

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

5

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 75/2004

R.A/C.P No.

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SECTION OFFICER (Judl.)

FORM NO. 4

(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
CONSTITUTIONAL BENCH.

ORDER SHEET

Org.App/ Misc.Petr/Cont.Petr/ Rev.Appl. 75/04

In O.A.

Name of the Applicant(s) Sri Sudip Das

Name of the Respondent(s) Union of India 2018.

Advocate for the Applicant J.A. Hassan Miss W. Rahman

Counsel for the Railway/ C.G.S.C. Miss U. Das, Add. C.G.S.C.

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

5.4.2004

Heard Mr. J.A. Hassan, learned counsel for the applicant and also Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents.

The application is admitted, call for the records, returnable by four weeks.

List on 12.5.2004 for orders. Menawhile, the respondents may file written statement.

K. P. S. Das
Member (A)

mb

25.5.2004

On the plea of counsel for the applicant list on 24.6.2004 for orders.

K. P. S. Das
Member (A)

mb

Steps taken.
Notice & order dt.
5/4/04 Sent to
D/Section for
issuing respondent
nos 1 to 3 by Regd.
with A/D post.

Cas
17/5/04.

No. 1 & 2 has been filed.

220
24.5.04

postal A/D card
return from
respondent no
1, 2 & 3.

9/6/04.

27-7-04

Notice duly served
on R-No 1, 2 & 3.

No. W/s have been filed. mb

18.8.2004

List on 30.8.2004 for orders.

K. P. Bhatta
Member (A)

mb

K. P. Bhatta
Member (A)

28.9.04

1) W/s not yet
filed by the
respondents.

2) Notice duly served on
R-1-3. *Am*

9-11-04

No. W/s have been filed.

mb

10.11.2004

None for the applicant. Mr. A. Deb
Roy, learned Sr.C.G.S.C. seeks eight
weeks time to file written statement.
Stand over to 10.1.2005.

R.
Vice-Chairman



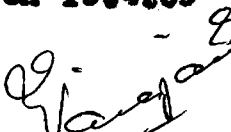
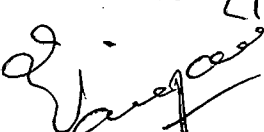
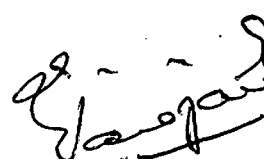
R.
Vice-Chairman

bb

Written Statement has
been filed on behalf of
Respondents No. 1, 2 & 3.

19-1-05

W/s filed by the
Respondents.
Am

Notes of the Registry	Date	Orders of the Tribunal
17-3-05 W/S has been filed	19.01.2005	Present: The Hon'ble Mr. Justice R.K. Batta, Vice-Chairman. Mr. A. Deb Roy, learned counsel for the respondents seeks further eight weeks time to file written statement. Accordingly, matter is adjourned to 8.3.2005.  Vice-Chairman
31-3-05 W/S has been filed	18.3.05	None present for the applicant. Miss U. Das, learned counsel for the respondents is present. List on 1.4.05 for order.  Member
12-4-05 W/S has been filed	1.4.05.	The learned counsel for the applicant is absent. Post the matter on 13.4.05 as last chance.  Vice-Chairman
24-5-05 W/S has been filed	13.4.2005	In spite of several opportunities learned counsel for the applicant is absent. Applicant is also not present. Still one more opportunity as a last chance is given. Post on 4.5.2005.  Vice-Chairman
	4.5.05	None appears for the applicant. Last time also there was no appearance on behalf of the applicant. As a last chance it is adjourned to 11.5.05 for hearing.  Vice-Chairman

Notes of the Registry	Date	Orders of the Tribunal
	25.5.2005	<p>Present: The Hon'ble Mr.K.V.Prahladan Administrative Member.</p> <p>Learned counsel for the applicant were absent during the last hearing dates. It seems that applicant has no interest in pursuing the application. Hence the application is dismissed for default</p>
<p>26.5.05</p> <p>Copy of the order has been sent to the Dy Sec. for issuing the order to the Applicant as well as to the Addl. C.G.S.C. for the Respondent</p> <p><i>[Signature]</i></p>	25.5.2005	<p>Present: The Hon'ble Mr.K.V.Prahladan, Administrative Member.</p> <p>Learned counsel for the applicant were absent during the last 4 four hearing date Ms.U.Das, learned Addl.C.G.S.C. is present for the respondents. It seems that applicant has no interest in pursuing the application Application is accordingly dismissed for default. No costs.</p>
<p>Received Usha Das Addl C.S.C. 26/5/05</p>		<p>bb</p> <p><i>[Signature]</i> Member</p>

25 MAR 2004
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

OA NO. 75/2004

List of dates and Synopsis of the Application

Sri Sudip Das

... Applicant

Vs.

Union of India & Orgs.

... Respondents

Since Nov., 1993

The applicant has been working as a water carfier as a Grade IV employee in the department of Subsidiary Intelligence Bureau (SIB), Ministry of Home Affairs, Govt. of India at Lokicherra Out post, Dist. Mamit, Mizoram as Master Roll Employee.

24.6.97

An application was made by the applicant before the Asstt. Director, SIB, Govt. of India, Aizawl, Mizoram, praying for regularisation of his service but the concern authority did not take any positive steps in respect to the applicants' request inspite of his repeated request to upgrade his service from temporary to permanent whereas one Sri Swapan Singh who was appointed as Casual Cook at Kelas Outpost and six months junior to the applicant has been upgraded to permanent rank.

