

50/690

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 301/04 OF 199

Applicant(s)

Sanjiv Tiwari

Respondent(s)

No 9 & m.

Advocate for Applicant(s)

Mr. B. Malakar

Advocate for Respondent(s)

C.S.C.

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form in form C.F.F. Rs 10/- deposited vide L.C.D. No. 135/240 Dated 8/12/04</p> <p>24/12/04</p> <p>W.Dy. Registrar</p>	24.12.04	<p>Present: The Hon'ble Shri K.V. Prahladan, Member (A).</p> <p>Heard Mr.B.Malakkar, learned counsel for the applicant as well as Mr.A.K. Chaudhuri, learned Addl.C.G.S.C. for the respondents.</p> <p>The applicant approached this Tribunal in O.A.No.264/2002 and this Tribunal vide order dated 21.11.2003 dismissed the application on the ground of limitation. However, the applicant was given liberty to make representation along with supporting documents and in case applicant files the same, respondents were to deal with the matter in accordance with law, rules and instructions. Pursuant thereto, applicant submitted representation dated 4.12.2003, but he is yet to receive any reply from the authority.</p>

Notes of the Registry	Date	Order of the Tribunal
<p>7.1.05 Copy of the order handed over to the L/Advocate for the applicant. HS</p> <p>11.1.05 Copy of the order has been sent to the Office for receipt the same to the L/Adv for the Respon. HS</p>	<p>Contd. 24.12.04</p> <p>bb</p>	<p>Considering the facts and circumstances of the case, I am of the view that the application can be disposed of with a direction to the respondents to give a reply to the aforesaid representation dated 24.12.2004 as per law, rules and instructions within a period of four months from the date of receipt of this order.</p> <p>The application is disposed of accordingly at the admission stage itself with no order as to costs.</p> <p>10/1/05 Member</p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI 23 DEC 2004

O.A. 341 / 2002
নগরী বারাদি
Guwahati Bench

Sanjib Tiwary

... Applicant

- Vs -

Union of India and others (Telecom)

... Respondents

List of Dates :-

- 1.1.94 : Appointed as casual labourer at a consolidated monthly salary of Rs. 500/- by Sub-Divisional Officer, Telegraph, Barpeta Road in connection with line work of Telephones.
- 1995 : Monthly salary was raised to Rs. 1,000/- which continued upto 1998. This was further raised to Rs. 1,150/- in 1999.
- 6.2.2000 : Salary was further raised to Rs. 1,200/- p.m. At the relevant time Sri D.P. Singh was the JTO and Sri C.N. Sinha was the S.D.O.
- 1998 : Threatened with verbal termination order, the applicant alongwith others filed OA 192/98 where restrained order not to oust the applicants was passed alive in OA 107/98.
- 31.8.99 : OA 107/98 disposed directing the respondents authority to consider each case on the representation made by the applicants. Two months time was granted for filing representations and six months time to dispose such representation. Stay order passed was kept in force.
- 12.11.99 : Applicant filed representation.

Contd...P/2

20.11.2000:- Applicant's case for TSM status was rejected by a cryptic order without examining records.

18.12.2000:- Applicant submitted another representation to Respondent No.1, which has not been disposed till to-day.

21.11.03 :- Application filed before the CAT, Guwahati Bench. OA 264/03 which stood dismissed. Directing the applicant to file representation.

4.12.03 :- Representation filed before the Respondent No.1. Not considered.

14.10.04 :- Writ Petition No. 8063/04 filed in the High Court. High Court directed to move the CAT.

Ratul Das.
(A D V O C A T E)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI

CA 341/04

An application under section 19 of the Central
Administrative tribunal Act, 1985.

Sanjeeb Tiwary

... Applicant

- Vs -

Union of India & Others

... Respondents.

I N D E X

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Filed by -

Ratul Das

ADVOCATE.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

Registration No. :

REGISTRAR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

Filed by -
Sri Sanjeeb Tiwary.
— Applicant
Through - Ratul Das
Advocate.

Sri Sanjeeb Tiwary
son of Sri Bhagnarayan Tiwary
Barpeta Road, P.O. Barpeta Road,
Dist. : Barpeta.

... Applicant.

- Vs -

1. Union of India,
Represented by the Chief
General Manager, Bharat
Sanchar Nigam Ltd.,
S.R. Bora Lane, Ulubari,
Guwahati - 7
2. The Telecom District Manager,
Bongaigaon.
3. S.D.O., Telegraph,
Barpeta Road.

