

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

**OA No.176/2019 with MA No.481/2019
OA No.177/2019 with MA No.482/2019
OA No.178/2019 with MA No.483/2019
OA No.179/2019 with MA No.484/2019
OA No.180/2019 with MA No.485/2019
OA No.181/2019 with MA No.486/2019
OA No.182/2019 with MA No.487/2019
OA No.183/2019 with MA No.488/2019
OA No.191/2019 with MA No.489/2019
OA No.192/2019 with MA No.490/2019
OA No.193/2019 with MA No.491/2019
OA No.194/2019 with MA No.492/2019
OA No.195/2019 with MA No.493/2019
OA No.196/2019 with MA No.494/2019
OA No.197/2019 with MA No.495/2019
OA No.198/2019 with MA No.496/2019
OA No.199/2019 with MA No.497/2019
OA No.200/2019 with MA No.498/2019
OA No.201/2019 with MA No.499/2019
OA No.202/2019 with MA No.500/2019
OA No.203/2019 with MA No.501/2019
OA No.204/2019 with MA No.502/2019**

Reserved on: 17.01.2020
Pronounced on:18.03.2020

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)**

O.A. No. 176/2019 with M.A.No. 481/2019

Dharam Singh s/o Mala Ram, aged about 45 years, r/o Village Sefraguwar, Teh. Khetri (Jhunjhunu), presently replaced from the post of Security Guard o/o Principal Chief Commissioner Income Tax, Statue Circle, Jaipur.

...Applicant.

(By Advocate: Shri P.N.Jatti with Ms.A.B.Jatti)

Versus

1. Union of India through the Secretary, to the Govt. of India, Ministry of Finance, Department of Revenue, Nehru Place, New Delhi-110019.

(2)

2. Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Jaipur-302005.

...Respondents.

(By Advocate: Sh. Gaurav Jain with Sh.T.R.Murlidharan
Income Tax Officer, Jaipur)

O.A. No. 177/2019 with M.A.No. 482/2019

Surjan Singh s/o Prahlad Singh, aged about 38 years, r/o Village Khayali, Post Narwasi, Teh. Rajgarh, District Churu, presently replaced from the post of Security Guard o/o Principal Chief Commissioner Income Tax, Statue Circle, Jaipur.

...Applicant.

(By Advocate: Shri P.N.Jatti with Ms.A.B.Jatti)

Versus

1. Union of India through the Secretary, to the Govt. of India, Ministry of Finance, Department of Revenue, Nehru Place, New Delhi-110019.
2. Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Jaipur-302005.

...Respondents.

(By Advocate: Sh. Gaurav Jain with Sh.T.R.Murlidharan
Income Tax Officer, Jaipur)

O.A. No. 178/2019 with M.A.No. 483/2019

Puran Singh s/o Mal Singh, aged about 36 years, r/o Village Badhala Ki Dhani, Singod Kalan, Jaipur, presently replaced from the post of Security Guard o/o Principal Chief Commissioner Income Tax, Statue Circle, Jaipur.

...Applicant.

(By Advocate: Shri P.N.Jatti with Ms.A.B.Jatti)

(3)

Versus

1. Union of India through the Secretary, to the Govt. of India, Ministry of Finance, Department of Revenue, Nehru Place, New Delhi-110019.
2. Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Jaipur-302005.

...Respondents.

(By Advocate: Sh. Gaurav Jain with Sh.T.R.Murlidharan
Income Tax Officer, Jaipur)

O.A. No. 179/2019 with M.A.No. 484/2019

Dharam Singh s/o Chander Singh, aged about 45 years, r/o Village and post Khayli Narwasi Teh. Rajgarh, District Churu, presently replaced from the post of Security Guard o/o Principal Chief Commissioner Income Tax, Statue Circle, Jaipur.

...Applicant.

(By Advocate: Shri P.N.Jatti with Ms.A.B.Jatti)

Versus

1. Union of India through the Secretary, to the Govt. of India, Ministry of Finance, Department of Revenue, Nehru Place, New Delhi-110019.
2. Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Jaipur-302005.

...Respondents.