20.11.97

When the application dated 24.6.97 did not yeild any resultt the applicant made another application to Assistant Director, SIB, Aizawl, Mazeram requesting for regularisation of his service but this too like the earlier one went in vain sattering all the hopes of the applicant.

31.3.98

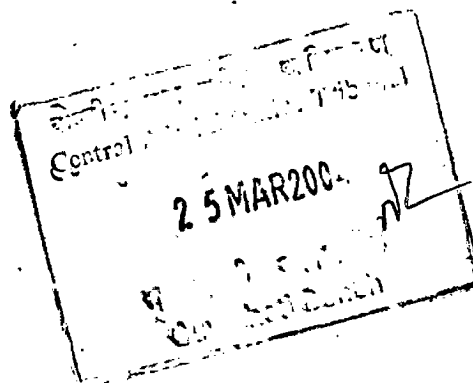
Then applicant when came to know from reliable sources that there are some post for Cooks lying vacant in the office of the Assistant Director, SIB, Aizawl submitted an application on this date to the Asstt. Director, SIB, Aizawl praying for appointment in thexxa said post. But the respondents did not conside- his case inspite of the facts that he had five years of Cooking experience and has educational qualification as 9 th class pass, which is more then requisite qualification for appointment in the post of Cook in the said office.

Contd..2.

5.2.03

That the applicant was drawing salary at full scale upto 1996 from his office but suddenly to his utter surprise and without any extensible reason his salary was reduced by the concerned authorities ~~xxxx~~, so the applicant being highly arrrieved an unable to find any reason for such reduction of his salary subbmited an application on this date before the Dy. Director, SIB, Aizawl through proper channel praying for upgradation of his temporary service to a permanant one.

Javed Ali Hassan &
Filed by : Waheda Rehman
Advocate.



CENTRAL ADMINISTRATIVE TRIBUNAL:: GUWAHATI BENCH.

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

C.A. No. 75 /2004.

Sri. Sudip Das,Applicant.

- Versus -

Union of India and ors. Respondents.

I N D E X

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Filed by - *Tareed Ali Hossain, Waheda Lehman.*
Advocates for the
applicant

Registration No.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH

(An Application U/S 19 of the Administrative Tribunal
Act, 1985).

C.A. No. /2004.

Sri. Sudip Das;
son of late Satyendra Das,
Village- Kakeripar.
under Patherkandi police Station, in the
district of Karimganj, Assam.

.....Applicant.

- Versus -

1. Union of India.

represented by Ministry of Home Affairs
Govt. of India, New Delhi.

2. Assistant Director,

Subsidiary Intelligence Bureau,
Govt. of India, Aizawl, Mizoram.

3. Deputy Director,

Subsidiary Intelligence Bureau,
Govt. of India, Aizawl, Mizoram.

.....Respondents.

Contd.....2.

Filed by,
Sudip Das.
- Applicant
through
Javed Ali Hassan and
Wakeela & Edwin
Advocates.

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for dip

I. Refusal or inaction on the part of the Respondents
to regularise the service of the applicant :-

1. That one Shri Swapn Singh who was appointed as casual cook at Kolasi outpost and six months junior to the applicant has been upgraded to permanent rank whereas the applicant is still in the casual status even after serving to the satisfaction of all in the Lakicharra outpost as 'Water Carrier' in Grade IV post from last 10 years in spite of his repeated requests to the concern authorities to regularise his job.

(Copies of the letter dated 24.6.97; 20.11.97; 5.2.03 are annexed as Annexure- B.B and E)

2. That the post of cook in the office of Assistant Director, SIB, Aizaul has been vacant and it is not possible to make appointment of the applicant in the said post in spite of his 5 years of experience in cooking and educational qualification is 9th pass, which is more than the requisite qualification for appointment in the post of cook in the office cited supra.

3. That the applicant was drawing salary of full scale upto 1996 from his office but suddenly from 1996 onwards without any astensible reason his salary was reduced by the Respondents.

II. Jurisdiction of the Tribunal :-

That, this tribunal has the jurisdiction to entertain this application as per the provisions of Section 14 (i)(a) of the Administrative Tribunal Act, 1985 for immediate redressal of grievances of the applicant.

Budip Das.

III. Limitation :-

As prescribed under Section 21 of the Administrative Tribunal Act, 1985 the applicant declares that the application made by him is within the limitation of the aforesaid Act.

IV. Facts of the Case :-

1. That, the applicant begs to state that he is a citizen of India belonging to the schedule caste community.
2. That, the applicant begs to state that since November 1993 he has been working as a ^{water} ~~matter~~ carrier which is a Grade- IV post in the department of Subsidiary Intelligence Bureau (SIB) Ministry of Home Affairs, Govt. of India at Lakicharra outpost, District- ^{Mizoram} Mayit, ~~digaram~~ as a Master Roll employee.
(A copy of the certificate of Working is annexed herewith as Annexure- 'A').
3. That, the applicant begs to state that working as a master Roll employee in the post of 'Water Carrier'. he was getting ^{not} only Rs. 45 per day as remuneration with no other employment benefits like allowances, P.F., D.A., gratuity etc, as enjoyed by the regular employees of the said department.
4. That, the applicant begs to state that being the only earning member of his family he is finding it

Sudrip Das.

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~~it earning member of his family~~

it extremely difficult to run the family with his fixed nominal salary of Rs. 1350/- P.M. (i.e. Rs. 45/- per day).

