

BHARAT SANCHAR NIGAM LIMITED
(A Government of India Enterprise)
CORPORATE OFFICE
5TH FLOOR, BHARAT SANCHAR BHAVAN, JANPATH, NEW DELHI-110 001
(LABOUR ESTABLISHMENT SECTION)

No. 7-14/2010-LE

Dated: 14th September, 2010

To

All Heads of Circles/Units BSNL

Sub: Circulation of orders of the Hon'ble CAT, GUWAHATI BENCH in TA No. 3 of 2009 and Series in WP (C) No. 152 of 2006 – Regularization of casual labourers engaged in BSNL - reg

Attention is invited to this office letter of even number dated 24.5.2010 on the above mentioned subject. A number of references/requests have been received from various circles requesting for a legible copy of the above said orders of the Hon'ble CAT. In view of the above said requests, a copy of the above said orders of the Hon'ble CAT dated 22.1.2010 is enclosed herewith for necessary action.

The instructions contained in this office letter of even number dated 24.5.2010 may be scrupulously followed.



(BRIJESH TYAGI)
ASSTT. GENERAL MANAGER (LE)
Tel. No. 23734364
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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Transfer Application Nos. 03 of 2009 & Series

Date of Order: This, the 22nd Day of January, 2010

HON'BLE SHRI MUKESH KUMAR GUPTA, MEMBER (J).

HON'BLE SHRI MADAN KUMAR CHATURVEDI, MEMBER (A).

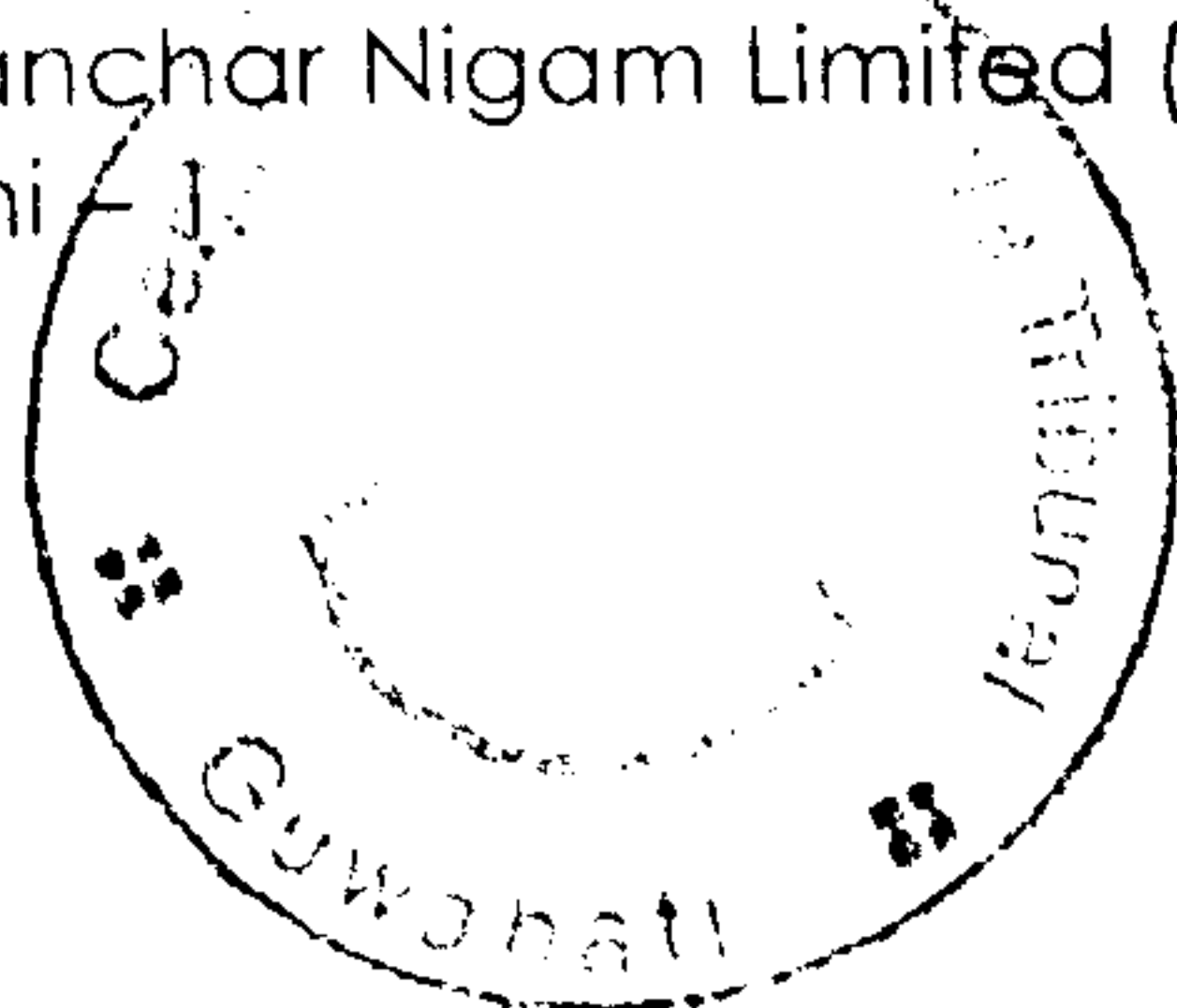
A. No. 03 of 2009 in W.P.(C) No. 152 of 2006

