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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 238/2004

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SECTION OFFICER (Judl.)

FORM NO. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET.

238/2004

Org. App/Misc. Petn/Cont. Petn/Rev. Appl.

In O.A.

Name of the Applicant(s) Sri Naren Sarma & Ans.

Name of the Respondent(s) U.O.I 2003.

Advocate for the Applicant Mr. S. Sarma, Miss U. Das & Miss B. Dasi

counsel for the Railway/C.G.S.C. CGSC A.K. Chaudhury

OFFICE NOTE	DATE	ORDER OF THE TRIBUNAL
This application is in form is filed/ F. for Rs. 50/- deposited in D.P.C./BD No. 206/116151	6.10.2004	present : The Hon'ble Mr. Justice R.K. Batta, Vice-Chairman. Heard Ms. U. Das, learned counsel for the applicant.
Dated 2/9/04		Notice to the respondents on admission, returnable on 3.11.2004.
<i>Done Dy. Registrar</i>		<i>R</i> Vice-Chairman
steps taken. 2/10/04	mb	Heard Sri S. Sarma, learned counsel for the applicant.
	3.11.04	Waiting service of respondents the matter be listed on 6.12.04.
Notice & order sent to D/section for issuing to resp: Nos. 1 to 3 by - regd. A/D post	pg	<i>R</i> Vice-Chairman
12/10/04		
S.R-1 notice received back due to incomplete address.		
	4/11/04	

2.11.04

1) AD cards not received back from the Respondents.

2) W/S has not been filed by the Respondents.

15

2/12/04

A telegram received
Ride no. 3-373/2003/B3H/
1186 dated 03.11.2004 for
extension of two months
- time due to some
unavoidable circumstances.

2/12/04

Notice duly served on
Respondents No. 4.....

2/12/04

J-12-84

① Service incomplete
by R-1.

② notice served on
R-4.

③ no W/S filed.

1a.

8-2-05

No W/S has been
filed

1a

8.12.2004
Shillong

Mr. S. Sarma, learned counsel for the applicant as also Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents are present.

Notice to respondent No. 1 has been returned unserved due to incomplete address. Applicant to take steps on respondent No. 1. Telegram received from respondent No. 3. For adjournment

Stand over to 2.2.2005.

R

Vice-Chairman

09.02.2005 Present : The Hon'ble Mr. M.K. Gupta Member (J).

None appears for the parties.
Reply has not been filed. Adjourned to 4.3.2005.

2/12/04

Member (J)

mb

04.03.2005 present : The Hon'ble Mr. K.V. Prahладan, Member (A).

None present. List on 11.3.05 for admission.

KV Prahладан

Member (A)

mb

11.3.05.

Present: Hon'ble Mr. K.V. Prahладan, Member (A)

On the plea of learned counsel on behalf of Mr. S. Sarma, learned counsel for the applicant case is adjourned to 18.3.05.

KV Prahладан
Member (A)

74 238/04

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Notes of the Registry Date Orders of the Tribunal

18.3.05

Heard Miss B. Devi, learned counsel for the applicant. Application is admitted. Respondents to file written statement within four weeks.

List on 29.4.05 for order.

28-4-05
W/S submitted by
the Respondents.
No. 1, 2 & 3.

DR

pg

29.4.2005

Written statement has already been filed. Post on 20.5.2005 for hearing. Rejoinder, if any, in the meantime.

ICV D. Deodhar
Member

19-5-05
No. of orders - has been
granted.

DR

mb

20.5.2005

Heard Ms. B. Devi, learned counsel for the applicant and also Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents.

Hearing concluded. Orders reserved.

ICV D. Deodhar
Member

mb

2.8.05

Order pronounced, kept in separate sheets.

The application is dismissed in terms of the order. No costs.

ICV D. Deodhar
Member

22.8.05
Copy of the order
has been sent to the
Office for issuing
to the applicant as well as
to the Addl. C.G.S.C. for the
respondents.

DR 22/8/05
DR 22/8/05

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Notes of the Registry Date Order of the Tribunal

CENTRAL ADMINISTRATIVE TRIBUNAL:::GUWAHATI BENCH.

O.A. No. 238 of 2004

DATE OF DECISION: 2-8-2005

Sri Naresh Sarkar and another

APPLICANT(S)

Mr. S.Sarma & Miss B.Devi

ADVOCATE FOR THE
APPLICANT(S)

- VERSUS -

U. O. I. & Ors.

RESPONDENT(S)

Mr. A.K.Chaudhuri,Addl. C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

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

Wx

b7

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

Judgment delivered by Hon'ble Administrative Member.

X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 238 of 2004.

Date of Order : This, the 2nd day of August, 2005.

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

1. Sri Naresh Sarkar,
Son of Lt. B.C.Sarkar,
2. Sri Sanjeet Kumar
Son of Sri Jai Babu Rai,
Both the applicants are
Casual Worker in the
Office of the Anthropological Survey of India,
North Eastern Regional Centre,
Mowblei, Shillong-21.
Meghalaya. Applicants

By Advocate Mr S. Sarma & Miss B. Devi.

- Versus -

1. Union of India,
represented by Secretary to the
Govt. of India,
Ministry of Human Resources,
New Delhi-1.
2. The Director,
Anthropological Survey of India,
27th Jawaharlal Nehru Marg,
Kolkata-16.
3. The Deputy Director,
Anthropological Survey of India,
Mowblei, Shillong-21.
Meghalaya. Respondents

By Shri A.K.Chaudhuri, Addl.C.G.S.C.

ORDER

K.V.PRAHLADAN, MEMBER(A).

The applicant No.1 is working as a casual worker since 7.12.92. Applicant No.2 is working as a Chowkidar on casual basis since 22.12.94. Both are working under the Deputy Director, Anthropological Survey of India (ASI) continuously since their initial engagement till date. The applicants filed O.A.No.106 of 2003 before

this Tribunal. In order dated 24.2.2004, this Tribunal directed the respondents to consider the case of the applicants for regularisation under the DOPT Scheme which came into effect from 1.9.93. The applicants claim that the respondents rejected their claim since they did not fulfill the eligibility criteria as laid down by the DOPT Scheme of 10.9.93. The applicants also point out to the case of Shri Dasarath Banik who was appointed as a casual worker in 1995-96 and has since been regularised against a Group 'D' post. The applicants claim that since Shri Banik was junior to them, they should get the benefit of promotion from the day he (Shri Banik) was promoted. The applicants have prayed for quashing of the order of 31.5.04, whereby the respondents rejected the case of the applicants for regularisation.