... Respondents.

(1) Particulars of the Applicant :-

- (i) Name : Sri Sanjeeb Tiwary
- (ii) Father's Name : Sri Bhagnarayan Tiwary
- (iii) Designation : Ex-casual Mazdoor under SDO (T)
& Office Barpeta Road.
which
employed
- (iv) Address for : As above.
services of
Notices

Contd...P/2

(2) Particulars of the Respondents :-

(1) Name & designation : (1) Union of India
of Respondents
Represented by the Chief
General Manager, Bharat
Sanchar Nigam Ltd.,
S.R.Bora Lane, Ulubari,
Guwahati - 7.

(2) The Telecom District
Manager, Bongaigaon.

(3) S.D.O., Telecom
Barpeta Road.

(ii) Office address of : As above.
the Respondents

(iii) Address for services
of notices : As above.

(3) Particulars of order against which this application is

Made :- : Non-consideration of the
applicant's case for grant of
temporary status and his illegal
ouster.

(4) Jurisdiction of the : The applicant declares that the
Tribunal subject matter of this application
is within the jurisdiction of
this Tribunal.

(5) Limitation : The applicant further declares that
the application is within the
limitation, prescribed by section
21 of the Act.

Contd...P/3

(6) Facts of the case :-

(i) That the applicant is a permanent resident of Barpeta Road and he had passed the H.S.L.C. Examination from St. Joseph High School, Barpeta Road, while in search of livelihood, the applicant was engaged as a casual mazdoor in the year 1994 by the S.D.O., Telegraph, Barpeta Road at a monthly salary of Rs. 500/-. In 1995, his salary was Rs.1,000/- per month which continued upto 1998. In 1999 his salary was Rs.1,150/- which was again raised to 1200 w.e.f. 06.02.2000. At the time of his engagements, Sri D.P. Singh was the JTO and Sri C.N. Sinha was the S.D.O.

(ii) That the working particulars of the applicant are as follows :-

26.04.1994 to 31.12.1995 : 365 days

1996 January : 22 days

February : 18 days

March : 15 days

April : 25 days

May : 13 days

June : 27 days

July : 20 days

August : 16 days

September : 24 days

October : 21 days

November : 19 days

December : 20 days

TOTAL = 240 days

1997 January : 22 days

February : 15 days

Contd...P/4

March	: 20 days
April	: 27 days
May	: 13 days
June	: 24 days
July	: 20 days
August	: 16 days
September	: 20 days
October	: 21 days
November	: 19 days
<hr/>	
TOTAL =	240 days

In 1998 :

January	: 19 days
February	: 20 days
March	: 27 days
April	: 22 days
May	: 16 days
June	: 24 days
July	: 14 days
August	: 20 days
September	: 21 days
October	: 15 days
November	: 20 days
December	: 27 days
<hr/>	
TOTAL =	245 days

- (iii) That while the applicant was working as above, there was a move to terminate the applicant and some other similar casual labourers. The All India Telecom Employees Union of which the applicant was also a member, took up their cause of apprehended retrenchment and the Union moved an application before

the Hon'ble CAT, Guwahati Bench the OA 192/98 which was admitted by the Tribunal and restrained the Respondents not to oust the applicant in the OA pending disposal of the application. In this application, although notices were issued to the Respondents, no written statement was filed before the Tribunal.

- (iv) That the cause came up before the Tribunal for hearing and after hearing some similar matters, the Hon'ble Tribunal disposed all such applications vide order dt. 31.8.98 in OA 107/98. The operative portion of the order is quoted below :-

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

A copy of the order is annexed herewith and marked as Annexure-A to the application.

- (v) That the applicant begs to state that on behalf of the respondents it was contended that casual labourers

(Grant of temporary status and regularisation) Scheme 1989 which came into effect from 01.10.89. The Scheme as such was not applicable to casual labourers appointed after that date, but in the department of post casual labourers appointed on 29.11.89 were granted the benefit. The benefit was also extended in the department of post to casual labourers appointed on 10.09.93 pursuant to a judgement of the Ernakulam Bench of the Tribunal passed on 13.03.95 in OA No.750/1994. Therefore, the applicant claimed the benefit. It was further contended that the schemes was retrospective and not prospective. Also the casual labourers of the Telecom Department were not at par with those of department of post.

