

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

Babu
22.18

CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

ORIGINAL APPLN. NO.	107 OF 1995
TRANSFER APPLN. NO.	OF 1995
CONTUMPT APPLN. NO.	OF 1995 (IN OA NO.)
REVIEW APPLN. NO.	OF 1995 (IN OA NO.)
MISC. PETN. NO.	OF 1995 (IN OA NO.)

..... Fazal Ali APPLICANT(S)

-VS-

..... U. O. I. T. O. S. RESPONDENT(S)

FOR THE APPLICANT(S)

... MR. B. K. Sharma
MR. M. K. Chanchay
MR. S. Sarma
MR.

FOR THE RESPONDENTS

... MR. S. Ali, Sr. C.G.S.C.

OFFICE NOTE	DATE	ORDER
This application is in form and within time. C. F. of Rs. 50/- deposited vide TPO/BD No. 883083 dated 17.4.95.	19.6.95	Mr. B.K.Sharma for the applicant. Mr. S.Ali, Sr. C.G.S.C. for the respondents.
<i>for 28.6.95 fazal Ali</i>		Admit. Issue Notice. The applicant has prayed for an interim order directing the respondents to allow the applicant to continue in his service as before and not to act in pursuance of Annexure-1 dated 28.5.95. As yet no order dispensing with the service of the applicant has been passed. Even otherwise she does not appear to have acquired any right to hold the post. Therefore there is no occasion to pass the interim order as prayed for. Prayer for interim order is accordingly rejected.
<i>for 28.6.95 trd</i> Requisites are ready on 28.6.95 & issued V. no 2749-51 S 30697		<i>60</i> Member

A
Chairman

*for 28.6.95
M. Ali received on
R. no. 2 at file No. 106/95 C file.*

2.8.95 Written statement not filed so far. Adjourned for orders to 9.10.95.
Liberty to file written statement.

60
Vice-Chairman

60
Member

nkm

*h
9/8/95*

22.1.96 To be listed for
leaving on 8.2.96

31-8-95

W/s submitted by *By order
of the Respondent No. 1, 203.*
At page no. 24 - ~~29~~ 31

8-2-96

Mr. S. Ali, Sr. C.G.S.C. for the respondents is present. Adjourned for hearing on 29-3-96, before Division Bench.

12-9-95

Rejoinder to the W/s
submitted by the Respondent.
At page 32 - 40

29.3.96

Mr. S. Sarma for the applicant.

Hearing adjourned to 16.5.96.

60
Member

14-9-95

For leaving

pg

on 24.11.95

16.5.96

Mr. S. Ali, Sr. C.G.S.C. for the respondents. List for hearing on 24.6.96.

60
Bor

24-11-95

Adjourned to 22-1-96 / pg

for hearing Bjo

60
Member

(6) 14-6-96

None for the applicant. Mr.S.Ali Sr.C.G.S.C. is present and ready for hearing. The applicant is given another opportunity of being heard.

List for hearing on 11-7-96.

6/6
Member(A)

lm

6/6
Member(B)

(7) 11-7-96

None for the applicant. Learned Sr.C.G.S.C. Mr.S.Ali, Sr.C.G.S.C. is present for the respondents.

List for hearing on 8-8-96.

6/6
Member

lm

(8) 8-8-96

Learned counsel Mr.S.Sarma for the applicant. Learned Sr.C.G.S.C. Mr.S. Ali for the respondents.

List for hearing on 6-9-96.

6/6
Member

lm

M/
8/8

(9) 6-9-96

Learned Addl.C.G.S.C. Mr.A.K.Choudhury for Mr.S.Ali, Sr.C.G.S.C. for the respondents.

List for hearing on 7-10-96.

6/6
Member

lm
M/
6/9

OFFICE NOTE

DATE

COURT'S ORDER

(10)

7.10.96

Mr. S.Ali, Sr. C.G.S.C. for
the respondents.

List for hearing on 22.11.96.

Member

pg
on
7/10

(11)

25.2.97

List on 20.3.1997 for hearing.

Member

Vice-Chairman

1) Notice served on AP: (11) 25.2.97
No: 2
2) W/Statement - his son A.W.
on Respondents no 1-3
3) Rejoinder - his son A.W.
trd

(12)

20.3.97

On the prayer of Mr. S.Ali, Sr.C.G.S.C.
appearing on behalf of the respondents hearing is
adjourned to 9.4.1997.

List on 9.4.97 for hearing.

Member

Vice-Chairman

trd

(13)

9.4.97

Heard the learned counsel for the
parties in part. List it tomorrow, 10.4.97 for
further hearing.

Member

Vice-Chairman

nkm

9/11

(14)

10.4.97

On the request of the learned counsel
for the parties this case be listed tomorrow, 11.4.97
for hearing.

Member

Vice-Chairman

nkm

(3) OA 107/95

(16) 8.5.97.

Left over. List on 19.5.97
for hearing.

60
Member


Vice-Chairman

1) W/S. has sum b/w
2) Rajinder has sum
b/w.
3) Show cause his next
sum b/w.

80
915

19-5-97

There is no representation.
List for hearing on 4-6-97.

60
Member


Vice-Chairman

W/S. and Rajinder has
sum b/w.

80
916

1m

5
23/5

(17) 4.6.97

Let this case be listed on 4.7.1997 for
hearing.

60
Member

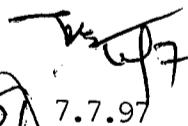

Vice-Chairman

trd

5
5/6

4.7.97

80. For the day.
Bd.


7.7.97

Records have been produced by the
respondents. Mr. B.K.Sharma, learned counsel
appearing on behalf of the applicant prays for short
adjournment to enable him to go through the records.
Other side has no objection. Prayer allowed. Let the
records be examined by Mr. Sharma in the chamber of
Registrar. After examination the Bench Assistant
shall keep the records in safe custody.

Let the case be listed on 14.7.97 for
hearing.

60
Member


Vice-Chairman

trd 14.7.97 Due to ref, in cont-i suspended
after 12 noon. Adjourn to 23-7-97.

11.4.97

In this case after hearing at some length we found that records of the case was necessary. Accordingly we requested Mr. S.Ali, Sr.C.G.S.C. to bring records from the office of the Superintending Engineer, Telecom, fixing next date for production of records on 10.4.97. Mr. Ali informs us that though he informed the office of the Superintending Engineer, Telecom, records were not sent. For the ends of justice we granted further time till today for production of records. The office of the Superintending Engineer is only about a kilometre away from this place. Mr. Ali again informs this Tribunal though he again informed, records have not been produced. For non production of the records the Tribunal is not in a position to dispose of this case. This amounts to interference with the Administration of justice.

In view of the above, issue notice to the Superintending Engineer, Telecom to show cause why contempt proceeding shall not be drawn up against him for non-compliance of the directions.

Notice is returnable by 30.4.97. The Superintending Engineer is also directed to produce the records on 22.4.97.

Furnish the copy of this order to Mr. S.Ali, Sr. C.G.S.C. for taking necessary steps.

List for hearing on 30.4.97.

Member

Vice-Chairman

trd

16/4

21-4-97
Memo of appearance
filed by Mr. S.Ali, Sr.C.G.S.C. 30.4.97

Vide order passed in O.A. No. 106 of 1995 on 30.4.1997.

Member

Vice-Chairman

trd

1) Service reports are
with awaiting
2) D/S is Rejoinder
in sum in 2.5.97
3) Summons
sum in 2.5.97

Vide order passed in O.A. 106 of 1995 on 2.5.97.