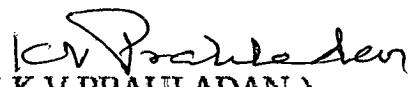
2. The respondents claim that following the directions of this Tribunal in O.A.No.106 of 2003 they had considered the DOPT Scheme of 10.9.1993 and since the applicants did not qualify for regularisation as per rules their claim was rejected vide letter dated 31.5.2004. The respondents state that the applicants were casual employees. "..... since it is mandatory to engage casual employees through Employment Exchange the appointment of casual employees without Employment Exchange is irregular as per existing norms. Hence, such casual employees cannot be bestowed with temporary status and, are not entitled for regularisation against any existing Group 'D' vacancies. Further, the speaking order of 31.5.04 was issued in the light of the above directions of the Govt." With reference to Shri Banik the respondents claim that he had been working as casual labour since 1989. He was recruited from the local Employment Exchange and hence regularised against a regular

(b/w)

vacancy. The respondents have stated that the applicants are free to apply in any regular vacancy occurring in their organization in future.

3. Heard both the learned counsel for applicants and learned counsel for respondents. The applicants have shown no documents and neither have they claimed that they had put in 206/240 days on 1.9.93 the date from which the DOPT Scheme of 10.9.93 became effective. So they are neither eligible for temporary status nor for subsequent regularisation under the scheme of 10.9.93, which is not an ongoing scheme. The O.A. is therefore liable to be dismissed and thus stands dismissed.

No order as to costs.


(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER

pg

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केन्द्रीय प्रशासनिक त्रिम्‌ठ
Central Administrative Tribunal

4 OCT 2004

गुवाहाटी बायो बेंच
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case : 238
O.A. No. 238 of 2004

BETWEEN

Shri Naresh Sarkar & ~~others~~ Applicants.

AND

Union of India & ors. Respondents.

I N D E X

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Filed by : Alsha Das . Regn. No. :

File : RCI\WWS\NARESH Date :

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

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

O.A. No. 238 of 2004

Naresh Sarkar

-VS-

Union of India & Ors.

SYNOPSIS

The applicants in the instant application have been working under the respondents for last about 10 years continuously as Casual Worker. The applicants kept on pursuing their case for regularisation, but same failed to evoke any positive response from the respondents. Situated thus the applicants had no option left than to approach the Hon'ble Tribunal by filing OA No. 106/03 praying for consideration of their cases under the said scheme. The Hon'ble Tribunal while disposing of the said OA was pleased to direct the respondents to regularise the services of the applicants in the light of the said scheme. The respondents however misinterpreting the judgment issued the impugned orders dated 31.5.04 rejecting their cases. The applicants now having no other alternative have come under the protective hands of this Hon'ble Court seeking redressal of their grievances.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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

D.A. No. 238 of 2004

BETWEEN

1. Sri Naresh Sarkar
Son of Lt. G.C. Sarkar
Casual Worker in the
office of the Anthropological Survey of India,
North Eastern Regional Center,
Mowblei, Shillong-21,
Meghalaya.

2. Sri Sanjeet Kumar
Son of Sri Jai Babu Rai
Casual Worker in the
office of the Anthropological Survey of India,
North Eastern Regional Center,
Mowblei, Shillong-21,
Meghalaya.

..... Applicants.

- AND -

1. The Union of India.
Represented by Secretary to the
Govt. of India,
Ministry of Human Resources,
New Delhi-1.
2. The Director,
Anthropological Survey of India,
27th Jawaharlal Nehru Marg,
KOLKATA-16.
3. The Dy. Director
Anthropological Survey of India,
Mowblei, Shillong-21.
Meghalaya.

..... Respondents.

PARTICULARS OF THE APPLICATION

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

Filed by
the applicant - through
Advocate 1/2
Alpho Das
28/9/04

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This application is preferred by the applicants against the order issued by the respondents vide memo no.25-68/2003/Estt. dated 31.5.04 by which their claim for regularisation under the scheme of 1.9.93 has been rejected. This application is also directed against the action of the respondents in not regularising the services of the applicants by extending the benefit as described in the OM dated 1.9.93 and its subsequent clarifications issued from time to time.

2. LIMITATION:

The applicant declares that the instant application has been filed within the limitation period prescribed under section 21 of the Central Administrative Tribunal Act, 1985.

3. JURISDICTION:

The applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

4. FACTS OF THE CASE:

4.1. That the applicants in the instant application have been working under the respondents for last about 10 years continuously as Casual Worker. The applicants kept on pursuing their case for regularisation, but same failed to evoke any positive response from the respondents. Situated thus the applicants had no option left than to approach the Hon'ble Tribunal by filing OA No.106/03 praying for consideration of their cases under the said scheme. The Hon'ble Tribunal while disposing of the said OA was pleased

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to direct the respondents to regularise the services of the applicants in the light of the said scheme. The respondents however misinterpreting the judgment issued the impugned orders dated 31.5.04 rejecting their cases. The applicants now having no other alternative have come under the protective hands of this Hon'ble Court seeking redressal of their grievances.

This is the crux of the matter for which the applicants have filed this application.

4.2. That the applicants are citizens of India and as such they are entitled to all the rights, privileges and protection as guaranteed by the Constitution of India and laws framed thereunder.

4.3. That the applicant no.1 Sri Naresh Sarkar was initially got his appointment as Casual Worker on 7.12.92. His aforesaid Casual employment is continuing till date without any break. This initial appointment of the applicant No.1 was against the sanctioned vacant post after following the due process of selection. The work allotted to the said applicant No.1 is infact regular in nature and during his service tenure he received bonus and other admissible dues like other regular Gr.D employee. The applicant No.1 is eligible to hold any Gr.C or Gr.D post as he possesses all the required qualifications prescribed for the said post. Similarly the applicant No.2 got his appointment as a chowkidar on casual basis and he continued to hold the said post w.e.f. 22.12.94 and as such he is continuing till date without any break. After from possessing all the requisite

qualification to hold any Gr.C or D post, the applicant No.2 is a holder of professional driving license as required for being appointed as Driver. Similarly the applicant No.2 also received all the admissible dues applicable to the regular Gr.D employees. It is pertinent to mention here that at the time of his initial recruitment, the respondents followed the due selection process for making such appointments.

Since the appointments of the applicants are not in dispute, the applicants instead of annexing all the appointment particulars beg to annex some of the relevant document and same are marked as Annexure-1 (colly).

4.4. That the applicants in the instant application have sought for a direction towards the respondents for consideration of their cases under the relevant scheme and its subsequent clarification issued from time to time. The reliefs sought for by the applicants are similar arising out of a common cause of action and as such they pray before this Hon'ble Tribunal to register their grievances through a single petition invoking Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules 1987.

4.5. That the office of the respondent No.3 started functioning w.e.f. 1992 as it is a newly setup office covering NE Region. At the time of its set-up, the respondents were in need of man power and against the said newly created posts number of persons hailing from the NE Region, got their appointments against the said newly created vacant posts. Likewise the applicants also placed their candidature against those vacant posts and accordingly

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both of them got their initial appointments. Although there were number of vacant posts, the respondents instead of resorting to regular appointment, adhered to temporary arrangement by appointing persons on casual basis. Subsequently most of such casual employment got regularised. However, inspite of repeated requests apart from assurances nothing was done in case of the applicants towards regularisation of their services.

