

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,

Original Application No. 261 of 2013

Date of Order: This the 29th Day of September, 2015

HON'BLE MRS MANJULA DAS, JUDICIAL MEMBER

HON'BLE MOHD HALEEM KHAN, ADMINISTRATIVE MEMBER

1. Nipu Hazarika, Son of Late Jonaran Hazarika,
Village-Namoni Gayan Gaon, P.O.
Dhekorgorah, District-Jorhat
Assam.
2. Pobitra Chutia
Son of Sri Padma Chutia,
Village-Banmukh Chutia Gaon,
District-Sivasagar, Assam
3. Atul Gogoi
Son of Sri Jogeswar Gogoi
Village-Kukura Chowa
P.O. Tenga Pukhuri,
District-Sivasagar.
4. Sri Jitul Neog
Son of late Ramnath Neog,
Village-Araltali,
P.O.Pelengi,
5. Mafizur Rahman
Son of Md.Mohibul Rahman
Village-Arjunguri,
P.O.Arjunguri,
District: Sivasagar
Assam
6. Durgeswar Khanikar
Son of Late Gutiram Khanikar
Village-Khanikar Gaon,
P.O.Gargaon,
District-Sivasagar, Assam

7. Mahendra Borah
Son of Sri Siba Nath Birah
Village-Bahuwa Bari,
P.O.-Ban Rajabari,
District-Sivasagar, Assam
8. Sunaber Ali
Son of Abdul Rahman,
Village-Aideobari Bagicha Gaon,
P.O.Sonari,
District-Sivasagar, Assam
9. Bipin Borah,
Son of Kanak Borah
Village-Bohuabari
P.O.Bam Rajabari
District: Sivasagar, Assam
10. Rati Kanta Gogoi
Son of Thunika Gogoi,
Village-Banmukh
Dhupabaria,
P.O.Pan Becha,
District-Sivasagar,
Assam
11. Anil Changmai
Son of Late Kanak Changmai
Village-Betbari Tamuli Bazar
P.O. Betbari,
District-Sibvasagar, Assam
12. Moni Kanata Chutia
Son of Liladhar Chutia,
Village-Banmukh,
Chutia Gaon,
District –Sivasagar, Assam
13. Pramod Gogoi, Son of Budai Gogoi,
Village-Kathpar,
P.O.Banmukh,
District:- Sivasagar, Assam

14. Bhaben Gogoi
Son of Sadananda Gogoi,
Village- Naragaon,
P.O. Golaghat, Assam
15. Alauddin Ahmed
Son of Late Chumber Ali Ahmed
Village- Na Ali,
P.O.Sivasagar
District-Sivasagar, Assam
16. Jitu Hazarika
Son of Late Jonaram Hazarika
Village-Namoni Gayan Gaon,
P.O.Dhekor Gorah,
District-Jorhat, Assam
17. Mridul Lahon,
Son of Sri Loknath
Village-Simluguri Lahon Gaon,
P.O.Simluguri,
District-Sivasagar
Assam
18. Dipen Hazarika
Son of Late Dhaniram Hazarika
Village-Khutia Pota Gaon
P.O.Nahotia, District: Jorhat, Assam
19. Makan Gogoi
Son of Haluram Gogoi
Village-Lujania Gaon,
P.O.-Gaspuria
Mariani, District: Jorhat, Assam
20. Binoy Gogoi
Son of Lokrsvar Gogoi, Village
Marongial Gaon,
P.O.Nakachari
Mariani, District: Jorhat, Assam
21. Dharani Gogoi,
Son of Tilak Gogoi,
Village-Laguabari,

P.O.-Rajmai,
District-Sivasagar, Assam

22. Nirupama Burhagohain
SBS, O/O GMTD, BSNL, Jorhat

Applicant

By Advocate Mr.H.K.Das

-Versus-

1. The Chairman-cum-Managing Director
Bharat Sanchar Nigam Limited (BSNL)
New Delhi-1

2. The Chief General Manager,
Assam Telecom Circle, BSNL
Panbazar, Guwahati-1

3. The Telecom District Manager,
Bharat Sanchar Nigam Limited
Jorhat.

Respondents

By Advocate Mr.M.R.Das (BSNL)

O R D E R (ORAL)

Per Mrs.Manjula Das, Judicial Member:

By this O.A., applicant makes a prayer to set aside and quash the impugned order dated 28.01.2013 and to direct the respondents to grant the benefit of the temporary status under the Scheme of 1989 to the applicants.

