

(19)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.3160/2002

New Delhi, this the ^{6th} day of February, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

Shri Raghwa Sharma,
S/o Shri Chander Dev Sharma,
Helper, Instruments Research & Development
Establishment,
Raipur Road, Dehradun (Uttaranchal)
and five others as per Memo of Parties

.... Applicants

(By Advocate : Shri B.S. Mainee)

V e r s u s

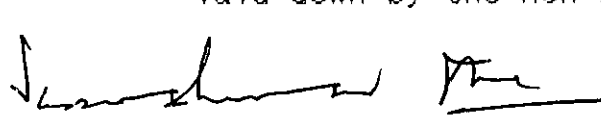
1. Union of India,
Through the Secretary,
Ministry of Defence,
South Block, New Delhi
2. The Director General,
Research & Development,
Ministry of Defence,
South Block, New Delhi
3. The Director of Manpower Planning
and Development,
'B' Wing, Sena Bhawan,
New Delhi
4. The Director,
Instrument Research & Development
Establishment,
Raipur Road,
Dehradun (Uttaranchal)

.... Respondents

(By Advocate : Shri K.C.D. Gangwani)

O R D E R

The applicants have preferred this OA against the termination of their services verbally on 1.9.2002 after the respondents had been directed to consider their case by the Tribunal vide order dated 19.8.2002 in an earlier OA filed by them seeking regularisation and absorption as per the law laid down by the Hon'ble Supreme Court.

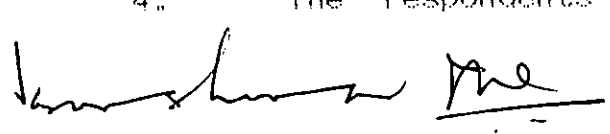


2. The facts of the matter, briefly, are that the applicants have claimed that they were initially engaged by the respondent No.4 in the year 1991-93 and continued to work through the contractor as Helper Khalasis/Peon/Chowkidars. They have submitted that they were paid for their services by the contractor. Temporary staff passes were issued to them for working under respondent No.4. As regards the nature of duties that they were performing, they have claimed that their work was of perennial nature and accordingly they should have been considered for absorption. Defending their contention that their services should have been regularised and they should have been absorbed, they have referred to the fact that the system of contract labour has been abolished in the Government Departments and such labourers have been treated as Government employees. They have pleaded that while they had been working through the contractor, their work was supervised and controlled directly by the respondents. While they have admitted that they have no direct relationship with the respondents and, therefore, there is no master-servant relationship on account of the presence of intermediaries, they have urged that they should be treated as regular parcel porters w.e.f. 15.4.1991 when they were initially engaged, in terms of the decisions of the Hon'ble Supreme Court in Writ Petition No. 277/1988. They have also referred to a bunch of Writ Petitions Nos. 507/1992, 415/1992 and 82/1993 in the case of National Federation of Railway Porters, Venders and Bearers vs Union of India and Others decided by the Hon'ble Supreme Court (SCR 1995 Vol.II Page 709) directing the respondents to absorb the petitioners as regular Railway employees.



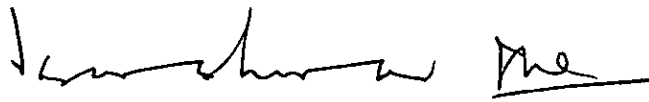
3. A reference has also been made to the decisions of the Tribunal in OA No.331/1998 dated 30.9.1998 directing the respondents to treat those applicants as regular Railway employees with effect from the date of the order and to grant them the same salary which was paid to the regular Parcel Porters (Annexure A-2). It is observed that they had approached the Assistant Labour Commissioner, Dehradun, earlier under the Industrial Disputes Act and who is reported to have taken a view that no settlement could be possible in the case, as the parties held divergent views and as such conciliation proceedings ended in failure. The applicants appear to have followed the matter with the respondents through representations, seeking relief in the light of the decisions of the Hon'ble Supreme Court as referred to hereinabove. When their services were not regularised nor were they given any reply to their representations, they filed OA No.2145/2002 for directions being given to the respondents to consider their case for regularisation and absorption. The said OA was disposed of at the admission stage itself with directions to the respondents to consider the representation of the applicants and pass a speaking and reasoned order in the matter at the earliest. The applicants have alleged that the respondents have not passed a speaking and reasoned order in compliance with the directions of the Tribunal and have instead terminated their services on 1.9.2002 by passing an oral order. The applicants have further alleged that the respondents have recruited fresh persons in their place and hence this OA.