5. That, the applicant begs to state that due to ever raising prices of the essential commodities he is finding it ^{hard} ~~heard~~ to cope up with the expenses with the above mentioned salary, So he made an application to the Assistant Director, SIB, Govt. of India, Aizaul, Mizoram vide memo No. LKR/6/Sw/97-190 dated 24.6.97 requesting for regularization of his service in the said department, but the respondents did not take any steps to regularize the service as requested by the applicant.

(A copy of the application dated 24.6.97 is annexed herewith as Annexure-^bB).

6. That, the applicant begs to state that when the aforesaid application did not draw any attention of the authorities concerned for regularization of the applicant's service, he made another application to the Assistant Director, Subsidiary Intelligence Bureau, Aizaul, Mizoram vide memo No. 1/ESTT/97-753, dated 20.11.97 requesting for regularization of his service, but that too, like the earlier one, went in vain shattering all the hopes of the applicant.

(A copy of the application dated 20.11.97 is annexed herewith as Annexure-^bB).

Contd....5.

Sub P DAD.

7. That, the applicant begs to state that when he came to know from reliable sources that ^{there} are some post for cooks lying vacant in the office of Asstt. Director Subsidiary Intelligence Bureau, Aizawl, Mizoram, he immediately submitted an application on 31.3.98 vide memo No. 1/EST/98-121 to the Asstt. Director, SIB(MHA) ~~ky~~ Govt. of India Aizawl, praying for appointment in the said post. But the respondents did not consider his case inspite of the fact that he had 5 years of cooking experience and has educational qualification was 9th class pass, which ~~more~~ were more than the requisite qualification for appointment in the post of cook in the said office.

(A copy of the application dated 31.3.98 is annexed herewith as Annexure- D).

8. That, the applicant begs to state that he was drawing salary at full scale upto 1996 from his office but suddenly to his utter surprise and without any ^{any} ostensible reason his salary was reduced by the concerned authorities. Consequently, his financial condition worsened and he had to suffer untold miseries and hardships as he is the only earning member in the entire family.

9. That, the applicant being highly aggrieved and unable to find any reason for such reduction of his salary, submitted an application on 5.2.03 vide memo No. 1/EST/2003-KKR-31 before the Deputy ~~Commissioner~~ Director, SIB, Aizawl, through proper channel praying for upgradation of his temporary service to a permanent one taking into

Handwritten: 14
Sd/- P. D. D.

into consideration the financial hardships suffered by the applicant and his family. But the Respondents did not pay any attention to the applicant's request and till date the applicant is serving in the said department as a casual worker in the post of 'Water Carrier' with the same nominal salary as aforesaid without any hope of being absorbed as a regular employee.

(A copy of the application dated 5.2.03 is annexed herewith as Annexure- (E)).

10. That, the applicant begs to state that one Sri. Swapan Singh, who was appointed at Kalasi outpost as casual cook and six months junior to the applicant, was already absorbed in the said post as a permanent employee whereas the applicant's position remains the same as a casual worker inspite of his seniority. Further the applicant highlighted this fact to the concerned authorities on several occasions. But the authorities did not pay any heed and all his efforts to regularize his service did not yield any good result. The applicant was treated differently in this respect and the concerned authorities have acted in a highly biased manner.

11. That, the applicant begs to state that as he belonged to schedule caste community he was very much entitled to regularization of his service much earlier than others as per the special privileges enjoyed by the members of S.C. community in respect of service/appointment. But inspite of serving 10 years in the said post as per the

Contd.....7.

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Dad.
Dad.
Dad.

as per the satisfaction of the concerned authorities and being a member of S.C. community the job of the applicant is not being regularized by the concerned authorities.

12. That, the applicant further begs to state that since he is the only earning member of the family and all the other members are dependant on him and his salary is the only source of their livelihood. The applicant and his family will face monetary problem, hardships and suffer starvation in the ensuing days if the salary of the applicant is not increased by regularising his service. Moreover, the present age of the applicant will not make him eligible for any other service/post.

V. Grounds for relief with legal provision :-

1. For that the petitioner was highly discriminated as much as the other casual employees junior to him in service were absorbed in permanent ~~service~~ rank whereas the petitioner is still working as casual worker with meagre salary.

2. For that, the petitioner having worked 11 years in the said department should have been absorbed in permanent rank in view of his service period as well as service record. The respondents have acted in highly prejudicial manner in not regularising the service of the petitioner.

3. For that the petitioner having more than requisite qualification and experience for the post of cook should have been appointed atleast for the post of Cook for which the petitioner had duly applied in due time. Ignoring the appointment of the petitioner for ~~the same~~.

Budip Das.
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for which the petitioner had duly applied in due ~~time~~ time. Ignoring the appointment of the petitioner for the said post, the respondents have acted in highly biased manner.

4. For that, being a schedule caste person, the petitioner was very much entitled to permanent rank in preference to the general category, candidated for any vacant post as per the reservation policy of central Govt. where the Govt. has reserved 17% of total vacansis for candidates who belong to the categories of Schedule caste (S.C.) and Schedule Tribes (S.T.). By preferring the general categories of candides for appointments in vacant posts over the petitioner who belongs to schedule caste (S.C.) community, the respondents have violated the reservation policy of the central Govt.

VI. Details of Remedies exhausted :-

1. ~~That~~ the applicant begs to state that he has been serving as a Master Roll employee as a 'Water Carrier' in Grade IV post in the Department of SIB, Ministry of Home affairs, Govt. of India, since 1993 and during his service as a casual worker he worked to the full satisfaction of the concerned authorities at Lakicherra out post in the district of Mauit, Mizoram, drawing a nominal salary of Rs. 45/- per day with no other employment benefits as enjoyed by the regular employee of the said department.

