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5

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 302/96

R.A/C.P No.

E.P/M.A No.

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16. Counter Reply.

SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

OA No. 302 196

A1 Telecom Employees Union, G.D. . . . Applicant(s)
-Versus-

Union N. Dandia & Ors. Respondent(s)

Mr. B.K. Sarma, D Bhattacharya . . . Advocates for Applicant(s)
S. Sarma,

Mr. A.C. Choudhury, A.C.S. . . . Advocates for Respondent(s)

----- Office Notes ----- 8 Date ----- Courts' Orders -----

This application is in
form and within time.
C. F. of Rs. 50/-
deposited vide
IPO No 444977
Dated 3.1.96

7.1.97

Learned counsel Mr B.K. Sharma for
the applicant. Learned Addl. C.G.S.C.
A.K. Choudhury for the respondents.

Adjourned for admission on 9.1.97

Sarma
By Registrar. 2.1.97 nkm

9.1.97

Mr S.Sarma for the applicant
None for the respondents.

Heard Mr. Sarma for admission
Permission under Rule 4(5)(b) of
the Central Administrative(Proce-
dure) Rules 1987 is granted as
conditions mentioned in the afore-
said rule are fulfilled.

Perused the contents of the
application and the relief sought.
The application is admitted. Iss-
notice on the respondents by reg-
istered post.

List for written statement
and further orders on 21.2.97.

by
Member

8-1-97

*Deficiency in the
OA removed as prayed by
Advocate in application*

15.1.97

*Requisite receipt
on 15.1.97 issued to
the co-accused partner
vide D No. 254 dt. 20.1.97*

12-2-97

*Notice duly served
on Respondant No-2 & 4*

pg

*W
9/1*

20.2.97

*1) No memo of appearance filed.
2) No W/S has been submitted.*

(2)

CA 302/76

21-2-97

Mr. B.K. Sharma counsel for the applicant is present. ~~Mr. B.K.~~ Written statement has not been submitted.

List for written statement and further order on 14-3-97.


Vice-Chairman

4-3-97

lm

N^o 513

14.3.97

On the prayer of Mr. A.K. Choudhury, Addl. C.G.S.C. 3 weeks time is granted for filing written statement.

List on 4.4.97 for written statement and further orders.


Vice-Chairman

13-3-97

4-4-97

Written statement has been filed. Case is ready for hearing.

List for hearing on 16-5-96.


Vice-Chairman

Notice duly served on R. No-2, 3 & 4. Written statement has not been submitted.

pg 13.3

pg

7/13

7/14

31-3-97

Memo of appearance filed for A.K. Choudhury, Addl. C.G.S.C. 16.5.97.

Left over. List on 27.6.97 for hearing.


Vice-Chairman

Notice duly served on R. 2, 3 & 4.

Written statement has not been filed.

pg

20/5

27.6.97

Mr. A.K. Choudhury, learned Addl. C.G.S.C. prays for adjournment as he needs some instructions in the matter. Mr. B.K. Sharma, learned counsel for the applicant has no objection. Accordingly this case is adjourned till 1.8.97 for hearing.


Vice-Chairman

11-4-97

Written statement filed on behalf of the Respondant. No-1, 2, 3 & 4. at page-23 to 35.

nkm

20/6

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QA/TA/CE/BA/MP No. 302/1996

OFFICE NOTE	DATE	ORDER
W/S. and Repairs has been b'ld.	<u>1.8.97</u>	List on 6.8.97. By order.
W/S. and Repairs has been b'ld.	<u>6.8.97</u>	Adjourned to 8.8.97. By order.
W/S. and Repairs has been b'ld.	8.8.97	Adjourned to 11.8.97. By order.
W/S. and Repairs has been b'ld.	11.8.97	Pass over for the day. By order.
W/S. and Repairs has been b'ld.	12.8.97	Pass over for the day. By order.

OFFICE NOTE

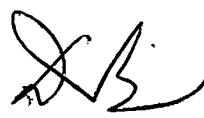
DATE

ORDER

13.8.97

Heard counsel of both sides. Hearing concluded. Judgment delivered in open Court, kept in separate sheets.

Application is allowed in terms of the order. No order as to costs.



Vice-Chairman

25.3.98

Copy of the Judgment has been sent to the D/sec. for issuing the same to the parties through Regd. Mail A.D. etc.

pg

24/3/98

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI-5.

O.A.No. 299 of 1996 and 302/96.

13-8-1997.

DATE OF DECISION.....

All India Telecom Employees Union

(PETITIONER(S))

S/Shri B.K.Sharma, S.Sarma

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors.

RESPONDENT(S)

Shri A.K.Choudhury, Addl.C.G.S.C

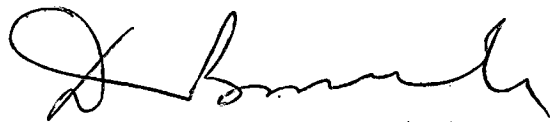
ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE

THE HON'BLE JUSTICE SHRI D.N.BARUAH, VICE CHAIRMAN.

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman.



X

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 & another

. . . 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 & another

. . . Applicants

- Versus -

Union of India & Ors.

. . . Respondents.

Advocate for the applicants : S/Shri B.K.Sharma
S.Sarma.

Advocate for the respondents: Shri A.K.Choudhury,
Addl.C.G.S.C.

O R D E R

BARUAH J.(V.C)

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

O.A.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 Upen 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.299/96 represents the interest of the casual labourers referred to in Annexure-A to the Original Application and the applicant No.2 is one of such casual labourers mentioned in Annexure-A. Their grievances are :

They are working as casual labourers in the department of Telecom under Ministry of Communications. They are similarly situated with the casual labourers working in the 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 benefit 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 applicant Unions. The applicants state that pursuant to the judgment of the Apex Court in Daily Rated Casual Labourers employed under P&T Department vs. Union of India & Ors. reported in (1988) 1 SCC 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 Telecommunications before the apex Court praying for direction 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 Communications prepared a scheme known as "Casual Labourers (Grant of Temporary Status and Regularisation Scheme" on 7.11.1989. 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 17.3.1993 certain clarification was issued in respect of the scheme in which it had been stipulated that the benefit 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 Government of India issued a letter dated 1.11.1995 conferring the benefit of temporary status to the casual labourers. The present applicants being employees under the Telecom Department under the Ministry of Communications 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 yet been disposed of. Hence the present applications.

B

3. O.A.299/96 is also of similar facts. The grievance 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 benefit to the applicants is unfair and unreasonable. Mr A.K.Choudhury, learned Addl.C.G.S.C for the 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 JCM 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 in the Postal Department as per Annexure-3 (in O.A. 302/96) and Annexure-4 (in O.A.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.


(D.N.BARUAH)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH

3 DEC 1996

4043

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

Title of the Case : O.A. No. 302 of 1996

All India Telecom Employees Union
Line Staff and Group "D" Assam Circle,
Guwahati & Another

Applicants

-Versus-

Union of India & Others

Respondents

I N D E X

Sl.No. Particulars of the documents

Page Nos.