4.6. That the applicants kept of pursuing the matter before the respondents by submitting representations but same failed to evoke any positive response. As stated above the matter pertaining to regularisation of services of the applicants was kept in cold storage without considering the same.

Copies of the representations submitted by the applicants are annexed herewith and marked as Annexure-2 (colly).

4.7. That the respondents without considering their cases kept on recruiting and regularising the services of the Casual Workers who got their initial recruitments in the year ranging from 1996-1998. There are various instances wherein the respondents even without adhering to the selection process, appointed persons against Gr.C and D posts without taking into consideration the cases of the present applicants. On the other hand, the present applicants who are continuing for fairly long time were under the impression that in due course of time their cases would be considered. However, contrary to such bonafide

expectation the respondents never considered their cases and adopted pick and choose policy for such recruitment.

4.8. That since the office of the respondent No.3 is a newly set up office, there were regular vacancies to accommodate the applicants against regular posts, but both the applicants as on date never been favoured with such regularisation even though there are adequate number of vacancies available to accommodate them on regular basis. It is pertinent to mention here that at present in the office of the respondent NO.3 there are number of vacant posts available in the Gr.D cadre.

4.9. That the applicants beg to state that the respondents have acted in a very unfair manner in not regularising the service of the present applicants who are much more qualified and senior than the Casual Workers whose services have already been regularised. The respondents adopted the pick and choose policy discriminating the present applicants from their legitimate claim of regularisation. As per the procedure and rules holding the field, the respondents ought to have regularised the services of the Casual Workers on the basis of seniority without adhering to the pick and choose policy. Admittedly, persons junior to the applicants have been given the benefit of regularisation without considering the cases of the present applicants. It is pertinent to mention here that one Sri Dasarath Barik, who got his appointment as Casual Worker in the year 1995-96, now has been enjoying the benefit of regularisation against GR.D post. Similar controversy arose before the Hon'ble Apex Court in the matter of

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regularisation of the Casual Workers working under Atomic Research Institute wherein the Hon'ble Apex court vide its judgment and order dated 21.4.95 while laying down the law directed the concerned authority to regularise the services of the effective persons with retrospective effect i.e. from the date when the services of the juniors were so regularised.

A copy of the Apex Court Judgment dated 21.4.95 is annexed herewith and marked as Annexure-3.

4.10. That the applicants beg to state that at present they are continuously serving under the respondents against Gr.D vacancy since their initial appointment and they are performing the similar nature of work like that of regular Group.D employee. It is pertinent to mention here that the applicants are to perform duty 16 hours a day whereas a regular Gr.D employee as per the office schedule is to work only 8 hours a day. The respondents however, not paying the applicants as per the norms and they are drawing lesser pay than the other Gr.D employees. As per the settled proposition of law equal pay for equal work, the applicants are entitled to same pay as has been allowed to the regular Gr.D employees working under the respondents.

4.11. That the applicants beg to state that the respondents now have decided to fill up some vacant posts both in the Gr.C and D cadre providing undue favour to the blue-eyed boys without considering the claim of the applicants. As stated above the applicants kept on pursuing their matter before the authority concern but same yielded

(A)

no positive response. Situated thus, the applicants have preferred OA No.106/03 before this Hon'ble Tribunal seeking redressal of their grievances. The respondents on receipt of the notice submitted written statement controverting the claim made by the applicants.

The applicants crave leave of his Hon'ble Tribunal to rely and refer upon the statements made in the OA as well as in the written statement at the time of hearing of this case.

4.12. That the aforesaid OA came up before this Hon'ble Tribunal on 24.2.04 and the Hon'ble Tribunal was pleased to observe that the applicants who have been working continuously for fairly long time are entitled to get the benefit of regularisation in terms of the OM dated 1.9.93. The Hon'ble Tribunal while disposing of the said OA issued a categorical direction towards consideration of their cases for regularisation.

A copy of the aforesaid judgment and order dated 24.2.04 is annexed herewith and marked as Annexure-4.

4.13. That the applicants immediately after the aforesaid judgment communicated the same to the respondents with a prayer to regularise their services. The respondents however without taking into consideration any of the observations issued the impugned order dated 31.5.04 rejecting their claims on the grounds of non fulfillment of eligibility criteria as laid down in the OM dated 1.9.93.

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Copies of the orders dated 31.5.84
are annexed herewith and marked as
Annexure-5 series.

4.14. That the applicants beg to state that Govt, of India, Ministry of personnel, issued an OM dated 10.9.93 providing certain benefits to the Casual Workers towards their regularisation. In the said OM dated 10.9.93, Govt. has formulated a policy for regularisation of Casual Workers who rendered 1 year continuous service under the said Deptt. In the said OM there has been mention regarding the procedure of regularising Casual Workers and to grant them certain benefits including temporary status, fixation of pay and other related service conditions. Both the applicants fulfill all the eligibility criteria and as such they are entitled to all the benefits as described therein.

A copy of the OM dated 10.9.93 is annexed herewith and marked as Annexure-6.

4.15. That the applicants beg to state that in terms of the OM dated 1.9.93 and its subsequent clarifications issued from time to time the applicants are entitled to regularisation against any Gr.Cor-D post even if there is no vacancy. The respondents however without taking into consideration those guidelines issued the impugned orders which has got no sanction in the eye of law and as such same are liable to be set aside and quashed.

4.16. That the respondents while issuing the impugned orders made a categorical statement that

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sponsorship from Employment Exchange is a mandatory requirement of the OM dated 1.9.93 which is not at all tenable. The concern Ministry time and again clarified this issue wherein it has been clarified that sponsorship from Employment Exchange is not a mandatory provision. In this connection it is pertinent to mention here that the applicants infact registered their names in the local Employment Exchange and as such the aforesaid ground is not at all tenable. As stated above the office of the respondent No.2 as set up in the year 1992 and at the time of making employment the respondents did not place their intense in the local Employment Exchange. It is therefore the question of not having sponsorship from the local Employment Exchange does not arise. On this score alone the impugned orders dated 31.5.04 are liable to be set aside directing the respondents to regularise their services with retrospective effect following the Apex Court decision.

4.17. That the applicants beg to state that the respondents have acted contrary to the settled principle and discriminated the present applicants in the matter of public employment. The applicants who are fully qualified to hold any Gr.C/Gr.D posts under the respondents have been discriminated in the matter of regularisation whereas similarly situated employees have been favoured with regularisation and infact in their cases none of these eligibility criteria has been insisted upon. In that view of the matter, the plea raised by the respondents are not at all tenable and same are liable to be dismissed.

4.18. That the applicants beg to state that the respondents now are making move to fill up certain posts in the Gr.D category without taking into consideration the cases of the present applicants and as such the applicants through this application pray before this Hon'ble Tribunal for appropriate interim order directing the respondents to regularise their services and not to disturb their present service pending disposal of this application.

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

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the respondents have acted contrary to the settled proposition of law and have violated the principle of natural justice and administrative fair play in the matter of public interest and as such same are not sustainable in the eye of law and liable to be dismissed with cost.

