CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

1. OA No.1428/2001
2. OA No.1429/2001
3. OA No.1430/2001
4. OA No.1431/2001
5. OA No.1432/2001

New Delhi this the 17th day of August, 2001.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

OA No.1428/2001

Sushil Verma,
S/o Sh. Ram Chander Verma,
R/o Village & P.O. Aya Nagar,
New Delhi-47. -Applicant

(By Advocate Shri Chittranjan Hati)

-Versus-

1. Union of India through
the Secretary,
Ministry of Agriculture,
Krishi Bhawan, New Delhi.

2. I.C.A.R.
through its D.G./Secretary,
Krishi Bhawan,
New Delhi.

3. I.A.R.I.,
through its Director,
Pusa, New Delhi.

4. M/s Anand & Company,
through Maintenance Section,
IARI, Pusa, New Delhi. -Respondents

(By Advocate Ms. Gitanjali Goel)

OA No.1429/2001

Netrapal Singh,
S/o Sh. Chanderkesh,
R/o H.No.691, Gali No.6,
Second Pusta,
Sonia Vihar,
Delhi-94. -Applicant

(By Advocate Shri Chittranjan Hati)

-Versus-

1. Union of India through
the Secretary,
Ministry of Agriculture,
Krishi Bhawan, New Delhi.

2. I.C.A.R.
through its D.G./Secretary,
Krishi Bhawan,
New Delhi.

3. I.A.R.I.,
through its Director,
Pusa, New Delhi.

4. M/s Anand & Company,
through Maintenance Section,
IARI, Pusa, New Delhi. -Respondents

(By Advocate Ms. Gitanjali Goel)

OA No.1430/2001

Ram Balak Yadav,
S/o late Sh. Jai Nandan Yadav,
R/o R-4, Hari Nagar,
New Delhi. -Applicant

(By Advocate Shri Chittranjan Hati)

-Versus-

1. Union of India through
the Secretary,
Ministry of Agriculture,
Krishi Bhawan, New Delhi.

2. I.C.A.R.
through its D.G./Secretary,
Krishi Bhawan,
New Delhi.

3. I.A.R.I.,
through its Director,
Pusa, New Delhi.

4. M/s Anand & Company,
through Maintenance Section,
IARI, Pusa, New Delhi. -Respondents

(By Advocate Ms. Gitanjali Goel)

OA No.1431/2001

Bhag Singh,
S/o Shri Chandra Bhan,
R/o Village & P.O. Ladpur,
Kanjwala, Delhi-81. -Applicant

(By Advocate Shri Chittranjan Hati)

-Versus-

1. Union of India through
the Secretary,
Ministry of Agriculture,
Krishi Bhawan, New Delhi.

2. I.C.A.R.
through its D.G./Secretary,
Krishi Bhawan,
New Delhi.

3. I.A.R.I.,
through its Director,
Pusa, New Delhi.

4. M/s Anand & Company,
through Maintenance Section,
IARI, Pusa, New Delhi. -Respondents

(By Advocate Ms. Gitanjali Goel)

OA No.1432/2001
MA No.1234/2001

1. Mahadev Mann,
S/o Sh. Shree Bandhu Mann,
R/o 218, Pilanji, Sarojini,
New Delhi-23.

2. Ram Chander,
S/o Shri Bali Chand,
R/o N-501, Mangolpuri,
Delhi-83.

3. Suresh Kumar,
S/o Shri Uchit Prasad,
R/o N-501, Mangolpuri,
Delhi-83. -Applicants

(By Advocate Shri Chittranjan Hati)

-Versus-

1. Union of India through
the Secretary,
Ministry of Agriculture,
Krishi Bhawan, New Delhi.

2. I.C.A.R.
through its D.G./Secretary,
Krishi Bhawan,
New Delhi.

3. I.A.R.I.,
through its Director,
Pusa, New Delhi.

4. M/s Anand & Company,
through Maintenance Section,
IARI, Pusa, New Delhi. -Respondents

(By Advocate Ms. Gitanjali Goel)

O R D E R

By Mr. Shanker Raju, Member (J):

As common question of law is involved these OAs are disposed of by this common order.

2. Briefly stated in OA-1428 and 1429 of 2001 the applicants have been working as Supervisors under the Contractor in the maintenance Section since 1.12.2000 of the IARI and have prayed for directions to the respondents not to terminate their services.

2.1 In OA-1430/2001 the applicant has been working as Generator Operator-cum-Electrician in the maintenance Section since 15.1.2000 through a contractor.

2.2 In OA-1431/2001 the applicant has been working as Helper to Electrician through a Contractor in the maintenance section of the IARI since 1.12.2000 and in OA-1432/2001 the applicants have been working as Electricians in the maintenance section through a Contractor since 1.12.2000.