4. The respondents have submitted that the applicants



in the OA had earlier also filed OA No. 2145/2002 in which directions had been given by the Tribunal on 19.8.2002 to them to consider the representations of the applicants along with the OA and pass a reasoned and speaking order. They have affirmed that they did consider the matter and passed a reasoned and speaking order to all the applicants on 4.12.2002 in which it had been made clear to them that they being the employees of Dehradun Valley Multipurpose Sainik Cooperative Society Ltd and having been never employed by the respondents, the question of regularisation of their services under respondent No.4 did not arise. However, there is no reference to the said order in this OA by the applicants and they have instead alleged termination of their services by a verbal order dated 1.9.2002. The respondents have broadly contended that the applicants were never the employees of the Government nor were they ever in their service. In these circumstances, the Tribunal cannot adjudicate upon their imaginary grievance under Section 14 of the Administrative Tribunals Act. They have also maintained that the applicants being based at Dehradun, the Principal Bench of this Tribunal has no territorial jurisdiction in the matter. The applicants have, however, not reacted to this point in the rejoinder.

5. On the merit of the case, the respondents have contended that the applicants cannot claim any relief against them, as they were the employees of the said Co-operative Society and not of the Government. As regards temporary staff passes having been issued to the applicants, the same were issued to them as per existing security instructions for their identification and for allowing them



: 5 :

entry inside the premises of the respondents. In any case, these were not temporary photo passes as issued to regular, temporary, ad-hoc or casual employees held on the strength of the establishment; these were only entry passes which did not make them employees of the respondents. They have also maintained that there was no master-servant relationship between the applicants and the respondents and as such demand for regularisation of their services is not at all tenable and justified. Referring to the decision of the Hon'ble Andhra Pradesh High Court, Hyderabad (Annexure II), they have submitted that in the said similarly placed case, the plea for regularisation of the services of the casual workers had been summarily rejected by the Hon'ble High Court. They have also referred to the fact that Assistant Labour Commissioner having considered the matter in detail also did not consider the case fit for adjudication, as the employer-employee relationship between the applicants and the respondents could not be proved. Accordingly, the Ministry of Labour ruled that the dispute did not subsist.

6. In the rejoinder, filed by the applicant, no new point has been brought out by the applicants.

7. On consideration of the submissions of both the parties, while it is observed that the applicants have relied upon the decisions of the Hon'ble Supreme Court in Writ Petition No.277/1988, it is observed that the applicants have not made the Dehradun Valley Multipurpose Sainik Co-operative Society Ltd. a party/respondent to the OA. It is also observed that earlier also when the



applicants had approached the Tribunal with OA No. 2145/2002 decided on 19.8.2002 they had not made the said Society a respondent. In the process, the representation which was directed to be considered by the respondents as respondents in the said OA was considered by them and disposed of vide order of the respondents dated 4.12.2002. While a copy of the said order does not appear to have been attached with the OA by either of the parties, it is observed from the opening paragraph of the counter reply that the respondents took the position that the applicants were the employees of the said Society and were never employed by the respondents. As such, the question of regularisation of their services under respondent No.4 did not arise. This contention of the respondents has appeared all through their reply.

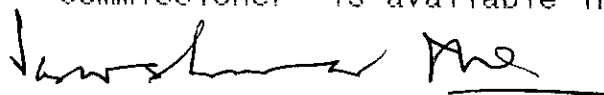
8. During the course of oral submission, the learned counsel for the respondents has also contended that there is no cause of action against which the applicants have preferred this OA. In their opinion, the subject matter of the OA, having once been brought before the Assistant Labour Commissioner and having not been resolved, they should not have agitated the matter before the Tribunal and instead should have approached the Hon'ble High Court. They have also said that the respondents have taken a decision to out-source work like cleaning etc. and the Notification issued in this regard does not prohibit engagement of contract labour. He has also pointed out that the applicants have sought multiple reliefs in the OA and the same are not permissible. In their opinion, the rulings which have been referred to and relied upon by the

Lawrence Me

applicants in support of their case are not relevant to their case. They have, however, not clarified as in what respect the cases relied upon by the applicant are not relevant to their case.