1. Shri Prahlad Ch. Borah
Son of Sri Pipil Ch. Borah
Resident of Vill- Kakhari Gaon
Dist - Nagaon.
2. Shri Dilip Mazumdar
Son of Kala Mazumdar
Resident of Vill -
Dist - Nagaon.
3. Shri Sanjeet Kr. Banik
Son of Manindra Ch. Banik
Resident of vill - Chakitup
P.O.- Shuta Haibar
Dist - Nagaon.
4. Shri Radhakanta Bordoloi
Son of Late Debnath Bordoloi
Resident of Vill - Pub-Soragaon
Post of Soragaon
Dist - Nagaon.
5. Shri Binod Kr. Saikia
Son of Late Megh Ram Saikia
Resident of Vill - Owanagaon
P.O.- Rupahi, Dist- Nagaon.

...Petitioners

-Versus-

1. Union of India
Represented by the Secretary to the
Government of India
Ministry of Communication
Sanchar Bhawan, New Delhi - 1.
2. The Chairman-Cum-Managing Director
Bharat Sanchar Nigam Limited (BSNL)
New Delhi - 1.



3. The Chief General Manager, (BSNL)
Assam Telecom Circle
Ulubari Guwahati – 7, Assam.

4. The Sub-Divisional Officer, BSNL
Nagaon Telecom Division, Nagaon.

...Respondents

T.A. No. 05 of 2009 in W.P.(C) No. 2342 of 2006

1. Sri Nirmal Chandra Baruah
Son of Sri Rameswar Baruah
Village – Sutargaon, P.O.- Takelagaon
District- Jorhat.

2. Sri Nadhu Kumar Bora
Son of Late Ganesh Bora
Vill – Assaibarigaon, P.O.- Chowtang
District- Jorhat.

3. Sri Jibon Bora
Son of Sri Giridhar Bora
Vill- Phosual, P.O.- Phosual
District- Jorhat.

4. Sri Anil Handique
Son of Late Tapuram Handique
Vill- Alangmara, P.O.- Alangmara
District- Jorhat.

5. Sri Prasanta Gogoi
Son of Sri Naren Gogoi
Vill- No.1 Chownigaon
P.O.- Borbheta, District- Jorhat.

6. Sri Dhiren Barua
Son of Late Dhandiram Barua
