IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 20th day of April, 2005

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. G.R.PATWARDHAN, MEMBER (ADMV.)

ORIGINAL APPLICATION No.160/2005 with
MA No.139/2005

Hanuman s/o Shri Ram Niwas Meena r/o Village Belanganj, Post Babai, Tehsil Indergrah. Distt. Bundi.

.. Applicant

(By Advocate: Mr. Deepak Pareek)

Versus

1. Union of India, through Secretary, Ministry of Telecommunication, Department of Telecommunication, Sanchar Bhawan, New Delhi.

2. The Director (Railway Electrification), B-1/10, Community Center, Janakpuri.

3. Divisional Engineer, Telegraphs (RE) Railway Electrification Project, Division Sawaimadhopur.

4. Assistant Engineer Telegraphs, Railway Electrification Project Circle, Sawaimadhopur.

.. Respondents

(By Advocate:--

ORIGINAL APPLICATION No. 161/2005 with MA No.140/2005.

Syogi Lal s/o Shri Gyarsi Lal r/o Village Belanganj, Post Babai, Tehsil Indergarh. Distt. Bundi.

..Applicant

(By Advocate: Mr. Deepak Pareek)

Versus

1. Union of India, through Secretary, Ministry of Telecommunication, Department of Telecommunication, Sanchar Bhawan, New Delhi.

2. The Director (Railway Electrification), B-1/10, Community Center, Janakpuri.

3. Divisional Engineer, Telegraphs (RE) Railway Electrification Project Division, Sawaimadhopur.

4. Assistant Engineer Telegraphs, Railway Electrification Project Circle, Sawaimadhopur.

.. Respondents

(By Advocate: --

ORIGINAL APPLICATION NO.162/2005 with MA No.141/2005

Mohan Lal S/O Mathura Lal Mali r/o Village Belanganj, Post Babai, Tehsil Indergarh, Distt. Bundi.

.. Applicant

(By Advocate: Mr. Deepak Pareek)

Versus

1. Union of India, through Secretary, Ministry of Telecommunication, Department of Telecommunication, Sanchar Bhawan, New Delhi.

2. The Director (Railway Electrification), B-1/10, Community Center, Janakpuri.

3. Divisional Engineer, Telegraphs (RE) Railway Electrification Project, Division, Sawaimadhopur.

4. Assistant Engineer Telegraphs, Railway Electrification Project Circle, Sawaimadhopur.

.. Respondents

(By Advocate: --

ORIGINAL APPLICATION No. 163/2005 with MA No.142/2005

Radhey Shyam s/o Bal Kishan Mali r/o Village Belanganj, Post Babai, Tehsil Indergarh, Distt. Bundi.

.. Applicant

(By Advocate: Mr. Deepak Pareek)

Versus

1. Union of India, through Secretary, Ministry of Telecommunication, Department of Telecommunication, Sanchar Bhawan, New Delhi.

2. The Director (Railway Electrification), B-1/10, Community Center, Janakpuri.

3. Divisional Engineer, Telegraphs (RE) Railway Electrification Project, Division, Sawaimadhopur.

4. Assistant Engineer Telegraphs, Railway Electrification Project Circle, Sawaimadhopur.

.. Respondents

(By Advocate: --

ORIGINAL APPLICATION No.164/2005 with MA No.143/2005

Radha Kishan s/o Gopal Lal r/o village Ali, Distt. Tonk.

.. Applicant

(By Advocate: Mr. Deepak Pareek)

Versus

1. Union of India, through Secretary, Ministry of Telecommunication, Department of Telecommunication, Sanchar Bhawan, New Delhi.

2. The Director (Railway Electrification), B-1/10, Community Center, Janakpuri.

3. Divisional Engineer, Telegraphs (RE) Railway Electrification Project, Division, Sawaimadhopur.

4. Assistant Engineer Telegraphs, Railway Electrification Project Circle, Sawaimadhopur.

.. Respondents

(By Advocate:--

ORDER (ORAL)

By this common order, we propose to dispose of these OAs as common question of law and facts are involved in these cases.