2. That, the applicant begs to state that he had submitted an application before the Asstt. Director, SIB, Govt. of India, Aizaul, Mizoram vide memo No. LKR/6/SW/97-190 dated 24.6.97, praying for regularization of his

Sudip Das

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of his service but the concerned authorities did not take any positive steps in respect to the applicants request inspite of his repleated request to upgrade his service from temporary to permanent.

(Copy of the application dated 24.6.97 is annexed herewith as Annexure-B).

3. That, the applicant further begs to state that not receiving any response from the authorities concerned and highly aggrieved by the inaction of the authorities, he submitted an application before the Deputy Director, SIB, Ministry of Home Affairs, Govt. of India, Aizaul, Mizoram, through proper channel dated 5.2.03 requesting to x upgrade his temporary service to a permanent one.

(Copy of the application dated 5.2.03 is annexed herewith as Annexure-E).

4. That, the applicant begs to state that one Sri Swapan Singh who was appointed as a casual cook at Kolasi out post and he is six months x junior to the applicant has been regularised as a permanent employee but the applicants job has till date not being regularised inspite of his being senior to some of the permanent employees It may be further mentioned here that he belongs to S.C. community and he is very much entitled for regularization of his service much earlier then others as per the special primeleges enjoyed by the members belonging to the S.C. community is respect of service/appointment or promotion.

Contd....9.

Budip Das

5. That the applicant begs to state that when the concerned authorities did not pay any attention to his ~~repeated~~ repeated request to regularise his service, he with no other option in his hand applied for the post of cook which was lying vacant in the office of Asstt. Director, SIB, Aizaul, Mizoram after asuming the same from some reliable sources, But the respondents did not consider his case inspite of the fact that the applicant had 5 years of experience as a cook and his educational qualification was 9th pass which were more than the requisite qualification for appointment in the post of cook in the said office.

VII. Suits before ather courts/Tribunal :-

(i) That, central Administrative Tribunal being the appropriate Forum for deciding the matter in hand, the applicant did not approach any other court/Tribunal.

(ii) That, the applicant begs to state that he has made this application to the central Administrative Tribunal ~~which is~~ under Section 19 of the Central Administrative Tribunal Act, 1985 for the ends of justices and redressal of his grievances.

VIII. Relief sought for and Grounds :-

That, this Hon'ble Tribunal would be pleased to admit this application and after hearing the parties pass such or order/orders to the concerned authorities to regularise his service or to appoint him as a cook in the said department by considering his financial position and also that he belongs to the S.C. community and

and moreover his present age will not make him eligible for any other direction as the Tribunal may deem fit and proper in the facts of the case and the grievances mentioned supra alongwith the legal provision ~~particulars of the I.P.S.~~

IX. Particulars of the I.P.S. :-

X. List enclosures as stated in the Indlose.

- VERIFICATION-

I, Shri Sudip Das, son of late Satyendra Das, aged about 30 years, resident of village Kakeripara under Patherkandi P. S. in the district of Karimganj, Assam, do hereby solemnly verify that the contention of paragraphs I to VIII are ~~■~~ true to the best of my knowledge which I belived to be true on legal advice and those made in the rest are my humble submission before this Hon'ble ~~court~~, I have not suppressed any material fact.

I put my signature on this day of 25th.
March' 2004 at Guwahati.

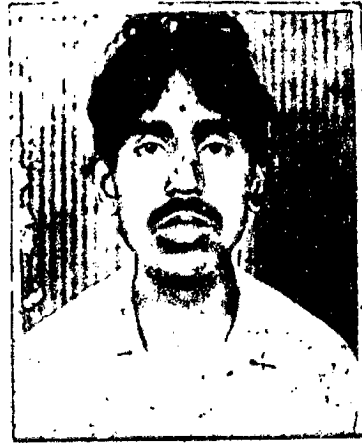
Sudip Das.
Applicant.

Annexure - 'A'

2

TO WHOM IT MAY CONCERN

THIS IS TO CERTIFY THAT
SHRI SUDIP DAS S/O LATE
SATYENDRA DAS OF BARIGRAM
VILLAGE (ASSAM) IS WORKING
UNDER THE OFFICE OF THE
UNDERSIGNED SINCE 1993.
HIS CHARACTER IS GOOD
AS IN THE OFFICE RECORD.



08/08/2002
Assistant Central Intelligence Officer
SIL of India
DRI, Bham.

*Certified to be true copy.
Javed Ali Hassan
Advocate
24.03.04.*

To

The Assistant Director
Subsidiary Intelligence Bureau ,
Govt. of India. Aizwl, Mizoram.

THROUGH PROPER CHANEL

Sub :- Request for regularisation of service.

Sir,

With due respect and humble submission I have the honour to state following few lines for your kind consideration and sympathetic action.

Sir, I am serving at Lokicharra out post since last 6 years as Water carrier on contingency basis. I am gatting Rs. 45/- per day as my remuneration and having no other benefit which enjoyed by the regular employees.

sir, I belong to poor class of family and there is none earning member accept me in my family. I have to meet all the expenses and other livelihood of my younger brother and sister. Due to paucity of money I always feel very difficulty to meet the expenses of my family.

Sir, I am very low paid person and in the present situation of dearness. I am unable to meet Education expenses of my younger brother and sister. Result of which my younger brother and sister are on the verge of giving up their education. Hence, I am very much pasture.