Vill – nowsoliagaon
P.O.- Chowtang, District- Jorhat.

7. Sri Anil Saikia
Son of Late Rameswar Saikia
Village- Nara Holidharigaon
P.O.- Lodoigorh, District- Jorhat.

8. Sri Birendra Bora
Son of Sri Bhuban Bora
Village – No.2 Charaiborigaon
P.O.- Dhalayan, District- Jorhat.

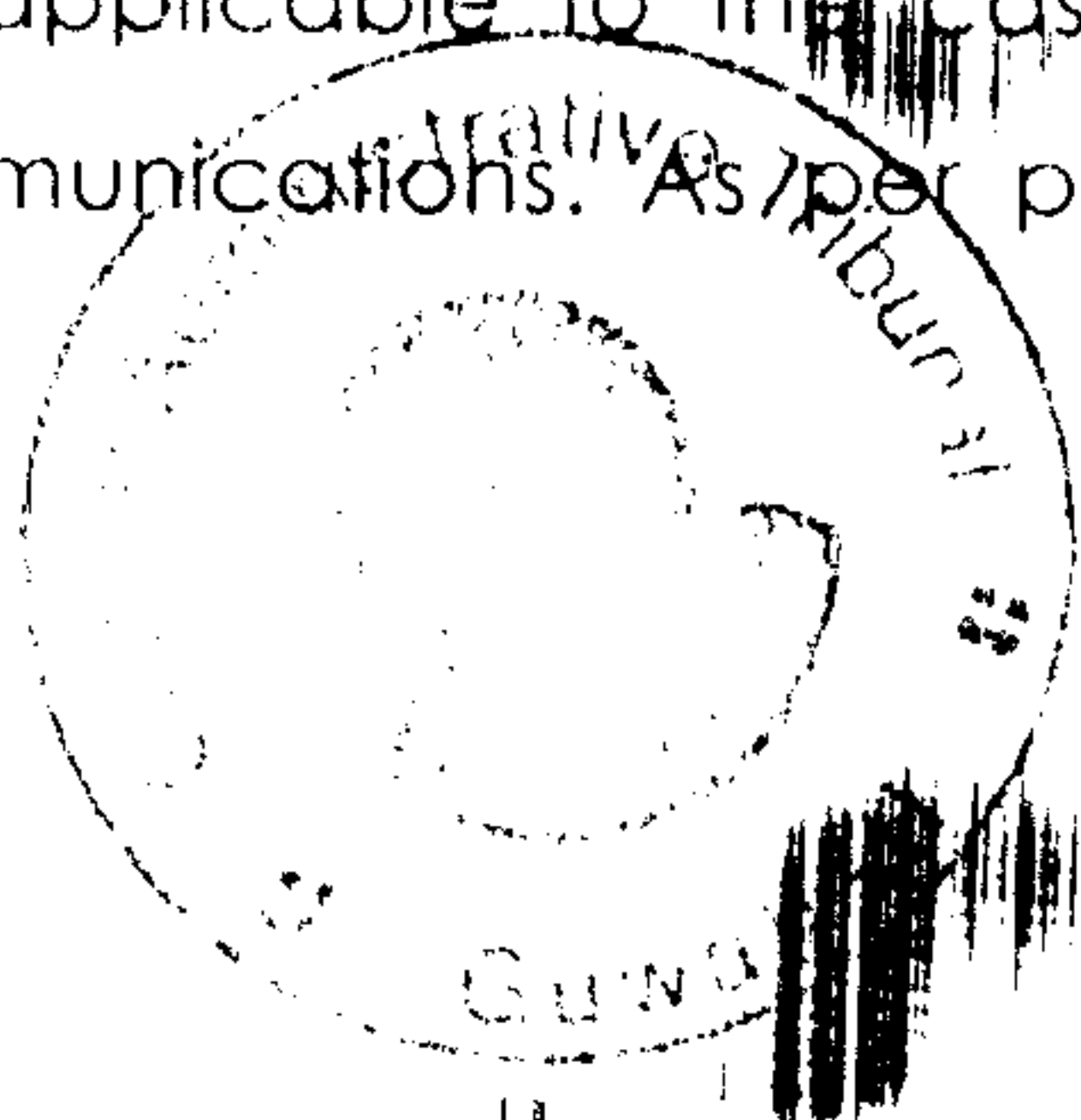
ORDERMUKESH KUMAR GUPTA, JUDICIAL MEMBER

Identical question of law is involved in this series of Transferred Applications (for short TA's) and therefore, we are deciding the same by present common order. Initially, these TAs were filed before the Hon'ble Gauhati High Court at Guwahati and later, on conferment of jurisdiction over the BSNL to this Tribunal in terms of DOPT Notification dated 31.10.2008, same were transferred to this Tribunal.

2. The principal relief claimed is regarding grant of benefits of "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Department of Telecommunication, 1989" (hereinafter referred as 'Scheme'). Applicants seek grant of temporary status as well as regularisation retrospectively with all consequential benefits. In TA. No 10 of 2009 (filed by two applicants) additional relief sought is quashing of order dated 29th June, 1998 vide which their temporary status granted vide Order dated 15th/22nd Dec, 1997 had been cancelled and representation made to restore such benefits had also been rejected vide communication dated 31st Jan, 2005.

3. Before proceeding on merits, it would be expedient to notice the **historical background** in which aforesaid Scheme had been devised by the Government of India.

