

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 665 of 2014
OA No. 805 of 2016

Present: Hon'ble Mr.Gokul Chandra Pati, Member (A)]
Hon'ble Mr.Swarup Kumar Mishra, Member (J)

- OA 665/2014 Trilochan Sethi, aged about 44 years, S/o Jogendra Sethi, working as Casual Worker, awarded with 1/30th wages, under the Dy. Superintendent Horticulturist, Archaeological Survey of India, Bhubaneswar, Sub-Circle, Dist.- Khurda.
- OA 666/2014 Akhaya Kumar Das, aged about 47 years, S/o Sapani Das, working as Casual Worker, awarded with 1/30th wages, under the Dy. Superintendent Horticulturist, Archaeological Survey of India, Bhubaneswar, Sub-Circle, Dist.- Khurda.
- OA 667/2014 Sridhar Das, aged about 45 years, S/o Chandramani Das, working as Casual Worker, awarded with 1/30th wages, under the Dy. Superintendent Horticulturist, Archaeological Survey of India, Bhubaneswar, Sub-Circle, Dist.- Khurda.
- OA 672/2014 Satyabadi Behera, aged about 45 years, S/o Jogi Behera, working as Casual Worker, awarded with 1/30th wages, under the Dy. Superintendent Horticulturist, Archaeological Survey of India, Bhubaneswar, Sub-Circle, Dist.- Khurda.
- OA 757/2014 Basanta Kumar Bhoi, aged about 43 years, S/o Makar Bhoi, working as Casual Worker, awarded with 1/30th wages, under the Dy. Superintendent Horticulturist, Archaeological Survey of India, Bhubaneswar, Sub-Circle, Dist.- Khurda.
- OA 758/2014 Manu Bhoi, aged about 44 years, S/o Chaitanya Bhoi, working as Casual Worker, awarded with 1/30th wages, under the Dy. Superintendent Horticulturist, Archaeological Survey of India, Bhubaneswar, Sub-Circle, Dist.- Khurda.
- OA 813/2014 Mayadhar Senapati, aged about 45 years, S/o Khageswar Senapati, working as Casual worker, awarded with 1/30th Wages, under the Dy. Superintendent Horticulturist, Archaeological Survey of India, Bhubaneswar, Sub-Circle, Dist.- Khurda.
- OA 693/2016 Rabindra Kumar Jena, aged about 43 years, S/o Late Chaila Jena, At/PO-Uttarana, Dist-Puri, at present working as a casual worker awarded with 1/30th status at Archaeological Survey of India Site, Paschima Somanath Temple, At/PO/PS/Dist-Boudh, Odisha.
- OA 765/2016 Sukanta Kumar Swain, aged about 39 years, S/o Gaur Swain, At-Panikata, PO-Jhanti Sasan, PS-Balipatana, Dist-Khurda, at present working as a casual worker awarded with 1/30th status at Archaeological Survey of India Circle Office, Toshali Apartment, Satya Nagar, Bhubaneswar, Dist-Khurda, Odisha.
- OA 805/2016 Ranjan Barik, aged about 48 years, S/o Upendra Barik, At-Tarabai, PO-Chanahat, PS-Balipatna, Dist-Khurda, at present working as a casual worker awarded with 1/30th

status at Archaeological Survey of India, Sub-Circle, AT/PO/PS-Sanantrapur, Dist.- Khurda, Odisha.

- OA 806/2016 P.Manguli Rao, aged about 41 years, S/o P.Tarini Rao, At/PO-Old Town, Bhubaneswar, Dist-Khurda, at present working as a casual worker awarded with 1/30th status at Archaeological Survey of India, Sub-Circle, AT/PO/PS-Sanantrapur, Dist.- Khurda, Odisha.
- OA 807/2016 Bharat Kumar Mohanty, aged about 41 years, S/o Surendra Mohanty, At-Arilo, PO-Naraj, PS-Barang, Dist-Cuttack, at present working as a casual worker awarded with 1/30th status at Archaeological Survey of India, Sub-Circle, AT/PO/PS-Sanantrapur, Dist.- Khurda, Odisha.
- OA 421/2017 Ajay Kumar Mandoi, aged about 42 years, S/o Late Narayan Mandoi, AT-Jambewswar Patna Sahi, PO-Old Town, PS-Lingaraj, Dist-Khurda, at present working as a casual worker awarded with 1/30th status at Archaeological Survey of India, Sub-Circle, AT/PO/PS-Sanantrapur, Dist.- Khurda, Odisha.
- OA 422/2017 Rajendra Pradhan, aged about 35 years, S/o Late Gandharba Pradhan, At-Jambeswar Patna Sahi, PO-Old Town, PS-Lingaraj, Dist-Khurda, at present working as a casual worker awarded with 1/30th status at Mahima Mani Temple, Archaeological Survey of India Site, At/PO-Ragadi, PS-Banki, Dist.-Cuttack, Odisha.
- OA 423/2017 Ashok Kumar Behera, aged about 42 years, S/o Pravakar Behera, At-Niranjanpur, PO-Kantia, PS-Jatni, Dist-Khurda, at present working as a casual worker awarded with 1/30th status at Archaeological Survey of India, Sub-Circle, AT/PO/PS-Sanantrapur, Dist.- Khurda, Odisha.
- OA 61/2018 Rajkishore Samal, aged about 44 years, S/o Late Nabina Samal, At-Sanamachapur, PO-Dalakashati, PS-Balipatna, Dist-Khurda, at present working as 1/30th status at Singha Nath Temple, Archaeological Survey of India, Site, Banki, Dist-Cuttack, Odisha.
- OA 19/2019 Sarbeswar Behera, aged about 54 years, S/o Udayanath Behera, At-Jayapur, PO-Itipur, PS-Dhauli, Dist-Khurda, at present working as a casual worker awarded with 1/30th status at Archaeological Survey of India, Ancient Site, Baneswar Nasik, At/PO-Badamba, Dist-Cuttack, Odisha.
- OA 72/2019 Kabula Swain, aged about 39 years,I S/o Harihar Swain, At-Jagamara, PO/PS-Khandagiri, Dist-Khurda, at present working as a casual worker awarded with 1/30th status at Archaeological Survey of India, Horticulture Division-IV Circle Office, Samantrapur, Bhubaneswar, Dist-Khurda, Odisha.
- OA 73/2019 Abhimanyu Nayak, aged about 51 years, S/o Arjuna Nayak, At-anjira, PO-Sisilo, PS-Baliana, Dist-Khurda, at present working as a casual worker awarded with 1/30th status at Archaeological Survey of India, Ancient Site, Baneswar Nasik, At/PO-Padma Mala, Badamba, Dist-Cuttack, Odisha.

OA 132/2019 Surya Narayan Barik, aged about 44 years, S/o Bhramarabara Barik, At-Basantapur, PO-Taradapada, PS/Dist-Jagatsinghpur, at present working as 1/30th status at Khandagiri ASI site, Bhubaneswar, Dist-Khurda, Odisha.

OA 133/2019 Duryodhan Swain, aged about 47 years, S/o Bansidhar Swain, At-mankaragorada, PO-Junei Bazar, PS-Konark, Dist- Puri, at present working as 1/30th status at Khandagiri ASI site, Bhubaneswar, Dist-Khurda, Odisha.