Member

Vice-Chairman

13.7.97

Proper records have not been produced by the respondents. Records contains only written statement, application and the parawise comments. The respondents are directed to produce records on 28.7.97 regarding engagement and subsequent invitation of tenders etc.

List on 28.7.97 for hearing.

69
Member

Vice-Chairman

pg

AS
21/2

28.7.97

On the prayer of Mr S. Ali, learned Sr. C.G.S.C., this case is adjourned till 30.7.97.

69
Member

Vice-Chairman

nkm

30.7.97

Passover on next day.

By order.

b.

81.7.97

Leftover - List on 3-8-97

By order.

b.

3.8.97

Leftover. List on 8-8-97.

By order.

8.8.97

Adjourned to 17-8-97.

By order.

~~28.7.97~~, w/s and
referred to the
Chairman

29

w/s and referred to
the Secretary

10/9

0
O.A. 107/95.

8.10.97

Copy of the Judgment
has been issued to the
Respondent No.3 vide
D/No. 3015.

✓

17.9.97

Heard Mr S.Sarma, learned counsel
for the applicant and Mr S.Ali, learned
Sr.C.G.S.C for the respondents.

Hearing concluded. Judgment deli-
vered in open court, kept in separate
sheets. The application is disposed of.
in terms of the order. No order as to
costs.

✓

Member

✓

Vice-Chairman

pg

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Date of Order : This the 17th Day of September, 1997.

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

Shri G.L. Sanglyine, Administrative Member.

Original Application No.106 of 1995.

Smt. Anita Baishya Applicant

- Versus -

Union of India & Ors. Respondents.

Original Application No.107 of 1995.

Md. Fazar Ali Applicant

- Versus -

Union of India & Ors. Respondents.

Original Application No.115 of 1995.

Smt. Namita Das Applicant

- Versus -

1. Union of India
represented by the Director General
(Telecom.)
New Delhi.

2. The Chief General Manager,
Assam Telecom Circle,
Ulubari, Guwahati-7.

3. The Superintending Engineer,
Telecom Civil Circle,
Guwahati-7.

. Respondents.

Advocate for all the applicants : Shri S. Sarma.

Advocate for all the respondents : Shri S. Ali, Sr.C.G.S.C.

O R D E R

BARUAH J(V.C)

All the 3 applications involve common questions of law and similar facts. We, therefore, dispose of all the 3 applications by this common order. The facts are :

The applicants were appointed Casual Workers on various dates in the years 1992 and 1993. They are claiming temporary status and also subsequent regularisation. As per statement made in Annexure-4 in O.A.No.106/95 and O.A. 115/95 and Annexure-1 in O.A.107/95 all the applicants

worked for more than 206 days in the year 1993. The applicants claimed that they are working in 5 days week and therefore, as per the scheme prepared by the department of Telecommunications the person working more than 206 days in a 5 days week where the offices observed 5 days a week, they are entitled to get temporary status and subsequent regularisation. This aspect of the matter has not been disputed in spite of that their engagement had been terminated verbally.

2. Heard Mr S.Sarma, learned counsel appearing on behalf of the applicants and Mr S.Ali, learned Sr.C.G.S.C for the respondents. Mr Sarma submits that as per the scheme the present applicants are entitled to be given temporary status and subsequent regularisation. Mr Ali however, disputed the same, in view of the fact that they were working as Draftsman and Typist and therefore, they are not entitled to claim the benefit of the scheme. Mr Sarma on the other hand submits that even if applicants are regularised in a Group D posts they have no objection. Mr S.Ali also agrees to the same. He has stated that there will not be any difficulty in regularising them in the Group D posts. Considering the submissions of the learned counsel for the parties, we dispose of these applications with a direction to the respondents particularly respondent No.3, that is Superintending Engineer, Telecom Civil Circle, Guwahati to grant temporary status in any Group D post as agreed by the learned counsel for the parties and thereafter regularise their posts as per the scheme. This must be done as early as possible and at any rate within a period of 1 (one) month from the date of receipt copy of this order.

Considering the entire facts and circumstances of
the case we however, make no order as to costs.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (A)

Central Administrative Tribunal
सेंट्रल एडमिनिस्ट्रेटिव ट्रिब्यूनल

286 13 JUN 1995

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
Guwahati Bench

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

Title of the Case : O.A. No. 107 of 1995

Md. Fazar Ali ... Applicant

- Versus -

Union of India & Ors. ... Respondents

I N D E X

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For use in Tribunal's office :

Date of filing : 13.6.95

Registration No. : OA.107/95

For 13/6/95
Section Officer (Jud.)
Central Administrative Tribunal
Guwahati Bench,
Guwahati-6.

Received COPY
S. C. S.
13/6/95

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL: : GUWAHATI BENCH

O.A. No. 107 of 1995

BETWEEN

Md. Fazar Ali, Casual Typist,
in the office of the Superintending Engineer,
Telecom. Civil Circle,
Guwahati-7.

... APPLICANTS

AND

1. The Union of India, represented by the Director General (Telecom.), New Delhi.
2. The Chief General Manager, Assam Telecom Circle, Ulubari, Guwahati-7
3. The Superintending Engineer, Telecom Civil Circle, Guwahati-7.

RESPONDENTS

DETAILS OF APPLICATION

**1. PARTICULARS OF THE ORDER AGAINST WHICH
THE APPLICATION IS MADE :**

The application is directed against the threatened discontinuance of service and forcible conversion of service to that of contractual system by inviting quotation No. 8(20)95/TCC/GH/170 dated 26.4.95.

2. JURISDICTION OF THE TRIBUNAL :

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

Contd...P/2.

3. LIMITATION :

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

4. FACTS OF THE CASE :

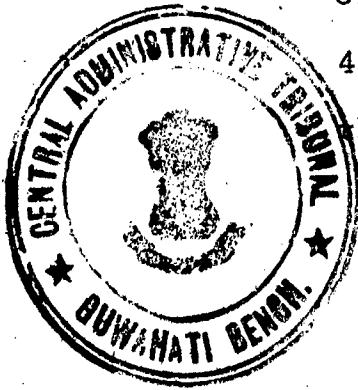
4.1 That the applicant is a citizen of India and a permanent resident of Assam, and as such, he is entitled to all the rights, protections and privileges guaranteed by the Constitution of India and the laws framed thereunder.

4.2 That the applicant is a B.A. with diploma in type writing (English). His name is registered with the Employment Exchange and his registration No. is ✓ 6536/82 (old) 26764/93 (new).

8.3 That the Telecom Civil Circle in the Department of Telecommunication was established in the year 1992 and the same is concerned with civil construction. In consideration of the qualification and the fact that the name of the applicant is registered with the Employment Exchange, the applicant having being found suitable was appointed as a Typist in the Telecom Civil Circle w.e.f. 11.2.93 and ever since his such appointment, he has been continuing as such without any blemish and to the satisfaction of all concerned.

8.4 That since there are vacancies in the post of Typist in various offices of the Telecom Civil Circle, the

case of the applicant was taken up for regularisation and pursuant to such action, the Superintending Engineer (Civil), Telecom Civil Circle, forwarded the particulars of the casual labourers by his letter No. 8(3)92/TCC/GH/411 dated 26.7.94. In the said list alongwith others the name of the applicant figured at Sl. No. 6.



A copy of the said letter dated 26.7.94 is annexed herewith as ANNEXURE-1.

