

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./TA/ NO. 121/2009-2008
R.A./CP/NO.....2015
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SECTION OFFICER (JUDL.)

28.2.2015

FORM NO. 4
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :
ORDERSHEET

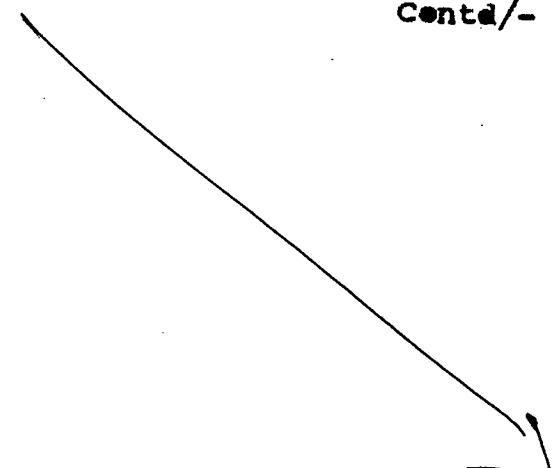
1. Original Application No : 721 / 2009
2. Misc. Petition No : ----- in O.A. No.-----
3. Contempt Petition No : ----- in O.A. No.-----
4. Review Application No : ----- in O.A. No.-----
5. Execution Petition No : ----- in O.A. No.-----

Applicant (S) : Sri Phuleswar Das

Respondent (S) : Union of India BSNL

Advocate for the : Mr. S. Sarmo
(Applicant (S)) Mr. H.K. Das

Advocate for the : Advocate for BSNL
(Respondent (S))

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form is filed/C. F. for Rs. 50/- deposited vide IPO/BD No. <u>396407398</u></p> <p>Dated <u>18/6/05</u></p> <p><i>crd</i></p> <p><i>Dy. Registrar</i></p> <p><u>26/6/05</u></p>	<u>29.06.2009</u>	<p>Applicant a Casual Worker continuing under the Respondents since 1998, has approached this Tribunal (with the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985) seeking a direction (to the Respondents) for taking him to regular establishment. Copies of this O.A. has already been supplied to Mr. B.C. Pathak and Mr. Y. Doloi, Advocates for BSNL; who are present in Court today.</p>
<p><u>26.6.09</u></p> <p>6 copies of application received with 6 Nos of envelopes and extra charge for Respondent No 6 (six) deposited. Copy served.</p> <p><u>26/6/05</u> <u>26/6/09</u></p>		<p><i>contd/-</i></p> 

Contd/-

29.06.2009

(2.) It has been stated in Annexure-G Dated 01.06.2001 of the Respondent Organization (pertaining to the Applicant) as under :-

“ Shri Phuleswar Das
January, 1998
Actually engaged
He had not completed 240
days/
As noted below -

He is presently working at New I.B. (3 Story Building) at Panbazar, Guwahati, where 2-VIP Suites plus 8-suites exist. To run this Inspection Bungalow, where V.I.Ps. including Members / Advisors / CGMs have been staying, there was requirement of cooks / Helpers / Safaiwallas / Gardeners hence he was employed. He is currently employed too with effect from 15.07.1999 as cook and is being paid through ex-servicemen agency. He was previously working in Sualkuchi Exchange (January 1998-December 1998) and Panbazar Exchange, Guwahati (January 1999-July 1999). Records under verification”.

(3.) In Annexure-H, Dated 27.11.2003 goes to show that the verification committee noted that the Applicant was engaged for 211 days (from February 1998 to August 1998) at Panbazar Telephone Exchange.

Contd/-

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29.06.2009

(4.) In Annexure-N Dated 30.08.2008 of Respondent Organization, it has been disclosed that the Applicant also served for 116 days between September'1998 and December'1998 and, thus, he served for more than 240 days during 1998 itself.

(5.) In the above premises, the Applicant has made out a prima-facie case in his favour.

(6.) That apart, it is submitted by Mr. H.K. Das, learned counsel for the Applicant that the fact that the Applicant is continuing to serve the Respondent Organization (at its VIP Inspection Bungalow) for last 10 years itself goes to show (a) that the Applicant is a good/disciplined worker and (b) that the Respondent Organization is in need of manpower (a post) to meet their day to day requirement (in the VIP-Inspection Bungalow/Panbazar/Guwahati) on regular basis. It is submitted, further, on behalf of the Applicant, that for these reasons, instead of continuing to exploit him/by keeping him as a casual labourer for years together, the Respondents ought to have sanctioned a regular post and regularized the Applicant in their regular establishment and, pending such action, they ought to have paid wages to the Applicant at the minimum of the pay scale of regular Group 'D' Staff with DA, HRA & CCA etc. and granted him leave on pro-rata basis (i.e. oneday

14
Contd/-

Contd/-

29.06.2009

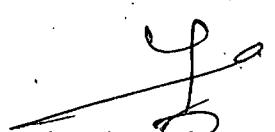
leave for every 10 working days) etc. as was recognized by Govt. of India.

(7.) In the above premises, this case is admitted. Registry to issue notice to the Respondents requiring them to file their written statement by 14.08.2009. This case is to be taken up analogously with O.A. No. 84 of 2009.

(8.) In the meantime, the Respondents should continue to engage the Applicant, as before, until further orders and should not disengage/retrench/terminate the Applicant, without leave of this Tribunal.

(9.) Pendency of this case shall not stand on the way of the Respondents (a) for considering the grievance of the Applicant (for taking him to regular establishment) and (b) pending such consideration, to grant benefits of minimum (of pay scale etc. merit for a Group 'D' Staff of Respondent Organization) to the Applicant.

10. Send copies of this order to the Applicant and to the Respondents (along with the notices) and free copies of this order be also supplied to the Advocates for both parties.


(M.R. Mohanty)
Vice Chairman

① Service report awaited.

1/m/

sent during 13.8.09

Notice issued wide
no. 3663 to 3668 dt- 30.6.09.


14/6/09

K.Das

Send copies of this order in order to the Respondents in the address given in O.A. urgently.

12/08/09 09:10 AM

12/8/09

14.08.2009 On the prayer of Mr. B.C.Pathak, learned counsel for BSNL, call this matter on 17.09.2009 awaiting written statement from the Respondents.

Send copies of this order to the Respondents, in the address given in the O.A.


(M.K. Chaturvedi)
Member(A)


(M.R. Mohanty)
Vice-Chairman

~~Information Order dated 14/8/2009~~

~~Copies of order~~

~~Dated 14/8/2009~~

~~Send to D/Secretary~~

/lm/

~~Issuing to respondents~~

~~by post.~~

~~D/No - 9676-9681~~

~~20/8/09. D/ 24/8/09~~

17.09.2009

No written statement has yet been filed by the Respondents. Call this matter on 28.10.2009 awaiting written statement from the Respondents.


(M.K. Chaturvedi)
Member (A)

No W/S filed.


16.9.09

/bb/

No W/S filed.


27.10.09

28.10.2009

Mr. B.C.Pathak, learned counsel for the respondents prays for some time enabling him to file written statement.

List on 13.11.2009.


(Madan K. Chaturvedi)
Member (A)


(Mukesh K. Gupta)
Member (J)

No W/S filed.


30.11.09

/pg/

13.11.2009

Further ten days time is allowed by the request of learned counsel for respondents to file reply.

List this matter on 01.12.2009


(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)

/pb/

7

O.A.121 of 2009

17.03.2010 Being Division Bench matter,
adjourned to 07.04.2010.

NO. regioinder filed.

26.4.2010

/bb/

(Madan Kr. Chaturvedi)
Member (A)

NO regioinder filed.

12.4.2010

(Madan Kr. Chaturvedi)
Member (A)

(Mukesh Kr. Gupta)
Member (J)

/pg/

Regioinder not
filed.

6.5.2010

13.04.2010 List for hearing on 07.05.2010 before
the Division Bench.

(Madan Kumar Chaturvedi)
Member (A)

nkm

07.05.2010 Mr.H.K.Das, learned counsel
appearing for the applicant, states that vide
communication dated 30.08.2008,
respondents had taken a stand that he had
worked for a period of 211 days in between
February, 1998 to August, 1998 and besides
this, he had also worked for 116 days from
September 1998 to December 1998 and for
said purpose, he placed reliance on
certificate dated 04.02.1999 appended at
page -17 of the paper book. He further states
that respondents are examining the matter

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O.A.1215098 to ISL.A.U

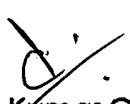
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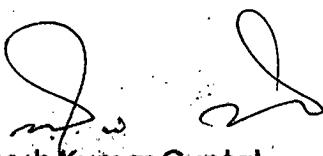
*Copy of the Judgment on 07.05.2010
Order of, 07.05.2010 BSNL/BSNL
has been prepared and
Send to Effect for
consideration
to the
Ld. Counsel for the
both Sides Advocate
by hand*

O.U.S.C.O.N.I

as to whether applicant satisfies the requirement of the scheme in force. In this view of the matter, he seeks permission to withdraw present O.A. with liberty to approach the respondents to pursue that aspect. Mr.B.C.Pathak, learned counsel appearing for BSNL has no objection.

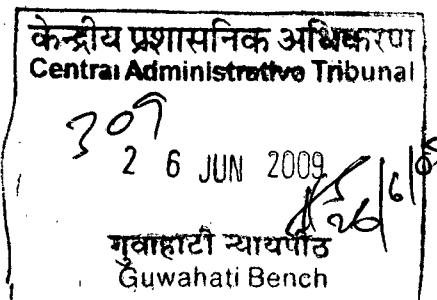
Accordingly, O.A. is dismissed as withdrawn with liberty, as noticed hereinabove.

 (Madan Kumar Chaturvedi) Member (A)

 (Mukesh Kumar Gupta) Member (J)

/bb/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI



OA No. 121 of 2009

Sri Phuleswar Das.

...APPLICANT

- Vs -

B.S.N.L & Ors.

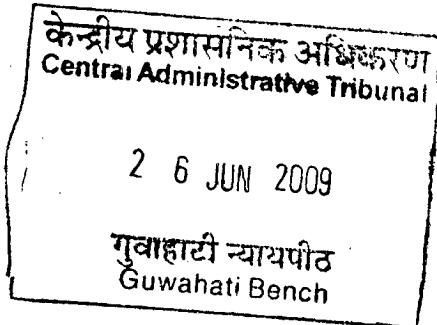
...RESPONDENTS

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI

O.A. No. 121 of 2009



Sri Phuleswar Das.

...APPLICANT

- Vs -

B.S.N.L & Ors.

...RESPONDENTS

S Y N O P S I S

That the applicants who are casual workers under the respondents have come under the protective hands of this Hon'ble Court by way of filing the present original application making a prayer for grant of temporary status and subsequent regularization in terms of the Scheme as circulated in the name and style "Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Department of Telecommunication, 1989" (in short the Scheme of 1989). It is worthwhile to mention here that pursuant to the judgment passed by the Hon'ble Apex Court the Department of Telecommunication prepared the Scheme of 1989 providing certain benefits to the casual workers like temporary status, regularization etc. In terms of the said Scheme casual workers who have completed 240 days of works in a particular year are entitled to get the benefit of temporary status etc. The said Scheme underwent various clarifications and finally the respondents issued an order dated 01.09.99 by which the cut off date of the said Scheme was extended for the recruits up to 01.08.1998. The applicant who was initially appointed in January' 1998 fulfills all the required qualification/criterion as laid down in the said Scheme of 1989, however, the applicant is yet to be extended with the benefits of the Scheme. The verification committee verified the case of the applicant erroneously on conjecture and surmises without resorting to the records pertaining to the engagement particulars of the applicant. Therefore, basing on such erroneous report the respondents are denying the case of the applicant on flimsy grounds. Although, the applicant submitted his engagement particulars to the respondents, which clearly depicts that the applicant served the respondents for 327 days i.e. more than 240 days in a year **[Annexure- A Series]**, the respondents failed to take into consideration that aspect of the matter and denying the

benefits of the Scheme of 1989 to the applicant which is per se illegal and incurs interference of the Hon'ble Court. The applicants kept on pursuing the matter but same yielded no result in positive. Now, the respondents instead of granting the benefits of the Scheme are making a move to oust applicant from service without assigning any reason. The applicant who is now over aged for any Government jobs and has full grown family is facing tremendous hardship. Being aggrieved by such inaction on the part of the respondents the applicant has approached this Hon'ble Tribunal by way of filing the instant original application for redressal of his grievances.

Hence the present original application.

केन्द्रीय प्रशासनिक अदालत
Central Administrative Tribunal

26 JUN 2009

गुवाहाटी न्यायपोठ
Guwahati Bench

Filed by

Hridip Kr. Das
26.06.09

Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI

OA No. 121 of 2009

केन्द्रीय प्रशासन आयोग अधिकारी
 Central Administrative Tribunal
 गुवाहाटी बैच
 26 JUN 2009

LIST OF DATES

1989 The judgment of Hon'ble Supreme Court directing the respondents to prepare a Scheme on rational basis for absorbing as far as possible the casual laborers who have been continuously working for more than one year. **[ANNEXURE- B] [Page- 20]**

07.11.89 Order vide No. 269-10/89-STN by which a Scheme in the name and style "Casual Laborers (Grant of Temporary Status and Regularization Scheme, 1989) (in short "the Scheme of 1989) has been communicated to all heads of Departments. **[ANNEXURE- C] [Page- 22]**

13.08.97 Order of the Hon'ble Central Administrative Tribunal, Guwahati Bench in O.A. No. 299/96 and 302/96 directing the respondents to extend the benefits of the Scheme to the similarly situated persons. **[ANNEXURE- E] [Page- 27]**

1998 The applicant joined the service under the respondents as casual labour and served more than 240 days in the said year.

31.08.99 Order of the Hon'ble Central Administrative Tribunal, Guwahati Bench directing the respondents to extend the benefit of the said Scheme after examining each case, in the light of Hon'ble Apex Court verdict as well as the Scheme and its subsequent clarifications issued from time to time. **[ANNEXURE- F] [Page- 30]**

01.09.99 Order bearing No. 269-13/99-STN-II clarifying the cut off date of applicability of the Scheme. The respondents have made the Scheme applicable to the casual workers recruited after 1989. **[ANNEXURE- D] [Page- 26]**

01.06.01 Communication under No. Genl-3051/Staff/201-2002 by which the particulars of the casual workers were furnished to the Dy. General Manager (Admn), CGM, Telecom, Assam Circle. **[ANNEXURE- G] [Page- 35]**

26 JUN 2009

Guwahati Bench

27.11.03 Report of the Verification Committee pertaining to the applicant. [ANNEXURE- H] [Page- 37]

19.12.03 Communication under No. ESTT-9/12/CO/63 by which the applicant was extended with one opportunity to substantiate his claim of temporary status. [ANNEXURE- I] [Page- 38]

01.01.04 Communication made by the applicant to the 3rd respondent indicating the fact that when he visited the office of S.D.E (FC), Trunks, Panbazar to search out the records of his engagement particulars during the year 1998-99, the respondents intimated him that the records were destroyed by mouse in the office. [ANNEXURE- J] [Page- 39]

20.01.04 Communication under No. ESTT-9/12/CO/66 by which the respondents rejected the claim of the applicant towards grant of temporary status. [ANNEXURE- K] [Page- 40]

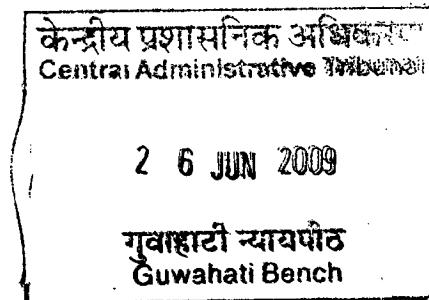
27.12.07 Representation submitted by the applicant for consideration of his case for granting of the benefits of temporary status under the Scheme of 1989. [ANNEXURE- L] [Page- 41]

23.08.08 Communication made by the applicant to the Chief General Manager, Telecom, Assam Telecom Circle, BSNL indicating the fact that he has got his engagement particulars pertaining to the year 1998-99 which were missing, after rigorous search in the department. The documents clearly states that during the year 1998 the applicant worked for 327 (three hundred and twenty seven) days. [ANNEXURE- M] [Page- 42]

30.08.08 Communication made by the Assistant General Manager (Admn) to the General Manager, Telecom, BSNL, Kamrup Telecom District, Guwahati stating that the applicant had worked more than 240 days in the year 1998. [ANNEXURE- N] [Page- 43]

10.12.08 Communication made by the Divisional Engineer (Admn), BSNL, Kamrup Telecom District under No. GMT/EST-179/Pt.-III/08-09/6 to the Divisional Engineer (Extl-II), Dispur for furnishing the detailed report and engagement particulars of the applicant for further verification of the claim of the applicant. **[ANNEXURE- O] [Page- 44]**

08.05.09 Order passed by this Hon'ble Court in a similar matter i.e. O.A. No. 84/09 [Rajkumar Pandey & Ors. -vs- U.O.I & Ors.] directing the respondents therein to continue to engage the applicants, as before, until further orders with further direction of not to disengage/ retrench/ terminate the applicants without the leave of this Hon'ble Tribunal. **[ANNEXURE- P] [Page- 45]**



Filed by

Advocate

26 JUN 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Filed by:
The Applicant
through
Hrldip Kr. Das.
Advocate
26.6.09

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI

OA No. 121 of 2009

BETWEEN

Sri Phuleswar Das,
Son of late Bhrath Chandra Das,
Monakuchi, Hajo, Kamrup, Assam.