(By Advocate: Sh. Gaurav Jain with Sh.T.R.Murlidharan
Income Tax Officer, Jaipur)

O.A. No. 180/2019 with M.A.No. 485/2019

(4)

Mahendra Singh s/o Prem Singh, aged about 38 years, r/o Village Khana Khanker, Teh. Bhopalgarh, Jodhpur, presently replaced from the post of Security Guard o/o Principal Chief Commissioner Income Tax, Statue Circle, Jaipur.

...Applicant.

(By Advocate: Shri P.N.Jatti with Ms.A.B.Jatti)

Versus

1. Union of India through the Secretary, to the Govt. of India, Ministry of Finance, Department of Revenue, Nehru Place, New Delhi-110019.
2. Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Jaipur-302005.

...Respondents.

(By Advocate: Sh. Gaurav Jain with Sh.T.R.Murlidharan
Income Tax Officer, Jaipur)

O.A. No. 181/2019 with M.A.No. 486/2019

Pawan Singh s/o Shiv Pal Singh, aged about 29 years, r/o Plot No.28, Vyas Colony, J.P.Marg, Sastri Nagar, Jaipur, presently replaced from the post of Security Guard o/o Principal Chief Commissioner Income Tax, Statue Circle, Jaipur.

...Applicant.

(By Advocate: Shri P.N.Jatti with Ms.A.B.Jatti)

Versus

1. Union of India through the Secretary, to the Govt. of India, Ministry of Finance, Department of Revenue, Nehru Place, New Delhi-110019.
2. Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Jaipur-302005.

...Respondents.

(By Advocate: Sh. Gaurav Jain with Sh.T.R.Murlidharan
Income Tax Officer, Jaipur)

O.A. No. 182/2019 with M.A.No. 487/2019

Madan Singh s/o Chander Singh, aged about 48 years,
r/o Village Khayali Narwasi, Teh. Rajgarh, District
Churu, presently replaced from the post of Security
Guard o/o Principal Chief Commissioner Income Tax,
Statue Circle, Jaipur.

...Applicant.

(By Advocate: Shri P.N.Jatti with Ms.A.B.Jatti)

Versus

1. Union of India through the Secretary, to the Govt.
of India, Ministry of Finance, Department of
Revenue, Nehru Place, New Delhi-110019.
2. Chief Commissioner of Income Tax, New Central
Revenue Building, Statue Circle, Jaipur-302005.

...Respondents.

(By Advocate: Sh. Gaurav Jain with Sh.T.R.Murlidharan
Income Tax Officer, Jaipur)

O.A. No. 183/2019 with M.A.No. 488/2019

Dayal Singh s/o Rewat Singh, aged about 50 years, r/o
Pl. No.267, Ganesh Nagar-4, Benad Road, Jaipur,
presently replaced from the post of Security Guard o/o
Principal Chief Commissioner Income Tax, Statue
Circle, Jaipur.

...Applicant.

(By Advocate: Shri P.N.Jatti with Ms.A.B.Jatti)

Versus

(6)

1. Union of India through the Secretary, to the Govt. of India, Ministry of Finance, Department of Revenue, Nehru Place, New Delhi-110019.
2. Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Jaipur-302005.

...Respondents.

(By Advocate: Sh. Gaurav Jain with Sh.T.R.Murlidharan
Income Tax Officer, Jaipur)

O.A. No. 191/2019 with M.A.No. 489/2019

Mukesh Kumar s/o Jhaber mal, aged about 30 years, r/o Village Dhani Dudian Wali, Post Sefraguar, teh.Khetri, District Jhunjhunu, presently replaced from the post of Security Guard o/o Principal Chief Commissioner Income Tax, Statue Circle, Jaipur.

...Applicant.

(By Advocate: Shri P.N.Jatti with Ms.A.B.Jatti)

Versus

1. Union of India through the Secretary, to the Govt. of India, Ministry of Finance, Department of Revenue, Nehru Place, New Delhi-110019.
2. Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Jaipur-302005.

...Respondents.