4.5 That the applicant states that although he has not been issued with any formal appointment letter, there is no denial of the fact that he has been continuing as a casual typist with effect from 11.2.94. In this connection, certificates issued by the Departmental authorities dated 30.3.95 and 12.5.94 are annexed herewith as ANNEXURES-2 and 3.

4.6 That the applicant states that he has been working against a clear vacancy and his continuance as a casual typist is against that clear vacancy. Apart from the post/vacancy presently being occupied by the applicant, there are other vacancies ~~as~~ of typist in various wings of the Telecom Civil Circle (TCC). The applicant has been performing his duties with devotion and he is required to perform his duties beyond official hours for which he is not being paid any extra remuneration.

In the above context letter dated 5.9.94 issued by the ASW to the S.E. may be referred to which is annexed as ANNEXURE-4.



4.7 That when nothing was done towards regularisation of services of the applicant either through process of regularisation under the various schemes adopted by the Department pursuant to the dictum laid down by the Apex Court or through the process of selection, the applicant made representation both oral and written to the respondents. The cause of the applicant was also espoused by the National Union of Telecom Engineering Employees, Class-III and accordingly by letter No.Civil Wing/NUTEE/Cl-III/Guwahati/11 dated 10.1.95, an agenda item was forwarded to the Superintending Engineer, Telecom Civil Circle, Guwahati. In the said letter, the agenda item No. 7 was in respect of regularisation of casual ~~type~~ staff in different Civil Unit Offices. However, it has been learnt by the applicant that nothing fruitful has come out pursuant to such discussion by the Union with authorities concerned.

A copy of the said letter dated 10.2.95 is annexed herewith as ANNEXURE-5.

3.8 That after rendering more than two years of service by the applicant in the Department of Telecommunication, it has been the legitimate expectation of the applicant that his services would be regularised by the respondents. The respondents ~~xxx~~ also all along assured the applicant that his services would be regularised and

he need not go for any other job. He was hopeful of materialisation of such assurances more so in view of the initiative taken by the department as indicated above. However, contrary to such expectation, the applicant is surprised to find that the respondents have issued quotation No. 8(20)95/TCC/GH/186 dated 31.5.95 ~~marked~~ inviting sealed quotation from qualified typists on a purely contractual basis. It will be pertinent to mention here that the said so called quotation has not been published in any national or local newspapers, but a copy of the same has been given to the applicant asking him to give his rates so that his services can be continued in contractual basis. He has also been asked to quote more copies of the quotations and then to insert rates lower than his own rate to be given giving some fictitious names so that on the basis of such fake quotations, he can be continued on contract basis. Such attitude/action on the part of the respondents is *prima facie* unbecoming of a model employer and is against the dictum laid down by the Apex Court.

Copy of the said quotation dated 31.5.95 is annexed herewith as ANNEXURE-5.

4.9 That being at the receiving end, the applicant had no other alternative when to ~~as~~ quote his rate pursuant to the said quotation. He submitted a representation dated 1.6.95 making a grievance against such changed conditions of services and accordingly urged upon the authorities to

regularise his services with the request not to ~~not~~ discontinue his services and to allow him in service as before a decision is taken on the representation dated 1.6.95. Along with the said representation, he also enclosed a newspaper report regarding directive of the Hon'ble Supreme Court to abolish contract labour system.



Copy of the said representation dated 1.6.95 together with the newspaper report and his quotation are annexed herewith as ANNEXURES 7, 7A and 7B respectively. 4

4.10 That the applicant states that the aforesaid action of the respondent is prima facie illegal and arbitrary inasmuch as instead of regularising his services, either through the process of regularisation or through the process of selection, his service condition is sought to be changed and his services are sought to be substituted to that of contract basis which is against the law. Be it stated here that after the aforesaid Annexure-6 representation dated 1.6.95, no action has been taken by the respondents and the applicant has been kept in dark regarding his future prospect. Unless some positive directions are issued to the respondents, the services of the applicant may be discontinued and in such eventuality he will suffer irreparable loss and injury. The balance of convenience lies in favour of the applicant towards passing of such an interim order.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that prima facie the aforesaid action of the respondents are illegal and arbitrary and liable to be set aside and quashed.



5.2 For that the services of the applicant is required to be regularised either through the process of regularisation pursuant to the various schemes formulated by the Government of India or through the process of selection as was sought to be done vide Annexure-1 letter. It will be pertinent to mention here that in other respect, the applicant has been extended the benefit of temporary status inasmuch as when the question of payment of interim relief came to be considered by the respondents, the question arose as to whether the casual workers like that of the applicant are entitled to grant of interim relief. Pursuant to the clarification issued by the Government of India vide its letter No. 49014/2/93-Estt(C) dated 9.3.94 the applicant and other such casual employees were granted the interim relief. The respondents may be directed to produce a copy of the said letter dated 9.3.94.

5.3 For that the applicant having continuously worked for two years on casual basis, his services are required to be regularised ; but instead of the respondents have adopted the policy of hire and fire and have sought to change the conditions of service of the applicant by converting his service into contractual system against the dictum of the Apex Court.

5.4 For that though the applicant cannot claim as a matter of right for regularisation of his services, but as yet he has got a right to be regularised. However, the respondents instead of considering ~~the~~ his case for regularisation have sought to terminate his services

without issuing any order by way of devising the policy to convert his services into a ~~xxx~~ contractual one.

5.5 For that the ~~xxx~~ action of the respondents being arbitrary and illegal, the same are not sustainable under the law and appropriate directions are required to be issued by this Hon'ble Tribunal.

5.6 For that in any view of the matter, the impugned orders/actions are not sustainable. The applicant craves leave of this Hon'ble ~~xxx~~ Tribunal to at the time of hearing of the instant application.

6. DETAILS OF REMEDIES EXHAUSTED :

The applicant declares that he has no other alternative or efficacious remedy than to come under the protective hands of ~~xxx~~ Your Lordships.

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

The applicant further declares that he had not filed any application, writ petition or suit in respect of the subject matter of this application, before any other Court or any other Bench of this Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELEIFFS SOUGHT FOR :

Under the facts and circumstances stated above, the applicant most respectfully prays that the instant

application be admitted, records be called for and upon hearing the cause or causes that may be shown and on perusal of the records, be pleased to grant the following reliefs :



- 8.1 To direct the respondents to regularise the services of the applicant as Typist with retrospective effect with all consequential benefits.
- 8.2 To set aside and quash the Annexure-5 quotation dated 31.5.95.
- 8.3 To direct the respondents to allow the applicant to continue in his service as before till such time his case is considered for regularisation either through the process of regularisation under the regularisation scheme or through the process of selection.
- 8.4 Cost of the application ; and
- 8.5 Any other relief or reliefs to which the applicant is entitled under the facts and circumstances of the case.

~~Exe~~
9. INTERIM ORDER PRAYED FOR :

During the pendency of the application, the applicant prays for an interim order directing the respondents to allow the applicant to continue in his service as before and not to ~~act~~ act in pursuance of the Annexure-5 quotation dated 31.5.95.

10.....

The application is filed through Advocate.

11. PARTICULARS OF THE I.P.O. :

(i) I.P.O. No. 803.883080

(ii) Date 17/4/95

(iii) Payable at : Guwahati.



12. LIST OF ENCLOSURES :

As stated in the Index.