VERSUS

Respondents in OA 665/2014, OA 666/2014, OA 667/2014, OA 672/2014, OA 757/2014, OA 758/2014, OA 813/2014

1. Union of India, represented through the Secretary, Ministry of Culture, Govt. of India, Shastri Bhawan, New Delhi-110001.
2. Director General, Archaeological Survey of India, Janpath, New Delhi-110011.
3. Chief Horticulturist, Archaeological Survey of India, Eastern Gate, Taj Mahal, Agra, Uttar Pradesh.
4. Dy. Superintendent, Horticulturist, Archaeological Survey of India, Division No. IV, Satya Nagar, Bhubaneswar, Dist.- Khurda.

Respondents in OA 805/2016, OA 421/2017, OA 422/2017, OA 423/2017

1. Union of India, represented through the Secretary, Ministry of Culture, Govt. of India, Shastri Bhawan, New Delhi-110001.
2. Director General, Archaeological Survey of India, Janpath, New Delhi-110011.
3. Superintending Archaeologist, Archaeological Survey of India, Toshali Apartment, Satya Nagar, Block No. VI, 2nd Floor, Bhubaneswar, Dist-Khurda, Odisha.
4. Ajay Kumar Khuntia, aged about 45 years, S/o Drona Khuntia, working as Monument Attendant, Office of the Superintending Archaeologist, Archaeological Survey of India, Circle Office, Bhubaneswar, Dist-Khurda, Odisha.

Respondents in OA 693/2016, OA 806/2016, OA 807/2016, OA 61/2018

1. Union of India, represented through the Secretary, Ministry of Culture, Govt. of India, Shastri Bhawan, New Delhi-110001.
2. Director General, Archaeological Survey of India, Janpath, New Delhi-110011.
3. Superintending Archaeologist, Archaeological Survey of India, Toshali Apartment, Satya Nagar, Block No. VI, 2nd Floor, Bhubaneswar, Dist-Khurda, Odisha.
4. Ajay Kumar Khuntia, aged about 45 years, S/o Drona Khuntia, working as Monument Attendant, Office of the Superintending Archaeologist, Archaeological Survey of India, Circle Office, Bhubaneswar, Dist-Khurda, Odisha.
5. Gangadhar Nayak, aged about 44 years, S/o Laxmidhar Nayak, working as Monument Attendant, Office of the Superintending Archaeologist, Archaeological Survey of India, Circle Office, Bhubaneswar, Dist-Khurda, Odisha.

Respondents in OA 765/2016, OA 19/2019, OA 72/2019, OA 73/2019 OA 132/2019, OA 133/2019,

1. Union of India, represented through the Secretary, Ministry of Culture, Govt. of India, Shastri Bhawan, New Delhi-110001.
2. Director General, Archaeological Survey of India, Janpath, New Delhi-110011.
3. Superintending Archaeologist, Archaeological Survey of India, Toshali Apartment, Satya Nagar, Block No. VI, 2nd Floor, Bhubaneswar, Dist-Khurda, Odisha-751002.

.....Respondents

For the applicant : Mr.B.Rout, counsel

For the respondents: Ms.S.B.Das, counsel (OA 665/2014, 666/2014, 667/2014, 757/2014, 758/2014, 765/2016, 806/2016, 421/2017, 423/2017, OA 73/2019)
 Mr.P.K.Mohanty, counsel (OA 61/2018)
 Mr.C.M.Singh, counsel (OA 19/2019)
 Mr.G.R.Verma, counsel (OA 72/2019, 133/2019)
 Mr.A.K.Mohapatra, counsel (OA 132/2019)
 Mr.A.C.Deo, counsel (OA 672/2014, 813/2014, 693/2016, 805/2016, 807/2016, 422/2017)

Heard & reserved on : 3.9.2019

Order on : 1.10.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs :

Reliefs claimed in OA 665/2014, OA 666/2014, OA 667/2014, OA 672/2014, OA 757/2014, OA 758/2014, OA 813/2014

- "(i) To quash the impugned office order darter 30.1.2014 of the respondent No.4 under Annexure A/7 rejecting grant of temporary status, as the same is contrary to the office order dated 3.8.2011 of the respondent No.4 under Annexure-5, discriminatory in nature, violative of Articles-14 &16 of the Constitution of India and further the respondents be directed to extend the consequential benefits of temporary status to which the applicant is entitled to with effect from the date of enjoyment of such benefits at par with other colleagues already awarded the temporary status working under the administrative control of respondent No.4 vide office order dated 3.8.2011 under Annexure A/5.
- (ii) To pass such other order(s)/direction(s) calling upon for the relevant records from the department and to pass such other order(s) which would be deemed just and proper in the facts and circumstances of the case and allow the original application."

Reliefs claimed in OA 693/2016, OA 765/2016, OA 805/2016, OA 806/2016, OA 807/2016

- "(i) To quash the speaking order dated 10.2.2014 (Annexure A/6) passed by the respondent No.3 holding that the same is against the scheme formulated by the Government.
- (ii) To pass appropriate orders directing the Departmental Respondents to grant Temporary Status to the applicant retrospectively and regularization.
- (iii) To pass such other orders/directions calling for the relevant records from the respondents as are deemed just and proper in the

facts and circumstances of the case and allow the Original Application with cost."

Reliefs claimed in OA 421/2017, OA 422/2017, OA 423/2017, OA 61/2018

- "(i) To quash the speaking order dated 29.3.2017 (Annexure A/6) passed by the respondent No.3 holding that the same is against the scheme formulated by the Government.
- (ii) To pass appropriate orders directing the Departmental Respondents to grant Temporary Status to the applicant retrospectively and regularization.
- (iii) To pass such other orders/directions calling for the relevant records from the respondents as are deemed just and proper in the facts and circumstances of the case and allow the Original Application with cost."

Reliefs claimed in OA 19/2019

- "(i) To quash the speaking order dated 5.9.2017 (Annexure A/6) passed by the respondent No.3 holding that the same is against the scheme formulated by the Government.
- (ii) To pass appropriate orders directing the Departmental Respondents to grant Temporary Status to the applicant retrospectively and regularization.
- (iii) To pass such other orders/directions calling for the relevant records from the respondents as are deemed just and proper in the facts and circumstances of the case and allow the Original Application with cost."

Reliefs claimed in OA 72/2019

- "(i) To quash the speaking order dated 27.8.2018 (Annexure A/6) passed by the respondent No.3 holding that the same is against the scheme formulated by the Government.
- (ii) To pass appropriate orders directing the Departmental Respondents to grant Temporary Status to the applicant retrospectively and regularization.
- (iii) To pass such other orders/directions calling for the relevant records from the respondents as are deemed just and proper in the facts and circumstances of the case and allow the Original Application with cost."

Reliefs claimed in OA 73/2019

- "(i) To quash the speaking order dated 7.2.2018 (Annexure A/6) passed by the respondent No.3 holding that the same is against the scheme formulated by the Government.
- (ii) To pass appropriate orders directing the Departmental Respondents to grant Temporary Status to the applicant retrospectively and regularization.
- (iii) To pass such other orders/directions calling for the relevant records from the respondents as are deemed just and proper in the facts and circumstances of the case and allow the Original Application with cost."

Reliefs claimed in OA 132/2019, OA 133/2019

- "(i) To quash the speaking order dated 31.12.2018 (Annexure A/7) passed by the respondent No.3 holding that the same is against the scheme formulated by the Government.

- (ii) To pass appropriate orders directing the Departmental Respondents to grant Temporary Status to the applicant retrospectively and regularization.
- (iii) To pass such other orders/directions calling for the relevant records from the respondents as are deemed just and proper in the facts and circumstances of the case and allow the Original Application with cost."

