully acquainted with the facts and circumstances of the case.
2. That a copy of the Contempt Petition No. 52/2004 (referred to as the "petition") has been served on me. I have gone through the same and understood the contents thereof.

Filed by the Respondent
docket No.2
through
Dilip Baruah
Advocate
26/12/2004

3. That the statements made in the said petition which are not specifically admitted are hereby denied by me.
4. That before traversing the various paragraphs of the petition, I give a brief resume to the facts and the circumstances of the case and the present position of the matter as hereunder:
 - (a) That the petitioner/ applicant above-named filed the OA No. 217/94 in this Hon'ble Tribunal stating therein [Para 6(4)] that she was engaged as casual worker for doing the miscellaneous work of the office including typing etc. The job in which she was engaged as admitted by herself is a job related to Group C post. The said case was contested and it was contended by the respondent side that the provisions of the scheme [Casual Labourers (Grant of Temporary Status and Regularization) of the Department of Telecommunication, Scheme, 1989] were not applicable to the applicant. The said statement of the respondents was also recorded in para 6 of the order dated 2.5.1997 passed in OA No. 217/94 by this Hon'ble Tribunal. By the said order this Hon'ble Tribunal also held that the applicant completed 240 days and she was a casual labourer. This Hon'ble Tribunal also directed the respondents to regularize the services of the applicant strictly in accordance with the said scheme provided she fulfills the requirements as indicated in the said order. In this connection, it is respectfully submitted here is that the said scheme does not apply to the casual workers engaged for doing the job in Group 'C' post as there existed clear order of ban for such engagement.
 - (b) That the Scheme of 1989 does not apply to the category of persons engaged in work similar to the job of Group C post and

as the petitioner/applicant did not fulfill the criteria as required under the scheme, her case was not considered. While the order passed by the Hon'ble Tribunal was not complied with and it was under process as to whether it could implemented or challenged; at that stage, the petitioner/applicant filed another application vide OA No. 261/1998 and raised the same issues once again before this Hon'ble Tribunal. This second application was filed instead of filing a contempt petition, for the fact that the applicant was herself not clear by the said Judgment of the Hon'ble Tribunal. The case was again contested and after hearing the parities this Hon'ble Tribunal passed the final order on 13.3.2000. By the said order this Hon'ble Tribunal held that the order passed in OA No. 217/94 was final and binding and accordingly this Tribunal once again reaffirmed that the Scheme of 1989 would be fully applicable to the applicant and further 2 months time was allowed to comply with the order passed in OA No. 217/94.

(c) That the respondents again could not implement the order as the petitioner/applicant did not appear before the verification committee to substantiate her claim by furnishing reliable proof. It may be mentioned here that in other cases pertaining to casual labourers, the respondents constituted an independent Verification Committee in the light of a decision passed in OA.No.107/98 (series) and that Verification Committee verified the cases with regard to the genuineness of the engagement particulars and it rejected or recommended for conferment of Temporary status for regularization of such casual labourers. The petitioner/applicant was also directed vide order dated 29.3.2001 to appear before the Verification Committee in spite of the fact that her case did not come within the zone of consideration under the scheme of 1989. But she

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failed to appear before the said Verification Committee. Instead, the petitioner/applicant filed a contempt petition before this Hon'ble Tribunal vide CP No. 4/2001. The Tribunal after hearing the respondents was pleased to drop the said contempt proceeding vide order dated 12.10.2001. By the said order in the CP No. 4/2001, the Hon'ble Tribunal held that the dismissal of the application shall not, however, preclude the respondents from its responsibility in communicating their decision on verification of the applicants claim pursuant to the letter dated 29.3.2001. By the said order it was also stated that it would also not debar the petitioner/ applicant from taking appropriate steps under the law in support of her claim. In this connection the respondents submit that by virtue of the order dated 12.10.2001 passed in the contempt petition, the orders passed in OA No. 217/94 and OA No. 261/98 eventually merged with the order dated 12.10.2001 and the matter rested with the findings of the Verification Committee. The Verification Committee examined the various documents of the applicant and found that the applicant was engaged as a casual typist only for 90 days during the period beginning from April 1992 to May 1993 and accordingly her case was not considered by the respondents and she was duly informed about the findings of the Verification Committee vide letter No. GMT/EST-179/TSM/01-02/196 dated 26.3.2002.

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(d) That after that the petitioner/applicant once again filed another application vide OA No. 12/2003 and challenged the order 26.3.2002. The respondents contested the case and filed the written statements. After hearing the parties the Hon'ble Tribunal passed the order on 26.9.2003 and once again held that the petitioner/applicant completed 240 days in service during the calendar year 1991 and 1992 (which is not correct)

as per finding of the Verification Committee) and therefore she was entitled to conferment of temporary status. By the said order it was also held that as the earlier order passed in OA No.261/98 was not challenged in any other higher forum the same attained finality and accordingly the order dated 26.3.2002 was set aside and quashed.

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The respondents most respectfully submit that this finding was without consideration of the materials on record, namely, that the applicant was engaged for the job related to the Group C post and the verification committee verified the engagement particulars of the applicant strictly as per direction given in CP No. 4/2001 dated 12.10.2001 and apparently the earlier two decisions of this Hon'ble Tribunal virtually merged with the said order dated 12.10.2001 passed in the CP.

(e) That in view of the above facts and circumstances of the case and having no other alternative, the respondents (as petitioners) approached the Hon'ble Gauhati High Court by filing a writ petition vide WP(C) No. 724/2004 under Article 226/227 of the Constitution of India for judicial review of those orders passed by the Hon'ble Tribunal. By the said writ petition the respondents raised the question of jurisdiction of the Hon'ble Tribunal that the Hon'ble Tribunal had no jurisdiction to pass any order against the Bharat Sanchar Nigam Ltd., a company duly registered under the Companies Act, 1956 and in absence of due notification as required under section 14(2) of the Central Administrative Tribunal Act, 1985. By the said writ petition it was also contended that the Scheme of 1989 was not a ongoing scheme and the same was extended upto 1.8.1998 only for the limited purpose as provided under circulars dated 12.2.1999 and 1.9.1999 issued by the Govt. of India. The

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Hon'ble High Court vide its order dated 10.2.2004 dismissed the said writ petition and held that the casual labourer who had been appointed during the period 29.11.1989 to 1.9.9993 are also entitled to get the benefit under the Scheme. But the Hon'ble High passed the final order per incuriam as the issue that the casual worker engaged for the job in group C post are not attracted by the said scheme of other casual labourers. Hence, the said order of the Hon'ble High Court cannot be treated as a precedent as no ratio has been laid down by that order with regard to that issue. The Hon'ble High Court also observed that there was no infirmity in the order passed by the Tribunal.

(f) That it is pertinent to state here that the Govt. of India, Ministry of Finance vide their Office Memorandum No. 49014/16/89-Estt.(C) dated 26.2.1990 imposed a ban on engagement of causal worker for performing duties of Group C post and directions were given to all the departments not to make any appointment of casual worker in future for performing duties of Group C post. Similarly, the Govt. of India, Department of Post also issued similar clarification that the Casual Labourer (Grant of Temporary Status and Regularization) Scheme shall not be applicable to any person working in casual basis in Group C post. In a similar case as in OA No. 120/2001 which came up before this Hon'ble Tribunal, the Hon'ble Tribunal considered the above provisions of the Govt. circulars and expressed its difficulty to issue a direction to the respondents to confer temporary status to the applicant vide its order dated 4.9.2002 as the said applicant was engaged as Driver, which is job in the Group C post. By the said judgment also it was observed by the Hon'ble Tribunal that the respondents may consider the case in due course as and when vacancy in Group C post arises if

necessary by relaxing the age of the applicant. By the said order the Hon'ble Tribunal also kept it open to the applicant for seeking engagement as a casual mazdoor (meaning thereby not in Group C post) till he was finally absorbed in a regular post and in that event the authority may consider such prayer fairly. As the case of the applicant was not immediately considered, the said applicant in that case also filed a contempt petition vide CP No. 36/2003 which was also heard by this Hon'ble Tribunal at length and this Hon'ble Tribunal was pleased to dismiss the said contempt petition on 18.6.2004 on the ground that the Hon'ble Tribunal was no longer in a position to issue any direction on the BSNL as the BSNL has not been notified and brought under the jurisdiction of the Tribunal as required by Section 14(2) of the Central Administrative Tribunal Act.

(g) That in view of the above situation the respondent authorities took up the matter with the highest authority for instruction with regard to the implementation of those orders passed by this Hon'ble Tribunal on 2.5.1997, 13.3.2000 and 26.9.2003 in OA No. 217/94, 261/98 and 12/03. The competent authority, after examining the pros and cons of the matter and the various orders passed by this Hon'ble tribunal expressed its opinion that the said competent authority decided not to go in for any further litigation in this regard. The said competent authority also instructed the local authority to approach this Hon'ble Tribunal through a Miscellaneous Petition to seek clear directions on its orders dated 2.5.97, 13.3,2000 and 26.9.2003 as it appeared to them to be contradictory and difficult to maintain for the reasons as stated above. This was communicated vide Corporate Office at New Delhi F.No.272-35/2004-Pers.-IV dated 8.9.2004. By the said communication it was also directed to initiate disciplinary action against the

officer/ official who were responsible for the engagement of Smti. Das for jobs which are related to group C post in spite of a ban order in that regard. On receipt of the said instruction dated 8.9.2004 the local authority took up the matter and sought legal opinion for filing Miscellaneous Petition from their Standing counsel and wrote to him vide letter No. STES-21/435/26 dated 27.9.2004. The Standing Counsel of the BSNL however caused some delay due to his personal difficulties and re-occupation and as a result the respondents preferred the instant petition. The Standing Counsel of BSNL, however, could prepare his draft Misc. Petition which was vetted by the Department and the same has also been filed in the Hon'ble Tribunal on 14.12.2004 and the same is also pending disposal.