- (vi) That the department introduced a cut off date as 01.08.1998 in order to disentitle the applicant the benefit of regularisation. The condition precedent for confirmment of temporary status and subsequent regularisation was on the only consideration that casual labourers having completed 240 days of continuous service in a year. On this basis the applicant was entitled to the grant of temporary status and regularisation of service as there was definite proof of completion of 240 days of service in 1994-1995 and 1995-1996 on the basis of certificates given by J.T.O., Phones, Barpeta Road and the S.D.O., Telegraph, Barpeta Road.

Copies of the certificates are annexed herewith and marked as Annexure-B series to this application.

Contd...P/7-

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- (vii) That the applicant on receipt of the order of the Hon'ble Tribunal submitted a representation on 12.11.1999 to the respondent No.1. through proper channel praying the regularisation of service as casual labourer on the basis of his complying with the eligibility criteria.

A copy of the representation is annexed herewith and marked as Annexure-C to this application.

- (viii) That the applicant begs to state that on 08.11.2000 the respondent No.2, issued a letter wherein it was stated that casual labourer who were still in engagement but could not be granted temporary status may be furnished in the enclosed proforma. It was also directed to obtain a certificate from all SDOs to the effect that no casual labourers have been engaged after 01.08.1998. The report was sought for within a week time.

Copies of the letter together with the annexures are annexed herewith and marked as Annexure - D series.

- (ix) That the applicant begs to state that the Respondent No.2 issued letter No.E-75/PT & CM/ CAT Case/ 2000-2001/43, dt. 20.11.2000 wherein it was stated that on the basis of the findings of the verification committee and details scrutiny and examination of records of casual labourers in Bongaigaon SSA, the regularisation could not be granted as the

applicant had not completed 240 days in any preceeding year and was not in service on 01.08.1998.

A copy of the letter is annexed herewith and marked as Annexure-E to this application.

- (x) That the applicant begs to state that the letter dtd. 20.11.2000 disposing the representation of the applicant is perfunctorily written as no records have been verified in the Office of the SDO (T) Barpeta Road. The SDO (T) Barpeta Road has not sent any records to the Respondent No.2 for verification. The applicant asserts that the certificates regarding engagement of the applicant as casual labourer and completion of 365 days of continuous service in 1995 and 240 days in 1996 are signed by the JTO, Phones, Barpeta Road (Sri D.P.Singh) and SDO (T), Barpeta Road (Sri C.N. Sinha), both of them being responsible officer of the department. If these 2 certificates are found to be false, forged or fabricated, in that case only rejection of the applicant's claim may arise.
- (xi) That the applicant humbly submits that there is total non-application of mind by the Respondent No.2 in disposing the representation of the applicant. The letter has been issued in a most arbitrary and capricious manner which is required to be set aside.
- (xii) That the applicant further submits that on 12.11.1999 when the representation was made, the applicant categorically stated that he was still in engagement as

casual labourer. Further, the Hon'ble Tribunal while disposing the OA No.107/98 issued a direction to the respondent authorities not to disengage the applicant till the disposal of the representation. The representation was disposed on 20.11.2000 and the Respondent No.2 has held by a cryptic order that the applicant was not in engagement on 01.08.98.

(xiii) That the applicant submits that the order passed by the Respondent No.2 is not a reasoned order in as much as no opportunity was afforded to the applicant to state his case before the authority. The applicant had submitted sufficient proof of his engagement as casual mazdoor and also his continuous engagement for 240 days prior to 1.8.98. The order being arbitrary and in violation of the principle of Natural Justice is liable to be set aside.

(xiv) That the applicant further submits that it was incumbent on the part of the Respondent No.2 to reconcile the records submitted by the applicant by calling for a report from the office of the Respondent No.3 before issuing a stereo-type decision in the matter. The order does not reveal that the so-called scrutiny committee decided the matter on the basis of records. The order, therefore, is ex-facie illegal and liable to be set aside.

X

- (xv) That the applicant assailed the order dated 20.11.2000 before the Tribunal by filing OA No.264/03 which was barred by limitation. The reason for late filing of the OA was that the Respondent had consumed the time by giving the applicant false promise stating that his case would be reviewed. But it did not materialise. The learned Tribunal, however, dismissed the OA as barred by limitation on 21.11.2003. But the Respondent authority was directed to consider the representation filed by the applicant.

A copy of the order in oA 264/03 is annexed hereto and marked as Annexure- F.