(By Advocate: Sh. Gaurav Jain with Sh.T.R.Murlidharan
Income Tax Officer, Jaipur)

O.A. No. 192/2019 with M.A.No. 490/2019

Bhanwer Singh s/o Om Singh, aged about 32 years, r/o Village and post Khyali Narwasi, teh. Rajgarh, District Churu, presently replaced from the post of Security Guard o/o Principal

(7)

Chief Commissioner Income Tax, Statue Circle, Jaipur.

...Applicant.

(By Advocate: Shri P.N.Jatti with Ms.A.B.Jatti)

Versus

1. Union of India through the Secretary, to the Govt. of India, Ministry of Finance, Department of Revenue, Nehru Place, New Delhi-110019.
2. Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Jaipur-302005.

...Respondents.

(By Advocate: Sh. Gaurav Jain with Sh.T.R.Murlidharan
Income Tax Officer, Jaipur)

O.A. No. 193/2019 with M.A.No. 491/2019

Shiv Pal Singh s/o Rameshwar Lal, aged about 42 years, r/o Village Barsangpura, Teh. Shri Madhopur, District Sikar, presently replaced from the post of Security Guard o/o Principal Chief Commissioner Income Tax, Statue Circle, Jaipur.

...Applicant.

(By Advocate: Shri P.N.Jatti with Ms.A.B.Jatti)

Versus

1. Union of India through the Secretary, to the Govt. of India, Ministry of Finance, Department of Revenue, Nehru Place, New Delhi-110019.
2. Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Jaipur-302005.

...Respondents.

(8)

(By Advocate: Sh. Gaurav Jain with Sh.T.R.Murlidharan
Income Tax Officer, Jaipur)

O.A. No. 194/2019 with M.A.No. 492/2019

Kamlesh Kumar s/o Har Dev Ram, aged about 30 years, r/o village Jeta, Post Sola via Khandela, District Sikar, presently replaced from the post of Security Guard o/o Principal Chief Commissioner Income Tax, Statue Circle, Jaipur.

...Applicant.

(By Advocate: Shri P.N.Jatti with Ms.A.B.Jatti)

Versus

1. Union of India through the Secretary, to the Govt. of India, Ministry of Finance, Department of Revenue, Nehru Place, New Delhi-110019.
2. Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Jaipur-302005.

...Respondents.

(By Advocate: Sh. Gaurav Jain with Sh.T.R.Murlidharan
Income Tax Officer, Jaipur)

O.A. No. 195/2019 with M.A.No. 493/2019

Baldev Singh s/o Mool Singh, aged about 45 years, r/o Khyali Narwasi, Teh. Rajgarh, District Churu, presently replaced from the post of Security Guard o/o Principal Chief Commissioner Income Tax, Statue Circle, Jaipur.

...Applicant.

(By Advocate: Shri P.N.Jatti with Ms.A.B.Jatti)

Versus

(9)

1. Union of India through the Secretary, to the Govt. of India, Ministry of Finance, Department of Revenue, Nehru Place, New Delhi-110019.
2. Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Jaipur-302005.

...Respondents.

(By Advocate: Sh. Gaurav Jain with Sh.T.R.Murlidharan
Income Tax Officer, Jaipur)

O.A. No. 196/2019 with M.A.No. 494/2019

Deepa Ram s/o Mahadeva Ram, aged about 51 years, r/o Bahuji Ki Dhani, Post Barsinghpura, Teh. Khandela, District Sikar, presently replaced from the post of Security Guard o/o Principal Chief Commissioner Income Tax, Statue Circle, Jaipur.

...Applicant.

(By Advocate: Shri P.N.Jatti with Ms.A.B.Jatti)

Versus

1. Union of India through the Secretary, to the Govt. of India, Ministry of Finance, Department of Revenue, Nehru Place, New Delhi-110019.
2. Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Jaipur-302005.

...Respondents.

(By Advocate: Sh. Gaurav Jain with Sh.T.R.Murlidharan
Income Tax Officer, Jaipur)

O.A. No. 197/2019 with M.A.No. 495/2019

Rameshwar Lal s/o Nathmal, aged about 55 years, r/o H.No.74, Kartarpura, Malio Ki Kothi, Adarsh Krishana, Jaipur-12, presently replaced from the post of Security Guard o/o Principal Chief Commissioner Income Tax, Statue Circle, Jaipur.