VERIFICATION

I, Md. Fazar Ali, son of Late Fazir Ali, aged about 28 years, presently working as Typist in the office of the Telecom Civil Circle, Guwahati-7, do hereby solemnly verify and state that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge; those made in paragraph 5 are true to my legal advice and I have not suppressed any material facts.

And I sign this verification on this the day of June 1995 at Guwahati.

Md. Fazar Ali

ANNEXURE 1.

GOVT. OF INDIA.
DEPARTMENT OF TELECOMMUNICATIONS,
OFFICE OF THE SUPERINTENDING ENGINEER: :TELECOM CIVIL CIRCLE,
GUWAHATI - 781 007.

No. : 8(3)92/TCC/GH/ 471

Dated : 26.07.1994.

To,

The Superintending Engineer (C),
Telecom Civil Circle,
Shillong.

Sub. : Engagement of Casual labourer in different
units of Civil Wing.

Kindly refer to your letter No. 8(3)92/TCC/SII/1263,
dated 01.07.1994 the particulars of Casual Labourers in
different units are furnished herewith for further necessary
actions from your end.

enclo : Proforma.

Ram Kumar Upadhyay 26/7/94
Superintending Engineer (C),
Telecom Civil Circle,
Guwahati.

Attn:
Shresth

STATEMENT SHOWING DETAILS OF CASUAL LABOURS

Sl. No. Name of casual labourers Date of Birth Date of appointment as casual labourer Date of Employment Community/Quali- fication Total No. of days worked to date Nature of job/Reasons for break-up post against engagement

1. Sri. Bapdhan Rajbongshi 3.2.70 18.05.1992 3037/92/90 Regn. No 21 Office 1992 - 121 1993 - 228 1994 - 192

2. Sri Akhil Talukdar 1.2.71 15.06.1992 9907/92 - IX 1992 - 124 1993 - 1236 1994 - 124

3. Sri Kandarpa Rajbongshi 1.5.69 27.07.1992 5344/87 - X 1992 - 101 1993 - 227 1994 - 123

4. Sri Anil Rajbongshi 1.3.73 27.07.1992 5671/93/91 Passed H.S.S.L.C. 1992 - 105 1993 - 223 1994 - 108

5. Sri Dimbeswar Das 31.12.67 12.10.1992 12176/91 - IX 1992 - 56 1993 - 203 1994 - 108

6. Md. Fazar Ali 1.3.66 11.02.1993 6764/93 - B.A. 1993 - 217 1994 - 125

7. Smt. Anita Baishya 1.3.70 22.06.1992 262/90 S.C. - Dip. in Draugh- tsman Civil Engi- neering 1992 - 112 1993 - 228 1994 - 64

8. Smt. Namita Das 1.10.72 13.07.1992 753/92 - do - 1992 - 112 1993 - 235 1994 - 112

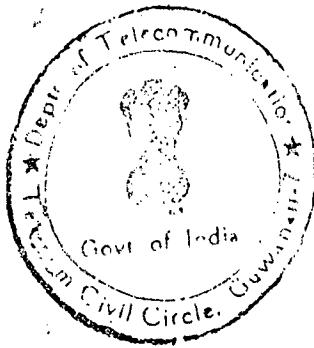
ANNEXURE

1 Contd.

In this correspondence, it has been made with C.G.M.T. Assam Circle Guwahati Vide T.O. No. 16(2)/92/TCC/GH/69 dated 13-7-92 and 16(2)/92/TCC/GH/622 dated 25-2-93 but no Group 'C' & 'D' Staffs posted against the existing vacant posts.

26/7/93
Superintending Engineer
Telecom Civil Circle
Guwahati
D.C. 15/7

ANNEXURE 2

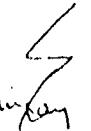


TO WHOM IT MAY CONCERN :

It is hereby certified that I know Md. Fazar Ali, son of late Fazir Ali R/o Vill. Chanmaguri, P.O. Chanmaguri, Via. Baihata, P.S. Rangia, District Kamrup, Assam, he is working "Casual Typist" in the Deptt. of Telecommunications O/o S.E. (C), since 11th Feb. '1993. He bears moral character.

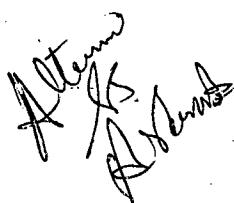
I wish him success in life.

Dated. 30-03-95.

 
Sanjay Sabharwal
30/3/95

(SANJAY SABHARWAL)

Assistant Surveyor of Works
Telecom Civil Circle,
Guwahati-781007.


Md. Fazar Ali



TO WHOM IT MAY CONCERN :

2

It is hereby certified that Md. Fazar Ali, son of Late Fazir Ali, Village & P.O. Chanmaguri, Via- Baihata, P.S. Rangia, Dist. Kamrup (Assam) is working in the Department of Telecommunications, Telecom Civil Circle, Guwahati as "Casual Typist" since 11th Feb'1993. To best of my knowledge he bears a moral character and he performs his duties very sincerely.

I wish him all success in life.

Dated 12-05-94.

(S.K. DUTTA),
Superintending Engineer (C),
Telecom Civil Circle,
Guwahati-7.

00000

To,

The Superintending Engineer (HQ),
O/o the Chief Engineer (Civil),
Department of Telecommunications,
North East Zone,
Guwahati.

Sub. :- Request for payment of over time for
extra work i.r.o Shri Fazar Ali.

Sir,

In absence of any typist in the Office of the Chief Engineer (Civil), Guwahati Shri Fazar Ali, Casul typist, Office of the Telecom Civil Circle, Guwahati has been performing all the typing works pertaining to the P.E., D.E and other works of the planning branch of Chief Engineer Telecom , North East Zone, Guwahati's Office, Shri Fazar Ali alone is doing all the typing works of this office which are quite heavy in addition to his other works of heavy nature pertaining to the planning branch of the Telecom Civil Circle, Guwahati. He is therefore performing extra 2 to 3 hours of duty every day.

Considering this he may be granted a suitable sum of money for extra hours of work which he performs every day beyond office hours.

Yours faithfully,

Arup Chowdhury 5/9/94
(ARUP CHOWDHURY)

Assistant Surveyor of Works,
O/o the Chief Engineer (C),
North East Zone,
Guwahati.

dated :- 05.09.1994.

*Pl. put up
this case in a
file to be put up
to CF(C) for his perusal
and approval.*
Sh. Fazar Ali



ANNEXURE 5

F.N.T.O. *

NATIONAL UNION OF TELECOM ENGINEERING EMPLOYEES

Class III

Ref. No Civil wing/NUTEE/C1, III/Ghy/11

Date 10.2.95

To

The Superintending Engineer
Telecom Civil Circle
Guwahati.

Sub. Agenda for by monthly meeting.

Sir,

This is with reference to your Telephonic discussion had with you on 9.2.95, In this connection I am very glad to place the following agenda for suitable decision.

AGENDA.

1. Recruitment of L.D.C. & Steno-III & D.M.Gr.II from local employment exchange.

2. O.T.B.P. Promotion to TOA-II who have completed 16 years.

3. Transfer of Mrs. Usha Saikia to Jorhat Division.

4. Shifting of Telecom Civil Division, Guwahati

5. Acceptance of Options & issue of order for conversion from clerical to T.O.A. pattern in in r/o candidates promoted from Gr. D to L.D.C. recruited after 1990.

6. Posting of clerical staff & steno in Chief Engineer's and D/M Gr.II to Civil S.E.'s office and D/M Gr. III in Division office. Pay scale to be given as per central secretariate scale for chief Engg. office class III staff.