Sir, I have come to know that swwpan Singh which was a contingency paid staff at Kolsasi has been

Contd.....(2)

*Certified to be true copy
Javed Ali Hassan
Advocate
24.03.07*

(2).

regularised , whereas I could not . It may be mentioned here that mysealf and Swapan Singh joined as contingency paid staff same time. Sir, I have served in Lokicherra honestly with hard work and dedication.

Under the above circumstances, I fervently request your kind honour to regularise my service. For this act of your kindness, I shall ever pray to god. with best regards.

Your's faithfully

Sd/- Sudip Das.

Water Carrier.

O-P - Ploemerra-

Date- 24.6.97.

To

The Assistant Director
Subsidiary Intelligent Bureau
Aizawl, Mizoram.

Sub:- Prayer for permanent Establishment according to
my qualification and experience.

Sir,

With due respect and humble submission I have the
honour to state that the following few lines for your kind
consideration and sympathetic action.

1. That sir, I had submitted an application in
the month ofdt.....Now I am again sending an
application to your honour kindly appoint me as a permanent
staff as subject mentioned above.
2. That sir, I am getting a fixed pay of Rs. 1350/-
and having no other allowances and benefits, which is enjoy-
ble and enjoyed by the permanent employees.
3. That sir, I am maintain my family with the
fixed pay of Rs. 1350/- is very hard and nowadays all the ess-
ential comodities market price is very high and it is imposi-
ble to maintain my family with the small amount. On the other
hand I have to meet all the educational expenses of my younger
brother and sister and other demands for living a civic
life, but the scanty amount I get a pay is too small to meet
all such expenses. The result is that they are ill maintained.

Therefore, considering all the points stated above
I fervently request you kindly to include me in a permanent
employees roll so that I may get the usual Govt. scale(centre)
of pay and allowances to enable me to maintain my family without
much difficulties and sustain the family upkeep. And for
this act of kindness I, as well as my family members shall
remain grateful to you ever.

I remain sir

Your's faithfully

Sd/- Sudip Das
SBI Office

Lokichara/Aawlnuam/Mizoram

Date 20.11.97.

*Certified to be true copy
Signed Aizawl
Advocate
24.03.04.*

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- 15-

Annexure- D.

No. 11 EST/98-121

SIB-Lokicharra

Date- 31.3.98.

To

The Assistant Director
SIB (MHA) Govt. of India
Aizawl.

Sub:- Application for the post of cook.

Respected sir,

With due respect I beg to state that I came to know through reliable source that some posts of cook is lying vacant in the office of Assistant Director SIB Aizawl under your kind control. I am working as a water carrier in SIB Lokicherra OP. since November 1993. I belongs to very poor family. I have three sister to be married. I am only the earning member in my family and my father is already expired and there is nobody to look after them. My educational qualification is 9th pass.

Therefore, you are requested sir, that one post of cook may please be given to me, if possible, I am having five years experience of cooking. I have full hope that you will consider my case to see my condition.

Thanking you sir,

Your's faithfully

Sd/- Sudip Sas.

Water Carrier.

Date; -

Place :-

*Certified to be true
copy
James A. Harsan
Advocate
24.03.04.*

No. 1/EST/2003/KR-31.

To

Dt- 05.02.2003.

The Deputy Director
SIB, Aizwal
(Through proper channel)

Sub:- Prayer for upgradation temporary to permanent.

sir,

With due respect and humble submission Sri. Sudip Das W/C have the honour to state that I am a very poor and needy follow have been serving as a master rule employee since January 1993 in S.I.B. OP Lokicharra . Since the beginning I have been applying to upgrad me as a permanent employee. The last application was submitted bu me on 26.08.99 vide memo No. 1/EST-LKR/99-243 dt. 26.08.99. But till today I have not yet received any proper justified response.

Sir, I have belong to schedule caste category/ and my age for any other service is almost over I am maintaining my livelihood in a very worst condition and expuling respons every day.

That sir, I do want to mention also that I was enjoying the salary of whole year up to 1996. But suddenly from 1996 onwards I am getting lapsed one day after ever three months. It may be noted that Sapan Singh OP Kolasib, casual cook who was six months junior to me was already upgraded to permanent rank while I was still in the causal status. There was some vacceted seat in 1999 but no chance was given to me.

So, I do hereby pray to Comider my case immediately and save me for which I shall remain ever grateful to you

Date.....

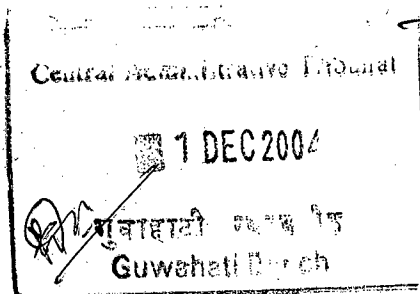
Place

Your's faithfully

Sd/- Sudip Das W/C
OP Lokicherra.