APPLICANT

-Versus-

1. The Chairman -cum- Managing Director, Bharat Sanchar Nigam Limited (BSNL), New Delhi- 1.
2. The Chief General Manager, (BSNL), Assam Telecom Circle, Panbazar, Guwahati- 1, Assam.
3. The Deputy General Manager (Administration), O/o the Chief General Manager, Telecom, BSNL, Assam Telecom Circle, Bora Service, Guwahati- 781007.
4. The Assistant Director, Telecom (Estt.), BSNL, O/o Chief General Manager, Assam Telecom Circle, Guwahati- 781007.
5. The General Manager, Telecom, BSNL, Kamrup Telecom District, Guwahati- 7.
6. The Sub-Divisional Officer (Phones), Dispur- II, Dispur, Guwahati- 781006.

RESPONDENTS

Sri Phuleswar Das.

Recd the C.P.Y
B. Chandra
BSNL
Advocate
29/6/09

26 JUN 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER(S) AGAINST WHICH THE APPLICATION IS MADE:

The present application is made against the inaction on the part of the respondents in not regularizing service of the applicant under the "Scheme of 1989".

2. JURISDICTION OF THE TRIBUNAL:

The applicant further declares that the subject matter of the instant application is well within the jurisdiction of the Hon'ble Tribunal.

3. LIMITATION:

The applicant further declares that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE:

4.1 That the applicant is presently working as Supervisor of the sweepers in the office of the Chief General Manager, Telecom, Assam Circle, BSNL, Panbazar, Guwahati- 1.

4.2 That the applicant got his appointment as casual worker in the year 1998 under the respondents and thereafter he is continuing as casual worker till date. Though the applicant got his initial appointment as casual worker but for all practical purpose he has been treated as regular Group- D employee and he was drawing his salary under the prescribed pay slip i.e. ACG 17 pay bill. Even at the time of his initial appointment he had to face interviews and tests and his name was sponsored by the local employment exchange.

Copies of the documents showing such employment of the applicant are annexed herewith and marked as
ANNEXURE- A series.

Om phulswar Das.

26 JUN 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

4.3 That the applicant begs to state that some of the casual workers of the Department of Post under the Ministry of Communication approached the Hon'ble Supreme Court praying for regularization of their services and the Hon'ble Supreme Court after hearing the parties in the year 1989 was pleased to issue a direction to the official respondents thereto to prepare a Scheme. Thereafter, claiming similar benefits another set of casual workers working in the Telecommunication department also under the Ministry of communication approached the Hon'ble Supreme Court seeking a similar direction and the said matter was also disposed of by a similar order and direction has been issued to the respondents to prepare a Scheme on rational basis for casual workers who have been working continuously for one year and who have completed 240 days of continuous service in a particular year.

A typed copy of the said judgment passed in the year 1989 of the Hon'ble Supreme Court is annexed herewith and marked as **ANNEXURE- B**.

4.4 That applicant begs to state that the respondents thereafter issued an order vide No. 269-10/89-STN dated 07.11.1989 by which a Scheme in the name and style "Casual Laborers (Grant of Temporary Status and Regularization Scheme, 1989) (in short "the Scheme of 1989) has been communicated to all heads of Departments. As per the said Scheme of 1989, certain benefits have been granted to the casual workers such as conferment of temporary status, regularization, wages and daily rates etc.

A copy of the order dated 07.11.1989 is annexed herewith and marked as **ANNEXURE- C**.

4.5 That the applicant states that as per the direction contained in the judgment of the Hon'ble Supreme Court and the Scheme of 1989, he is entitled to the benefits mentioned in the said Scheme, including temporary status and subsequent regularization. The applicant is eligible for grant of temporary status and he fulfills all the required qualifications mentioned under the said Scheme of 1989. However, the respondents for the reasons best known to them withhold the said benefit to him

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गुवाहाटी न्यायपीठ
Guwahati Bench

whereas the said benefits has been extended to other similarly situated casual employees and even juniors to the applicant working in the Assam Telecom Circle more particularly under the respondents No. 3 as well as N.E. Telecom Circle.

4.6 That the applicant states that the aforesaid Scheme of 1989 has been clarified by the respondents in respect of the cut off date of its applicability. The respondents to that effect issued and order bearing No. 269-13/99-STN-II dated 01.09.1999 clarifying the said cut off date. By the aforesaid order dated 01.09.1999 the respondents have made the Scheme applicable to the casual workers recruited after 1989. In fact the Scheme of 1989 is an ongoing Scheme and same has been mentioned in the Scheme itself.

A copy of the said order dated 01.09.1999 is annexed herewith and marked as **ANNEXURE- D**.

4.7 That the applicant begs to state that in spite of such Scheme as well as its clarifications issued from time to time the respondents never implemented the said Scheme. Situated thus the Worker's Union espousing the cause of the casual workers like that of the present applicant had approached the Hon'ble Tribunal by way of filing O.A. No. 299/96 and 302/96 and the Hon'ble Tribunal was pleased to pass an order dated 13.08.1997 directing the respondents to extend the benefits of the said Scheme.

A copy of the order dated 13.08.1997 is annexed herewith and marked as **ANNEXURE- E**.

4.8 That the applicant beg to state that the aforesaid order dated 13.08.1997 was never implemented by the respondents and being aggrieved by the said action on the part of the respondents the worker's Union once again approached the Tribunal by way of filing original applications before the Hon'ble Tribunal and the Hon'ble Tribunal after careful consideration of the matter directed the respondents to extend the benefit of the said Scheme after examining each case, in the light of Hon'ble Apex Court verdict as well as the Scheme and its subsequent clarifications issued from time to time.

26 JUN 2009

गुवाहाटी न्यायदीर्घ
Guwahati Bench

A copy of the said order dated 31.08.1999 is annexed herewith and marked as **ANNEXURE- F**.

4.9 That the applicant begs to state that pursuant to a verification committee's report particulars of casual workers working in the Circle Office, Guwahati were forwarded to the Deputy General Manager (Admn.), Telecom, Assam Circle vide communication under No. Gent-3015/Staff/201-2002 dated 01.06.01 for the purpose of regularization. In the said communication the applicant's name appeared in Sl. No. 3 and the respondents have admitted that the applicant served as casual worker w.e.f. Jan' 98 to Dec' 98 in Sualkuchi Exchange and w.e.f. Jan' 99 to July' 99 in Panbazar Exchange and thereafter also he was engaged as cook in Panbazar exchange. However, in spite of his regular service since January' 1998 the respondents in the said communication held that the applicant had not completed 240 days of service.

The applicant categorically states that from the ANNEXURE- A series in the instant O.A., it is crystal clear that the applicant completed 240 days of service in the year 1998 and thereafter till 2009 in every year. However, the respondents without verifying the service records of the applicant came to the conclusion on surmises regarding the non fulfillment of 240 days service and hold the applicant to be ineligible for extending the benefits of the Scheme of 1989.

A copy of the communication dated 01.06.01 is annexed herewith and marked as **ANNEXURE- G**.

4.10 That the applicant begs to state that in the year 2003 a verification committee was constituted by General Manager Telecom, Kamrup to examine and scrutinize and settle the claims of casual workers working under the jurisdiction of Kamrup, SSA. The applicant appeared before the committee along with the documents certifying his engagement w.e.f. January' 1998 under the respondents. The respondents submitted a report dated 27.11.2003 in regard to the claim of the applicant and came to the conclusion that the applicant has not completed 240 days in any calendar year prior to August' 1998 and as such the applicant

Sri Phukedwar Das

26 JUN 2009

गुवाहाटी न्यायालय
Guwahati Bench

6

is not found eligible to granting temporary status as per the Scheme of 1989.

A copy of the report of the verification committee dated 27.11.03 is annexed herewith and marked as **ANNEXURE- H.**

4.11 That the applicant begs to state that the Scheme of 1989 the cut off date of which was extended to 01.08.1998 provides for two conditions for grant of temporary status first the casual labour has to be in employment as on 01.08.1998 and has to complete 240 days of service in any calendar year. It is an admitted fact that the applicant is in engagement since January' 1998 and in the year 1998 he served the respondents for 327 days **[ANNEXURE- A series]**. Therefore, the applicant fulfills both the requirements of the Scheme of 1989 and is eligible for getting the benefits of the Scheme. However, the respondents misinterpreted the Scheme pertaining to the applicant and hold the applicant ineligible on the ground that he had completed only 211 days as on 01.08.1998. It is categorically stated that the Scheme nowhere provides for completion of 240 days before the cut off date i.e. 01.08.1998. The spirit of the Scheme only provides that the casual labour has to be in employment as on 01.10.1998. Hence, the findings of the verification committee are erroneous and are not based on records.

4.12 That the applicant begs to state that the 4th respondent on 19.12.2003 issued a communication under No. ESTT-9/12/CO/63 intimating the applicant that as per the recommendation of the verification committee the applicant was not in engagement for 240 days in any calendar year prior to 01.08.1998 and as a result his case for grant of temporary status has not been recommended by the said committee. Moreover, by the said communication the applicant was given one more chance to substantiate his claim for temporary status by producing fresh evidence.

A copy of the communication dated 19.12.2003 is annexed herewith and marked as **ANNEXURE- I.**

Sri Phulonwar Das.

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4.13 That in pursuance to the communication dated 19.12.03 the applicant made a representation dated 01.01.04 to the 3rd respondent indicating the fact that when he visited the office of S.D.E (FC), Trunks, Panbazar to search out the records of his engagement particulars during the year 1998-99, the respondents intimated him that the records were destroyed by mouse in the office. By the said representation the applicant also prayed for sympathetic consideration of his case for granting the benefits of temporary status and consequent regularization thereof.

A copy of the said representation dated 01.01.04 is annexed herewith and marked as **ANNEXURE- J.**

4.14 That the applicant begs to state that the 4th respondent thereafter issued an order under No. ESTT-9/12/CO/66 dated 20.01.04 rejecting the claim of the applicant and negating the benefits of the Scheme of 1989 on the ground that he had not completed 240 days prior to the cut off date i.e. 01.08.1998.

It is stated that the Scheme of 1989 and subsequent clarifications nowhere said that for granting the benefits of the Scheme the casual labour has to complete 240 days prior to 01.08.1998 rather it only said that on 01.08.1998 the incumbent has to be in service. Moreover, the Scheme of 1989 is a on going scheme and the applicant is entitled for the benefits of the Scheme.

A copy of the order dated 20.01.04 is annexed herewith and marked as **ANNEXURE- K.**

4.15 That the applicant begs to state that on 27.12.07 the applicant submitted another representation for consideration of his case for granting of the benefits of temporary status under the Scheme of 1989. In the said representation the applicant submitted that he is discharging duties to the satisfaction of all concern since 1998. The applicant also stated that presently he is working as cook in the Inspection Quarter of BSNL, Panbazar, Guwahati. As a cook the applicant is a disciplined worker and continuously working for last 10 years. It is further submitted by the applicant that there is deep need of the service of the applicant in the respondent department for meeting the day to day requirement on regular basis. Therefore, he prayed for

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inclusion of his name in the list of persons selected for regularization. However, the respondents sat over the matter and did not give an eye to the claims of the applicant.

A copy of the said representation dated 27.12.07 is annexed herewith and marked as **ANNEXURE- L.**

4.16 That finally on 23.08.08 the applicant made communication to the Chief General Manager, Telecom, Assam Telecom Circle, BSNL indicating the fact that he has got hold of the engagement particulars during the year 1998-99 which were missing after rigorous search in the department. The documents clearly states that during the year 1998 the applicant worked for 327 (three hundred and twenty seven) days. Hence, the applicant is eligible for the benefits of the Scheme of 1989. Therefore, by the said communication the applicant prayed for granting of the benefits of temporary status and consequent regularization as per the Scheme of 1989.

A copy of the communication dated 23.08.08 is annexed herewith and marked as **ANNEXURE- M.**

4.17 That the applicant begs to state that in pursuance to the representations dated 27.12.07 and 23.08.08 submitted by the applicant the Assistant General Manager (Admn) made a communication to the General Manager, Telecom, BSNL, Kamrup Telecom District, Guwahati stating that the applicant had worked more than 240 days in the year 1998. By the said communication the Assistant General Manager (Admn) requested to scrutinize the matter and the relevant records for necessary action.

A copy of the communication dated 30.08.08 is annexed herewith and marked as **ANNEXURE- N.**

4.18 That the applicant begs to state that the Divisional Engineer (Admn), BSNL, Kamrup Telecom District issued a communication under No. GMT/EST-179/Pt.-III/08-09/6 dated 10.12.08 to the Divisional Engineer (Extl-II), Dispur for furnishing the detailed report and engagement particulars of the applicant for further verification of the claim of the applicant. However, nothing has been done towards granting of the benefits

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of the Scheme of 1989 and consequent regularization of the service of the applicant.

A copy of the communication dated 10.12.08 is annexed herewith and marked as **ANNEXURE- O.**

4.19 That the applicant begs to state that their cases are covered by the aforesaid judgment of the Hon'ble Tribunal. It is stated that pursuant to the aforesaid order dated 31.08.1999 the respondents have initiated a large scale proceeding for filling up at least 900 posts of DRM under Assam Circle and almost equal number posts in N.E. Circle. To that effect verification committee comprising of officials the respondents has been set up to examine each case. However, the respondents have done the scrutiny and granted the benefit in pick and choose basis without any scrutiny and without taking into consideration the report placed by the divisional authority as well as the payment records.

4.20 That the applicant begs to state that this Hon'ble Tribunal has got the occasion to deal with a similar matter i.e. O.A. No. 84/09 [Rajkumar Pandey & Ors. -vs- union of India & Ors.]. In the aforesaid matter the Hon'ble Tribunal vide order dated 08.05.09 was pleased to admit the original application issuing notice to the respondents and further pleased to direct the respondents therein to continue to engage the applicants, as before, until further orders and should not disengage/ retrench/ terminate the applicants without the leave of this Hon'ble Tribunal. The Hon'ble Tribunal also directed that pendency shall not be a bar for the respondents for consideration of the grievance of the applicants and pending such consideration grant the applicants the benefits of minimum of pay scale etc. meant for a Group- D staff of respondents organization.

A copy of the order dated 08.05.09 passed in O.A. No. 84/09 is annexed herewith and marked as **ANNEXURE- P.**

4.21 That the applicant begs to state that the respondents have granted the benefits of the Scheme to other similarly situated employees like that of the applicants. It is pertinent

Sri Phuleswar Das.

to mention here that casual workers of Assam Telecom Circle, as well as N.E. Circle, recruited even in the year 2001-02 have been granted with the benefits of the said Scheme but the said benefit has been kept withheld in respect of the present applicants without any rhymes and reasons.

4.22 That the applicant begs to state that as stated above he is still continuing in his respective post and he is drawing his pay regularly. It is crystal clear from the Annexure- A series that the applicants have completed 240 days of continuous service in year 1998 and subsequent years, which is a condition precedent for getting benefit of the said Scheme of 1989. It is further stated that there are various other communications and documents which clearly goes to show that the applicant has completed the required number of working day in a particular year to have the benefit of the said Scheme of 1989.

The applicants crave leave of the Hon'ble Court to place the records as well as communications pertaining to their continuous service at the time of hearing of the case.

4.23 It is stated that the applicant who is still in service now apprehending termination of his service in view of the change of the office structure from Telecom Department to BSNL. In fact there has been a move to eliminate the applicant from the BSNL and in the event of termination the service of the applicant without considering his case under the Scheme would suffer them irreparable loss and injury and as such the applicant has come under the protective hands of the Hon'ble Court seeking an immediate and urgent relief with a prayer directing the respondents not to terminate his service and allow him to continue. The applicant who is working as casual worker belongs to the lower stratum of the society and theirs family members are entirely dependent on his meager income. In the event of not passing any interim order as prayed for the applicant will suffer irreparable loss and injury and the present original application would render infructuous. The principles of balance of convenience lies very much in favor of the applicant in passing the interim order as prayed for.

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4.24 That the applicant files this application bonafide for securing the ends of justice.

5. GROUNDS FOR RELIEF(S) WITH LEGAL PROVISIONS:

5.1 For that the action/inaction on the part of the respondents, in not granting the benefit of the Scheme of 1989 to the present applicant is illegal, arbitrary and clear violation of the principles of administrative fair play and hence same is liable to be set aside and quashed.

5.2 For that the respondents ought to have extended the benefits of the said scheme to the present applicant taking into consideration his initial entry and days of continuous work. Therefore, having not done so the respondents have acted illegally by denying the benefits of regularization to the present applicant and which incurs interference of this Hon'ble Court.