2. Heard Mr.H.K.Das, learned counsel for the applicant and Mr. M.R.Das, learned Standing Counsel for the BSNL.

3. Mr.H.K.Das, learned counsel for the applicant submitted that the applicants were initially appointed for the year 1991 to 1997 under the respondents were in need of the service of the respondents and they engaged the applicants as casual workers at Jorhat. The applicants received their salaries by the ACG-17 pay slip issued by the respondents. Mr.Das submits that the applicants are performing the duties of regular Group-D employees, till date as much as the service of the applicants were extended by the respondents from time to time by passing administrative order. It is submitted by the learned counsel that as per the Scheme in the name and style "Casual Labourers (Grant of Temporary Status and Regularization) Scheme" 1989, the applicants are entitled to the benefits of temporary status and consequential regularization. It was submitted by the learned counsel that all the applicants fulfilled all the required qualifications mentioned in the said Scheme of 1989. However, the respondents authority without any cogent reasons withholding the benefits of the Scheme to the applicants whereas other similarly situated persons working in the Assam Telecom Circle as well as N.E. Telecom Circle are enjoying the benefits of temporary status and regularization.

4. It was submitted by the learned counsel that the aforesaid Scheme of 1989 was clarified by the respondents in respect of the cut

of date of its applicability. The respondents to that effect issued an order dated 01.09.1999 clarifying the said cutoff date. By the aforesaid order the respondents made the Scheme applicable to the casual workers recruited up to 01.08.1998. Meaning thereby the casual workers recruited after 01.08.1998 will not be entitled to get the benefits of the Scheme. Since the original Scheme was an ongoing Scheme by the aforesaid order dated 01.09.1999, a cutoff date has been given to the Scheme.

5. Mr.H.K.Das further submitted that the applicants have completed 240 days of service which is an admitted factual aspect of the matter. It was further submitted that on 12.9.2003, the Chief General Manager intimated to Sr. DDG(Pers) , New Delhi, enclosing a list of casual; workers completing 240 days of service prior to 01.08.1998 and sought for clarification from the Sr.DDG(Pers), for consideration of the case of the applicants for grant of temporary status. In the said list included the names of the applicants who have completed 240 days on continuous service prior to 01.8.1998. Thereafter , the General Manager, BSNL, Assam Telecom Circle issued another communication dated 05.02.2004 to the Sr.DDG (Pers), BSNL, New Delhi seeking some more clarification for consideration of the applicants for grant of temporary status under the Scheme of 1989.

6. Mr.Das further submitted that being aggrieved for non-granting of temporary status, the applicants earlier approached this Tribunal vide O.A.No.239 of 2012 where this Tribunal vide order dated 13.08.2012 disposed of the said O.A. directing the applicants to submit comprehensive representation with further direction to the respondents to dispose of the same within two months. Pursuant to such direction applicants submitted comprehensive representation dated 24.11.2012 praying for grant of temporary status. However, their prayer was turned down by the respondents vide impugned order dated 28.1.2013 on the ground that the applicants were not in service on 01.08.1998 inasmuch as they did not fulfil the requirement of the Scheme of 1989. According to the learned counsel, the rejection of the claim of the applicants by taking their plea , as mentioned in the speaking order is not sustainable under the law as much as, the 1989 Scheme was ongoing Scheme. Meaning thereby any casual labour who is engaged subsequent to the coming of the Scheme completing 240 days are entitled to get the benefits of the Scheme. Therefore, the department of Telecommunication issued circular dated 01.09.1999 fixing a cutoff date as 01.08.1998 towards granting the benefits of temporary status to the casual labourers. Thus, the casual labourers who have been engaged prior to 01.08.1998 and who completed 240 days of service are entitled for granting the benefits of temporary

status. According to the learned counsel the applicants have already completed more than 15 years of service under the respondents and in the event of not considering their cases for temporary status would cause irreparable loss and injury to the applicants.