4. Hon'ble Supreme Court in **Daily Rated, Casual Labourer of Department of Posts v. Union of India and others**, 1988 (1) SCC 122, required the Department of Posts to frame a scheme for regularisation of daily rated casual mazdoors. Pursuant thereto, Government of India, Department of Posts framed a Scheme. Deptt. of Telecommunications also framed the scheme known as "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Department of Telecommunication, 1989, (hereinafter for short referred as '**Scheme**') which has come into force from 01.10.1989 onwards & is applicable to the casual labourers employed by the Deptt. of Telecommunications. As per para 4 of said

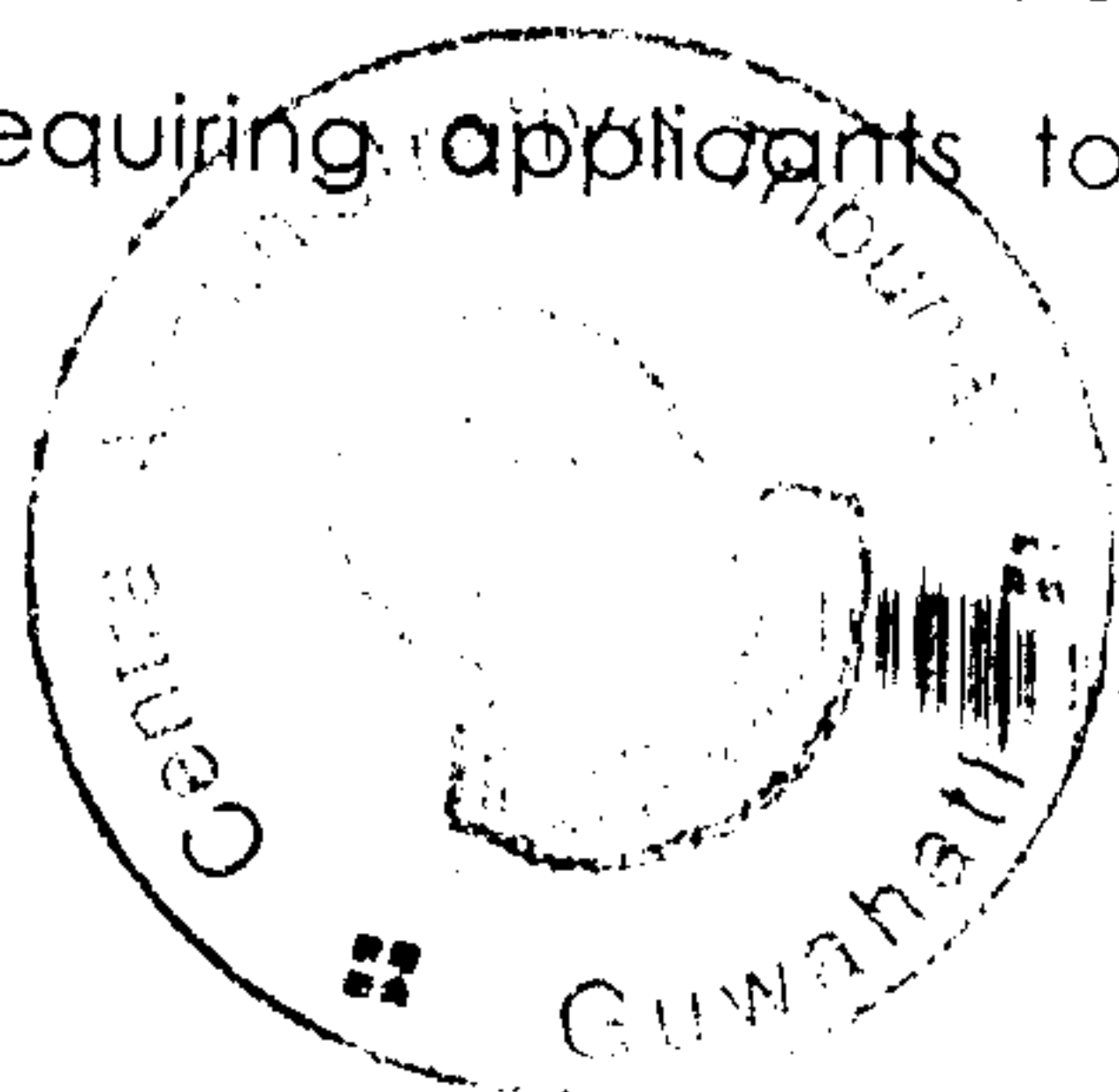


Scheme, vacancies in Grade 'D' cadre in various offices of Department of Telecommunications are to be exclusively filled by regularisation of casual labourers and no outsiders would be appointed to the cadre except in the case of appointment on compassionate grounds, till the absorption of all existing casual labourers fulfilling the eligibility qualification prescribed in the relevant Recruitment Rules. Para 4 B thereof, provides that till regular Group D vacancies are available to absorb all the casual labourers to whom said Scheme is applicable, the casual labourers would be conferred a Temporary Status as per details given in para 5. Para 5 provides that temporary status would be conferred on all 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)"**. Conferment of said status would be without reference to the creation/availability of regular Group D posts and further conferment of such status would not involve any change in duties and responsibilities. The engagement would be on daily rates of pay on a **need basis**. Such casual labourers who acquire temporary status would not, however, be brought on to the permanent establishment unless they are selected through regular selection process for recruitment to Group D posts. Later, Department of Telecommunications, vide O.M.No.269-1/93 STN-II(Pt) dated 12.02.1999 withdrew the powers of all DoT officers to engage casual labourers as it had noticed that said department had imposed a ban on recruitment/ engagement of Casual Labourers vide letter No.269-4/93-STN-II dated 22.06.1988, which directions were ignored & flouted by the concerned officials and they continued to engage casual labourers. Vide another letter No.269-4/93-STN.II dated 12.02.1999 the Telecom Commission decided that as a one time measure on special consideration powers were delegated to all the Heads of Circles, Metro Districts, Chief General Managers, MTNL, New Delhi and Mumbai and heads of Administrative Units to create posts of Regular Mazdoors for regularizing them under the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme 1989, who have completed 10 years of service as on 31.03.1997 to the extent of numbers indicated in Annexure-A, which had been compiled based on information received from the Circles/Units. It further conveyed the approval of Telecom Commission for