5.3 For that the respondents have acted illegally in not extending the benefit of 1989 Scheme taking into consideration the Apex Court judgment and 1989 Scheme and its subsequent clarification issued from time to time. Hence, the action of the respondents is illegal and is in clear violation of the Constitutional mandate.

5.4 For that the respondents while regularizing the service of the colleagues of the applicant and granting them the benefits of the Scheme of 1989 and denying the similar benefits to the present applicant committed gross illegally and arbitrariness which is not sustainable in the eye of law and is in clear violation of the Article 14 and 16 of the Constitution of India.

5.5 For that the verification committee while considering the claim of the applicant, hold the applicant to be ineligible totally on wrong premises. The verification committee without going through the engagement particulars of the applicant and without verifying the records has come to the erroneous conclusion on ineligibility of the applicant. Hence, the

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action/inaction on the part of the respondents in not regularizing the service of the applicant is in clear violation of the Apex Court judgment in this regard and this Hon'ble Court may be pleased to direct the respondents to extend similar benefits to the applicant.

5.6 For that the applicant is continuously serving the respondents for last 10 years without there being any complain of any quarter which clearly goes to show that the applicant is a good and disciplined worker and the respondents are in need of the service of the applicant to meet their day to day requirement on regular basis. Therefore, the respondents being a model employer instead of exploiting the applicant keeping him as casual worker ought to have absorbed the applicant in the regular establishment and pending such absorption the respondents ought to have paid the applicants the minimum of the pay scale of regular Group- D Staff with DA, HRA & CCA etc. along with the leave on pro-rata basis as recognized by the Government of India. However, the respondents deprived the applicant from the benefits of the Scheme of 1989 as has been granted by the Government of India and exploited the service of the applicant which is not at all sustainable in the eye of law and on this ground alone the Hon'ble Court may be pleased to direct the respondents to grant the benefits of the Scheme of 1989 to the applicant and consequent regularization thereof.

5.7 For that from the sequence of events it is clear that the action of the respondents in denying the similar benefits to the applicant is discriminatory and has been done with the sole purpose to deprive the applicant from their legitimate claim. The respondents in totality failed to adhere to the Apex Court decision and sat over the matter which requires judicial interference by this Hon'ble Court. Hence on this ground alone the respondents can be directed to regularize the service of the applicants conferring him benefit of the "Scheme of 1989".

The applicant craves leave of the Hon'ble Court to advance more grounds both legal and factual at the time of hearing of this case.

Sri Phanteswar Das.

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Guwahati Bench

6. DETAILS OF THE REMEDIES EXHAUSTED:

That the applicant declares that he has exhausted all the remedies available to him and there is no alternative remedy available to him.

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

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

8. RELIEF(S) SOUGHT FOR:

8.1 To direct the respondents to extend the benefit of the Scheme of 1989 to the applicants by regularizing their services with all consequential service benefits.

8.2 Cost of the application.

8.3 pass any such order/orders as Your Lordships may deem fit and proper.

9. INTERIM ORDER PAYED FOR:

Pending disposal of the original application the applicant prays for an interim order:-

9.1 To direct the respondents to allow applicants to continue as earlier and to consider the case of the applicant for taking him into regular establishment, and

9.2 To direct the respondents to grant benefits of minimum of pay scale etc. meant for a Group- D staff of Respondents-organization to applicant pending such consideration.

10. The application is filed through Advocates.

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11. PARTICULARS OF THE IPO:

(I) IPO No.	:	396 409398
(II) Date of Issue	:	18.06.09
(III) Issued from	:	G.P.O.
(IV) Payable at	:	Guwahati

12. LIST OF ENCLOSURES:

As stated in the Index.

...Verification

केन्द्रीय प्रशासनिक अधिकार पर
Central Administrative Tribunal

26 JUN 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

VERIFICATION

I, Sri Phuleswar Das, Son of late Bharath Chandra Das, aged about- 39 years, village- Monakuchi , Hajo, Dist- Kamrup, Assam, do hereby solemnly affirm and verify that the statements made in the accompanying application in paragraphs 4.11, 4.19, 4.21, 4.22, 4.23 and 4.24 are true to my knowledge, those made in paragraphs 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.12, 4.13, 4.14, 4.15, 4.16, 4.17, 4.18 and 4.20 being matters of records are true to my information derived there from and the grounds urged are as per legal advice. I have not suppressed any material fact.

And I sign this verification on this the 25th day of July, 2009 at Guwahati.

Sri Phuleswar Das.

APPLICANT



BSNL

कोर7/Corr-7

भारत संचार निगम लिमिटेड

BHARAT SANCHAR NIGAM LIMITED

(A Government of India Enterprise)

वारालिय/Office of the S.D.E F/LC Panbazar Gu-1

TO

The S.D.E (Admn)

Ulubari - GH - 7

No. FCL/E-14/98-99

Date - 1.7.98

To The Certified date Sri - P. Das, Garden Mali
Panbazar Telephone Exchange and Govt Compound
Mount of Working days

Feb 1998 - 28 days -

March " - 31 days -

April " - 30 days -

May " - 31 days -

June " - 30 days -

July " - 31 days -

August " - 30 days -

Total - 211 days

केन्द्रीय प्रशासनिक न्यायालय
Central Administrative Tribunal

26 JUN 2009

गुवाहाटी न्यायालय
Guwahati Bench

Pass
of T

To S.D.E F/LC
Panbazar Gu-1

Abul

Hass

Advocate

दूर संचार विभाग
DEPARTMENT OF TELECOMMUNICATION

कार्यालय / Office of the

It is to certify that Sri Fulkeswar Das s/o late Bhureth Ch. das worked in the Dispur under Sub-Division II (Phones) as a Casual Labour on daily contract basis with the S9/LM as per record and paid in their ACC-2 bill form / ACC-17 bill as per verification. He was working from September '98 to December '98 as follows : -

Sept '98	—	29 days
Oct '98	—	28 4
Nov '98	—	30 4
Deef '98	—	29 4

*Days
SDP/Dispur II
Date - 4/02/99
Sub-Divisional Officer
Dispur - II*

केन्द्रीय प्रशासन
Central Administrative

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Guwahati Bench

Corr-22

भारत संचार निगम
BHARAT SANCHIAR NIGAM LIMITED
(A Government of India Enterprise)

BSNL

में से
From

SACOT Rangia
BSNL.

में से ने
To the A.E. Admin.

070 6MT. BSNL, Kamrup, GJ

में से
No. E-1/RNY/03-04/2

टिक्का
Dated at Rangia on 17/10/03

दिनांक :

Subject : Engagement and working
Particulars in respect of Sri
Fuleswar Das

Ref. No: 6MT/EST-179/C.N./03-04/54 Dated 15/9/03.

It is intimated that on verification of
office records, it is found that Sri Fuleswar Das
worked at Sankuchi exchange for cleaning and
sweeping exchange on contract basis as follows:-
from March '99 to July '99

Month -	No. of days
March '99 -	15 days
April '99 -	15 days
May '99	15 days
June '99	15 days
July '99	15 days

Recd

S.D.O.P.B.S.N.B
Ranila.

Copy to:-

The A.E. Batali - III, Morigaon
for information - 26

केन्द्रीय प्रशासनिक न्यायालय
Central Administrative Tribunal

26 JUN 2009

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Guwahati Bench

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S.D.O.P.B.S.N.B
Ranila

Office of The Managing Director

EX-SERVICEMEN INLAND SECURITY BUREAU

Luit Nagar, Noonmati, Guwahati-20

No.

Date 06.11.2009

TO WHOM IT MAY CONCERN

This is to certify that Shri Fuleswar Das serving under me since September, 1999 at IS Telecom BSNL, Panbazar Guwahati -781 001 on contractual basis. He will be terminated on 31.3.2004 or till the contract is discontinued.

He is an energetic employee. I wish him every success in life.



B. Roy

(B. Roy)
Managing Director
E I S B

Managing Director
Ex-Servicemen Inland Security Bureau
Luit Nagar, Guwahati-20

केन्द्रीय प्रशासनिक
Central Administrative Dept.

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Guwahati Bench

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ANNEXURE- B.

Absorption of Casual Labourers

Supreme Court directive Department of Telecom take back all Casual Mazdoors who have been disengaged after 30.3.85.

In the Supreme Court of India
Civil Original Jurisdiction.

Writ Petition (C) No 1280 of 1989.

Ram Gopal & ors. Petitioners.

-versus-

Union of India & ors Respondents.

With

Writ Petition Nos 1246, 1248 of 1986 176, 177 and 1248 of 1988.

Jant Singh & ors etc. etc. Petitioners.

-versus-

Union of India & ors. Respondents.

ORDER

We have heard counsel for the petitioners. Though a counter affidavit has been filed no one turns up for the Union of India even when we have waited for more than 10 minutes for appearance of counsel for the Union of India.

The principal allegation in these petitions under Art 32 of the Constitution on behalf of the petitioners is that they are working under the Telecom Department of the Union of India as Casual Labourers and one of them was in employment for more than four years while the others have served for two or three years. Instead of regularising them in employment their services have been terminated on 30th September 1988. It is contended that the principle of the decision of this Court in Daily Rated Casual Labour Vs. Union of India & ors. 1988 (1) Section (122) squarely applies to the petitioner though that was rendered in case of Casual Employees of Posts and Telegraphs Department. It is also contended by the counsel that the decision rendered in that case also relates to the Telecom Department as earlier Posts and Telegraphs Department was covering both sections and now Telecom has become a separate department. We find from paragraph 4 of the reported decision that communication issued to General Managers Telecom have been referred to which support the stand of the petitioners.

Attested

[Signature]

Advocate

26 JUN 2009

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Guwahati Bench

By the said Judgment this Court said :

" We direct the respondents to prepare a scheme on a rational basis for absorbing as far possible the casual labourers who have been continuously working for more than one year in the Posts and Telegraphs Department".

We find the though in paragraph 3 of the writ petition, it has been asserted by the petitioners that they have been working more than one year, the counter affidavit does not dispute that petition. No distinction can be drawn between the petitioners as a class of employees and those who were before this court in the reported decision. On principles, therefore the benefits of the decision must be taken to apply to the petitioners. We accordingly direct that the respondents shall prepare a scheme on a rational basis absorbing as far as practical who have continuously worked for more than one year in the Telecom Deptt. and this should be done within six months from now. After the scheme is formulated on a rational basis, the claim of the petitioners in terms of the scheme should be worked out. The writ petitions are also disposed of accordingly. There will be no order as to costs on account of the facts that the respondents' counsel has not chosen to appear and contact at the time of hearing though they have filed a counter affidavit.

Sd/-

(Ranganath Mishra) J.

New Delhi

Sd/-

(Kuldeep Singh) J.

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Guwahati Bench

ANNEXURE- C.

CIRCULAR NO. 1
GOVERNMENT OF INDIA
DEPARTMENT OF TELECOMMUNICATIONS
STN SECTION

No. 269-10/89-STN

New Delhi 7.11.89

To

The Chief General Managers, Telecom Circles
M.T.H.I New Delhi/Bombay, Metro Dist.Madras/
Calcutta.
Heads of all other Administrative Units.

Subject : Casual Labourers (Grant of Temporary Status and
Regularisation) Scheme.

Subsequent to the issue of instruction regarding regularisation of casual labourers vide this office letter No.269-29/87-STC dated 18.11.88 a scheme for conferring temporary status on casual labourers who are currently employed and have rendered a continuous service of at least one year has been approved by the Telecom Commission. Details of the scheme are furnished in the Annexure.

2. Immediate action may kindly be taken to confer temporary status on all eligible casual labourers in accordance with the above scheme.

3. In this connection, your kind attention is invited to letter No.270-6/84-STN dated 30.5.85 wherein instructions were issued to stop fresh recruitment and employment of casual labourers for any type of work in Telecom Circles/Districts. Casual labourers could be engaged after 30.3.85 in projects and Electrification circles only for specific works and on completion of the work the casual labourers so engaged were required to be retrenched. These instructions were reiterated in D.O letters No.270-6/84-STN dated 22.4.87 and 22.5.87 from member(pers. and Secretary of the Telecom Department) respectively. According to the instructions subsequently issued vide this office letter No.270-6/84-STN dated 22.6.88 fresh specific periods in Projects and Electrification Circles also should not be resorted to.

3.2. In view of the above instructions normally no casual labourers engaged after 30.3.85 would be available for consideration for conferring temporary status. In the unlikely event of there being any case of casual labourers engaged after 30.3.85 requiring consideration for conferment of temporary status. Such cases should be referred to the Telecom Commission with relevant details and particulars regarding the action taken against the officer under whose authorisation/approval the irregular engagement/non retrenchment was resorted to.

3.3. No Casual Labourer who has been recruited after 30.3.85 should be granted temporary status without specific approval from this office.

4. The scheme finalised in the Annexure has the concurrence of Member (Finance) of the Telecom Commission vide No SMF/78/98 dated 27.9.89.

Attached

Haz.

Advocat

- 23 -

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Guwahati Bench

5 Necessary instructions for expeditious implementation of the scheme may kindly be issued and payment for arrears of wages relating to the period from 1.10.89 arranged before 31.12.89.

sd/ =

ASSISTANT DIRECTOR GENERAL (STN).

Copy to.

P.S. to MDS (C).

P.S. to Chairman Commission.

Member (S) / Adviser (HRD), GM (IR) for information.
MCG/SEA/TE -II/IPS/Admn. I/CSE/PAT/SPB-I/SR Secs.

All recognised Unions/Associations/Federations.

sd/ =

ASSISTANT DIRECTOR GENERAL (STN).

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Guwahati Bench

ANNEXURE

CASUAL LABOURERS (GRANT OF TEMPORARY STATUS AND REGULARISATION) SCHEME.

1. This scheme shall be called "Casual Labourers(Grant of Temporary Status and Regularisation) Scheme of Department of Telecommunication. 1989"

2. This scheme will come in force with effect from 1.10.89. onwards.

3. This scheme is applicable to the casual labourers employed by the Department of Telecommunications.

4. The provisions in the scheme would be as under.

A) Vacancies in the group D cadres in various offices of the Department of Telecommunications would be exclusively filled by regularisation of casual labourers and no outsiders would be appointed to the cadre except in the case of appointment on compassionate grounds, till the absorption of all existing casual labourers fulfilling the eligibility qualification prescribed in the relevant Recruitment Rules. However regular Group D staff rendered surplus for any reason will have prior claim for absorption against the existing/future vacancies. In the case of illiterate casual labourers, the regularisation will be considered only against those posts in respect of which illiteracy will not be an impediment in the performance of duties. They would be allowed age relaxation equivalent to the period for which they had worked continuously as actual labour for the purpose of the age limit prescribed for appointment to the group D cadre, if required. Out side recruitment for filling up the vacancies in Gr. D will be permitted only under the condition when eligible casual labourers are NOT available.

B) Till regular Group D vacancies are available to absorb all the casual labourers to whom this scheme is applicable, the casual labourers would be conferred a Temporary Status as per the details given below.

Temporary Status.

i) Temporary status would be conferred on all the casual labourers currently employed and who have rendered a continuous service at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in case of offices observing five day week). Such casual labourers will be designated as Temporary Mazdoor.

ii) Such conferment of temporary status would be without reference to the creation / availability of regular Gr. D posts.

iii) Conferment of temporary status on a casual labourers would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on a need basis. He may be deployed any where within the recruitment unit/territorial circles on the basis of availability of work.

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Guwahati Bench

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 Gr. posts.

6. 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 of regular Gr.D officials including DA, HRA, and CCA.

ii) Benefits in respect of increments in pay scale will be admissible for every one year of service subject to performance of duty for at least 240 days (206 days in administrative offices observing 5 days week) in the year.

iii) Leave entitlement will be on a pro-rata basis one day for every 10 days of week. Casual leave or any other leave will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularisation. They will not be entitled to the benefit of encasement of leave on termination of services for any reason or their quitting service.

iv) Counting of 50 % of service rendered under Temporary Status for the purpose of retirement benefit after their regularisation.

v) After rendering three years continuous service on attainment of temporary status, the casual labourers would be treated at par with the regular Gr. D employees for the purpose of contribution to General Provident Fund and would also further be eligible for the grant of Festival Advance/ food advance on the same condition as are applicable to temporary Gr.D employees, provided they furnish two sureties from permanent Govt. servants of this Department.

vi) Until they are regularised they will be entitled to Productivity linked bonus only at rates as applicable to casual labour.

7. No benefits other than the specified above will be admissible to casual labourers with temporary status.

8. Despite conferment of temporary status, the offices of a casual labour may be dispensed within accordance with the relevant provisions of the Industrial Disputes Act. 1947 on the ground of availability of work. A casual labourer with temporary status can quite service by giving one months notice.

9. If a labourer with temporary status commits a misconduct and the same is proved in an enquiry after giving him reasonable opportunity, his services will be dispensed with. They will not be entitled to the benefit of encasement of leave on termination of services.

