

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

RA NO. 2 197 (OA 295/96)

The Union of India & ors. Applicant(s)

-Versus-

B.K. Sharma & ors. Respondent(s)

Mr. S. Ali, Sr. C.G.S.C. Advocates for Applicant(s)

Mr. B.K. Sharma, B. Mehta, S. Sharma Advocates for Respondent(s)

Office Notes Date Court's Order

This RA is filed by Mr. S. Ali, Sr. C.G.S.C. for the review petitioner. Mr. S. Sharma for the opposite party. At the request of Mr. S. Ali case is adjourned to 26-3-97.

19-3-97

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

the review petitioner. Mr. S. Sharma for the opposite party.

At the request of Mr. S. Ali case is adjourned to 26-3-97.

Necessary approval for placing before the court has been taken at C file.

Member

Submitted to Sign. R.

lm

20/3

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30/3/97

26.3.97

This Review Application has been filed against the judgment of this Tribunal dated 30.12.1996 passed by a Single Bench. By the said order dated 30.12.1996 this Tribunal directed the respondent No.2 to dispose of the representation received from the applicant, through proper channel, if any, within a period of one month from the date of receipt of the representation. The Union of India has filed this Review Application against the said direction.

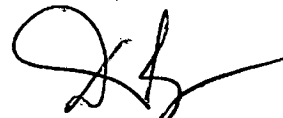
Heard Mr S. Ali, learned counsel for the applicants (respondents in O.A. No.295/96) and Mr B.K. Sharma, learned counsel for the opposite party (applicant in O.A.No.295/96). According to the Review petitioner, as per the averments made in paragraph 2 of the Review Application, it is not the respondent No.2 who can

R.A.No.2/97 (O.A.No.295/96)

26.3.97

dispose of the representation. It is the Head of SSA who is actually competent to pass such order. Mr B.K. Sharma has no objection if the representation as directed by this Tribunal by order dated 30.12.1996 is disposed of by the said authority. Considering the submissions of the learned counsel for the parties the order dated 30.12.1996 is reviewed to the extent that instead of respondent No.2, it is the Head of SSA who will dispose of the representation within a period of one month from the date of receipt of this order. Till then as ordered earlier the opposite party (applicants in original application) shall not be disturbed.

The Review Application is disposed of accordingly.



Vice-Chairman

nkm

16.6.97

Copy of The order
has been sent to The
D/sec. for issuing the
same to The parties
alongwith the L/Advocate
of The parties.

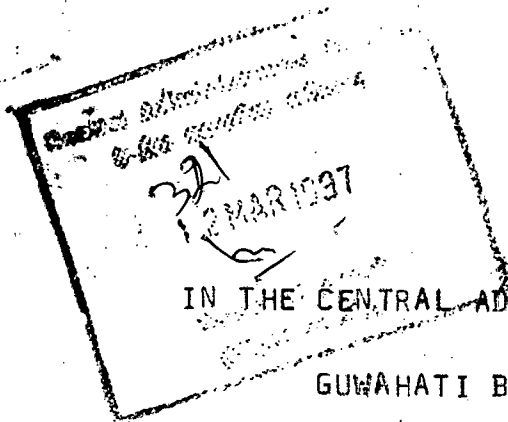
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Issued vide

Q.No. 2160 to 2165

d. 18.6.97

18/6



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:

GUWAHATI BENCH:GUWAHATI.

R. A. NO. 2 OF 1997

(O. A. No. 295/96)

Filed by:

Shankar

17/2/97

(MD. SHAUKAT ALI)
Sr. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench, Guwahati

IN THE MATTER OF:

A Petition under Section 22(F)
of the Central Administrative
Tribunal Act, 1985 praying for Review
of the Judgment & Order dated 30-12-96
passed by the Hon'ble Member of the
Hon'ble Central Administrative Tribunal
in O.A. No. 295/96 .

-AND-

IN THE MATTER OF:

- 1) The Union of India ,
represented by the Secretary
to the Govt. of India, Ministry
of Telecommunication, New Delhi.
- 2) The Chief General Manager,
Assam Telecom Circle,
Ulubari, Guwahati-7.
- 3) The Telecom District Manager,
Department of Telecommunication,
Golaghat, Jorhat.

(Contd.)

- 4) The Superintendent of Telecom Traffic
Department of Telecommunication,
Golaghat. Jorhat.

... Petitioners
Respondents

-Versus-

- 1) Bhupen Ghosh
Telegraph man on
(Daily Rated Mazdoor)
- 2) Sri Pulin Sharma
Telegraph Man on
(Daily Rated Mazdoor)
- 3) Md. Abid Ali
Telegraph man on
(Daily Rated Mazdoor)

All are working under the Assistant
Superintendent (T.T.) In-charge,
Golaghat.

....Opposite Parties.

The humble Petitioners above-
named :

MOST RESPECTFULLY SHEWETH:

- 1) That the Hon'ble Tribunal vide order dated
30-12-96 disposed of the D.A. No. 295/96 at the
admission stage without issuing any notice to the
Respondents and as a result of which the Respondents
could not place their actual facts of the case . The

(Contd.)