delegation of powers to grant temporary status to casual labourers to the extent of numbers indicated against the respective circles in Annexure-B which had also been compiled based on information furnished by the circles/units concerned. It provides that there should not be any variation in the figures and in case there is any change, Heads of Circles should refer the cases to TCHQ explaining the reasons thereof. It further conveyed that non compliance of aforesaid instructions in true letter and spirit would be viewed as a serious lapse. It was further observed that Circles are hesitating to fix responsibility on the erring officers/officials to had employed much casual labourers despite ban. As per Annexure-B for Assam Circle, casual labourers to be given temporary status as on 01.08.1998 was nil, though under the North East category the figure shown had been as 350.

APPLICANTS' GRIEVANCES

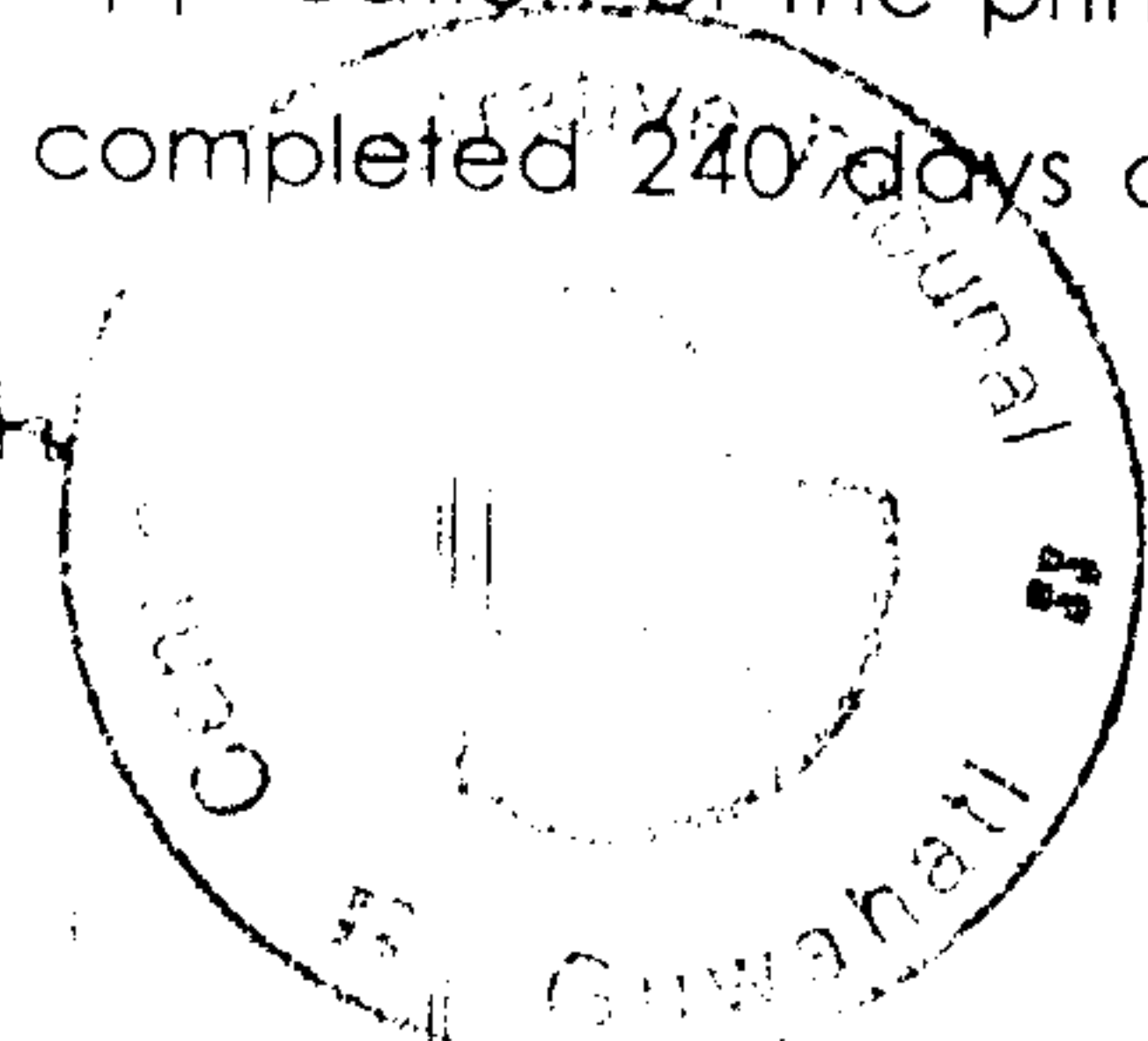
5. For the sake of convenience, the facts of TA No. 3 of 2009 have been delineated.
6. Their basic grievance had been that though they had been working as casual labourers and completed 240 days, yet they had not been conferred temporary status in terms of the aforesaid Scheme. Initially All India Telecom Employees Union preferred O.A.Nos.299 and 302 of 1996 before this Tribunal seeking grant of temporary status as well as regularisation. They had earlier approached the department seeking confirmation of status and regularisation by filing representation which remained un-disposed. Though the matter regarding regularisation of casual labourers had been discussed in the JCM level at New Delhi, but no decision had been taken and hence aforesaid O.A.s. Vide order dated 13.08.1997 said OAs were disposed of holding that applicants being similarly situated to casual labourers working in the Department of Posts were entitled to the benefits of the Scheme and, therefore, respondents were directed to extend them similar benefits. Since the required action had not been taken, All India Telecom Employees Union as well as certain individual casual labourers approached this Tribunal once again vide O.A.Nos.107, 112, 114, 118, 120, 131, 135, 136, 141, 142, 145, 192, 223, 269 and 293 of 1998. Said OAs were disposed of vide common order dated 31.08.1999 requiring applicants to file individual