2. In all these OAs the applicants are similarly placed and the reliefs sought for in these OAs arise out of orders passed by the respondents rejecting the representation of the applicants for grant of Temporary Status in the light of the OM dated 10.9.1993 (Annexure A/2). These OAs, with similar facts were heard together and are being disposed of by this common order considering the OA No. 665/2014 with the OA No. 805/2016 as the lead OA.

OA No. 665/2014

4. In this OA, the applicant claims that he was engaged as a casual worker under the respondent No.4 on daily wage basis and is discharging uninterrupted service. On the basis of the letter dated 27.2.2013 (Annexure A/1), the applicant claims that he was working continuously from 19.2.1993 and was allowed the benefit of 1/30th wage status on completion of 240 days in a year.

5. It is stated in the OA that the scheme for granting temporary status and regularisation of casual worker was formulated by the respondents vide office order dated 1.11.1993 of the respondents based on the OM dated 10.9.1993 of the Department of Personnel and Training (in short DOPT), copy of which is at Annexure A/2 of the OA. Under the scheme the applicant claims that he was entitled to be allowed temporary status available for casual labourers as per the OM dated 10.9.1993 which was also clarified in the OM dated 6.6.2002 of DOPT (Copy at Annexure A/3). Since the applicant's case was not considered by the respondents, some other similarly placed employees approached this Tribunal vide order dated 12.5.2000 passed in OA 81 & 82/1998 directed the respondents to consider the grant of temporary status to the applicants in the said OA in accordance with the scheme. Against the said order the respondents approached Hon'ble High Court in OJC No. 9786/2000 and WP(C) 6723/2004 which was dismissed vide order dated 20.2.2009. The copies of the order dated 12.5.2000 and 20.2.2009 have not been enclosed by the applicant along with his written note of submissions filed in the OA No. 805/2016.

6. Thereafter, the applicant made several representations for grant of temporary status and a copy of such representation has been enclosed at Annexure A/4 series. It is stated in the OA that the respondents, vide office order dated 3.8.2011 (Annexure A/5), some of the casual labourers were granted temporary status under the scheme of 10.9.1993 but the applicant was excluded. The applicant is aggrieved because as stated in the OA although

some of the employees who were engaged after the applicant were given temporary status ignoring the applicant's case. It is submitted that in the Ministry of Home Affairs, the Indian Council of Agricultural Research and Central Board of Excise & Customs have allowed to confer temporary status under the scheme to the casual labourers working under the said organisations.

7. Being aggrieved by the inaction of the respondents, the applicant approached the Tribunal in OA 793/2013 requesting for a direction to consider the representation of the applicants. The Tribunal disposed of this OA vide order dated 4.12.2013 (Annexure A/6) directing the respondents to consider the representation with reference to the scheme of 10.9.1993 (Annexure A/2) and the letter dated 16.8.2002 (Annexure A/3) of the respondents and take an appropriate decision within 60 days.

8. In compliance of the Tribunal's order dated 4.12.2013, the respondents have passed the impugned order dated 31.1.2014 (Annexure A/7), rejecting the case of the applicant.

9. The grounds advanced in this OA are that although the applicant had fulfilled the eligibility conditions as per the OM dated 10.9.1993 (Annexure A/2) his case for temporary status has been rejected by an order which is not the well reasoned order. It is stated that the failure to give reasons amount to denial of justice in terms of judgment of Hon'ble Apex Court in 2003 (SC) 4664, 2004 AIR SCW 751, 2010 (1) (Supreme) 633 and 2012 (4) (Supreme) 585. Hence it is stated that the impugned order dated 30.1.2014 is illegal. The decision is also discriminatory since it is stated that other applicants who are on similar footing have been granted the benefit of temporary status vide order dated 3.8.2011 in which some of the employees who have been engaged subsequent to the applicant have also been granted the benefit, while denying the same benefit to the applicant. It is further stated that since the applicant has been receiving 1/30th status after completing 240 days work in a year, he ought to have been given the benefit of temporary status.

10. The counter filed by the respondents submitted that the OA is not maintainable and it is liable to be dismissed because of limitation, since any grievance pertaining to the scheme dated 10.9.1993 should have been taken within the period as stipulated under the law. It is stated that after a lapse of 20 years, the applicant filed OA No. 793/2013. It is stated that in the judgment of Hon'ble Apex Court in the case of DCS Negi -vs- UOI in SLP(C) No. 7956/2011, it was held that the Tribunal is duty bound to first consider whether the application is within limitation. The order dated 22.7.2011 of the Principal Bench of the Tribunal in OA No. 2155/2011 has also been cited in support of the contentions of the respondents. It is further stated in the counter that the applicant is required to prove that he has completed 240 days

in which year as contended by him. It is stated that a memorandum of settlement was made in the year 2008 before the Assistant labour Commissioner Central with the Workers Union wherein it was amicably decided the causal labourers who have completed 240 days of work as on 2002 will be allowed the benefit of 1/30th of the minimum of pay scale for a Group 'D' on pro-rata basis. It is further stated in the counter that Hon'ble Apex Court in a judgment dated 29.4.2002 in Civil Appeal No. 3168/2002 (Annexure R/3) held that the scheme of 10.9.1993 is not an ongoing scheme and hence, the temporary status can be conferred under that scheme only after fulfilment of conditions as incorporated in the said scheme. In other words, the casual labourer concerned, should have rendered continuous service of at least one year i.e. 240 days in a year as on the cut off date i.e. 10.9.1993. It is further stated that as per the Tribunal's order dated 12.5.2000 in OA No. 81 and 82 of 1998, which was upheld by order dated 20.2.2009 of the Hon'ble High Court, temporary status has been given to the employees who are covered by the said orders and for similarly placed employees and some of them were subsequently regularised against Group 'D' post as per the instructions of the DOPT vide OM dated 10.9.1993 (Annexure A/2). It is further stated that the respondents have considered the case of the applicants as per the order of the Tribunal to consider their cases and passed speaking order.

11. Rejoinder has been filed by the applicant reiterating the contentions in the OA and stating that the OA filed by the applicant is not barred by limitation in view of the judgments in the matter of Tukaram Kana Joshi & Others through Attorney holder –vs- M.I.D.C. & Others [(2013) 1 SCC 353. In reply to para 12-15 of the Counter, it is stated that apart from the applicants who approached the Tribunal in OA 81/1998 & 82/1998, the respondents have granted temporary status benefit to many other employees inspite of the fact that their cases were not covered under the order dated 12.5.2000 of the Tribunal in OA No. 81 and 82 of 1998. Such benefits were given to those casual workers by relaxing the terms and conditions fixed by DOPT OM dated 10.9.1993. Copy of the order dated 31.1.2012 (Annexure A/8) by which other similarly placed employees as the applicants, have been regularized has been enclosed to the rejoinder.

OA No. 805/2016

12. The facts in this OA are similar to OA No.665/2014 as discussed in the preceding paragraphs. The applicant joined the establishment as Casual Labourers on 5.8.1990 and he claims that he continued till date without any break. It is stated in the OA that w.e.f. 9.9.2008 the applicant has been allowed the benefit of 1/30th wage status as he has completed 240 days of work in a year vide order dated 9.9.2008 (Annexure A/1). Like the applicant in OA 665/2014, the applicant in this OA is aggrieved by the fact that he was not

conferred temporary status in terms of the DOPT OM dated 10.9.1993 although other similarly placed employees were conferred the status vide order dated 3.8.2011 (Annexure A/3) by the respondents. The applicant had filed OA No. 972/2013 in the first round, which was disposed of vide order dated 4.12.2013 (Annexure A/5) directing the respondents to dispose of the pending representations of the applicant dated 2.8.2011, 3.3.2012 and 10.11.2012 (as mentioned in the order dated 4.12.2013 of the Tribunal in OA No. 792/2013). The respondents thereafter passed the speaking order dated 10.2.2014 (Annexure A/14), rejecting the representation of the applicant for grant of temporary status. The grounds mentioned in the impugned order dated 10.2.2014 are same as in the rejection order passed in OA No. 665/2014.