5.2. For that the impugned orders issued by the respondents are illegal, arbitrary and same are violative of the provisions contained in the Apex Court judgment laying down the relevant law.

5.3. For that the respondents have acted arbitrarily in issuing the impugned order without following the observations made by the Hon'ble Tribunal and as such same is not sustainable in the eye of law and liable to be set aside and quashed.

5.4. For that the applicants who fulfill all the required qualification for enjoying the benefit of the scheme formulated vide OM dated 1.9.93, the respondents ought not to have ignored/rejected their cases taking into aid of a subsequent clarification. The right accrued to the applicants way back in 1993 cannot be brushed aside by a subsequent clarification issued in this regard.

5.5. For that in any view of the matter the impugned action of the respondents are not sustainable in the eye of law and liable to be set aside and quashed.

The applicants crave leave of the Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicants declare that they had exhausted all the remedies available to them and there is no alternative remedy available to them.

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

The applicants further declare that he has not filed previously any application, writ petition or suit regarding the grievances in respect of which this application is made before any other court or any other Bench of the Tribunal or any other authority nor any such application, writ petition or suit is pending before any of them.

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8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicants most respectfully prayed that the instant application be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the applicant:-

8.1. To set aside and quash the impugned orders dated 31.5.84 and to regularise the service of both the applicants with retrospective effect i.e. from the date when the services of their immediate juniors have been regularised and to provide all consequential service benefits including salary and seniority etc.

8.2. Cost of the application.

8.3. Any other relief/reliefs to which the applicants are entitled to under the facts and circumstances of the case and deemed fit and proper.

9. INTERIM ORDER PRAYED FOR:

Pending disposal of the application the applicants pray for an interim order directing the respondents not to put them from their present employment till disposal of the OA.

10. *****

11. PARTICULARS OF THE I.P.O.:

1. I.P.O. No. : 20 Cr 114151
2. Date : 29/04
3. Payable at : Guwahati.

12. LIST OF ENCLOSURES:

As stated in the Index 43

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VERIFICATION

I, Sri Naresh Ch. Sarkar, son of late Ganesh Ch. Sarkar, aged about 30 years, Casual Worker in the Office of the Anthropological Survey of India, N.E. Regional Center, Mawblei, Shillong Meghalaya do hereby solemnly affirm and verify that the statements made in paragraphs 2, 3, 4², 4⁴, 4⁸, 4⁹, 4¹⁰, 4¹⁶ to 4¹⁹ & 5¹² are true to my knowledge and those made in paragraphs 1, 4¹, 4³, 4⁵, 4⁶, 4⁷, 4¹¹, 4¹² & 4¹⁵ are ~~also~~ based on records and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the Verification on this the 2nd day of Sept. of 2004.

Signature.

Naresh Sarkar

Anthropological Survey of India
North East Regional Centre
Shillong

No.1-292/91/Estt.

Dated 11.7.1994.

In continuation of this office letter of even number dated 6.7.94, the duty of Chowkidars since been modified and reallocated the duty at Museum building from 11.7.1994 will be as follows:

1. Shri Naresh Sarker, Casual Labour	-	10.0PM to 6.00AM
2. Shri Ramen Barmen, Casual Labour.	-	2.00PM to 10.00PM

Deputy Director
&
Head of Office

No.1-292/91/Estt.

Dated 11.7.1994.

Copy forwarded for information and necessary action to:

1. Shri N.M. Sengupta, Assistant Keeper, Anth. Survey of India, Shillong. faxx
2. Accounts Section.

Ran
Deputy Director
&
Head of Office

T. K. D.
6/7/96

Attested
Under
Advocate

*Attestation
for
Center Inspector of
Museum, Shillong.*

15-B

Annex

Anthropological Survey of India,
North East Regional Centre,
Mawblei Block-B, Madanrtting,
Shillong- 793 021.

Dated : February 27, 2003.

OFFICE ORDER

In supersession of this office order of even number dated 30-01-03, the duties of Regular and Daily wages chowkidar for the month of March, 2003, as suggested will be as follows. The duties of Daily wages chowkidars will be on temporary basis and may be terminated automatically as and when required and they will be paid @ Rs. 127/- only per day i.e. ~~no work no pay~~ bais as per rules :-

Sl. No.	Name of Chowkidars.	Times.	Days.
1.	Shri. I. Sangma, Regular Chowkidar.	6.00 am to 2.00 pm. From 1st-28th March, 2003. Weekly off : 1,8,15,22.	4/11/18/25
2.	Sri. G. Khongwir, (MUS - do - EUM)	9.00 am to 5.00 pm. From 1-31 st, March, 2003. Weekly off : 3,10,17,24,31.	
3.	Sri. Chinmoy Das, Daily wage chowkidar.	10.00 pm to 6.00 am. From 1-31st March, 2003. Weekly off : 7,14,21,28.	
4.	Sri. Uma Nath Rai, - do -	9.00 am to 5.00 pm. From 1-31st March, 2003. Weekly off : 2,9,16,23,30. Brink on 5th, 12th, 19th, 26th, 3rd	
5.	Sri. Naresh Sarkar, - do -	10.00 pm to 6.00 am. From 1-31st March, 2003. Weekly off : 1,8,15,22,29.	
6.	Sri. K. Barman, - do -	2.00 pm to 10.00 pm. From 1-31st March, 2003. Weekly off : 5,12,19,26.	
7.	Sri. Sanjeet Kumar, - do - (Museum)	6.00 am to 2.00 pm - 1,8,15,22, March, 2003. 9.00 - 5.00 pm - 3,10,17,24,31, March, 2003. 10.00 - 6.00 am - 7,14,21,28, March, 2003. (Library) 9.00 am-5.00 pm - 2,9,16,23,30, March, 2003. 10.00 - 6.00 am - 1,8,15,22,29, March, 2003. 2.00 - 10.00pm- 5,12,19,26, March, 2003. Weekly off : 6,13,20,27, March, 2003. Brink on 15th & 16th, 22nd, 29th, 2nd, 3rd	
	Copy to :- 1) Sri. R. Th. Varte, Security officer, A.S.I., Shillong for information 2) A/C section,	- do -	

(B. Francis Kulirani)
B. Francis Kulirani
Anthropological Survey of India
Government of India
North East Regional Centre
Shillong- 793 021

Attested
U.P. Ans
Advocate
27/2/03

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Annexure - 1 (contd.)

No. 1-292/91/Estt (Vol-II)

Anthropological Survey of India,
North East Regional Centre,
Bawali Block-B, Nahaniting,
Shillong - 793 021.

Dated : January 30, 2003.

