

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO.170/00373/2017

DATED THIS THE 20TH DAY OF AUGUST, 2018

HON'BLE DR. K.B. SURESH, MEMBER(J)

HON'BLE SHRI C.V. SANKAR, MEMBER(A)

1.Vaijeenath,
S/o Sharanappa,
Aged about 49 years,
Cable Work at Bidar Telephone Exchange,
Bidar-585 101.
Residing at Siddeshwarawadi,
Bhalki-585 328.

2.Shaik Saleem,
S/o Chandsab,
Aged about 37 years,
Cable Work at Bidar Telephone Exchange,
Bidar-585 101.
R/AT Kumbarwada,
Bidar-585 401.

3.Kantappa,
S/o Basappa,
Aged about 45 years,
Cable Work at Bidar Telephone Exchange,
Bidar-585 101.
R/ at Village Solapur,
Post Astoor, Bidar-585 401.

4.Niranjappa,
S/o Ghalappa,
Aged about 42 years,
Cable Work at Bidar Telephone Exchange,
Bidar-585 101.
R/ at Village Solapur,
Post Astoor, Bidar-585 401.

5.Tukaram,
S/o Balappa,
Aged about 52 years,
Cable Work at Bidar Telephone Exchange,
Bidar-585 101.
R/ at H.No.8-3-11, Near Krish Ganesh
Shah Gunj, (Out side) Bidar-585 401.Applicants.

(By Advocate Shri M.N. Madhusudhan)

V/s.

1.The Telecom District Manager,
BSNL Telecom Office,
Bidar-585 101.

2.Telcom District Engineer,
Bidar-585 101.

3.Chief General Manager, BSNL
Karnataka Telecom Circle,
No.1, Swamy Vivekananda Road,
Halasuru,
Bangalore-560 008.

4.The Director General (STN),
Department of Telecom Service,
20, Sanchar Bhavan,
Ashoka Road, (STN II Section)
New Delhi-110 001.Respondents.

(By Shri Vishnu Bhat, Sr. Panel Counsel)

O R D E R (ORAL)

HON'BLE DR K.B. SURESH, MEMBER(J)

Heard. Apparently this matter is covered by an earlier order in
OA.No.170/00885/2016 dated 17.4.2018, which we quote below:

ORDER

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

This is a third round of litigation and the applicants who apparently worked for some time as casual labourers in the respondents department have sought reinstatement and conferment of temporary status with all consequential benefits in terms of the Casual Labourers (Grant of Temporary Status and Regulation) Scheme of the Dept. of Telecom 1989 read with DOT order dtd.29.9.2000.

2. When the matter was initially agitated before this Tribunal in TA.No.208,203,199 & 413/2009, the Tribunal vide order dtd.18.4.2013(Annexure-A1) held vide para-10 to 11 as follows:

10. The applicant has produced some documents (Annexure 'F') to evidence his working which normally would be considered inadequate to decide the case for conferment of TS and eventually regularization, but in a situation of this kind where the records have been weeded out with efflux of time, that is after the retentivity period, the respondent authority should appropriately consider the case with reference to the Scheme of regularization (Annexure 'G') with all the subsequent modifications/amendments and liberalization based on the documents furnished by/available with the applicant like that marked as Annexure 'F', unless these are found to be manipulated or forged, after giving the applicant or/and his representative (including an Advocate or family member/relative or some other well-wisher of his to present his case) an opportunity of hearing and examining the genuineness of the document(s) produced by the applicant in the TA etc., and after examining, co-workers, if any (if such persons can be fetched by the applicant or called by the respondents), the objective being to find out the truth instead of going by the conventional/rigid formal approach, and then to decide the claim based on preponderance of probability. The respondents' should carry out the above exercise and pass a reasoned and speaking order within a period of 4 months from the date of receipt/production of a copy of this order.

11. With the above direction, the TA bearing No.173 of 2009 stands disposed of. The other TAs bearing Nos.199, 203, 208 & 413 all of 2009 are decided and disposed of on the same basis with the same direction to the concerned respondent authorities as set out in para 10 above. No order as to costs.