The copies of the said communication dated 8.9.2004, letter dated 27.9.2004 and the Misc. Petition^{NO 151/04} with annexures are annexed hereto as Annexure R1, R2 and R3 respectively.

5. That with regard to the statements made in para 1, 2 and 3 and of the petition, I say that the order dated 26.9.2003 could not be implemented by the Bharat Sanchar Nigam Limited for the reasons as explained hereinabove in this affidavit and there had been series of litigation continuously.
6. That with regard to the statements made in para 4 of the petition, I say that after the passing of the final order in WP(c) No. 724/2004 and Review Application No. 41/2004, the orders passed by this Hon'ble Tribunal remained unchanged keeping open the scope for interpretation as to whether a casual worker engaged in job similar to the job of Group C post is also

entitled to the benefit of the Scheme of 1989. The Hon'ble High Court has not taken any decision in that issue. But it is very much clear that the Scheme of 1989 is not applicable to causal workers working in job similar to Group C post and it has been affirmed by this Hon'ble Tribunal as stated hereinabove. Moreover, an independent verification committee constituted to comply with the direction given by this Hon'ble Tribunal, as stated above, verified the engagement particulars of the petitioner and found that she was engaged only for 90 days, not for 240 days. This is apparent on the face of records of the case.

7. That with regard to the statements made in para 5 of the petition, I say that the notification No. DY2423 of 1995 dated 9.10.1995 and Govt. of India, DOT No. 269-13/99-Stn.II dated 1.9.1999 were wrongly interpreted by the petitioner/applicant as the said notification and the communication dated 1.9.1999 are to be read and considered along with the Govt. of India DOT OM No. 269-4/93-Stn.II(Pt.) dated 12.2.1999 and No. 269-IV/93-Stn.II dated 12.2.1999. The communication-dated 1.9.1999 is somewhat a corrigendum/ clarification to the aforesaid OM. According to the said circular the cases were to be considered as per Annexure A and B appended to it. Even in case of Annexure A and B, so far as the petitioner is concerned, the Annexure B was applicable had she been eligible to be considered under the Scheme of 1989. But there was no sanction or requirements for any such casual labourers as indicated in the Annexure B against the Assam Circle to which the petitioner/applicant belongs.

The copies of the communication dated 1.9.1999, OM dated 12.2.1999 and circular

dated 12.2.1999 are annexed hereto as
Annexure R4, R5 and R6.

8. That with regard to the statements made in para 6 of the petition, I respectfully submit that for the reasons as stated above the BSNL authorities became handicapped and could not take any immediate decision to implement the orders of this Hon'ble Tribunal which were affirmed by the Hon'ble Gauhati High Court.
9. That with regard to the statements made in para 7 of the petition including the prayer portion I once again reiterate and reassert the foregoing statements and respectfully submit that for the reasons stated hereinabove there has been a casual delay in implementing the order of this Hon'ble Tribunal and such casual delay was caused as a consequence of difficulty in interpretation of the direction given by this Hon'ble Tribunal. Hence such delay and inaction cannot be termed as deliberate and willful disobedience or violation of the orders of this Hon'ble Tribunal to bring home the charge of contempt (civil). The law in this regard is well settled by the Hon'ble Supreme Court in "**Kapil Deo Prasad Sah & others -vs- State of Bihar & others**" as reported in (1999) 7 SCC 569. The Hon'ble apex court has held that since notice of contempt and punishment for contempt is of far reaching consequences, these powers should be invoked only when a clear case of willful disobedience of the Court's order has been made out. Whether disobedience is willful in a particular case depends on the facts and circumstances of that case. Willful would exclude casual, accidental, bonafide or unintentional acts or genuine inability to comply with the terms of the order. The Hon'ble Supreme Court

also held that when there is a genuine dispute as to whether the appellant satisfied the conditions subject to which the Court's direction was made, such dispute should be resolved in appropriate forum. In this instant case the competent authority could not take a decision to implement the order under the Scheme of 1989 as the petitioner's case was not applicable to the said Scheme and such hindrance caused the delay which is nothing but casual in nature and the non implementation is unintentional and genuine inability. In another decisions in **Indian Airport's Employees' Union-vs- Ranjan Chatterjee & Others as reported in (1999)2 SCC 537**, the Hon'ble supreme Court has held that where there is no deliberate flouting of the court's order but a mere misinterpretation of executive instructions, it would not be a case of civil contempt. Rival contentions raised in the case involve interpretation of the order of the Court, notifications and other relevant documents. In contempt it is not decided whether the interpretation put forward by the respondents or the petitioner is correct. That question has to be decided in appropriate proceedings. The non-implementation of the court's order under such circumstances cannot amount to willful disobedience.

10. That is also respectfully submitted that neither myself nor the Chief General Manager, Telecom, Assam Circle are competent authority to take a decision to implement any court's order as there is no such power vested on us by the competent authority or by any law. The competent authority to decide to implement the court's order, particularly relating to recruitment including the matter of regularization of casual labourer under the Scheme of 1989 are vested with the Corporate Office of the BSNL after 1.10.2000; prior to that it was vested with the Department of Telecom, New Delhi. As such, I, B.K. Mishra and the Chief General Manager, BSNL, Sri B.K. Sinha, have been

wrongly implicated as party respondents in this petition as there in nothing to show that they are liable under the law.

I also respectfully submit that the settled position of law is now 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 or to issue any direction with regard to any service matter of casual worker from 1.10.2000 onwards. The Hon'ble Tribunal also should not have exercised its power under section 14 (2) and (3) automatically without any notification. There are now a plethora of decisions that the BSNL is not under the jurisdiction of the Tribunal. I crave the leave of this Hon'ble Tribunal to allow me to refer and to put reliance on such decisions at the time of hearing the matter.

11. That under the above facts and circumstances of the case and the settled provisions of law, I am not liable for contempt of court as alleged by the petitioner. However, I respectfully submit that I have the highest regard to the judicial forum and the judgment/ order passed by them. I also know that as a responsible officer of the Govt. of India I am bound to obey any judgment/ order or direction of any court or judicial authority. In case, for some or other reasons, this Hon'ble Tribunal comes to finding that I am otherwise liable for contempt of court, in that case, I hereby seek unqualified apology from this Hon'ble Court

and I may kindly be exonerated for such alleged contempt of court.

12. That the statements made in para 2, 3, 5, 6, 8 and 9..... are true to my knowledge and belief, those made in para 4 and 7....., being matter of records are true to my information derived there-from and the rest are statements made on legal advice and humble submission. I have not concealed or suppressed any material fact.

And I sign this affidavit on this ^{20th day of December, 2004 at Guwahati.}

Binod Kumar Mishra

Identified by me:

Dilip Baruah
Advocate
20/12/04

DEPONENT

Solemnly affirm and signed before me by the deponent who is identified by Sri...B.C..Pathak..., Advocate on this 20th day of December, 2004 at Guwahati.

Dilip Baruah
Advocate 20/12/04

BSNL
13 SEP 1964
R.L. No. 590

BHARAT SANCHAR NIGAM LIMITED
A GOVERNMENT OF INDIA ENTERPRISE
CORPORATE OFFICE
-B, STATESMAN HOUSE, NEW DELHI-110 001
(PERSONNEL - IV SECTION)

ANNAURE : R1
39

14/14/c

13 SEP 1964

R.L.No 595
To

The Chief General Manager,
B.S.N.L.,
Assam Circle,
Guwahati.

F. No. 272-35/2004-Pers-IV
Dated: 8th September, 2004

Sub: Implementation of CAT orders in the case of Smt. Tripti Das, Casual Labour - req.

Sir.

Your kind attention is invited your office letter No. STES-21/435/13 dated 9.8.2004 in which approval of BSNL HQRS was solicited for filing SLP in Supreme Court against the orders dated 10.2.2004 and 28.5.04 in WP (C) No. 724/04 and RA No. 41/04 delivered by the Hon'ble High Court of Guwahati. I am directed to say that the competent authority has decided not to go in for any further litigation in this regard.

2. 'I am further directed to inform you that it has been decided that the Hon'ble CAT, Guwahati be approached vide a Misc. Application to seek clear directions on its orders dated 2.5.97, 13.3.2000 and 26.9.03 on this matter, as they appear to be contradictory and difficult to maintain. Further, disciplinary action may be initiated against the officer/officials who were responsible for the engagement of Smt. Das, despite of a ban order. Action taken in this regard may be intimated to this office.

Yours faithfully,

P. Venkataraman (S. V. Raman)

ASSTT DIRECTOR GENERAL (PERS-IV)

TEL No. 23734152

FAX No. 23725255

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BHARAT SANCHAR NIGAM LTD.
(A Govt. of India Enterprise)
Office of the Chief General Manager Telecom.
Assam Telecom, Circle, Ulubari, Guwahati-781 007.

No. STES-21/435/26

Dated at Guwahati the 27.09.2004.

To

Shri B. C. Pathak
 Addl. CGSC,
 CAT, Guwahati Bench
 Guwahati.

Sub: Implementation of CAT order in the case of Smti. Tripti Das Casual labourer - reg.

Sir,

Kindly find herewith a copy of letter No. F. No. 272-35/2004-Pers - IV dated 08/09/2004 issued from BSNL HQ. OA No. 12/2003 filed by Smti. Tripti Das had been disposed by the Hon'ble Tribunal with direction to the respondents to take follow-up action for conferment of temporary status to the applicant forth with.

WP (C) No. 724/2003 and thereafter RA No. 41/2004 had been filed before the Hon'ble Guwahati High Court against the order delivered by the Tribunal but both the petitions had been dismissed without any direction.