13. Heard learned counsel for the applicants and the respondents and the written submissions have been filed by both sides. It is stated in the submissions made by the learned counsel for the applicants is that the case of the applicants is similar to the Tribunal's order dated 12.5.2000 passed in OA 81/1998 and 82/1998 in which the order was passed to confer temporary status for similarly placed casual workers and this order was upheld by Hon'ble High Court. The SLP filed by the respondents against order of Hon'ble High Court was dismissed. The said order dated 12.5.2000 was implemented vide order dated 3.8.2011 (Annexure A/5) of the respondents. It is further stated that the temporary status to other casual labourers apart from the applicants in OA No. 81 and 82 of 1998 was allowed and their services were regularised by relaxing DOPT OM dated 10.9.1993. Hence, it is claimed that the cause of action for the applicants arose from 3.8.2011 when the applicant submitted his representation ventilating his grievance. Then he filed OA 793/2013 which was disposed of on 4.12.2013 directing the respondents to dispose of the representation. It is further submitted that the respondents are also required to comply the direction of the judgment of Hon'ble Apex Court in the case of State of Karnataka & Others -vs- Uma Devi [AIR 2006 SC 1806], since the applicant, being a qualified person has worked in the department for more than 10 years and is also entitled for the benefit as per the judgment in the case of Uma Devi (supra). The other cases relied by learned counsel for the applicant were meant to demonstrate that the OA is not barred by limitation are the judgments in the case of Tukaram Kana Joshi (supra). The issue of discrimination of the applicant vis-a-vis the similarly placed employees who were conferred temporary status, has been also raised in the written submission. The other judgments cited by applicant are State of Karnataka - vs- M.L.Keshari [2010 (9) SCC 247] and Amarkanti Rai -vs- State of Bihar & Others and Bansidhar Nayak & Others -vs- Union of India & Others [2018 (II) OLR 479]. It is stated that the applicant had joined as a casual employee under the respondents in the year 1993 before the issue of the circular dated

10.9.1993 (Annexure A/2) and he has been granted 1/30th status. It is therefore, submitted that the applicant is eligible for consideration for the benefit as per the OM dated 10.9.1993.

14. In the written submission filed by the learned counsel for the applicant in OA No. 805/2016 the copy of the following cited judgements have been enclosed :-

- i) Order dated 12.5.2000 of the Tribunal passed in OA No. 81 and 82/1998 and the order dated 20.2.2009 of the Hon'ble High Court dismissing the Writ Petition filed by the respondents against the order dated 12.5.2000 of the Tribunal.
- ii) Order dated 31.7.2009 passed in SLP No. 17155/2009 by the Hon'ble Apex Court dismissing the SLP filed against order dated 20.2.2009 of Hon'ble High Court.
- iii) Tukaram Kana Joshi & Others through the Power of Attorney holder –vs- M.I.D.C. & Others decided on 2.11.2012 in Civil Appeal No. 7780/2012 arising out of SLP(C) No. 2418/2012 [(2013) 1 SCC 353].
- iv) Secretary, State of Karnataka & Others –vs- Uma Devi [AIR 2006 SC 1806]
- v) State of Karnataka & Others –vs- M.L.Keshari & Others [(2010) 9 SCC 247] and judgments in Amarkanti Rai (supra) and Bansidhar Nayak (supra).
- vi) Amarkanti Rai –vs- State of Bihar & Others
- vii) Bansidhar Nayak & Others –vs- Union of India & Others [2018 (ii) OLR 479]

Besides, at the time of hearing, learned counsel for the applicant has also filed the copy of the order of this Tribunal dated 25.5.2018 in OA No. 652/2013 (Rabindra Kumar Mallick –vs- The Secretary, Ministry of Culture, Government of India & Others) and the order dated 11.12.2018 of this Tribunal in OA No. 690/2016, 691/2016, 694/2016 and 695/2016 (Chitrasen Mohanty –vs- Union of India & Others) in which similar claims have been adjudicated by this Tribunal.

15. Learned counsel for the respondents was heard and she filed a memo dated 12.9.2019 stating that the written note of submissions filed in similar cases on behalf of the respondents may also be adopted in this case. It is seen that a detailed written note of submissions has been submitted by the respondents in OA 672/2014 which is also relevant for all the OAs in this batch. One of the submission in the note that the OA is barred by limitation as stated in the counter, in terms of the judgment in OA No. 2155/2011 of the Principal Bench in the case of Umesh Kumar –vs- Union of India and the judgment of Hon'ble Apex Court in the case of D.C.S. Negi –vs- Union of India & Others [SLP(C) No. 7956/2011] (supra). It is further submitted that the applicant did not fulfil the conditions of the scheme vide OM dated 10.9.1993 which was a one-time scheme and not on going scheme as decided by the Hon'ble Apex Court in Civil Appeal No. 3176/2002 [Union of India & Another –vs- Mohan Pal, etc.] (Annexure R/3 to the counter). It is stated that the

applicant has approached the Tribunal for the first time in the year 2013 after long gap of 20 years after issue of OM dated 10.9.1993.

16. We have considered the submissions made by the learned counsels for both sides and also perused the plea of the parties available on record. The issues to be resolved in this cases are :-

- (i) Whether the OA is barred by limitation as argued by the respondents?
- (ii) Whether the applicant is entitled for the benefit of temporary status and other benefits in accordance with the judgment of Hon'ble Apex Court in the case of Uma Devi (supra)?

17. The cause of action for the applicant first arose after the policy guidelines in the OM dated 10.9.1993 (Annexure-A/2), by which, the scheme for granting temporary status to the casual labourers (referred hereinafter as 'scheme') was launched. The scheme was applicable for the casual labourers who were on employment on the date of issue of the order dated 10.9.1993 and who had rendered a continuous service of at least one year or engaged for 240 days during one year prior to 10.9.1993. In other words the said scheme would not be applicable for a casual labourer who was not employment as on 10.9.1993 or those who were engaged from a date subsequent to 10.9.1993. The scheme would also not be applicable for those who were engaged prior to 10.9.1993, but were not engaged continuously for 240 days as on 10.9.1993.

18. It is a stated in para 4.5 of the OA that the said scheme dated 10.9.1993 was directed to be implemented by the respondents, i.e. Archaeological Survey of India (in short ASI) vide the dated 16.8.2002 (Annexure-A/3). On perusal of the letter dated 16.8.2002 reveals that it instructed the field officers of ASI to strictly follow the DOPT OM dated 6.6.2002, 7.6.1988 and 10.9.1993. The OM dated 6.6.2002 (A/3) stated that the scheme dated 10.9.1993 is not an ongoing scheme and that the temporary status can be granted on casual labourers under the scheme only on fulfilling the conditions in cause 4 of the scheme, as observed by Hon'ble Apex Court in the case of Union of India & Anr. vs. Mohan Pal etc. in SLP (Civil) No. 2224/2000.

