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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR**

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**ORDER SHEET**

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**ORDERS OF THE TRIBUNAL**

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15.11.2011

OA No. 511/2008 with MA 409/2008

Mr. P.N. Jatti, Counsel for applicant.

Mr. B.K. Pareek, Counsel for respondents no. 1.

Mr. B.N. Sandu, Counsel for respondent nos. 2 to 4.

Learned counsel for the applicant submits that he filing rejoinder in the Registry today. The Registry is directed to place the same on record.

List it on 22.11.2011.

*Anil Kumar*  
(Anil Kumar)  
Member (A)

ahq

22.11.2011

Mr. P.N. Jatti, Counsel for applicant

Mr. P. A. Sharma, Counsel for respondent no. 1

Mr. B.N. Sandu, Counsel for respondents no. 2 to 4.

Heard. The OA is disposed of  
by a separate order.

*Anil Kumar*  
(Anil Kumar)  
M (A)

*[Signature]*

Reply taken on  
record.

rejoinder ~~on~~

filed.

*[Signature]*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR.

*Jaipur, the 22<sup>nd</sup> day of November, 2011*

**ORIGINAL APPLICATION No. 511/2008**

**With**

**MISC. APPLICATION NO. 409/2008**

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Ms. Kalawati Devi wife of Late Shri Mahesh Chand Upadhyay by caste Brahmin age about 50 years, resident of Ram Nagar Colony, Baswa Road, Bandikui.

... Applicant

(By Advocate : Mr. P.N.Jatti)

Versus

1. Union of India through the Secretary to the Government of India, Department of Telecom, Sanchar Bhawan, New Delhi.
2. Bharat Sanchar Nigam Ltd. through the Chairman, Corporate Office, Personnel IX Section, Sanchar Bhawan, New Delhi.
3. Chief General Manager, Telecom Rajasthan Circle, Jaipur.
4. Principal General Manager, Jaipur District, Jaipur.

... Respondents

(By Advocates : Mr. T.P. Sharma – Respondent no. 1  
Mr. B.N. Sandu – Respondent no. 2 to 4)

**ORDER (ORAL)**

The applicant has filed this OA thereby praying for the following reliefs :-

- (i) That by a suitable writ/order or the direction the respondents be directed to allow the temporary status to the applicant with effect from 01.10.1989.
- (ii) That by a suitable writ/order or the directions the respondents be directed to issue the orders of the permanent service with effect from 24.04.2011 of Mr. Mahesh Chand Upadhyay and be given to the applicant- widow of Mr. Mahesh Chand Upadhyay.
- (iii) That all the pensionary benefits with the pension be allowed to the applicant-widow of

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Mr. Mahesh Chand Upadhyay with effect from 6.5.2001 with all the consequential benefits and the record of the selection of 24.4.2001 be called for kind perusal of the Hon'ble bench and after perusal of the record the necessary orders be passed in favour of the applicant.

- (iv) Any other relief which the Hon'ble bench deems fit."

2. Brief facts of the case, as stated by the applicant, are that Shri Mahesh Chand Upadhyay was appointed as Casual Labour in the office of sub-divisional office phones Bandikui (Annexure A/2). That Mahesh Chand Upadhyay was performing duties continuously and performed the duty of more than 240 days in a year with effect from March, 1988. Therefore, temporary status be allowed to the Mahesh Chand Upadhyay with effect from 01.10.1989 instead of 1993. The Mahesh Chand Upadhyay represented for regularisation and ultimately he was called for interview on 24.04.2001 to submit all the original documents for the purpose of regularisation (Annexure A/3). Mahesh Chand Upadhyay appeared before the authorities and submitted the original documents on 24.04.2001. However, in the meantime, Shri Mahesh Chand Upadhyay expired on 26.05.2001 and till now the widow of the deceased has not been drawing the pension and pensionary benefits. Aggrieved by this action of the respondents, the present OA has been filed.

