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Central Adminisrative Tribunal
Principal Bench

O.A.No.2831/2001
M.A.No.2316/2001

with

O.A.No.2892/2001

O.A.No.2881/2001

O.A.No.2896/2001

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 30th day of May, 2002

1. Gopal Singh
s/o Shri Hari Chand
r/o Village Mohaminadabad
Post Office Bindroli
Tehsil Sonipat
District Sonipat
Haryana.

2. Dilbad
s/o Shri Ramdhari
Village & Post Office Rajpur
Tehsil Gunnaur
District Sonipat.

3. Suresh Chand Meena
s/o Shri Malla Ram
c/o Shri Dharam Singh Meena
House No.261/7 Gyan Nagar
Sonipat. ... Applicants

(By Advocate: Ms. Meenakshi proxy of Mrs. Rani Chhabra)

Vs.

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

2. The Chief General Manager
Microwave Maintenance II, NTR
Kidwai Bhawan
New Delhi.

3. General Manager
Microwave Maintenance II, NTR
Kidwai Bhawan
New Delhi.

4. Divisional Engineer Telecom
Microwave Maintenance II
R-Block New Rajendra Nagar
New Delhi.

5. Sub Divisional Engineer
Microwave Maintenance II/OFC,
Sonipat. ... Respondents

(By Advocate: Shri M.M.Sudan)

O.A.No.2892/2001:

Birendernath Karmakar
s/o Shri Bholanath Karmakar
c/o Shri Adhir Karmakar
r/o RZ-14/288, Gali No.5A
West Sagarpur, Geetanjali Park
New Delhi. ... Applicant

(By Advocate: Ms. Meenakshi proxy of Mrs. Rani Chhabra)

Vs.

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through its Secretary
Ministry of Telecommunication
Department of Telecommunications
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2. The Chief General Manager
Microwave Maintenance II, NTR
Kidwai Bhawan
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3. General Manager
Microwave Maintenance II, NTR
Department of Telecommunication
Kidwai Bhawan
New Delhi.

4. Divisional Engineer Telecom
Microwave Maintenance II
R Block, New Rajendra Nagar
New Delhi - 110 060.

5. Sub-Divisional Engineer
Microwave Maintenance II
R Block
New Rajendra Nagar
New Delhi.

6. Sub Divisional Engineer
Microwave OFC
Main Telephone Exchange
Rohtak
Haryana. ... Respondents

(By Advocate: Shri M.M.Sudan)

O.A.No.2881/2001:

Mukandi Lal
s/o Shri Ramdhari
c/o Bhagwan Giri
H.No.88 A Gali No.4 Phase No.7
Shiv Vihar, Karawal Nagar
Delhi - 94. ... Applicant

(9)

(By Advocate: Ms. Meenakshi proxy of Mrs. Rani Chhabra)

Vs.

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

2. The Chief General Manager
Microwave Maintenance II, NTR
Kidwai Bhawan
New Delhi.

3. Divisional Engineer Telecom
Microwave Maintenance II
R Block, New Rajendra Nagar
New Delhi - 110 060.

4. Sub-Divisional Engineer
Microwave Maintenance II
New Delhi. ... Respondents

(By Advocate: Shri M.M.Sudan)

O.A.No.2896/2001:

Birender Giti
s/o Shri Jagdish Giri
c/o Bhagwan Giri
H.No.88-A Gali No.4 Phase No.7
Shiv Vihar, Karawal Nagar
Delhi - 94. ... Applicant

(By Advocate: Ms. Meenakshi proxy of Mrs. Rani Chhabra)

Vs.

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

2. The Chief General Manager
Microwave Maintenance II, NTR
Kidwai Bhawan
New Delhi.

3. Divisional Engineer Telecom
Microwave Maintenance II
R Block, New Rajendra Nagar
New Delhi - 110 060.

4. Divisional Engineer Telecom
Official Fibre Cable (OFC)
Department of Telecommunications
Karol Bagh, New Delhi.

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5. Sub-Divisional Engineer
Microwave Maintenance II
Department of Telecommunication
New Delhi.

(By Advocate: Shri M.M.Sudan)

O R D E R (Oral)

By Shanker Raju, M(J):

As the matter involves in all the above four OAs identical question of facts and law, the same are being disposed of by this common order.

2. It is not disputed that applicants had been working from 1996 as they are performing jobs of Security Guards have approached this Court claiming temporary status as per the Scheme framed by the Department of Telecommunication, dated 1.10.1989 as well as re-engagement on account of available vacancies. The afore-said Scheme envisages that whosoever completes 240/206 days would be conferred temporary status. It is stated that they are casual labourers and are entitled for the benefits under the aforesaid Scheme. It is stated that they had been working continuously on a perennial nature of work, which is available with the respondents previously, approached this Court, in the present OA No.2831/2001, directions have been issued to dispose of their representation which has been rejected by respondents on 28.9.2001. In rest of the OAs, the applicants maintained that the certificates issued by respondents support their averment that they have been working under respondents and master and servant relationship exists between them. It has also been stated that the defence projected by respondents that they are working through a Contractor is false and

the contract being sham and camouflage they are to be treated as directly employed with the respondents to claim the benefit of the aforesaid Scheme. If the contract is in establishment for seasonal work, there is no question of abolishing the same if the work is of a perennial nature. It is stated that applicants have not only worked as Security Guards, but have also been entrusted the work in the Micro Hill Station under the respondents. It is also stated that Circular issued by respondents precluded them by engaging casual workers through Contractor. In this regard, it is stated that this is in violation of Articles 14 and 16 of the Constitution of India. Lastly, it is stated that as they are eligible as per the criteria laid down under the Scheme of 1989, which is applicable to the Department of Telecommunication, the policy of the respondents for not according them temporary status and further engagement, is against law, and deprived their right of employment, which is contrary to the Constitution of India.