3. It appears that the Tribunal had dealt with the case of Sri C.S.Kanavi in detail and passed a direction and disposed of other TAs with similar direction. However, Sri

Kanavi is no longer the applicant in the present case whereas the applicants in other TAs are the applicants in the present case. When the respondent No.3, the General Manager Telecom, Dharwad Telecom District vide similar order dtd.23.9.2013 rejected the claim of the present applicants, they again approached this Tribunal in OA.No.373-378/2014 and this Tribunal vide order dtd.22.06.2015(Annexure-A2) remanded the matter back to the respondents to reconsider the matter holding that the concerned authority which had the possession of the acquittance roll shall be bound to produce it which should be in their possession and which cannot be destroyed at all. They will be able to realize from the concerned supervisory officer on the quantum of work done by such number of people which would have required from them and from the co-workers evidence would be able to deduce as to whether the applicants had worked or not.

4. The respondents approached the Hon'ble High Court of Karnataka against the order of the Tribunal in WP.No.42511-42516/2015(S-CAT). The Hon'ble High Court on consideration of the matter held vide para-7 to 9 of the order dtd.30.3.2016(Annexure-A3) as follows:

7. We do find substance in the contention of the petitioner that the Tribunal has not properly considered the burden to be discharged by the workmen/respondents herein for proving their case that they were working prior to 1989 and would be entitled to the benefit of the Scheme of 1989 for Temporary Status upon the completion of 240 days. However, the peculiar circumstance in the present case is that the record is not available as per the petitioner as the same is destroyed. It appears that the grievance is raised by the petitioner herein for the first time in the year 2013 but the proceedings were initiated in the year 2004. It is true that the Tribunal passed the order in such proceedings on 18th April 2013. Therefore, it will have to be considered as to whether the record was destroyed by the petitioner after 2004 or not. If the record was destroyed after initiation of the proceedings by the petitioner before the appropriate forum, the respondents would be entitled to the benefit of such conduct on the part of the petitioner. But at the same time, if the record was already destroyed prior to 2004, then the respondents would not be entitled to any benefit of such situation and the burden will have to be discharged by the respondents showing that they had worked for a period of 240 days and more so as to get the benefit of the scheme of 1989.

8. In addition to the above, we find that if in a given case, direct evidence is not available, the respondents-workmen should be at liberty to produce corroborative evidence which may go to show that they had worked at the relevant point of time and had completed 240 days so as to get the benefit of the scheme of 1989. It is hardly required to be stated that the petitioner is an instrumentality of the State within the meaning of Article 12 of the Constitution. It should act as an ideal employer and if the workmen have really worked for 240 days and are entitled to the benefit of the Scheme of 1989, such should be made available by the petitioner to the respondents concerned. We record the same with an emphasis that the effort should also be made by the petitioner to search the records, if any, and to find out any corroborative evidence, if any regarding working of respondents at the relevant point of time in the petitioner organization. It is only after the cross examination or the material produced before the competent authority of the petitioner, a concluded finding may be recorded as to whether the respondents or any of the respondent had worked for 240 days at the relevant point of time so as to entitle for the benefit of the Scheme of 1989 or not.

9. The aforesaid exercise may be completed within a period of three months from the date of receipt of certified copy of this order. Under these circumstances, we find it appropriate to direct as follows:

- 1) The matter shall be re-considered by the competent authority of the petitioner with regard to the entitlement of the respondent/s for the benefit of the Scheme of 1989.
- 2) All the respondents jointly as well as individually shall be at liberty to produce the relevant evidence before the competent authority of the petitioner. If the evidence is produced earlier, copy of the same shall again be produced. It would also be open to the respondent/s to lead oral evidence and to cross examine any officer of the petitioner who have stated that respondents were not working at the relevant point of time.
- 3) Suffice it to observe that the evidence of any type, upon with reliance can be placed, shall be produced by the respondents.
- 4) The petitioner after re-examination of its record shall once again verify including the officers who had worked at the relevant point of time so as to find out whether the respondents had worked as labourers and had completed 240 days or not.
- 5) After the aforesaid exercise is undertaken, the matter shall be considered and decided in light of the observations made by this Court in the present order including on the aspect of destroying of the record and final decision shall be taken within a period of three months and the same shall also be communicated to the respondents.

It is needless to observe that if it is found that the respondents or any of the respondent is entitled to the benefit of Scheme of 1989, the consequential monetary benefit shall also be paid to the concerned respondent/s within a period of one month from the date of the decision. The order passed by the Tribunal shall stands modified to the aforesaid extent.