OFFICE CHARGE

In supersession of this office order of even number dated Cl-01, 2003, the duties of Regular and Daily wages Chowkidars for the month of February, 2003, as suggested will be as follows. The duties of Daily wages chowkidars will be on temporary basis and may be terminated automatically as and when required and they will be paid @ Rs. 127/- per day i.e. no pay work no pay basis as per rules :-

Sl. No.	Name of Chowkidars.	Times.	Days.
1.	Shri I. Sangma, Regular Chowkider. (Library)	9.00 am to From 1-26th February, 2003. 5.00 pm. Weekly off: 4,11,18,25.	
2.	Sri. G. Khongwir, - do -	2.00 pm to From 1-26th February, 2003. 10.00 pm Weekly off: 3,10,17,24.	
3.	Sri. Chinmoy Das, D/W. Chowkider.	6.00 am to From 1st to 26th February, 03. 2.00 pm. Weekly off: 7,14,21,28.	
4.	Sri. Uma Nath Rei, - do -	10.00 pm to From 1st-28th February, 2003. 6.00 am. Weekly off: 2,9,16,23.	
5.	Sri. Kulen Barman, - do - (Museum)	9.00 pm to From 1st-26th February, 2003. 5.00 pm. Weekly off: 5,12,19,26. Break on 11th & 12th February, 2003.	
6.	Sri. Sanjeet Kumar, - do -	10.00 pm to From 1-26th February, 2003. 6.00 am. Weekly off: 6,13,20,27.	
7.	Sri. Narash Sarkar, - do -	9.00 am to 5.00 pm on 4,11,18,25 (Library) 2.00 pm to 10.00 pm on 3,10,17,24. 6.00 pm to 2.00 pm on 7,14,21,28. 10.00 pm to 6.00 am on 2,9,16,23. 9.00 am to 5.00 pm on 5,12,19,26 (Museum)	
Certified by : - 1. Mr. D.P. Sahani, Shillong 2. Mr. D.P. Sahani, Shillong for information and necessary action.			
2. Account section, - do - - do - (D.P. Sahani)			

D.P. Sahani
Shillong
2003

D.P. Sahani
Shillong
2003

18

To

The Head of Office
Anthropological Survey of India
North East Regional Centre
Shillong.-1

Sub:-Application for the post of causal Chowkidar.

Sir,

I have the honour to state that I am given to understand that you need one daily wage Chowkidar. I beg to offer myself as a candidate for the same. I am known to Shri R.S.Rai, Lab.Attendant, Anthropological Survey of India, Shillong, since childhood.

If you kindly consider me for that post, I will be highly obliged to you.

Thanking You

Yours faithfully

Sangit Kumar
(Sangit Kumar)

Dated 22.12.94

Address :-

C/o Shri R.S.Rai, Lab.Attendant
Anthropological Survey of India
Shillong.-1

Attes
Umar
Advocate

28

To
The Director,
Anthropological Survey of India,
27, Jawaharlal Nehru Marg,
Calcutta-700016

(Through Proper Channel)

Subject: Permanent post either in Peon or Chowkider or
Temporary Status - request for.

Sir,

With reference to my earlier applications dated 1.11.2000, I have the honour to submit my humble request for your kind consideration.

That Sir, I am working as a daily wage Chowkider in this North East Regional Centre, Anthropological Survey of India, Shillong since 7. DCE 9901. I am still working in this office as a daily wage Chowkider. As I am working in this office for the last 11 years, I would like to request you kindly consider my case at the time of filling the permanent post of Peon or Chowkider. If not possible presently at least giving me the status temporary status.

Kindly consider my case favourably and do the needful in this regards.

Thanking you, with regards,

Yours faithfully,

(Shri NHIRESH SHIKHAR)

Chowkider (daily wage)

Anthropological Survey of India,
North East Regional Centre,
Mawblei, Madanritting
Shillong- 793 021

Shillong
31.10.02.

ANIL SHARMA
Advocate

To

Head of Office
 Anthropological Survey Of India
 North Eastern Regional Centre
 Mawblei, Madaniriting

Sub:-Seniority for appointment as chowkidar

Sir,

With reference to the above subject, I have the honour to request you kindly to give due consideration with regards to my seniority for appointment of chowkidar in your office.

In this connection, I would like to mention that though some of the aspirants for the post of chowkidar had been engaged as chowkidar (work-charges basis) in your office prior to me, they worked only for sometime and thereafter there was extensive break in their services. Whereas, my date of joining as chowkidar (work-charge basis) was in December 1992 and till date I have been working in your office.

I, therefore, do hereby make a fervent appeal to you to consider my case with due consideration and sympathy.

Thanking you
 Yours faithfully

Copy to:

The Director
 Anthropological Survey of India
 27/Jawaharlal Nehru Road
 Calcutta -700016

Name: NARESH

SARKAR

Designation

✓
 10/01/2002

W.D.
 Annexure

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 1995
(Arising out of S.L.P.(C) No. 15619 of 1994)

Aryind Kumar & Ors.

Appellants

Versus

U.O.I. & Ors.

Respondents

WITH

CIVIL APPEAL NO. _____ OF 1995
(Arising out of S.L.P.(C) No. 15818 of 1994)

Subhash Chand & Anr.

Appellants

Versus

U.O.I. & Ors.

Respondents

ORDER

C.A. & S.L.P.(C) No. 15619/1994

Special leave granted.

Heard learned counsel for the parties.

Admittedly, the employees concerned who are on daily wages are transferable from one job to another and also from one place to another in the country. Hence, there has to be a common seniority list of all such employees.

Anmol
Advocate

25-

and the regularisation has to be made strictly according to such seniority list. The respondents are in fact maintaining what they call a master seniority list according to the dates of appointments of the employees concerned. It is not disputed before us that the appellants herein were engaged on different dates between March 1986 and September 1987. They have not yet been regularised while others about 15 in number whose names have been given by the appellants in their application before the tribunal who were engaged between November 1987 and 1992, have been regularised. The only ground given for regularising the said 15 persons ignoring the claim of the appellants, is that the said 15 workers are working on the mining side while the appellants are working on the drilling side. It is not disputed that the appellants themselves were first working on the mining side and they were later assigned to the drilling side. Further, as stated above the jobs are transferable and there has to be a common seniority list. Hence the ground made out for discrimination is untenable in law. We, therefore, direct that the appellants shall also be regularised from the day their juniors in the common seniority list were regularised. The appeals are allowed accordingly with no order as to costs.

Amritsar
W.M.
Advocates

23.

C.A. P. S.L.P.(C) No. 15949/1994

Leave granted.

In view of our decision in the appeal arising out of S.L.P.(C) No.15619 of 1994, this appeal stands allowed. The respondents will regularise the appellants herein from the date their juniors were regularised. Appeal allowed accordingly. No order as to costs.

(P. B. SAHAUT)

(K. VENKATASHAMI)

New Delhi:
April 21, 1995

Amrit
Kaur
Advocate.

26
Annexure 4
35

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 106 of 2003

Date of decision: This is the 24th day of February 2004.

The Hon'ble Shri Shanker Raju, Judicial Member

The Hon'ble Shri K.V. Prahladan, Administrative Member

1. Shri Naresh Sarkar,
S/o Late G.C. Sarkar
Casual Worker in the
Office of the Anthropological Survey of India,
North Eastern Regional Centre,
Shillong, Meghalaya.