representations as well as direction to respondents to consider the same after scrutinizing and examining each case in consultation with the records by passing reasoned and speaking order. Despite aforesaid directions as well as the Department of Telecommunication Circular dated 11.12.1997, barring in few cases, said status had not been granted. Applicants (2 in Number) in T.A. No. 10/2009 were granted temporary status but it had been withdrawn, validity of which had been challenged in said T.A. Representation made to restore the said status had been rejected vide communication dated 31st Jan, 2005, validity of which is under challenge in TA No 10 of 2009.

7. Similar had been the factual aspects in OA NO 47 of 2009 (initially filed as WP (C) No3252/2006), where Temporary Status had been initially granted, but later on it was cancelled & withdrawn. Sole applicant therein, initially engaged w.e.f. 1.3.88, was granted Temporary Status vide Order dated 16.12.1997, which was cancelled vide Order dated 27.6.1998, validity of which was challenged vide OA No 141 of 1998, which was disposed of requiring the respondents to scrutinize and pass individual order. Reconsidered order passed, in compliance of aforesaid direction, had once again been challenged in OA No 133/03, which was dismissed vide Order dated 23.6.2003., against which WP(C) No 10369/2003 was preferred, which in turn was disposed of vide Order dated 29.8.2005, requiring him to file representation. Thereafter, on filing representation, impugned Order dated 14.10.2005 was passed stating that he did not complete 240 days in any year, which is impugned in present proceedings.

8. As far as T.A. NO 7 of 2009 (filed by 12 applicants) is concerned, they were initially appointed during 1988-1998 & entrusted highly technical job and were paid under the ACG-17 system. They were forced to work with contractor since 1998. In reply filed it was stated that applicant No 1, Mohd Nur Zaman had earlier filed OA No 316 of 2000, alongwith 20 others, which was disposed of vide Order dated 28.9.2001 only in respect of five person, excluding him. Therefore, present proceeding is barred on application of the principles of res-judicata. None of the applicants have completed 240 days of service. Copy of Order dated 1.3.2006 passed in