5. Pursuant to the order of the Hon'ble High Court, the respondent No.3 have

reconsidered the matter and again rejected the claim of the applicants by individual similar orders dtd.21.7.2016(Annexure-A4 to A8). Against the decision of the respondent No.3, the applicants have approached the Tribunal again in the present OA seeking the following relief:

- a. *Quash the orders bearing No.LC-221/CAT Case/OA.373/2014 to 378/2014/33, LC-221/CAT Case/OA.373/2014 to 378/2014/34, LC-221/CAT Case/OA.373/2014 to 378/2014/35, LC-221/CAT Case/OA.373/2014 to 378/2014/36, LC-221/CAT Case/OA.373/2014 to 378/2014/37, dated 21.7.2016, Annexure-A4 to A8 passed by General Manager, Dharwad Telecom District, Dharwad R-3 herein.*
- b. *Direct the respondents to cause reinstatement of the applicants in R-3 unit forthwith and to extend the benefit of Temporary Status of a regular mazdoor so as to become eligible to get the basic pay of the lowest post with all attendant benefits as indicated in 1989 scheme Ann-A9 and the subsequent DOT orders on the subject.*
- c. *Pass any other order or direction that this Hon'ble Tribunal may deem it fit and necessary in the facts and circumstances of the present case and in the interest of justice and equity.*

6. According to the applicants, they had the required working days during the relevant point of time so as to become eligible for the benefit of the DOT order dated 29.9.2000 since under the said order, casual labourers either part-time or full time regardless of the technical conditions coming in their way under the 1989 Scheme were supposed to get the benefit of the DOT order dtd.29.9.2000. They submit that it is an admitted position on the part of the official respondents that these applicants were engaged between 1985 and 2000 though on need basis. In response to the individual notices, the applicants appeared before the Committee constituted by the respondents and presented their cases. Proceedings of the Committee along with materials presented by the applicants are at Annexures-A14 to A18. Though each of the applicants produced reliable material in support of their working particulars, the authority stuck to

its earlier stand as it comes handy to them under the guise of destruction of the records at the official end. Particulars of the wages paid to the applicants in respect of their engagement as claimed by them do find place in so many official records like imprest bill of concerned JE, ACE-2 records etc., maintained at the sub-division level. The authority has not specified whether these records are permanent records or there is any periodicity for their destruction and if so under what provision such destruction was carried out. The tenor of the orders of the DOT is such that no casual labourer working in the year 2000 should be left without the benefit of temporary status in the least, if not regulating their services as regular employees of the Department. However, the applicants were denied the benefits because of the indifferent attitude of the field officers concerned in the Dharwad Telecom District wherein these applicants were working continuously for many years. They further submitted that even though the concerned officer who are in the knowhow of applicants' engagement have not come forward to appraise the Committee in the matter. But it does not mean that applicants' claim of having worked should become unreliable to the Committee especially when applicants are not at fault in any manner. All the applicants who have worked for almost all three or more times of 240 days duration are entitled for getting benefits under the said DOT order. Therefore, they prayed for granting the relief as sought by them.

7. The respondents No.1 to 3 i.e. BSNL in their reply statement referred to the order of Hon'ble High Court of Karnataka dtd.30.03.2016 and submitted that in compliance of the said order, the General Manager, Telecom, Dharwad TD constituted a committee vide order dtd.25.5.2016 headed by DGM(Admn) Hubli and comprising of seven other Members. The Committee had called all the applicants to appear before them,

recorded their statement, accepted the documents produced by them and allowed them to cross-examine the officers who were present and under whom they were stated to be working. The committee submitted its report regarding each of the applicant on 8.7.2016.

8. According to the respondents, the 1st applicant Shri Sanjay P.Sambrani appeared before the Committee on 2.6.2016. Though he was given an opportunity to cross-examine Shri S.T.Pawar under whom he claims to have worked, he did not ask any question to substantiate his claim nor produced any new documents. The documents submitted by the applicant contained only the statement in tabular column without any authentication of departmental officials. Shri S.T.Pawar, the then AO under whom the applicant claimed to have worked has negated the fact that Shri Sanjay P.Sambrani had worked in TRA section and also the papers attached did not belong to his office. Therefore, the said applicant could not provide any documentary evidence or substantial evidence to substantiate his claim.

