

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

29

OA 2512/2001

New Delhi, this the 10<sup>th</sup> day of October, 2002

Hon'ble Dr. A.Vedavalli, Member (J)  
Hon'ble Sh. Govindan S.Tampi, Member (A)

1. Jagdish Chander  
S/o Sh. Ganga Bishan  
R/o 767, Kundevalan  
Ajmeri Gate, Delhi - 110 006.
2. Pankaj Kumar Verma
3. Ravi Raj
4. Rakesh
5. Babu Lal
6. Arvind Kumar
7. Rekha Patwal
8. Sheetal Kumar
9. Ravinder Kumar
10. Jaswant Singh
11. Govind Ram
12. Mukesh Chander Pokhriyal
13. Dharmender Singh
14. Vinod Kumar
15. Devender Kumar
16. Manju Bala
17. Anju Aggarwal
18. Anita
19. Ashwani Kumar Sidhu
20. Ritu Rani
21. Suman
22. Kamlesh Kumari
23. Mamta Arora
24. Pushpa
25. Poonam
26. Sheetal
27. Rachna

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28. Sanjay Mohan Kanojiya

29. Jasjeet Singh

30. Jatinder Kaur

All C/o Jagdish Chander  
R/o 767, Kundevalan  
Ajmeri Gate, Delhi - 110 006.

30  
...Applicants

(By Adv. Dr. Surat Singh alongwith  
Sh. Jagdev Singh)

V E R S U S

1. Govt. of NCT of Delhi  
through The Secretary (Revenue)  
Old Secretariat, Delhi.
2. Commissioner of Sales Tax  
Govt. of NCT of Delhi  
Bikri Kar Bhawan, New Delhi - 110 002.
3. Assistant Commissioner (Admn)  
Sales Tax Deptt., Govt. of NCT of Delhi  
Bikri Kar Bhawan, New Delhi - 110 002.

...Respondents

(By Adv. Mrs. Avnish Ahlawat with  
Sh. Mohit Madan)

O R D E R

By Hon'ble Sh. Govindan S. Tampi,

The applicants, 30 in number challenge the order of termination of service by the impugned order dt. 27-9-2001.

2. Heard Dr. Surat Singh along with Sh. Jagdev Singh for the applicants and Smt. Avnish Ahlawat with Sh. Mohit Madan, for the respondents respectively.

3. The applicants whose names were sponsored by the Employment Exchange for appointment against the post of Data Entry Operators, were appointed as Jr. Clerks on 1-2-2001 and 15-2-2001. Appointments followed regular selection process of written tests and practical tests. The services rendered by the applicants were perennial in nature, there was

requirement for the services and their performances had been satisfactory. Still the respondents were seeking to have their services dispensed with and replaced by freshers, which was illegal, arbitrary and capricious, besides being violative of the principles as enshrined in Articles 14, 16 and 21 of the Constitution of India. Grounds raised in the OA are the violation of the constitutional rights, unfair, improper and illegal, urge the applicants.

4. On the other hand, ld. counsel for the respondents aver that all those posts held by the applicants were general meant for being filled up, by recruitment through agency DSSSB, New Delhi. On account of temporarily increased load of work in the organisation of the respondents. Sales Tax Deptt. engaged a number of individuals including the applicants on purely temporary arrangement against a contract for a fixed period say 179 days. These engagements were extended for further periods but the conditions remained as ever. As apparently there was some fall in work, it was decided by the respondents, not to extend the contracts~further. Hence this OA. However, the respondent's above move has been stayed by the interim relief granted by this Tribunal on 21-9-2001. Respondents point out that as the engagements were purely of contract nature, once the period was over, the concerned individuals would have to vacate their position and the respondents' action for dispensing with their services cannot be faulted, for <sup>it is</sup> being totally legal. The applicants also cannot have any right to claim retention as their engagement has been for a specific period. The claim by the

applicants was totally misconceived and cannot be conceded. Regular staff of the Deptt. can handle the work as the extra work load was over and if anything remains to be attended it can be carried out by the transfer of the regular staff. No fresh staff has been appointed on contractual basis. Nor was any move to do so, as alleged. No violation of any fundamental right has been committed and the respondents have acted in a just and fair manner. The applicants would have had any case only if the respondents were making any fresh selection from outsiders, which was not the case. Though originally a proposal had been sent for the creation of 271 posts, only 23 posts have been created which did not include any post of Data Entry Operators. As the extra work that had arisen had been completed and the remaining work could be completed by the existing staff who are already trained, there was no case at all for the applicant's being continued.

5. In their rejoinder along with the additional affidavit, the applicants submit that the respondents have work of the type which the applicants were performing, which they were getting executed through private companies. There was, therefore, no ground for dispensing with the services of the applicants. Further as admittedly the Deptt. has considerable vacancies to be filled up, dispensing with the services of the applicants was totally illegal and arbitrary. It was all the more relevant as the applicants had been recruited through a regular selection process. Having work executed <sup>by others</sup> at their cost was clearly avoidable, according to the applicants.

6. Respondents have further pointed out that a move was made to engage DEOs on short time contract basis to handle the assessment work in the Deptt. for 1997-98 & 1998-99, as a special measure. It was also proposed to have the pay drawn for these posts against the vacant posts of DEOs. Accordingly it was decided to approach the Employment Exchange and have the posts filled up on short term basis of 179 days a piece. These posts were extended and once the work was completed, there was no question of extending the engagements. As no fresh contractual employees are being engaged to finish the remaining work, if any, the applicants have no case at all. Even if certain vacancies exist, the applicants have no right to state that those posts be filled by engaging their services. This is contested by the applicants, according to whom, when there was work and when vacancies existed, the applicants who are qualified and who have been engaged after a due selection process had every right for being considered <sup>for engagement.</sup> By <sub>2</sub> denying the same, the respondents have acted against fair principles of administration, argue the applicants.

7. During the oral submissions, Dr. Surat Singh and Sh. Jagdev Singh, ld. counsel point out that the case of the applicants is squarely covered by the decision of the Tribunal in the case of Sangeeta Narang & ors. Vs. Delhi Admn. (ATR 1988 (1) CAT 1556), upheld by the Hon'ble Supreme Court of India as well as in the case of UOI Vs. Sunil Kr. Arya (S.L.Appeal No.5501-02/88 decided on 6-1-1988. According to Dr. Surat Singh, <sup>in case of</sup> the applicants who were

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contract employees <sup>was</sup> ~~were~~ on all fours with the <sup>ad-hoc</sup> ~~ad-hoc~~ appointees in Sangeeta Narang's case and there was no reason whatsoever to take a different view in their case. OA in the circumstances, should be allowed and the interim order issued in their case should be made absolute, pleads Dr. Singh.

8. Both the counsel strongly reiterated their written pleas. Whereas Dr. Surat Singh affirmed that in the circumstances of the case, wherein the applicants have been engaged, on being sponsored through Employment Exchange and selected thereafter against regular vacancies existing unfilled, their services should not be dispensed with and they be extended the benefit given to the likes of Dr. Sangeeta Narang. On the other hand, Smt. Avnish Ahlawat and Sh. Mohit Madan submitted that the Tribunal's decision dt. 3-4-2002 in the case of Usha Rani Vs. UOI & Ors. (OA No.2601/2001) squarely dealt with the issue, as all the applicants were identically placed as Usha Rani. The decision of the Tribunal was upheld by the Hon'ble Delhi High Court on 19-4-2002 in CWP No.2481/2002 in CM No.4286/02. Dr. Surat Singh, ld. counsel indicated that Usha Rani's case could be distinguished in as much as her services had already been terminated by the time she approached the Tribunal, while the applicants are working with the respondents and quite a few vacancies are present in the respondents' organisation. In view of Hon'ble Supreme Court's decision in Sangeeta Narang's case, the applicants' OA should be allowed, overlooking the Tribunal's decision, argued Dr. Singh.

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9. We have carefully deliberated on the rival contentions. The undisputed facts in this case are that all the applicants are those "sponsored by the Employment Exchange and consequent upon his/her selection to the post of Data Entry Operator on contract basis for a period of 179 days at a consolidated fee of Rs. 4000/- p.m.". It is further indicated that "the contract will automatically expire on completion of period of 179 days" and the Deptt. will have a right to dispense with this contract at any time without prior notice" (Emphasis added). The postings have been as DEO/Jr. Clerk after a written examination and practical test and once the work for which they were engaged, was over, which was after 2 months extension from the end of the contract, they were sought to be relieved, but are continuing on account of the interim relief granted on 29-1-2001. Once the period of contract is over, the individuals concerned would have to vacate the post, unless extension is granted by the respondents or interim relief or stay is granted (which is the case in this OA). However, according to the applicant as there are a number of vacancies remaining unfilled, the applicants should be permitted to continue, unless regular appointees join the post. We recall that Tribunal had, by its decision - in which one of us (Sh. Govindan S.Tampi) was concerned - in Usha Rani's OA No. 2601/2001 held that an employee under contract had to vacate the post when the contract comes to an end and that unless the applicant had not been replaced by another contract employee, she had no case. This decision has been upheld by the Hon'ble Delhi High Court in CWP No.2481/2002 . Circumstances

being the same, the current applicant's case should also lead to the same conclusion. Dr. Surat Singh, ld. counsel for the applicants had attempted to distinguish their case from that of Usha Rani, but the same is of no avail. Usha Rani and the applicants are on the same footing. All of them had been engaged by the same respondents after following the same procedure against the same posts by the same type of contract originally for the same period of 179 days but extended once or twice till the end of September 2001, when their services were dispensed with. The only difference is that the applicant approached the Tribunal before the end of September 2001, when their services were <sup>to be</sup> ~~actually~~ dispensed with and obtained the interim stay while Usha Rani moved the Tribunal after she was relieved and, therefore, could not obtain any interim relief by way of stay. This difference is hardly material as <sup>far as</sup> the determination of the basic issue is concerned i.e. whether a contract employee has any right for continuation after the contract period is over ; even if their services were extended by short spells. The answer has to be in the negative, as held by this Tribunal and endorsed by the Hon'ble Delhi High Court. We have also been led through the decisions of the Tribunal in Sangeeta Narang's case (ATR 1988 (1) CAT 556), ad-hoc doctors, whose services at the end of ad-hoc period, were sought to be dispensed with and replaced by another set of ad-hoc appointees and who were given much less emoluments in comparison to regulars. Tribunal had held the above to be arbitrary and illegal and granted them the benefit of continuation till the regularly appointed persons reach and even provided for their

consideration in the regular selection. The decision in the case of Rattan Lal & Ors. Vs. State of Haryana & Ors. (AIR 1987 Supreme Court 478) is no different. Same is the position in regard to the decision of the Hon'ble Supreme Court in UOI & Ors. Vs. Arun Kumar Roy (AIR 1986 Supreme Court 737). Thus in all the above cases, the rights of the applicants for equal treatment vis-a-vis regular occupants of the posts as well as that against removal except by regular appointees are upheld. And these would be applicable in the case of the instant applicants if the circumstances were similar. Unfortunately for them, it is not so. Here the services of applicants who were contract employees are sought to be dispensed with at the expiry of the contract period. No evidence of any kind has been brought on record to show that the applicants are being replaced by another set of contract employees or ad-hoc employees. Unless and until the same is the position, the applicants cannot ~~claim~~ <sup>and others</sup> any benefit from the decisions cited and relied upon by them. The fact that a few vacancies in the post of DEOs do exist also bestows no right on the applicants as it is for the administration to decide whether a post or posts should be filled up or not and it is not for the Tribunal to interfere in such a decision, which is a policy matter in the exclusive domain of the executive. Hon'ble Apex Court's decision in the case of Sankarshan Das Vs. UOI & Ors. (AIR (1991) SC 1612) is relevant in this connection. Hon'ble Delhi High Court has also reiterated the same while disposing of Usha Rani's case in CWP No.2482/01 on 19-4-2002 as below :-

"In other words the employer himself is to take a decision, as to whether and when a post should be filled up. The Court has no say in the matter".

If the respondents decides to have the work performed by deployment of regular and experienced staff from other Deptts, the same also cannot be questioned. As pointed out earlier, the applicants would have a case only if they were being replaced by other contract staff. That is not the position in this OA. The respondents have made it clear that they do not have any work available to keep the applicants engaged further and they are not taking any steps to fill up any of the vacant posts, as they do not need them. In the circumstances, Tribunal cannot compel them to keep the applicants engaged. At the same time, we are also aware of the hardship likely to be caused to the applicants by their disengagement from service, which they had been able to postpone by the interim order, but in law no remedy is available to them.

10. In the above view of the matter, the applicants have not established a convincing case for our interference. OA, therefore, fails and is accordingly dismissed. However, while dismissing the OA, we would like to observe that the respondents shall consider the case of the applicants for fresh contract/ad-hoc appointment in preference to freshers and juniors, if they choose to do so and the

applicant's claims shall also be kept in mind when selections for regular appointments are ordered, having regard to the service rendered by them so far. No Cont.

(GOVINDAN SANTAMPI)  
MEMBER (A)

/vksn/

A. Vedavalli  
(DR. A. VEDAVALLI)  
MEMBER (J)

NDOH 29.1.03

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DATED

FROM

THE REGISTRAR  
DELHI HIGH COURT  
NEW DELHI

13687-w  
29-10-02

1142/B. Registrar  
31/10

TO

The Registrar  
Central Admn. Tribunal  
Faridkot House  
New Delhi

CIVIL MISC. PETITION 1152/02

IN  
CIVIL WRIT PETITION 6761/02

Jagdish Chander and others PETITIONER/S

Vs.

Govt. of NCT of Delhi and others RESPONDENT/S

Petition against the order dt. 10.10.02 passed by Central Admn. Sir, Tribunal in O.A. 2512/01.

In continuation of this Courts Letter No. \_\_\_\_\_

dt. \_\_\_\_\_ I am directed to forward herewith for information and immediate compliance/ necessary action a copy of order dt. 24.10.02 passed by a Division Bench/~~hon'ble Mr. Justice~~ of this Court in the above noted case alongwith a copy of Memo of Parties.

Please acknowledge the receipt.

Yours faithfully,

28/10

Asstt. Registrar (W)  
for Registrar

RK

CAT (PB) New Delhi

Receipt No. 5680/R

Date 30/10

Receiving Office

607

RK Shrivastava  
28/10/02

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J-I  
S-1  
31/10

IN THE HIGH COURT OF DELHI AT NEW DELHI  
CIVIL WRIT PETITION No. 6781 OF 2002

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**MEMO OF PARTIES**

IN THE MATTER OF:

1. Jagdish Chander
2. Pankaj Kumar Verma
3. Ravi Raj
4. Rakesh
5. Babu Lal
6. Arvind Kumar
7. Rekha Patwal
8. Sheetal Kumar
9. Ravinder Kumar
10. Jaswant Singh
11. Govind Ram
12. Mukesh Chander Pokhriyal
13. ~~Dharmender Singh~~ y
14. Vinod Kumar
15. Devender Kuamr
16. Manju Bala
17. Anju Aggarwal
18. Anita
19. Ashwani Kumar Sidhu
20. Ritu Rani
21. Suman
22. Kamlesh Kumari

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23. Mamta Arora
  24. Pushpa
  25. Poonam
  26. Sheetal
  27. Rachna
  28. Sanjay Mohan Kanojiya
  29. Jasjeet Singh
  30. Jatinder Kaur

All C/o Jagdish Chander  
S/o Shri Ganga Bishan  
R/o 767, Kundevalan  
Ajmeri Gate  
Delhi 110 006

.....Petitioners

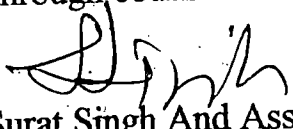
Versus

1. Govt. of NCT of Delhi  
through The Secretary (Revenue)  
Old Secretariat, Delhi
2. Commissioner of Sales Tax  
Govt. of NCT of Delhi  
Bikri Kar Bhawan, New Delhi 110 002
3. Assistant Commissioner (Admn)  
Sales Tax Department, Govt. of NCT of Delhi  
Bikri Kar Bhawan  
New Delhi 110 002

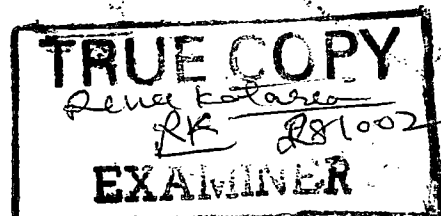
... Respondents

Petitioners

through counsel

  
Dr Surat Singh And Associates  
Advocates, 304, Lawyers' Chambers  
Delhi High Court, New Delhi 110 003.

New Delhi  
Dated: 25<sup>th</sup> October 2002



IN THE HIGH COURT OF DELHI AT NEW DELHI

CW 6761/2002

JAGDISH CHANDER & ORS.

..... Petitioners  
Through Dr. Surat Singh with  
Mr. Jagdev Singh, Adv.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents  
Through Ms. Pratima Nair for  
R - 1, 2 and 3.

CORAM:  
HON'BLE MR. JUSTICE ANIL DEV SINGH  
HON'BLE MR. JUSTICE R.S. SODHI

ORDER

24.10.2002

CW 6761/2002:

Learned counsel for the petitioners submits that though the contracts of the petitioners have come to an end, the petitioners have been working as Data Entry Operators for a continuous period of more than one year. He also points out that there are 59 vacancies of Data Entry Operators, while the petitioners are only 29 in numbers. Learned counsel for the petitioners fairly concedes that once the regular appointments are made by the employer, the petitioners will have no right to the posts. Learned counsel contends that till regular appointments are made the services of petitioners cannot be terminated.

Issue notice to the respondents to show cause why rule nisi be not granted, returnable on 29th January, 2003.

Ms. Pratima Nair accepts notice on behalf of the respondents.

Notice need not be served on the respondents.

CM 1152/2002 in CW 6761/2002:

Issue notice to the respondents, returnable on 29th January, 2003.

Ms. Pratima Nair accepts notice on behalf of the respondents.

Notice need not be served on the respondents.

In the meantime, the service of the petitioners shall not be terminated.

List the matter on 29th January, 2003.

Sd/-  
Anil Dev Singh, J

Sd/-  
R.S. Sodhi, J

OCTOBER 24, 2002  
dr