Vide above cited letter, BSNL HQ. instructed to file a Misc. application before the Hon'ble Tribunal seeking clear direction on

1. order dtd. 02/05/97 in OA No. 217/94.
2. order dtd. 13/03/2000 in OA No. 261/98.
3. order dtd. 26/03/2003 in OA No. 12/2003.

as they appear to be contradictory and difficult to maintain.

You are therefore requested to examine the case in totality as both Writ Petition and Review application had been defended by you before the Hon'ble High Court and to offer your considered advice/ instruction to this for filing Misc. application as instructed by BSNL C.O.

With regards.

Enclo:

1. Copy of BSNL/HQ. letter.

Sincerely yours

[Signature]
 (S. C. Das)
 Asstt. Director Telecom (Legal)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

M.P No. /2004
(IN O.A No. 217/94, 261/98, 12/03)

In the Matter of:

1. Bharat Sanchar Nigam Ltd.
A govt. Of India Enterprise,
Represented by the Chairman-cum-Managing
Director, Sanchar Bhawan, New Delhi-1
2. The Chief General Manager,
M/s Bharat Sanchar Nigam Ltd., Assam Circle,
Ulubari, Guwahati-7
3. The Telecom District Manager, Guwahati-4
4. The SDO East, Guwahati.

.....Petitioner

-VS-

Smti. Tripti Das,
W/o. Sudip Kumar Das,
Udalbakra, Rodali Path,
Guwahati, District- Kamrup, Assam

.....Respondents

-And-

In the matter of:

A Miscellaneous Petition seeking direction for
implementation of the order passed by this
Hon'ble Tribunal in the above-noted cases vide

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✓

order dated 2.5.97, 19.3.2000 and 26.9.2003
and also order dated 12.10.2001 passed in
C.P No.4/2001.

-And-

In the matter of :

Doctrine of merger while the earlier orders
passed by the Hon'ble Tribunal reversed or
modified, the same cannot survive.

The Humble petition of the petitioners above-named:

MOST RESPECTFULLY SHEWETH:

1. That the respondent above-named filed the OA No. 217/94 in this Hon'ble Tribunal stating therein [Para 6(4)] that she was engaged as casual worker for doing the miscellaneous work of the office including typing etc. The job in which she was engaged as alleged by herself is a job related to Group C post. The said case was contested and it was contended by the petitioner side that the provisions of the scheme [Casual Labourers (Grant of Temporary Status and Regularisation) Scheme] were not applicable to the applicant. The said statements of the present petitioner was also recorded in para 6 of the order dated 2.5.1997 passed in OA No. 217/94 by this Hon'ble Tribunal. By the said order this Hon'ble Tribunal also held that the applicant completed 240 days and she was a casual labourer. This Hon'ble Tribunal also directed the petitioners to regularize the services of the applicant strictly in accordance with the said scheme provided she fulfils the requirements as indicated in the said order. In this connection, it is respectfully submitted here is that the said scheme does not apply to the casual workers engaged for doing the job in Group 'C' post as there existed clear order of ban for such engagement.

The copy of the said order dated 2.5.1997 passed in OA No. 217/94 is annexed hereto as Annexure 1.

2. That the Scheme of 1989 does not apply to the category of persons in Group C and as the applicant did not fulfill the criteria as required under the scheme, her case was not considered. At that stage, the applicant filed another application vide OA No. 261/1998 and raised the same issues once again before this Hon'ble Tribunal. The case was again contested and after hearing the parities this Hon'ble Tribunal passed the final order on 13.3.2000. By the said order this Hon'ble Tribunal held that the order passed in OA No. 217/94 was final and binding and accordingly this Tribunal; once again reaffirmed that the Scheme of 1989 would be fully applicable to the applicant and further 2 months time was allowed to comply with the order passed in OA No. 217/94.

The copy of the order dated 13.3.2000 passed in OA No. 261/98 is annexed hereto as Annexure-2.

3. That the petitioners again could not implement the order as the applicant did not appear before the verification committee to substantiate her claim by furnishing reliable proof. It may be mentioned here that in other cases pertaining to casual labourers, the petitioners constituted an independent Verification Committee in the light of a decision passed in OA.No.107/98 (series) and that Verification Committed verified the cases with regard to the genuineness of the engagement particulars and it rejected or recommended for conferment of Temporary status for regularization of such casual labourers. The applicant was also directed vide order dated 29.3.2001 to appear before the verification Committee but she failed to appear. Instead, the applicant filed a contempt petition before this Hon'ble Tribunal vide CP No. 4/2001. The Tribunal after hearing the petitioner was pleased to drop the said contempt proceeding vide order dated 12.10.2001. By the said order in the CP No. 4/2001, the Hon'ble Tribunal held that the dismissal of the application shall not, however, preclude the respondents from its responsibility in communicating their decision on verification of the applicants claim pursuant to the letter dated 29.3.2001. By the said order it was also stated that it would also not debar the applicant from taking appropriate steps under the law in support of her claim. In this connection the petitioners submit that by virtue of the order dated 12.10.2001 passed in the contempt petition, the orders passed in OA No. 217/94 and OA No. 261/98 eventually merged with the order dated 12.10.2001 and the matter rested with the findings of the Verification Committee. The Verification Committee examined the various documents of the

applicant and found that the applicant was engaged as a casual typist only for 90 days during the period beginning from April 1992 to May 1993 and accordingly her case was not considered by the petitioners and she was duly informed about the findings of the Verification Committee vide letter No. GMT/EST-179/TSM/01-02/196 dated 26.3.2002.

The copies of the order dated 12.10.2001 and the letter dated 26.3.2002 with the findings of the verification committee are annexed hereto as Annexure 3 and 4 respectively.

- That after that the applicant once again filed another application vide OA No. 12/2003 and challenged the order 26.3.2002. The petitioners as respondents contested the case and filed the written statements. After hearing the parties the Hon'ble Tribunal passed the order on 26.9.2003 and once again held that the applicant completed 240 days in service during the calendar year 1991 and 1992 and therefore she was entitled to conferment of temporary status. By the said order it was also held that as the earlier order passed in OA No.261/98 was not challenged in any other higher forum the same attained finality and accordingly the order dated 26.3.2002 was set aside and quashed.

The petitioners most respectfully submit that this finding was without consideration of the materials on record, namely, that the applicant was engaged for the job related to the Group C post and the verification committee verified the engagement particulars of the applicant strictly as per direction given in CP No. 4/2001 dated 12.10.2001 and apparently the earlier two decisions of this Hon'ble Tribunal virtually merged with the said order dated 12.10.2001 passed in the CP.

The copy of the order dated 26.9.2003 passed in OA No. 12/2003 is annexed hereto as Annexure 5.

- That in view of the above facts and circumstances of the case and having no other alternative, the petitioners approached the Hon'ble Gauhati High Court by filing a writ petition vide WP(C) No. 724/2004 under Article 226/227 of the Constitution of India for judicial review of those orders passed by the Hon'ble Tribunal. By the said writ petition the petitioners raised the question of

jurisdiction of the Hon'ble Tribunal that the Hon'ble Tribunal had no jurisdiction to pass any order against the Bharat Sanchar Nigam Ltd., a company duly registered under the Companies Act, 1956 and in absence of due notification as required under section 14(2) of the Central Administrative Tribunal Act, 1985. By the said writ petition it was also contended that the Scheme of 1989 was not a ongoing scheme and the same was extended upto 1.8.1998 only for the limited purpose as provided under circulars dated 12.2.1999 and 1.9.1999 issued by the Govt. of India. The Hon'ble High Court vide its order dated 10.2.2004 dismissed the said writ petition and held that the casual labourer who had been appointed during the period 29.11.1989 to 1.9.1993 are also entitled to get the benefit under the Scheme. But the Hon'ble High Court ^{contd} passed the final order per incurium as the issue that the casual worker engaged for the job in group C post are not attracted by the said scheme of other casual labourers. Hence, therefore, the said order of the Hon'ble High Court can not treated as a precedent as no ratio has been laid down by that order in that issue. The Hon'ble High Court also observed that there was no infirmity in the order passed by the Tribunal.

The copy of the order dated 10.2.2004 is annexed hereto as Annexure 6.

6. That it is pertinent to state here that the Govt. of India, Ministry of Finance vide their Office Memorandum No. 49014/16/89-Estt.(C) dated 26.2.1990 imposed a ban on engagement of causal worker for performing duties of Group C post and directions were given to the departments not to make any appointment of casual worker in future for performing duties of Group C post. Similarly, the Govt. of India, Department of Post also issued similar clarification the Casual Labourer (Grant of Temporary Status and Regularization) Scheme shall not be applicable to any person working in casual basis in Group C post. In a similar case as in OA No. 120/2001 which came up before this Hon'ble Tribunal, the Hon'ble Tribunal considered the above provisions of the Govt. circulars and expressed its difficulty to issue a direction to the respondents to confer temporary status to the applicant vide its order dated 4.9.2002 as the said applicant was engaged as Driver, which was a Group C post. By the said judgment also it was observed by the Hon'ble Tribunal that the respondents may consider the case in due course as and when vacancy in Group C post arises if necessary by relaxing the age of the applicant. By the said order the Hon'ble Tribunal also kept it open to the

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applicant for seeking engagement as a casual mazdoor (meaning thereby not in Group C post) till he was finally absorbed in a regular post and in that event the authority may consider such prayer fairly. As the case of the applicant was not immediately considered, the said applicant in that case also filed a contempt petition vide CP No. 36/2003 which was also heard by this Hon'ble Tribunal at length and this Hon'ble Tribunal was pleased to dismiss the said contempt petition on 18.6.2004 on the ground that the Hon'ble Tribunal was no longer in a position to issue any direction on the BSNL as the BSNL has not been notified and brought under the jurisdiction of the Tribunal as required by Section 14(2) of the Central Administrative Tribunal Act. In the instant case also the petitioners are the BSNL and the official respondents under it. In this connection it is also worth mentioning here that the respondent/applicant has also filed a contempt petition in the Hon'ble Tribunal vide CP No. 52/2004 which is still pending disposal. In view of the above facts and circumstances of the case, it is also a squarely similar case where this Hon'ble Tribunal may consider the case as had been done in the earlier case as stated above in the line of the law laid down by the Hon'ble Supreme Court as doctrine of precedent to maintain consistency, certainty and uniformity in the field of judicial decisions.