- (xvi) That on the basis of the order aforesaid the applicant filed a representation of 4.12.2003 through proper channel to Respondent No.2 mainly on the ground of the certificate issued by the Respondent No.3. This time also, the Respondent No.3 had not considered his representation. Therefore, the applicant approached Hon'ble Gauhati High Court filing a Writ Petition which was numbered as WP(C)8063/04. The Hon'ble High Court has since disposed of the Writ Petition on 14.10.2004 with a direction to the applicant to approach the Hon'ble Tribunal for appropriate direction in the matter.

A copy of the order of the Hon'ble High Court is annexed hereto and marked as Annexure - G.

- (xvii) That the applicant has a right to get his considered in view of cogent evidence that the applicant had

worked for 240 days in 1996 and 240 days in 1997 and 248 days in 1998

7. Relief Sought :-

Under the circumstances, it is most respectfully prayed that the Tribunal be pleased to admit this application and after hearing be pleased to :-

- 1) issue a direction to the Respondent No.1 to consider the representation filed by the applicant in consultation with the records and pass a reasoned order.

8. Remedies Exhausted :-

The applicant declares that he has availed the remedies available but to no effect. Against the order dt. 20.11.2000, I submitted an other representation to Respondent No.1 on 18.12.2000 which has not been disposed as yet.

9. Interim Order : Nil.

10. Matter not pending in any other Court or Tribunal :-

The applicant further declares that the matter is not pending the any other Court or Tribunal.

11. Particulars of I.P.O. :-

- (i) No.of I.P.O. :-
- (ii) Name of Issuing :-
Post Office
- (iii) Post Office :-
which payable

12. Annexures :-

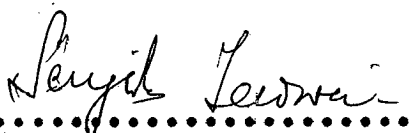
- (i) Tribunal's Order in OA 107/98.
- (ii) Copies of Certificates.
- (iii) Representation.
- (iv) Letter dated 08.11.2000.
- (v) Letter dated 20.11.2000.
- (vi) Appeal dated 18.12.2000.
- (vii) CAT's Order dated 21.11.2003.
- (viii) High Court's Order.

.. VerificationP/13

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

I, Sri Sanjeeb Tiwary, son of Sri Bhagnarayan Tiwary, the applicant above-named do hereby verify that the statements made in paras - 6(i, ii, iii, v, vii, xii) are true to my knowledge and those made in paras - 6(iv, vi, viii, ix, x) being matters of records are true to my information which I believe to be true and rest are my humble submission.

And I sign this Verification on this the day
of December, 2004.


.....

SIGNATURE.

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Annex - A

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.107 of 1998 and others

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

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

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

1. O.A.No.107/1998

Shri Subal Nath and 27 othersApplicants

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

-versus-

The Union of India and othersRespondents

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

....

2. O.A.No.112/1998

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

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

-versus-

The Union of India and othersRespondents

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

....

3. O.A.No.114/1998

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

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

-versus-

The Union of India and othersRespondents

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

....

4. O.A.No.118/1998

Shri Bhuban Kalita and 4 othersApplicants

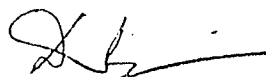
By Advocates Mr J.L. Sarkar, Mr M. Chanda
and Ms N.D. Goswami.

-versus-

The Union of India and othersRespondents

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

....



True Copy
Ratul Das
Advocate

-15-19-

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5. O.A.No.120/1998

Shri Kamala Kanta Das and 6 others

.....Applicant

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

-versus-

The Union of India and others

.....Respondents

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

.....

6. O.A.No.131/1998All India Telecom Employees Union and
another

.....Applicants

By Advocates Mr B.K. Sharma, Mr S. Sarma
and Mr U.K. Nair.

-versus-

The Union of India and others

.....Respondents

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

O.A.No.135/98

.....

7. All India Telecom Employees Union,
Line Staff and Group 'D' and
6 others

.....Applicants

By Advocates Mr B.K. Sharma, Mr S. Sarma
and Mr U.K. Nair.

-versus-

The Union of India and others

.....Respondents

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

.....

8. O.A.No.136/1998All India Telecom Employees Union,
Line Staff and Group 'D' and
6 others

.....Applicants

By Advocates Mr B.K. Sharma, Mr S. Sarma
and Mr U.K. Nair.

-versus-

The Union of India and others

.....Respondents

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

.....

9. O.A.No.141/1998All India Telecom Employees Union,
Line Staff and Group 'D' and another

.....Applicants

By Advocates Mr B.K. Sharma, Mr S. Sarma
and Mr U.K. Nair.