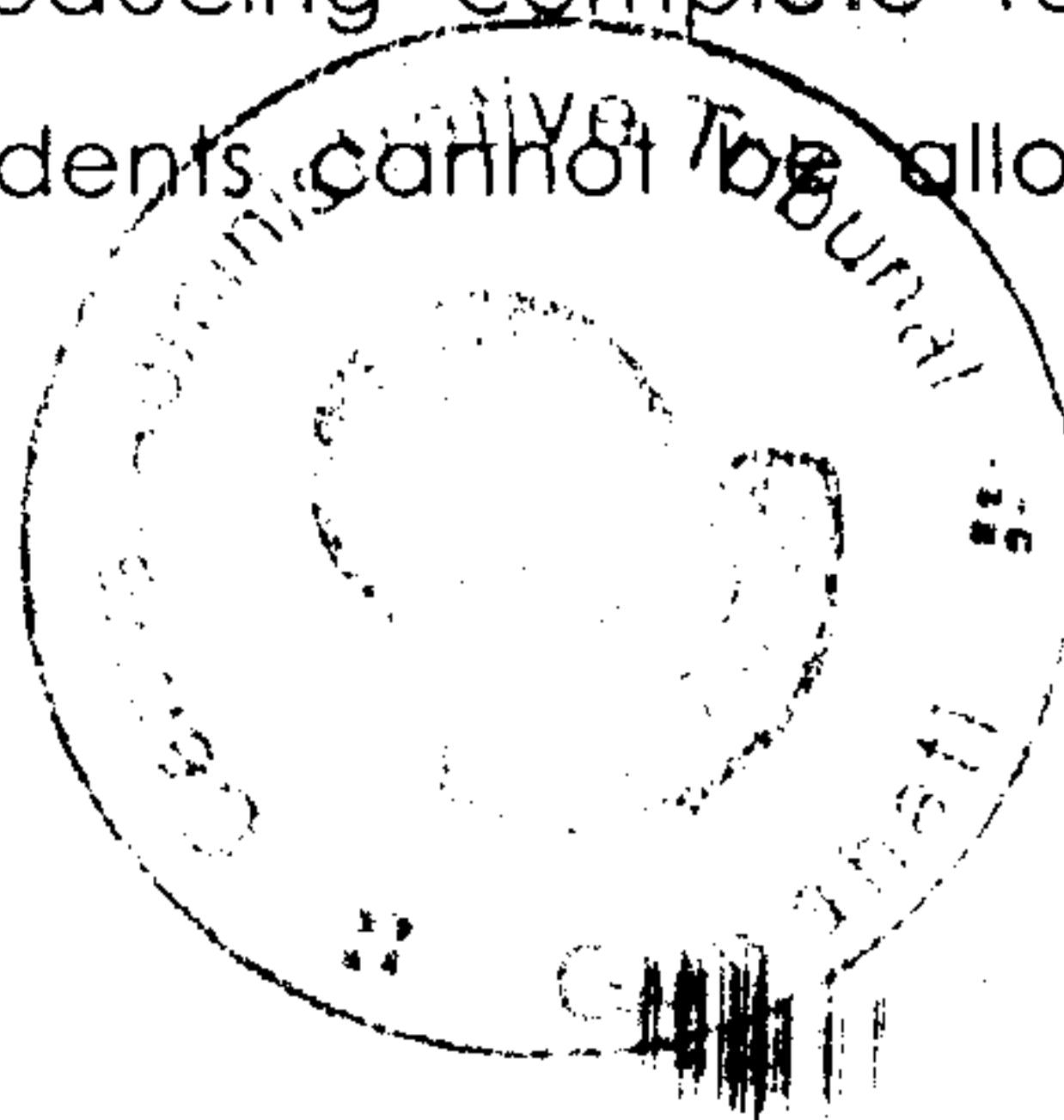


respect of Nur Zaman was placed on record along-with reply to substantiate that his claim had been considered by the Committee & he was found not to have worked for the required period, and thus ineligible for said status. No rejoinder was filed to the reply filed on 13.8.2007.