The copy of the OM dated 26.2.1990 and the order dated 4.9.2002 and 18.6.2004 are annexed hereto as Annexure 7, 8 and 9 respectively.

7. That the petitioners respectfully submit that the Hon'ble Supreme Court in K Ajit Babu & others –v-s Union of India & others reported in AIR 1997 SC 3277 has held as quoted hereunder:

"Often in service matters the judgments rendered either by the Tribunal or by the Court also affect other persons, who are not parties to the cases. It may help one class of employees and at the same time adversely affect another class of employees. In some circumstances the judgments of the Courts or Tribunals may not be strictly the judgments in personam affecting only the parties to the cases, they would be judgments in rem. Such affected persons who are not parties to a case, yet the decision in such a case adversely affect their rights in the instant case, are entitled to file fresh application under Section 19 of the Act. And Tribunal can not reject

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application merely on grounds that appellants had sought setting aside of judgment rendered by CAT in earlier case. When an application under Section 19 of the Act is filed and the question involved in the said application stands concluded by some earlier decision of the Tribunal, the Tribunal necessarily has to take into account the judgment rendered in earlier case, as a precedent and decide the application accordingly. The Tribunal may agree with the view taken in the earlier judgment or it may dissent. If it dissents, then the matter can be referred to larger Bench /Full Bench and place the matter before the Chairman for constituting a larger Bench so that there may be no conflict upon the two Benches. The larger Bench can overrule the view taken in the earlier judgment and declare the law, which would be binding on all the Benches."

In view of the said law laid down by the Hon'ble Supreme Court, it is also a case which may be referred to the Hon'ble Chairman of the Tribunal for placing it before a Full Bench and or for passing necessary order that this Tribunal may deem fit and proper.

8. The law is also well settled that a judgment is law only on the points raised and decided and once the correct material, rule itself is not made available to the particular court, the judgment could only be considered per incurium and could not said to be a judgment in rem, so the same would not be made applicable to other cases. In view of the said settled provisions of law the order passed in OA No. 217/1994 and OA No. 261/98 would not be the basis of the order passed in OA No. 12/2003. In view of the above anomaly and inconstancy the above-noted decisions of the Hon'ble Tribunal pertaining to the similar situation and issues, it is a fit case to be reconsidered in the light of the Hon'ble Supreme Court. Moreover, there is no clear indications in the orders passed in the above noted cases of the respondents as in what manner the case of the applicant would be considered by the petitioners against what category as the scheme is clearly not applicable to casual workers engaged in jobs pertaining to group C post.
9. That the petitioners also most respectfully submit that the law is also well settled that no Court or Tribunal shall issue any mandamus to the Govt./authority to act contrary to law or to refrain from enforcing the law. Hence, it is a fit case in which this Hon'ble Tribunal may be pleased to issue a clear direction with regard to the

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procedure and manner as to how to implement the orders passed by the Hon'ble Tribunal in the aforementioned cases.

10. That the petitioners most respectfully crave the leave of this Hon'ble Tribunal to allow them to rely upon and refer to all the record including the copies of the OA and written statements submitted in the OA No. 217/94, 261/98, CP No. 4/2001, OA No. 12/2003 etc. and the said original records may also be called from the Registry of the Hon'ble Tribunal at the time of hearing of this petition.
11. That it is also pertinent to state there that the petitioners are not in a position to implement the orders dated 2.5.1997, 13.3.2000, 26.9.2003 and also the order dated 12.10.2001 in CP No. 4/2001 as the said orders are not free from further interpretation, particularly on the point of application of the scheme to the casual worker engaged in job equivalent to the Group C post and also for the reasons by interpreting the doctrine of merger of the decisions rendered in OA No. 217/94, 261/98 with the order dated 12.10.2001 passed in CP no. 4/2001.
12. That this petition is made bonafide and for the ends of justice.

In the premises aforesaid it is therefore prayed that the Hon'ble Tribunal would be pleased to admit this petition, call for the records and issue notice to the respondent/applicant to show cause as to why this petition shall not be admitted and the necessary order should not be passed as prayed for by the petitioners and after hearing the parties and perusing the records shall also be pleased to refer the matter to the Chairman of the Tribunal for placing the matter before a Full Bench and or pass such further or other order thereby modifying, altering the earlier orders and also be pleased to issue such order to the petitioner s as to how they would proceed and implement the said orders dated 2.5.1997, 13.3.2000, 26.9.2003 and also the order dated 12.10.2001 in CP No. 4/2001 so that they may be immune from the liability raised in the CP No. 52/2004 pending disposal in this Hon'ble Tribunal.

AFFIDAVIT

I, Shiri Shankar Chandra Das, son of Late Gopi Ram Das, aged about 58 year, resident of Telecom Officers' Colony, Chenikuth Hillside, Guwahati- do hereby solemnly affirm and state as follows:

1. That at present I am working as the Assistant Director (Legal) in the Office of the Chief General Manager, Bharat Sanchar Nigam Limited, Assam Circle, Guwahati and I am taking steps in all the legal matters of the Bharat Sanchar Nigam limited and as such I fully acquainted with the facts and circumstances of the case in WP (c) No.5132/2000 and the Misc. petitions filed therewith.
2. That the statements made in para of the Misc. petition are true to my knowledge and belief, those made in para being matter of records are true to my information derived therefrom and the rest are my humble submission made before this Hon'ble Court. I have not suppress any material fact.

And I sign this affidavit on this day of December, 2004 at Guwahati.

Identified by me:

DEPONENT

Advocate

Solemnly affirmed and declared before
me by the deponent who is identified by
Sri....., Advocate on
this the day of December 2004, at
Guwahati.

Advocate

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

JGM/KT

Original Application No. 217 of 1994

Date of decision : This the 2nd day of May 1997.

Hon'ble Justice Shri P.N. Baruah, Vice-Chairman.

Hon'ble Shri G.L. Sangliyine, Member (Administrative).

Mrs. Tripti Das,
W/o Sri Sudip Kumar Das,
Resident of Ujalbakra, Rodalipath,
P.O.-Ujalbakra,
P.S. Dispur,
Dist. Kamrup

By Advocate Mr. S.Sarma.Applicant

-versus-

1. Union of India
Through the Secretary to the Govt. of India,
Telecom Department,
New Delhi.
2. The District Telecom Manager,
Guwahati.
3. The S.D.O. Phone (East)
Guwahati

....Respondents

By Advocate Mr. G.Sarma, Addl. C.G.S.C.

O R D E R

BARUAH J. (V.C.)

The applicant was verbally engaged casual worker in the office of the Sub-Divisional Officer (Phone) on 1.2.1991 and she had been doing miscellaneous works continuously. She was paid her daily wages at the rate of Rs. 47/- per day as prescribed for daily rated Mazdoor. Though she worked for the period from 1.2.1991 to 21.6.93, she was paid only upto 31.5.93. Annexures A, B, and C are letters issued to the Senior Medical

....Dispensary

Dispensary by the Assistant Engineer Cables Sub-Divisional Officer. These letters would go to show that she had been working as casual labour. Her engagement was terminated verbally on 31.5.1994. The applicant, therefore approached the authority, praying interalia for her reinstatement. However, this was denied. Hence the present application.

2. The respondents have entered appearance in due course and have filed written statement.

3. The contention of the applicant is that she was engaged casual labour on 1.2.1991 and, she had worked more than 240 days. According to the applicant, she is entitled to get temporary status and also thereafter regularisation. The respondents however, refute the claim of the applicant.

4. We have heard Mr. S.Sarma, learned counsel appearing on behalf of the applicant and Mr. G.Sarma, learned Addl. C.G.S.C. for the respondents. Mr. S.Sarma submits that the Central Government has prepared a scheme known as "Casual Labourers (Grant of Temporary Status and Regularisation) scheme of the department of telecommunications, 1989". This scheme was prepared by the Government to give certain benefits to the casual workers. It was a welfare scheme and all the casual labourers coming within the purview of this scheme, have legitimate expectation to receive benefits given by the said

.....scheme

scheme. The applicant has stated that she comes within the scope of the said scheme. Mr. S.Sarma further submits that the applicant has fulfilled all the conditions necessary for getting the benefit of the scheme. However, the authorities most unreasonably have denied the said benefit to the applicant. The action of the authorities according to Mr. Sarma was arbitrary and unreasonable. Mr. G.Sarma, on the other hand refutes the submissions of Mr. S.Sarma. According to him, the applicant no doubt a casual labour but her service was no longer required and therefore she was not entitled to get temporary status and subsequent regularisation of her service.

5. On the rival contentions of the parties it is to be seen as to whether the applicant is entitled to get the benefit of the aforesaid scheme or not? The scheme was prepared in 1989. It came into force with effect from 1.10.1989. This scheme is applicable to the casual labourers of the department of Telecommunications. As per clause 5 of the said scheme, the temporary status of casual labourers may be conferred to those casual labour who continuously rendered service for one year, out of which they must have been engaged for 240 days (206 days in case of offices observing five days a week). Such casual labourers would be designated as Temporary Mazdoor. The conferment of the temporary status would be however without reference to the creation/ availability of regular Group D posts. Conferment

of temporary status on a casual labourer would involve any change of his duties and responsibilities. Mr. G.Sarma, however, submits that the applicant was engaged for specific periods depending on availability of work and the averments to that effect have been made in paragraph 3 of the written statement. We quote the paragraph 3 of the written statement :

"That with regard to the contents made in para 3, I beg to state that the applicant was engaged and paid for specific period depending on work availability. This practice was purely on daily rated basis, question of any appointment does not arise".