7. Mr.H.K.Das, learned counsel for the applicant submitted that in the impugned order the respondents resisted the claim of the applicants on the ground that the applicants were failed to furnish any substantive record/document in support of their claim and the applicants were not in service on 01.08.1998, therefore, they do not fulfil the requirement of the Scheme of 1989.

8. The learned counsel further submitted that in the present case, the applicants were working directly under the respondents BSNL. According to learned counsel, the applicants were fulfilled all the essentials mentioned in the scheme of 1989 for grant of temporary status. They have completed 240 days service prior to 01.08.1998 and they have already completed more than 15 years of service under the respondents. Learned counsel for the applicant emphasised that the respondents issued an order dated 07.11.1989 by which a Scheme of 1989, certain benefits were also granted to the casual workers such as conferment of temporary status, regularization , wages and daily rates etc. It was further submitted that as per the directions in the judgment and order passed by the Hon'ble Supreme Court and the Scheme of

1989, the applicants are entitled to the benefits mentioned in the said scheme. Learned counsel vehemently argued that the similarly situated persons working in the Assam Telecom Circle as well as the N.E. Telecom Circle are enjoying the benefits of temporary status and regularization. The aforesaid Scheme of 1989 was clarified by the respondents in respect of the cut-off date of its applicability and to that effect issued an order dated 01.09.1999 clarifying the said cut off date. By the aforesaid order the respondents made the Scheme applicable to the Casual workers recruited up to 01.08.1998, thereby the casual labourers recruited after 01.08.1998 will not be entitled to get the benefits of the Scheme. Since the original Scheme was an ongoing Scheme by the aforesaid order dated 01.09.1999 a cut off date has been given to the scheme.

9. Mr. Das submitted that as the applicants having the eligibility criteria for being conferment of temporary status, the respondents ought to have granted the same.

10. Learned counsel further emphasised that the action on the part of the respondents in rejecting the prayer of the applicants on the ground of their failure to produce documents is grossly illegal. The applicants are casual labourers getting their pay under ACG 17 pay slips and the respondents are custodian of the records of service applicants. Further submitted that the act of respondents relying on the law laid

down by the Hon'ble Apex Court in the case of Uma Devi –Vs-State of Karnataka & Others to deny relief to the applicants shows clear non application of mind. The applicants never disputed the propositions of law laid down by the Hon'ble Apex Court. Since the applicants are only claiming temporary status, therefore, the aforesaid law is not applicable in the present facts of the case. Hence on this score alone the present original application deserves to be allowed.

11. Learned counsel by referring para 6 of the written statement submitted that the DOT/ND vide order No. 271-85/97-STN-II dated 17.02.1998 observed that “some circles are inducting Casual labourers on the basis of false certificates for attendance etc. giving further scope to claim the benefits of scheme 1989, thereby causing loss to Department of Telecom”.

Further observed that “casual labourers approaching Tribunals when they were denied the benefits or terminated from service and drawing Department of Telecom to legal litigation and causing pecuniary loss to the Department.”

12. Mr. Das vehemently argued that the DOT vide Notification dated 01.09.1999 by referring their another two orders O.M.No.269-4/93/STN-II and 269-13/990STN-II dated 12.02.1999 stated that the office has conveyed approval on the two items one is grant of

temporary status to the Casual Labourers eligible on 01.08.1998 and another on regularization of Casual labourers with temporary status who were eligible as on 31.03.1997. Some doubt have been raised regarding date of effect of these decision. It is therefore, clarified that in case of grant of temporary status to the casual labourers, the order dated 12.02.1999 will be effected w.e.f. the date of issue of this order and in case of regularization to the temporary status Mazdoors eligible as on 31.03.1997, this order will be effected w.e.f. 01.04.1997.