10. The Department of Telecommunications will have the power to make amendments in the scheme and/or to issue instructions in details within the framing of the scheme.

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Guwahati Bench

ANNEXURE- D

No.269-13/99-STN-II
Government of India
Department of Telecommunications
Sanchar Bhawan
STN-II Section
New Delhi

Dated 1.9.99.

To

All Chief General Managers Telecom Circles,
All Chief General Managers Telephones District,
All Heads of other Administrative Offices
All the IFAs in Telecom. Circles/Districts and
other Administrative Units.

Sub: Regularisation/grant of temporary status to Casual
Labourers regarding.

Sir,

I am directed to refer to letter No.269-4/93-STN-II dated 12.2.99 circulated with letter No.269-13/99-STN-II dated 12.2.99 on the subject mentioned above.

In the above referred letter this office has conveyed approval on the two items, one is grant of temporary status to the Casual Labourers eligible as on 1.8.98 and another on regularisation of Casual Labourers with temporary status who are eligible as on 31.3.97. Some doubts have been raised regarding date of effect of these decision. It is therefore clarified that in case of grant of temporary status to the Casual Labourers, the order dated 12.2.99 will be effected w.e.f. the date of issue of this order and in case of regularisation to the temporary status Mazdoor eligible as on 31.3.97, this order will be effected w.e.f. 1.4.97.

Yours faithfully

(HARDAS SINGH)
ASSISTANT DIRECTOR GENERAL (STN)

All recognised Unions/Federations/Associations.

(HARDAS SINGH)
ASSISTANT DIRECTOR GENERAL (STN)

Attached

H.S.

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Guwahati Bench

ANNEXURE- E

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.299 of 1996.

and

302 of 1996.

Date of order : This the 13th day of August, 1997.

Justice Shri D.N.Baruah, Vice-Chairman.

O.A.No.299 of 1996

All India Telecom Employees Union,

Line Staff and Group-D,

Assam Circle, Guwahati & Others. Applicants.

- Versus -

Union of India & Ors. Respondents.

O.A. No.302 of 1996.

All India Telecom Employees Union,

Line Staff and Group-D

Assam Circle, Guwahati & Others. Applicants.

- Versus -

Union of India & Ors. Respondents.

Advocate for the applicants : Shri B.K. Sharma

Shri S. Sarma

Advocate for the respondents : Shri A.K. Choudhury

Addl.C.G.S.C.

ORDER

BARUAH J. (V.C.)

Both the applications involve common question of law and similar facts. In both the applications the applicants have prayed for a direction to the respondents to give them certain benefits which are being given to their counter parts working in the Postal Department. The facts of the cases are:

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Guwahati Bench

1. O.A. No.302/96 has been filed by All India Telecom Employees Union, Line Staff and Group-D, Assam Circle, Guwahati, represented by the Secretary Shri J.N.Mishra and also by Shri Open Pradhan, a casual labourer in the office of the Divisional Engineer, Guwahati. In O.A. 299/96, the case has been filed by the same Union and the applicant No.2 is also a casual labourer. The applicant No.1 in O.A. No.299/96 represents the interest of the casual labourers referred to Annexure-A to the Original Application and the applicant No.2 is one of the labourers in Annexure-A. Their grievances are :

2. They are working as casual labourers in the Department of Telecom under Ministry of Communication. They are similarly situated with the casual labourers working in the Department of Postal Department under the same Ministry. Similarly the members of the applicant No 1 are also casual labourers working in the Telecom Department. They are also similarly situated with their counter parts in the Postal Department. They are working as casual labourers. However the benefits which had been extended to the casual labourers working in the Postal Department under the Ministry of Communications have not been given to the casual labourers of the applicants Unions. The applicants state that pursuant to the judgment of the Apex Court in daily rated casual labourers employed under Postal Department vs. Union of India & Ors. reported in (1988) in sec.122 the Apex Court directed the department to prepare a scheme for absorption of the casual labourers who were continuously working in the department for more than one year for giving certain benefits. Accordingly a scheme was prepared by the Department of Posts granting benefit to the casual labourers who had rendered 240 days of service in a year. Thereafter many writ petitions had been filed by the casual labourers, working under the department of Telecommunication before the Apex Court praying for directing to give similar benefits to them as was extended to the casual labourers of Department of Posts. Those cases were disposed of in similar terms as in the judgment of Daily Rated Casual Labourers (Supra). The Apex Court, after considering the entire matter directed the Department to give the similar benefit to the casual labourers working under the Telecom Department in similar manner. Pursuant to the said judgment the Ministry of Communication prepared a scheme known as "Casual Labourers (Grant of Temporary Status and regularisation)Scheme" on 7.11.89. Under the said scheme certain benefit had been granted to the casual labourers such as conferment of temporary Status, Wages and Daily Rates with reference to the minimum of the pay scale etc. Thereafter, by a letter dated 17.3.93 certain clarification was issued in respect of the scheme in which it had been stipulated that the benefits of the scheme should be confined to the casual labourers engaged during the period from 31.3.1985 to 22.6.1988. On the other hand the casual labourers worked in the Department of Posts as on 21.11.1989 were eligible for temporary Status. The time fixed as 21.11.1989 had been further extended pursuant to a judgment of the Ernakulam Bench of the Tribunal dated 13.3.1995 passed in O.A.No.750/94. Pursuant to that judgment, the Govt.of India issued a letter dated 1.11.95 conferring the benefit of Temporary Status to the casual labourers. The present applicants being employees under the Telecom Department under the Ministry of Communication also urged before the concerned authorities that they should also be given same benefit. In this connection the casual employees submitted a representation dated 29.12.1995 before the Chairman, Telecom Commission, New Delhi but to the knowledge of the applicant the said representation has not been disposed of. Hence the present application.

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Guwahati Bench

3. O.A.299/96 is also of similar facts. The grievances of the applicants are also same.

4. Heard both sides, Mr.B.K.Sharma, learned Counsel, appearing on behalf of the applicants in both the cases submits that the Apex Court having been granted the benefit of temporary status and regularisation to the casual labourers, should also be made available to the casual labourers working under Telecom Department under the same Ministry. Mr.Sharma further submits that the action in not giving the benefits to the applicants is unfair and unreasonable. Mr.A.K.Choudhury, learned Addl.C.G.S.C for respondents does not dispute the submission of Mr.Sharma. He submits that the entire matter relating to the regularisation of casual labourers are being discussed in the J.C.M level at New Delhi, however, no decision has yet been taken. In view of the above, I am of the opinion that the present applicants who are similarly situated are also entitled to get the benefit of the scheme of casual labourers (grant of temporary Status and Regularisation) prepared by the Department of Telecom. Therefore, I direct the respondents to give the similar benefit as has been extended to the casual labourers working under the Department of Posts as per Annexure-3(in O.A.302/96) and Annexure-4 (in O.A.No.299/96) to the applicants respectively and this must be done as early as possible and at any rate within a period of 3 months from the date of receipt copy of this order.

However, considering the entire facts and circumstances of the case I make no order as to costs.

Sd/- Vice Chairman.

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Guwahati Bench

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ANNEXURE

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.107 of 1998 and others.

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

The Hon'ble 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 others. Applicants.

By Advocate Mr. J.L. Sarkar and Mr. M.Chanda
— versus —

The Union of India and others. Respondents.

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

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2. O.A. No.112/1998

All India Telecom Employees Union,

Line Staff and Group- D and another..... Applicants.

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

— versus —

Union of India and others. Respondents.

By Advocate Mr.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 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.

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4. O.A.No.118/1998

Shri Bhuban Kalita and 4 others. Applicants.

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

.....

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.131/1998

All India Telecom Employees Union and another...Applicants.

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

— versus —

Attested



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Guwahati Bench

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

7. O.A.No.135/98

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.136/1998

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.

9. O.A.No.141/1998

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.

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

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Guwahati Bench

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 and 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. Sr.C.G.S.C.

15. O.A.No.293/1998

All India Telecom Employees Union,
Line Staff and Group-D and another Applicants
By advocates Mr. B.K.Sharma and Mr.S.Sarma,
and Mr.D.K.Sharma

- versus -

The Union of India and others .. Respondents.

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

O R D E R

BARUAH.J. (V.C.)

1. All the above applicants involve common question 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 applicants were submitted by the said union, namely the Line Staff and Group-D employees and some other application 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 benefits of the scheme, namely casual Labourers (Grant of Temporary Status and Regularisation) Scheme of 7.11.1998, to the casual Mazdoors concerned 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 services 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 their service in different office in the Department of Telecommunication under Assam Circle and N.E. Circle. The Govt.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 7/11/89 and it came in to operation with effect from 1989. Certain casual employees had been given the benefits under the

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Guwahati Bench

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 D.A. 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 29.11.89 were granted the benefits of temporary status on satisfying the eligibility criteria. The benefits were further extended to the casual labourers of the Department of Posts as on 10.9.93 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 benefits 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.As.

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.As 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 servant are not eligible to become members or office bearers to 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 in to 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.As 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 can not 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 in to 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 Guwahati High Court against the order of the Tribunal dated 13.8.1997 passed in O.A. No.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 application, before the Hon'ble Guwahati High Court. However according to the applicants no interim order has been passed against the order of the Tribunal.

6. We have heard Mr.B.K.Sharma, Mr J.L.Sarkar, Mr.I. Hussain and Mr.B.Malakar, learned counsel appearing on behalf of the applicants and also Mr.A.Deb Roy, learned Sr.C.G.S.C. and Mr.B.C. Pathak, learned Sr.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 up to 1989 and then extended up to 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 submits that the respondents can not 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 definite conclusion. We, therefore, feel that the matter should be re-examined by the respondents themselves taking in to 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)

BHARAT SANCHAR NIGAM Limited
(A Govt. of India Enterprise)
Office of the Chief General Manager, Telecom.
Uliburi, Guwahati-781007.

केन्द्रीय प्रशासनिक उचित
Central Administrative Tribunal

No. Genl-3015/Stat/201-2002

Dated 01-06-01.

26 JUN 2009

गुवाहाटी न्यायपाठ
Guwahati Bench

To
The Dy. General Manager (Admn.)
O/o. the Chief General Manager Telecom.
Assam Circle, Guwahati-781007.

Sub: Particulars of Casual Mazdoers.

Ref: Yr No. ESTT-9/12/cm/22 dtd. 8.5.2001

The required information pertaining to casual mazdoors is furnished below in prescribed proforma:

A.D.T. (Genl.), Circle Office, Guwahati

1)	Shri Bhupen Deka	September '96	Actually engaged but Verification Committee could not approve his case for want of old cases	The name was sent	As noted below
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REMARKS :- As noted above, he is also engaged in I.B., Panbazar, Guwahati, as Gardener / Helper and being paid through ex-servicemen agency. Records under verification. He has filed a Court Case also O.A.No. 143/2001 for regularisation. He was previously working at Dispur I.B. GH during 1996(30days) & 1997(184days) where as during entire 1998 he was working for 273 days in I.B. Dispur, Cable Section I.B., Panbazar but upto 31.07.98 he could complete only 151 days.

2)	Shri Gaulam Kalita	January '96	Actually engaged but Verification Committee could not approve his case for want of old cases	The name was sent	As noted below
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REMARKS :- As noted above, he is also engaged in I.B., Panbazar, Guwahati, as Helper and being paid through ex-servicemen agency. Records under verification. He has been granted stay by Hon'ble CAT in OA no. - 98 / 2001. His case for compassionate appointment, due to death of his father was regretted, because of delay in applying. The delay was because he was minor at time of death of his father. He was previously working in Dispur I.B. in 1996 & during 1998 he has completed 242 days but upto 31.07.98 he could complete only 120days. During 1998 he was working in cable section & LB., Panbazar GH.

3)	Shri Phuleswar Das	January '98	Actually engaged	He had not completed 240 days	As noted below
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REMARKS :- He is presently working at New I.B. (3 storey building) at Panbazar, Guwahati, where 2 V.I.P. suites plus 8 suites exist. To run this Inspection Bungalow where V.I.P's including Members / Advisors / CGMs have been staying, there was requirement of Cooks / Helpers / Safaiwala / Gardener, hence he was employed. He is currently employed too with effect from 15.07.1999 as cook and is being paid through ex-serviceman agency. He was previously working in Sualkuchi Exchange (Jan'98- Dec'98) and Panbazar Exchange, Guwahati (Jan'99 - July '99). Records under verification.

4)	Shri Prabin Roy (Rajbongshi)	January '98	Actually engaged	He had not completed 240 days	As noted below
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REMARKS :- As noted above, he is also engaged in I.B., Panbazar, Guwahati, as Helper and being paid through ex-servicemen agency. Records under verification.

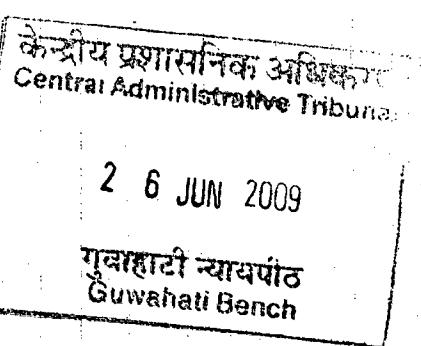
5)	Mrs. Murgoda Devi	January '98	Actually engaged	She had not completed 240 days	As noted below
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REMARKS :- As noted above, she is also engaged in I.B., Panbazar, Guwahati, as Sweeper and being paid through ex-servicemen agency. Records under verification.

Attached

H.B.

Advocates



Certificate of IFA and CGM

Certified that the above information is correct and figures given therein are final and there are no casual labourers in the Circle except those mentioned above.

ADT(Genl)
O/o the CGMT, Assam Circle

AGM(TT)
Assam Telecom Circle

BHARAT SANCHAR NIGAM LIMITED
 (A Government of India Enterprise)
 O/o the General Manager, Kamrup District,
 Ulubari :: Guwahati-7.

NO:- GMT/ENG/CL-1/2002-2003 / 66

Dated at Guwahati the 27-11-2003.

Sub:- Verification committee's report

A Verification Committee was constituted by G.M.T. / Kamrup to examine and scrutinize particulars of the casual labourers vide his office letter No. GMT(K)/ ENG /2001-2002 / 61 dated 13-3-2003 to verify the working particulars of the Casual Labourers claimed to have worked under the jurisdiction of Kamrup SSA.

The Committee consists of the following members:-

(1) Divisional Engineer (ADMIN), O/o GMT(K).	Chairman.
(2) Chief Accounts officer (Finance), O/o GMT(K).	Member.
(3) ADT (Legal), Circle office / Guwahati.	Member.
(4) S.D.E. / Legal, O/o GMT / Kamrup.	Member.

The committee has started functioning and verified various records relating to the payment particulars available with A.O.(cash), O/O the G.M.Telcom/Kamrup Bora service in respect of the applicant Phuleswar Das. As directed the applicant Sri Phuleswar Das has appeared before the Verification Committee on 28-11-2003 and submitted an application along with two certificates for consideration of TSM. The certificates verified by the committee with the related payment particulars noted below.

<u>Applicant Submission</u>	
(1) Working from Feb'98 to August'98 at Panbazar Telephone Exchange for 211days	<u>Verification Committee comments</u>
	Payment particulars not found.
(2) Working from March'99 to July'99 at Soalkuchi.	
	153 days worked.

The committee after careful examination of the records found that the applicant Sri Phuleswar Das has not completed 240 days in any calendar year prior to August 1998 even in his submissions. The findings of the committee is furnished in separate sheet.

Considering the above facts and circumstances of the case, and the guidelines of the "Grant of Temporary status and Regularisation Scheme, 1989" of the DEPTT. and other related letters issued from DOT/ND No.: 269-13 /99-STN-II dated 1-9-1999 & 269-20/2000-STN-II dated 4-9-2000, Phuleswar Das is not found eligible for granting temporary status as per above aforesaid scheme.

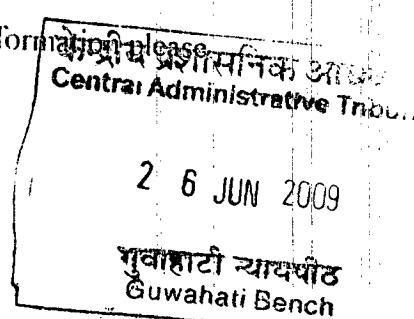
The committee, therefore does not recommend the applicant to grant temporary status.

28/11/03.
 SDE(Legal).
 O/o GMT/Kamrup.

28/11/03
 ADT(Legal).
 Circle Office.

28/11/03
 C.A.O. (Finance).
 O/o GMT/KTD/GH.
 D.E. (ADMIN).
 O/o GMT/KTD/GH.

Copy to:- The GM Telecom/Kamrup Telecom District for information, please.



Attached

H. As.

Advocate

BHARAT SANCHAR NIGAM LTD.
(A Govt. of India Enterprise)
OFFICE OF THE CHIEF GENERAL MANAGER,
ASSAM TELECOM CIRCLE, GUWAHATI-781007

No. ESTT-9/12/CO/63

Dated at Guwahati, the 19th December, 2003

To.