19. The OM dated 7.6.1988 of the DOPT laid down the guidelines for engagement of casual labourers as under: (http://documents.doptcirculars.nic.in/D2/D02est/49014_2_86-Estt.C-07061988.pdf) :-

"Subject: Recruitment of casual workers and persons on daily wages -Review of policy.

The policy regarding engagement of casual workers in Central Government offices has been reviewed by Government keeping in view the judgement of the Supreme Court delivered on the 17th January, 1986 in the Writ Petition filed by Shri Surinder Singh and others vs. Union of India and it has been decided to

lay down the following guidelines in the matter of recruitment of casual workers on daily wage basis:-

- i) Persons on daily wages should not be recruited for work of regular nature.
 - ii) Recruitment of daily wagers may be made only for work which is casual or seasonal or intermittent nature or for work which is not of full time nature, for which regular posts cannot be created.
 - iii) The work presently being done by regular staff should be reassessed by the administrative Departments concerned for output and productivity so that the work being done by the casual workers could be entrusted to the regular employees. The Departments may also review the norms of staff for regular work and take steps to get them revised. If considered necessary.
 - iv) Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.
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xi) If a Department wants to make any departure from the above guidelines, it should obtain the prior concurrence of the Ministry of Finance and the Department of Personnel and Training. All the administrative Ministries /Deptts. Should undertake a review of appointment of casual workers in the offices under their control on a time-bound basis so that at the end of the prescribed period, the following targets are achieved:-

- a) All eligible casual workers are adjusted against regular posts to the extent such regular posts are justified.
- b) The rest of the casual workers not covered by (a) above and whose retention is considered absolutely necessary and is in accordance with the guidelines, are paid emoluments strictly in accordance with the guidelines.
- c) The remaining casual workers not covered by (a) and (b) above are discharged from service."

From above, it is clear that as per the OM dated 7.6.1988, no casual labourer was to be engaged for regular type of works and if the nature of the duty entrusted to a casual labourer is same as that of a regular employee, then the casual labourer is to be paid 1/30th of the minimum pay scale applicable for the regular employee as the wages. Except the casual labourers who are regularized or whose continuation is necessary will continue to be engaged, otherwise they are to be discharged. The fact that the applicant is continued to be engaged by the respondents, after 7.6.1988, implies that his continuation is considered absolutely necessary.

20. In the above factual background, the applicant is required to demonstrate that he was initially engaged prior to 10.9.1993 by the ASI and that he was engaged for 240 days in a year, as on 10.9.1993 in order to claim the benefit of the scheme dated 10.9.1993 (A/2). In para 4.8 of the OA, the applicant avers that some of the similarly placed casual labourers who were engaged after the applicant were granted temporary status by the respondents vide order dated 3.8.2011 (Annexure-A/5) in pursuance of the order of the Tribunal dated 12.5.2000 in OA No. 81 and 82 of 1998, which was upheld by Hon'ble High Court vide the order dated 20.2.2009. It is stated in the OA that since the case

of the applicant was not considered, he filed the OA No. 793/2013 which was disposed of vide order dated 4.12.2013 (Annexure-A/6), directing the respondents to consider and dispose of the applicant's representation. Copy of the representation submitted by the applicant has not been enclosed by the applicant with his pleadings in this OA. It is seen from the order dated 4.12.2013 (A/6) that the applicant had submitted the representation dated 13.1.2012 and 21.10.2011 as stated in the order dated 4.12.2013, which were to be disposed of as per the direction of the Tribunal. Hence, from the documents available on record, it is clear that the applicant had submitted representation for grant of temporary status as per the scheme dated 10.9.1993 on or after 21.10.2011, after order dated 3.8.2011 granting similar benefit to some other casual labourers was passed.

21. It is noticed that the following observations were made by the Tribunal in the order dated 4.12.2013 (Annexure-A/6) passed in OA No. 793/2013:-

"4. In so far as the Original Application is concerned the prayer of the Applicants for a direction to the Respondent No. 4 to consider their grievance raised in the representations dated 13.01.2012 and 21.10.2011 at Annexure-A/4 series for grant of temporary status with reference to the Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1993 and letter dated 16.08.2002 under Annexure-A/3."

It appears from above, that no grievance was raised by the applicant in OA No. 793/2013 in his first round of litigation for grant temporary status on the ground that by the order dated 3.8.2011, some of the casual labourers who were engaged subsequent to the applicant or junior to the applicant, were granted temporary status.

22. In the present OA, the applicant has averred that in the order dated 3.8.2011 (A/5) some of the casual labourers engaged after the applicant, had been granted temporary status. But no details of the casual labourer who was junior to the applicant and granted temporary status vide order dated 3.8.2011 (A/5) have been mentioned in the pleadings of the applicant. Although no grievance was raised by the applicant in the OA No. 793/13 that some of his juniors were allowed temporary status vide order dated 3.8.2011, it is noticed from the order dated 21.10.2011 (Annexure A/4 of the OA) that some of the casual labourers who were granted temporary status had been engaged after the date of initial engagement of the applicant in OA No. 665/2014 i.e. 19.2.1993.

23. Learned counsel for the applicant in his written note has also cited the judgment in the case of Amarkanti Rai (supra), in which the immediate authority of the petitioner in that case had recommended his case for

regularization of his service against 2 vacant posts in the year 2002 and 2004 in accordance with the policy guidelines for regularization of such employees in educational institutions in Bihar. His case was considered in the light of the judgment in the case of Uma Devi (supra) and direction was given to the authorities to regularize the services of the petitioner in the cited case. In the present OA, no such proposal was there of the authority to propose regularization of his service against vacant post and the judgment in the case of Uma Devi (supra) has been found to be not applicable to the present OA vide discussions in paragraph 29 above. Hence, the case of Amarkanti Rai (supra) will be of no help for the applicant's case.

24. The judgment in the case of M.L. Keshari (supra) has been cited by the applicant's counsel in his written notes. The judgment in this case was rendered following the judgment in the case of Uma Devi (supra). It was held in the case of M.L. Keshari (supra) as under:-

"4. The decision in State of Karnataka v. Umadevi was rendered on 10.4.2006 (reported in 2006 (4) SCC 1). In that case, a Constitution Bench of this Court held that appointments made without following the due process or the rules relating to appointment did not confer any right on the appointees and courts cannot direct their absorption, regularization or re- engagement nor make their service permanent, and the High Court in exercise of jurisdiction under Article 226 of the Constitution should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment had been done in a regular manner, in terms of the constitutional scheme; and that the courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities, nor lend themselves to be instruments to facilitate the bypassing of the constitutional and statutory mandates. This Court further held that a temporary, contractual, casual or a daily-wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution. This Court however made one exception to the above position and the same is extracted below :

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [1967 (1) SCR 128], R.N. Nanjundappa [1972 (1) SCC 409] and B.N. Nagarajan [1979 (4) SCC 507] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date."

5. It is evident from the above that there is an exception to the general principles against 'regularization' enunciated in Umadevi, if the following conditions are fulfilled :

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

Umadevi casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. Umadevi, directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10.4.2006)."

It is clear from the above that to avail the benefits as per the judgment, the applicant has to fulfil the conditions stipulated in para 5 of the judgment as extracted above. He should have worked continuously for 10 years or more in duly sanctioned post. There is nothing on record in the pleadings of the applicant to show that such conditions are fulfilled in case of the applicant. Hence, the judgment in M.L. Keshari case will be inapplicable to the case of the applicant.