1. Application

1 to 12

2. Verification

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3. Annexure-1

13, 14

4. Annexure-2

15 to 19

5. Annexure-3

20, 21

6. Annexure-4

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For use in Tribunal's Office :

Date of filing : 81.12.96

Registration No. : 00302/96

REGISTRAR

Copy sent to
Mr. A. K. Chowdhury
Addl. C.G.S.C.
Assam Govt. Secy.

7. D. W/S

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

GUWAHATI

BETWEEN

1. All India Telecom Employees Union
Line Staff and Group "D"
Assam Circle, Guwahati represented
by the Circle Secretary Shri J.N. Mishra.
2. Shri Upen Pradhan,
Casual Labourer in the office
of the Divisional Engineer, OFC,
Chenikuthi, Guwahati-3

Applicants

AND

1. The Union of India,
represented by the Secretary,
Ministry of Communication, Govt. of India,
New Delhi.
2. The Director General,
Department of Telecommunication,
New Delhi.
3. The Chairman, Telecom Commission,
New Delhi-110001

4. The Chief General Manager Telecom,
Assam Telecom Circle, Jorhat,
Guwahati-7.

Respondents

DETAILS OF APPLICATION

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

The instant application is not directed against any particular order but has been made for appropriate direction of this Hon'ble Tribunal to the respondents to extend the similar benefits and treatment to the casual labourers in the Department of Telecommunication with temporary status at par with the casual labourers of the Department of Posts.

✓

✓

12
and
order
given
by
the
court

2. JURISDICTION OF THE TRIBUNAL :

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

3. LIMITATION :

The applicant further declares that the instant application has been filed within the limitation period prescribed under Section 21 of the Administration Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 The applicant No. 1 is the Circle Secretary of All India Telecom Employees Union Line Staff and Group-D, Assam Telecom Circle, Guwahati. The Union represents the interest of casual labourers working in different offices under the Assam Circle. The casual labourers on whose behalf, the instant application has been filed are all members of the Union. The applicant No. 2 is the casual labourer presently he is working as casual labourer in the office of the Divisional Engineer, OFC, Chenikuthi, Guwahati. He is similarly situated like that of other casual labourers on whose behalf the instant application has been filed. Accordingly, there is same cause of action and reliefs sought for are also same. Thus the instant application may be permitted to be moved under Rule 5(4)(2) of the C.A.T. (Procedure) Rules, 1987.

4.2 That the casual labourers whose interest are being represented in the instant case are all temporary status

holder under the relevant scheme and they are continuing in their services in different offices of the Department of Telecom under Assam circle.

4.3 That pursuant to a judgment delivered in respect of casual labourer in the Department of Posts the casual labourers working in the Department of Telecommunication had approached the Hon'ble Supreme Court for similar direction as was rendered in respect of casual labourers of the Department of Posts. The Hon'ble Supreme Court acting on several writ petitions issued certain directions for the casual labourers in the department of Telecommunication in the same line as that of the judgment delivered in respect of the casual labourers of the Department of Posts. It will be pertinent to mention here that both the Departments i.e. the Department of Posts and the Department of Telecommunication fall under the same Ministry i.e. the Ministry of Communication.

A copy of the said Judgment delivered in respect of the casual labourers is annexed hereto as ANNEXURE-1.

4.4 That pursuant to the aforesaid Judgment, the Government of India, Ministry of Communication has prepared a scheme under the name and style "Casual Labourer (Grant of Temporary Status and Regularisation) Scheme" and the same was communicated vide letter No. 269-10/89-STN dated 7.11.89.

A copy of the said letter dated 7.11.89 together with scheme is annexed hereto as ANNEXURE-2.

4.5 That as per the said Scheme, certain benefits have been granted to the casual labourers such as confirmation of temporary status, wages and daily rates with reference to the minimum pay scale for regular Group D officials including D.A., H.R.A. and C.C.A. etc.

4.6 That the aforesaid scheme was prepared pursuant to the aforesaid Judgment of the Hon'ble Supreme Court. Similar Judgment was delivered in respect of the casual labourers of the Department of Posts and in their case also scheme was prepared for grant of temporary status and other benefits. However, in respect of the casual labourers working in the Department of Posts, the Government of India vide their letter No. 66-9/91-SPB-1 dated 30.11.92 in reference to the scheme of 1991 prevalent for the Department of Posts and also in reference to the Judgment of the Hon'ble Supreme Court delivered in the case of the casual labourers of the Department of Posts further direction has been issued in respect of the benefits of the casual labourers. As per the said letter, the following benefits have been granted to the casual labourers :

- (i) The casual labourers be treated at par with the temporary Group D employees with effect from the date when they complete three years service in the newly acquired temporary status as per the scheme.
- (ii) From that date they will be entitled to benefits admissible to temporary Group-D employees such as (a) all kinds of leave admissible to temporary employees


(b) Holiday admissible to regular employees (c) counting of service for the purpose of pension and terminal benefits as in the case of temporary employees appointed on regular basis for post temporary employees who are given temporary status and who complete 3 years of service in that status while giving them pension and retirement benefits after their regularisation (d) Central Government employees Insurance Scheme, (e) G.P.F. (f) Medical Aid, (h) L.T.C. (i) All advance admissible given to temporary Group-D employees (j) Bonus.

A copy of the said letter dated 30.11.92 conveying the benefits contained therein is annexed hereto as ANNEXURE-3.

4.7 That the applicants state that the casual labourers working in the Department of Telecommunication are similarly situated with that of the casual labourers working the department of Posts. In both the cases, relevant scheme was prepared as per the direction of the Hon'ble Supreme Court and the Hon'ble Supreme Court delivered their Judgment in respect of the casual labourers of the Department of telecommunication following the judgment delivered in respect of the casual labourers of the Department of Posts. As already stated above, both the Departments are under the same Ministry i.e. the Ministry of Communication. There is apparent discrimination in respect of both the sets of casual labourers though working under the same Ministry. The casual labourers working in the Department of Posts on

attaining the temporary status are granted much more benefits as enumerated above than the casual labourers of the Department of Telecommunication. Similar benefits are required to be extended to the casual labourers of the Department of Telecommunication having regard to the fact that both the Departments i.e. the Department of Telecommunication and the Department of Posts are under the same Ministry and basic foundation of the scheme for both the Departments are Supreme Court's Judgment referred to above. If the casual labourers of the Department of Posts can be extended with the benefits as enumerated above based on the Supreme Court's Judgment, there is no earthly reason as to why the casual labourers of the Department of Telecommunication should not be extended with the similar benefits.

4.8 That the applicant No. 1 in view of the above discrimination in respect of the casual labourers working under the Telecommunication Department, Assam Circle made a representation to the Chairman, Telecom Commission, New Delhi vide its letter No. ASM/LS/CM/95 dated 29.12.95. In the said representation, apart from other grievances it was pointed out that the Director General, Posts has issued order in respect of the casual labourers of the Department of Posts that they, on completion of three years of service as temporary status Mazdoor will be treated as temporary Group-D staff. Thus it was contended in their representation that the benefits which have been enjoyed by the temporary status Mazdoor in Postal Wing should also be extended to the casual labourers working in the Telecom Wing like that of the Postal Wing.