Shri Phuleswar Das.
S/o Late Bharath Chandra Das.
P.O. Monakuchi, Hazo.
Kamrup, Assam.

Sub:- Grant of Temporary Status Mazdoor.

With reference to above mentioned subject, it is intimated that your engagement particulars submitted by you, were thoroughly scrutinized and examined by the Verification Committee. After careful examination of the records, the Verification Committee submitted report to this office.

As per committee report, you have not been engaged for 240 days in any calendar year prior to 01.08.98 and as such your case for grant of temporary status has not been recommended by the said committee.

Now, you are hereby again given one more opportunity to substantiate your claim for granting temporary status by producing fresh evidence if any within 15 days from the date of receipt of this letter.

Roy CM2/55

केन्द्रीय प्रशासनिक आदानप्रदान
Central Administrative Tribunal

26 JUN 2009

गुवाहाटी बायपोर्ट
Guwahati Bench

[Signature]
(B.C. Pal)
Asstt. Director Telecom. (Estt)

Attested

H. Bas.

Advocate

To

The Dy. General Manager (Amn.)
of the Chief General Manager,
Assam Telecom Circle (BSNL),
Guwahati

Sub:- Grant of Temporary Status Hazard.

Ref:- ESTT. 7/12/10/63, Dt. 19.12.03.

Respected Sir,

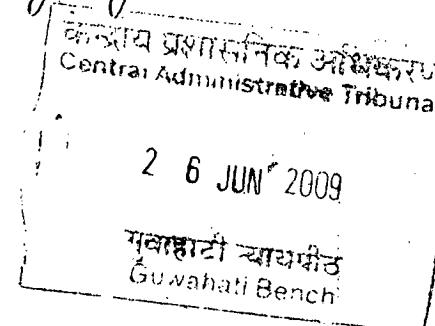
With due regards & humble submission,
I beg to state that with reference to your letter
under reference, I went to the o/c of the S.D.E (F),
Trunks, Panbazar Exco., Guwahati (my previous
controlling unit) to search out the records of my
engagement particulars as casual labour which
could have been revealed about my engagement
for 240 days in a calendar year. But unfortunately,
I have been informed that the same have been
destroyed by the mouse in the said office.

Hence, considering the above fact, I
would fervently request your kindself to con-
sider my case sympathetically and grant
me Temporary Status Hazard and oblige for
which act of your kindness, I shall remain
ever grateful to you.

Thanking you,

Attested

Dt. 1.1.04



yours faithfully,
Sri Phulswar Das
(Phulswar Das)
S/o Late Bhagat Ch. Das
P.O. Monahuchi, H.A.Z.

H. Das
Advocate

BHARAT SANCHAR NIGAM LTD.

(A Govt. of India Enterprise)

Office of the Chief General Manager Telecom.
Assam Telecom, Circle, Ulubari, Guwahati-781 007.

No. ESTT-9/12/CO/66

Dated at Guwahati the 20.1.2004.

To,

Sri Phuleswar Das,
S/o Late Bharat Ch. Das,
P.O.: Monakuchi, Hajo,
Dt.: Kamrup. (Assam).

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

26 JUN 2009

गुवाहाटी न्यायालय
Guwahati Bench

SUB: Prayer for granting of Temporary Status Mazdoor under Scheme of 1989 _____ regarding.

RE: Your application dated 1.1.2004.

With reference to your application regarding your prayer for granting of temporary status mazdoor, it is to intimate you that as per the records of the office you have not completed 240 days in a year prior to 1.8.1998 and you have failed to produce the required documentary evidence in support of your claim regarding your casual employment in the erstwhile Deptt. of Telecom, now BSNL, for granting of temporary status mazdoor to you.

Hence, your prayer for grant of temporary status as per Scheme of 1989 could not be acceded to.

This is for your information please.


(B.C. PAL)
Asstt. Director Telecom. (ESTT)

Affected

Has.

Advocate.

To

Dated at Guwahati the 27/11/07.....

The Chief General Manager Telecom. BSNL
Assam Circle, Guwahati-781001.

Subject:- Prayer for regularization of service of the undersigned shri Phuleswar Das, Casual Mazdoor, BSNL
Sir,

With due respect, I beg to state that I have been working in the department since 1998 from DOT era and till now continuing in the service as casual-cum-contract labour, and working as cook in the Inspection Quarter, BSNL.

That Sir, initially I entered as causal mazdoor at Panbazar Telephone exchange, Guwahati in the early part of 1998. Thereafter, I was engaged as casual labour under SDOT, Rangia under Kamrup SSA since 1999 and when the DOT was converted into BSNL, I was continued in the service but then I have been handed over to contractor, and put on duty in the Inspection quarter of BSNL, Panbazar, Guwahati as a Cook.

That Sir, during these period from 1998 to till now, i.e. almost ten years, I have served the department faithfully, most obediently and with full satisfaction of higher or highest officer of the department and therefore I would request you to consider my case for regularization of service.

Mentionable that Sir, I could know from reliable sources, that a list of casual Mazdoor working in BSNL since DOT era was forwarded to the BSNL Head quarter for regularization of their services in the year 2003 but I am not aware whether my name has been forwarded to BSNL Hq. along with others or not. However, in case my name has not been incorporated in that list, I would request you to kindly include my name therein, and if, at any time the BSNL decides to regularize some casual mazdoor as regular employee, I may please be given a chance and a fair deal.

That Sir, I belong to a schedule Caste community and hailing from a poor family. My family therefore needs a financial relief which is not available in my present engagement in BSNL under the contractor.

So, I would request you to please include my name for regularization of service in the BSNL and for this act of your kindness, I shall remain ever grateful to you.

With thanks,

Enclo:- Records of past services
(2/3 copies)

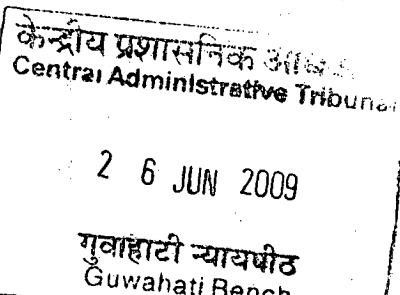
Yours sincerely

Sri Phuleswar Das
(Phuleswar Das)
Cook at BSNL I.Q, Panbazar
Guwahati

Copy to:- 1. Dist. Secretary 2. Branch Secretary 3. Circle Secretary
4. Self copy

Advocates

*Advocate
Court of*



To

The Chief General Manager Telecom
BSNL, Assam Telecom Circle,
New Administrative Building, 3rd Floor,
Panbazar, Guwahati-781001

Date: 23/8/2008

Sub:- Prayer for regularization of service-Case of Sri Phuleswar Das, Casual Mozdoor, BSNL.

Ref:- My earlier application dated 27-12-2007.

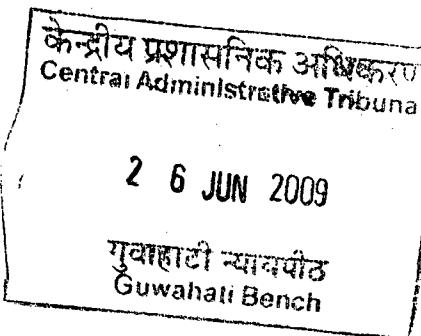
Sir,

With reference to the subject and my earlier application dated 27-12-2007, regarding regularization of my service, I beg to submit herewith the working particulars from Sept'98 to Dec'98 which was not submitted by me as the same was missing. Now I got the same and submitted herewith for favour of your kind necessary action please. My total working days during the year 1998 was 327 days please.

Enclo:-A/A

Yours Faithfully

Sri Phuleswar Das
23/8/08
(Sri Phuleswar Das)
Casual Mozdoor, Guwahati.



Malay DAS
25/8/08

Attended
Das
Advocate

22
BHARAT SANCHAR NIGAM LTD.
(A Govt. of India Enterprise)
Office of the Chief General Manager Telecom
Assam Telecom. Circle, Panbazar, Guwahati-781 001

No. Estt-9/12/C.O/76

Dated at Ghy the 30th August 2008.

To

The General Manager Telecom
BSNL, Kamrup Telecom District
Guwahati.

Sub:- Engagement particulars in r/o Sri Phuleswar Das, Casual Mazdoor.

Ref:- 1) Copy of representation dated 27-12-2007.
2) Copy of representation dated 23-08-2008.

Kindly find enclosed herewith the copies of representation in r/o Sri Phuleswar Das under reference on the above subject regarding regularization of service.

✓ It is seen from the report Sri Phuleswar Das had worked since Feb'1998 to August'1998 for a period of 211 days at Panbazar Telephone Exchange and worked at Sualkuchi Exchange for cleaning & sweeping on contract basis for the period from March'99 to July'99 under SDOT/Rangia. But from the letter under reference No.(2) , it is found that Sri Das had also worked from Sept'98 to Dec'98 for 116 days under Sub Division II (Phones)/Dispur i.e total period of casual service is more than 240 days in the year 1998.-

Now, I am directed to request you kindly to scrutinize the matter and furnish your comments, at an early date after examining all relevant records for taking necessary action at this end.

Enclo:-A/A

09/09/08

(N.K. Rabha)

Asstt. General Manager (Admn)

केन्द्रीय प्रशासनिक बाध्यकारी
Central Administrative Officer

26 JUN 2009

गुवाहाटी न्यायालय
Guwahati Bench

Advocates

Advocates

Advocates

Bharat Sanchar Nigam Limited

(A Govt. of India Enterprise)
OFFICE OF THE GENERAL MANAGER
KAMRUP TELECOM DISTRICT: PANBAZAR,
GUWAHATI-1.

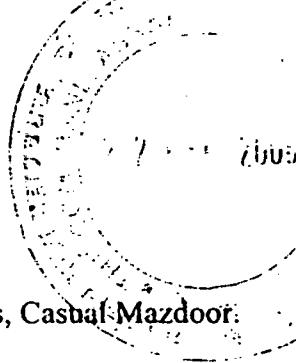
BSNL

No: GMT/EST-179/Pt.-III/08-09/ 6

Dated at Guwahati the 10th December, 2008.

To,

The Divisional Engineer (Extl-II),
Dispur, Guwahati-781006.



Sub: Engagement particulars i.r.o. Sri Phuleswar Das, Casual Mazdoor.

Ref: Circle Office Letter No. Estt-9/12/C.O/76 dated 30.08.2008.

Please refer to Circle Office letter cited above. It is hereby requested to send detail - report and engagement particulars etc i.r.o. Sri Phuleswar Das at an early date for the authenticity of the representation for further verification of above claim.

Enclo: As above.

Sd/-
(C. Dey)
Divisional Engineer (Admn)

Copy to:

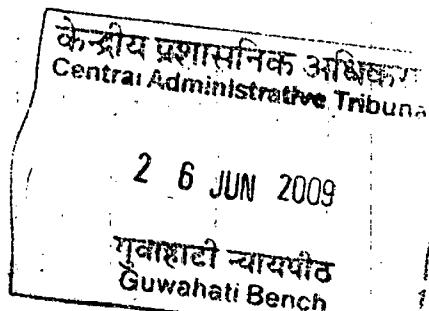
The AGM(Admn), O/O the CGMT, BSNL, Panbazar, Guwahati-1.

For, GM, BSNL, KTD, Guwahati

Attested

H.M.

Advocati



Original Application No: 84/2009

2. Misc Petition No _____

3. Contempt Petition No _____

4. Review Application No _____

Applicant(s) Rajkumar Pandey & Ors (Three)

Respondent(s) I.O.T. Guwahati

Advocate for the Applicant(s): S. Sarma
H.K. Das

Advocate for the Respondent(s): C.B.S.C. (BSNL)

Notes of the Registry	Date	Order of the Tribunal
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08/05/2009

Heard Mr. H.K. Das, learned Counsel appearing for the 3 [three] Applicants and perused the materials placed on record. A copy of this O.A. has already been supplied to Mr. Y. Doloi, learned Counsel in the panel of BSNL.

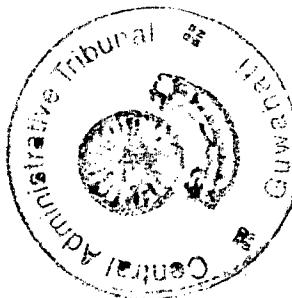
2. Applicants, who are continuing to serve the Respondents-Organisation since 1990/1991, were once [during 03.05.2000] called to face a scrutiny to be conferred with Temporary Status; but, because details/papers pertaining to them [Applicants] were not made available to the Scrutinising authorities, their cases received no consideration for conferment of Temporary Status. It has been alleged that the Casual Labourers, who served the Respondents-Organisation for a period less than that of the Applicants, were conferred with Temporary Status [after the screening of 03.05.2000] and, later, they have already been taken to regular establishment of the Respondents-Organisation in Group-D status and, yet, the Applicants are continuing to suffer in Casual Labour Establishment of the Respondents-Organisation for almost last 18/19 years. In the said premises, after submitting representations on 19.10.2000 and 20.11.2003, they ventilated their grievances through a Lawyer's Notice dated 02.12.2008. Without redressal of their grievances and without hearing from the Respondents, the Applicants have approached this Tribunal with the present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985.

3. It is submitted by Mr. H.K. Das, learned Counsel appearing for the Applicants that the fact that the Applicants are continuing to serve the Respondents-Organisation for over 18/19 years itself, *prima facie*, goes to show [a] that they [Applicants] are good/disciplined workers and [b] that the Respondents-Organisation is in need of manpower to meet their day to day requirement on regular basis. It is submitted further, on behalf of the

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Guwahati Bench



AIWED

H.N.

Advocate

applicants, that, for these *prima facie* reasons, instead of continuing to exploit them/by keeping them as Casual Labourers for years together, the Respondents ought to have sanctioned posts [if those are not available vacant] and absorbed the Applicants in their regular establishment and, pending such action, they ought to have paid wages to the Applicants at the minimum of the pay scale of regular Group-D Staff with DA, HRA & CCA, etc. and granted them leave on pro-rata basis [i.e. one day for every 10 working days etc.] as was recognized by Govt. of India.

4. In the above premises, this case is admitted. Registry to issue notice to the Respondents requiring them to file their counter/written statement by 25.06.2009.

5. In the meantime, the Respondents should continue to engage the Applicants, as before, until further orders and should not dis-engage/retrench/terminate the Applicants, without the leave of this Tribunal.

6. Pendency of this case shall not stand on the way of the Respondents [a] for considering the grievances of the Applicants [for taking them to regular establishment] and [b] pending such consideration, to grant benefits of minimum [of pay scale etc. meant for a Group-D Staff of Respondents-Organisation] to the Applicants.

7. Send copies of this order to the Applicants and to the Respondents [along with notices] and free copies of this order be also supplied to Advocates for both parties.

Parbat

Sd/-

M.R. MOHANTY
VICE CHAIRMAN

TRUE CO.

प्रतिलिपि

✓

अनुभाग अधिकारी

Section Officer (Judi)

Central Administrative Tribunal

गुवाहाटी न्यायघर

Guwahati Bench

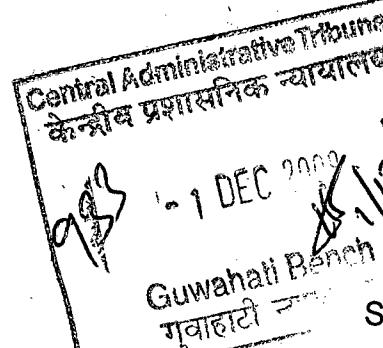
Guwahati

15/09/2009

File No. 1/12/09
Court Officer.

File No. 1/12/09
Court Officer
for BSNL
Advocate
for BSNL
for BSNL

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: AT GUWAHATI



O.A.No.121 / 2009

... Applicant

-vs-

The Chairman-cum-Managing Director, BSNL & 5 others ... Respondents

[WRITTEN STATEMENTS FILED BY THE
RESPONDENT No. 1 to 6]

The written statements of the above-mentioned respondents are as follows:

1. That the copy of the above noted O.A. No. 121/2009 (hereinafter referred to as the "application") has been served on the respondents. The respondents have gone through the same and understood the contents thereof. The interest of all the respondents being common and similar, the written statements as filed herewith may kindly be treated as common to all of the respondents No.1 to 6.
2. That the statements made in the application, which are not specifically admitted by the respondents are hereby denied.
3. That the subject matter of this application being matter pertaining to contract labour regulated by the provisions of Contract Labour (Regulation & Abolition) Act, 1970, the jurisdiction and power for consideration of conferment of temporary status and / or regularization of such contract labourer has been ousted by the provisions of the said Act and the rules framed thereunder. Hence the application is also liable to be dismissed.
4. That before traversing the various paragraphs of the application, the respondents beg to give a brief resume of the facts and circumstances of the case as under:

Kamakhye K. Das.

Sub-Divisional Engineer (Legal)

State Election Commissioner / BSNL

Office of the GM K.T.