2. Shri Uma Nath Rai,
S/o of Sital Prasad Rai,
Casual Worker in the
Office of the Anthropological Survey of India,
North Eastern Regional Centre,
Shillong, Meghalaya.

3. Shri Sanjeet Kumar,
S/o Shri Jai Babu Rai,
Casual Worker in the
Office of the Anthropological Survey of India,
North Eastern Regional Centre,
Shillong, Meghalaya.Applicants

By Advocates Mr. S. Sarma, Mr. U.K. Rai
and Ms. U. Das.

- versus -

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

2. The Director,
Anthropological Survey of India,
Kolkata.

3. The Deputy Director,
Anthropological Survey of India,
Shillong, Meghalaya.Respondents
by Advocate Mr. A.K. Choudhury, Addl. C.G.A.

Affested
Advocate

3. Salman RAIH, MEMBER (J)

The applicants who had been working on Group 'D' posts on casual basis for the last more than ten years have sought regularisation to Group 'D' posts and other consequential benefits.

2. Heard Mr. U.K. Hair, learned counsel for the applicants and Mr. A.K. Chaudhuri, learned Addl. C.G.S.C.

3. Relying upon the decision of the Apex Court in State of Haryana Vs. Pyara Singh, (1992) 3 SLJ 34 SCC, it is contended on behalf of the applicants that when a casual labourer works for longer period there is a presumption of vacancy against which he may be regularised. In this view of the matter it is stated that the applicants who are still working may be considered against other Group 'D' posts where vacancies are available.

4. The respondents in their reply oppose the contention and stated that as no junior has been accorded regularisation for want of vacancies, the claim of the applicants cannot be acceded to.

5. Having regard to the rival contentions we are of the considered view bearing support from the decision Apex Court in Pyara Singh (Supra) that the applicants who had already worked on casual basis for more than ten years are covered by the DOPT's Scheme of 1.9.1993. Having been in status on 1.9.1993 the respondents shall consider their cases. In so far as vacancies are concerned, we observe that instead of restricting reconsideration against the post of Chowkidar the applicants may be considered for

*Arrested
V.S.R.
Advocate.*

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other Group 'D' posts as there is no nomenclature for a casual labourer and he can be adjusted in any Group 'D' post.

6. Having regard to the above the O.A. is disposed of with a direction to the respondents to consider the claim of the applicants for regularisation in the light of the Notification and Scheme promulgated by the Government. Till then they may not be discontinued from service.

Sd/MEMBER (J)

Sd/MEMBER (ADM)

FIRCE CO. 2

अधिकारी

12/3/05

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

11/3

ARRESTED
Under
Advocate.

ANTHROPOLOGICAL SURVEY OF INDIA

MINISTRY OF TOURISM AND CULTURE

DEPARTMENT OF CULTURE

GOVERNMENT OF INDIA

27, JAWAHARLAL NEHRU ROAD, KOLKATA-700 016

Dial :00-91-33-22498731/33/34 Tele Fax:2249-7099

E-Mail : anthro@cal2.vsnl.net.in, Website : www.anthsi.org

No.25-68/2003/Estt.

Dated :

SPEAKING ORDER

31

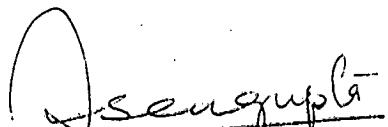
Consequent upon the judgement of Hon'ble CAT, Guwahati Bench, Guwahati dated 24.2.2004 and his representation dated 22.03.2004, the undersigned is directed to inform Shri Naresh Sarkar, contingent paid staff attached to the NERC, Shillong that his request to regularize his service in the Survey has carefully been considered but cannot be acceded to as the following barrier has been raised under rules.

1. That, in the judgement of the Hon'ble CAT, Guwahati Bench, Guwahati dated 24.2.2004 has directed to the Respondents to consider the claim of the Applicant for regularization in the light of the DOPT's Scheme of 1.9.1993.
2. That, in terms of clarification no.1 of DOPT's scheme 1.9.1993 says that since it is mandatory to engage casual employees through Employment Exchange, the appointment of Casual employees without Employment Exchange is irregular.
3. That, the Applicant was engaged as contingent paid staff (casual labourers) on no work no pay basis in the Survey without sponsoring the local Employment Exchange.
4. Hence, such casual employees can not be bestowed with temporary status (Annexure-I).

In view of the above it is submitted that as the Applicant has failed to full fill the criteria as laid down in DOP&T's Scheme w.e.f. 1.9.93, his request to regularize him in the Survey, as directed by the Hon'ble CAT cannot be acceded to. However, his service may be continued in the Survey as contingent paid staff on no work no pay basis as and when required until further orders.

To

✓ Shri Naresh Sarkar
Contingent Paid Staff
North West Regional Centre
Anthropological Survey of India
Shillong


(SADHAN SENGUPTA)
HEAD OF OFFICE

Attended
Naresh
Adhikarate

ANTHROPOLOGICAL SURVEY OF INDIA
MINISTRY OF TOURISM AND CULTURE
DEPARTMENT OF CULTURE
GOVERNMENT OF INDIA
27, JAWAHARLAL NEHRU ROAD, KOLKATA-700 016
Dial :00-91-33-22498731/33/34 Tele Fax:2249-7099
E-Mail : anthro@cal2.vsnl.net.in, Website : www.anthsi.org

No.25-68/2003/Estt.

Dated : 3/3/2004

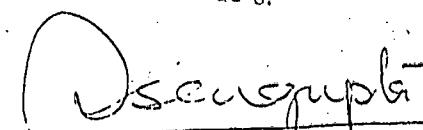
SPEAKING ORDER

Consequent upon the judgement of Hon'ble CAT, Guwahati Bench, Guwahati dated 24.2.2004 and his representation dated 22.03.2004, the undersigned is directed to inform Shri Sanjeet Kumar, contingent paid staff attached to the NERC, Shillong that his request to regularize his service in the Survey has carefully been considered but cannot be acceded to as the following barrier has been raised under rules.

1. That, in the judgement of the Hon'ble CAT, Guwahati Bench, Guwahati dated 24.2.2004 has directed to the Respondents to consider the claim of the Applicant for regularization in the light of the DOPT's Scheme of 1.9.1993.
2. That, in terms of clarification no.I of DOPT's scheme 1.9.1993 says that since it is mandatory to engage casual employees through Employment Exchange, the appointment of Casual employees without Employment Exchange is irregular.
3. That, the Applicant was engaged as contingent paid staff (casual labourers) on no work no pay basis in the Survey without sponsoring the local Employment Exchange.
4. Hence, such casual employees can not be bestowed with temporary status (Annexure-I).

In view of the above it is submitted that as the Applicant has failed to full fill the criteria as laid down in DOP&T's Scheme w.e.f. 1.9.93, his request to regularize him in the Survey as directed by the Hon'ble CAT cannot be acceded to. However, his service may be continued in the Survey as contingent paid staff on no work no pay basis as and when required until further orders.