A copy of the said representation dated 29.12.95 is annexed hereto as ANNEXURE-4.

4.9 That the applicants state that inspite of the aforesaid representation and many other representations both oral and in writing, the respondents are sitting over the matter and have not done anything towards redressal of the grievances of the casual labourers working in the Department of Telecommunication, Assam Circle. This has resulted in discrimination in violation of Articles 14 and 16 of the Constitution of India. The Government of India being a model employer cannot make to different sets of rules arising out of same Judgment in respect of two different wings under it although under the same Ministry. In both the cases, certain benefits were extended in preparation of a scheme pursuant to the judgment of the Hon'ble Supreme Court. However, in respect of casual labourers working in the Department of Posts certain more benefits have been extended and they have been virtually treated as Group-D employees under the Annexure-3 letter dated 30.11.92. The casual labourers whom the present applicants represent in this O.A. being similarly situated are required to be extended with same benefits as have been extended by the said Annexure-3 letter dated 30.11.92 in respect of the casual labourers of the Department of Posts.

4.10 That the denial of the aforesaid benefits to the casual labourers of the Department of Telecommunication has resulted in discrimination and there is gross violation of the principles innunciated in Articles 14 and 16 of the

Constitution of India. There is no intelligible differentia so as to deprive the members of the applicant union who are working in different offices of the Telecommunication under the Assam Circle as casual labourers.

4.11 That the instant application has been filed for appropriate direction by this Hon'ble Tribunal towards redressal of the grievances of the casual labourers whom the applicant union represents in this O.A. The members of the applicant union being similarly circumstanced with that of the casual labourers working in the Department of Posts, they are entitled to benefits as have been extended to the said casual labourers. The denial of the same to them has resulted in hostile discrimination and hence this O.A. for appropriate relief.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that the denial of the similar benefits to the casual labourers whom the applicant union represents in the instant case is prima facie illegal and arbitrary.

5.2 For that the benefits which the casual labourers working in the Department of Posts are deriving having been based on the Supreme Court's Judgment and the similar judgment relying on the said judgment having been delivered in respect of the casual labourers of the Department of Telecommunication and both the Departments under the same Ministry there is no earthly reason as to why the said benefits should not be extended to the members of the applicant.

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5.3 For that the Annexure-3 letter which has been issued in respect of the Department of Posts is admittedly pursuant to the judgment in respect of the casual labourers and the similar judgment having been rendered in respect of the casual labourers of the Department of Telecommunication, there is no earthly reason as to why the Government of India should not extend similar benefits to the members of the Applicant union.

5.4 For that it is the settled principle of law that when some principles have been laid down in any Judgment extending certain benefits to certain set of employees, the said benefits are required to be extended to the similarly situated employees without requiring them to approach the Court again. The Central Government should set an example of a model employer by extending the said benefits to the members of the applicant union.

5.5 For that the discrimination meted out to the members of the applicant is not based on any reasonable intelligible differentia and accordingly the same is violative of Articles 14 and 16 of the Constitution of India.

5.6 For that if the benefits which have been given to the casual labourers of the Department of Posts can be extended based on the Supreme Court's judgment there is no earthly reasons as to why the said benefits should not be extended to the casual labourers of the Department of Telecommunication they having been similarly situated with that of the casual labourers of the Department of Posts.

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5.7 For that both the sets of the casual labourers working in the Department of 'Posts and Department of Telecommunication working in the same environment and condition and they belong to the same Ministry accordingly, the benefits extended to one Wing of Ministry should also be extended to other Wing of the Ministry i.e. the Telecom Wing, otherwise, same will result in hostile discrimination.

5.8 For that in any view of the matter, the action/inaction on the part of the respondents are not sustainable and appropriate direction is required to be given in the instant case.

6. DETAILS OF REMEDIES EXHAUSTED :

That the applicant declares that they have exhausted all the remedies available to them and there is no alternative remedy available to them.

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

The applicants further declare that they have not previously filed any application, writ petition or suit regarding the grievances in respect of which this application is made before any 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.

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8. RELIEFS SOUGHT :

Under the facts and circumstances stated above, the applicants most respectfully pray that the instant application be admitted, records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of the records, be pleased to grant the following reliefs to the applicant :

- (i) To direct the respondents to extend similar benefits as has been extended to the casual labourers of the Department of Posts vide Annexure-3 to the members of the applicants working as casual labourers with temporary status in different offices under the Assam Telecom Circle. The aforesaid benefits be extended to the aforesaid members of the applicant union with retrospective effect i.e. with effect from the date from which the casual labourers of the Department of Posts have been extended with the said benefits.
- (ii) Cost of the application
- (iii) any other benefit or benefits to which the aforesaid members of the applicant union may be extended to and as may be deemed fit and proper.

9. INTERIM ORDER PRAYED :

Pending disposal of this application, the applicants pray for an interim direction to the Respondents to dispose of their representation submitted vide Annexure-4 dated 29.12.95.

10.

The application is filed through Advocate.

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

11.1 I.P.O. No. : // 444977

11.2 Date : 31.12.96

11.3 Payable at : Guwahati.

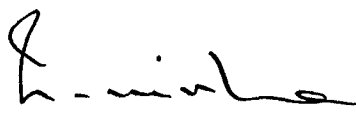
12. LIST OF ENCLOSURES :

As stated in the Index.

V E R I F I C A T I O N

I, J.N. Mishra, Circle Secretary, All India Telecom Employees Union, Line Staff and Group "D", Assam Telecom Circle, Guwahati, do hereby verify and state that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice and I have not suppressed any material facts. I am also duly authorised by the applicant No. 2 to sign this verification on his behalf.

And I sign this verification on this the 31st day of ~~December~~ 1996.


(J.N. MISHRA)

13

24

Absorption of Casual Labours
Supreme Court directive Department of Telecom to take back
all Casual Mazdoors who have been discharged after 30.3.1985

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 Article 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 petitioners though that was rendered in the case of casual employees of Posts and Telegraphs Department. It is also contended by the counsel that the decision rendered in that case also related 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.

By the said Judgment this Court said :

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

attached

31.12.96

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Annex. 1 contd.

We find the though in paragraph 3 of the writ petition, it has been asserted by the petitioners that they have been working for 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 principle, 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 for 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 fact 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 Misra) J.

Sd/-
(Kuldeep Singh) J.

New Delhi
April 17, 1990.

Q. Misra
[Signature]
31.12.96

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ANNEXURE-2

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 labourer 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 dt. 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 cases 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.

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

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 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 an enquiry after giving him reasonable opportunity, his services will be dispensed with. They will not be entitled to the benefit 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 details within the framing of the Scheme.