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...Applicant.

(By Advocate: Shri P.N.Jatti with Ms.A.B.Jatti)

Versus

1. Union of India through the Secretary, to the Govt. of India, Ministry of Finance, Department of Revenue, Nehru Place, New Delhi-110019.
2. Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Jaipur-302005.

...Respondents.

(By Advocate: Sh. Gaurav Jain with Sh.T.R.Murlidharan
Income Tax Officer, Jaipur)

O.A. No. 198/2019 with M.A.No. 496/2019

Keshar Ram s/o Kulda Ram, aged about 48 years, r/o Dhani Bhanwaria wali, Village Sefraguwar Teh. Khetri, District Jhunjhunu, presently replaced from the post of Security Guard o/o Principal Chief Commissioner Income Tax, Statue Circle, Jaipur.

...Applicant.

(By Advocate: Shri P.N.Jatti with Ms.A.B.Jatti)

Versus

1. Union of India through the Secretary, to the Govt. of India, Ministry of Finance, Department of Revenue, Nehru Place, New Delhi-110019.
2. Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Jaipur-302005.

...Respondents.

(By Advocate: Sh. Gaurav Jain with Sh.T.R.Murlidharan
Income Tax Officer, Jaipur)

O.A. No. 199/2019 with M.A.No. 497/2019

Sumer Singh s/o Chander Singh, aged about 43 years, r/o Village and post Khyali, District Churu, presently replaced from the post of Security Guard o/o Principal Chief Commissioner Income Tax, Statue Circle, Jaipur.

...Applicant.

(By Advocate: Shri P.N.Jatti with Ms.A.B.Jatti)

Versus

1. Union of India through the Secretary, to the Govt. of India, Ministry of Finance, Department of Revenue, Nehru Place, New Delhi-110019.
2. Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Jaipur-302005.

...Respondents.

(By Advocate: Sh. Gaurav Jain with Sh.T.R.Murlidharan
Income Tax Officer, Jaipur)

O.A. No. 200/2019 with M.A.No. 498/2019

Prahlad Ram s/o Ganesh Ram, aged about 43 years, r/o Huhala, Teh. Neem Ka Thana, presently replaced from the post of Security Guard o/o Principal Chief Commissioner Income Tax, Statue Circle, Jaipur.

...Applicant.

(By Advocate: Shri P.N.Jatti with Ms.A.B.Jatti)

Versus

1. Union of India through the Secretary, to the Govt. of India, Ministry of Finance, Department of Revenue, Nehru Place, New Delhi-110019.

(12)

2. Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Jaipur-302005.

...Respondents.

(By Advocate: Sh. Gaurav Jain with Sh.T.R.Murlidharan
Income Tax Officer, Jaipur)

O.A. No. 201/2019 with M.A.No. 499/2019

Rajesh s/o Prahlad Singh, aged about 36 years, r/o Village Khyali Narwasi, Teh. Rajgarh, District Churu, presently replaced from the post of Security Guard o/o Principal Chief Commissioner Income Tax, Statue Circle, Jaipur.

...Applicant.

(By Advocate: Shri P.N.Jatti with Ms.A.B.Jatti)

Versus

1. Union of India through the Secretary, to the Govt. of India, Ministry of Finance, Department of Revenue, Nehru Place, New Delhi-110019.
2. Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Jaipur-302005.

...Respondents.

(By Advocate: Sh. Gaurav Jain with Sh.T.R.Murlidharan
Income Tax Officer, Jaipur)

O.A. No. 202/2019 with M.A.No. 500/2019

Om Singh s/o Hari Singh, aged about 40 years, r/o Village Ajmeri, Post Katmana, Teh. Diggi, District Tonk, presently replaced from the post of Security Guard o/o Principal Chief Commissioner Income Tax, Statue Circle, Jaipur.

...Applicant.