13. By countering the arguments advanced by Mr.H.K.Das, learned counsel for the applicants, Mr.M.R.Das, learned counsel for the respondents submitted that the applicants were engaged as casual labourers in the Department of Telecom (DOT) Jorhat Division purely on temporary and daily wages basis between the period from 1991 to 1997 and casual services of the applicants were disengaged in different dates between 01.06.1998 to 13.06.1998.

14. Even though, the applicants were completed 240 days in a preceding year, but they were not in Casual service as on 01.08.1998 i.e. the cut off date as per scheme. Therefore, it is submitted that as per DOT/New Delhi's order dated 12.02.1999 Recruitment of Casual Labourers was completely Ban w.e.f. 22.06.1988. In the instant case the applicants were engaged in Casual service from 1991 to 1997 i.e. during the imposition of Ban period. They were not continuing for such works

as on 01.08.1998 as per Scheme. There Casual services came to an end before 01.08.1998. Therefore, the claim of the applicants is not justify for conferment of temporary status as per Scheme. It was further submitted by the learned counsel that as per the decision of **the Hon'ble Supreme Court in Civil Appeal No.3595-3612/1999 dated 10.04.2006 in the case of Secretary, State Karnataka and others Vs. Uma Devi and others** regarding regularization of Casual labourers/Workers, present applicants are not entitled to get the benefit as sought for.

15. We have heard learned counsel for the parties, perused the pleadings and materials placed before us. It is clear that the applicants were initially recruited under the respondents as casual worker in between the year 1991 to 1997. The Scheme of Casual labourers grant of temporary status and regularization scheme 1989 came into force w.e.f. 01.10.1989 onwards. The said scheme is applicable to the casual labourers employed by the department of Telecommunications, 1989, where the conferred a Temporary Status as here under:-

- i) Temporary status would be conferred on all the Casual labourers currently employed and who have rendered a continuous service at least one year. Out of which they must have been engaged on work for a period of 240 days (206 days in case of offices observing five day week). Such casual labourers will be designated as temporary status.

- ii) The Department vide order dated 01.9.99 on the subject of regularization/grant of temporary status to casual labourers informed all the Chief General Manager, Telecom Circles, Chief General Manager Telephones District, all Heads of other Administrative Officers, all the IFS in Telecom, Circles/Districts and other Administrative Units by referring letter dated 12.2.1999 issued by the Government of India, Department of Telecommunication, New Delhi as here under:-

"In the above referred letter this office has conveyed approval on the two items, one is grant of temporary status to the Casual Labourers eligible as on 1.8.1998 and another on regularization of Casual Labourers with temporary status who are eligible as on 31.3.1997. Some doubts have been raised regarding date of effect of these decision. It is therefore, clarified that in case of grant of temporary status to the Casual Labourers, the order dated 12.2.1999 will be effected w.e.f. the date of issue of this order and in case of regularization to the temporary status Mazdoor eligible as on 31.3.1997, this order will be effected w.e.f. 1.4.1997.

16. From the speaking order dated 28.1.2013, it was intimated that as per the scheme for granting Temporary Status and Regularization of Casual Labourers vide DOT, New Delhi letter dated 07.11.1989, the only those casual labourers who were currently working as on 01.08.1989 which is contrary to the specific requirement of Scheme 1989 were to be considered for conferment of Temporary Status. Thus, after examining the case, the representation of the applicants was disposed of in a negative.

17. In the present case, it is not disputed that the applicants were engaged during the period from 31.03.1985 to 22.06.1988 and they were continuing for such works as on 01.08.1998. As such, it is established from the records that they have completed 240 days Casual works. Thus, we are in view that the conferment of temporary status to the applicants is justifiable. Accordingly, we direct the respondent authority to confer temporary status as discussed above. However, the prayer for regularisation is not entertained which will be decided by the appropriate authority as per law.

18. O.A. stands partly allowed. No order as to costs.

(MOHD HALEEM KHAN)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICIAL MEMBER

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