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ANNEUXRE

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 the Department of Telecommunications, 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 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 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 casual labour for the purposes of the age limits prescribed for appointment to the Group D cadre, if required. Outside 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 Gr. 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 of at least 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 day week). Such casual labourers will be designated as Temporary Mazdoor.

Amul D
31.12.86

- 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 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 Gr. D 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 for a regular Gr. 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 at least 240 days (206 days in administrative offices observing 5 days week) in the year.
 - iii) Leave entitlement will be on a pre-rata basis, one day for every 10 days of week. Casual leave or any other kind of 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 encashment 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 benefits after their regularisation.
 - v) After rendering three years continuous service on attainment of temporary status, the casual labourers would be treated on par with temporary Gr. 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 Gr. D employees, provided they furnish two sureties from permanent Govt. servants of this Department.
 - vi) Until they are regularised, they would be entitled to Productivity Linked Bonus only at rates as applicable to casual labour.

Amended
31/12-76

Annex. 2 contd.

4. The scheme furnished in the Annexure has the concurrence of Member (Finance) of the Telecom Commission vide No. SMF/78/89 dated 27.9.89.

5. Necessary instructions for the expeditious implementation of the Scheme may kindly be issued and payment of 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, Telecom Commission

Member (S)/Adviser (HRD), GM (Est), 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)

Alk
[Signature]
31.12.89

GOVT. ORDERSRegularisation of Casual labourers :

No. 66-9/91-SPB-1 New Delhi dated the 30 Nov. 1992 .

Vide this office circular letter No. 45-95/87-SPB-I dated 12.4.1991, a scheme for giving temporary status to casual labourers fulfilling certain conditions was circulated .

In their judgement dated 29.11.1989, the Hon'ble Supreme Court have held that after rendering three years of continuous service with temporary status , the casual labourers shall be treated at par with temporary Group 'D' employees of the Department of Posts and would thereby be entitled to such benefits as are admissible to Group D employees on regular basis .

In compliance with the above said directive of the Hon'ble Supreme Court it has been decided that the Casual labourers of this Department conferred with temporary status as per the scheme circulated in the above said circular No. 45-95/87- SPB- I dated 12.4.1991 be treated at par with temporary Group 'D' employees with effect from date they complete three years of service in the newly acquired temporary status as per the above said scheme. From that date they will be entitled to benefits admissible to temporary Group 'D' employees such as :

1. All kinds of leave admissible to temporary employees.
2. Holidays as admissible to regular employees.
3. Counting of service for the purpose of pension and terminal benefits as in the case of temporary employees appointed on regular basis for those temporary employees who are given temporary status and who complete 3 years of service in that status while granting them pension and retirement benefits after their regularisation .
4. Central Government Employees Insurance Scheme .

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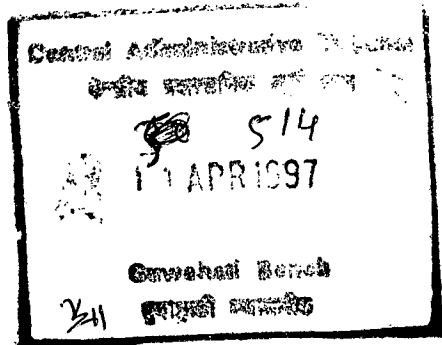
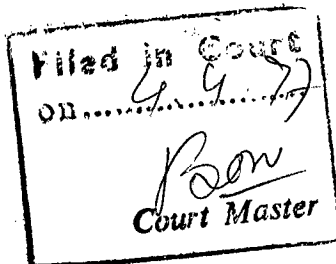
- 2 -

ANNEXURE - 3 (Contd..)

5. G.P.F.
6. Medical Aid.
7. L.T.C.
8. All advances admissible to temporary Group 'D' employees .
9. Bonus .

Further action may be taken accordingly and proper service record of such employees may also be maintained .

Handwritten signature
31.12.81



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Filed by:-
H.K. Choudhury
31-3-97
Addl. Central Govt.
Standing Counsel

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH
GUWAHATI

In the matter of :-

O.A. No.302 of 1996

All India Telecom Employees Union
Line Staff & Group 'D' Assam Circle
Guwahati & others

.... Applicants

-Versus-

Union of India & others

.... Respondents

Written statement for and on behalf of the
Respondents Nos.1,2,3 & 4.

I, B. Dasgupta, Asstt. Director (Legal) Office
of the Chief General Manager, Telecom, Assam Circle
Guwahati, do hereby solemnly affirm and say as
follows :-

1) That I am the Assistant Director (Legal) Office
of the Chief General Manager, Telecom, Assam Circle, Guwahati
and am acquainted with the facts and circumstances of the case.
I have gone through a copy of the application and have under-
stood the contents thereof. Save and except whatever is
specifically admitted in this written statement the other
contentions and statements made in the application may be
deemed to have been denied. I am authorised to file this
written statement on behalf of ~~the~~ all the respondents.

2) That with reference to paragraph 1 of the application
the Respondents beg to state that this application is not
maintainable. The Administrative Tribunals Act, 1985, section
19, provides as follows - "(1) Subject to the other provisions
of this Act a person aggrieved by any ORDER pertaining to any
matter within the jurisdiction of a Tribunal may make an

Contd.p/2-

*Received copy
31-3-97*
Asstt. Director Telecom (Legal)
O/O the C. G. M. Telecom
Assam Circle, Guwahati-781007.

23 22 33
ANNEXURE - 4

ALL INDIA TELECOM EMPLOYEES UNION
LINE STAFF & GROUP - D. ASSAM
CIRCLE BRANCH : P&T HOUSE
DR J.C. DAS ROAD : PANBAZAR.
GUWAHATI- 781001.

No. ASM/LS/CM/95

Dated Guwahati the 29th December '95

To,

The Chairman,
Telecom Commission,
New Delhi - 110001.

(Through Chief General Manager, Assam Telecom Circle)

Sub :- Casual Labourers (Grant of Temporary Status and ~~Regular~~ Regularisation) Scheme .

Ref :- My letter dated 6-10-95.

Sir,

I am to intimate that the Department of post issued a Circular vide his letter No. 66-52/92-SPB-I dtd. 1-11-95 (Copyenclosed) for declaration of Temporary Status Mazdoor engaged upto 10-9-93 as per Verdict of CAT Ernakulam But no such order issued in respect of the same from Telecom. Wings.

Further, you are aware that the D.G. Post issued a order that these who have been Completed 3(Three) years of service as Temporary Status Mazdoors will be treated as Temporary Group- D staff . Hence, the benefits of Group-D, has been enjoying by the Temporary Status Mazdoors in Postal Wing but sorry to inform you that these facilities not yet been implemented in Telecom, Wing like Postal Wing.

In this regard, I would like to mention here that the Telecom. Directorate has been asked a statement from C.G.M.T. Assam Circle for Casual Mazdoors working in the Circle upto Decembor, 1994. The same statement has since been forwarded to the Telecom. Directorate by the CGMT Assam Circle, Guwahati.

But there is no instructions issued from the Directorate to declare the Temporary Status Mazdoor working upto Dec'94.