(By Advocate: Shri P.N.Jatti with Ms.A.B.Jatti)

(13)

Versus

1. Union of India through the Secretary, to the Govt. of India, Ministry of Finance, Department of Revenue, Nehru Place, New Delhi-110019.
2. Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Jaipur-302005.

...Respondents.

(By Advocate: Sh. Gaurav Jain with Sh.T.R.Murlidharan
Income Tax Officer, Jaipur)

O.A. No. 203/2019 with M.A.No. 501/2019

Ram Niwas s/o Mala Ram, aged about 38 years, r/o Village Sefra Guar, Teh. Khetri, District Jhunjhunu, presently replaced from the post of Security Guard o/o Principal Chief Commissioner Income Tax, Statue Circle, Jaipur.

...Applicant.

(By Advocate: Shri P.N.Jatti with Ms.A.B.Jatti)

Versus

1. Union of India through the Secretary, to the Govt. of India, Ministry of Finance, Department of Revenue, Nehru Place, New Delhi-110019.
2. Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Jaipur-302005.

...Respondents.

(By Advocate: Sh. Gaurav Jain with Sh.T.R.Murlidharan
Income Tax Officer, Jaipur)

O.A. No. 204/2019 with M.A.No. 502/2019

Hawa Singh s/o Megh Singh, aged about 37 years, r/o Village and post Khyali Narwasi, Teh. Rajgarh, District Churu, presently replaced from the post of Security

(14)

Guard o/o Principal Chief Commissioner Income Tax,
Statue Circle, Jaipur.

...Applicant.

(By Advocate: Shri P.N.Jatti with Ms.A.B.Jatti)

Versus

1. Union of India through the Secretary, to the Govt. of India, Ministry of Finance, Department of Revenue, Nehru Place, New Delhi-110019.
2. Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Jaipur-302005.

...Respondents.

(By Advocate: Sh. Gaurav Jain with Sh.T.R.Murlidharan
Income Tax Officer, Jaipur)

ORDER

Per: Suresh Kumar Monga, Member (J):

MA No.481/2019 in OA No.176/2019, MA No.482/2019 in OA No.177/2019, MA No.483/2019 in OA No.178/2019, MA No.484/2019 in OA No.179/2019, MA No.485/2019 in OA No.180/2019, MA No.486/2019 in OA No.181/2019, MA No.487/2019 in OA No.182/2019, MA No.488/2019 in OA No.183/2019, MA No.489/2019 in OA No.191/2019, MA No.490/2019 in OA No.192/2019, MA No.491/2019 in OA No.193/2019, MA No.492/2019 in OA No.194/2019, MA No.493/2019 in OA No.195/2019, MA No.494/2019 in OA No.196/2019, MA No.495/2019 in OA No.197/2019, MA No.496/2019 in OA No.198/2019, MA No.497/2019 in OA

No.199/2019, MA No.498/2019 in OA No.200/2019, MA No.499/2019 in OA No.201/2019, MA No.500/2019 in OA No.202/2019, MA No.501/2019 in OA No.203/2019 and MA No.502/2019 in OA No.204/2019 are taken up together for disposal with the consent of learned counsels for the parties as a common question of law and fact is involved in all these cases.

2. The applicants in all the above captioned Original Applications state that the respondents had engaged their services as casual labour (Security Guard with effect from 01.09.2007). They had been working continuously for a long period. Since they were not allowed to work with effect from 01.06.2018, therefore, they submitted representations before Respondent No.2 stating therein that the action of the respondents to replace them with another set of casual labours is contrary to the principles laid down by the Hon'ble Supreme Court. However, the said representations have been negatived. It has further been averred that the act of respondents in replacing the applicants with another set of casual labours is not permissible. With all these assertions, the applicants have prayed for quashing of the order dated 16.07.2018. Furthermore, they are seeking the directions to respondents to take them back on duty with effect from 01.06.2018 with all consequential benefits.