APPLICANTS' CONTENTIONS:

9. Sh. H.K.Das, Ld. Counsel opening the arguments on behalf of applicants submitted that:

1. 1989 Scheme is an ongoing Scheme, applicable to all those who completes 240 days of service as & when they complete one year 'one year' has not been defined under said Scheme. Therefore, it is neither financial nor calendar year, but relatable to 12 months of engagement, beginning from the day of initial engagement irrespective of the month he was employed. Judgment in State of Karnataka v. Umadevi's (3) (2006) 4 SCC 1, neither concerned with the validity of the said Scheme nor made any observation that such Scheme should not be followed. The said Scheme is still in operation.
2. Applicants are still employed with the respondents and satisfied the requirement of the Scheme having completed 240 days in more than one year. Some of them have served for more than two decades, yet no such Temporary Status, as envisaged by the Scheme has been conferred and as such they have been exploited, which amounts to unfair practice.
3. When they approached this Tribunal, but no conclusive findings had been recorded because of paucity of complete material. Respondents are in possession of all the required material, which ought to have been produced by them. Unfortunately this has not been done by the respondents. As such their conduct is not fair. Earlier on directions issued by the Tribunal, they formed Verification Committee, and later another committee was constituted which is known as Responsible Committee. Without verifying the complete records, Committee recorded its findings dated 1.3.2006. Without producing complete records before said committee, the respondents cannot be allowed to claim



that applicants had not completed 240 days of service in a year & consequently not eligible for grant of Temporary Status followed by regularization, in terms of Scheme.

4. Later some of them have been appointed on contract basis too. Circular dated 12.2.1999 had been issued for special consideration to wipe out the complexities in implementing the Scheme of 1989, yet no tangible benefits have been conferred on casual workers.

10. Sh. M.Singh, Ld. Counsel appearing in TA NO 5 of 2009 contended that earlier said applicants (9 in number) had filed two different OAs, including OA NO 23/2003 which was disposed of vide Order dated 23.7.2004 and matter was referred to Responsible Committee to examine each case. No Terms of Reference was specified. No norms were laid down. Manner & procedure to be adopted by such Committee was also not detailed. Committee members did not act fairly & justly. No documents/material was placed before it which became the basis for arriving its conclusion. Applicants were kept in dark about the reasons for its findings. Comparison of documents namely Annexure A-1 (year-wise service particulars of applicants with the documents/material prepared by TDM, Jorhat, where said applicants were working) viz. a viz. Annexure A-6 (Minutes of the proceedings of Responsible Committee) would reveal that number of days in every year the applicants had worked, show large variation of dates, without any justification & reasons. Therefore no credence could be given to the orders passed by Responsible Committee. Findings recorded did not either reject their documents produced nor assigned any reasons for its decision. Nature of document produced was not described in its minutes. What were the documents produced by the respondents were also not detailed. Thus findings of said committee are not based on any legal evidence but mere ipsi-dixit. They being class IV employees are not aware about the legal implications. Applicants have also doubted the bonafides of documents, if any, produced before such committee. No real & effective hearing was given to them, emphasized Ld. Counsel. There had never been any court order to disengage them. It was never their case that applicants were appointed illegally. Plenty of work is still available against which some of

them are still engaged though through the Contractor on the pretext that some services have been outsourced.

11. Sh. S.Sharma, Ld Counsel appearing in TA NO 64 of 2009 contended that applicant therein was engaged in Jan, 1993 & continuing. He had completed 240 days in a year. He was basically a permanent employee and had been paid salary in said capacity namely on voucher known as ACG-17.

12. Sh. Manik Chanda, Ld. Counsel appearing in TAs No 7, 10 & 25 of 2009 contended that there is slight variation in facts inasmuch as some of them were earlier granted temporary status which was later cancelled. In T.A.No.25/2009, 14 applicants in number were engaged during 1988-98 and later fully sent to work under Class I contractor of the Department. However they continue to be engaged as on date. 9 persons including two applicants in TA No 10/2009 were conferred temporary status vide order dated 15/22nd Dec, 1997, which status was cancelled on 29.6.98, validity of which had been challenged vide O.A.No.141/98 by two applicants namely All India Freedom Employees Union & Nihar Dey. Said OA was disposed of vide common order dated 31.8.99 along with various other O.A.s namely 107, 112, 114, 118, 120, 131, 135, 136, 142, 145, 192, 223, 269 & 293 of 1998 requiring the respondents to examine each case and pass reasoned order because due to paucity of material it was not feasible for the Tribunal to come to a definite conclusion. Said judgment had attained finality. Thereafter similarly situated persons also filed O.A.No.28/2001, by Pritu Bhusan Roy, who was also conferred temporary status and later withdrawn vide order dated 27.6.98. Said O.A. was allowed vide order dated 24.8.2001 holding that action of scrutinizing committee to confine its enquiry upto 1.8.98 was not sustainable. Later, applicants in TA No 10/2009 also preferred individual O.As. No.182 and 183 of 2003, which were decided vide common Order dated 26.4.04 requiring the respondents to pass speaking order. Pursuant thereto order dated 31.1.05 was passed wherein it has been stated that the engagement report from the field unit based on certification on the lines is factually incorrect and cannot be accepted and the records establish that they had not been