-versus-

The Union of India and others

.....Respondents

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

.....

Xb

10. O.A.No.142/1998

All India Telecom Employees Union,
Civil Wing Branch.

.....Applicants

By Advocate Mr B. Malakar

-versus-

The Union of India and others

.....Respondents

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

.....

11. O.A.No.145/1998

Shri Dhani Ram Deka and 10 others

.....Applicants

By Advocate Mr I. Hussain.

-versus-

The Union of India and others

.....Respondents

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

.....

12. O.A.No.192/1998

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

.....Applicants

By Advocates Mr B.K. Sharma, Mr S. Sarma
and Mr U.K. Nair.

-versus-

The Union of India and others

.....Respondents

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

.....

13. O.A.No.223/1998

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

.....Applicants

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

-versus-

The Union of India and others

.....Respondents

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

.....

14. O.A.No.269/1998

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

.....Applicants

By Advocates Mr B.K. Sharma, Mr S. Sarma,
Mr U.K. Nair and Mr D.K. Sharma.

-versus-

The Union of India and others

.....Respondents

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

.....

SL

15. O.A.No.293/1998

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

-VERSUS-

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

O R D E R

BARUAB.J. (V.C.)

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

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

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

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

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

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

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

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

SLS

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

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

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

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- 22 - ~~28~~ 29

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

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

9. No order as to costs.

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

Certified to be true Copy
गौरीनाथ - गौरीनाथ

nkhi
25/9/03
District Court, Patna
District Court, Patna
District Court, Patna

TO WHOM IT MAY CONCERN

Certified that Shri Sanjib Tiwary, Son of Shri Bhag Narayan Tewary an inhabitant of Village Simlaguri, P.O. Barpeta Road, P.S. Barpeta Road, Dist. Barpeta worked under me as daily Rated Mazdoor satisfactorily in the following period and works.

PERIODS

WORKS

in 1996 :-

January : 22 dys

February : 18 days

March : 15 days

April : 25 days

May : 13 days

June : 27 days

July : 20 days

August : 16 days

September: 24 days

October : 21 days

November : 19 days

December : 20 days

TOTAL = 240 days

(Two hundred forty days only)

S.D.O. Telegraph
Barpeta Road.

Dated :

Station : Barpeta Road

J.T.O. Telephone
Barpeta Road

31/12/96

True copy.
Ratul Das.
Advocate.

TO WHOM IT MAY CONCERN

This is to certify that Shri Sanjib tiwari, Son of Shri Bhagya Narayan Tiwari of Barpeta Road is well known to me. He worked as casual mazdoor under me in telecom line construction and maintenance work during 1994-95 for 365 days. He is young energetic and sincere in duty.

S.D.O. Telegraph
Barpeta Road.

True copy
Ratul Das
Advocate

To

The Chief General Manager,
Telecommunication Department,
Assam Circle, Guwahati-7.

Dated : Barpeta Road the ...12-11-99...

Sub : Representation for regularisation of casual mazdoor
as per verdict of Case No. 192/93, CAT GH.

Respected Sir,

With due respect and honour, I beg to lay the following few lines for favour of your kind information.

That this petition has been filed before your honour as per decision given by the Central Administrative Tribunal, Guwahati Bench on 31st day of August, 1999. The order of the Tribunal has been communicated to me by the department of Barpeta Road 3 days before this application. The Tribunal has deserved that the applicants may file representations indivisually within a period of one month from the date of receipt of the order.

That Sir, before receiving this order an application was filed before the Dist. Manager (Tele), Bongaigaon Telecom Division for regularisation of the post. But this application has again being filed as per decision of the Tribunal.

I am still working as casual labour under SDOT/ Barpeta Road since 1.1.94.

I, therefore, request your honour to consider my case sympathetically and hope your honour will regularise my service in the department considering the facts stated above and thus obliged. This is stated here that I have been working since 1.1.94 till today and in all previous years, I had completed 365 days in 1995 and 240 days since in 1996.

Yours faithfully,

(SANJIB TIWARI)
S/O. B.N. Tiwari
Telephone Exchange,
P.O. : Barpeta Road,
Dist. : Barpeta (Assam).

*True copy
Ratul Das
Advocate*

BHARAT SANCHAR NIGAM LIMITED
(A Government of India Enterprise)
OFFICE OF THE TELECOM DISTRICT MANAGER:::BONGAIGAON:783380

No.E-75/PT & CM/CAT Case/2000-2001/60 Dated at Bongaigaon the
8th November, 2000.