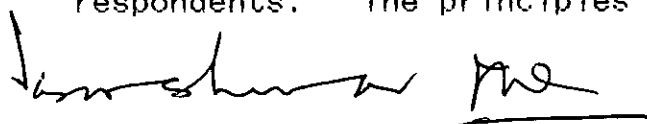
9. When the facts of the OA are seen with reference to the facts as submitted before the Hon'ble Supreme Court and the observations of the Hon'ble Apex Court thereon, I find that there are certain aspects of the matter which need to be pondered over by the respondents. It appears that the applicants in the said Writ Petition No.277/1988 were also employees of the Contractors and they were also serving as Parcel Porters through the Contractors. It was also observed that the nature of the work done by them was perennial. In the said case, the matter had been enquired into, in detail, by the Assistant Labour Commissioner and his report constituted the basis for further consideration of the matter by the respondents. It also appears that the respondents did agree to absorb some of them on the basis of length of service rendered by them through the Contractor. Accordingly, the Apex Court laid down certain norms for absorption of these employees. Some of the Porters were thus, it is presumed, absorbed by the Railways in their service.

10. However, in the present case, the Assistant Labour Commissioner has not submitted any report, as the conciliation proceedings did not succeed for the reasons that the employer-employee relationship could not be established. As a result, no report of the Assistant Labour Commissioner is available in the present case and as such,



: 8 :

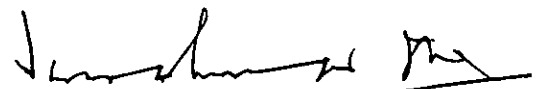
similarity with the case referred to above does not go beyond this point. However, a significant factor in this OA, which can be seen vis-a-vis what has been stated in the Writ Petition decided by the Hon'ble Supreme Court as referred to above, is that the work performed by the applicants through the Contractor was the same as performed by the applicants in the case decided by the Hon'ble Supreme Court. It is also a fact, as was the fact in the previous case, that the applicants in the OA served for more than 10 years and as such they should have been given the benefit of regularisation of their services even by the Contractor, which does not seem to have been done by them. The view that the applicants, in fact, rendered services for the respondents, even though through a Contractor, has not been disputed in the present application. This fact had also been admitted in the case decided by the Hon'ble Supreme Court. The right course, therefore, should be that the respondents consider the cases of those applicants who have rendered very long years of service through the Contractor and who could have been considered for regularisation/absorption in the service of the respondents as per rules and procedures against such vacancies as were available. This does not seem to have been done by them. It appears that they got irked by the fact that the applicants had approached the Tribunal for relief and in the process they dispensed with their services altogether which does not appear to be justified on any parameter. It is certainly not a routine thing that the applicants served the respondents through the Contractor for 10 long years and finally lost their job for reasons not explained by the respondents. The principles of natural justice as also the



principles as have been upheld by the Hon'ble Supreme Court in the Writ Petition No. 277/1988 necessitate reconsideration of the matter by the respondents in the light of the basic facts of the matter and not simply on the basis that they were employees of a Society.

11. Thus, having regard to the facts and circumstances of the case and also keeping in mind the various aspects of the matter which have been gone through by the Hon'ble Supreme Court while deciding and disposing of the aforesaid Writ Petition, and also considering the fact that the applicants have essentially served the respondents through the Contractor/Society, I am inclined to dispose of this OA by remitting the matter to the respondents with direction that they reconsider the case of the applicants in the light of the decisions of the Hon'ble Supreme Court in Writ Petition No.277/1988 and dispose it of by issuing a reasoned and speaking order covering all the points as have been referred to in the above mentioned decisions of the Hon'ble Supreme Court. They are further directed to dispose of the matter in the above manner within a period of four months from the date of receipt of a copy of this Order.

12. With the above directions, the OA stands disposed of. No costs.



(SARWESHWAR JHA)
MEMBER (A)

/pkr/