Hon'ble Tribunal vide order dated 30-12-96 directed the Chief General Manager, Telecommunication, Guwahati to dispose of the application within One month from the date of receipt of ~~the~~ same such representation through proper channel.

2)* That the above direction of the Central Administrative Tribunal has been examined from the administrative point of view taking into consideration the power and limitation of the CGMT in the matter of engagement of casual mazdoor/daily rated mazdoor. It is found that the CGMT is not in position to decide about the engagement or otherwise of a particular mazdoor. Any such attempt will unsettle the departmental rules under which the SDE in charge of field units are the sole authority to decide about engagement of any mazdoor depending on the job requirement and the suitability of the person. In case of any dispute arising out of the engagement or disengagement, the head of SSA is in a better position to review the case on appeal. The head of circle can not associate himself in the process of engagement of any mazdoor. His ^{power} ~~power~~ is limited to the sanction for creation of justified post of RMs according to the rules governing the regularisation of TY status mazdoors.

It is not desirable to consider the case of the applicants in a isolated way lest it may affect the case of similarly placed mazdoors

(Contd.)

who had not approached the Central Administrative Tribunal . The question of retention of mazdoor and conferment of TY status can only be considered by the Head of the SSA and the availability of DRM in various Subdivisions under him .

In the case titled "P.K.Vijayan Nair and others Vs Asstt. S.P.O.s" - 1995 ATC. 414. it was held by a Division bench of the Central Administrative Tribunal that to Government Servants for whom rules under Article 309 of the Constitution or otherwise have been framed, provisions of Industrial Disputes Act, shall not apply, even though they may appear to be falling under the definition of "worker" and the department look to be covered under the definition of "industry". Hon'ble Supreme Court in the case of M. Venugopal versus Divisional Manager ,LIC - (1994) 27 ATC 84, as laid down the similar dicta holding that employees of LIC were separate class having their own rules and thus will not claim protection under Industrial Dispute Acts.]

In the case "state of HP Versus S.K. Verma (1996 (2) SC 455) the Honourable Supreme Court has held that appointment on daily wage basis is not an appointment to a post according to the rules. Court can not give any direction to re-engage such person in work or to appoint him/her against the existing vacancies . If the court do so , the judicial process would become another mode of recruitment dehors the

(Contd.)

the rules. Appointment on daily wages can not be a conduit signed for regular appointment.

In another case (O.A. No. 1075 of 1996) the Central Administrative Tribunal Chandigarh Bench has dismissed the application, filed by Smti. Melam Chadha against her retrenchment from Casual Service, as not maintainable and hence the petitioners filed this Review Application on the following amongst other :

G R O U N D S

- i) For that, serious injustice has been done to the petitioners as the original application has been disposed of without giving any notice to the Respondents and as such, it is a fit case to review the Impugned Judgment & order dated 30-12-96 .
- ii) For that, the cases of the Casual Labours as dealt with by the SDE in-charge of Field Units who is competent to decide the engagement any mazdoor depending on the job requirement and the suitability of the person and as such he has the authority to consider the representation submitted by the opposite parties . And as such, it is a fit case to review the Impugned Judgment and order and decide on merit .
- iii) For that, The CGMT being head of the Telecom , Assam Circle under the rule does not ^{decide} ~~delete~~ the cases of the Casual Labours and as such, it is & necessary to review the impugned judgment and order.

iv) For that, there has been ~~error~~ apparent on the face of the record and hence, it is a fit case to review the judgment and order.

v) For that, if opportunity for filing the Written Statements would have been given to the Respondents then the Respondents would have placed the real facts of the case for proper adjudication of the case and there would not have been the miscarriage of justice and hence it is a fit case to review the ~~yx~~ impugned judgment & order.

vi) For that, it is not desirable that the cases of the opposite parties alone be considered which may effect the case of the similarly placed mazdoors who had not approached the Central Administrative Tribunal and as such, it is a fit case ~~to~~ for review of the Impugned Judgment & Order.

vii) For that, the retention of mazdoor and conferment of TY considered by the Head of the SSA and the availability of the DNM in various Subdivisions under him ~~and~~ the CGMT has nothing to do with these cases under the rules.

viii) That at any rate, the impugned Judgment and order is liable to review for the ends of justice.

(Contd.)

It is, therefore, respectfully prayed that, the Hon'ble Tribunal may be pleased to admit this ~~petition~~ Review Application, call for the records, issue notice on the opposite parties and after hearing the parties review the Impugned Judgment & Order and setting ~~it~~ aside the impugned Judgment & Order hear the ~~petition~~ O.A. and disposed of on the merit for the ends of justice.

And for this act of kindness your petitioners as in duty bound shall ever pray.