7. Regularisation of ERM staff in different civil wing office

8. Immediate posting of P.A. to Chief Engineer (C), S.E. (H.Q.)

9. Adhoc promotion of eligible Gr.D staff to Gr.C

10. Bifurcation of S.E. civil Shillong and S.E. Guwahati

11. Issue of order for Sr. TOA.

12. Functioning of L.G.C.m.

13. Admin. Bldg.

UR
(R.K.Sharali)
Divisional Secy.
NUTEE, C.III (Civil wing)
Guwahati.

Altam
SS
of 10

17

GOVT. OF INDIA. ANNEXURE — 6

DEPARTMENT OF TELECOMMUNICATIONS

OFFICE OF THE SUPERINTENDING ENGINEER :: TELECOM CIVIL CIRCLE ::

GUWAHATI-7.

No. 8(20)/95/TCC/GH/ 186

Dated. 3/-06-95.

Q U O T A T I O N :

Sealed Quotations are invited from persons knowing typing with speed of atleast 30 (thirty) words per minute, on a purely contractual basis. The person is required to type in standard A₄ size sheet at quoted rate to be furnished by him. He is required to furnish experience certificate of previous working. The typist selected will have no claim for regularisation of the engagement offered. The contract can be terminated any time without assigning any reason. All stationaries and typing machine will be supplied by the Department. He should quote for typing a standard A₄ size sheet on one face rate for quotation

Name of the desiring person.	Qualification.	Rate for Quotation.
1.	2.	3.
1. Typing original letter on A ₄ size sheet.		
2. Additional copies of letter over and above original copy.		

Copy to:-

1. The Chief Engineer (C), Deptt. of Telecom, North East Zone, Guwahati.
2. The Executive Engineer (C), Telecom Civil Division, GHY.
3. Notice Board.

Asstt. Surveyor of Works (E),
Telecom Civil Circle,
Guwahati-7.

F. Ali.

Asstt. Surveyor of Works (Estt),
Telecom Civil Circle,
Guwahati-7.

To,

The Superintending Engineer (C),
Telecom Civil Circle,
Guwahati-7.

Dated at Guwahati the 1st June '95.

Sub:- Regularisation of "Casual Service".

Ref:- Quotation No. 8(20)/95/TCC/GH/186, dtd. 31-05-95.

Sir,

With reference to the above, I, with due deference and profound submissions beg to state the followings:-

1. That ever since the establishment of the Telecom Civil Circle, I have been working as Typist against an existing vacancy. My services are being utilised by the Deptt. and I have been rendering my sincere, denoted and unblemished service to the satisfaction of all concerned.
2. That I have been representing for regularisation of my service. In this connection, you had written to the Superintending Engineer (C), Telecom Civil Circle, Shillong urging for engagement of "Casual labourer" in different units of Civil Wing clearly indicating about the sanctioned post and as to how my services are satisfactory and required to be utilised Vide your letter No. 8(3)/92/TCC/GH/411 dtd. 26-7-94.
3. That based on various guidelines issued by the Govt. of India and dictums laid down by the Appex Court, my service is required to be regularised. However, contrary to such a stand, the sealed quotations as indicated above has been issued for contractual employment which is again contrary to the dictums of the Appex Court. Instead of being a model employer my services are being sought to be utilised in exploitative terms. In this connection, a recent decision of the Appex Court may be referred to as reported in the issue of "The Assam Tribune" dated 24-5-95 (copy enclosed). In this connection provisions of contract labour (Regulation and Abolition) Act may also be referred to.

Attn: Biju
In view of the above, I most respectfully pray that my services may be regularised instead of utilising my services under contract system as has been sought to be done. Till a decision is taken on my this representation, I may be allowed to continue as before without insisting upon for engagement on contract basis thereby changing my condition of service.

Should you be pleased to accede to my aforesaid prayer which has been made in accordance with law, and thereby extend your protective hands over me, I shall remain bound to you in deep gratitude.

With sincere regards.

Yours faithfully,

Md. Fazal Ali
(FAZAR ALI), 1/6/95

Casual Typist,

O/o the Superintending Engineer (C),
Telecom Civil Circle,
Guwahati-7.

Enclo:- As stated.

Copy to:-

1. Advance copy to the Superintending Engineer (C), Telecom Civil Circle, Guwahati for information and necessary action please.
2. The Chief Engineer (C), Department of Telecom, North East Zone, Guwahati for information and necessary action please.
3. The Executive Engineer (C), Telecom Civil Division, Guwahati for information and necessary action please.

Md. Fazal Ali
(FAZAR ALI), 1/6/95
Casual Typist,
O/o the Superintending Engineer (C)
Telecom Civil Circle,
Guwahati-7.

F. Ali.

~~16/6/95~~

*H. Ali.
F. Ali.*

20
FA
The Assam Tribune 24-05-95

ANNEXURE

SC directive to abolish contract labour

NEW DELHI, May 23— The Supreme Court has termed the contract labour system as an unfair labour practice and has recommended to the Central and State Governments to take necessary steps for its abolition.

While disposing of several appeals, wherein the issue of abolition of contract system of labour, had been raised, the Division Bench of Justice P B Sawant and Justice S B Majumdar said, "We recommend that both the Central and the State Governments should appoint a committee to investigate the establishments in which the contract labour is engaged and where on the basis of the criteria laid down in Clauses (a) to (d) of Section 10(2) of the Contract Labour (Regulation and Abolition) Act, 1970, the contract system can be abolished and direct employment can be given to the contract labour".

The appropriate government on its own should take initiative to abolish the labour contracts in the establishments concerned by following the procedure laid down by the Act.

The Apex Court also asked the Central government to amend the Act by incorporating a suitable provision to "refer to the industrial adjudicator the question of the direct employment of the workers of the ex-contractor in the principal establishment, when the appropriate government abolishes the contract labour".

The Judges further observed that "all the undertakings which are employing the contract labour system in any process,

operation or work which satisfies the factors mentioned in Clauses (a) to (d) of Section 10(2) of the Act, should on their own, discontinue the contract labour and absorb as many of the labour as is feasible as their direct employees".

The Judge said : "We cannot help expressing our dismay over the fact that even the undertakings in the public sector have been indulging in unfair labour practises by engaging contract labour when workmen can be employed directly even according to the test laid down by Section 10(2) of the Act.

"The only ostensible purpose in engaging the contract labour instead of the direct employees in the monetary advantage by reducing the expenditure".

Attnkt
R. J. Ahuja

To

The Superintending Engineer (C),
 Telecom Civil Circle,
 Silvani, Guwahati-7.

Dated at Guwahati the 1st June '95.

Sub: Submission of Quotation

Sir,

According to your "Quotation" I have filled up and enclosed my documents herewith.

Name of the desiring person.	Qualification	Rate for quotation:
1. Md. Fazal Ali	B.A. I have been working Casual Typist since 11th Feb '93 till 26 31st May '95	Rs. 2.0/- (Rupees Two only). 2. Rs. 10/- (Rupees Ten only).

Attn: J. S. Jaiswal
 This Quotation is Submitted without any prejudice and result of the representation made to-day (1st June '95).

Yours faithfully,

Md. Fazal Ali
Casual Typist,
to the S.E. (C),
TCC/GHY.-7.