25. Learned counsel for the applicant has cited the judgment passed by Hon'ble High Court in Bansidhar Nayak (supra). The dispute in that case was absorption of the petitioners against the Group 'D' post by regularising the service with all consequential benefits. Paragraph 4 of the judgment states as under :

"4. As per the provisions contained in the scheme prepared by the DOP&T which was adopted and circulated vide letters dated 23.9.1994 and 23.11.1994, the Director of Central Rice Research Institute issued an Office Order dated 13.1.1995 by granting the temporary status w.e.f. 1.9.1993 and regularizing the services of the casual labourers in the said list, where the names of the petitioners found place at Sl. Nos. 111, 113, 115, 116, 044 and 045 respectively. Consequence thereof, the petitioners have been paid the wages at daily rates with reference to the minimum of the pay scale for a corresponding regular Group D officials including DA, RA, CCA. But, the benefits of increments at the same rate, as applicable to Group-D employees were not paid and the leave entitlement in a prorate basis, maternity leave and even after, rendering three years continuous service after conferment of temporary status were not allowed....."

Hence, as stated above the dispute in the cited case is different from the present OA since the petitioners in that case were allowed the benefit of

regularisation of service, but were not allowed the consequential benefits which was applicable to other Group 'D' employees. Hence the cited case is factually distinguishable.

26. Learned counsel for the applicant has filed a copy of the order dated 25.5.2018 passed in OA No. 652/2013 by this Tribunal in respect of one of the casual labourers under the same respondents. In that case, the applicant's contention that he has worked for more than 240 days in a year continuously was disputed by the respondents. The applicant had also claimed in that case that the persons who were junior to him were given temporary status w.e.f. 3.8.2011 and 28.3.2011 and the case of the applicant was not considered, while passing these orders. It was claimed that the entire selection process was done by the respondents in an arbitrary manner, while excluding the applicant in OA No. 652/2013. In OA No. 652/2013, the averment that the cause of action of the applicant arose on 3.8.2011, was accepted by the Tribunal in the order dated 25.5.2018 and finally, after examining the decision in similar cases, the OA was allowed since the applicant's juniors were granted temporary status.

27. The applicant's counsel has also cited the order dated 11.12.2018 of this Tribunal in OA No. 690/2016 along with other three OAs of similar nature. In those OAs, the facts were similar to the present batch of OAs. In OA No. 690/2016, the applicants had been allowed 1/30th status and claimed that they had worked for 240 days or more and that while their juniors were granted temporary status, the applicant's case was ignored. Two such persons were impleaded as respondents in OA No. 690/2016. In the counter, it was mentioned that the applicant was given 1/30th status since he had completed 240 days of work. Following the order passed in the OA No. 985/2014 with similar facts, it was held in OA No. 690/2016 that there was no delay with following orders :

"9. In view of the above, we are of the opinion that the facts of the case are similar to the facts of the applicants in OA 985/2014. Accordingly, following the order of this Tribunal dated 31.7.2018 passed by this Tribunal in OA 985/2014, respondents are directed to consider the case of the applicants for grant of temporary status and other consequential benefits under the Scheme of 1993 of DOPT similarly as the applicants in OA No. 985/2014. In case the applicant is found to be entitled for grant of temporary status as per the instructions of Government and if his juniors who are similarly situated as the applicant, have already been given temporary status, then the applicants will also be considered to be entitled for grant of temporary status with consequential benefits from the date their juniors have been given such benefits. The respondents shall comply with this order within eight weeks from the date of receipt of the copy of this order."

28. Learned counsel for the respondents has cited the judgment of Hon'ble Apex Court in the case of D.C.S. Negi (supra) in the Counter as well as at the time of hearing. In this case, it was held by Hon'ble Apex Court that the

Tribunal is required to examine whether the application was within the limitation and if it is not, then whether sufficient cause has been shown for delay. The judgment dated 29.4.2002 of Hon'ble Apex Court in the Civil Appeal No. 3168/2002 has been cited in the Counter, in which, it was held that the scheme of 10.9.1993 was not an ongoing scheme. This judgment has been followed in the OM dated 6.6.2002 which was enclosed with the respondents' letter dated 16.8.2002, copy of which has been enclosed by the applicant at Annexure-A/3 of the OA. In this order we have applied the ratio of the said judgment and the OM dated 6.6.2002 (Annexure-A/3) of the DoPT circulating the findings, has not been challenged in the OA.

29. The respondents in their Counter have cited the order dated 22.7.2011 in OA No. 2155/2011 decided by the Principal Bench of this Tribunal in the case of Umesh Kumar vs. Union of India & others. The facts in that OA as stated in the order dated 22.7.2011 are as under:-

"2. The brief facts of the case, as set out in the OA, are that the applicant was engaged as a Class IV casual employee in the year 1980 (mentioned as 1990 in his representation dated 2.6.2010) in the Archaeological Survey of India. Thereafter, he was granted temporary status under the Department of Personnel and Trainings (DoPT) Scheme of 10.9.1993, along with other casual employees, w.e.f. 1.09.1993. It is stated that the applicant made representations/reminders to the respondents on 29.09.2008, 30.12.2008, 7.1.2009 and 23.10.2009 seeking service benefits like medical facilities (CGHS), group insurance, etc as admissible to the temporary status employee in the Department of Posts. As no response has been received from the respondents, the applicant approached this Tribunal in September, 2009 by filing OA No.3308/2010, seeking the same benefits at par with employees of the Department of Posts, which was disposed of on 26.05.2010 by the following order:

This OA stands disposed of with an observation that if the applicant makes a representation to respondent No.4 regarding parity in respect of certain conditions of CLTS at par with employees in Postal Department by appending all material, documents and case laws cited in the OA, within a period of two days from today, Respondent No.4 shall consider the same and pass a speaking order within 45 days thereafter. No costs."

It is clear from the facts of the cited case that in that OA, the applicant was granted temporary status and he was aggrieved on account of the benefits allowed to him. In the present OA, the applicant claims the benefit of temporary status on various grounds. Hence, the cited case is factually distinguishable and the judgment dated 22.7.2011 has no application for the present batch of OAs before us.

30. From the discussions above, it is noticed that the OA No. 690/2016 with other three OAs with similar facts and circumstances were disposed of by this Tribunal vide order dated 11.12.2018 and it was held that there is no delay on the part of the applicants in view of the averment of the applicant that their juniors were allowed temporary status vide order dated 3.8.2011, while

ignoring the case of the applicants in those OAs. In OA No. 652/2013, it was held in the order dated 25.5.2018 that there was no delay. Hence, if the juniors of the applicant in the present OA had been granted temporary status by the respondents vide order dated 3.8.2011 or 21.10.2011, then there will be no delay. There is no specific denial in the counter filed by the respondents for such contentions of the applicants in the present OAs. Hence, following the order dated 25.5.2018 and 11.12.2018 of this Tribunal, it is held that there is no delay in this OA also and the case of the applicant needs to be considered on merit. The issue No. (i) of the paragraph 16 of this order is decided accordingly.

31. One of the ground taken by the applicant is that he is entitled for the benefit of the judgment of Hon'ble Apex Court in the case of *Uma Devi* (supra). In the said judgment, it was held by Hon'ble Apex Court as under:-

"44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. NARAYANAPPA* (supra), *R.N. NANJUNDAPPA* (supra), and *B.N. NAGARAJAN* (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

32. For consideration of the case of a casual worker as per the judgment in *Uma Devi* case, it is necessary to prove that the person concerned was engaged against a sanctioned vacant post. In this OA, it has not been demonstrated by the applicant that he was engaged against a vacant sanctioned post. Hence, the applicant will not be entitled for the benefit of the judgment in the case of *Uma Devi* (supra). The issue no. (ii) of the paragraph 16 of this order is decided accordingly.