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

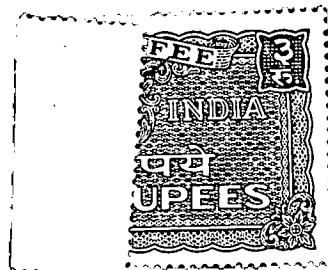
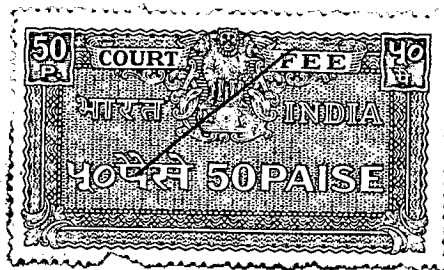
I, Sri B. Das Gupta, Assistant Director, Telecom (Legal) Office of the Chief General ~~Secretary~~ Manager Telecom, Assam Circle, Guwahati as authorised do hereby solemnly declare that the statements made above are true to my knowledge, belief and information.

And I sign this verification today on 3rd day of February, 1997 at Guwahati.

D e c l a r e n t

Bidyut Das Gupta

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



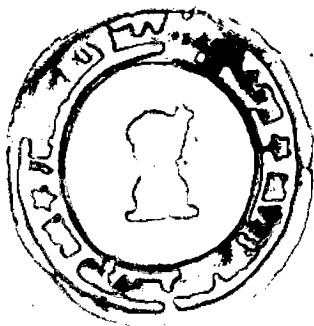
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A F F I D A V I T

I, Shri Bidyut Das Gupta, aged about 45 years, son of Late Hemandu Bikas Das Gupta by profession Assistant Director Telecom(legal) in the office of the Chief General Manager Telecom, Assam Circle, Guwahati-7 do hereby solemnly declare and state as follows :

- 1) That the statements made in paragraphs 2, - are true to my knowledge and the statements made in paragraphs 1, — are true to my information of the above ~~app~~ review application and those made in the rest are my humble submission before this Hon'ble Tribunal.

I put my hand hereunto to this affidavit on this 15th day of February ,1997 at Guwahati.



Bidyut Das Gupta
Declarant.

Identified by me
Adil Ahmed
(ADIL AHMED)
Advocate ,Guwahati.

Solemnly affirmed and declared before me by the declarant and who is identified by Shri Adil Ahmed, Advocate,Guwahati.

JS K...
Comptroller
of the Court

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::::::::::: GUWAHATI

O.A. No. 295/96.

Sri Bhupen Gosh & Ors. ...

Applicants.

Versus

Union of India & Ors. ...

Respondents.

- P R E S E N T -

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER(A)

For the Applicants : Mr. B.K. Sharma,
Mr. B. Mehta &
Mr. S. Sharma, Advocates.

For the Respondents; Mr. A.K. Choudhuri,
Addl. C.G.S.C.

30.12.96

Learned counsel Mr S. Sarma
for the applicants. Learned Addl. C.G.S.C.
Mr A.K. Choudhuri for the respondents.

Mr S. Sarma submits that he
may be allowed to move this application
unlisted on the ground of urgency.
Allowed.

This application has been
submitted by the three applicants in this
O.A. who are daily rated Mazdoors under
the Superintendent (TT) Incharge Golaghat.
It has been submitted by Mr Sarma that
they had worked continuously since 1990 in
that capacity in that office. He further
submits that in this application the
applicants seek a direction to the
respondents to extend to them the benefits
as laid down in the Casual Labourers
(Grant of Temporary Status and
Regularisation) Scheme of the Department
of Telecommunications 1989 and
clarification No.271-13/92-STN dated
22.10.1992 and to regularise their
services with retrospective effect,
namely, from the respective dates of their
appointment with all consequential
benefits including arrear salary and
seniority. It has also been submitted by
him that the applicants have common cause



30.12.96

and reliefs and they may be allowed to join in this single application under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987. Since the conditions mentioned in the aforesaid rule are fulfilled the applicants are allowed to join in this single application.

After hearing Mr S. Sarma and Mr A.K. Choudhuri I consider that the application needs not be admitted at this stage. It is disposed of with the following directions:

1) The applicants may submit fresh representation individually before the Chief General Manager, Assam Telecom Circle, Ulubari, Guwahati, respondent No.2, through proper channel within 7 days from today with advance copy to respondent No.2 seeking appropriate redressal of their grievances.

2) The respondent No.2 shall dispose of the representations received from the applicants through proper channel, if any, within one month from the date of receipt of such representations. Pending disposal of the representations he shall not disturb the services of the applicants.

The applicants are at liberty to approach this Tribunal again if they are still aggrieved with the order of respondent No.2.

The application is disposed of as above.

Copy of the order may be furnished to the counsel for the parties.

Sd/-
MEMBER(A)

Memo.No. 4594

Dated 30/12/96

Copy for information and necessary action to :

1. Shri Bhupen Ghosh, Telegraph Man (Daily Rated Mazdoor), under the Asstt. Superintendent (T.I.) In-Charge, Golaghat.
2. The Secretary to the Govt. of India, Ministry of Telecommunication, New Delhi.
3. The Chief General Manager, Assam Telecom Circle, Ulubari, Guwahati -7.
4. The Telecom District Manager, Department of Telecommunication Golaghat.
5. The Superintendent of Telecom Traffic, Department of Telecommunication, Golaghat.
6. Mr. B.K. Sharma, Advocate, Gauhati High Court, Guwahati.
7. Mr. A.K. Choudhury, Addl. C.G.S.C., CAT, Guwahati Bench.

DEPUTY REGISTRAR