31 AUG 1995

451

Recd

452

Filed by
Jhankar

9/8295
Central Govt. Standing Committee
Central Administrative Tribunal
Guwahati Bench, Guwahati

96

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH AT GUWAHATI

In the matter of :

O.A. No. 107 of 1995

Shri Fazal Ali

-Vs-

Union of India and others

-And-

In the matter of :

Written Statements submitted by the
Respondents No. 1, 2 & 3.

WRITTEN STATEMENTS:

The humble Respondents submit their
written statements as follows :-

1. That with regard to statements made in paragraph 1 of the application, the Respondents beg to state that the applicant was not under service with the department on any basis except that he had been asked to type some letters and estimates for which he was being paid on Hand Receipt which was a form of contract in which applicant's verbal offer for doing work on agreed terms of payment was accepted and acceptance of payment by the applicant closes the contract. Every month work was done by the applicant on similar terms. As such the applicant did not have any right and status as an employee.

-2-

2. That with regard to statements made in paragraph 2 of the application, the Respondents beg to state that the matter is beyond the jurisdiction of the Hon'ble Tribunal as the applicant did not have any status as employees of this Office of Central Govt. because he was never appointed to any post in any capacity and therefore the matter cannot be heard by the Hon'ble Tribunal.

3. That with regard to statements made in paragraphs 3 of the application, the Respondents have no comments.

4. That with regard to statements made in paragraphs 4.1 and 4.2 of the application, the Respondents have no comments on them.

5. That with regard to statements made in paragraph 4.3 of the application, the Respondents beg to state that it is not correct that having found him suitable for the post of Typist, he was appointed as Typist w.e.f. 11.2.1993. In fact this office required certain letters and estimates to be typed in the course of duties to be performed by this Office because of paucity of the staff at that time, therefore on casual job basis the applicant was asked to type the letters and estimates which were ^{beyond his} the capacity of the existing staff for which payment was made to him on hand receipt. If he were appointed in any capacity to hold a post, necessary appointment letter would have been issued after due process of selection through the office of the Chief General Manager Telecom, Assam Circle, Guwahati. Just because some jobs were required to be done for some time and were got from him does not confer any right on him to hold the post or because he was eligible to hold that post does not give any right to

-3-

him on that post. The appointment on a post of Group "C" can only be made by the authority competent to appoint through the established channels of recruitment in the department.

It is absolutely baseless to say that he was at any time appointed as Typist and he has rendered any service in such capacity and he was paid salary as Rs. 950/- (Rupees Nine Hundred and fifty) only per month. He was paid only on hand receipt on the basis of work done by him in terms of equivalent sum payable to Group "C" employee. The payment was strictly for the work done and not on monthly basis as is clear from the different payments made during each month. As already stated each month when the applicant accepted the payment on hand receipt, the verbal contract according to which he executed work stood closed.

It is further pointed out that it is not correct to say that he has continuously rendered his services as he was not holding any post but doing only work as and when required on casual basis. He was paid for the work done equivalent to No. of days payment to Group "C" employee.

6. That with regard to statements made in paragraph 4.4 of the application, the Respondents beg to state that there are no posts as typist in the Department and the complete cadre of clerks has been converted to the cadre of TOA(Telecom Office Assistant) for which there are separate recruitment rules and there is ban at present on the recruitment of the same. The TOA have to perform many other duties in addition to typing.

A report of casual labour working in the units working under the Respondent No.3 was forwarded as general administrative report in which name of all persons working on casual basis were included as a routine report only without any thought or consideration of any legal aspects. The inclusion of any

-4-

person in this list does not make the person employee of the Department and bestows on him right to the post as it is only inter Department. list of persons from whom work is being taken on casual basis sometimes for the record and administrative purposes.

The list only states the list of labourers engaged on casual work and does not in any way states that case for regularisation was taken up for the applicant. The annexure is merely a statement.

7. That with regard to statements made in paragraph 4.5 of the application, the Respondents beg to state that the applicant was not holding any post and as had been admitted no appointment letter was issued to him and there was no question of his being in service with the Respondent. The certificates issued and annexed are contrary to the facts and do not carry any meaning except that work was first given to the applicant on the given date and whatever work been done by him was satisfactory and issue of such certificate itself indicates that he was not given any assurance of continuance and certificates were meant for his help in getting job elsewhere.

8. That with regard to statements made in paragraph 4.6 of the application, the Respondents beg to state that the existence of vacancy in the office of the Respondent does not in any manner confer any right on the applicant for that post as recruitment to the vacancy can be made only as per departmental rules by the authority competent to do so through the process of recruitment process duly established. There is no post of Typist in the Department.

Any work done by the applicant in different office

-5-

on casual basis is independent work done by the applicant which has no connection with the work got done by the Respondent No.3.

9. That with regard to statements made in paragraph 4.7 of the application, the Respondents beg to state that there was no question of regularisation of services of the applicant as he was never appointed in the first place and he was not having any service with the Respondent No.3. There are no schemes of regularisation to the post of Group "C" and there are no posts of Typists as such in the Department as has already been stated.

The agenda item with union quoted (union agenda item at Sl.No.7) for DRM Staff has no relevance with the case as it deals with Casual Mazdoors of Gr. "D" level engaged on daily wages basis only and there is no mention of regularisation case of the applicant and DRM and staff of Group "D" cannot in any case be regularised in Group "C".

10. That with regard to statements made in paragraph 4.8 of the application, the Respondents beg to state that it is not correct to say that it has been his legitimate expectation that he would be offered regular service as he has not been promised for the same at any time. If it were so the Respondents would have issued appointment letter as they have issued to all other employees and the applicant would not have taken the certificates as stated by him of having done some workdone for the department if he were assured of regularisation in the department. The allegations made by the applicant are baseless, malacious and fictitious in nature.

Since the applicant was given work on casual basis as and when it was there and work area of the office of the respondent was reduced to half as a result of creation of one more Circle at Jorhat and there was practically no work to do by Typist, there was no justification of giving work to the applicant. Since the work was reduced considerably, quotations were called by this office for typing work to cater for the urgent needs of the respondent beyond the capacity of the existing staff which was still more infrequent need as and when it arose. Since quantum of work required was very little quotations were not published in national or regional Dailies.

11. That with regard to statements made in paragraph 4.9 of the application, the Respondents beg to state that since the applicant was not having any post incumbent and was not appointed at any time there is no question of allowing him to join or terminate his services. The representations of the applicant were filed as he did not have any status as employee of the office and hence no action was required to be taken on the representations. The documents do not have any relevance. There is nothing illegal and against the Directives of Hon'ble Supreme Court in calling quotations for getting some work done on contract basis. The abolition of Contract labour has no relevance in the instant case as applicant is always free to work or not to work for the respondent and the applicant is rather trying otherwise to bind the department to give him work whether Department has it or not.

-7-

12. That with regard to statements made in paragraph 4.10 of the application, the Respondents beg to state that it is not correct that calling of quotation for getting some typing work done on contract basis is illegal and arbitrary.

Since the respondents did not appoint the applicant in any manner but only got some work done from him which was duly paid like they pay to all other people from whom casual works are got done or to contractors as and when works are got done from them, there was no question of any regularisation as already stated above. There was no service of the applicant and hence no service condition changing of which is being talked about.

Since applicant was not an employee of the Respondents, there was no question of considering his representation or keeping him in dark. He was aware of everything from the begining. There is no point of discontinuing of service which does not exist and for which no appointment has ever been made. There is no cause for any remedy to the applicant.

