

Central Administrative Tribunal
Principal Bench

O.A.No.1136/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 25th day of February, 2003

Akil Ahmad
20/247-248, Trilokpuri
Delhi - 110 009.

.. Applicant

(By Advocate: Sh. G.K. Aggarwal)

Vs.

1. The Administrator
Govt. of NCTD thro'
Principal Secretary (PWD)
Vikas Bhawan (IP Estate)
New Delhi - 110 002.
2. The Engineer-in-Chief, PWD (Delhi)
Kasturba Gandhi Rd. Barracks
(Opposite: Bharatiya Vidya Bhawan)
New Delhi - 110 001.
3. The Superintending Engineer
Circle-7, thro': E-in-C(PWD (Delhi))
KG Marg Barracks
New Delhi - 110 001..
4. The Executive Engineer, PWD (Delhi)
Division - 30, thro' E-in-C, PWD(Delhi)
Kasturba Gandhi Rd Barracks, New Delhi-1.
5. The Director General
(Road Development) & Addl. Secy.
Ministry of Surface Transport
Govt. of India, Transport Bhawan
Sansad Marg
New Delhi - 110 001. Respondents

(By Advocate: Sh. Ajay Gupta with Sh. Bhaskar
Bhardwaj)

O R D E R

By Shri Shanker Raju, M(J):

Applicant, through this OA, seeks declaration to the effect that he may be treated as Motor Lorry Driver with temporary status w.e.f. 1.1.2001 with regular status and with full normal wages including OTA paid to regular MLDS and other benefits with interest.

2. Applicant, who holds Motor Driving Licence, was engaged as Motor Lorry Driver and was driving Staff Car No.DL3C-E9303 since 1996. He aggrieved that non-accord of temporary status and regularisation and payment of wages as admissible to regular employee, the present OA is filed.

3. Sh. G.K.Agarwal, learned counsel for applicant, contended that applicant was employed by the PWD and the payment is not even hand-receipt which means that he has been paid without obtaining his signatures as Driver. According to him, he is on work order basis payment is disbursed by Junior Engineer through the Consolidated Fund of the Government. He performed over-time duties also and was issued Identity Card by the Ministry of Road Transport and Highways.

4. Shir Aggarwal, in so far as the plea that applicant is being engaged through Contractor, it is stated that as the payment has been made to the applicant and certificate has been issued by the Department a general presumption is to be drawn in his favour that he has been working with respondents unless rebutted or proved otherwise. As respondents have not produced any material to establish that applicant was employed by Contractor, he is entitled to be accorded temporary status, regularisation and also to be paid the difference of pay and allowances, which are less paid to him in comparison to regular

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employees. By referring to Article 23 of the Constitution of India, it is stated that burden of proof, otherwise, is on the respondents.

5. Sh. Aggarwal further stated that since 1999, till date, applicant was engaged by PWD, and was under direct employment of Respondents, PWD. As the Staff Car is a permanent asset of PWD, being a Driver of such Staff Car applicant is deemed to be a Government employee and is entitled for prescribed rates, as are paid to the regular Drivers on the basis of cardinal principle of "equal pay for equal work". Belied the plea of contractual employment, it is stated that the same has never been apprised to him by the PWD.

6. In so far as the additional affidavit is concerned, it is stated that the documents which are filed do not mention the name of applicant which cannot establish that he was employed by a Contractor and was not an employee of official respondents.

7. On the other hand, Shri Ajay Gupta, counsel for respondents strongly rebutted the contentions of applicant and stated that applicant right from inception he was an employee of Contractor and was not under his direct employment and control of the respondents, and he has never been paid by the official respondents and was drawing his pay from the Contractor's cell. There is no master and servant relation ship between applicant and respondents and was not in any manner under the control of

respondents. As applicant has been engaged by Contractor and paid by him, there is no question of hand receipt.

8. By referring to additional affidavit, it is stated that all the services of the Staff Car Driver ibid is being provided to by Contractor through work order and by producing the official records, it is contended that applicant received the payment, through his signatures from the Contractor and work orders have been issued to the Contractor, who in turn provided the services of applicant to respondents as such applicant is not being under the direct control of official respondents and the services of applicant is being on contractual basis, this Court has no jurisdiction to entertain the grievance of applicant and as per the decision of Apex Court in Steel Authority of India Limited v. National Union Water Front Workers, 2001(7) SCC 1 where it has been held that the contract is shame or camouflage it is the industrial adjudicator who has to go into the determination of this question and this Court has no jurisdiction.

9. I have carefully considered the rival contentions of the parties and perused the material on record.

10. From the official records, I am satisfied that applicant had never been engaged by respondents and services of applicant had been provided on a work order basis by a Contractor and in fact applicant was an employee of the Contractor, this being so, neither

applicant has been paid out of the Government Fund nor was in any manner under their control. The issue regarding the judicial presumption is concerned, having satisfied on the issue of engagement by Contractor, no judicial presumption as to applicants by PWD can be drawn. The Apex Court in Steel Authority of India's case supra, has held whether the Contractor has been interposed or the contract is genuine or mere rescue or camouflage to avoid compliance with various beneficial legislation, the issue is to be gone into by an industrial adjudicator.

11. As applicant is not the holder of civil post or had not been paid out of the Consolidated Fund of India nor Contingent Fund, this Court has no jurisdiction to entertain the grievance. As such the present OA is liable to be dismissed for lack of jurisdiction. However, this will not preclude applicant to take resort to before an appropriate forum for redressal of his grievance in accordance with law. OA is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member(J)

/rao/