2. Briefly stated, the applicants were initially engaged on daily wage basis in the year 1985. It is further stated that they worked in that capacity up to June, 1987 when they were disengaged by the respondents. The applicants have also placed on record material to suggest that during the aforesaid period they worked for more than 240 days. According to the applicants, they have been retrenched arbitrarily and illegally even though they have completed over one year of regular work in the department, and, therefore, they ought to have been regularized and

conferred temporary status. It is further stated that they have also protested against their illegal termination and one of the last representation was given on 15.12.1995. It is further stated that thereafter a separate OAs was filed in the year 1996 and the same was withdrawn by the counsel for the applicants to pursue the departmental remedy as the representation made by the applicants before the respondents were pending. It is on these basis that the applicants have filed these OAs thereby praying that retrenchment of the applicants be declared illegal and the respondents be directed to reinstate the applicants in service with all back wages and consequential benefits. Alongwith these OAs, the applicant have filed Misc. Application for condonation of delay. In the application for condonation of delay, the applicants have not explained the circumstances in which they could not avail the remedies available to them at the relevant time when they were retrenched w.e.f. June, 1987. However, in the application for condonation of delay, the applicants have explained the delay after filing of the OAs in the year 1996 on the ground that they were not aware about the withdrawal of the OA in the year 1996 by their counsel and they came to know about disposal of the OAs only in the first week of March, 2005. It has further been pleaded that the delay is not intentional or

deliberate and in these circumstances the delay be condoned.

3. We have heard the learned counsel for the applicant at admission stage. We are of the view that the applicants are not entitled to the relief as prayed for, for more than one reason. Firstly, this Tribunal has got no jurisdiction to entertain this matter in view of the law laid down by the Hon'ble Apex Court in the case of U.P.State Bridge Corporation Lrd. And Ors. vs. U.P.Rajya Setu Nigam S. Karamchari Sangh, 2004 (1) SCSLJ 357 whereby the Apex Court has held that where the right and obligations sought to be enforced by the Union in the writ petition are those created by the Industrial Disputes Act, the High Court erred in entertaining the writ petition of the Union as the dispute was an industrial dispute. In the instant case, the applicants are aggrieved by their retrenchment w.e.f. June, 1987. Basis for declaring the retrenchment as illegal, as can be seen from pleadings made in the OA, is that they have completed more than one year of continuous service, as such they could not have been retrenched, which according to the applicants, is in violation of Section 25-F of the Industrial Disputes Act. Thus, in view of the law laid down by the Apex Court as referred to above, the remedy, if any available to the applicants, is to

raise industrial dispute under the Industrial Disputes Act and the present OA is not appropriate remedy.

4. That apart, even though it is held that this Tribunal has got jurisdiction to entertain these OAs, yet the applicants are not entitled for any relief in view of withdrawal of earlier OA filed in the year 1996 whereby no opportunity was granted by the Tribunal to institute fresh OA for the same cause of action, in view of the law laid down by the Apex Court in the case of Sarguja Transport Service, vs. State Transport Appellate Tribunal, Gwalior and ors., AIR 1987 SC 88. The applicant have placed photocopy of the order dated 25.4.1996 passed in four out of five cases which is verbatim the same. In para 2 of the said order, the Tribunal has made the following observations:-

> "2. During the arguments on the question of admission of the OA, the learned counsel for the applicant stated that the applicant has made a representation, Annexure-A3 dated 15.12.1995, to the Assistant Engineer (Telegraph), Railway Electrification Project, Sawaimadhopur, with regard to his grievance. He adds that since he wants to pursue the matter with the Departmental Authorities with regard to his grievance, he seeks permission to withdraw the present application. Permission granted. Application is dismissed as withdrawn."

Thus, from the portion as quoted above, it is apparent that the Tribunal has not granted any liberty

to the applicants to approach again in case the representation dated 15.12.1995 (ann.A3), in all these cases, was rejected by the departmental authorities. However, the OA was withdrawn on the statement made by the learned counsel for the applicants that they want to pursue the departmental remedy. Thus, in view of the law laid by the Apex Court in the case of Sarguja Transport Service (supra), these OAs cannot be entertained.

5. Further, the applicants are claiming their reinstatement as casual labour with all consequential benefits w.e.f. June, 1987. The OAs are filed almost after a lapse of 19 years. Even if it is assumed that the applicants have got a good case on merit they are not entitled for their reinstatement from back date as it can legitimately be presumed that they have abandoned the job and cannot raise this issue at this belated stage. The learned counsel for the applicants further submits that since the applicants have raised issue regarding their retrenchment in violation of the provisions contained in Industrial Disputes Act, as such liberty may be reserved to them to raise industrial dispute in accordance with law. We do not want to express any opinion at this point. In case the applicants are entitled to raise such issue at this belated stage as per law, the applicant may avail this right if available in accordance with law.

6. With these observations, the OAs as well as MAs for condonation of delay are disposed of at admission stage.

(G.R.PATWARDHAN)
Member (A)

(M.L.CHAUHAN)
Member (J)