To,

1. Sri B. Mishra, DE Telecom, Dhubri.
2. Sri J.M. Taraphdar, DE Telecom, Kokrajhar.
3. Sri Shafi Ahmed, DE Telecom, Barpeta.
4. Sri M. Dekabaruah, DE(Mice), Baongaigaon.

Sub : Engagement of casual labourers.

With reference to the subject cited above, a copy of the CGATEGH's letter no. ESTT-9/12/Pt(II)/59, dated 19.10.200 is enclosed herewith for favour of kind information, guidance and necessary action at your end.

In this respect casual labourers still in engagement but could not granted Temporary Status may be furnished in the proforma enclosed. A certificate is to be collected from all Sub-Divisional Officer that no fresh casual labourer has been engaged after 01.08.1998 and follow up cases of Casual Labourers are pending for grant of Temporary Status due to reasons mentioned therein. Your report should reach this office within a week time fro onward transmission to Circle Officer.

(Harbans Singh)
Telecom District Manager
Bongaigaon-783380.

Copy forwarded for information and necessary action to :-

1. The SDOT, Dhubri/Nalbari/Barpeta Road/ Kokrajhar/Bongaigaon.
2. The SDE(C DOT), Bongaigaon.
3. The SDE Phones (Gr.), Goalpara.
4. The SDOP, Bongaigaon.
5. The SDE(TT), Bongaigaon.
6. The Divisional Secretary, IS & Ggroup-I), AITFU, Nalbari Telephone Exchange, Nalbari.

For submission of report.

(P.C. Sarkar)
Sub-Divisional Engineer (HRD)
For Telecom District Manager
Bongaigaon-783380

True Copy.
Ratul Das.
Advocate

-27- 26-34
D1

ANNEXURE-8

BHARAT SANCHAR NIGAM LIMITED
OFFICE OF THE TELECOM DISTRICT MANAGER
ASSAM CIRCLE, GUWAHATI-781007.

No. ESTT-9/12/PT(11)/59 Dated Guwahati, the 19th October, 2000

To,

1-3. The General Manager, Guwahati/Dibrugarh/
Silchar.

4-7 The Telecom District Manager, Bongaigaon.

Sub : Engagement of Casual labourers.

The SSA for level committees which were formed to verify the eligibility of all casual labourers have since submitted their report to the respective head of SSA/ District who in turn submitted his recommendation to the Circle Office on the basis of the Committees report. Most of the Casual labourers thus recommended have since been granted temporary status and the remaining cases are still under consideration. Instructions were also issued to all concerned for disengagement of the ineligible casual labourers after disposing their representations in accordance with the order and direction of the Hon'ble CAT.

In the above situation, normally no casual labourers other than those found suitable for grant of TSM should be available in any SSA. However, owing to delay in disposal of representation or some other compelling situation, there may be some casual labourers still engaged in the field unit but no granted Ty status. The details of these casual labourers still in engagement but could not granted TSM may be furnished in the proforma appended below. It may kindly be ensured that every Sub-Divisional Officer gives a certificate that no fresh casual labourer has been engaged after 01.08.98 and following cases of casual labourers are pending for grant of TSM due to reasons mentioned therein.

PROFORMA

Sl.No.	Name of Casual labourers	Date of engagement	Date of engagement	No. of days put in work during calendar year			Whether currently engaged if so, reason for continued engagement	Why he could not be granted Ty. status
				1998	1999	2000		
1	2	3	4	5a	5b	5c	6	7

True copy
Ratul Das
Advocate

Contd....P/2

- 28 - 35

It may be noted that this is the final compilation of existing, casual labourers and no addition/alteration will be allowed thereafter on any ground. Utmost care should therefore, be taken to prepare an-error free report. If any Court case is in operation the member and brief details of the court orders should be given as column 6.

The report complete and corrected in all respects should be submitted under the signature of SSA/District head so as to reach the unsigned on or before 31.10.2000.

Sd/-

(M. Shukla)

Dy.General Manager (Admn.)

Copy to :-

1. The S.E.(H.Q.) He is requested to submit a similar report covering Civil Electrical and Architectural Wing.
2. The Divisional Engineer (Installation)
3. The Asstt. Director Telecom (Genl.)
Circle Office, Guwahati.
4. The Principal, C.T.T.C., Guwahati
5. The Divisional Engineer (Store)
C.T.S.D., Guwahati

For submission
of Report.