I also pointed out that there are more that 2000 (Two thousand) Casual Mazdoors awaiting declaration of Temporary Status Mazdoor in the Assam Telecom Circle .

After 10 am
I would therefore request you kindly to issue necessary instructions to the authority concerned to declare Temporary Status Mazdoor working upto Decembor, 1994 in this Department and arrange to issue a guideline/instructions to the authority concerned to declare the working Casual Mazdoors as Temporary Status Mazdoors.

Thanking You,

Yours faithfully,

Copy to:

Secy.Gen. NPTC ; For N/A.
Gen.Secy,L/S & ;

(J.N. Misra)
Circle Secreta

application to the Tribunal for the redressal of his grievance. It clearly means that an ORDER must be passed by the competent authority and should be in existence which is in any way prejudicial to the applicant. It is admitted in para 1 of the O.A. that the instant application is not directed against any particular order so to say there exist no such order passed in the Department of Telecommunication which is challenged. The Deptt. of Personnel & Training, also observed that there cannot be parity with officials between two Departments namely DOT and DOP and both the Department have got their own policies. Copy of letter No. 271-15/97-STN-II, dtd. 19-2-97 received from Asstt. Director General (STN)/New Delhi enclosed as Annexure-R-1. Hence it is prayed that the OA in the question is not fit case for admission and is liable to be dismissed.

3) That the respondents have no comments to the statements made in paragraph 2 & 3 of the application.

4) That with reference to paragraph 4.1 of the application the respondents beg to state that the applicant No.1 in this para tends to misguide the Hon'ble Tribunal with erroneous twisting of actual fact. In fact the casual labourers engaged in the Department of Telecommunication cannot be members of said union (to which applicant No.1 is Circle Secretary) as per the constitution / by laws of the union. It is prayed that applicant may be directed to produce authentic proof about the claim made in the application. In fact in the letter No.13-85-SRT, dtd.31-5-95 the DOT/New Delhi initiated the process of verification of membership of the service association/unions. In the encloser of said letter the details of employees covered under the category "The Line Staff & Group 'D' Employees" are specifically indicated. A copy of the same is enclosed in Annexure-R-2. As such permission granted by the Hon'ble Tribunal under Section 4(5) (b) of the Central Administrative Tribunal (Procedure) Rules 1987 may not be valid. It is therefore prayed that the said OA may be dismissed straightaway.

5) That with reference to paragraph 4.2 of the application the Respondents beg to state that as no list of the casual labourers are furnished along with the said OA, authenticity of the statement made in the para could not be verified.

Contd.p/

(3)

6) That with reference to paragraph 4.3 of the application the Respondents beg to state that the necessary direction made in the Apex Court judgment mentioned in the para is implemented by the DOT.

7) That the Respondents have no comments to the statements made in paragraph 4.4 and 4.5 of the application.

8) That with reference to paragraph 4.6 of the application the Respondents beg to state that it is pointed out in this case that the Annexure-3 as enclosed with the copy of OA No.302 served to the respondent No.4 and mentioned in the para seems to be not authentic on the following ground.

2x (a) The letter contains in the Annexure-3 carries no signature of any of officers whose designations are mentioned.

(b) The Asstt. Director General (STN) is not authorised to issued such letter related to the Department of Post.

(c) In the file No.RECIT-3/10/Part-II maintained by Asstt. Director Telecom (E & R) Office of the Chief General Manager, Telecom, Ulubari, Guwahati-7 no such order was forwarded to any subordinate offices at all.

Hence it is prayed that Hon'ble Tribunal may check the same and direct the applicant to produce a certified copy of the letter. It is not known if a any simple mistake is committed by the applicant or some purposeful attempt is made by the applicant to misled the concerned parties in the case. If the document (Annexure-3 in O.A. No.302/96) proved as not genuine the OA may be straightaway dismissed and necessary proceedings against the applicant may be initiated.

9) That with reference to paragraph 4.7 of the application the Respondents beg to state that the Department of Personal and Training observed that there cannot be any parity within the 1 labourers engaged between two Departments namely DOT & DOP. Annexure-R may kindly be seen. Hence no parity may be ordered between the casual labourers of both the Departments simply because they are under same Ministry.

Contd.p/4-

Signature
Asstt. Director Telecom (Legal)
O/O the C. G. M. Telecom
Assam Circ. Guwahati-781007.

10) That with reference to paragraph 4.8 of the application the Respondents beg to state that the applicant No.1 being a Circle Secretary of a recognized union is not authorised to represent any case directly to the Chairman, Telecom Commission in his official capacity as per by-law of the union. The Secretary General of CHQ of the staff Unions is only authorised to take up the related matter with Chairman in this case. The necessary Guide line regarding Channel of Communications issued vide DOT / R-3 New Delhi letter No.13-1/85-SR, dated 4-2-87 is given as Annexure-8. Moreover the Staff Unions are permitted to take up the cases related to their enrolled members. It is once again stressed here that the casual labourers can not be enrolled as members of the represented union. In this very point there is a instention on the part of applicant-1 to misguide the Hon'ble Tribunal. Hence entire ~~ag~~ argument put forth in the OA carries no weight at all. The application is liable to be dismissed.

11) That with reference to paragraph 4.9 of the application the Respondents beg to state that the ~~ag~~ argument put forth in this para is not based on any valid ground. It is a well known fact that under Govt. of India, Ministries used to frame rules as per their working environment. It is prayed that the Hon'ble Court not pass any order based on such modalities as not applicable to DOT.

12) That with reference to paragraph 4.10 and 4.11 of the application the Respondents beg to state that it mentioned here that the entire matter relating to the regularisation of casual labourers are being discussed in the JCM level at New Delhi by the CHQ of the represented union for consideration of the Chairman Telecom Commission New Delhi. The matter is across the table and under negotiation. Efforts are on to settle the issue. So at this stage. It is felt not desirable to bring the case under the preview of Hon'ble Tribunal. This if allowed even for once may frustrate the entire process of negotiated settlement through J.C.M. The applicant is not unaware of the above fact as JCM has representation from the CHQ members of the applicant union also. In this process the applicant violated the provision under section 20 (1) of the Administrative Tribunals Act, 1985. Hence the OA is not maintainable and liable to be dismissed.

Contd.p/5-

(5)

- 13) That with reference to paragraph 5.1 to 5.8 of the application the Respondents beg to state that the validity of the grounds mentioned in the paras are not sustainable, in view of the fact the claim is based on a order which is doubtful as ex-plained in earlier paras.
- 14) That with reference to paragraph 6 of the application the Respondents beg to state that the declarisation made by the applicant 1 is not correct as explained above.
- 15) That the Respondents have no comments ~~to the statements made in paragraph 7 of the application.~~
- 16) That with reference to paragraph 8 of the application the Respondents beg to state that no relief is admissible as the applicants have tried to misguide the Hon'ble Tribunal by producing incorrect information and ingenuine office order. The OA it self is not maintainable and liable to be dismissed.
- 17) That with reference to paragraph 9 of the application the Respondents beg to state that the interim order as prayed may not be granted as it will violate the by-law of the recognised staff union as explained in para 4.8 above.
- 18) That the respondents have no comments to the statements made in paragraph 10 to 12 of the application.
- 19) That the applicant is not entitled to any relief sought for in the application and the same is liable to be dismissed with costs.