6. In paragraph 6 of the written statement it has been mentioned that the scheme was not applicable to the applicant. The terms of appointment have not been produced before us. It is not known on what basis such averments have been made. The written statement is silent as to why the scheme is not applicable to the applicant. Learned Addl. C.G.S.C. Sri G.Sarma also has not been able to show anything as to why the scheme is not applicable to the applicant. Records have also not produced before us to ascertain the genuineness of the averments made in the written statement.

7. On perusal of the application and the written statement, we find that the applicant was appointed in the year 1991 and she worked more than 240 days and on the date of commencement of the scheme she was serving as per engagement. It may be mentioned here

1.10.1989

240 days

here

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here that the learned Addl. C.G.S.C. has not referred to any other document other than the scheme.

✓ Considering all the aspects of the matter we have no hesitation to come to the conclusion that, the applicant was a casual labour.

✓ 8. In view of the above, we dispose of the application with a direction to the respondents to consider the case of the applicant, if she fulfils the requirement as indicated above she shall be given temporary status and thereafter her services shall be regularised strictly in accordance with the scheme. These must be done as early as possible within a period of 3 months from the date of receipt of the copy of this order.

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

Certified to be true Copy

ccyfsl - fslfsl

Commissioner of Registration
Central Government of India
Dated 10th April 1988.

Annexure-VIII

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 261 of 1998

Date of decision : this the 15th day of March 1998.Hon'ble Mr. G.L. Sanghyam, Administrative Member,
Hon'ble Mrs. Lakshmi Swaminathan, Judicial Member.Mr. Srinath Das,
Resident of Udalbazar, Rochariachar,
P.O. Udalbazar,
P.S. Dispur
Dist. Kamrup

By Advocate Mr. M. Chanda

Applicant

versus -

1. Union of India
Through the Secretary to the Govt. of India
Telecom Department
New Delhi
2. The District Telecom Manager
Guwahati
3. The B.D.O. Phone (East)
Guwahati

By Advocate Mr. A. Deb Roy, Sr. C.I.T.C.

Respondent

Q.U.D.E.R. (CONT'D.)

MRS. L. SWAMINATHAN, MEMBER (J).

The applicant is aggrieved by the order passed by the respondents dated 7.10.1997.

2. The aforesaid impugned order has been passed by the respondents pursuant to the directions of the Tribunal in O.A. No. 217 of 1997, decided on 2.6.1997. The facts pertaining to the applicant have been mentioned in that order and it will, therefore, not be necessary to repeat the same here.

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After considering the legal contentions of the parties, the earlier application filed by the applicant was dismissed as follows :

"Considering all the aspects of the matter we have no hesitation to come to the conclusion that the respondent was a casual labour."

"In view of the above, we dismiss the application with a direction to the respondents to consider the case of the applicant. If she fails to meet the requirements indicated she shall be given temporary status and thereafter her services which are recognized shall be settled in accordance with the scheme. This must be done as early as possible within a period of 3 months from the date of receipt of the copy of this order."

The respondents have apparently not filed any appeal against the aforesaid order of the Tribunal and hence the order has become final and binding.

To consider as per Scheme

a. Taking into account the facts and circumstances of the case and the reasons given in the Tribunal's order dated 25.1.1997, with which we respectfully agree, we reiterate the above order and make it clear that the scheme proposed by the respondents under the heading of "Casual Labourer's Grant of Temporary Status and Re-employment Scheme, 1987" would be fully applicable to the services of the applicant as casual labourer with effect from 1.2.1997, accordingly the respondents are given further two months to fully comply with the directions of the Tribunal in their do. 217/94.

b. Mr. M. Chanda, learned counsel for the applicant, has submitted that in the meantime the respondents have also

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How?

engaged and continuing to employ certain juniors to the applicant as mentioned in the D.A. We make it clear that, if work of a casual nature is available with the respondents, the applicant shall have a prior claim for engagement as a casual labourer over her juniors and outsiders. No prop

The O.A. is disposed of in terms of the above order. No order as to costs.

Sd/-Member(Admin)
Sd/- Member (J)

Contempt Petition No. 4 of 2001 (In O.A.261/98)

Date of Order : This the 12th Day of October, 2001.

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

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

Smt. Tripti Das,
 Resident of Udalbakra Rodali Path,
 P.O. Udalbakra, P.S. Dispur,
 Dist. Kamrup.

. . . Petitioner.

By Advocate Sri M.Chanda.

- Versus -

1. Mr S.K.Bhaduri,
 Telecom District Manager,
 Ulubari, S.R.Bora Road,
 Guwahati-7.

2. Mr Swapan Chanda,
 S.D.O.(phones), East,
 Guwahati.

. . . Contemnors.

By Advocate Sri B.C.Pathak.

O R D E R

CHOWDHURY J.(V.C)

This is an application alleging contempt against the respondents for alleged violation of the order of the Tribunal dated 2.5.97 passed in O.A.217/94 as well as the order of the Tribunal dated 13.3.2000 passed in O.A.261/98. The applicant stated and contended that despite the positive direction of the Tribunal, the respondents failed to comply with the judgment and order of the Tribunal and consider her case for conferment of temporary status as per the scheme.

2. The respondents submitted its written statement denying the contention of the applicant and stated that ^{inspite} _{of the} opportunity granted the applicant ^{since} _{he} did not appear before the authority question of giving effect to the order did not arise.

3. In course of hearing Mr M.Chanda, learned counsel for the applicant has produced before us the communication bearing No. GMT/EST-179/TSM/00401/120 dated 29.3.2001 whereby the applicant was advised to appear before the Divisional Engineer, Administration at the earliest possible time for consideration of her case. The learned counsel submitted that after presentation of the Contempt Petition the respondents to cover up their inaction sent the communication to the applicant. Mr Chanda also submitted that though she appeared alongwith all the documents before the competent authority in pursuance to the letter she has neither been conferred the temporary status nor she was communicated with any order.

Appealance failed

4. On perusal of the communication dated 29.3.2001 it cannot be said that the respondents has deliberately defied the direction given by the Tribunal. In the circumstances the contempt petition is not maintainable. The dismissal of the application shall not however preclude the respondents from its responsibility in communicating their decision on verification of the applicant's claim pursuant to the letter dated 29.3.2001. This will also not debar the applicant from taking appropriate steps, under the law in support of her claim.

The contempt petition is accordingly dropped.

A copy of the order dated 29.3.2001 is kept on record.

Sd/VICE CHAIRMAN

Sd/MEMBER (ADM)

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প্রতিলিপি

W/No. 16/11/2001

Section Officer (s)

প্রান্তীয় পরিদর্শক / প্রান্তীয় কার্যকারী
General Executive Tribunal

প্রান্তীয় পরিদর্শক
General Executive, Guwahati

প্রান্তীয় পরিদর্শক / প্রান্তীয় কার্যকারী
General Executive, Guwahati

W/No. 16/11/2001

BHARAT SANCHAR NIGAM LIMITED
 (A Govt. of India Enterprise)
OFFICE OF THE GENERAL MANAGER TELECOM
KAMRUP TELECOM DISTRICT
GUWAHATI-781007.
 NO. GMT/EST-179/TSM/01-'02/196 Dated at Guwahati, the 26-03-2002.
 To

Mrs Tripti Das, W/o Shri Sudip Kr. Das.
 Rodali Paath, Udalbakhra, P.S: Dispur.
 Dist - Kamrup(Assam).

As you are aware that as per direction given by Hon'ble CAT, Guwahati Bench, Guwahati in OA No.261/98 and C.A No. 04/2001, the department constituted verification committee for this SSA under the circle for conducting detailed verification /scrutiny about the no. of days of engagement year-wise in different units / offices and also to collect proof / evidence for yourself. The committee verified all the documentary as well other proof from the various units/ offices. In our office / SSA, the committee comprised of three members namely (1) Shri M.C.Patar, DE(Admn.) O/O the GMT/KTD/ Guwahati (2) Shri N. K. Das, C.A. O (Cash), O/O the GMT/KTD/ Guwahati (3) Shri S. Das, ADT (Legal), O/O CGMT/ Guwahati.

The aforesaid committee submitted its report to the Department detailing all about their finding / proof against casual laborer including you. The detail of such scrutiny report is enclosed and furnished herewith as an annexure for your information.

Under the above circumstances, as you could not satisfy the eligibility criteria as laid down in the Scheme for conferment of TSM/ Regularisation, your case could not be considered favourably. Please take notice that you have also not been in engagement under the Department since 31.05.1993 and have never been re-engaged thereafter.

This is done in accordance with the Hon'ble Tribunal's order/direction.

Sdy
 Head of SSA/Unit (Admn)
 O/O G.M. Telecom
 Kamrup Telecom District
 Guwahati-7.

Copy to :

The C.G.M.T., Assam Circle, Guwahati
 for favour of information w.r.to his office letter No. STES-21/312/20
 Dtd. 23.11.2001.
 2. The SDOP(Kalapahar), Adabari.
 3. The DE(Opn), O/O the GM(BSNL)/GH-7.

B. Bhattacharya
 For GM(BSNL)/GH-7. 11412
 Civilian Engineer (Admn)
 O/O G.M. Telecom
 Kamrup Telecom District
 Guwahati-7.

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ANNEXURE

Details of findings by the Verification Committee Of Kamrup Telecom.
District/Guwahati(District/SSA/ Unit) in case of Mrs Tripti Das, in SDOP(Kalapahar)GH.