33. It is seen that in the impugned order dated 30.1.2014 (Annexure-A/7) in OA No. 665/2014, the following reason has been mentioned while rejecting the case of the applicant for grant of temporary status as per the scheme dated 10.9.1993 of the DOPT (A/2):-

"Since the applicants have not completed 240 days of work in a year as per the Circular No. 51016/2/90-Estt (C), dtd. 10.09.1993 of D.O.P.T., they are not eligible for getting Temporary Status. Hence their representations have been rejected."

The reasons for rejection of the applicant's case have also been reiterated in para 8 of the Counter in OA No. 665/2014 as under:-

"That in reply to para 4.1 to 4.2 of the OA, it is submitted that the applicant was engaged under the establishment of the Dy. Superintending Horticulturist, Archaeological Survey of India, Hort. Divn. No.IV, Bhubaneswar on 19.2.1993 and subsequently was granted 1/30th wages. The applicant as stated in this para that he has been served on daily wages for more than 240 days in a year from the date of his engagement which is totally incorrect. The burden is heavy on the applicant to prove that he has completed 240 days in each year as stated above. It is submitted that as per the available official records, the working days of the applicant has been clearly shown in Annexure R/2 hereto. The applicant did not file any such document to show that he has completed 240 days in each calendar year. It is a fact that a memorandum of settlement was made in the year 2008 before the Asst. Labour Commissioner (Central) with the Archaeological Survey of India workers Union wherein it was amicably decided that those casual labourers who have completed 240 days as on 2002, the management of ASI will allow such casual labourers for attending the duty of Group 'D' on pro rata basis and will get 1.30th wages/. Since the applicant fulfilled the criteria as mentioned above along with others he was allowed to get 1/30th wages."

34. It is clear from the impugned order as well as the counter as discussed above that the claim of the applicant was rejected on the ground that no document has been produced by the applicant to prove that he had worked for 240 days in a year. Similar contentions of the respondents were not accepted in the OA No. 652/2013 and OA No. 690/2016 vide orders dated 25.5.2018 and dated 11.12.2018 respectively. A casual labourer is engaged on daily wage basis, for which no order or documents is communicated to the employee for such engagement. It is therefore difficult on the part of the applicant to produce the documentary proof in support of 240 days of engagement in a year as a casual labourer. The respondents on the other hand, have not furnished any evidence to show that the applicant was engaged for less than 240 days in a year as on 10.9.1993. Further, it is seen that the applicant was first engaged from 19.2.1993 as stated in the letter dated 27.2.2013 (Annexure A/1 of OA No. 665/14) of the respondents in reply to a RTI question, which has not been denied by the respondents in their pleadings. But as seen from the order dated 21.10.2011 (Annexure A/4 of OA No. 805/2016) that one casual employee Purna Chandra Sethi, who was engaged from 28.7.1994, i.e. after the engagement of the applicant, was granted temporary status. Hence, the applicant's averment that his juniors were allowed temporary status while ignoring his case, has some force for which the applicant's case deserves reconsideration by the respondents.

35. In the circumstances, we follow the order dated 25.5.2018 and 11.12.2018 passed by this Tribunal in OA No. 652/2013 and OA No. 690/2016 respectively under similar factual circumstances and dispose of the OA with a direction to the respondents/competent authority to reconsider the case of the applicant for grant of temporary status with other consequential benefits under the OM dated 10.9.1993 of the DOPT similarly as in the OA No. 690/2016. In case the applicant is found to be entitled for grant of temporary status as per the OM dated 10.9.1993 and if his juniors who are similarly situated as the applicant, have already been given temporary status, the applicant will also be entitled for grant of temporary status with consequential benefits from the date their juniors have been given such benefits. The respondents after reconsideration of the applicant's case as above, will pass a speaking order copy of which is to be communicated to the applicant within eight weeks from the date of receipt of a copy of this order. In case, the applicant is found ineligible as per the OM dated 10.9.1993 while some of his juniors have been allowed temporary status in relaxation of the OM dated 10.9.1993, the reasons for not extending similar consideration to the applicant are to be mentioned in the speaking order as stated above. The applicant will have liberty to inform the respondent No.2 the details of his juniors including their names, who were granted temporary status while ignoring the applicant's case, within one week from the date of receipt of this order.

OA No. 666/14, 667/14, 672/14, 754/14, 756/14 and 813/14

36. It is seen that the OA No. 666/14, the applicant's date of initial engagement was 21.4.1987 (vide Annexure A/1 of the OA No. 666/14) and his case was rejected on the same ground as in the OA No. 665/14. The cases of the applicants in OA No. 667/14, OA No. 672/14, OA No. 754/14, OA No. 758/14 and OA No. 813/14 with date of initial engagement of the respective applicants in above OAs being 17.3.1993, 6.11.1987, 1.8.1988, 10.7.1991 and 10.6.1992 respectively vide Annexure A/1 of the respective OAs are similar to the case of the applicants in OA No. 665/14. Hence, the OA Nos. 666/14, 667/14, 757/14, 758/14 and 813/14 are also disposed of in terms of the directions in paragraph 35 of the order in OA No. 665/14.

OA 805/16

37. In OA No.805/16, as stated in para 12 of this order, the applicant was engaged from 5.8.1990 and prima facie it is seen that the respondent No.4 at the serial number 53 in the list dated 21.10.2011 (Annexure A/4 of the OA 805/16) has been allowed temporary status although his initial engagement was after the applicant. Same is the case for the serial Nos.54 and 55 of the list at Annexure A/4. Hence, the contention of the applicant in his pleadings that while the applicant's juniors have been allowed temporary status, the

applicant's case has been ignored, cannot be overlooked. The applicant has filed the MA No. 675/16 for condoning delay in filing the OA, which deserves to be allowed in view of the order dated 11.12.2018 in OA No. 640/16 cited by the applicant's counsel. It is further seen that in the impugned order dated 10.2.2014 (Annexure A/6 of the OA No. 805/16), rejecting the case of the applicants, a ground has been mentioned that his case was not sponsored by the Employment Exchange. A similar plea taken in OA No. 652/2013 was not accepted vide order dated 25.5.2018 of this Tribunal cited by the applicant's counsel. The respondents have enclosed the DOPT OM dated 26.2.2016 (Annexure R/3) in which it is stated that temporary status can be given to those who were on engagement as on 10.9.1993. But the applicant in this OA was engaged on 5.8.1990. Hence, the applicant's case, being similar to the OAs cited by the applicant and the OA No. 665/14, deserves to be reconsidered and the OA No. 805/16 is to be disposed of in terms of the paragraph 35 of this order.

OA Nos. 693/16, 806/16 and 807/16

38. For the OA nos. 693/16, 806/16 and 807/16 with date of initial engagement of the applicants in these OAs being 5.6.1990, 5.7.1994 and 16.2.1994 respectively, it is seen from the list dated 21.10.2011 (Annexure A/4 of these OAs) that the respondent Nos. 4 and 5 at serial number 53 and 54 of the list have been allowed the temporary status even though they had initially joined the establishment after the initial engagement date of the applicants. The MAs for delay condonation have also been filed in these OAs as in the OA No. 805/16. The OM dated 26.2.2016 (annexure R/3) has been cited by the respondents to argue that the applicants joining after 10.9.1993 cannot be considered for temporary status. It is seen from list dated 21.10.2011 (Annexure A/4) that in many cases, this has been disputed or reasons for the same are not mentioned. Hence, factually these OAs are similar to the OA No. 805/16 and as discussed in paragraph 37 of this order, for these OAs also the MAs filed for condoning delay deserved to be allowed and these OAs are to be disposed of like OA No. 805/16 in terms of the directions in paragraph 35 of this order.