V E R I F I C A T I O N

I, B. Dasgupta, Asstt. Director (Legal) Office of the Chief General Manager, Telecom, Assam Circle, Guwahati, do hereby declare that the statements made in this written statement are true to my knowledge ~~derived~~ from the records of the case.

I sign this Verification of this the 18 th day of March 1997 at *Guwahati*

DEPONENT

Bidyut Dasgupta

Asstt. Director Telecom (Legal)
O/O the C. G. M. Telecom
Assam Circle, Guwahati-781007.

Annexure R-I

(6)

Annexure - R-1

COURT CASE - 28-

MOST IMMEDIATE

39

Govt. of India
Ministry of Communications
Department of Telecommunications

Sanchar Bhavan,
20-Ashoka Rd.,
New Delhi-110001.

No. 271-15/97-STN-II

Dated: 19.2.97

To:

The Chief General Manager,
Assam Telecom Circle,
GUWAHATI-781007.

Sub: OA No. 302/96 and 279/96 of CAT Guwahati- reg.

Kindly refer to your letter No. STES-21/134 dt. 10.2.97 on the above mentioned subject and I am directed to say that Unions have raised the demand in J.C.M. regarding grant of similar benefits to the temporary status mazdoors of DOT on completion of three years as given by the Deptt. of Posts. This issue is still under the examination in the Directorate. In fact the Deptt. of Posts granted all benefits to their Temporary Status Mazdoors on completion of three years in pursuance of Hon'ble Supreme Court directions in its judgement dt. 29.11.89 in WP No. 1119/1986 to avoid contempt proceedings. There is no such direction from Supreme Court in the case of Temporary Status Mazdoors of Deptt. of Telecom.

2. The Deptt. of Personnel & Trg. also observed that there cannot be any parity within the officials between two Departments namely DOT and DOP and the both the Departments have got their own policies.

3. In the light of above, the case may be defended strongly and effectively on behalf of all the respondents in consultation with the Govt. Standing Counsel as any adverse judgement will affect us badly.

4. The copies of documents as desired vide your letter under reference are enclosed herewith.

5. I am also directed to say that Dy. General Manager (A) may kindly be deputed to Directorate for understanding this case threadbare so as to effectively defend it.

(V.K. GUPTA)

Assistant Director General (STN)

Attended

12/3/97

Asstt. Director Telecom (Legal)
O/O the C. G. M. Telecom
Assam Circle, Guwahati-781007.

- 29 -
7 Annexure R-210
Page - 1

Government of India
Department of Telecommunications
Sanchar Bhavan, New-Delhi-110001.

File No. 13-1/85-SRT

Dated the 31st May, 1995.

To,

All Heads of Circles

Sub :- IMPLEMENTATION OF CCS (RSA) RULES, 1993 - PROCESS FOR
VERIFICATION OF MEMBERSHIP

Ref :- i. Letter No. 13-1/85-SRT dated 6.12.1993
ii. -do- dated 28.2.1994
iii. -do- dated 15.2.1995
iv. No. 2-7/93-TAI dated 08.4.1994

Kindly refer to the above letters wherein it was intimated that the service associations /unions would have to go through a fresh process of recognition under the above rules circulated under reference (i). Accordingly, it has been decided to get the field units to be in readiness for obtaining the membership forms filled.

2. A set of guidelines, is enclosed, have been prepared which could serve as check list to be followed by the Head of Circle, DDO, Controlling Officer/office. The copy of the letter of authorisation marked as Annexure 1 is also enclosed along with the instructions for filling which will have to be given to all the staff members on receipt of instructions from TCHQ.

3. You are requested to go through the instructions to the Heads of Circle carefully and ensure compliance. The entire process is time bound and will have to be completed as per the prescribed time schedule.

Encl: as above.

sd/-
(T.S. KUPPUSWAMY)
DY. DIRECTOR GENERAL (SR)

Attested
brid
Asstt. Director Telecom (Legal)
O/O the C. G. M. Telecom
Assam Circle, Guwahati-781007.

- 36 -

8

R-201
Page - 2

Instructions to DDO

1. The DDO should ensure that he has received the forms from all the controlling officers falling under his jurisdiction and the same are in order.

2. The DDO SHOULD TAKE ACTION TO DEDUCT THE ANNUAL SUBSCRIPTION AMOUNT from the salary of the concerned member, on a monthly basis, as authorised by him and arrange for its remittance to the concerned service union/association.

3. After recovery of the membership fee, the DDO may take ACTION TO COMPILE THE RECOVERY as stipulated under the accounting procedure as outlined under DOT(TA Section) Memo No. 2-7/93-TA1 dated 8.4.94, with amendments if any, and submit the same to Head of his Circle through a confidential letter. The proforma for compilation and submission to the Circle Office is given in item (6) below.

4. The DDO should FORWARD THE ABOVE LIST SO PREPARED to the Head of the Circle through a confidential letter within the time prescribed by the Head of the Circle.

5. The remittance by the DDO, to the Branch Unions should be effected according to the nomination received from the unions for such purposes. Suitable nomination may be had with the nodal officer in the Circle for obtaining these nomination from the union concerned.

6. Proforma of statement to be made by the DDO to the Nodal Office (Head of Circle)

Sl. No.	Category	Total no. of employees in that category	Names of the Association/ union	Membership as per check of system	Remarks
(1)	(2)	(3)	(4)	(5)	(6)

7. The categorisation list enclosed may be consulted for the purpose of filling the above proforma.

Contd to...2/=

Attested.
[Signature]
Asstt. Director Telecom (Legal)
O/O the C. G. M. Telecom
Assam Circle, Guwahati--781007.

LIST OF CATEGORIES CONSTITUTED

Sl.	Name of Category	Details of employees covered
1.	Line Staff & Group 'D' Employees	Line Staff such as linemen, SIs, LIs, Regular Mazdoors & Gr D employees of the Telecom Engg, non industrial Gr D employees of Telecom Factories Telegraph Traffic, Accounts Wings of the Deptt. excluding the Gr D employees working in Circle HQrs offices, Civil Wing & WPC/Monitoring Organisation who are since included in other categorises viz. category Nos. 4, 5 & 7 respectively.
2.	Telecom Gr C employees	All Gr C employees of the Telecom Engineering, Telecom factories (non industrial employees), Telegraph Traffic & the Telecom Accounts Wings excluding Gr C employees working in the Circle HQrs offices, JTOs, JEs (Civil), Gr C employees of the Civil Wing and WPC/Monitoring

Asstt. Dir

but

Asstt. Director Telecom (Legal)
O/O the C. G. M. Telecom
Assam Circle, Guwahati-781007.