Date of engagement	Authority of engagement	No. of days engaged, year wise/ month wise	Proof of engagement (documentary)	Name & Designation of members of verification committee	Reasons in brief as found	Remarks.
		(A)	(B)			
April '92	SDOP(Entd.).GH	04/92 - 23.00 05/92 - 24.00 04/93 - 22.00 05/93 - 21.00	ACT-2 A/c	1. Sri M.C.Patur DE (Admin.) 2. Sri N.K.Das, CAO, 3. Sri S.C.Das, ADT(Legal)	Not Completed 240 days in any calendar year and not in engagement since May'93 and have never been re- engaged by the Dept. for any works thereafter..	Not recommend- ed by the committee

Date: 26.03.2002

Signature. B. Bhattacharya
Designation 1/4/12
Seal. Etc. Divisional Engineer (A.O.D.)
O/O/ G.M. Telecom
Kamrup Telecom District
Guwahati-V.

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original application No. 12 of 2003.

Date of Order : This the 26th Day of September, 2003.

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

Smti. Tripti Das,
Wife of Sri Sudip Kumar Das,
resident of Udal Bakra, Rodalipath,
P.O. Udalbakra,
P.S. Dispur, Dist. Kamrup.

...Applicant

By Advocate Sri M.Chanda.

- Versus -

1. Union of India,
represented by the Secretary to the
Government of India, Ministry of Communication,
Bharat Sanchar Nigam Ltd.,
New Delhi.

2. The Chief General Manager
Bharat Sanchar Nigam Limited,
Ulubari, Guwahati.

The District Telecom Manager,
Guwahati.

S.D.O.(East),
Guwahati.

5. Sri M.C.Patar,
Divisional Engineer (Admin)
Office of the General Manager (Telecom),
KTD, Guwahati.

6. Sri N.K.Das,
Chief Accounts Officer,
Office of the GMT/KTD,
Guwahati.

7. Sri S.Das,
NTD (Legal),
Office of the Chief General Manager ,telecom,
Guwahati.

...Respondents

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

ORDER (ORAL)

CHOWDHURY J. (V.C)

The issue relates to confirmation of temporary status. By the impugned order dated 26.3.2002 the respondents communicated the decision on the basis of the report submitted by Verification Committee. The applicant was accordingly informed the decision to the effect that she did not complete 240 days work in any calendar year since the applicant was working since April 1992 till May 1993.

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Mr. M.Chanda, learned counsel appearing for the applicant submitted that she had rendered 240 days of service in the calendar year of 1992-93. Mr. A.Deb Roy, learned Sr.C.G.S.C however disputed the contention of the applicant and submitted that the applicant had not rendered 240 days of service in any calendar year reiterating the decision of the verification committee. Mr Chanda, learned counsel for the applicant however, bring it to my notice about the decision rendered by this Tribunal on 2.5.1997 in O.A.217/94 and the subsequent decision rendered by this Tribunal on 13.3.2000 in O.A.261/98. The observations made in para 7 of the judgment in O.A.217/94 is reproduced below :

"On perusal of the application and the written statement, we find that the applicant was appointed in the year 1991 and she worked more than 240 days and on the date of commencement of the scheme she was serving as per engagement. It may be mentioned here that the learned Addl.C.G.S.C has not referred to any other document other than the scheme.

Considering all the aspects of the matter we have no hesitation to come to the conclusion that the applicant was a casual labour."

The other observations made in para 5 of the judgment passed in O.A.261/98 is also reproduced below :

"Taking into account the facts and circumstances of the case and the reasons given in the Tribunal's order dated 2.5.1997, with which we respectfully agree, we reiterate the above order and make it clear that the scheme prepared by the respondents under the heading of "Casual labourers (Grant of Temporary Status and Regularisation) Scheme 1989, would be fully applicable to the services of the applicant as casual labourer with effect from 1.2.1991. Accordingly, the respondents are given further two months to fully comply with the directions of the Tribunal in O.A.217/94."

From the facts above and materials on record it appears that the applicant has rendered 240 days service during the calendar year 1991 and 1992. From the materials on record it is also found that the applicant was entitled for confirmation of temporary status. The aforementioned judgment were not

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challenged by the respondents in any other forum and the same has attained its finality. There is no scope for the respondents to hold that the applicant did not complete 240 days in any calendar year. As such the communication dated 26.3.2002 is accordingly set aside and quashed. The respondents are ordered to take follow up action for conferment of temporary status to the applicant forthwith.

The application is accordingly allowed with cost of Rs.1000/-.

Sd/ VICE CHAIRMAN

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JK 22/10/05

Section Officer (J)
C.A.T. GUWAHATI BRANCH
Guwahati-781005

JK 22/10

21/3/04/1614 CM

16/2/04

17/2/04

17/2/04

- 12 -

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Annexure ^{III}

ANNEXURE : 6

IN THE GAUTAM HIGH COURT

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura
Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from

Civil Rule

W. P (c) No. 124 of 2004

Appellant

Petitioner

Bharat Sanchar Nigam Limited S. no?

versus

Smti. Tripti Das

Respondent

Opposite Party

Appellant
For

Petitioner

Mr. B. C. Pathak

Mr. D. Barua

Mr. B. Pathak

Respondent
For

Opposite Party

Notified by Counselor

✓

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In the matter of:

1. M/s. Bharat Sanchar Nigam Limited (A govt. of India Enterprise)
Represented by the Chairman-cum-Managing Director,
Sanchar Bhawan, New Delhi-110001.
2. The Chief General Manager
M/s Bharat Sanchar Nigam Limited, Assam Circle, Ulubari,
Guwahati-7

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- 3 -

3. The Telecom District Manager,
Guwahati.

4. The S.D.O (East),
Guwahati.

... Petitioners

-versus-

Smti. Tripti Das,
W/o. Sudeep Kumar Das,
Resident of Udal Bakra, Rodali
Path, P.O. Udalbakra, P.S.
Dispur, District - Kamrup,
Assam.

... Respondent

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
	2	WP(C) NO. 724/04	4

BEFORE

HON'BLE THE CHIEF JUSTICE MR.P.P.NAOLEKAR
THE HON'BLE MR.JUSTICE AMITAVA ROY.

~ 10.02.2004

Heard Mr.B.C.Pathak, learned counsel for the petitioner and Mr.M. Chanda, learned counsel for the respondent.

It is submitted by the learned counsel for the petitioner that under the scheme, the temporary status can only be conferred on the casual labourers who have been in service on the date of the scheme came into force i.e. 1.10.1989 under the Casual Labourer (Grant of Temporary Status and Regularization) Scheme. As per the learned counsel for the petitioner the respondent having been engaged as casual labour only in the month of April, 1992 the benefit under the scheme could not have been given.

Learned counsel for the Respondent Mr.M.Chanda has pointed to us the clarification and amendments to the scheme of grant of temporary status. As per the Notification issued under No. DY/2423 of 1995 dated 09.10.1995 and Govt of India, Department of Telecommunication No.269-1399-STN II dated 01.09.1999, it has been decided under the scheme that the full time casual labour recruited after 29.11.89 and upto 01.09.93 may also be considered for grant of benefits under the scheme. In view of the modification in the scheme, the casual labourers who have been appointed during the period 29.11.89 to 01.09.93 are also entitled to get the benefit under the scheme. The respondent having been appointed after 29.11.89 and before 01.09.93 was rightly given the benefit under the scheme and we do not find any infirmity in the order passed by the learned Central Administrative Tribunal. Accordingly, the appeal is dismissed.

Amitava Roy *Chief Justice*
Judge

CERTIFIED TO BE TRUE COPY.

Date 17th day of Feb 2004.

Superintendent (Clerk in-charge)

Gazetted Officer

Authorised on 26. Oct 1, 1872

PNK 82252
16/1/04

If any deviation in this regard is committed, responsibility should be fixed and appropriate departmental action taken against the official concerned.

[G.I., D.P. & T., O.M. No. 49014/18/84-Estt. (C), dated the 7th May, 1985.]

5. Ban on engagement of casual workers for duties of Group 'C' posts

There is a complete ban on engagement of casual workers for performing duties of Group 'C' posts and hence no appointment of casual workers should be made in future for performing duties of Group 'C' posts. If any deviation in this regard is committed, the administrative officer in charge in the rank of Joint Secretary or equivalent will be held responsible for the same.

[G.I., M.P., O.M. No. 49014/16/89-Estt. (C), dated the 26th February, 1990.]

6. Payment of wages to unskilled casual workers in Archaeological Survey of India

It has been decided that the unskilled casual worker whose nature of work is the same as that of the regular employees may be paid at the rate of 1/30 of Rs. 750 plus DA for work of 8 hours a day with effect from 7-6-1988. The guidelines issued by the Department of Personnel and Training should be strictly observed. On a reference made to them, it has been clarified as under—

- (i) The persons on daily wages on regular nature of work should not be engaged. In case casual workers have been engaged to do duties of regular nature, they shall have to be paid at the minimum time-scale of pay plus DA for work of 8 hours a day.
- (ii) The casual workers are required to be paid for the day on which they actually perform duties.
- (iii) If the casual worker is called for duty on a holiday, he will have to be paid for that day. In case this holiday happens to be paid holiday for the casual worker that he will have to be allowed additional wages for the duty for that holiday.
- (iv) The practice of engaging a casual worker on his weekly off day should be avoided. The question of allowing paid weekly off to casual workers in the offices following five days week work pattern is under consideration of the Department of Personnel and Training.

As for revision of rates in respect of skilled labour is concerned, the matter is being examined separately and the orders will be issued shortly.

[G.I., Archaeological Survey of India, O.M. No. 27-1/86-Admn. III, dated the 15th December, 1988.]