Guwahati / Guwahati-781 001

(i) That the moot question raised in this application is whether the applicant is entitled to conferment of Temporary Status under the "Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Department of Telecommunications, 1989" (referred to as the "Scheme of 1989") or not. The said Scheme, inter alia, provides that a casual labourer who has completed at-least 240 days in engagement as casual labourer in the department in twelve calendar months preceding the date of his disengagement / retrenchment and who has been in continuous engagement as on 1.10.1989 would be entitled to conferment of temporary status under the said Scheme. The said Scheme was circulated through the Govt. of India, Department of Telecom. Circular No.269-10/89-STN dt. 7.11.1989. By the said circular, it was made clear about the applicability of the scheme to a particular class of casual labourers as a one-time scheme. The Govt. of India, Department of Telecommunications (DoT) issued another OM vide No. 269-4/93-STN-II (Pt) dated 12.2.1999 (Power of all DOT officers to engage casual labourers withdrawn). By the said OM, the Department of Telecom withdrew the power to engage casual labourer from the Officers of DoT putting emphasis on the issue that the Department has already imposed a ban on recruitment/ engagement of casual labourer vide letter dated 22.6.1988. The Scheme of 1989 was framed only to regulate the affairs of conferment of Temporary Status and the regularization of such casual labourers, who have been already in engagement and in continuous engagement. The Scheme has no provision for any fresh engagement of such casual labourer after 22.6.1988. In view of the above curtailment of power and the prohibition, any engagement of casual labourer and any certificate issued to that extent is null and void and the DoT is not bound by any such illegal action of their officers for engagement of any casual labourer after 22.6.1988.

Copies of the Scheme and the OM dated 12.2.99 are annexed as the ANNEXURE- R1 and R2 respectively.

(ii) That regarding the applicability of the scheme for which the Govt. of India, Department of Telecom. vide circular No.269-4/93-STN.II dt.12.2.99 (Sanction of posts of Regular Mazdoors for regularization of Temporary Status Casual Mazdoor) as stated above it was clarified that, a casual labourer who has already been conferred with temporary status and

Kamlesh Kumar Das,

Sub-divisional Engineer (Legal)

राजसंचार नियम लिमिटेड / BSNL

गायीलय महाप्रशंसक कामल्य दूरध्वंद्वार लिमिटेड

Office - 10th Floor, K.T.T.

काशीपुर - 781 004

• 1 DEC 2009

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Guwahati Bench
गুৱাহাটী বেঁচ

completed 10 years of services were to be regularized as per vacancies as in the Annexure 'A' appended thereto. By the said circular, it was also clarified that those casual labourers who were engaged by the department in spite of the ban order were to be given temporary status strictly only against the places and vacancies as indicated in Annexure 'B' as appended thereto. This was done as a **one time measure**.

The copy of the OM dated 12.2.1999 is annexed as ANNEXURE: R3.

(iii) Thereafter, again some anomaly came up with regard to the dates from which the benefit should be effected to as indicated in the earlier circular dt. 12.2.99. The Govt. of India, Department of Telecom vide circular No. 269-13/99-STN.II dt. 1.9.99, issued further clarification and clarified that the date for conferment of such class of casual labourers would be effected from the date of issue of the said circular, i.e. 1.9.99 and in case of regularization to the casual mazdoor with temporary status eligible as on 31.3.1997 would be from 1.4.97. By that circular, the date for consideration of casual labourer for conferment of temporary status of such eligible casual labourers was fixed up to 1.8.1998 subject to the provisions as in OMs dated 12.2.1999 (two circulars as stated above).

A copy of the circular 1.9.99 is annexed as the ANNEXURE- R4.

(iv) That the respondents beg to state here that prior to the above mentioned instructions, the Govt. of India, Ministry of Finance, vide OM No. 49014/16/89-Estt(C) dated 26.2.1990 (which is applicable to the respondents also) issued the order thereby imposing ban on engaging causal worker for performing duties of Group C post and by the said circular the Govt. also issued strict guidelines to impose penalty in case any deviation is made to the said instruction. Similarly, the Govt. of India, Department of Posts also issued similar instruction vide letter No. 45-37/91-SPB.1 dated 5.6.1991.

The copy of the relevant portion of the said circular dated 26.2.1990 and letter-dated 5.6.1991 are annexed hereto as Annexure R5 & R6 respectively

Kamalika Ban Deka.

— ৰ কামলিকা (স্বাক্ষৰ)

Sub-Divisional Engineer (Legal)

গুৱাহাটী সচিবালয় নিয়ম লিভিটেড / BSNL

শায়েলিয় মণ্ডপ পথ কামৰূপ দুর্বল বিল

Office No. 100, GPO, KALI

পৰিষেবা পথ : গুৱাহাটী-৭৮১ ০০৮

- 1 DEC 2009

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

(v) That after the framing of the Scheme, some clarification were sought by the department as to whether the benefit of the Scheme could be extended to the part-time casual labourer or not. The competent authority, in the clarification made it clear that the part-time casual labourers are not entitled to temporary status/ regularization under the scheme. This was decided by the Govt. of India, Department of Telecom letter No. 269-10/89-STN dated 17.10.1990. By the said clarification, however, it was stated that such part-time labourer may be brought on the strength of full-time causal labourer subject to availability of work and suitability.

The relevant portion of the clarification-dated 17.10.1990 is annexed hereto as ANNEXURE R7.

(vi) That just 2 days before the transfer of the assets and liabilities of Telecom Services and Telecom operations of the Department of Telecom (DOT) to the newly created company, Bharat Sanchar Nigam Limited (BSNL), the DOT issued another letter vide No.269-94/98-STN-II dated 29.9.2000 regarding the regularization of casual labourers. By that circular letter the said authority issued direction to all the Chief General Managers to regularize eligible casual labourers up to 1.8.1998 as per provisions of letter No.269-4/93-STN-II dated 12.2.1999 (two OMs)/ 1.9.1999 and to disengage those ineligible forthwith.

A copy of the said circular letter dated 29.9.2000 is annexed as ANNEXURE: R8.

(vii) That the applicant as per official records, was engaged from the month of February, 1998. He completed 181 days as on 1.8.1998, the cut off date being fixed as 1.8.1998 as explained hereinabove. He was no longer in engagement as casual labourer as he was disengaged w.e.f. 31.8.1998. His engagement for 30 days in the month of August, 1998 will not be counted although necessary payment has been made, as the said period was outside the scope of the Scheme. The claim for the period from September, 1998 to December, 1998 is not based on any genuine facts or proof. The respondents state that the certificate annexed in the writ petition as Annexure A (series) at page 17 is a false one and cannot be given in evidence. In this

Kamalika Rn. Das

Central Administrative Tribunal
কেন্দ্ৰীয় প্ৰশাসনিক ন্যায়পালিকা
Central Administrative Tribunal
भारत संचार निगम लिमिटेड / BSNL
শার্যালয় মন্ত্রাপৰ্বক কামালক দুর্বলচার পিল

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connection the answering respondents state that after coming to know about the said certificate dated 4.2.1999 allegedly issued by any such authority was investigated and the said officer was asked to explain about the genuineness of the said certificate. In response to the query, the said officer has categorically stated by his letter dated 31.10.2009 that the signature in the certificate is not his signature and the certificate is false. Similarly, the officer allegedly issuing the certificate dated 17.10.2003 allegedly showing the engagement from March, 1999 to July, 1999 as in Annexure A (series) at page 18 was also asked to explain the genuineness of the said certificate. In reply to the said query, the concerned officer clarified that particular certificate was not issued by him and the same is totally false. He also denied the correctness of the contents of the certificate by his letter dated 10.11.2009. At present the applicant is working as a contract labourer under a contractor, namely, Ex-Servicemen Inland Security Bureau, Luit Nagar, Noonmati, Guwahati – 20 from September, 1999 till 31.3.2004 and under another contractor, namely, M/s. NEHERBS, 111 – R.G. Baruah Road, Guwahati – 5 w.e.f. 1.4.2006, which is best known to the applicant and the said contractor. The respondents have no engagement particulars of the applicant under the said contractor, although they have the copies of NIT / agreement etc. with the contractor. As such the period worked under the contractor is well outside the scope of the Scheme and such contract labourer cannot claim regularization in the establishment of the principal, BSNL. The law in this regard is well settled that the contract labourer cannot claim regularization; but their cases may be considered in the event the principal authority decides to employ regular employee, in that case the claim of the contract labourers may be considered for such regular employment provided they are found suitable even by relaxing their age bar and qualification. Moreover, the Scheme is not an ongoing one but was introduced as a one-time measure as explicit from the Clause 5 of the said scheme. The Hon'ble Supreme Court in "**Union of India -vs- Mohan Paul as reported in (2002) 4 SCC 573**" and "**Union of India –vs- Gagan Kumar, as reported in (2006) 1 SLJ 64 (SC)**" has clearly held that the Scheme of 1993 is a one time scheme. In the said decision the Hon'ble Supreme Court made a reference to the Clause 4 of the said Scheme. The Clause 5 of the Scheme of the 1989 is exactly similar to that of Clause 4 of the Scheme of 1993.

Kamathya Rm. Das.

टी-एस वायपरा (लैगल)

Sub-Divisional Engineer (Legal)

पारा संचार नियम लिमिटेड - BSNL

पार्श्वलय महाड़ - ৭৮১ কামৰূপ পুরসভা পুরসভা

Office of the Comptroller & Auditor

গুৱাহাটী / Guwahati-781 022

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Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

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(viii) That on the other hand the Hon'ble Supreme Court in a recent path finding decision as in "**Secretary, State of Karnataka & others –vs- Uma Devi (3) & others as reported in (2006) 4 SCC 1**" has held, absorption, regularization or permanent continuance of temporary, contractual, casual, daily wager or adhoc employees appointed / recruited and continue for long time in public employment dehors the Constitutional Scheme of the public employment and also issuance of direction for, and for stay of regular recruitment process for the posts concerned as impermissible on the face of provisions of Article 14 and 16 of the Constitution of India. By the said decision the Hon'ble Apex Court has further clarified in para 53 read with para 15 of the said judgment that, "there may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employee have continued to work for more than 10 years or more but without the intervention of orders of the courts or Tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of principles settled by this court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed who have worked for 10 years or more in duly sanctioned post but not under cover of order of the Courts or of Tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that are required to be filled up in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent those not duly appointed as per the constitutional scheme." By the said judgment, the Hon'ble Supreme Court also further clarified that those decisions which run counter to the principle settled in that decision, or in which decisions running counter to what the court has held therein, would stand denuded of their status as precedent. By the said decision, the Hon'ble Apex Court has overruled the earlier decision rendered in "**Daily Rated Casual Labourer v. Union of India**" reported in 1988(1) SCC 122 on the strength of which the

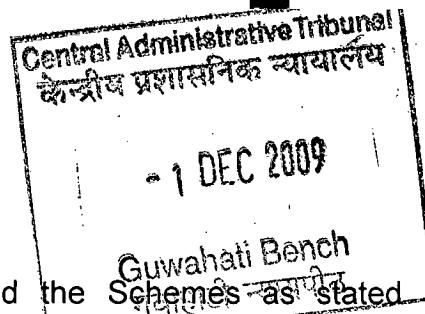
Kamathya Bn. Des.

**-বিষয় কাশকান্দি (পৰিকল্পনা)

MD: Provisional Engineer (Legal)

বাস্তু সংস্কার নির্মাণ লিমিটেড / BSNB

বাস্তু সংস্কার নির্মাণ লিমিটেড / BSNB



Department of Posts and Telegraph prepared the Schemes as stated hereinabove. That being the legal status, the Scheme has lost its very foundation and cannot operate as the same has been declared as to be based on invalid law. The Hon'ble Supreme Court in **Uma Devi (3)** case in para 18 has clearly held that such provisions are impermissible in view of the decision taken in the said decision by a Bench constituting as many as 5 judges. In the said decision, it has also been held in **para 43** that if it is a **contractual appointment, the appointment comes to an end at the end of the contract. If it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued.** Similarly, a temporary employee could not claim to be made permanent on the expiry on the term of his appointment. The Hon'ble Apex Court further clarified that merely because a temporary employee or a casual wage worker is continuing for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.

It is also pertinent to state here that by the aforesaid decision in **Umadevi (3)**, the Hon'ble Supreme Court has declared the Scheme so made as unconstitutional. The law laid down by the judgment in **Umadevi (3)** has also been given retrospective effect / operation.

(ix) That the requirements under the Scheme for entitlement of benefit is to show by the casual labourer that he has completed 240 days in preceding 12 calendar months from the date of retrenchment and he has been in engagement while the Scheme was introduced. The law is well settled that the burden of proof of completion of such 240 days lies on the casual labourer / workman as in "**Mohan Lal -vs- Management of Bharat Electronics Limited**" as reported in **(1981) Lab. I.C. 806 (813) (SC)** and as in "**Ranip Nagar Palika -vs- Babuji Gabhaji Thakore & others**" as reported in **(2007) 13 SCC 343**. But in the instant case, there is no such cogent and irrefutable proof to sustain such claim of the applicant and he has not proved the same as required by law. After the decision of **Umadevi (3)** and the Scheme being declared unconstitutional giving retrospective effect and not to reopen any action taken under the Scheme prior to the decision,

Kanakhya Deo Das

वृत्तिशाली वायरल इंजीनियर (लैगल)

नियन्त्रित इंजीनियर (लैगल)

राष्ट्रीय तकनीकीय विभाग

राष्ट्रीय विभाग विभाग

नियन्त्रित इंजीनियर (लैगल)

नियन्त्रित इंजीनियर (लैगल)

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there is absolutely no case to be considered by this Hon'ble Tribunal under the said Scheme and the applicant is not entitled to any benefit / relief as envisaged under the said Scheme.

(x) That as shown hereinabove, the applicant was engaged for a limited period of 181 days up to 1.8.1998, the date up to which the scheme, now declared unconstitutional with retrospective effect. The services, if any, rendered by the applicant as claimed by him, was the service rendered to a contractor to whom certain works were allotted by the respondents. Such service under the independent contractor does not come for consideration under the scheme. Moreover, the services rendered by a workman under a contractor could be related only for the purpose of payment of minimum wages or for the purpose of Factories Act, 1948. Such contract labourer / workmen are not entitled to demand to be employee of such principal establishment / management to claim other benefits like absorption, regularization or any other similar benefits. The law in this regard is well settled by the Hon'ble Supreme Court in "**Haldia Refinery Canteen Employees Union -vs- Oil India Corporation Ltd. & others**" as reported in (2005) 5 SCC 51, that the workmen do not become the employee of the management for any other purpose like absorption etc. into the service of the principal employer. It is also settled law that no power is vested in the management either to make the appointment or to take disciplinary action against the erring workmen engaged by the contractor and their dismissal or removal from service. The management is not reimbursing to the contractor the wages of the workmen. On this facts, it is therefore held by the Hon'ble Supreme Court that it cannot be concluded that the contractor was nothing but an agent or a manager of the management / respondent working completely under the supervision and control of the management. Moreover, the authority for redressal of any disputes relating to contract labour and the contractor vests on the Labour Commissioner of the region.

(xi) That in view of the above settled provisions of law and under the facts and circumstances of the case, the case of the applicant cannot be considered for any such conferment of temporary status or for regularization under the provisions of the said Scheme. As indicative and clear from the para 18 read with para 43 and 53 of the Umadevi (3) passed by the Hon'ble Apex Court, the Casual Labourer (Grant of Temporary Status and Regularization)

Kamakhyा Ban Das.

—४ अड्डा शासनपत्रक (विभाग)

शारत संचार निगम लिमिटेड / BSNL

शार्यलय महाप्रश्न उक्त लापत्तव दूरध्वंवार लिमिटेड

Office of the C.I.O. K.T.T.

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गुवाहाटी न्यायपीठ

Scheme of the Department of Telecommunications, 1989 has also become redundant retrospectively and has no force to operate any longer. Hence, this application is liable to be dismissed.

PARAWISE REPLY

5. That with regard to the statements made in para 1, 4.12, 4.13 and 4.14 of the application, the respondents state that the competent authority of the respondents constituted a Verification Committee on 13.3.2003 to verify the working particulars of casual labourers under the jurisdiction of Kamrup SSA. The committee was constituted by as many as four members from different wings of the administration in order to ensure transparency and to avoid biasness. The said committee, after detailed scrutiny of the records pertaining to the applicant on 28.11.2003 found that the applicant did not complete 240 days in any calendar year and therefore his case was not recommended for conferment of temporary status. The said report was submitted vide No.GMT/EMG/CL-1/2002-2003/66 dated 27.11.2003 (as in Annexure: H). The period indicated as 153 days in the said report is a period worked under the contractor, while the period from February, 1998 to August, 1998 has been explained hereinabove. On receipt of the said Verification Committee report dated 28.11.2003, the applicant was intimated about the findings of the verification committee that he was not engaged for 240 days in any calendar year prior to 1.8.1998. By the said communication issued under letter No.ESTT-9/12/CO/63 dated 19.12.2003 (as in Annexure: I). It was further intimated that his case has not been recommended by the committee, however, he was given one more opportunity to show and produce fresh evidence if he had any, within 15 days from the receipt of the letter. In response to the said letter dated 19.12.2003, the applicant allegedly submitted a letter dated 1.1.2004 (as in Annexure: J) and thereby raised an issue that the relevant records have been destroyed by mouse as intimated to him in the office. This new allegation of destruction of record by mouse is baseless and false (rodent) and the applicant clearly failed to prove that he had ever completed 240 days preceding 1.8.1998. That being the factual position, the competent authority vide letter No.ESTT-9/12/CO/66 dated 20.1.2004 (as in Annexure: K) informed the applicant that he could not complete 240 days prior to 1.8.1998 and fail to produce any record as documentary evidence in support of his claim and his claim was accordingly

Kamalika Rn. Das.