13. That with regard to statements made in paragraph 5 of the application, regarding Grounds for relief with legal provisions, the Respondents beg to state that none of ground is maintainable in law as well as in facts and as such the application is liable to be dismissed.

14. That with regard to statements made in paragraph 6 of the application, the Respondents beg to state that the applicant could have approached higher offices situated in Guwahati itself like Office of Chief Engineer(C)/C.G.M.T., Assam Circle, Guwahati.

-8-

15. That with regard to statements made in paragraph 7 of the application, the Respondents have no comments on them.

16. That with regard to statements made in paragraph 8, regarding Reliefs sought for, the Respondents beg to state that the applicant is not entitled to any of the reliefs sought for and as such the application is liable to be dismissed.

17. That with regard to statements made in paragraph 9 of the application, regarding Interim Order prayed for, the Respondents beg to state that in view of the facts and circumstances narrated above the Interim order is liable to be dismissed.

18. That with regard to statements made in paragraphs 10, 11 & 12 of the application, the Respondents have no comments on them.

19. That the Respondents submit that the application is devoid of merit and as such the application is liable to be dismissed.

- V e r i f i c a t i o n -

K. P. Rajkhowa Asstt.

I, Shri Krishan Kumar, Superintending Engineer,

SD-J.

Telecom Civil Circle, Guwahati do hereby solemnly declare that the statements made above are true to my knowledge, belief and information and I sign this verification on this 9 th day of AUGUST, 1995 at Guwahati.

DECLARENT:

K. P. Rajkhowa

Asstt. Engineer (civl)

Central Admin.	Guwahati
12 SEP 1995	
507	General
	Guwahati

Filed by
Arvind Saha
11.9.95

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: : GUWAHATI BENCH

O.A. No. 107 of 1995

Md. Fazar Ali

- Versus -

U.O.I. & Ors.

REJOINDER TO THE WRITTEN STATEMENT FILED BY THE
RESPONDENTS

The applicant abovenamed begs to state as follows :

1. That the applicant has gone through the copy of the Written Statement filed by the respondents and have understood the contents thereof. Save and except the statements which are specifically admitted hereinbelow, other statements made in the W.S. are categorically denied by the applicant. Further the statements which are not borne on records are also denied.
2. That the statements made in paragraph 1 of the W.S. while denying the contentions made by the respondents the applicant begs to state that he was engaged as a casual Typist with effect from 11.2.93 by the competent authority against the sanctioned post. All the duties of a Typist were entrusted to him and he had been performing his duties satisfactorily. He always attended the office regularly and kept on performing his duties to the best of his ability. He was enjoying the status of full time Typist from the very beginning.

The mode of payment of salary was by ACG-17 per month which is one of the prescribed procedure for payment of monthly wages to casual workers.

Thus it is stated that the statements made by the respondents are not true. The applicant has failed to understand as to what the respondents have meant by the words 'hand receipt'. It is also denied that ~~now~~ his appointment was contractual. He was a casual employee like any other casual employees in any other departments.

3. That with regard to the statements made in paragraph 2 of the W.S., the applicant states that the Hon'ble Tribunal has got jurisdiction to entertain the O.A. filed by the applicant. The applicant craves leave of the Hon'ble Tribunal to refer to the various provisions of the law in support of his claim. At the same time, the respondents are called upon to substantiate their claim that the O.A. is not maintainable.

4. That with regard to the statements made in paragraphs 3 and 4 of the W.S., the applicant reiterates and reaffirms the statements made in the O.A.

5. That with regard to the statements made in paragraph 5 of the W.S. it is stated that at the time of creation of the Assam Telecom Circle in 1992, there were sanctioned posts of Typist and the said posts were sanctioned by the Directorate, New Delhi along with other posts. Thus there being requirement of staff, the applicant was appointed as a casual typist by the competent authority. It will be pertinent to

ment ion here that in all such newly created Telecom Circles, casual typists and other such casual employees have been appointed and some of them have also been granted temporary status. As pointed out above, the payment of salary was made through ACG-17, a prescribed departmental form for payment to casual workers. It will be further be pertinent to mention here that other casual employees engaged prior to and after the applicant are still working in the office of the Superintending Engineer, Telecom Civil Circle, Guwahati. Thus there is no earthly reason as to why the applicant should not be continued in his service.

It is unfortunate that the respondents instead of being a model employer have gone to the extent of making an incorrect statement to the effect that the services of the applicant were utilised ~~xxx~~ towards ~~exaggeration~~ of typing works as per the requirements of the office. Such a statement is wholly incorrect in as much as his services were utilised like any other casual employees and he had to remain in the office throughout the duty hours performing his duties. In this connection the applicant craves leave of the Hon'ble Tribunal to direct the respondents to produce the relevant records. It is also denied that the payment of salary was made to him not on monthly basis but on the basis of the works done by him. Further the applicant states that merely because he was issued no any appointment letter, it does not mean that his services were on contract basis or that he was not a casual employee. As has been seen that it is the

usual practice not to give any appointment letter to the casual employees. However, as will be evident from the Annexures-in the O.A., the then competent authority as a recognition to his services urged for regularisation of his services. The stand of the respondents cannot be allowed to be changed with the change of the competent authority. The earlier competent authority duly recognised him as a casual employee. The respondents cannot go on taking new stand than the earlier one with the change of incumbent. The Hon'ble Tribunal would surely look into this aspect of the matter. It is emphatically stated that the payments are made on monthly basis as per DOT's guidelines vide letter No. 269-33/90-STN dated 4.12.90.

A copy of the said letter dated 4.12.90

is annexed herewith as ANNEXURE-1 which include the copy of the letter dated 23.2.88.

In the above context, the grant of temporary status scheme may also be referred to. As regards pay, it is stated that the payments were made to the applicant to the equivalent pay of the Typist in the minimum of pay scale of Rs. ~~1200/-~~^{950/-} plus D.A. on monthly basis. Further, the applicant was also paid Rs. 100/- as interim relief with effect from 16.9.93 which is admissible to regular staff as well as casual workers in terms of letter No. 490/4/2093-Estt(C) dated 9.3.94. Further the applicant has been paid arrears of D.A. as and when Central Government granted additional D.A. to its regular employees. This fact can easily be ascertained from the Accounts Officer, office of the ~~Chinmaya~~ Executive

- 5 -

Engineer, Telecom Civil Circle, Guwahati who is the distributing Officer for the staff of Superintending Engineer, Telecom Civil Circle.

Above facts clearly prove that the applicant was a casual ~~exact~~ typist with monthly wages and that he was not engaged on contract basis as has been stated by the respondents incorrectly and baselessly. As per the departmental guidelines, he is also entitled to confer the temporary status and thereafter his case is to be considered for regularisation against the available vacancies. Instructions are available from the Directorate that so far as regularisation is concerned, the casual workers should be regularised first and then only outsiders can be appointed.

A copy of the letter dated 9.3.94 is annexed herewith as ANNEXURE 2.

6. That with regard to the statements made in paragraph 6 of the W.S., the applicant states that there are posts of Typist which is interchangeable to that of Telecom Assistants and the applicant has got a right to be continued in the said post till such time he is regularly selected through the normal recruitment process. However, the representation of the casual labourers working in the unit was forwarded urging for his regularisation of service alongwith others and the stand of the respondents that the same was forwarded as a routine manner is not tenable.