INSTRUCTIONS TO HEADS OF CIRCLE

1. The General Secretary of the respective Unions would be instructed by the TCHQ to nominate their representative to coordinate at the Circle level. Such a nomination (only one) when received from the General Secretary may be accepted. The names of General Secretaries will be issued by the TCHQ in due course. Further coordination for obtaining the nomination at all the Branch Unions can be had with this nominee. The nominee may be asked by the Circle to furnish both, to the Circle and the Controlling Officers/Offices, the names of authorised office bearers for signing the forms. This would also include nominations to be made for remittances of the membership subscription to be made by the DDO.
2. The last date for submission of forms is fixed as 14.7.1995. This should be PUBLICISED immediately at the time of issue of forms to staff.
3. He should ensure that the FORMS ARE KEPT READY in sufficient number with each of Controlling officer (not below Group B level) for issue to all the officials.
4. The instructions for issue of the forms along with the FINAL LIST of eligible applicant unions may be given after the FINAL LIST of eligible applicant unions has been communicated by TCHQ by an order. Such order will be issued in June, 1995.
5. The Head of Circle may NOMINATE A JAG LEVEL officer who will be the nodal point of the Circle to coordinate with the Telecom Hqrs. on all matters concerning the membership enrolment and subsequent recognition process.
6. He may ensure the compliance of instructions for the issue and COMPILATION OF THE INFORMATION BY THE CONTROLLING OFFICERS, DDOs concerned and ensure the availability of the consolidated information to Directorate from all the DDOs by 31st July, 1995.
7. The process of filling up the forms and its submission to the Controlling Officer SHOULD BE GOT COMPLETED latest by 14.7.95. The Controlling Officer should consolidate the information as per the forms and supply the same to DDOs by 18.7.95.
8. The Head of Circle may ensure that the recovery of subscription is affected by the DDO from the salary of July, 1995 payable on 31.7.95.
9. If any clarification is required the nodal Officer is Shri B.K.Kapur, Director (SR), TCHQ with Tel Nos. 3716876/3032751.

The nominated Nodal Officer in the Circle may keep in touch with the Nodal Officer in TCHQ from time to time to indicate the progress.

Asst. Dir
Asst. Dir
Asstt. Director Telecom (Legal)
O/O the C. G. M. Telecom
Assam Circle, Guwahati--781007.

10. The Head of the Circle should ensure that having received the membership consolidated information as per Annexure II of the accounting procedure circulated by TA Section of TCHQ is submitted to him by each DDO in his Circle.

11. The information submitted by the DDOs shall be further COMPILED AT CIRCLE LEVEL IN ANNEXURE II of the accounting procedure and SUBMITTED TO TCHQ latest by 11.8.95.

12. The Head of Circle may keep the Circle level applicant unions informed so that the action plan proceeds strictly as per the above schedule. No action point should lag behind the target date in any case.

13. It is suggested that the following activities may be got completed in advance before issue of forms.

i. Preparing adequate number of MULTIPLE COPIES OF THE FORM and the instructions for filling. This can be done centrally or got done by concerned officers whichever may take less time.

ii. PREPARATION OF REGISTER according to the serial number of the form and the name of the applicant, designation, union etc. This will be signed at the time of receipt of forms as acknowledgement. This register will also be reconciled after the receipt of filled in forms from the applicant.

iii. The DDOs can keep the information relating to the STAFF STRENGTH IN EACH CATEGORY in readiness. This information will have to be incorporated at the time of sending the compiled information to the Circle Office.

Attested

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Asstt. Director Telecom (Legal)
O/O the C. G. M. Telecom
Assam Circle, Guwahati-781007.

No.13-1/85-SR

Dated the 4th February, 1997.

Sub :- UNAUTHORISED COMMUNICATIONS FROM UNIONS

It has been found that Union - branches of Circle, Divisions or even sub-divisions, quite often address the communications to the Honourable MOC or senior officers or Honourable MPs or politicians on local affairs of either dispute with management or complaints against the concerned officers; or even criticising Department's policy matters.

2. In this regard the attention is drawn to the rules attached at annexure - 1.

3. The unions are having proper forum for communication i.e. meetings at SSA level, JCM meetings, meetings at circle levels and meetings at All India levels. In addition to that they can communicate through the concerned senior officers at their respective levels through letters as well as personal interviews.

4. It is therefore absolutely not justified nor necessary that unions of any level jump to any level of Government authorities. This is clear cut violation of rules on the subject of Channel of Communication.

5. It is therefore emphasised that these instructions may be brought to the knowledge of all Union office bearers at all levels to maintain the discipline of communication. Also they may be advised that disciplinary action will be initiated against them personally against signatories for violation of these rules.

3dl-

(P P KHARE)
DY. DIRECTOR GENERAL (SR)

To

All CGMs.

Attested

Signature

Asstt. Director Telecom (Legal)
O/O the C. G. M. Telecom
Assam Circle, Guwahati-781007

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Annexure R-3 - 35 -
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ANNEXURE - I

I. CHANNEL OF COMMUNICATIONS

1. Not relevant on the subject.

2. The All India Unions have their branches at Circle, Divisional and local levels. The Central Unions and their branches should correspond directly only with the authorities incharge of the unit they represent; i.e. a local union should correspond only with the local authority, a Divisional Union with the Divisional authority, a Circle Union with the Head of the Circle and the Central Unions with the DG or the Government through the D.G. [Ref: STB-150-19/52-STA dt. 28.10.52].

3. Representations of the Unions are limited to the matters concerning the unit they represent i.e. a Divisional Union should take up matter concerning the Division as a whole, the Circle Union, matters concerning the circle as a whole and the Central Unions matters of All India interest. If a Branch Union is not satisfied with the decision or reply given by its accredited authority, the next higher branch union may take up such matters with its accredited authorities and while doing so, the union should clearly state that the matter was taken up initially with the lower authorities concerned and state the replies or decision received from that authority. If Central Union intends to take up the matter concerning particular circle, it may submit a representation to the Director General but should bring about in the representation the fact that the Circle Branch Union took up the matter with the Head of the Circle and also state the reference of the same. [Ref: STB-150-19/52-STA dt. 28.10.52].

4. No action is to be taken on direct reference from branch unions except when specifically ordered by Minister / Deputy Minister / Chairman, Telecom Board / Member of the Telecom Board. [Ref: -6-2/65-SR dated 3.8.1966].

5. On behalf of Unions / Associations, their General Secretaries or the holders of corresponding office or the President only should normally address the Administration. The Assistant Secretaries / Deputy General Secretaries / wherever specifically authorised by their General Secretaries, may also address communications to the Administration but the reference made by them should contain a clear indication that the same are being made under the authority of the General Secretary concerned. [Ref: 31-1/64-SR dated 5.4.1966].

(Followed by other paras not concerned in present context)

II. The Service Association is formed primarily with the object of promoting the common interest of its member.
(Annexure I (b) - Compilation of Instructions issued vide letter no. 10-12/87-SRT dated 5th May, 1987).

III. All representations by the Service Associations shall be submitted through proper channel, and shall, as a normal prac-

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Assam Circle, Guwahati-781007.