To
 Shri Sanjeet Kumar
 Contingent Paid Staff
 North West Regional Centre
 Anthropological Survey of India
 Shillong


 (SADHAN SENGUPTA)
 HEAD OF OFFICE

ANTHROPOLOGICAL SURVEY OF INDIA
 27, JAWAHARLAL NEHRU ROAD
 KOLKATA-700 016
 INDIA / CALLED 2249-7099

Attested
 Noor
 Advocate

Ministry of Personnel, P.G. and Pensions (Deptt. of Personnel and Training)
OM No. 51016/2/90-Estt.(C) dated 10th September 1993

(XVIII)

Subject : Grant of temporary status and regularisation of casual workers -
 Formulation of a scheme in pursuance of the CAT, Principal Bench, New Delhi, Judgement dated 16th Feb. 1990 in the case of Raj Kamal & Others Vs UOI.

The guidelines in the matter of recruitment of persons on daily-wage basis in Central Government offices were issued vide this Department's OM No. 49014/2/86-Estt.(C) dated 7.6.88. The policy has further been reviewed in the light of the judgement of the CAT, Principal Bench, New Delhi delivered on 16.2.90 in the writ petition filed by Shri Raj Kamal and Others Vs. Union of India and it has been decided that while the existing guidelines contained in OM dated 7.6.88 may continue to be followed, the grant of temporary status to the casual employees, who are presently employed and have rendered one year of continuous service in Central Government offices other than Deptt. of Telecom, Posts and Railways may be regulated by the scheme as appended.

2. Ministry of Finance etc. are requested to bring the scheme to the notice of appointing authorities under their administrative control and ensure that recruitment of casual employees is done in accordance with the guidelines contained in OM dated 7.6.88. Cases of negligence should be viewed seriously and brought to the notice of appropriate authorities for taking prompt and suitable action.

S/I/- Y.G. Parande
 Director

Attost
 Umar
 Advocate

APPENDIX

Department of Personnel and Training, Casual Labourers (Grant of Temporary Status and Regularisation) Scheme

1. This Scheme shall be called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993."
2. This Scheme will come into force w.e.f. 1.9.1993.
3. This Scheme is applicable to casual labourers in employment of the Ministries/Departments of Government of India and their attached and subordinate offices, on the date of issue of these orders. But it shall not be applicable to casual workers in Railways, Department of Telecommunication and Department of Posts who already have their own schemes.
4. Temporary Status

- i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week).
- ii) Such conferment of temporary status would be without reference to the creation/availability of regular Group 'D' posts.
- iii) Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.

Attested
V. Srinivas
Advocate

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- iv) Such casual labourers who acquire temporary status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts.

5. Temporary status would entitle the casual labourers to the following benefits:-

- i) Wages at daily rates with reference to the minimum of the pay scale for a corresponding regular Group 'D' official including DA, HRA and CCA.
- ii) Benefits of increments at the same rate as applicable to a Group 'D' employee would be taken into account for calculating pro-rata wages for every one year of service subject to performance of duty for at least 240 days (206 days in administrative offices observing 5 days week) in the year from the date of conferment of temporary status.
- iii) Leave entitlement will be on a pro-rata basis at the rate of one day for every 10 days of work, casual or any other kind of leave, except maternity leave, will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularisation. They will not be entitled to the benefits of encashment of leave on termination of service for any reason or on their quitting service.
- iv) Maternity leave to lady casual labourers as admissible to regular Group 'D' employees will be allowed.
- v) 50% of the service rendered under Temporary Status would be counted for the purpose of retirement benefits after their regularisation.

Arrested
Under
Advocate.

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vi) After rendering three years' continuous service after conferment of temporary status, the casual labourers would be treated on par with temporary Group 'D' employees for the purpose of contribution to the General Provident Fund, and would also further be eligible for the grant of Festival Advance/Flood Advance on the same conditions as are applicable to temporary Group 'D' employees, provided they furnish two sureties from permanent Govt. servants of their Department.

vii) Until they are regularised, they would be entitled to Productivity Linked Bonus/Ad-hoc bonus only at the rates as applicable to casual labourers.

6. No benefits other than those specified above will be admissible to casual labourers with temporary status. However, if any additional benefits are admissible to casual workers working in Industrial establishments in view of provisions of Industrial Disputes Act, they shall continue to be admissible to such casual labourers.

7. Despite conferment of temporary status, the services of a casual labourer may be dispensed with by giving a notice of one month in writing. A casual labourer with temporary status can also quit service by giving a written notice of one month. The wages for the notice period will be payable only for the days on which such casual worker is engaged on work.

8. Procedure for filling up of Group 'D' posts.

1) Two out of every three vacancies in Group 'D' cadres in respective offices where the casual labourers have been working would be filled up as per extant recruitment rules and in accordance with the instructions issued by Department of Personnel and Training from amongst casual workers with temporary status. However, regular Group 'D' staff rendered surplus for any reason will have prior claim for absorption against existing/future vacancies. In case of

Attested
W.D.L.
Advocate.

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Illiterate casual labourers or those who fail to fulfil the minimum qualification prescribed for post, regularisation will be considered only against those posts in respect of which literacy or lack of minimum qualification will not be a requisite qualification. They would be allowed age relaxation equivalent to the period for which they have worked continuously as casual labourer.

9. On regularisation of casual worker with temporary status, no substitute in his place will be appointed as he was not holding any post. Violation of this should be viewed very seriously and attention of the appropriate authorities should be drawn to such cases for suitable disciplinary action against the officers violating these instructions.
10. In future, the guidelines as contained in this Department's OM dated 7.6.88 should be followed strictly in the matter of engagement of casual employees in Central Government offices.
11. Department of Personnel and Training will have the power to make amendments or relax any of the provisions in the scheme that may be considered necessary from time to time.

Amritpal
W.D.M.
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BRANCH, GUWAHATI.

Central Admin. Trib. (Guwahati)

Guwahati Branch

In the matter of

OA No.238/2004

Narendra Sarkar and others

-Applicant

Vs

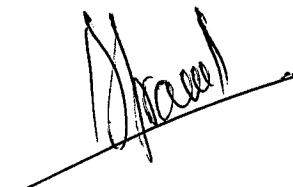
Union of India and others ...

-Respondents

Written Statement for and on behalf of Respondents Nos. 1, 2 and 3.

I Dr. B. Francis Kulirani, Superintending Anthropologist (C) & Head of Office, Anthropological Survey of India, North East Regional Centre, Mawblei, Shillong do hereby solemnly affirm and say as follows:

1. That I am the Superintending Anthropologist & Head of Office, Anthropological Survey of India, North East Regional Centre, Mawblei, Shillong and as such I am fully been acquainted with the facts and circumstances of the case, I have gone through the application served on me and have understood the contents thereof. Save and accept whatever is specifically admitted in this written statement, and other statements and contentions may be deemed to have been denied. I am authorised to file this written statement on behalf of all the respondents.