3. On the other hand, Shri M.M.Sudan, learned senior standing counsel for respondents took a preliminary objection of jurisdiction by resorting to Full Bench decision in Rehmat Ullah Khan Vs. Union of India & Others, 1989(10) ATC 656 wherein it has been held that though casual labour does not hold a civil post but are amenable to the jurisdiction of this Tribunal. In this background, it is stated that after coming into existence of Bharat Sanchar Nigam Litd., the entire DOT staff has been sent on deputation to BSNL, who are having lien, are holding civil post. As

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the applicants are only casual labourers and are not holders of a any civil post, this Court has no jurisdiction to entertain their grievance.

4. It is also stated that the claim of the applicants is not justifiable as they have never been engaged by the respondents rather the contract has been given to M/s Keshav Securing Services, New Delhi for all those years when the applicants had claimed to have worked and payment is being dispensed to the Security services who in turn paid to the applicants. It is also stated that the approval of the contract has been accorded by the Department of Telecommunication. As such being a contractual labour they cannot be treated as casual labour to be accorded the benefit of DoT Scheme of 1989. While referring to a decision of the High Court in CWP No.4511/2001 wherein a decision of the Tribunal in OA 287/2001 R.D.Paul and Others Vs. UOI which was agitated by the respondents, the High Court by an order dated 30.10.2001 set-aside the order of the Tribunal by holding that as prima-facie proof of engagement of respondents therein as casual labourers has not been produced, as such are not entitled to the benefit of Scheme of 1989. In this back ground, it is stated that the ratio of High Court supra, in all fours, covers the case of the applicants herein and they are not entitled in absence of any proof of their being engaged by respondents under them as a casual labour, is liable to be rejected. It is further stated that there is no relationship of employer and employee and the contract has not been proved to be farse.

5. Further placing reliance on a decision of

a Co-ordinate Bench in OA 1516/2001 Anand Kumar Sha Vs. UOI, wherein placing reliance on a decision of the Constitutional Bench of Steel Authority of India Ltd. Vs. National Union of Water Front Workers, 2001 (7) SSC 1, more particularly to the para 121 held that in case of any department and in absence of a notification, the industrial adjudicator will deal with the issue of regularisation of the services of the contractual labour and as this Court has no jurisdiction over the matter and is not competent to investigate matter relating to the engagement of the contractual labour, the remedy lies elsewhere to the applicants. Further placing reliance on a decision of another co-ordinate bench in OA 1036/2001 Ashok Kumar Vs. Union of India, it is contended that in identical circumstance, the claim of the contractual labour has been rejected being not amenable to the jurisdiction of this Court.

6. I have carefully considered the rival contentions of the parties and perused the material on record. In my considered view, which is supported by the decision of the Apex Court in Steel Authority of India Ltd.'s case supra and in absence of any material produced by the applicants to show that there exists any notification under Contract Labour (Regulation & Abolition) Act, 1970, the proper forum for the applicants to agitate their grievance is within the Industrial Adjudicature and not to this Tribunal.

7. I am also convinced by the arguments of the learned senior standing counsel for respondents that in view of the Full Bench in Rehmat Ullah Khan's case supra as the casual labour does not hold a civil post, BSNL which has been come into existence is not

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amenable to the jurisdiction of this Court. In absence of any notification under Section 14 of the Administrative Tribunals Act, 1985, the grievance of those officials who are holder of civil post and are being on deputation from DOT to BSNL and having lien in DOT would be amenable to the jurisdiction of this Court. As the casual labour is not a holder of civil post, he cannot be treated on deemed deputation in the BSNL. Moreover, applicants have failed to show that they are casual labour. Being contractual labour their remedy lies elsewhere and not before this Tribunal. On this ground itself, these cases are liable to be rejected for want of jurisdiction.

8. In this view of the matter and nothing as been shown to us to take a view that the applicants have been paid by the respondents and their working conditions are controlled by them the applicants have also failed to establish that though they are in fact working under the respondents, and the contract being a sham or camouflage, which could have persuaded me to take a different view.

9. In this view of the matter, supported by the case-law cited by respondents' counsel these OAs are dismissed for want of jurisdiction. However, this it will not preclude the applicants to assail their grievance before the appropriate forum as per the SAIL's case supra.

10. All the above four OAs are dismissed accordingly. No costs.

11. Let a copy of this order be kept in the relevant OAs.

(Shanker Raju)
Member(J)

/rao/