47 tice, be addressed to Secretary or Head of the Department or office.

(Annexure 2 (d) - Compilation of Instructions issued vide letter no.10-12/87-SRT dated 5th May, 1987).

IV. The Service Association shall not do any act or assist in the doing of any act which, if done by a Government servant, would contravene the provisions of rules 8, 9, 11, 12, 16 and 20 of the Central Civil (Conduct) Rules, 1964. (Annexure 2 (e) - Compilation of Instructions issued vide letter no.10-12/87-SRT dated 5th May, 1987).

V. CCS (Conduct) Rules, 1964 - Rule 8, 9, 11, 12, 16 and 20.

Rule 8 : Connection with the press or radio.

Rule 9 : Criticism of the Government:

Rule, 11 : Unauthorised communication of information.

Rule, 12 : Subscription

Rule, 16 : Investment, Lending and Borrowing.

Rule 20 : Convassing of non-official or other outside influence
- No Government servant shall bring or attempt to bring any political or other outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under Government.

are categorically denied. Further, the statements which are not borne on records are also denied.

2. That with regard to the statements made in paragraphs 1, 2 and 3 of the written statement, the applicants categorically deny the contentions made therein. The narrow interpretation which has been sought to be given by the respondents in respect of ORDER is upheld, then in that case, the very object and purpose of establishing the Hon'ble Tribunal will be frustrated. Moreover, the respondents of their own have shown the order dated 19.2.97. As regards the contention that there cannot be parity within the officials between 2 departments, namely, DOT and DOP, it appears that the respondents have given weightage to Annexure 'R/1' order dated 19.2.97 without any application of mind of their own. This is the precise why the instant application has been filed so as to bring parity in the matter of employment and service benefits. 2 Directorates under the same Ministry cannot have 2 different policies. Moreover, when some principles have been laid down by Court of law, same are required to be applied to other such similarly situated employees when all the factors are similarly situated.

3. That with regard to the statements made in paragraph 4 of the written statement, the applicants deny the contentions raised therein and crave leave of

- 3 -

the Hon'ble Tribunal to refer to the relevant provisions of the rules. In this connection, the applicants beg to state that the casual labourers are all members of the applicant no. 1. The respondents ought not to have raised the issue regarding membership of the casual labourers as has been raised in the written statements. There is no bar for casual labourers to become members of the applicant no. 1 under any law and accordingly, they being members of the applicant no. 1, the applicant no. 1 coupled with the applicant no. 2, is very much entitled to prefer the instant O.A. There is no question of re-examining the promotions granted by this Hon'ble Tribunal under Rule 4(5) (b) of the CAT(Procedure) Rules, 1987. The instant O.A. is very much maintainable.

4. That with regard to the statements made in paragraph 5 of the written statement, the applicants while denying the contentions made therein, reiterate and reaffirm the statements made here-in-above.

5. That with regard to the statements made in paragraphs 6 and 7 of the written statements, the applicants reiterate and reaffirm the statements made in O.A.

6. That with regard to the statements made in paragraph 8 of the written statements, the applicants beg to state that the respondents have mentioned about Annexure '3' annexed to the copy of the O.A. served on the

Contd....4

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respondent no. 4 but are silent about the other copies served on other respondents. The contentions as regards Annexure '3' as have been raised are wholly untenable in-as-much-as the respondents have very well understood the said Annexure in the context in which the same was issued by the authorities of the Deptt. of Post. Initially, there was a mistake in the said Annexure which was pointed out by this Hon'ble Tribunal and accordingly, the said mistake has been rectified and now the Annexure '8' document annexed to the O.A. is the correct one ~~which~~ by which certain benefits have been extended to the casual labourers of the Deptt. of Post. Thus, the contentions raised by the respondents are wholly untenable and the same have been made to bring confusion to the matter and with the sole purpose of misleading this Hon'ble Tribunal.

7. That with regard to the statements made in paragraph 9 of the written statements, the applicants state that the real reason behind the Annexure 'R/1' letter dtd 19.2.97 is explicit on the basis of the said letter. Merely because the Deptt. of Personnel & Training has allegedly observed that there cannot be any parity within the officials between 2 Deptts., namely, DOT and DOP, the respondents cannot deny the benefits available to the casual labourers of the Deptt. of Post to their counter-parts in the DOT. In this connection, it is stated that following the judgment (1988) 1 SCC 122 (Daily Rated Casual Labourers Vs. U.O.I. & Ors.) delivered in the case of the casual

Contd.....5

Labourers of the Postal Department, judgment and Annexure '1' to the O.A. was delivered in respect of the casual labourers of the Tele-Comm. Deptt. Thus, the same parity is required to be maintained and the pleas raised by the respondents are wholly untenable.

8. That with regard to the statements made in paragraph 10 of the written statement, the applicants deny the correctness of the same and reiterate and reaffirm the statements made in paragraphs 4.11. and 4.12 of the O.A. Earlier, the Deptt. of Post and Tele-communication was a single Department. Although bifurcation took place, they remain to be under the same Ministry. Thus, there is no earthly reason as to why the casual labourers working in the DOT should be metted out with discriminatory treatment with their counter-parts in the Deptt. of Post. They carry the same amount of work.

9. That with regard to the statements made in paragraph 11 of the written statement, while denying the contentions made therein, the applicants reiterate and reaffirm the statements made in para 4.9 of the O.A.

10. That with regard to the statements made in paragraph 12 of the written statements, the applicants categorically deny the contentions made therein. It is unfortunate that the respondents have sought to give weightage to J.C.M. over this Hon'ble Tribunal. In the ~~same~~ name

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of negotiated settlement through J.C.M., the respondents cannot delay the matter. In any case, referring the matter to J.C.M. cannot be ground to close the forum of this Hon'ble Tribunal for the applicants. In any case, the so called negotiation having not yielded any result, the applicants are constrained to approach this Hon'ble Tribunal. The respondents are called upon to substantiate their claim that the applicants have violated the provision ²⁰ 2(1) of the Administrative Tribunals Act, 1985 and that the O.A. is not maintainable and liable to be dismissed.

11. That with regard to the statements made in paragraphs 13 to 19 of the written statement, the applicants while denying the contentions made therein, reiterate and reaffirm the statements made here-in-above and so also in the O.A.

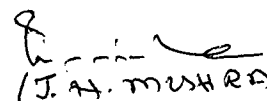
12. That in view of the facts and circumstances stated above, the instant O.A. deserved to be allowed with costs.

Verification....7

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VERIFICATION.

I, Shri J.N. Misra, Circle Secretary, All India Tele-communication Employees' Union, Line Staff and Group 'D', Assam Tele-comm. Circle, Guwahati, do hereby verify and state that the statements made in paragraphs 1 and 2 are true to my knowledge, those made in paragraphs 3 to 11 being matters of records of the case are true to my information and the rests are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact and I sign this Verification on this _____ day of _____ 1997.


(J.N. MISRA)
(Signature of the applicant).