एवं-विधान वापरकार (लैगल)
Joint-Professional Engineer (Legal)
परत संचार निगम लिमिटेड / BSNL
पर्यालय बहुतायर एक लामाल द्रव्यमार निम

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rejected. Therefore the statements made in this para are far from any truth and the same has been made by suppressing the said material facts and as such for the said ground alone, the application is liable to be dismissed with cost.

6. That with regard to the statement made in para 2 of the application, the respondents respectfully submit that so far as the casual labourer up to 1.8.1998, this application is maintainable within the jurisdiction of this Hon'ble Tribunal; but in so far as the question of contract labourer is concerned, the jurisdiction of this Hon'ble Tribunal stands ousted by the provisions of Contract Labour (Regulation & Abolition) Act, 1970.
7. That with regard to the statements made in para 3 and 4.1 of the application, the respondents say that the cause of action raised in this application relates back to 1.8.1998 as apparently admitted by the applicant in his various statements, the application is therefore about 10 years old and such stale cause of action is barred by limitation as provided under Section 20 read with 21 of the Administrative Tribunal Act, 1985. The cause of action after 1.8.1998 has no relevance with the matter under the Scheme of 1989 and unconnected with the point of limitation. The successive representations raising the issues time and again would not give any fresh cause of action as the law in this regard is well settled as reported in "AIR 1990 SC 10, S.S. Rathore -vs- State of M.P." and in "Ramesh Chand Sarmah -vs- Udhamp Singh Kamal & others reported in (1999) 8 SCC 304". Hence the application is barred by limitation and is liable to be rejected. The claim of the applicant that he is presently working as Supervisor of the sweepers in the office of the Chief General Manager Telecom, Assam Circle is also twisted statement and unconnected with the matter in issue. The fact is that he has been engaged by contractors and working under the contractor(s) as his employee as stated above. If the applicant has a cause of action against or relating to the said contractors, such matter comes under the jurisdiction of the Chief Labour Commissioner (Central) and not under the jurisdiction of this Hon'ble Tribunal. The contractor ha not been impleaded as a party.
8. That with regard to the statements made in para 4.2 of the application, the answering respondents state that as admitted hereinabove, the applicant was engaged as casual labourer by the DOT from the month of February,

Kamakhyा Ran. Das.

—४४४ कामया (कैम)

Sub-Divisional Engineer (Legal)

पारस संचार निगम लिमिटेड / BSNB

कामरुल्लाह बहादुर षक्क कामरुल्लाह दूरध्वनी विभाग

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1998 up to 30th August, 1998. The cut off date being 1.8.1998; the said applicant worked only for 181 days preceding 1.8.1998. After 30.8.1998, the applicant was not engaged by the DOT. As explained hereinabove, the applicant could manage to work under a contractor as contract labourer under the said contractor. Therefore, the respondents deny the claim of the applicant that he is still continuing as casual worker under the respondents. It is also denied that the applicant has been treated as a regular Group – D employee and drawing salary prescribed by pay slip, i.e., ACG 17 as stated above. From September, 1998 onwards the applicant being a contract labourer employed by the contractor(s), it is for him to show that from whom he is getting the wages. Therefore, the statements made in this para are false, misleading and concocted and not supported by any proof.

9. That with regard to the statements made in para 4.3, 4.4, 4.5, 4.6, 4.7 and 4.8 of the application, the respondents reiterate and reassert the foregoing statements and deny the correctness of those statements. The Scheme of 1989 was a Scheme prepared by the DOT as a one time measure and not as an ongoing process, the same came into end by 1.8.1998 as clarified hereinabove. Those casual labourers who were found eligible on fulfillment of the criteria envisaged in the said Scheme, were conferred with temporary status and those who could not come within the zone of consideration, their cases were rejected. The clarification given by the Department dated 12.2.1999 and 1.9.1999 are for limited purpose only and the extension of date up to 1.8.1998 is also within the scope of that limitation. The cases filed by such casual labourers and decided by such court / Tribunal have been dealt with in accordance with law. As stated above, the Scheme being declared as one time measure and not as an ongoing process, and as finally settled by the Umadevi (3) judgment of the Hon'ble Apex Court, no cases so decided prior to the said judgment of the Apex Court except those pending cases has been directed not to reopen. Therefore, on the facts and circumstances and the provisions of settled law, these statements cannot sustain in law.
10. That with regard to the statements made in para 4.9 of the application, the answering respondents state that the engagement particulars showing the applicant with effect from January, 1998 to December, 1998 and January, 1999 to July, 1999 in Annexure: G of the application is a clerical /

Kamakhye Rn Des.

**-एवज वायपात्ता (लिखा)

Sub-Divisional Engineer (Legal)

गरीब संचार निगम लिमिटेड / BSNL

गायीलय एमायडी बड़े कामरुद्दीन दुर्गापात्र लिपा

typographical mistake and the same should have been February, 1998 to 30th August, 1998, September, 1998 to December, 1998 and March, 1999 to July, 1999. These facts are supported by Annexure: A (series) of the application as documentary proof. Hence the contention of the applicant that he has completed 240 days in the year 1998 and also thereafter up to 2009 every year is baseless and not coming within the scope of the Scheme. Recently in a decision rendered by a Division Bench of the Hon'ble Gauhati High Court in WP(C) No.2873/2003 it has been further held that the Scheme is not an ongoing one and any claim after the stipulated date is not sustainable in law. The respondents crave the leave of this Hon'ble Tribunal to allow them to produce and to rely upon the said judgment at the time of hearing of the case.

11. That with regard to the statements made in para 4.10 and 4.11 of the application, the respondents say that the claim of the applicant of his engagement with effect from January, 1998 is false as on records relied upon by himself. In this regard the respondents reiterate the foregoing statements of this written statements. The statements made in this written statements are strictly on the basis of records and the findings of the verification committee is based on available official records only and the verification committee is an independent, unbiased authority with all transparency.
12. That with regard to the statements made in para 4.15 and 4.16 of the application, the respondents state that by the Annexure: L and M representations the applicant once again repeated the same fact and circumstances by suppressing the material fact that he was engaged by the contractor and he worked as a worker of the contractor. The representations being dated 27.12.2007 and 23.8.2008, the matter is barred by limitation as stated hereinabove.
13. That with regard to the statements made in para 4.17 and 4.18 of the application, the respondents say that these two communications as in Annexure: N and O in the application, are two intra-departmental documents requiring certain information as to verify the legality of the same as the same have been related after 1.8.1998 and for actions to be taken as envisaged under the Govt. of India, Dept. of Telecom, O.M. No.269-4/93-STN-II(Pt.) dated 12.2.1999 and Govt. of India, Dept. of Telecom, No.269-4/93-STN.II

Kanakhya Lu. Das.

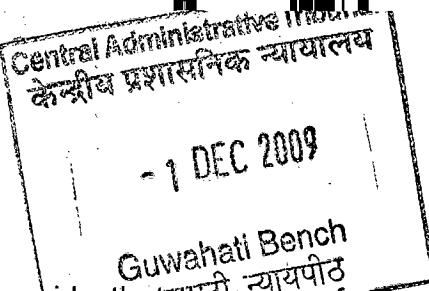
२-वर्षीय वामपक्षी (विरो)

Sub-Engineer (Legal)

बारस संचार निगम लिमिटेड / BSNL

गायत्री

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dated 12.2.1999. These two Office Memoranda provide that the power for engagement of casual labourer by any officer stands withdrawn and actions has to be taken against such erring officials from the given dates. These two communications as in Annexure: N and O do not meant for consideration of the case of the applicant nor is for communication to the applicant. It is a question as to how the applicant could manage to get these two copies of internal communications. He is called upon to explain as to how he could get those two documents by naming the particular persons, who helped him in getting the said two documents. Otherwise it will be presumed that he has stolen these two documents from the office of the respondents without the knowledge of anyone.

14. That with regard to the statements made in para 4.19, 4.20, 4.21, 4.22, 4.23 and 4.24, the respondents reiterate and reassert the foregoing statements and say that there is nothing on record in this OA to show that the matter in OA No.84/2009 is similar to this instant application and therefore the same is denied. For the reasons stated above, the contentions raised in these paragraphs are untenable in law and the benefit claimed by the applicant cannot be granted to him under the Scheme for the stated reasons. The applicant has clearly failed to adduce evidence in support of his claim that he completed 240 days prior to 1.8.1998. Moreover, the law is settled that the burden of proving 240 days lies on the workman. The applicant is not in continuity with the respondents after 30th August, 1998 and he is serving under the contractor from time to time as contract labour. In Umadevi (3) and other decisions on similar points, it has been settled that a contract labour under the contractor continues to be in engagement till the contract subsists. A contract labour under the contractor cannot have any right to claim absorption / regularization etc. from the principal establishment.
15. That with regard to the statements made in para 5.1, 5.2, 5.3, 5.4, 5.5, 5.6 and 5.7, the respondents respectfully state that under the given facts and circumstances of the instant case and the law regulating such issues, the grounds set up by the applicant in the said paragraphs are unsustainable in law and hence the application is liable to be dismissed as devoid of any merit and ground. The applicant failed to fulfill the required criteria of the Scheme of 1989 and the action of the respondents cannot be termed as illegal, arbitrary and violation of principle of natural justice for the reasons explained

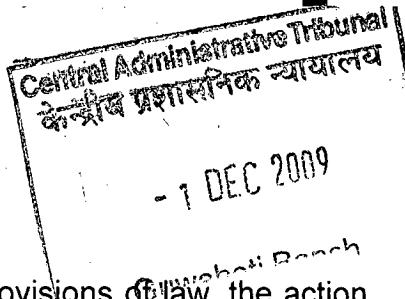
Konakhyo Km. Das.

বৰচন কাৰ্যকৰ্ত্তা (স্থান)

Central Engineer (Legal)

জাতীয় সচিবার নিগম লিমিটেড / BSNL

জাতীয় পুষ্টি পক্ষ কার্যক্রম দুর্বলিকারণ



in this written statements. In view of the settled provisions of law, the action of the respondents are well within the scope of law and cannot be termed as violation of constitutional mandate as in Article 14 and 16 of the Constitution of India.

16. That the answering respondents have no comment to offer to the statements made in para 6 and 7 of the application.
17. That with regard to the statements made in para 8.1, 8.2 and 8.3 and 9.1, 9.2, the answering respondents state and submit that under the facts and circumstances of the case and the law, the applicant is not entitled to any relief whatsoever either under the Scheme of 1989 or otherwise and the application is liable to be dismissed with cost as devoid of any merit. Moreover, the interim order dated 29.6.2009 passed by this Hon'ble Tribunal based on the statements made in Annexure: G to the effect that the applicant had been employed from 15.7.1999 as cook and the period from February, 1998 (not January, 1998) to December, 1998 and January, 1999 to July, 1999 is also liable to be vacated for the reasons as explained in this written statements as the same is not legally sustainable. If the said interim order is not immediately vacated and allowed to continue, the respondents would suffer irreparable loss and injury as the applicant is not in engagement under the respondents and he is working under contractor from time to time. It is for the contractor to decide whether the applicant is to continue with him or be discontinued. The law in this regard is well settled as cited above.
18. That in any view of the matter and under the facts and circumstances of the case supported by the provisions of law, the applicant is not entitled to any relief under the Scheme or under any provisions of law.
19. That this written statements has been filed bonafide and for the ends of justice.

It is therefore respectfully prayed that this Hon'ble Tribunal may kindly be pleased to hear the parties, peruse the records and after the hearing the parties and perusing the records may further be pleased to dismiss this application with exemplary cost.

Kanakhyा Kun. Das.

एकाधिकारी (विधि)

Joint Legal Engineer (Legal)

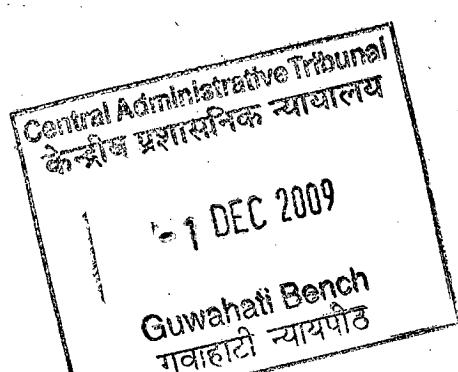
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गोपीलय महाप्रदेश कामरुष द्रविदी वार निक

निवासी कामरुष द्रविदी वार निक

निवासी कामरुष द्रविदी वार निक

VERIFICATION



I, Sri Kamakhy Ranjan Das, S/o Late D.C. Das, aged about 54 years, resident of Athgaon, Guwahati - 1, District – Kamrup, Assam, at present working as the SDE (Legal) in the office of the General Manager Telecom District, Kamrup, Bharat Sanchar Nigam Limited, Panbazar, Guwahati - 1, being competent and duly authorized to sign this verification do hereby solemnly affirm and state that the statements made in para are true to my knowledge and belief, those made in para being matter of records are true to my information derived threerfrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this 1st day of December, 2009 at Guwahati.

Kamakhy Ran. Das.

DEPONENT

কেন্দ্ৰীয় প্ৰশাসনিক (পৰিবেশ) ইঞ্জিনিয়ার (লেগাল)

ভাৰত সংস্কৰণ নিয়ন্ত্ৰণ লিমিটেড / BSNL

গুৱাহাটী পৰামৰ্শ পক্ষ কামৰূপ প্ৰৱেশদাৰ পিল

ANNEXURE R

IN THE DEPARTMENT OF TELECOMMUNICATIONS

1. Regularization of Casual Labourers of Department of Telecom and Conferment of temporary status – 1. A Scheme for conferring temporary status on casual labourers who are currently employed and have rendered a continuous service of atleast one year has been approved by the Telecom Commission. Details of the Scheme are furnished in the Annexure.
2. Immediate action may be taken to confer temporary status on all eligible casual labourers in accordance with the above Scheme.
- 3.1 Instruction were issued to stop fresh recruitment and employmnt of casual labourers for any type of work in Telecom Circles/ Districts. Casual labourers could be engaged after 30.3.1985, in Project and electrification Circles only for specific works and on completion of the work the casual labourers so engaged were required to be retrenched. According to the instructions subsequently issued, fresh recruitment of casual labourers even for specific works for specific periods in Projects and Electrification Circles also should not be resorted to.
- 3.2 In view of the above instructions normally no casual labourers engaged after 30.3.1985, would be available for consideration for conferring temporary status. In the unlikely event of there being any cases of casual labourers engaged after 30.3.1985, requiring consideration for conferment of temporary status, such cases should be referred to the Telecom Commission with relevant details and particulars regarding the action taken against the officers under whose authorization/ approval the irregular engagement/ non-retrenchment was resorted to.
- 3.3 No casual labourer who has been recruited after 30.3.1985 should be granted temporary status without specific approval from this Office.
4. The Scheme furnished in the Annexure has the concurrence of Member (Finance) of the Telecom Commission, vide No. SMF/78/89, dated 27.9.1989.

[G.I Dept. of Telecom, Circular No. 269-10/89-STN, dated the 7th November, 1989]

Certified to be true Copy.

Hemanta Kr. Gogoi,
Advocate.

- 1 DEC 2009

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
Guwahati Bench
गुवाहाटी न्यायपाठ

Annexure

Causal Labourers (Grant of Temporary Status and Regularisation) Scheme

1. This Scheme shall be called "Causal Labourers (Grant of Temporary Status and regularization) Scheme of the Department of Telecommunications, 1989".
2. This Scheme will come into force with effect from 1.10.1989 onwards.
3. This Scheme is applicable to the casual labourers employed by the Department of Telecommunications.

Central Administrative Tribunal
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- 1 DEC 2009

Guwahati Bench

PROVISIONS

4. The provisions in the Scheme would be as under-

(A) Vacancies in the Group 'D' Cadres in various offices of the Department of Telecommunications would be exclusively filled by regularization of casual labourers and no outsiders would be appointed to the cadre except in the case of appointments on compassionate grounds, till the absorption of all existing casual labourers fulfilling the eligibility conditions including the educational qualifications prescribed in the relevant recruitment rules.

However, regular Group 'D' staff rendered surplus for any reason will have prior claim for absorption against existing/future vacancies.

In the case of illiterate casual labourers, the regularization will be considered only against those posts in respect of which illiteracy will not be an impediment in the performance of duties.

They would be allowed age relaxation equivalent to the period for which they had worked continuously as casual labourer for the purpose of age limits prescribed for appointment to the Group 'D' cadre, if required.