9. According to the respondents, the 2nd applicant Smt.Basamma N.Belgaum appeared before the committee on 3.6.2016. Though she was given opportunity to cross-examine Shri Y.R.Chougale, Retd.SDE, Dharwad to substantiate her claim she did not made any cross-examination. Shri Chougale submitted that the case is 20 years old and as of now they could not recollect the facts due to age factor as he is 75 years old now. According to the respondents, the DOT order of 25.8.2000 is not applicable to the said applicant as she was not appointed as part-time mazdoor. She was engaged purely on contract basis for scavenger work for daily two hours from 1.1.1989 to 30.9.2001. She has not been working w.e.f.01.10.2001 and she is not eligible for

conversion to full time casual mazdoor. The applicant also did not work up to 30.03.1986 and from 30.03.1986 to 22.6.1988. The imprest bill/temporary advances and vouchers pertaining to the period up to 31.12.1998 consisting of 20 gunny bags weighing approximately 570 kgs. were auctioned for destruction during the year 2002 as per the approval of CAO(F&A) Hubli.

10. In respect of applicant No.3 Sri Daya F.Gamanagatti, he appeared before the committee on 3.6.2016 and only submitted a sheet containing the period of work done, amount paid, number of days, voucher number etc. None of the documents are authenticated or signed by any officer. Shri B.B.Hosur, Retd.DE under whom the applicant claims to have worked could not attend the meeting because of his ill-health. However, subsequently he gave a statement that Sri Daya F.Gamanagatti did not work in BSNL in any capacity. The 4th applicant Sri Shivanand S.Thimmanpyati appeared before the committee on 4.6.2016. Sri Srinivas M.Padaki, the then AO under whom the applicant claims to have worked could not attend the proceeding as he is working presently at Gujarat Circle. However, he communicated over telephone that he has given a statement earlier on 16.7.2013 in respect of the applicant in which he had stated that Sri Timmanpyati had not worked in Comp/TRA Section. The applicant also did not produce any further documents which would substantiate his working in the department. The 5th applicant Shri Pramod P.Mehrunkar appeared before the Committee on 4.6.2016. Sri C.H.Kulkarni, the then SDE(Genl) under whom the applicant claims to have worked is not available since he had passed away on 20.10.2015. The applicant submitted some documents which do not bear any signature of any officials. He had produced certificate which does not contain name of the person

who has issued the certificate. The designation is given as Section Supervisor(TR) O/o the GMT, Hubli who is not competent to issue such certificates. Therefore, no conclusion has been withdrawn by the committee in respect of working of the applicant.

11. According to the respondents, the inquiry was conducted in terms of the direction issued by the Hon'ble High Court of Karnataka and also by this Tribunal and sufficient opportunity was given to each of the applicants to prove their case. The documents submitted by each of the applicant were also carefully examined. Since none of the documents/evidences established the working of the applicants in BSNL, their claim was rejected by respondent No.3 by passing specific orders in each case. Therefore, they submitted that the contention made by the applicants did not merit any consideration.

12. A separate reply has been filed by respondent No.4 i.e. the Govt. of India saying that the matter pertains to BSNL and the Govt. of India has no say in the matter.

13. We have heard the Ld.Counsel for both the parties. Both sides have also filed written arguments. The Ld.Counsel for the applicants referred to the observation made by this Tribunal in earlier two OAs and also the observation of the Hon'ble High Court of Karnataka and mentioned that the administration misinterpreted the Hon'ble High Court order assuming that it is only the applicants who are required to prove of having worked more than 240 days to get the benefits. The exercise was done in a mechanical way with the intention to reject their case once again. According to him, each of the applicants had requisite working days of 240 days as casual labourer as on