7. Scheme for Grant of Temporary Status and Regularization of Casual Workers

The guidelines in the matter of recruitment of persons on daily wage basis in Central Government offices were issued *vide* this Department's

Original Application No.120 of 2002

Date of Order: This the 4th Day of September 2002

HON'BLE MR.JUSTICE D.N.CHOUDHURY, VICE-CHAIRMAN
HON'BLE MR.K.K.SHARMA, ADMINISTRATIVE MEMBER

Sri Parash Barman
Casual Labour(Driver)
Village Barnartdi
P.O.Belsor, District Nalbari, Assam ... Applicant
By Advocate Mr.B.Malakar.

-Vs-

1. The Union of India represented by the Chief
General Manager, Assam Telecom Circle, S.R.Bora Lane,
Ulubari,Guwahati-7.

2. The General Manager, Telecom,
Kamrup District, S.R.Bora Lane ... Respondents.
Ulubari, Guwahati-7.

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

O R D E R.

D.N.CHOUDHURY, VICE-CHAIRMAN:

In this application under Section 19 of the Adminis-
trative Tribunals Act the applicant has assailed the
order of termination from the post of Casual driver with
effect from 1.4.99 and also sought for direction to
regularise his service.

In this application it was interalia stated that the
applicant was engaged as Casual Driver with effect from 1.1.90
to 31.12.96 under SDO(T) Kamrup from 1.1.97 to 31.12.97.
He was engaged to work at various places such as SDE(Phone)
Goalpara, SDE/C, West Ambari, Guwahati, SDE(E) Ambari
Guwahati, SDO(T), Rangia, SDE(C) West Ambari, SDC, East
Ambari etc. It was stated that he was first appointed as

contd/-

Driver to run Departmental vehicle from time to time by his concerned officers, though he worked for a long period he was terminated. Hence this application.

2. Assailing the legitimacy of the order of termination and also prayed for direction for regularisation. The Respondents contested the claim of the applicant and stated that the applicant was only engaged in the year 1994, 1996, 1997 and 1998, in total the applicant was engaged for about 94 days. The respondents also mentioned about ban on fresh recruitment of casual labourers against Group 'C' post on the basis of Office Memorandum issued by the Government of India, Ministry of Finance. Any employment in the breach of the Office Memorandum No.4901/16/89-Estt(c) dated 26.2.1990 is in valid and unlawful contended by the Respondents. Therefore, the benefit for regularisation cannot be given to the applicant. The respondents also raised plea of maintainability of this application on this score that the responsibility of reseeing the pending cases of the Casual labourers are entrusted to the Bharat Sanchar Nigam Limited a Company under the Government of India. The BSNL has not yet been notified under Sub-Section 2 of Section 14 of the Administrative Tribunal Act and thus the Tribunal has no jurisdiction to entertain such position. The new Telecom Policy of Government of India as well as other office Memorandum issued by the Government of India will clearly spelt out the position. We find it, difficult to accept the contention of the Respondent on the basis of the materials produced to the effect that the applicant was not working in the Telecom department prior to the introduction of the New Telecom Policy. The policy of conferment of temporary status was also introduced by the Telecom departments in pursuance to the legal policy laid down by the Supreme Court.

contd/-3

3. On assessment of materials on record we however, find it difficult to issue a direction on the Respondent to confer temporary status to the applicant. The applicant worked as a Group 'C' Driver intermittently. But it will not absolve the Respondents from considering the case of the applicant fairly. The Respondents authority utilised the services of the applicant may be by deviation of the Government ban. It will not be fair to penalise the applicant for the breach. All in all the applicant worked. We are therefore, of the opinion that the Respondents need to take care of the situation and consider his case against future vacancy of Group 'C' alongwith others on priority basis, if necessary by relaxing his age keeping in mind the services rendered by him in the department. It will also be open to the applicant for seeking for being engaged as Casual Mazdoor till he is finally absorbed in a regular post and in that event the authority may consider such prayer of the applicant fairly.

4. Subject to the observations made above, the application stands disposed. There shall however, be no

Sd/ VICE CHAIRMAN
Sd/ MEMBER (Adm)

W.B. 18/9/02

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Contempt Petition No.36 of 2003 (O.A.120/2001)

Date of Order : This, the 18th Day of June, 2004.

THE HON'BLE SMT. BHARATI ROY, JUDICIAL MEMBER.

THE HON'BLE SHRI K. V. PRAHLADAN, ADMINISTRATIVE MEMBER.

Sri Paresh Barman

S/o Sri Rohini Barman

Aged, about 32 years, by occupation

Casual Labourer (Driver)

a resident of Barnaddi village

P.O: Belsor, P.S: Belsor in the

district of Nalbari, Assam.

. . . . Petitioner

By Advocates Mr.R.K.Malakar, G.C.Deka & K.C.Sarma.

- Versus -

1. Sri S.K.Bhaduri
General Manager, Telecom
Kamrup District, Guwahati
from 17.8.2000 to 31.10.2002 and at present
Kolkata Telephones, Kolkata.

2. Sri M.K.Gogoi
General Manager, Telecom
Kamrup District, Guwahati- 7
from 31.10.2002 to 12.11.2002
and at present Guwahati Area Manager
(East), Dispur, Ulubari
Guwahati - 6.

3. Sri N.N.Benerjee
General Manager, Telecom
District Kamrup, Guwahati - 7
from 12.11.2002 to 22.1.2003 and at present
Senior Deputy Director General (Vigilance)
and General Manager (Dev) Office of the
Chief General Manager
Assam Telecom Circle, Guwahati-7.

4. Sri B.K.Mishra
General Manager, Telecom
Kamrup District, S.R.Bora Lane
Ulubari, Guwahati-7 since 22.1.2003 till date.

. . . . Respondents.

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

Contd./2

ORDER

SMT. BHARATI ROY, MEMBER(J):

The petitioner, who was engaged as Casual Driver and was terminated from the post w.e.f.1.4.1999, filed the Original Application No.120 of 2001 assailing the order of termination and also sought for direction to regularise his service.

2. Vide order dated 4.9.2002 passed in the said O.A. this Tribunal opined that respondents need to take care of the situation and consider the case of the applicant against future vacancy of Group 'C' alongwith others on priority basis, if necessary by relaxing his age keeping in mind the services rendered by him in the department. It was also kept open to the applicant for seeking for being engaged as Casual Mazdoor till he is finally absorbed in a regular post and in that event the authority was directed to consider such prayer of the applicant fairly.

3. The present Contempt Petition has been filed by the applicant for violating the order of this Tribunal. It is the contention of the applicant that the respondents did not consider his case in terms of the order of the Tribunal and recruited person who is junior to him. Respondents appointed one outsider and one Sri Bhupen Deka, who is junior to the applicant.

4. Respondent No.4 have filed counter reply. However, Mr.B.C.Pathak, learned Addl.C.G.S.C. for the

Contd./3

contemner raised the point of jurisdiction of the Tribunal in entertaining the Contempt Petition. He further referred to the order of this Tribunal passed in C.P.6/2004 (in O.A.467/2001), wherein this Tribunal dismissed the C.P. for lack of jurisdiction. In the similar context, he has also referred to the Full Bench judgment of the CAT, Jaipur Bench in O.A.401/2002 and 7 Others. Learned counsel for the applicant Mr.R.K.Malakar, however, submits that the orders of the Tribunal referred to by the learned counsel for the respondents relates to the C.P. where B.S.N.L. was party before this Tribunal, whereas in the present case B.S.N.L. has not been made party. In this context, Mr.B.C.Pathak, learned Addl.C.G.S.C. submits that in so far as the reliefs and question of appointment and regularisation are concerned, the Deptt.

of Telecommunication (DOT) has no role to play in implementing the order of the Tribunal because of the fact that all the posts of Group 'B' & 'C' have been transferred from DOT to B.S.N.L. w.e.f.1.10.2000. In so far as the appointments of the two persons referred above is concerned, Mr.B.C.Pathak submits that the appointments were made by B.S.N.L. In this context, he has also drawn our attention to Annexure-P2 enclosed by the applicant in the O.A. to show that the appointments were made by B.S.N.L. We find force in the contention of the learned counsel for the contemners. In view of the facts and circumstances that the alleged contemners are not in a position to implement the order of this

1. *Thirteenth*
2. *Section 175(1) of the Contempt of Courts Act, 1971*

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Tribunal dated 4.9.2002 passed in O.A.120/2001, it cannot be held that there is any wilful disobedience of the order of this Tribunal. In this context, it requires mentioning that Bharat Sanchar Nigam Limited (B.S.N.L.) is a newly constituted corporation and no notification under section 14 under Section 14(2) of the Administrative Tribunals Act, 1985 has been issued in respect of new organisation i.e. B.S.N.L. Therefore, this Tribunal cannot issue any direction on the B.S.N.L. authorities.

That being the position, we hold that there is no contempt lies and accordingly the present Contempt Petition is dismissed.



Sd/ MEMBER (J)

Sd/ MEMBER (Adn)

Certified to be true copy

সত্য প্রতিক্রিয়া

BB

Section Officer (J)

C.A. T. GUWAHATI BANCH

Guwahati-781005

13/7/02

labourers to be given Temporary Status as on 1-8-93

CLs to be granted Temporary Status	MTNL BY NCES NE NETE NTP NTR OR PB QA RAJ RE NAGPUR STP STR T & D JBP TN TS CA UPE UPW WB WTP WTR TOTAL	23 0 350 249 50 NA 16 12 0 55 105 6 29 0 160 0 200 NA 50 119 36 4646
BH	3471	
BRBRATT	0	
CHEENNAI TD	4	
CTD	450	
DNW	1	
ETP	318	
ETR	229	
GUJ	177	
HP	790	
HR	25	
J & K	27	
KRL	24	
KTK	188	
MH	NA	
MP	NA	
MTNL DI	15	

Grant of temporary status from 12-2-1999 to the Telecom casual labourers who are eligible as on 1-8-1998, and regularization of eligible TSMs with effect from 1-4-1997.—I am directed to refer to letter No. 263-4/93-STN. II, dated 12-2-1999 circulated with letter No. 269-13/99-STN. II, dated 12-2-1999 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 1-8-1993 and another on regularization of casual labourers with temporary status who are eligible as on 31-3-1997.