3. The respondents were put on notice in the Original Applications by this Tribunal. They, however, instead of joining the defence by way of filing their reply on merits, preferred to file Miscellaneous Applications disputing the maintainability of the Original Applications stating therein that the original applicants are neither the employees of the Income Tax Department nor they are the persons directly engaged by the department. Their services were provided by M/s Jaipur Ex-servicemen Welfare Cooperative Society, Jaipur in terms of an agreement entered into with the said Society. It has further been averred that since the applicants were not appointed to any post or service by the Government, therefore, the matter does not come within the ambit of 'service matters' under Section 3 (q) of the Administrative Tribunals Act, 1985 (hereinafter called as the Act). It has further been averred that as per Section 14 of the Act, this Tribunal has no jurisdiction to entertain the applicants' Original Applications and, therefore, those are liable to be dismissed being not maintainable.

4. The original applicants, while filing their respective replies to Miscellaneous Applications, have joined the defence. While placing reliance upon a Full Bench judgment

of the Hon'ble High Court of Calcutta in the matter of **Awadhesh Singh vs. Union of India & Ors** W.P.21119 (W) of 2011 decided on 17.05.2013, it has been stated that the definition of 'service matters' under Section 3 (q) (v) of the Act is very wide and it does not debar the applicants from availing their remedy before this Tribunal. It has further been averred that the contract between the principal employer and the contractor was a mere camouflage to deprive the applicants from the benefits flowing from a beneficial legislation. The applicants had been working with the respondents for a long period and they were being paid their salaries through contractor. The fact as pleaded by the respondents in their Miscellaneous Applications that there is no relationship of master and servant between the original applicants and the respondents, has been refuted by the original applicants. With all these assertions, the original applicants have prayed for dismissal of the present Miscellaneous Applications whereby the maintainability of Original Applications has been disputed by the respondents.

5. The respondents, however, by way of filing their rejoinder, apart from reiterating the assertions made in their Miscellaneous Applications, have further stated that the original applicants are neither the employees of the

Department nor they are casual workers engaged directly by the Department. They are the employees of M/s Jaipur Ex-servicemen Welfare Cooperative Society, Jaipur, who had provided its services to respondents and an agreement was also executed in this regard. The original applicants were being paid their salaries by the said Society. The respondents had never made any payments directly to the original applicants. The services of M/s Jaipur Ex-servicemen Welfare Cooperative Society, Jaipur were engaged after inviting tenders and the agreement dated 21.07.2004 executed with the said society was being renewed on year to year basis. For the financial year 2018-19, tenders were again invited for availing the services of Security Guards as per tender notice and advertisement dated 16.04.2018. M/s Jaipur Ex-servicemen Welfare Cooperative Society, Jaipur also participated in the process of tender along with other bidders. The committee constituted to examine the tenders found M/s Modern V.R. Security Force (India) P. Ltd. as the lowest bidder and, therefore, the contract was given to said agency to provide the services of Security Guards. Since the contract was awarded to a new agency, therefore, the said agency has provided its personnel to work as Security Guards. The original applicants were employees of M/s Jaipur Ex-servicemen Welfare Cooperative Society, Jaipur, therefore, they cannot be allowed to work any further. The respondents

have thus prayed for dismissal of the Original Applications being not maintainable.

6. Heard learned counsels for the parties.

7. Shri Gaurav Jain, learned counsel for the respondents submitted that the case in hand does not fall within the definition of 'service matters' as per the provisions of Section 3(q) of the Act. He further submitted that there is no master and servant relationship between the original applicants and the respondents as they are the employees of M/s Jaipur Ex-servicemen Welfare Cooperative Society, Jaipur, which was engaged by the respondents to provide the services of personnel who can work as Security Guards. Learned counsel further submitted that as per Section 14 of the Act the Original Applications do not fall within the jurisdiction of this Tribunal.

8. In order to support his aforesaid arguments, Shri Jain has relied upon the following judgments:

- i) Union of India and Another vs. Chotelal and Others (1999) 1 SCC 554.
- ii) Mamta & Others vs. Govt. of NCT of Delhi & Others decided by the Principal Bench of this Tribunal on 05.09.2014 in OA No.980/2014 with connected cases.