Sd/-

For, C.G.M.T. Assam Circle,
Guwahati.

Annex- E
36.29

BHARAT SANCHAR NIGAM LIMITED
(A GOVERNMENT OF INDIA ENTERPRISE)
OFFICE OF THE TELECOM DISTRICT MANAGER BONGAIGAON

Memo No.E 75/PT & CM/CAT case/2000-2001/43

Dated at Bongaigaon the 20.11.2000

To,

Sri Sanjiv Tiwari
S/O Sd B.N. Tiwari, LM-DT
C/O Telephone Exchange, Baspeta Road.
Dt - Baspeta - 781315.

Sub :- Disposal of representations of Casual Labourers.

Ref :- CGMT/GH's letter No. ESTT-9/12/PT/KTD/34 dtd. 9-11-2000

with reference to the above, I am directed to dispose off your representation on the basis of findings of the verification committee set up in the office of the Telecom District Manager, Bongaigaon for making detailed scrutiny and examination of the records of casual labourers in Bongaigaon SSA, with a view to grant temporary status to the eligible casual labourers.

The committee has examined your representation in accordance with the relevant rules and orders governing the case of casual labourers of the Department and did not recommend your case for granting TSM.

Accordingly, it is to intimate you that your representation can not be granted as you have not completed 240 days in any preceeding years and you are not in service as on 01-08-1998.

P.S. 20/11/2000
(P.C.SARKAR)
Sub-Divisional Engineer (HRD),
B.S.N.L.
O/O the Telecom District Manager,
Bongaigaon - 783 380.

Copy forwarded for information necessary action to :-

- 01. The Asstt. General Manager (Admn), O/O the CGMT/GH-7.
- 02 to 06.. The SDOT/BPRD/NBR/DU/KKJ/BGN.
- 07. The SDE (C - DOT), Nalbari.

Sd/-
For Telecom District Manager,
Bongaigaon - 783 380.

True Copy
Ratul Das.
Advocate.

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.264/2003

Date of Order : This, the 21st Day of November, 2003.

THE HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE CHAIRMAN.

THE HON'BLE SHRI S. K. NAIK, ADMINISTRATIVE MEMBER.

Sri Sanjeeb Tewary
S/o Sri Bhagnarayan Tewary
Barpeta Road, P.O.: Barpeta Road
Dist: Barpeta.

..... Applicant.

By Advocates Mr.B.Malakar & Mr. R.Das.

- Versus -

1. Union of India
Represented by the Chief General Manager
Bharat Sanchar Nigam Limited
S.R.Bora Lane, Ulubari
Guwahati-7.

2. The Telecom District Manager
Bongaigaon

3. S.D.O., Telegraph
Barpeta Road.

..... Respondents.

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

O R D E R

SMT.L.SWAMINATHAN, (V.C.) :

This is the second round of litigation of the applicant as he is stated to have been one of the applicants in O.A. No.192 of 1998, which was disposed of by Tribunal's order dated 31.8.1999 with connected cases. In that order the Tribunal had held as follows :-

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

2. In pursuance of the directions of the Tribunal mentioned above, Mr.B.Malakar, learned counsel for the applicant, submits

Contd./2

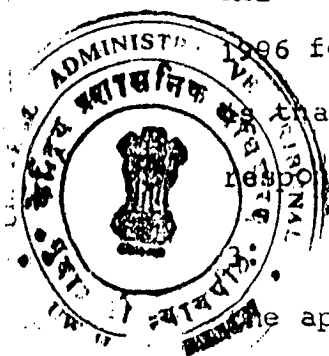
True Copy
Ratul Das
Advocate



-31-

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that the applicant had submitted two representations to the respondents, copies placed at Annexure - C & F. The respondents passed letter dated 20.11.2000 on his representation which is stated to have examined in accordance with the relevant rules and orders governing the case of casual labourers of the Department but had not recommended his case for granting Temporary Status (TSM). They have also intimated that the applicant had not completed 240 days in any preceeding years as on 1.8.1998. These facts are disputed by the learned counsel for the applicant, who has, inter alia, relied upon a certificate issued by S.D.O Telegraph, Barpeta Road dated 31.12.1996 (Annexure-B). In this certificate it is mentioned that the applicant had worked as a daily Rated Mazdoor in 1996 for a period of 240 days. The grievance of the applicant is that these facts have not been taken into account by the respondents while passing the impugned order dated 20.11.2000.