Some doubts have been raised regarding date of effect of these decisions. It is, therefore, clarified that in case of grant of temporary status to the casual labourers, the order, dated 12-2-1999 will be effected with effect from the date of issue of this order and in case of regularization to the temporary status Mazdoor eligible as on 31-3-1997, this order will be effected with effect from 1-4-1997.

[G.I. Dept of Telecom. No. 269-1395-STN. II, dated the 1st September, 1962.]

CHAPTER 23

**MEDICAL EXAMINATION ON
FIRST APPOINTMENT**

Production of Medical Certificate of Fitness at the time of appointment in a pensionable establishment.—To ensure that only persons, as are physically as well as mentally sound in health, are admitted to Government service, every candidate for appointment to a post (including appointment on part-time basis) under Government is required to produce a medical certificate of fitness from the appropriate Medical Authority except in cases where the appointment is made specifically for a period not exceeding three months in a non-pensionable establishment, when no medical certificate will be necessary unless it is decided later to extend the appointment beyond three months.

In view of the admissibility of family pension to the families of those Government servants who die before completion of one year of continuous service (provided the deceased Government servant immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared fit by that authority for Government service), in no case should a person be allowed to join Government service in a pensionable establishment without having been medically examined and found fit.

[G.I., M.F., O.M. No. 45 (1)-E. V/54, dated the 24th March, 1954; 5/6.54-RPS, dated the 1st September, 1955 and D.P., A.R., O.M. No. 15015/1/79-Est (D), dated the 20th June, 1979.]

Appropriate medical authority for conducting the medical examination.—The examining medical authority will be—

1. For appointment to a Gazetted post.—A Medical Board consisting of three Group 'A' Medical Officers of the status of specialists, namely, a Physician, a Surgeon and an Ophthalmologist. When a woman candidate is to be examined by a Medical Board, there should be on the Board a woman Doctor possessing a medical qualification in one of the first, second or Part-II of the Third Schedule, to the Indian Medical Council Act, 1956 (102 of 1956). As far as possible the members of the Board should be comparable in status to each other and not ordinarily be officers immediately subordinate to one another.

2. For appointment to a non-gazetted (other than Group 'D') post.—In the case of male candidates, a Civil Surgeon or a District Medical Officer or a Medical Officer of equivalent status.

In the case of female candidate appointed to a post (i) in Delhi, the Assistant Surgeon, Grade I (Woman), under the Central Government Health Scheme, and (ii) in any other place, a registered female medical practitioner possessing a medical qualification included in one of the Schedules to the

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regards conversion of the day of ban, curfew, etc., as "paid leave". It may be stated that the facility of paid weekly off is admissible for a casual employee (including the one granted temporary status) has to be given for six days of continuous work. The continuity is broken when a casual employee does not attend to his duties on account of any reason whatsoever it may be. The shifting of the weekly off would not be within the guidelines on the subject.

[G.I., Dept. of Telecom, No. 269-1033-STN, dated the 11th August, 1991.]

3. Casual employment to the wards of deceased temporary status casual mazdoors.—It has been decided that in the cases of "temporary status casual mazdoors" who die in harness leaving behind their family in indigent condition, the wards (i.e. son, daughter or wife) of such deceased may be given casual employment in relaxation of the ban imposed. This will be subject to the condition that none in the family (son, daughter or wife) is employed in whatsoever capacity. The Casual Labourers so appointed will be eligible for conferment of temporary status and regularization against Group 'D' posts as per "Casual Labourers—Grant of Temporary Status and Regularization Scheme" and orders issued from time to time.

All such cases may be decided with the specific approval of Chief General Managers.

[G.I., Dept. of Telecom, Lt. No. 269-3553-STN, dated the 7th May, 1991.]

4. Approach to be adopted while reinstatement of daily-rated Mazdoors/Casual Labourers on the directions of CAT judgments.—The question of bringing in uniformity on the subject issue has been under the consideration of the Department for some time in the past and after careful consideration, it has now been decided that the following approach is to be adopted:—

- (i) Wherever an OA has been filed by the retrenched DRMs/Casual Labourers, in the defence to be taken by the Department, the following would invariably be brought out—
 - (a) Department of Telecom is not an industry because it is run by General Government and it is a Ministry of Union of India where employees hold office during the pleasure of the President of India.
 - (b) It has not yet been decided that the Department of Telecom is an industry [State of Orissa v. Adwait Charan Mohanty, IT - 1995 (2) SC 6 at 13].
- (ii) Notwithstanding, what has been said at (i) above, wherever a DRM/Casual Labourer is to be retrenched, instructions of this office provided in the Letter No. 269-53 STN, dated the 21st September, 1989, would be followed scrupulously.
- (iii) Wherever the directions from Hon'ble Administrative Tribunals and other Labour Courts have been in regard to the reinstatement of the applicant labourers without any consequential benefits and time

being short, the matter may be referred to headquarters by FAX for a decision about filing of an appeal.

Normally CAT, etc., give three months for implementation of a verdict. Whenever a direction from CAT and other Labour Courts is received, the same should be referred to the Directorate within a week with all relevant documents. It should also be properly followed up with the Directorate so that the case not be lost on technical grounds. If there is a delay of over 15 days in forwarding the case to the Directorate, responsibility is to be fixed by the Head of Circle. In the event of a delay which goes to work to the detriment of the Department, an entry will have to be made in the ACR of the officer/official.

Where the CAT/Labour Courts direct implementation within a very short time, urgent action should be taken immediately for obtaining reasonable time and the same pursued with the Court. In all Court cases, there should be priority follow-up action by the circle with the time targets.

The Head of Circle may nominate a responsible official who will monitor Court verdicts and time-bound action on applications filed. He may kindly be set time targets for the disposal of and pursuit on a case.

- (iv) Directions emanating from the Hon'ble Tribunals/Labour Courts providing for payment of back-wages and consequential benefits such as conferment of temporary status to the case have also to be sent to the headquarters immediately on receipt of a copy of the directions from the Court.

[G.I., Dept. of Telecom, Lt. No. 271-58/95-STN, dated the 4th March, 1996.]

1. Powers of all DoT officers to engage casual labourers withdrawn.—
The undersigned is directed to refer to Para. 193 of P & T Manual, Vol. X which permits engaging of Labour on daily or monthly wages either direct or through contractor. The Department of Telecommunication has imposed a ban on recruitment/engagement of Casual Labourers vide letter No. 269-4/93-STN-II, dated 22-6-1988.

2. After issue of letter, dated 22-6-1988, a need was felt for amending the Para. 193 of P & T Manual, Vol. X. Accordingly, the issue was examined in detail. It has been decided to delete Para. 193 of P & T Manual, Vol. X with immediate effect. Paras. 150 to 177 of FHB, Vol. III, Part-I, Chapter 6, dealing with payment to casual labourers engaged on muster roll are also deleted.

3. Consequently the powers of all DoT officers to engage casual labourers, either or daily or monthly wages, direct or through contractors as well as the authority of the Accounts Officers for making payments to the labourers engaged on daily or monthly wages, either direct or through contractor are hereby withdrawn with immediate effect.

The instructions contained in this O.M. will not, however, apply to labourers for works of contingent nature lasting not more than fifteen days during exigencies and natural calamities. Payments to labourers during such contingencies should be made under Rule 331 of P & T F.M.R. Vol. I. The maximum period for which an individual labourer can be hired during a year should not exceed sixty days.

5. This issues with the concurrence of Internal Finance vide their D.Y. No. 47/FA-1-98, dated 13-1-1998.

[G.I., Dept. of Telecom, O.M. No. 269-4/93-STN-II (Pt.), dated the 12th February, 1993]

Sanction of posts of Regular Mazdoor for regularization of Temporary Status Casual Mazdoors.—I am directed to refer to this office letter No. 269-10-89-STN, dated 7-11-1989 wherein the scheme called "Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1989" was communicated. As per the said scheme, casual labourers who were engaged before 30-3-1985 and had completed 10 years of service, were made eligible for regularization. Based on the above, instructions were issued vide this office letter No. 5-1-92-TE-II, dated 17-3-1992, 6-7-1993, 20-5-1994, 8-5-1995 and 30-9-1996.

Even though there is a complete ban on recruitment of casual labourers, it has come to light that many circles, defying the ban orders, had recruited casual labourers even after the ban orders. Since, these casual labourers have completed 10 years of service, Employees Unions are pressing for the regularization of the remaining casual labourers who were recruited after 30-3-1985 and completed 10 years of service, on the analogy of earlier decision of Supreme Court on the subject.

Under these circumstances, the matter has once again been examined and it has been decided by the Telecom Commission as a one time measure, on special consideration, to further delegate powers to all the Heads of Circles, Metro Districts, Chief General Managers, MTNL, New Delhi and Mumbai, and Heads of Administrative Units to create posts of Regular Mazdoors for regularizing the Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1989, who have completed 10 years of service as on 31-3-1997 to the extent of the numbers indicated in Annexure 'A' which has been compiled based on the information received from the Circles/Units. The posts are to be created within the prescribed ceiling as on 31-3-1991. The other conditions stipulated in the letter, dated 17-3-1992 remain unchanged.

Approval of Telecom Commission is also conveyed for delegation of powers to grant temporary status to casual labourers to the extent of number indicated against the respective circles in Annexure 'B' which also has been compiled based upon the information furnished by the Circles/Units concerned.

As the numbers indicated in the Annexures 'A' and 'B' are furnished by the Circles/Units concerned, there should not be any variation in the figures. In case, there is a change, Heads of Circles should refer the cases to TCHQ explaining the reasons therefor.