- 6 -

7. That with regard to the statements made in paragraph 7 of the W.S., the applicant reiterates and reaffirms the statements made in the O.A.
8. That with regard to the statements made in paragraphs 8 and 9 of the W.S. while reiterating and reaffirming the statements made hereinabove, the applicant states that by their own statement, the respondents have admitted that there are posts against which the applicant can very well be accommodated.
9. That with regard to the statements made in paragraphs 10 and 11 of the W.S., the applicant denies the correctness of the statements made by the respondents and reiterates and reaffirms the statements made in the O.A.
10. That with regard to the statements made in paragraphs 12 to 19 of the W.S., the applicant denies the correctness of the statements made by the respondents and reiterates and reaffirms the statements made in the O.A. as well as in this rejoinder.
11. That in view of the facts and circumstances stated above, the applicant most respectfully submits that it is a fit case for appropriate direction by this Hon'ble Tribunal towards continuance of his services as before till regularisation of his service through due process of law.

Verification....

- 7 -

VERIFICATION

I, Md. Fazar Ali, the applicant in O.A. No. 107 of 1995, do hereby solemnly verify and state that the statements made in the accompanying rejoinder are true to my knowledge and belief and I have not suppressed any material facts.

And I sign this verification on this the day of September 1995 at Guwahati.

Md. Fazar Ali

1A'

ANNEXURE - A

8'

B9-

B-252

1 DEC 1990

No. 269-33/90-STN

Government of India

Ministry of Communications

Department of Telecommunications

STN Section

New Delhi, the 4.12.90

To

All Heads of Telecom. Circles/Telecom. Districts.

C.G.Ms MTNL Delhi/Bombay.

All CGMs Maintenance Regions.

All Heads of Project Circles.

CGMs ALTTC, Ghaziabad/T.T.C, Jabalpur.

All Heads of other Administrative Units.

Subject:- Payment of wages to semi-skilled/skilled casual workers.

It has been brought to the notice of the department by the Staff Unions that semi-skilled/skilled casual employees are not being paid at the rate of regular employees in the corresponding grads. Your attention in this regard is invited to the instruction issued vide this office letter number 10-13/87-Rates dated 23.2.88 (A copy of which is enclosed herewith) vide which all the casual labourers are to be paid wages worked out on the basis of minimum pay in the pay scale of regularly employed officials in the corresponding cadre but without any increment w.e.f. 5.2.86. Such casual labourers will also be entitled to D.A. and A.D.A., if any, on the minimum of the pay scale. These instructions are once again reiterated. You may kindly ensure that the casual workers are paid accordingly.

ALD.G. and

(S.K. SHAWAN)

ASSISTANT DIRECTOR GENERAL (STN)

Copy to:-

S.O. Rates for placing it in file No.10-13/87-Rates.
NCG/CSE/TFS/SEA section of the Department of Telecom.

All Staff Unions/Federation for information.

100 (RK)
12/1
10/1

Shiv.
Bhawna

Copy of letter number 10-13/87-Rates dated 23rd Feb., 1988.

In compliance to Hon'ble Supreme Court of India decision dated October 27, 1987, in Writ Petition No. 373 of 1986 regarding payment of wages to casual labourers at the minimum of pay in the pay scales of the regularly employed workers in the corresponding cadre, but without any increments with effect from the 5th February, 1986, the Directorate of Telecommunications has decided that:-

- (i) all the casual labourers engaged on casual basis are to be paid wages worked out on the basis of the minimum pay in the pay scale of regularly employed workers in the corresponding cadre but without any increment, with effect from 5th Feb., 86. The casual labour will also be entitled to DA and ADA, if other allowances are to be paid.
- (ii) the work 'casual labour' would cover full time casual labour, part-time casual labour and workers engaged on contingency basis. Part-time workers will be paid on pro-rata basis. For the purpose of payment, no distinction should be made whether the casual labourers are being paid wages against Muster Rolls charged to Works or Establishment Bills or from Office Contingencies.
- (iii) the arrears at the enhanced rates are to be paid before 25.2.88 positively.

2. The expenditure involved in the payment of arrears is classifiable in the accounts as Charged Budget Section of this Directorate may be contacted for allotment of funds.

3. This issued with the approval of Finance (Advice-I) U.O. No. 482/88-FA I dated 17.2.88.

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ANNEXURE-B
10/3/93
21 MARCH
Task Force, Guwahati

No.49014/2/93-ESPT.(C)
Government of India
Ministry of Personnel, Public
Grievances and Pensions
Department of Personnel and Training

New Delhi, dt. 9 March, 1994

OFFICE MEMORANDUM

Subject: Grant of temporary status and regularisation of
Casual workers - admissibility of Interim Relief.

.....

The undersigned is directed to refer to Department of Personnel & Training O.M. No. 51016/2/93-Estt.(C) dt. 10th September, 1993 on the subject noted above and to say that references have been received from various Ministries/Departments seeking clarification whether Interim Relief of Rs.100/- p.m. granted to Central Government Employees vide Ministry of Finance, Deptt. of Expenditure O.M. No. 7(26)/E.III/93 dt.d. 27.9.93 would be admissible to casual employees who have been bestowed with temporary status.

2.. The matter has been considered in consultation with Ministry of Finance and it has been decided that the Interim Relief at the rate of Rs.100/- p.m. will be admissible to casual employees with temporary status and also to casual employees who are entitled to daily wages with reference to minimum of the pay scale for corresponding regular Group 'D' officials including C.A., M.A. and SCA or pay plus DA. The casual employee is entitled to daily wages not linked to minimum of the pay scale plus DA for corresponding regular Group 'D' employees or casual workers/contingent employees engaged on part-time basis shall not be entitled to Interim Relief.

3. The above decision is effective from 16.9.1993.

Sd/-

(V. NATARAJAN)
Secretary to the Govt. of India

To

All Ministries/Departments/Offices of the Govt. of India as per the standard list. etc. etc.

No. 7(26)/E.III/93-D.E. 22.3.94

(c/c) forwarded to all Wing Comms, DEs, IP, AD, CDOs, DCs, Army Comms of IP Region for information and information.

1. 22/3/94
राज्यकाल अधिकारी (क्रासिन)
Assistant Engineer (Mech.)
प्राधिकारी क्रासिन
O/o the C. I. D. 781603

AAC (Gf)
Allan
Ranjan

Government of India
Department of Telecommunications
Sanchay Bhawan, New Delhi

No. 5-3/93-PAT

DATED: 16.3.1994

To

All Heads of Telecom. Circles/
All Heads of Telephone Districts/
All Heads of other Administrative Offices/
M.T.N.L., New Delhi/Bombay /
V.S.N.L. New Delhi/Bombay/

Subject: Grant of temporary status and regularisation of
Casual workers- admissibility of Interim Relief.

Sir,

I am directed to forward herewith a copy of O.M. No.
49014/2/93-ESTT(C) dt. 9.3.1994 received from the Ministry
of Personnel, Public Grievances and Pensions, Department of
Personnel and Training, New Delhi on the subject cited above
for information/guidance and necessary action.

Yours faithfully,

S.D. SHARMA
(S.D. SHARMA)
SECTION OFFICER(PAT)

Copy forwarded to :

1. All D.GOs/Directors
2. All A.O.G.
3. All I.A./I.I./I.I.I/I.I.I/IV/ Pa-Cor/ Cash/ Genl.I/II/
4. All Accountants/ All Rates & Costing/SAC/SR/STH-I/II/
5. All Paymasters/
6. Pay Accounts Officer
7. RTO (7) Guard file

S.D. SHARMA
(S.D. SHARMA)
S.O. (PAT)