the date of formation of BSNL and they are all entitled for the benefit of DOT order dtd.29.9.2000 which was issued a day earlier to formation of BSNL. According to him, the applicant No.1 Sri Sanjay P.Sambrani, as per the available particulars produced by him, had continuously worked from 1997 to end of March 2001 though his claim is that he had worked from 1994 until end of June 2001. Similarly, applicant No.2 Smt.Basamma N.Belgaum was engaged from 1.1.1989 onwards till 2002. The applicant No.3 Sri Daya F.Gamanagatti worked for 246 days during 1997, 289 days during 1998, 248 days during 1999, 312 days during 2000 and 300 days during 2001 on contract basis. It is the case of applicant No.4 Sri Shivanand S.Thimmanpyati that he worked between 1996 and 2001. The applicant No.5 Shri Pramod P.Mehrunkar has claimed to have continuously worked from October 1992 to 2001. He further mentioned that it is the case of the respondents that the bills and vouchers pertaining to the period up to 31.12.1998 consisting of 20 gunny bags weighing approximately 570 kgs were auctioned for destruction during the year 2002. This stand seems to have been adopted for the purpose of overcoming High Court's clear direction that if the records were already destroyed prior to 2004, then the applicants would not be entitled to any benefit of such situation and the burden will have to be discharged on them showing that they have worked 240 days. The administration has not clearly spelt out whether they undertaken any verification with reference to the applicants' working subsequent to 31.12.1998 as those records are not stated to have been destroyed by the authority. He submitted that the applicants are entitled to the benefits extended by respondent No.3 in July 2001 to similarly placed casual labourers. The names of applicants were left out for the reasons best known to the administration. Therefore, he submitted that the applicants are entitled to get benefits as prayed for.

14. The Ld.Counsel for the respondents while highlighting their submission made already in the reply statement stated that pursuant to the order of the Hon'ble High Court, the 3rd respondent constituted a committee to go into the matter and submit its report. The applicants were accorded an opportunity to cross-examine the officers who were available if they intend to do so. The applicants did not choose to cross examine the officers present before the Committee. After going through the details, the committee submitted a report holding that none of the applicants had worked during the period they claimed to have worked and no documents were available with the respondents to verify the genuineness of the documents produced by the applicants. He also mentioned that as per the provision of P&T Manual, the casual employees shall be enrolled in the Muster Roll register and they were to be engaged as such. The Dept. of Telecom in its memorandum dtd.12.2.1999 banned the engagement of casual employees but permitted to engage some workers on need basis or on hourly basis to meet the immediate exigencies of the work. All the wages for such casual employees were paid on contingency expenditure through ACG-17. The period of preservation of those ACG-17s were limited and after expiry of preservation period, those documents were destroyed. This Tribunal in the earlier OAs pertaining to the applicants had observed that the documents produced by the applicants are not sufficient or inadequate to decide the case of conferment of temporary status. No further evidence either oral or documentary has been produced by the applicants to substantiate their claim. After detailed verification, the committee felt that their case cannot be considered for regularisation. He also mentioned that the applicants would not also be covered under the purview of *Umadevi's* case. He also mentioned another *Civil Appeal*

No.6176/2008 in BSNL vs. N.T.Madivel which indicates that such schemes of regularisation are one time schemes and it did not postulate grant of temporary status to casual workers who were subsequently employed as and when they completed continuous service for the prescribed period. He stated that the respondents have taken due effort to examine all the records pursuant to the Hon'ble High Court's order and do not find any merit in the contention made by the applicants.

15. We have carefully considered the facts of the case and submission made by either side. As earlier mentioned, this is third round of litigation. When the matter was initially considered in 2009 in TA.No.173/2009 and connected cases as well as OA.No.373-378/2014 it was noted that the documents produced by the applicants were not adequate enough to decide on the conferment of temporary status and eventual regularisation and hence the respondents were directed to re-examine the matter on the basis of the claims of applicant and on preponderance of probability. The Hon'ble High Court of Karnataka also in WP.No.42511-42516/2015(S-CAT) and connected matters, gave a clear direction on the parameters to be followed for reconsideration by the competent authority with regard to the entitlement of the applicants for the benefit of scheme of 1989.

16. We note that pursuant to the order of Hon'ble High Court the respondents constituted a committee headed by a Dy.General Manager to examine the matter and to submit its report. The committee called each of the applicants individually to examine their case. It has been stated that the applicants only produced the documents that were already available and produced on earlier occasion and no additional documents. It is also seen from the record in respect of the hearing of the 1st applicant Shri.Sanjay

P.Sambrani and 2nd applicant Smt. Basamma N.Belgaum that the concerned officials namely Shri S.T.Pawar and Shri Y.R.Chougale were present. However, the applicants did not cross-examine them to substantiate their claim. From the records, another interesting aspect also came to our notice. The applicant No.1 Sri Sanjay P.Sambrani claims to have worked from 1994 onwards though submitted working particulars are available from 1997 onwards. As per the age details given in the present OA.No.885/2016, his age was 37 years and in TA.No.208/2009, his age was 30 years which would indicate that he was 15 years old in 1994 when he claims to have started working for the respondents. Smt. Basamma N.Belgaum who claims to have started work from 1.1.1989 will similarly be 16 years of age at that time. Sri Daya F.Gamanagatti, applicant No.3 who claims to have worked 246 days in 1997 was 32 years old in 2016 and thus would be 13 years of age in 1997. It seems that all the three applicants claim to have been engaged by the respondents when they were minors which is against the labour law. The other two applicants have mentioned details of period during which they worked and hence no comments were offered in respect of them.