OA Nos. 421/17, 422/17 and 423/17

39. In these OAs, the date of initial engagement of the applicants as claimed in the OA is 15.3.1994, which has not been disputed. It is seen that the respondents No. 4 and 5 who have joined subsequent to the applicants or they are being junior to the applicants have been given temporary status vide serial No. 53 and 54 of the list dated 21.1.0.2011 (Annexure A/4 of these OAs). The respondents have rejected the representation of the applicants in these OAs for temporary status on same grounds as in the OA Nos. 805/16, OA 693/16, 806/16 and 807/16. Although the respondents have cited the OM dated

26.2.2016 of the DOPT as Annexure R/3 of the counter to submit that the applicant was not under engagement on 10.9.1993. But such a ground is not tenable where some of the juniors of the applicants have been given temporary status as would be revealed from the seniority list dated 231.10.2011 and no reason has been furnished by the respondents in their pleadings as to the reasons for deviation in case of the juniors of the applicants who were given temporary status (vide Annexure A/4). Hence, the cases of these applicants also deserve reconsideration in terms of the directions in paragraph 35 of this order with modification that if the applicants are found to be eligible for temporary status, on reconsideration, then they will be allowed such benefit of temporary status notionally from the date their juniors have been allowed such benefit and the arrears of salary on temporary status will be available from the date three years prior to filing of the OAs i.e. three years prior to 16.5.2017.

OA No. 19/19 and 73/19

40. In these OAs the date of initial engagement of the applicants is 21.4.1990 as claimed in OA, which has not been denied by the respondents. There are a number of casual labours junior to the applicants, who have been conferred the temporary status vide the seniority list dated 21.10.2011 (Annexure A/4 of the OAs). The reasons for deviation from the OM dated 10.9.1993 in case of a number of casual labourers in Annexure A/4 and the reasons as to why similar relaxation was not considered for the applicants, have not been furnished by the respondents in their pleadings. Hence, the cases of the applicants in these OAs deserve reconsideration in terms of direction in paragraph 39 above.

OA No. 765/16 and OA No. 72/19

41. In OA No. 765/16, the applicant claims in the OA that he was engaged as a casual labourer on 18.2.1998 for the first time under the establishment of the respondents. For the applicant in OA No. 72/19, the date of initial engagement is 21.4.1995. the ground taken by the applicant in the OA that although many casual labourers were granted temporary status by relaxing the norms of the OM dated 10.9.1993, the case of the applicant was not considered. No ground has been taken by the applicant that any of the casual labourer junior to the applicant has been given temporary status. In OA No. 72/19, one of the ground in the OA is that some persons who joined much after the applicants, have been allowed temporary status. But no specific case of any casual labourer has been furnished in the OAs, who being junior to the applicants in both these OAs has been conferred temporary status by the respondents. Hence, from the facts on record, it is demonstrated in both these OAs that any of the casual labourer juniors to the applicants, has been conferred temporary status. The list dated 21.10.2011 of casual labourers with temporary status (Annexure A/4 of both the OAs does not contain name of any temporary status casual labourers who is junior to the applicants. The ground

taken in the OA that the OM dated 10.9.1993 was relaxed for many of the casual labourers who were given temporary status will not be helpful, since the equality cannot be claimed in respect of a decision in this matter which is not as per the OM dated 10.9.1993 in view of the settled law in this regard. In other OAs discussed in other paragraphs of this order, there is *prima facie* evidence that some juniors of the applicants were conferred temporary status. Hence, other OAs discussed so far in this order are different from the OA Nos. 765/16 and 72/19. The cases cited by the applicant's counsel will be of no help as no junior has been given the temporary status and the applicant in these OAs are not eligible for temporary status as per OM dated 10.9.1993 since as on 10.9.1993, they were not under employment under the respondents. As discussed earlier, other grounds in OAs are not helpful to the applicant. Hence, we are of the considered view that there is not merit in these two OAs, which are accordingly dismissed.

OA No. 61/18, 132/19 and 133/19

42. In all these OAs, the applicants have not mentioned the dates of their initial engagement under the respondents in this OA or in their Rejoinder. In OA No. 61/18, it is mentioned in para 5.2 of the OA that the Private Respondents No. 4 and 5 were appointed much after the applicant. While the dates of first engagement of the respondent No. 4 and 5 are 30.5.1994 and 1.6.1994 respectively as stated in the list dated 21.10.2011 (Annexure A/4 of the OA No. 61/18). Nothing is mentioned about the applicant's date of engagement as a casual labour except for stating in his Rejoinder that he completed 240 days of work in the year 1992-93 (vide para 5 of the Rejoinder). In para 5 of the Rejoinder, it is averred that the applicant has completed 240 days of work in the year 1992-93, without specifying the date of initial engagement either in the OA or in the Rejoinder. It is seen that in para 4.7 of the OA, the applicant in OA No. 61/18 has averred that he has rendered continuous service as a labour since last 25 years. Such an averment in para 4.7 of the OA has not been specifically denied in the counter of the respondents. Hence, the applicant was first engaged in 1992-93 and hence, *prima facie* he is senior to the respondents No. 4 and 5. Hence, the applicant in this OA deserves reconsideration in terms of paragraph 39 of this order.

43. In OA No. 132/19, no date of initial engagement has been mentioned by the applicant in his pleadings. In para 4.7 of the OA, it is stated that the applicant has already rendered service for 27 years as a casual labourer. There is no specific denial to such averment of the applicant in the Counter. It is also mentioned in the Rejoinder (para 5) that the applicant has completed 240 days of work in the year 1991-92. It is seen that the casual labourers at Serial No. 53, 54 and 55 of the list dated 21.10.2011 (Annexure A/4 of the OA No.

132/19) are junior to the applicant. Hence, the applicant's case deserves reconsideration in terms of the paragraph 39 of this order.

44. In OA No. 133/19, no date of initial engagement of the applicant has been mentioned in the pleadings on record. Para 4.7 of the OA states that the applicant has rendered service of about 19 years as a labourer and such an averment has not been specifically denied in the counter. In para 5 of the Rejoinder, it is mentioned that the applicant has completed 240 days of work in the year 1991-92. If the applicant has rendered 19 years of service as a casual labourer as stated in para 4.7 of the OA, we fail to understand how he could have worked during the year 1991-92. Assuming the contention about his length of service as stated in para 4.7 of the OA to be correct, it cannot be said that any of his junior has been given temporary status as revealed from the list dated 21.10.2011 (Annexure A/4 of the OA No. 133/19). Other grounds taken in the OA are not convincing as discussed earlier in this order. Hence, the OA lacks merit and accordingly it is dismissed.

45. As discussed above, the OA Nos. 665/14, 666/14, 667/14, 672/14, 757/14, 758/14, 813/14, 805/16, 693/16, 806/16 and 807/16 are disposed of in terms of the directions in paragraph 35 of this order. The OA Nos. 421/17, 422/17, 423/17, 61/18, 19/19, 73/19 and 132/19 are disposed of in terms of the directions in paragraph 39 of this order.

46. As discussed in paragraphs 41 and 44 of this order, the OA Nos. 765/16, 72/19 and 133/19 are dismissed.

47. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath