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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No.1516/2001

Thursday, this the 3rd day of January, 2002

HON'BLE MR. S.A.T. RIZVI, MEMBER (ADMN)

Anand Kumar Sharma ..Applicant
(By Advocate: Mrs. Rani Chhabra)

Versus

Union of India & Anr. ...Respondents
(By Advocate: Shri A.K.Bhardwaj)

Corum:-

HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

1. To be referred to the reporter or not? YES

2. Whether it needs to be circulated to Benches of the Tribunal? NO

(S.A.T. RIZVI)
MEMBER (A)

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Hon'ble Shri S.A.T. Rizvi, Member (A)

Anand Kumar Sharma,
S/o Shri Vijay Parkash Sharma,
R/o 3366 Katra Ahiran,
Chowk Singhara,
Qutab Road,
Delhi-6

..Applicant

(By Advocate: Mrs. Rani Chhabra)

Versus

1. Union of India,
through its Secretary
Ministry of Communications,
Department of Telecommunications,
Sanchar Bhawan, New Delhi

2. The Chief General Manager,
Microwave III,
Kidwai Bhawan, New Delhi

3. Divisional Engineer Telecom
Microwave III
Sanchar Bhawan, New Delhi

4. Sub Divisional Engineer,
Microwave III
Room No.1311, Sanchar Bhawan,
New Delhi

5. Junior Telecom Officer,
Microwave III
Sanchar Bhawan,
New Delhi

..Respondents

(By Advocate : Shri A.K. Bhardwaj)

O R D E R (ORAL)

On the plea that the applicant was engaged as a casual labourer by the respondents in 1996 and had been working as such continuously year after year for more than 5 years, he seeks conferment of temporary status on him in accordance with the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989 (A-3). The further plea taken is that since as per the aforesaid

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scheme the applicant has completed more than 240 days of work/service in each of the years in question, the said status could be granted without difficulty. In support of his claim, the applicant has placed on record copies of Work Orders dated 31.12.1997 and 31.12.1998 (A-1). He has also relied on the orders passed by this Tribunal in OA No. 287/2001 on 25.5.2001 in a similar case in which also the respondents were the same.

2. I have heard the learned counsel on either side at length and find that the documents relied upon by the applicant do not at all establish any case in his favour. The aforesaid documents (A-1) relate to contractors engaged by the respondents for providing labourers for carrying out certain works. In none of these documents the applicant has been named as a person engaged by the aforesaid contractors. The respondents have, in their reply, categorically stated that the applicant was never engaged by them nor did he ever work as a security guard in their set-up. There is no relevant record in the Office of the respondents as they have never engaged any casual labourer since 1992. Enough time was given to the applicant to file a rejoinder. On 7.12.2001 a last opportunity was given to him to file the rejoinder. No rejoinder has been filed. In the circumstances, it is clear that there is no evidence on record to prove that the applicant ever worked even as a contract labour for the respondents. That he never worked as a casual labour in the respondents' organisation has, as stated, already been asserted by the respondents. The aforesaid assertion

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remains without dispute. The learned counsel appearing for the respondents has placed before me a letter dated 26.6.2001 from Keshav Security Services (Regd.) which goes to show that the applicant was never a security guard with the aforesaid contractor ever since they took over the contract with MW/NTR in January 1998. A copy of this letter has been taken on record. This reinforces the respondents' plea that the applicant has never worked even as a contract labour. In the circumstances, there is no case for grant of temporary status under the said Scheme.

3. Insofar as the order passed by this Tribunal in OA No.287/2001 is concerned, the learned counsel appearing on behalf of the respondents has placed before me a copy of the order passed by the High Court of Delhi on 30.10.2001 in CWP No.4511/2001 quashing and setting aside the aforesaid order passed by this Tribunal. The facts and circumstances of the two cases, namely, the case decided by the High Court and the present case being similar, the present OA should also, in my view, meet the same fate. Accordingly, the OA deserves to be dismissed on this ground as well.

4. Those employed as contract labours as has been claimed herein in respect of the applicants could, however, on fulfilment of certain conditions, claim regularisation in terms of the Supreme Court's judgement in Air India Statutory Corporation and others v. United Labour Union and other reported in 1997 (9) SCC 377. But that is no longer the case in view of the law laid down in the very comprehensive judgement rendered by the

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Supreme Court in Steel Authority of India Ltd. and others etc. etc. v. National Union Water Front Workers etc. etc. on 30.8.2001, and reported in JT 2001 (7) SC 268. The learned counsel appearing for the respondents has taken me through the relevant portions of the aforesaid judgement to show that after the issuance of a prohibition notification under section 10 (1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labourer in regard to his conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed for the supply of contract labourers for the work of the establishment under a genuine contract, or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefits arising thereunder. The relevant portion taken from the aforesaid judgement is reproduced below for the sake of convenience:-

> "(5) On issuance of prohibition notification under section 10(1) of the CLRA Act prohibiting employment of contract labourer or otherwise, in an industrial dispute brought before it by any contract labourer in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labourer for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labourer will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labourer in the

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> concerned establishment subject to the conditions as may be specified by it for that purpose in the light of Para 6 hereunder."

In the instant case no notification prohibiting the engagement of contract labour is shown to have been issued. In any case, even in a situation in which a notification under Section 10 (1) of the CLRA Act, 1970 prohibiting employment of contract labour is found to have been issued, nothing in that Section or elsewhere in the said Act would seem to permit giving a direction for automatic absorption of contract labour. The relevant portion of the Apex Court's judgement which lays down the above proposition reads as under:-

> "121 (3) Neither section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labourer on issuing a notification by appropriate government under sub-section (1) of section 10, prohibiting employment of contract labourer, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labourer working in the concerned establishment."

5. The alternate scenario arising in the absence of a prohibition notification issued under the aforesaid section is also contemplated in the aforesaid judgement of the Supreme Court (Steel Authority of India Ltd"s case supra) If the Industrial Adjudicator, in a situation of industrial dispute, discovers after an enquiry that the contractual arrangement is a mere ruse or a camouflage, the so-called casual labour will be treated as employees of the principal employer and

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accordingly, the option of giving a direction to the principal employer to regularize the services of the contractual labour will still be available. However, in that event, the Industrial Adjudicator will have to specify conditions therefor in the light of provisions made in the following para which is extracted again from the very same judgement of the Supreme Court:-

> "121 (6) If the contract is found to be genuine and prohibition notification under section 10 (1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate government, prohibiting employment of contract labourer in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labourer, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

6. It will be seen from the above that in the absence of a prohibition notification, the conditions which could be specified by the Industrial Adjudicator will have to be prescribed only in the light of the principle laid down in the aforesaid sub-para 6. In other words, where a prohibition notification does not exist (as in the present case) and, in an industrial dispute, the contract is found to be a mere ruse or a camouflage, the Industrial Adjudicator will retain the authority to order regularization of the services of contractual labourer on terms and conditions to be

specified in the light of the aforesaid sub-para 6. By the same token, in a situation in which a prohibition notification has not been issued and yet the contract is found to be genuine, there is nothing that can be done to assist the contractual labourer. I have already noticed that a prohibition notification has not been shown to exist in the present case. The existence of a contract is also not in doubt. The applicant has failed to come up with any evidence to prove that the aforesaid contract is a mere ruse/camouflage. Thus, no assistance can be made available to the applicant herein even while it is accepted that he has worked as contractual labourer. The corresponding plea raised during the course of argument accordingly fails and has to be rejected.

7. On a submission made by the learned counsel appearing on behalf of the respondents, I consider it necessary to proceed further and clarify in terms of para 122 of the judgement rendered by the Supreme Court in Steel Authority of India's case (supra) (reproduced below), that whether or not a contract is a mere ruse or a camouflage necessarily entails a detailed investigation into disputed questions of fact and it will be impossible for High Courts to take up such investigations.

> "122. We have used the expression "industrial adjudicator" by design as determination of the questions aforementioned requires inquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into

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those issues will be industrial tribunal/court whose determination will be amenable to judicial review."

Accordingly, in all such cases, the appropriate authority to go into such issues will be an Industrial Tribunal and/or an Industrial Court subject to the condition that a determination made by such a Tribunal or a Court will still be amenable to judicial review. In this view of the matter, I find it appropriate to hold that this Tribunal which substitutes High Courts in service matters, would also lack competence to investigate matters relating to engagement of contractual labourer and accordingly, whenever issues concerning engagement of contractual labourer in terms of the provisions made in the CLRA Act, 1970 arise, the matter should be left to be gone into by an Industrial Tribunal or an Industrial Court and to that extent, the jurisdiction of this Tribunal in such matters and to the extent indicated will cease to operate.

8. For all the reasons mentioned in the preceding paragraphs, the OA fails and is dismissed without any order as to costs.

(S.A.T. RIZVI)
Member (A)

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