2.3 Except in OA-1430/2001 the applicants have prayed for a direction to the respondents not to terminate their services and in OA-1430/2001 the applicant has challenged the action of the respondents whereby he has not been regularised despite having requisite qualifications and have worked for 240 days in a years. The learned counsel of the applicants in all these OAs has contended that the applicants have been working under the contractor who has been impleaded as a respondent but they are in fact working under the direct control and supervision of the officers of the IARI. Their attendance is regulated by the respondents and they have been issued the ESI card. The learned counsel of the applicants states that contract is only a camouflage and sham whereas their exists a relationship of master and servant and as such having

rendered requisite 240 days of service they are eligible for accord of temporary status and regularisation in view of the scheme of the Government of India. The learned counsel of the applicants has placed reliance on two decisions of this Tribunal which have been passed exparte at the admission stage itself and wherein directions have been issued to the respondents to consider the claim of the applicants therein for re-engagement and availability of work in preference to juniors, fresher and outsiders. The learned counsel of the applicants has placed reliance on the decision of Apex Court in Hussainbhai v. Alath Factory Tezhilali Union & Others, 1978 LAB.I.C. 1264, wherein it has been held that on lifting the veil if it has been found that the real employer is the Management then they are entitled for regularisation. The learned counsel of the applicants has also placed reliance on several decisions of the High Court in Writ Petition No.5257/99, 5388/99 and others wherein the services of the employees engaged through contractor have been ordered to be regularised. The learned counsel of the applicants has failed to deliver any of the orders of the High Court. In this background it is stated that the respondents are going to terminate the services of the applicants despite availability of work as such they may be retained as have been working for a long period. In OA-1430/2001 the applicant contends that as he had worked for more than 240 days and has withdrawn OA-1304/2001 and accorded liberty to file the present OA is entitled for regularisation in view of the scheme and as he is working under the direct control and supervision of the respondents.

3. On the other hand, strongly rebutting the contentions of the applicants the learned counsel of the respondents stated that the present OAs are pre-mature as merely on an apprehension of termination they have approached this Tribunal whereas all the applicants are still working with the contractor. The learned counsel of the respondents placing reliance on a decision of this Tribunal in OA-2148/99 in Chiranji Lal v. Union of India contended that this Tribunal has no jurisdiction to deal with the grievance of the applicants as they are engaged by a contractor and no directions can be issued to him, being a private party. It is also contended that the contract for electricity, maintenance and repair work and other ancillary jobs have been given to a contractor as a policy matter which cannot be interfered by this Court. The applicants are not directly working under the official respondents. The respondents are not regulating the work of the applicants and the supervision of the respondents is to the extent as provided under the contract. Furthermore, the applicants are being paid by the contractor and have not been issued any appointment letters by the respondents. As regards the termination the official respondents contended that they have no role to place and it is stated at the Bar by the learned counsel of the respondents that in four cases the contract is upto 31.12.2001 and regarding the contract given in one case they are not sure as to when the contract is coming to an end. The learned counsel of the respondents contended that the applicants have not come against any specific order to which they are aggrieved of. It is also contended that the applicants have admitted to be working with a contractor. It is lastly contended that it is for the contractor to decide to whom he engages for

doing a particular work and this cannot be interfered with by the official respondents. There is no employee engaged through contractor who has been regularised by the respondents.

4. I have carefully considered the rival contentions of the parties and perused the material on record. As regards the OAs except OA-1430/2001 where the relief claimed is for a direction to the respondents not to terminate the services of the applicants is absolutely pre-mature as the applicants have not assailed any specific order of termination and the cause of action had not arisen to them till their services are terminated. Apart from it, mere apprehension would not give rise to a cause of action to the applicants to approach this court which would be a pre-mature exercise and the Tribunal has no jurisdiction to entertain such an application.

5. The contention of the applicants that the contract is sham and camouflage whereas their exists a relationship of master and servant between the official respondents and the applicants is concerned, the same is not legally tenable and has not been proved by producing any evidence to this regard. As admitted by the applicants they are working as contract labours under a contractor. Their wages are paid by the contractor and their mode of working and nature of work are prescribed by the contractor. The official respondents have a limited role of supervision to the extent as prescribed under the contract would not bestow the applicants the status of workmen and in absence of any direct control by the

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official respondents over the applicants there cannot be a question of any master-servant relationship with the respondents.

6. As regards the ratio cited by the learned counsel of the applicants in OA-2634/2000 decided on 15.12.2000 as well as OA-2623/2000 decided on 15.12.2000 is concerned, I have gone through the ratio and find that the same has no application in the facts and circumstances of the present case. Firstly, the OAs have been decided without notice to the respondents at the admission stage against which a review has already been preferred and is sub-judiced and secondly the applicants therein are those whose services have been terminated by the contractor and therein directions have been issued. But in the instant cases the applicants are still working and they cannot resort to this ratio to substantiate their claim.

7. Furthermore, the respondents' counsel has drawn my attention to a decision in Chiranji Lal's case (supra) where the respondents were the same who are in the present OA and the applicants were working under a contractor and in this conspectus taking into consideration the case law as well as other circumstances this Court has come to a irresistible conclusion that there is no question of conferment of temporary status, as firstly the applicants have not given any precise information regarding number of days and secondly the Tribunal has no jurisdiction to deal with this matter. The aforesaid observations have been arrived at on the basis that the respondents are not the principal employer and have asserted that the applicants are working as contract labour

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with an appropriate contractor. The applicants therein had failed to take a plea that the respondents are not an establishment or as principal employer are not registered and therefore cannot employ contract labour or contractor is not a licensed contractor. No notification regarding prohibition through employment of contract labour under Section 10 of the Act has been placed by the applicants and they have also failed to show that the relevant work is of perennial nature. The ratio cited in the aforesaid case is mutatis mutandis applicable to the present OA. This Tribunal has no jurisdiction to deal with the case of the applicants. In this view of mine I am fortified by the decision of the High Court in I.C.M. Engineering Workers Union vs. Union of India, 2001 (1) SCT 1043, wherein it has been held that the proper course in such like matter is to resort to Labour Court/Tribunal and not this Tribunal.

8. In the result and having regard to the reasons recorded and discussion made above, the OAs fail for want of jurisdiction and are accordingly dismissed. However, it is open to the applicants to pursue their remedies before the appropriate forum. No costs.

S.Raju

(Shanker Raju)
Member (J)

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