Outside recruitment for filling up the vacancies in Group 'D' will be permitted only under the condition when eligible casual labourers are NOT available.

(B) Till regular Group 'D' vacancies are available to absorb all the casual labourers to whom this scheme is applicable, the casual labourers would be conferred a temporary Status, as per the details given below.

*Certified to be true Copy.
Hamida Kr. Goga
Advocate*

5. **Temporary Status**

- (i) Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of atleast one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five days week). Such casual labourers will be designated as Temporary Mazdoor.
- (ii) Such conferment of temporary status would be without reference to the creation/availability of regular Group 'D' posts.

No change in duties

- (iii) Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on a need basis. He may be deployed anywhere within the recruitment unit/ territorial circles 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 'D' posts.

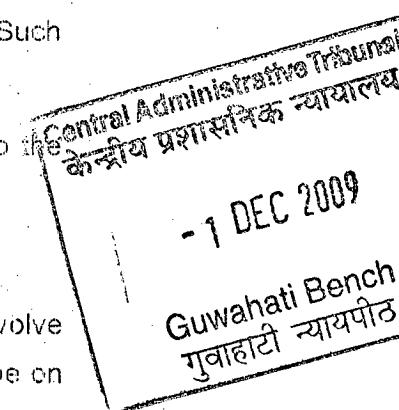
Entitlement

6. 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 regular Group 'D' official including DA, HRA and CCA.
- (ii) Benefits in respect of increments in pay scale will be admissible 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.
- (iii) Leave entitlement will be on pro rata basis, one day for every 10 days of work. Casual leave or any kind of leave will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularization. They will not be entitled to the benefit of encashment of leave on termination of services for any reason of their quitting service.
- (iv) Counting of 50% of service rendered under Temporary Status for the purpose of retirement benefits after their regularization.

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Hemanta Kr. Gogoi
Advocate



- (v) After rendering three years continuous service on attainment of temporary status, the casual labourers would be treated at par with temporary Group 'D' employees for the purpose of contribution to 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 Government servants of this Department.
- (vi) Until they are regularized, they would be entitled to Productivity Linked Bonus only at the rates as applicable to casual labour.

7. No benefits other than those specified above will be admissible to casual labourers with temporary Status.

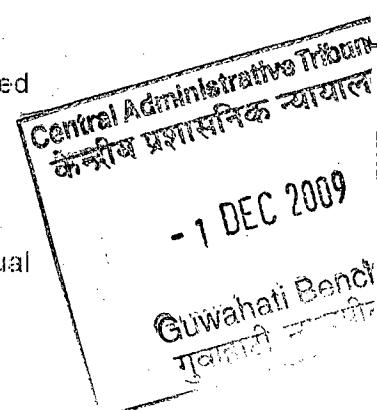
Termination of Service

- 8. Despite conferment of temporary status, the services of a casual labourer may be dispensed with in accordance with the relevant provisions of the Industrial Disputes Act, 1947, on the ground of non-availability of work. A casual labourer with temporary status can quit service by giving one month's notice.
- 9. If a labourer with temporary status commits a misconduct and the same is proved in the enquiry after giving him reasonable opportunity, his services will be dispensed with. They will not be entitled to the benefits of encashment of leave on termination of services.
- 10. The Department of Telecommunications will have the power to make amendments in the Scheme and/or to issue instructions in detail within the framework of the Scheme.

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Hemanta Kr. Gogoi

Advocate



ANNEXURE R2

[G.I., Dept. of Telecom, O.M. No. 269-1/93 STN-II(Pt), dated the 12th February, 1999]

Central Administrative Tribunal
भारतीय प्रशासनिक न्यायालय

- 1 DEC 2009

Guwahati Bench
गुवाहाटी न्यायपाल

Powers of all DoT officers to engage casual labourers withdrawn, -

1. The undersigned is directed to refer to Para 193 of P & T manual Vol. X which permits engaging of Labour on daily or monthly wages either direct or through contractor. The Department of Telecommunication has imposed a ban on recruitment / engagement of Casual Labourers *vide* letter No. 269-4/93-STN-II, dated 22.6.1988.
2. After issue of letter, dated 22.6.1988, a need was felt for amending the Para 193 of P & T manual, Vol. X. Accordingly, the issue was examined in detail. It has been decided to delete Para 193 of P & T Manual, Vol. X with immediate effect. Paras 150 to 177 of FHB, Vol. III, Part-I, Chapter 6, dealing with payment to casual labourers engaged on muster roll are also deleted.
3. Consequently the powers of all DoT officers to engage casual labourers, either on daily or monthly wages, direct or through contractors as well as the authority of the Accounts Officers for making payment to the labourers engaged on daily or monthly wages, either direct or through contractor are hereby withdrawn with immediate effect.
4. The instructions contained in this O.M. will not, however, apply to hiring any labourers for works of contingent nature lasting not more than fifteen days during exigencies and natural calamities. Payments to labourers hired during such contingencies should be made under Rule 331 of P & T FHB Vol.I. The maximum period for which an individual labourer can be hired during a year should not sixty days.
5. This issues with the concurrence of Internal Finance *vide* their Dairy No. 47/ FA-I-98, dated 13.1.1998.

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Hemanta Kr. Gogoi
Advocate

ANNEXURE R3

[G.I., Dept. of Telecom, No. 269-4/93-STN. II, dated the 12th February, 1999]

Sanction of posts of Regular Mazdoors for regularization of Temporary Status Casual Mazdoors. – I am directed to refer to this office letter No. 269-10/89-STN, dated 7.11.1989 wherein scheme called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989" was communicated. As per the said scheme, casual labourers who were engaged before 30.3.1985 and had completed 10 years of service, were made eligible for regularization. Based on the above, instruction were issued *vide* this office letter No. 5-1/92-TE-II, dated 17.3.1992, 6.7.1993, 20.5.1994, 8.5.1995 and 30.9.1996.

Even though there is a complete ban on recruitment of casual labourers, it has come to light that many circles, defying the ban orders, had recruited casual labourers even after the ban orders. Since, these casual labourers have completed 10 years of service, Employees Union are pressing for the regularization of the remaining casual labourers who were recruited after 30.3.1985 and completed 10 years of service, on the analogy of earlier decisions of Supreme Court on the subject.

Under these circumstances, the matter has once again been examined and it has been decided by the Telecom Commission as a one time measure on special consideration to further delegate powers to all the Heads of Circles, Metro Districts, Chief General Managers, MTNL, New Delhi and Mumbai and Heads of Administrative Units to create posts of Regular Mazdoors for regularising the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989, who have completed 10 years of service as on 31.3.1997 to the extent of numbers indicated in Annexure 'A' which has been compiled based on the information received from the Circles / Units. The posts are to be created within the prescribed ceiling as on 31.3.1991. the other conditions stipulated in the letter, dated 17.3.1992 remain unchanged.

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

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Hemanta Kr. Gogoi
Advocate

Guwahati Bench
गुवाहाटी न्यायपाल
- 1 DEC 2009

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

Recruitment of casual labourers was completely banned with effect from 22.6.1988 and instructions were issued time and again for identifying the officers/ officials responsible for engaging casual labourers inspite of the ban orders. The non compliance of the instructions issued by this office in true letter and spirit led to the Department having to bear a huge avoidable financial burden. This is a serious lapse. It is observed that Circles are hesitating to identify and fix responsibility on the errant officers/ officials. Therefore, Heads of Circles/ Units are once again requested to initiate necessary action against the officers/officials concerned and intimate the action taken against them to this office by 28.2.1999 as directed by the Chairman, Telecom Commission.

This issues with the concurrence of Internal Finance Vide their Dy. No. 47/FA-I/98, dated 13.1.1998.

Annexure "A"

TSMs eligible for regularization as on 31.3.1997 (engaged between 1.4.1986)

Circle	TSM to be regularised	MTNL BY	11
SLTTC	0	NCES	0
A&N	0	NE	24
AP	329	NETF	31
AS	77	NTP	179
BH	48	NTR	108
BRBRAITT	0	OR	5
CHENNAI TD	82	PB	27
CTD	97	QA	0
DNW	0	RAJ	48
ETP	0	RE NAGPUR	0
ETR	0	STP	0
GUJ	151	STR	5
HP	0	T&D JBP	0
HR	7	TN	37
J&K	4	TS CA	0
KRL	26	UPE	106
KTK	102	UPW	15
MH	238	WB	3
MP	21	WTP	189
MTNL DI	39	WTR	72
		TOTAL	2081

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Hemanta Kr. Gogoi
Advocate

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
- 1 DEC 2009
Guwahati Bench
गुवाहाटी न्यायालय

Annexure "B"

Casual labourers to be given Temporary Status as on 18.98

Circle	CLs to be granted temporary status	MTNL BY	23
SLTTC	0	NCES	0
A&N	0	NE	350
AP	NA	NETF	249
AS	NA	NTP	50
BH	347	NTR	NA
BRBRAITT	0	OR	16
CHENNAI TD	4	PB	12
CTD	450	QA	0
DNW	1	RAJ	56
ETP	318	RE NAGPUR	105
ETR	229	STP	6
GUJ	177	STR	29
HP	790	T&D JBP	0
HR	25	TN	160
J&K	27	TS CA	0
KRL	24	UPE	200
KTK	188	UPW	NA
MH	NA	WB	50
MP	NA	WTP	119
MTNL DI	15	WTR	26
		TOTAL	4046

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

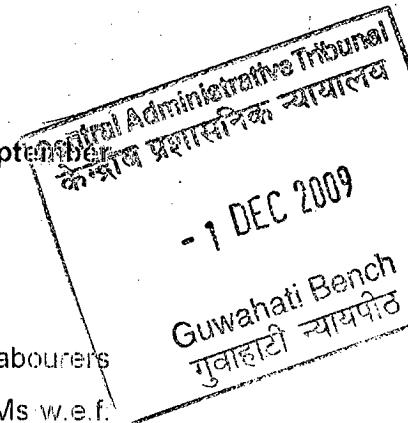
- 1 DEC 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

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Hemanta K. Goga
Advocate*

ANNEXURE R4

G.I., Dept. of Telecom., No. 269-13/99 – STN.II, dated 1st September 1999



Grant of temporary status from 12.2.1999 to the Telecom casual labourers who are eligible as on 1.8.1998 and regularization of eligible TSMs w.e.f. 1.4.1997. – I am directed to refer to letter No. 269-4/93-STN.II, dated 12.2.1999 circulated with letter No. 269-13/99-STN.II, dated 12.2.1999 on the subject mentioned above.

In the above referred letter, this office has conveyed approval on the two items, one is grant of temporary status to the casual labourers eligible as on 1.8.1998 and another on regularization of casual labourers with temporary status who are eligible as on 31.3.1997.

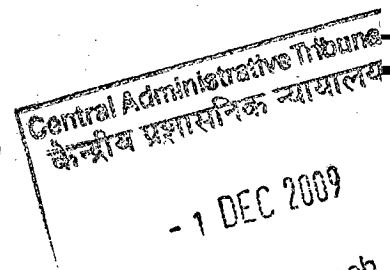
Some doubts have been raised regarding date of effect of these decisions. It is, therefore, clarified that in case of grant of temporary status to the casual labourers, the order, dated 12.2.1999 will be effected w.e.f. the date of issue of this order and in case of regularization to the temporary status Mazdoors eligible as on 31.3.1997, this order will be effected w.e.f. 1.4.1997.

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Hemanta Kr. Goga
Advocate

ANNEXURE R5

G.I., M.F., O.M. No. 49014/16/89 – Estt. (C), dated 26th February 1990



Gurukhali Ranch

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

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

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Hemanta Kr. Gogoi
Advocate

ANNEXURE I R6

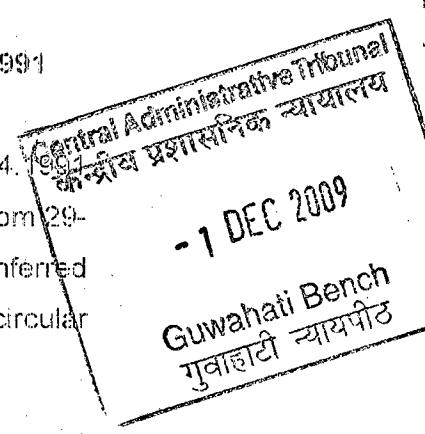
G.I., Dept. of Posts, Lr. No. 45-37/91-SPB.I, dated the 5th June, 1991

Clarification (1) – Further to letter No. 45-95/87-SPB-I, dated 12.4.1991 (order 2 above), it is hereby clarified that the Scheme is effective from 29-11-1989 and hence the eligible casual labourers may be conferred temporary status and the benefits indicated in the above said circular w.e.f. 29.11.1989.

2. Eligibility for weekly off to casual labourers continue to remain the same as before, viz., after 6 days of continuous work, they will be entitled to one weekly off. They will also be entitled for 3 paid National Holidays.
3. Leave salary to the casual laboureres with temporary status will be paid at the rate of daily wages being paid to the casual labourers concerned.
4. Casual labourers who work in offices observing 5 days a week are not entitle to Paid Off on Saturday on Sunday. In other words, the Weekly paid off after 6 continuous working days is permissible only to those casual workers who work at the rate of 8 hours per day in establishments having 6' days a week.
5. The Scheme is also applicable to casual workers in the Civil wing of this Department. It is not, however, applicable to any person working on casual basis in Group 'C' posts.
6. Vacancies of casual labourers caused by their absorption in Group D posts are not to be filled by recruiting fresh casual labourers. In other words, engagement of fresh casual labourers is not permissible as already reiterated time and again.

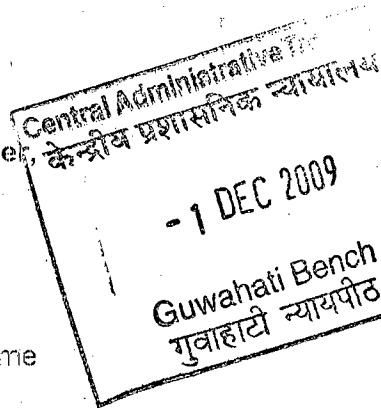
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Hemanta Kr. Gogoi
Advocate



ANNEXURE R7

G.I., Dept. of Telecom, Lr. No. 269-10/89-STN, dated the 17th October, 1990



Point (8) – Part Time -- Can temporary status be conferred on a part time employee?

Clarification – No. They may, however, be brought on the strength of full time casual labourers, subject to availability of work and suitability. For this purpose, work requirements of different types and at neighbouring units can be pooled. Subject to their completing 240 days or 206 days of work on full time basis, as the case may be, in the preceding 12 months they may be considered for grant of temporary status. However, part-time casual labourers will be merged with full time casual labourers/ temporary mazdoors in a common single panel in accordance with the existing instructions for the purpose of regularization of service.

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Hemanta Kr. Gogoi
Advocate

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No. 2-31/2000-Resig.
Government of India
Ministry of Communications
Department of Telecommunication Services

ANNEXURE : R12

New Delhi, the 30th September, 2000

Central Administrative Journal
संघ प्रशासनिक संचालन

- 1 DEC 2009

OFFICE MEMORANDUM

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

Guwahati Bench
गुवाहाटी बैठक

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

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

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

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Hemanta Kr. Goswami
Advocate

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

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

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

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

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

Vinod Vaish
(VINOD VAISH)

Secretary to the Government of India

To

To

1. The Secretary DoT and Chairman Telecom Commission.

2. The Secretary, DTS.

3. The Secretary, DTO and Member(Prodn.) Telecom Commission.

4. Member(Finance) Telecom Commission.

5. Member(Services) Telecom Commission.

6. Member(Technology), Telecom Commission.

7. Additional Secretary(T) and Secretary Telecom Commission

8. Joint Secretary(T), DoT.

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Hemant Kr. Gosh

Advocate

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9. Joint Secretary(A), DoT.

10. OSD Corporatisation (DoT) with request to bring it to the notice of the Board of Directors of Bharat Sanchar Nigam Limited.

11. All Chief General Managers of Telecom Circles, Metro Districts, Project Circles, Maintenance Regions, Telecom Stores, Railway Electrification Projects with request to communicate these orders to all units working under their administrative control.

12. All Principal Chief Engineers / Chief Engineers - Civil and Electrical Wings, with request to communicate these orders to all units working under their administrative control.

13. Chief Architects - C. E. i. Calcutta and Mumbai, with request to communicate these orders to all units working under their administrative control.

14. All Chief General Managers - Telecom Factories, with request to communicate these orders to all units working under their administrative control.

15. Sr.DDG(TEC)

16. Sr.DDsG- (BW)/(ARCH.)/(ELECT.)

17. Sr.DDG(ML) - with request to communicate these orders to all PSUs working under their administrative control.

18. Sr.DDG(IC & A)

19. Executive Director, C-DOT.

20. Sr.DDG(Vigilance), DoT

20. DDG(Pers.)

Copy to:-

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

Copy also to:-

1. Bharat Sanchar Nigam Limited.

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Hemanta Kr. Gogoi
Advocate