17. References were made to various schemes for casual workers. The respondents had brought out a scheme called 'Casual Labourers Grant of Temporary Status and Regularisation Scheme 1989' vide order dtd.7.11.1989 which was a scheme for conferment of temporary status of casual labourers who were employed at that point of time and have rendered continuous service of at least one year. Thereafter there was an order on 17.12.1993 in respect of casual labourers engaged in Circle. That scheme indicated that no casual labourers engaged after 30.3.1985 would be

eligible for conferment of temporary status. In case there is casual labourer engaged before conferment of temporary status such case would be referred to Dept. of Telecom for appropriate disciplinary action. It pertains to casual labourers engaged in Circle after 30.3.1985 and up to 22.6.1989. Thereafter an order was issued on 16.9.1999 regarding conversion of part time casual labourers working with 4 or more hours per day in to full time casual labourers. The said order reads as follows:

GOVERNMENT OF INDIA
MINISTRY OF COMMUNICATIONS
DEPARTMENT OF TELECOMMUNICATIONS
SANCHAR BHAWAN, NEW DELHI
(STN-II)

No.269-13/99-STN-II

Dated:16/09/1999

To,

All CGM, Telecom. Circles
All CGM, Telephone Districts
All Heads of other Administrative offices
All the IFAs in Telecom Circles/Districts and other Administrative Units

Subject: Conversion of Part Time Casual Labourers working with 4 or more hours per day into full time casual labourers.

Sir,

I am directed to refer to this office letter No.269-10/89-STN dated 14.8.98 on the above mentioned subject. The matter has been examined in consultation with Telecom Finance and it has decided as below:-

- i. As a one-time relaxation, part time casual labourers with 4 or more hours of duty per day who have worked for 240 days in the preceding 12 months may be converted into full time casual labourers. This will be applicable only to the extent of the numbers indicated against respective field units in the Annexure.
- ii. They should be engaged as casual labourers subject to suitability.
- iii. They should be engaged as casual labourers only where there is shortage of Group D staff (i.e. existence of vacant Group D posts after accounting for all TSMs and existing full time Casual Labourers) and no posts should be created for the purpose.
- iv. In the event, there is no shortage in Group D at the station where the part time

casual labourer is to be engaged at work as full time casual labourers, the part time casual labourers will not be converted into full time casual labourers.

- v.Payment to the above casual labourers may be made as provided for under Rule 331 of P&T FHB Vol.I. Under no circumstances should they are paid through muster roll.
- vi.No part time casual labourers will be engaged hereafter and any violation will result in disciplinary action.
- vii.Orders will take effect from the date of issue.

This issues with the concurrence of Telecom Finance vide their diary No.2409/99-FAI dated 8.9.99.

Yours' faithfully,

(HARDAS SINGH)
ASST. DIRECTOR GENERAL (STN)

18. Thereafter an order was issued on 25.8.2000 pertaining to conversion of part time casual labourers working for less than 4 hours per day into full time casual labourers. The said order reads as follows:

A-269-33/99-STN-II
Government of India
Department of Telecom Services
Sanchar Bhavan, 20, Ashoka Road, New Delhi
(STN-II Section)

Dated: 25.8.2000

To,

All CGM, Telecom. Circles
All CGM, Telephone Districts
All Heads of other Administrative offices
All the IFAs in Telecom Circles/Districts and other Administrative Units

Subject: Conversion of Part Time Casual Labourers working for less than 4 hours per day into full time casual labourers.