It is seen from the documents on record that what the applicant is impugning in the present application, which has been filed on 20.11.2003, is to ~~impugn~~ ^{impugn} the action and orders passed by the respondents dated 20.11.2000. Having regard to the provisions of Section 21 of the Administrative Tribunals Act, 1985, the O.A. is, therefore, highly belated and liable to be dismissed on the ground of bar of limitation. Further, we note from the documents on records, that the applicant does not appear to have annexed the certificate issued by S.D.O. Telegraph, Barpeta Road dated 31.12.1996 as an annexure to the aforesaid representations. We, therefore, find no reason to believe that the respondents have not considered the applicant's claim for grant of Temporary Status based on the official records available with them.

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Contd./3

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4. In the facts and circumstances of the case, ^{the} O.A. is dismissed as barred by limitation, at the admission stage itself. However, in case, applicant makes any further representation together with supporting documents, it is open to the respondents to deal with the matter, in accordance with law, rules and instructions.



bb

Sd/ VICE CHAIRMAN
Sd/ MEMBER (A)

certified to be true
[Signature]

[Signature]
30/11/03
Section Officer (J)
C.A.T. GUWAHATI BANCH
Guwahati-781005

2 before the GGMT/Assam Circle, Guwahati

34 41

- A N D -

IN THE MATTER OF :

Sri Sanjeeb Tewary,
son of Sri Bhagnarayan Tewary,
Ex- Casual Mazdoor under SDO/(T)/
Barpeta Road.

... PETITIONER

- Versus -

1. The Union of India,
represented by the Chief General
Manager, Bharat Sanchar Nigam Ltd.,
S.R. Bora Lane, Ulubari, Guwahati-7.
2. The Telecom District Manager,
Bongaigaon.
3. The SDO (Telegraph), Barpeta Road,

Gauhati High Court at Guwahati. RESPONDENTS.

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

WP(C) No.8063/2004

BEFORE

**THE HON'BLE THE CHIEF JUSTICE (ACTG.)
THE HON'BLE MR JUSTICE RNJAN GOGOI**

14.10.2004

Heard Mr B. Malakar, the learned counsel for the petitioner and Mr BC Pathak, the learned Standing Counsel for the BSNL.

The petitioner submitted a representation dated 4th December, 2003(Annexure-D) for re-consideration of his case for confirmation of temporary status in pursuance of the direction given by the learned Tribunal in O.A.No.264/2003.

Mr Malakar, the learned counsel submits that the representation filed on 4.12.2003 has been disposed of by the respondent authority.

In view of the above, the petitioner may approach the learned Tribunal for appropriate directions in the matter.

This petition accordingly stands disposed of.

sd/- Ranjan Gogoi Judge
sd/- D. Biswas Chief Justice (Acting)

23425
19/11/04

DECLARED TO BE TRUE COPY
By Akon Barpatra Gohain
Date 25/11/04
Superintendent (Copying Section)
Gauhati High Court
Authorised U/S 76, Act I, 1872

25/11/2004

To,

The Chief General Manager,
BSNL Assam Circle,
S.R. Bora Lane,
Guwahati - 6.

Date : 4-12-04³

Sub :- Grant of temporary status.

Sir,

I was engaged as a casual labourer under SDO/T/Barpeta Road in connection with maintenance of telephone. I had work as such casual labourer and last monthly salary was Rs.1200/-. The Deptt. threatened by service to be terminated along with others and when we moved the CAT, Guwahati Bench, the CAT restrained the authorities from terminating our services. CAT finally disposed the OA 107/98 on 31/8/99 directed the authorities to examine each case individually by a reasoned order. A representation was filed by me on 12-11-99. On 20-11-2000, representation was rejected. I had filed another representation on 18-12-2000.

Sir, it is pertinent to note that the SDO/T/Barpeta Road certified my continuous service of 240 days which was countersigned by the concerned JTO as on 31-12-96. This particular fact was not taken into consideration and my case was rejected by a stereo type order dt. 20-11-2000 without considering effectively my representation in O.A.No.264/03 dated 21-11-03. On being challenged, this order dt. 20-11-2000 the CAT rejected my prayer on the ground of limitation.

Now, in terms of CAT's order I again approach your honour to reconsider my case and grant temporary status to me.

Yours faithfully,

(Sanjib Tiwary)

Encl. - CAT's order dt. 21-11-03.

- xx -

True copy
Ratul Das
Advocate.