9. On the other hand, Shri P.N.Jatti, learned counsel for the original applicants submitted that the original applicants had been working with the respondent department for more than 12 years. They always remained at the command of the respondent department and their salaries were being paid by the respondents through contractor. The agreement between the principal employer and the contractor was a mere camouflage to deprive the original applicants from the benefits of a beneficial legislation. Learned counsel in order to support his arguments relied upon a Full Bench judgment of the Hon'ble High Court Calcutta in the matter of Awadhesh Singh (supra) and a judgment of the Patna Bench of this Tribunal in the matter of **Yogendra Mahto and Others etc. vs. Union of India and Ors.** (OA No.537/92 decided on 08.10.2001).

10. Considered the rival contentions of learned counsels for the parties and perused the record.

11. There is no doubt about the fact that the respondents had invited the tenders from the agencies providing services of Security Guards. The tender submitted by M/s Jaipur Ex-servicemen Welfare Cooperative Society, Jaipur to provide services of Security Guards was accepted and consequent thereto an agreement was executed between the said

Society and the respondents. Since 21.07.2004 (the date of execution of agreement) the services of the original applicants were placed at the disposal of the respondents by the said Society. The original applicants were being paid their remuneration through the said Society and there was no relationship of master and servant between the original applicants and the respondents. The agreement was being extended between the aforesaid society and the respondent department on year to year basis. However, in the financial year 2018-19, the tenders were again invited for availing the services of Security Guards as per the tender notice and advertisement published on 16.04.2018. Pursuant thereto, M/s Jaipur Ex-servicemen Welfare Cooperative Society, Jaipur again participated in the process of tender along with other bidders. However, in the said process, M/s Modern V.R. Security Force (India) Pvt. Ltd. was found as the lowest bidder and, therefore, the contract was given to said service provider. The new service provider has already deployed its own manpower.

12. In the aforesaid facts and circumstances, we find substance in the argument raised by Shri Gaurav Jain, learned counsel for the respondents that the matter does not come within the ambit of the definition of 'service matters' as enshrined in Section 3 (q) of the Act. A perusal

of Section 3 (q) of the Administrative Tribunals Act enumerates the 'service matters', in relation to a person, whose matters are related to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India.

13. Since the original applicants were the employees of a service provider, therefore, it cannot be said that the matter as projected in the Original Applications is with regard to the conditions of their services in connection with the affairs of the Union or of any State or of any local or other authority. Apart from this, Section 14 of the Act which deals with the definition of jurisdiction, powers and the authority of this Tribunal, makes a provision that this Tribunal shall exercise the jurisdiction in relation to recruitment, and matters concerning recruitment, to any All India Service or to any civil service of the Union or to a post connected with defence or to the defence services, being, in either case, a post filled by a civilian.

14. In the facts and circumstances of the case, we find that the original applicants, who were employees of a service provider, namely, M/s Jaipur Ex-servicemen Welfare Cooperative Society, Jaipur, were neither appointed to any

civil service of the Union or on a civil post under the Union. In this view of the matter, we find that this Tribunal does not have the jurisdiction to entertain these Original Applications.

15. So far as the plea raised by Shri P.N.Jatti, learned counsel for the original applicants that the applicants had been performing their duties for more than 12 years and they always remained at the command of the respondent department and they were being paid their salaries through the contractor, and, therefore, the agreement between the service provider and the respondent department is a mere camouflage; we do not find any substance in the said argument as well. As narrated hereinabove, the respondent department had engaged M/s Jaipur Ex-servicemen Welfare Cooperative Society, Jaipur to provide its services by deploying manpower as Security Guards. The said Society was found to be the lowest bidder, therefore, its services were availed by the department upto the year 2018. Thereafter, in the year 2018-19, the respondents invited a fresh tender and they found that M/s Modern V.R. Security Force (India) Pvt. Ltd. as the lowest bidder and, therefore, they have engaged the services of said service provider for deploying the manpower to discharge the functions of Security Guards and a fresh agreement has also been

executed in this regard. Thus, we hold that the agreement between the service provider and the respondent department was not a mere camouflage.