Sir,

I am directed to refer to this office letter No.209-10/89-STN dated 14.8.98 (Copy enclosed) on the above mentioned subject. The issue of conversion of Casual Labourers working for less than four hours per day into full time casual labourers has been examined in consultation with Telecom. Finance and it has been decided as indicated below:-

i. As one time relaxation, Part Time Casual Labourers with less than 4 hours of duty per day who have worked for 240 days in the preceding 12 months may be converted into full time casual labourers. This will be applicable only to the extent of the numbers indicated against respective field units. In the Annexure (the figures are based on the information furnished by the circles themselves) and it will further be subject to the conditions mentioned in the following paragraphs.

ii. They should be engaged as casual Labourers subject to suitability and qualifications.

iii. They should be engaged as casual labourers only where there is shortage of Gr.'D' staff(i.e. existence of vacant Gr. 'D' posts after accounting for all temporary status mazdoors (TSMs) and existing full time casual labourers and no posts should be created for this purpose).

iv. In the event, there is no shortage in Gr. 'D' at the station where the part time casual labourers are working, the part time casual labours will not be converted into full time casual labourers.

19. In the said order the number of part-time casual labourers with less than 4 hours of duty per day in Karnataka mentioned as 163. Thereafter a circular issued on 29.9.2000 regarding regularisation of casual labourers which reads as follows:

No.269-94/98-STN-II
 Department of Telecom. services
 Sanchar Bhavan, 20, Ashoka Road, New Delhi
 (STN-II Section)

Dtd.29.09.2000

To

All CGM, Telecom. Circles
 All CGM, Telephone Districts
 All Heads of other Administrative offices
 All the IFAs in Telecom Circles/Districts and other Administrative Units

Subject: Regularisation of Casual Labourers.

Sir,

The employees unions are demanding regularisation of all the casual labourers. This issue was under consideration for quite some time. It has been decided to regularise all the casual labourers, working in the Dept. including those who have been granted temporary status, with effect from 1.10.2000, in the following order.

1. All casual labourers who have been granted temporary status upto the issuance of orders No:269-/93-STN-II dtd.12.2.99, circulated vide letter No.269-13/99-STN-II dtd.12.2.99 and further vide letter No:269-13/99-STN-II dtd.9.6.2000.

2. All full time casual labourers as indicated in the Annexure.
3. All part time casual labourers who were working for four or more hours per day and converted into full time casual labourers vide letter No:269-13/99-STN-II dtd.16.9.99.
4. All part time casual labourers who were working for less than four hours per day and were converted into full time casual labourers vide letter No:269-13/99-STN-II dtd.25.8.2000.
5. All Ayas and Supervisors converted into full-time casual labourers as per order No:269-10/97-STN-II dtd.29.9.2000.

The number of casual labourers to be regularised in categories (2) to (5) above is given in the Annexure enclosed. The figures given in the Annexure are based on information received from the Circles.

The casual labourers indicated from 91) to (5) above are to be adjusted against available vacancies of Regular Mazdoors. However, Chief General Managers are also authorised to create posts or Regular Mazdoors as per the prescribed norms, and to that extent, the prescribed ceiling for the circle will stand enhanced.

As per this office letter No:269-4/93-STN-II dtd.12.2.99, vide which temporary status was granted to casual labourers eligible on 1.8.1998, no casual labourers were to be engaged after this date and all casual labourers not eligible for temporary status on 1.8.1998 were to be disengaged forthwith.

Therefore, there should be no casual labourers left without temporary status after 1.8.98 (Other than those indicated in serial nos. (2) to (5) above). however, if there is still any case of casual labourers left out due to any reasons, that may be referred to the Head Quarters separately.

This issues with the concurrence of Telecom Finance vide their Diary No:3536/2000/FA-I dtd.29.9.2000.

Yours' faithfully,

(HARDAS SINGH)
Assistant Director General (STN)
Tel.No.:371 6723/303 2531.

20. Various schemes have been mentioned in the preceding paras beginning with 'Casual Labourers Grant of Temporary Status and Regularisation Scheme 1989' which pertains to casual labourers engaged up to 30.3.1985. Subsequent order of 1993 relates to casual labourers engaged between 30.3.1985 up to 22.6.1989. The 1999 circular dealt with conversion of part time casual labourers working for 4 or