Vill.- Kakeripara
P.S. Patherkandi

*Certified to be true copy
Javed Ali Hassan
Advocate
24.03.04.*



Filed by:-
B. C. Pathak 30/11/04
Addl. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench : Guwahati

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH AT GUWAHATI

OA No. 75 of 2004

Sri Sudip Das Applicant

-Vs-

Union of India & others Respondents

(Written statement filed by the Respondent.No.1, 2 and 3)

The written statements of the Respondents are as follows:-

1. That a copy of the Original Application No. 75/04 (hereafter referred to as the "application") has been served on the respondents. The respondents have gone through the application and understood the contents thereof.
2. That save and except these statements which are specifically admitted by the respondents, the rest of the statements made in the application be treated as denied.
3. That with regard to the statements made in Para I(1) of the application, the respondents state that the applicant was engaged as a daily rated casual labourer (part-time contingency worker)

with effect from 1.12.1993 on "no work no wage" basis. He was never engaged against any Grade IV post as alleged by the applicant and was not in regular pay roll in the establishment of the respondents. The daily wages w.e.f. 1.12.1993 was paid at the rate of Rs. 35/- which was enhanced to Rs. 45/- per day w.e.f. 10.7.1997 and Rs. 70/- w.e.f. 1.6.2000. The respondents also deny the correctness of the seniority and up-gradation of one Shri Swapan Singh. In this regard the respondents state that by virtue of prior date of engagement and being within the zone of consideration under the Scheme of 1993, as explained herein below, the case of said Shri Swapan Singh was considered differently with the scope of the said scheme only and not otherwise as alleged by the applicant. The respondents also state that the applicant was engaged as part time casual labourer with break after every three months and he could not be considered within the scope of the said scheme of 1993 as provided in the scheme and the law laid down by the Hon'ble Supreme Court.

4. That with regard to the statements made in Para I (2) and (3), the respondents deny the correctness of the said statements. The respondents state that there is no post of cook and the applicant was engaged only as part time labourer to carry water as and when required. The respondents also deny the claim of the applicant that he was paid full salaries by the respondents. The applicant is put to show strict proof thereof to support his allegation.
5. That the respondents have no comments to offer to the statements made in Para II, III and IV(1) of the application.
6. That with regard to the statements made in para IV(2), the respondents state that the applicant was engaged as a Part-time

contingency paid worker (referred to as Casual Worker) on "no work no wage basis" w.e.f. 1.12.1993 and not w.e.f. November 1993 as stated by him. He was not on regular pay roll of the establishment and was paid wages from the office contingency fund. Hence the contention of the applicant that he was working in a Grade IV post as a Water Carrier is not correct.

7. That with regard to the statements made in para IV (3), the respondents state that initially the applicant was engaged at a monthly wage of Rs. 35/- per day which was subsequently raised from time and the present monthly wage of the applicant is Rs. 70/- per day. It may be mentioned that the Part-time contingency paid daily workers are not entitled to any other allowances and benefits as admissible to regular employees.
8. That the respondents offer no comment to the statements made in Para IV(4) ~~the respondents beg to offer no comments~~ as these are matter personal to the applicant.
9. That with regard to the statements made in Para IV(5) and (6), the respondents state that as per the existing Govt. orders/ scheme the services of the Part-time contingency paid daily workers can not be regularised. There are other contingency paid workers similarly placed with the applicant whose services have also not been regularised due to the reasons as stated above. Hence the applicant has not been discriminated in anyway in the matter of regularisation of his service. In this connection it may be mentioned here that the Govt. of India has introduced a Scheme named as 'Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Govt. of India, 1993'. The said Scheme came into force with effect from 1.9.1993. According to this Scheme, a casual labourer, who has been in employment

on the crucial date of 10.9.93 and rendered a continuous service of at least one year (at least 240 days) shall be granted temporary status. According to the clause No. 4(i) of the said Scheme, the provisions of the Scheme is applicable to only these casual labourers who were in engagement on 10.9.1993 and had completed at least 240 days in engagement. This clause also indicates that the scheme was introduced as a one-time measure and not as an ongoing Scheme. This is settled by the Hon'ble Supreme Court in "Union of India & Another -Vs- Mohan Pal and others - reported in 2002 SCC (L&S) 577". The applicant in the instant case admittedly was engaged w.e.f. 1.12.1993 and he was clearly not in engagement as on 10.9.1993 as required by the scheme. Hence he is not entitled to get the benefit of the Scheme and the respondent cannot do anything illegal or contrary to law to confer 'temporary status' or to regularise the applicant in any Group 'D' post as stipulated by the said Scheme. As already mentioned above, there is no provision for appointment/regularisation of Part-time contingency paid worker in Group D or any other post on regular basis. Hence his request for his appointment in a group 'D' post could not be entertained.

10. That with regard to the statements made in Para IV(8) and (9), the respondents state that as already mentioned, the applicant did not draw any regular salary as he was being paid from office contingency on "No work No wage" basis from day to day. The contention of the applicant that his wage was reduced after 1996 is not true. The copies of the acquaintance rolls for the months of December'96, Janunary'97, February'97 and November'97 (enclosed as Annexure R1, R2, R3 and R4) in respect of the applicant would reveal that he was drawing wage uniformly @ Rs.35/- per day as usual and there was no reduction whatsoever in his wage after December'96. Hence his contention that his wage was reduced without any reason is not true. Moreover, the

applicant cannot raise such issues as he is barred by doctrine of estoppel, waiver and acquiescence.

Copies of the acquaintance rolls for the months of December'96, January'97, February'97 and November'97 are enclosed herewith as Annexure R1, R2, R3 and R4 respectively.