3. The applicant has further stated that on 15.03.2001 a letter dated 15.03.2001 (Annexure A/4) was issued to all concerning officers that similarly situated labourers be

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informed and their forms may be filled in and forwarded to the respondents. The applicant has given the names of the candidates whose services were to be regularized as mentioned in <sup>Annexure</sup> 'A' of the letter. The name of Mahesh Chand Upadhyay is at sr. no. 4 of this Annexure and there are 8 persons in all listed at Annexure A/1. That one letter was issued by the Sub Divisional Engineer (R & E) on 19.04.2001 that the candidates who are casual labour and holding the temporary status are directed to present themselves before the Selection committee on 24.04.2001 with all the original documents for the purpose of regularisation. Mahesh Chand Upadhyay also attended the interview on 24.04.2001 and submitted all his original certificates. He was found fit by all means. Therefore, his services were to be regularized as Group 'D' in the Department of Telecom. That Shri Mahesh Chand Upadhyay expired on 26.05.2001 after regularisation of his services. Therefore, the widow of the deceased employee, Smt. Kalavati Devi, is entitled for pension and pensionary benefits. The applicant has prayed to the respondents for this relief but no reply has been given by the respondents. During the pendency of the OA, certain amendments were carried out in the OA, which have been taken on record.

4. The respondents have filed their reply to the OA as well as to the amended OA. The respondents have stated that Shri Mahesh Chand Upadhyay did not work continuously for 240 days in the year 1982-83 and 1983-

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84 and he had remained absent continuously after February, 1984. Thereafter he was engaged as Casual labour in March 1988. He was given temporary status on 17.12.1993 meaning thereby that Shri Mahesh Chand Upadhyay had worked on casual labour from March, 1988 and not from the year 1982. The photocopy of the order dated 28.01.1997 has been annexed as Annexure R/1. The respondents have denied that the orders of regularisation of husband of the applicant <sup>w</sup>ere issued and as per the departmental rules, no pensionary benefits are payable to the family of an employee <sup>who</sup> died as TSM. They further stated that it is not denied that the husband of the applicant was given the status of TSM and during the process of his regularisation proceedings he died as TSM and, therefore, he could not be regularized. The husband of the applicant died prior to the completion of his regularisation proceedings.

5. The respondents have also stated that the present OA has been filed beyond the period of limitation. Hence it deserves to be dismissed on the ground of delay as held by the Hon'ble Supreme Court in the case of **S.S. Rathore vs. State of M.P.** , AIR 1990 SC 10. Shri Mahesh Chand Upadhyay was neither the regular employee of the DOT prior to the formation of the BSNL nor the regular staff of BSNL, hence his claim is not tenable. Therefore the present OA may be dismissed.

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6. The applicant has filed rejoinder.

7. Heard learned counsel for the parties. The learned counsel for the respondents raised preliminary objections of limitation. He referred to the judgment of the Hon'ble Supreme Court in the case of **S.S. Rathore vs. State of M.P.**, AIR 1990 SC 10.

8. On the contrary, learned counsel for the applicant drew my attention to the case of **Jasbir Singh Narula vs. Union of India & Others** decided on 17.07.1996, 1996 (3) CAT 571 and the judgment of the Hon'ble Rajasthan High Court in the case of **Baso Devi vs. State of Rajasthan & Others**, 2003(3) WLN 460, in which it has been held that the pension is payable every month, so it is a recurring cause of action and in such cases, limitation does not apply. Therefore, I am of the opinion that the ratio laid down by the Hon'ble Supreme Court in the case of **S.S. Rathore (supra)** is not applicable in this case and the case was also heard on merit.

9. Learned counsel for the applicant argued that Shri Mahesh Chand Upadhyay was working with the respondents since 1988 and, therefore, he should have been given temporary status from 01.10.1989. Unfortunately, he died when the process of regularisation of Group 'D' was under process. Had Shri Mahesh Chand Upadhyay not expired, he would also have been

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regularized with other employees. Therefore, Shri Mahesh Chand Upadhyay may be deemed to be regularized alongwith other and consequential benefits like pension be given to the applicant.