more hours per day and who had worked for 240 days in the preceding 12 months in to full time casual labourers. The next order of 25.8.2000 permitted one time relaxation for conversion of part time casual labourers with less than 4 hours per day and who have worked for 240 days in the preceding 12 months in to full time casual labourers subject to suitability and qualifications. The subsequent order of 29.9.2000 permitted regularisation of casual labourers i.e all full time casual labourers working earlier, part time casual labourers working for four or more hours and converted into full time casual labourers pursuant to the circular dtd.16.9.1999 and part time casual labourers who are working for less than four hours and converted into full time casual labourers vide circular of 25.8.2000 It does not emerge clearly from the records and details submitted by the applicants as to whether they were working as full time casual labourers or part time casual labours. Only in the case of applicant No.2 Smt. Basamma N.Belgaum it was mentioned in the reply statement of the respondents that she was engaged for 2 hours daily during the period from 1.1.1989 to 30.09.2001. The circular dtd.29.9.2000 also stipulated that all casual labourers not eligible for temporary status as on 1.8.1999 should be disengaged forthwith. It appears from records that in Dharwad Telecom District where the applicants claim to have worked, 30 casual workers were regularised w.e.f. 1.10.2000 pursuant to the order dtd.29.9.2000. This would imply that there were casual labourers under different categories in Dharwad Telecom District who were considered for regularisation in terms of order dtd.29.9.2000. Neither the applicants have highlighted nor any reason is forthcoming for any discrimination between the applicants if they were fulfilling the conditions of the above mentioned circulars and the 30 casual labourers who had been working in

the Telecom District who were regularised in terms of circular dtd.29.9.2000. Further, according to the claim of the applicants themselves, they were disengaged in 2001 and they have not been working with the respondents for the last 17 years.

21. Right from the initial litigation i.e. TA.No.173/2009 and connected cases, it is evident that the documents produced by the applicants are not sufficient enough to establish their claim for having fulfilled the stipulation under schemes of regularisation of casual workers and which will entail them required benefit for fresh engagement as casual labourers and subsequent regularisation as have been claimed in these OAs. During the subsequent deliberations also no additional facts have been produced or emerged to justify their claims.

22. Having gone through the records and proceedings of the committee constituted to examine the case of the applicants, we do not find any justifiable ground to arrive at any positive conclusions about the claims of the applicants of having working as casual workers and their fulfilling all the stipulation so as to justify their eligibility for coming under the purview of the circular of 29.9.2000 for conferment of temporary status followed by regularisation.

23. Therefore, we hold that the contention made by the applicants does not merit any consideration and hence the OAs being devoid of any merit stands dismissed. No order as to costs. “

2. In this case also the matter went up to the High Court. The Hon'ble High Court directed the committee to examine it. Apparently it transpires that applicant did not produce any evidence in the Committee. Whereas the respondents have produced witnesses to be cross examined and the applicant did not cross examine them. Therefore, no presumption can be alleged against the respondents that they have not complied with their justificatory burden, even though the acquittance records are in the custody of the respondents. If there is no such thing available with them, it is for the applicant to produce contra evidence. Applicant ought to have produced the evidence to prove that he had worked at that point of time. Since the applicant had not done his part of the bargain, then no merit can be attached to the claim of the applicant. No merit.

3. OA dismissed. No order as to costs.

(C.N. SANKAR)
MEMBER(A)

(DR. K.B. SURESH)
MEMBER(J)

vmr

Annexures referred to by the Applicant in OA.373/2017

Annexure A-1:Copy of the Work Diary of the Applicant No.1 from 1985 to 1989.

Annexure A-2:Copy of the Work Diary of the Applicant No.2 from 1985 to 1990.

Annexure A-3:Copy of the Work Diary of the Applicant No.3 from 1986 to 1989.

Annexure A-4:Copy of the Work Diary of the Applicant No.4 from 1986 to 1989.

Annexure A-5:Copy of the Work Diary of the Applicant No.5 from 1987 to 1990.

Annexure A-6:Copy of the G I Dept of Telecom Circular dated 07.11.1989.

Annexure A-7:Copy of the Representation of service union dated 27.07.2000.

Annexure A-8:Copy of the letter No.1/23-22/2001 dated 28.07.2000.

Annexure A-9:Copy of the No. R & E/Union/Misc-Minutes of Spl. Meeting with union representative dated 21.08.2000.

Annexure A-10 series:Copy of of representations dated 28.06.2014.

Annexure A-11:Copy of the order dated 16.10.2015 passed in OA. No.1270-1274/2014.

Annexure A-12:Copy of the order dated 30.08.2016 passed in WP. No.6574-6578/2016.

Annexure A-13 series:Copy of the Representation dated 24.10.2016.

Annexure A-14 series:Copy of the Affidavit Evidence.

Annexure A-15 series:Copy of the impugned order in bearing ref. No.6574-6578/2015/2016-17/22 dated 29.12.2016.

....