11. That with regard to the statements made in Para IV(10), the respondents state that Shri Swapan Singh referred to in the application was engaged as a Part-time contingency worker on 'No work No Wage' basis on 20.9.1992 and hence he was senior to the applicant who was engaged on 1.12.1993. Hence the contention of the applicant that Shri Swapan Singh was junior to him by 6 months is not correct. It may further be added that as per Govt. of India OM No. 51016/290-Estt(C) dated 10.9.1993 all those contingency workers who were on government roll as on the date of issue of the order were bestowed with 'Temporary Status' w.e.f. 1.9.1993 entitling them with the pay and benefits as provided in the said scheme of 1993. (A copy of the said OM is enclosed as Annexure-R5). Since the applicant was engaged on 1.12.1993 he could not be allowed the benefits of Temporary Status for the reasons as stated hereinabove. Further it was clarified in Govt. of India OM No. 40011/6/2002-Esstt(C) dated 6.6.2002 (copy enclosed as Annexure-R6) that the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Govt. of India, 1993 is not an ongoing Scheme and the Temporary Status can not be conferred on the casual labourers only on fulfilling the conditions mentioned in clause 4 of the Scheme. It may also be mentioned here that none of the Part-time contingency worker engaged after 10.9.1993, the crucial date, have neither been conferred with Temporary Status nor

their services have so far been regularised. Hence there has been no discrimination on the applicant in this regard as alleged.

The copy of the OM dated 10.9.1993 and clarification dated 6.2.2002 are enclosed herewith as Annexure R5 and R6 respectively.

12. That with regard to the statements made in Para IV(11) and (12), the respondents reassert and reiterate the foregoing statements and state that the applicant is not entitled to any relief whatsoever for the reasons as stated above.
13. That with regard to the statements made in para V(1) to V(4) of the application showing the different grounds to vindicate the filing of the application are not tenable in law as the grounds shown by the applicant are no grounds at all in view of the settled position of law as stated hereinabove in this written statements. Hence, the application is liable to be dismissed as devoid of any merit.
14. That with regard to the statements made in para VI and VII of the application, the respondents state the application is not maintainable as the same has been filed in violation of the provisions as stated under the Section 20/21 of the Central Administrative Tribunal Act, 1985.
15. That with regard to the statements made in para VIII of the application, the respondents respectfully submit that under the facts and circumstances of the case and the provisions of law,

the applicant is not entitled to any relief whatsoever as prayed for and the application is liable to be dismissed with cost.

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

Verification

I, U. K. Shukla, at present working as the Assistant Director in the office of the SIB, Guwahati, being competent and duly authorized to sign this verification do hereby solemnly affirm and state that the statements made in para 1 to 9 are true to my knowledge and belief, those made in para 10 & 11 being matter of records are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

November

And I sign this verification on this 29th day of September, 2004 at Guwahati.

U. K. Shukla
DEPONENT
Assistant Director,
S. I. B. (M. H. A.)
Govt. of India,
Guwahati.

29/9/04

CB 188

ACQUITT

.....के स्थायी (या अस्थायी) स्थापना की
 Acquittance Roll of Permanent (or Temporary) Establishment of

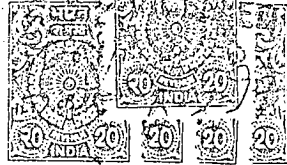
मद सं० Item No.	नाम Name	पदाभिधान Designation	सदेय शुद्ध रकम Net amount payable	तारोख सहित हस्ताक्षर (जहां आवश्यक हो वहां स्टाम्प सहित अंतर्दत्त मदें उसी रूप में दर्ज और सत्यापित की जानी चाहिए) Dated signature (with stamp where necessary, unpaid items to be noted as such and attested)
1	2	3	4	
			₹ Rs.	₹ P.
Shri.	Sudip Das	w/c 1	1050	00
	Wages Upto 12/96			
	30 days.	भुगतान किया एवं रद्द किया		
		PAID & CANCELLED		
	It is certified that	The amount mentioned		
	is due to the individual concerned	& has been		
	released for the month of July	after duly		
	signed and stamped by	the right concern		
	the person concerned			
				R. S. M.
				B/1197
				Intelligence Office
				(MHA) Govt. of India
				District

Annexure B

॥ नमः शिवाय ॥

ACQUIT

.....के स्थायी (या अस्थायी) स्थापना की
 Acquittance Roll of Permanent (or Temporary) Establishment of.....

मद सं० Item No.	नाम Name <u>LKR</u>	पदाभिदान Designation	संदेय शुद्ध रकम Net amount payable	तारीख सहित हस्ताक्षर (जहाँ आवश्यक हो वहाँ स्टाम्प सहित असदत्त मदें उसी रूप में दर्ज और सत्यापित की जानी चाहिए) Dated signature (with stamp where necessary, unpaid items to be noted as such and attested)
1	2	3	4	5
	B/No. 760/96-97	dt. 20.1.97		
	(C.B. No. 216)			
			र० Rs.	प० P
1	Sudip Das (wages for 1/97)	cpw	1085	-
<p>Certified that the amount mentioned opposite the underlined has been distributed to the person concerned after duly signed and stamped on due space.</p> <p>Resd B.V. SINGH S.I.B. (M.A., Govt. of India) Lucknow</p>				

ACQUITA.

मद सं० Item No.	नाम Name	पदाभिदान Designation	सदेय शुद्ध रकम Net amount payable	तारोख सहित हस्ताक्षर (जहां आवश्यक हो वहां स्टाम्प सहित असंदत्त मदें उसी रूप में दर्ज और सत्यापित की जानी चाहिए) Dated signature (with stamp where necessary, unpaid items to be noted as such and attested)
1	2	3	4	5

तारोख सहित हस्ताक्षर (जहां आवश्यक हो वहां स्टाम्प सहित असंदत मदें उसी रूप में दर्ज और सत्यापित की जानी चाहिए)

Dated signat e (with stamp where necce ary, unpaid items to be oted as such and artested)

PAID & CANCELLED

1	Shree Sudip Das	c/w	980
	(Wages for 2/97)		

at	certified	that	the	amount	mentioned
by	the	individual	has	been	paid
to	the	individual	after	duly	signed
and	stamped				
in	right	column			

No. 175 (44)
 V. Singh
 Office
 India

		Annexure-B	
A/Roll		LKR.	
P/No. 556 (CB No. 170)		15/11/97	
Sudip Das, w/c		Rs. 1350	
Wages 11/97			
Paid			
20/11/97			
Total		1350	
जोड़		कुल असदत रकम ६०...	
Total		Total unpaid Rs.	
		Rupees.	