16. So far as the judgment of the Hon'ble High Court of Calcutta in *Awadhesh Singh (supra)*, as relied upon by learned counsel for the original applicants, is concerned, the said judgment is of no avail to the applicants as in that case the Hon'ble High Court of Calcutta was examining a question as to whether the petitioners can directly file a Writ Petition in the High Court without approaching the Industrial Tribunal or the Central Administrative Tribunal, particularly when the relief for absorption/regularization in the services of the Eastern Railway was sought by the petitioners. A perusal of the said judgment nowhere reveals that the petitioners, who had been seeking their regularization/absorption in the service of Eastern Railway, were outsourced by the Eastern Railway by way of tender invited from open market from the service providers.

17. Similarly, the judgment in *Yogendra Mahto (supra)* rendered by the Patna Bench of this Tribunal also cannot be pressed into service as in the said case, the applicants were either engaged as casual labours by the Railway Department or by the Telecom Department and their services were

terminated by those departments. While invoking the jurisdiction of Patna Bench of this Tribunal, they had been seeking reinstatement in services and furthermore they had been claiming for grant of temporary status and the regularization in services thereafter. In the facts and circumstances of that case, this Tribunal held that the jurisdiction can be invoked by the casual labours. It was not a case where the services of the applicants therein were outsourced by the Railways and the Telecom Department, like the case in hand.

18. Exactly an identical issue, which is involved in the present case, had cropped up before the Principal Bench of this Tribunal in the matter of Mamta & Others (supra) wherein the applicants were engaged for housekeeping services by different contractors and their services were utilized in Acharyashree Bhikshu Govt. Hospital, Moti Nagar, New Delhi and they had prayed for issuance of directions to respondents to not to dispense with their services till the Committee constituted under the Chairmanship of Chief Secretary redresses their grievance.

19. A preliminary objection was raised in the said OA by the respondents and its maintainability was disputed. While relying upon a judgment of the Hon'ble Supreme Court in

the matter of Chotelal (supra), this Tribunal arrived at a conclusion that where the department directly engages somebody on contract basis and not through the contractor, the grievance of the contract employee is amenable to the jurisdiction of this Tribunal and in such cases where the work is assigned to the contractor and it is the employee of the contractor who has a grievance, the grievance can be looked into by the Labour Court or the Industrial Tribunal under the Central Government in terms of the Contract Labour Regulation Act. The operative portion of the said judgment is reproduced here as under:

“As far as the judgment of Hon’ble Calcutta High Court in the case of Awadhesh Singh vs. Union of India and Ors is concerned, the ratio deci dendi in the same is that in the case of contractual worker either and Central Administrative Tribunal or the Industrial Tribunal have the jurisdiction and when the alternate mechanism is provided in the law, the petitioner could not have invoked the extraordinary jurisdiction of the Hon’ble Supreme Court. When the Hon’ble High Court refused to entertain the Writ Petition, it was nowhere held that the employees of the contractor can approach the Central Administrative Tribunal but it was viewed that in the matter of contractual employee either the Central Administrative Tribunal or the Industrial Tribunal had the jurisdiction. In fact, where the department directly engaged somebody on contract basis and not through the contractor, the grievance of contract employee is amenable to the jurisdiction of the Tribunal and in such cases where the work is assigned to the contractor and it is the employee of the contractor who has a grievance, the grievance can be looked into by the Labour Court or Industrial Tribunal under the Central Govt. in terms of the CLRA. Besides, we are also

(27)

convinced with the plea raised by the respondents that when the applicants rightly approached the Industrial Tribunal for abolition of the contract and regularization of their services for part of the relief i.e. for continuance of their contractual service, they cannot approach the Tribunal. Once the Industrial Tribunal adjudicates the issue of abolition of contract and regularization of the applicants, they could also adjudicate the issue of their entitlement to continue in service. Thus, we find that the Original Application is not amenable to our jurisdiction and is also barred by principle of res sub-judice. "

20. In the conspectus of discussions made hereinabove, we are of the considered view that the above captioned Miscellaneous Applications deserve to be allowed and the Original Applications are liable to dismissed being not maintainable.

21. Accordingly, the above captioned Miscellaneous Applications are hereby allowed and the Original Applications are dismissed being not maintainable.

22. However, there shall be no order as to costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

/kdr/