Addl. Central Govt. Standing Counsel

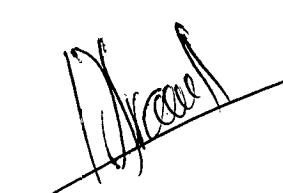
C. A. T.
Guwahati

2. That with regards to the statements in Paragraph 1 of the application the Respondents beg to state that the Memo No.25-68/2003/Estt, dated 31.5.2004 has taken in to cognisance the scheme of 1.9.1993 in letter and spirit while issuing the Memo.
3. That the Respondents have no comments to the statement made in Paragraph 2 & 3 of the application.
4. That with regard to the statement made in Paragraph 4(1) of the application that the Respondents have in no manner misinterpreted the orders of the Honourable Tribunal issued on 24th February, 2004 while display file No.OA106/2003 and that the services of the applicants cannot be regularised as the applicants have not gone through the regular process of selection. Their engagement was purely contingent nature and do not qualify for regularisation as per rules.
5. That the Respondents have no comments to the statement in paragraph 4.2 of the application.
6. That with regard to the statement made in paragraph 4.3 the Respondents begs to state that the applicant is trying to mislead the Hon'ble Tribunal. His engagement was purely contingent in nature and was not against any sanctioned vacant post and his recruitment was not through the State Employment Exchange of the Government of Meghalaya. Same is true in the case of applicant No.2. The payment of Bonus perhaps is no claim for the casual labourer to be absorbed against a permanent post of Group D staff. As the claimant in the statement submitted in the matter of OA No.106/03, copy of the document in Annexure No. 1 is only allocation of duty of the contingent chowkidar and not proof to their appointment in any other regular manner.
7. Those with regard to the statement made in paragraph 4.4 the Respondents have no comments.
8. That with regard to the statement in Paragraph 4.5 the Applicants are trying to mislead the Honourable Tribunal, the Office of the North East Regional Centre started functioning from October, 1953 and it is not a newly set up office as stated by the Applicants. The vacancies as and when arose were filled-up of Central recruitment rules. Contingent appointments were considered as per the need, for a period not exceeding 89 days.
9. That with regard to the statement in Paragraph 4.6 and Paragraph 4.7 the Respondents were guided by the prevailing recruitment policies of the Government of India and there was no intention as alleged by the Applicants.
10. That with regard to the statement made in Paragraph 4.8 the Respondents beg to state that the Respondents are guided by the recruitment policies with regard to filling-up the vacancies at various grades.
11. That with regard to the statements made in Paragraph 4.9 the Respondents beg to state that they had clarified on this point through their statement dated 20th October, 2003 in connection No.OA116/03 that Dasarath Barik had been working as a casual worker since 1989 and was recruited as casual worker from the local Employment Exchange in September 1993. Hence, he was regularised against the vacancy that arose subsequently.



Supporting documents in this regard can be submitted if the Honourable Tribunal so desires.

12. That with regard to the statement in Paragraph 4.10 the Respondents beg to state that the pay of the contingent worker is not identical with regular Group 'D'.
13. That with regard to the statement in Paragraph 4.11 the Respondents begs to state that there is no move to fill up the vacant post of Group 'D' as there is a total ban to Group 'D' recruitment by the Govt. of India.
14. That with regard to the statement in Paragraph 4.12, the Respondents have already issued a speaking order No.25-68/2003/Esst dated 31st May, 2004 in the light of the verdict of the Honourable Tribunal 24th February, 2004.
15. That with regard to the statement in Paragraph 4.13 the Respondents beg to state that they are constrained by the OM dated 1.9.1993.
16. That with regard to the statement in Paragraphs 4.14, 4.15 and 4.16 the Respondents begs to state that since it is mandatory to engage casual employees through Employment Exchange, the appointment of casual employees without Employment Exchange is irregular as per existing norms. Hence, such casual employees cannot be bestowed with temporary status and are not entitled for regularisation against any existing Group 'D' vacancies. Further the speaking order 31.5.04 was issued in the light of the above directives of the Government.
17. That with regard to the statement in paragraph 4.17 the Respondents beg to state that the applicants have made wild allegations that they are discriminated for regularisation and had favoured others for regularisation. The fact of the matter is that only in one instance regularisation of contingent worker has occurred in this organisation in the Andaman & Port Blair Region in which case the contingent worker was recruited through the local Employment Exchange. This was already been mentioned in paragraph 11 above.
18. That with regard to paragraph 4.18 the Respondents beg to state that there is no move to fill up the post of Group D category and the Honourable Tribunal is apprised of the fact that there is a ban on the recruitment to Group 'D'.
19. That with regard to paragraph 4.19 the Respondent have no comments.
20. That with regard to the GROUND FOR RELIEF WITH LEGAL PROVISIONS as sought by the applicants, the Respondents begs to state that they have acted on the grievance within the principles of justice and administrative fair play in treating the case of the applicants and has never acted contrary to the set position of law.
21. That with regard to statements in paragraph 5.2 the Respondents have not been vindictive and have been law abiding.
22. That with regard to paragraph 5.3 the Respondent have acted very much within the purview of law.
23. That with regard to paragraph 5.4 the Respondent beg to state that the Applicants are free to apply for any regular vacancy in future in this organisation. However, the so called rights accrued as claimed by the applicants way back in 1993 cannot be considered under the provision of existing laws.



24. That with regard to paragraph 5.5 the Respondents wish to state that the impugned action of the respondents is not sustainable in the eye of law and liable to be set aside and quashed is totally harsh and uncalled for. The Respondents wish to further state that they are willing to advance more grounds both legal as well as factual at the time of hearing of the case.

25. That with regard to paragraph 6 the Respondents have no comments.

26. That with regard to paragraph 7 the Respondents have no comments.

27. That with regard to paragraphs 8, 8.1, 8.2 and 8.3, RELIEF SOUGHT FOR the Respondents wish to state that the regularisation of the applicants is not possible under the provisions of existing recruitment procedures.

28. That with regard to paragraph 9 the Respondents beg to state that no harsh measures shall be taken against the applicants pending the disposal of the application.

29. That the Respondents beg to submit that the applicants are not entitled to any relief sought for and the application is liable to be dismissed with costs.



VERIFICATION

I, B.Francis Kulirani, Superintending Anthropologist(C) and also presently holding charge of Head of Office, Anthropological Survey of India, North East Regional Centre, Shillong – 21, being duly authorized and competent to sign this verification, do hereby solemnly affirm and state that the statements made in paragraphs 1, 3, 5, 7, 25 & 26 are true to my knowledge and belief and those made in paragraphs 2, 4, 6, 8-24 being matters of record are true to my information derived there from and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this 27th day of April, 2005, at Shillong.



(Deponent)

प्रथम अध्यक्ष

Head of Office

प्राचीय मानवविज्ञान संस्थान

Anthropological Survey of India

पश्चिम-यूर्द्ध शेशीय केन्द्र शिलाप-793021

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