के स्थापन/यात्रा भर्त्ता के
 घर रु०..... (रुपये.....)
 (अंकों में) (शब्दों में)
 Passed for Rs..... (Rupees.....) on the authority of For
 (in figures) (in words) Travell
 for.....

रोकडिया
Cashier
68/GIFS/Cal 89-Nov. '89-20,00,000-MGITBPChdg

આણન Drawing

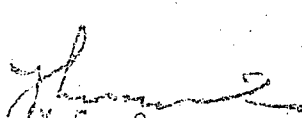
New Delhi, the 10th Sep-1993

OFFICE MEMORANDUM

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 Shri 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 O.M. 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 O.M. 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 Department of Telecom, Posts and Railways may be regulated by the scheme as appended.

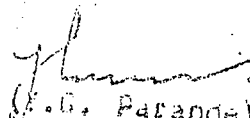
2. Ministry of Finance etc. are requested to bring the scheme to the notice of appointing authorities under their administrative control and ensure that recruitment of casual employees is done in accordance with the guidelines contained in O.M. dated 7.6.88. Cases of negligence should be viewed seriously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


(V.G. Parande)
Director

To
All Ministries/Departments/offices of the Government
of India as per the standard list.

Copy sent - (1) All attached and subordinate offices of
(i) Ministry of Personnel, PG and Pensions
(ii) Ministry of Home Affairs

(2) All officers and sections in the MH and
Ministry of Personnel, PG and Pensions.


(V.G. Parande)
Director

**Department of Personnel & Training, Central 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.

Temporary status

i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this O.A. 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 'O' 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 ~~of Group 'O' level~~. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.

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 'O' 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 'O' official including DA, HRA and CCA.

ii) Benefits of increments at the same rate as applicable to a Group 'O' employee would be taken into account for calculating pro-rata wages for every one year of service subject to performance of duty for atleast 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 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

14 35 39- 39

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.

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 Dispute 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

i) 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 & 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 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

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 regularization 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 O.M. dated 7.6.88 should be followed strictly in the matter of engagement of casual employees in Central Government Offices.

11. Department of Personnel & 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.

ANNEXURE : 104-30-41

ANNEXURE 7

No. 40011/6/2002-Estt(C)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

New Delhi, dated the 6th June, 2002

OFFICE MEMORANDUM

Subject: Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Govt. of India, 1993-Clarifications.

The Undersigned is directed to say that the Casual Labourers (Grant of Temporary Status & Regularisation) Scheme of Government of India, 1993 formulated in pursuance of the CAT, Principal Bench judgement dated 16th February, 1990 in the case of Raj Kamal & Others Vs. Union of India and circulated vide this Department's OM No. 51016/2/90-Estt(C) dated 10th September, 1993, inter alia stipulate the following conditions for grant of temporary status to the persons recruited on daily wage basis in the Central Government Offices:-

(i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of the OM (namely: 10-9-93);

(ii) Should have rendered a continuous service of a 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 five days a week); and

(iii) Conferment of temporary status on casual labourer would not involve any change in his duties and responsibilities and 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.

2. Various Benches of the CAT and some High Courts have been taking the view that the scheme is an ongoing affair and that any casual employee who is engaged for 240 days or more (206 days in case of five days a week offices) acquired a right to temporary status. The Supreme Court has finally decided the matter in SLP(Civil) No. 2224/2000 in the case of Union of India & Anr. Vs. Mohan Pal etc. etc. The Supreme Court has directed that :-

"The scheme of 1-9-93 is not an ongoing Scheme and the temporary status can be conferred on the casual labourers

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under that Scheme only on fulfilling the conditions incorporated in clause 4 of the scheme, namely, they should have been casual labourers in employment on the date of the commencement of the scheme and they should have rendered continuous service of at least one year i.e. at least 240 days in a year or 206 days (in case of offices having 5 days a week). We also make it clear that those who have already been given 'temporary' status on the assumption that it is an ongoing Scheme shall not be stripped of the 'temporary' status pursuant to our decision".

3. The Supreme Court in the above case have also considered the question as to whether the services of casual labourers who had been given 'temporary' status could be dispensed with as per clause 7 as if they were regular casual labourers and observed that -

" The casual labourers who acquire 'temporary' status cannot be removed merely on the whims and fancies of the employer. If there is sufficient work and other casual labourers are still to be employed by the employer for carrying out the work, the casual labourers who have acquired 'temporary' status shall not be removed from service as per clause 7 of the Scheme. If there is serious misconduct or violation of service rules, it would be open to the employer to dispense with the services of a casual labourer who had acquired the 'temporary' status".

4. All Ministries/Departments are requested to bring the above judgement/observations to the notice of all concerned for strict observance. The existing guidelines in the matter of engagement of casual workers in Central Government Offices contained in OM No. 49014/2/86-Estt(C) dated 7-6-88 may also be observed scrupulously while making engagement of casual labourers.

P. Mohan

(Pratibha Mohan)
Director

All Ministries/Departments and their attached and subordinate offices, as per the standard list.