10. Learned counsel for the respondents argued that Shri Mahesh Chand Upadhyay was engaged as casual labour in March, 1988. Casual Labours (Grant of Temporary Status & Regularation) Scheme was issued by the DOT, New Delhi vide letter No. 269-10/89-STN dated 7.11.1989 was applicable to those casual labours who were engaged upto 30.3.1985 whereas Late Shri Mahesh Chand Upadhyay was engaged in March 1988. Hence he did not come under the purview of the scheme issued by DOT New Delhi letter dated 07.11.1989 (Annexure R/1).

11. Later on DOT New Delhi issued casual Labour (Grant of Temporary Status and Regularisation) Scheme 1989 extended to grant temporary status to those casual labours engaged during the period 31.03.1985 to 22.6.1988 vide letter No. 269-4/93-STN-II dated 17.12.1993. Since late Shri Mahesh Chandra Upadhyay was engaged in March, 1988, therefore, he came in the purview to this extended scheme and as such he was granted temporary status w.e.f. 17.12.1993. The applicant cannot be allowed temporary status w.e.f. 29.11.1988/01.10.1989 since the scheme dated 17.12.1993 is not applicable with retrospective date. The

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photocopy of letter dated 17.12.1993 has been annexed as Annexure R/2. The respondents have admitted that Late Shri Mahesh Chand Upadhyay was called for interview on 24.04.2001 alongwith original documents and certificates for verification for the purpose of regularisation but the official died on 26.05.2001 before the issuance of his regularisation order, that shows that he died as TSM and since he expired on 26.05.2001 as TSM, hence pensionary benefits are not allowed to the widow the deceased as per rules. Many formalities like Attestation form, PVR, Medical examination etc. are required to be completed before issuance of order of regularisation and in the case of Shri Mahesh Chand Upadhyay, these formalities could not be completed due to his death on 26.05.2001 and, therefore, he cannot be treated as regular Group 'D' official and, therefore, the widow of the deceased is not entitled for any pension.

12. Having heard the rival submissions of the parties and perusing the relevant documents on record, I am of the opinion that there is no need to interfere with the order granting temporary status to Late Shri Mahesh Chand Upadhyay w.e.f. 17.12.1993 (Annexure R/2) and there is no illegality/irregularity in the decision taken by the respondents so far as it relates to the grant of temporary status to the applicant.

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13. As regards regularisation of Late Shri Mahesh Chand Upadhyay is concerned, it is not disputed between the parties that he was interviewed on 24.04.2001 and submitted his documents. It is also not disputed by the respondents that other official who were called for interview alongwith Late Shri Mahesh Chand Upadhyay were regularized. Since Late Shri Mahesh Chand Upadhyay was working with the respondents as TSM in all likelihood, he would also have been regularized with other similarly situated persons, had he not expired on 26.05.2001 during the process of regularisation. It was not a case of new appointment but it is a case of regularisation of an employee, who was working with the respondents. The widow of Late Shri Mahesh Chand Upadhyay would suffer irreparable hardship if Late Shri Mahesh Chand Upadhyay is not deemed to have been regularized on a Group 'D' post. Therefore, in the interest of justice, I deem it proper to direct the respondents to treat Late Shri Mahesh Chand Upadhyay as regularized from the date from which all other similarly situated persons have been regularized by the respondents and give all consequential benefits to the applicant which are permissible under the rules and according to the provisions of law within a period of three months from the date of receipt of a copy of this order.

14. With these observations, the OA is disposed of with no order as to costs.

*Azib Kuma*

15. In view of the order passed in the OA, there is no need to pass any order in the MA No. 409/2008, which is accordingly disposed of.

*Anil Kumar*

(Anil Kumar)  
Member (A)

*AHQ*