

Central Administrative Tribunal
Principal Bench

O.A. 1610/99

New Delhi this the 4th day of April, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Hari Singh Rana,
S/o Kanhya Singh,
R/o H.No. 260, Govind Mohalla,
Banjare Wali Gali, Hyderpur,
Badli,
Delhi-52.

... Applicant.

By Advocate Shri Deepak Verma proxy for Mrs. Rani Chhabra.

Versus

1. Union of India, through
its Secretary,
Ministry of Communication,
Department of Telecommunication,
Sanchar Bhawan, New Delhi.
2. Chief General Manager,
Telecom, West,
Dehradun.
3. General Manager Telecom,
Jaina Tower Raj Nagar,
Ghaziabad.
4. General Manager Telecom,
Sector 19, Telephone Exchange
Building, Noida.
5. Divisional Engineer, Telecom,
Bhooor Telephone Exchange,
Bulandshahr.
6. Sub Divisional Engineer (NEAX),
<Bhooor Telephone Exchange,
Bulandshahr. ... Respondents.

(By Advocate Shri Anil Singh proxy for Shri K.R. Sachdeva)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has filed this application seeking a direction to the respondents to confer temporary status/absorb him as AC operator in the Department.

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2. The brief facts of the case are that the applicant claims that he was initially engaged as a casual labourer on 1.8.1997 and he has been working in the post of AC Operator continuously from 25.9.1997 with the Department. He has, however, stated that his payments were being paid through a contractor though he was initially engaged by the Department directly. His grievance is that the respondents, instead of absorbing and regularising him, are now threatening to terminate his services and engage fresh persons on contract basis in utter violation of the Central Labour (Regularisation and Abolition) Act, 1970. He claims that this is also in disregard to the directions of the Supreme Court in Secretary, Haryana State Electricity Board Vs Suresh & Ors. (JT 1999(2) SC 435).

3. According to the applicant, he was initially engaged as casual labourer on 1.8.1997 and paid on ACG-17 and he was directed to work as AC Operator w.e.f. 25.9.1997. He has submitted that from this date he has been working as AC Operator continuously with the respondents (under Respondent 6). His claim is that although he has been engaged directly by the Department his payment has been made through the Contractor. He has also stated that the respondents have continued to renew the contract with the contractor, but the latest contract has expired on 15.6.1999. He has submitted that even after that date, he has continued to work, which also shows that he was directly employed by the Department. He has relied on the Scheme prepared by the Department of Telecommunications which came into effect from 1.10.1989 and prays for grant of temporary status as he has completed the required period of 240 days

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as a casual labourer. He also relies on the aforesaid judgement of the Supreme Court which deals with the employment of contract labourers. The applicant has placed on record copies of attendance register on which he relies upon to show that he has been employed directly by the respondents which has, however, been stoutly denied by them. The applicant has stated in Para 5.3 of the O.A. that even if he is deemed to have been employed through contractor, he is entitled to be absorbed as AC operator in view of the judgement of the Supreme Court in Air India Statutory Corporation and Ors. Vs. United Labour Union (1997(9)SCC 377). This contention of the applicant that 'even if he has been employed by a private contractor', he would be entitled for a direction from this Tribunal, cannot be accepted as from his own averments it appears that he has been employed through a contractor and not by the Department.

4. The respondents in their reply have submitted that the applicant has never been engaged by them. According to them, they have given a contract to one M/s Feeders Lloyd Corporation Limited for operation and maintenance of air-conditioning of main switch room of Telephone Exchange Bhoor, Bulandshahr. They have submitted that as this is a highly technical matter and proper and uninterrupted air-conditioning is to be maintained for running of telephone services, this contract has been entered into with the Corporation. They have stated that the applicant was never employed by the Department and they have also denied the correctness of the entries in the attendance register as being false and fabricated. They have also submitted that

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the applicant is neither qualified nor competent to maintain the Air-condition Plant at Bulandshahr while reiterating the stand that he was never engaged by the Department.

5. The applicant has also filed a rejoinder reiterating his averments in the O.A. He also states that he is fully qualified and is a technical person for carrying out the work of AC Operator.

6. From the facts given above, it is clear that the applicant has been employed by a contractor for maintenance of the Air-condition Plant in the Telephone Exchange of the respondents. He has himself stated that he is fully qualified and is a technical person for carrying out the work of AC Operator. In the circumstances, it does not appear that he is a casual labourer employed in a Group 'D' post and is covered by the Scheme issued by the Department of Telecommunications in 1989. This Scheme deals with casual labourers employed by the Department. From the documents on record and the averments made by the applicant himself, it is not possible to come to the conclusion that he is a casual labourer covered under the Scheme. Further, the applicant himself has submitted that even if he has been employed through the contractor, he is entitled to be absorbed as AC Operator with the respondents. This argument cannot also be accepted because the applicant is making contradictory statements in the O.A. In the facts and circumstances of the case, the statements made by the respondents that the judgements of the Hon'ble Supreme Court relied upon by him are distinguishable and not applicable to the facts of this case appear to be in order. As the applicant claims that he

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has been working as an AC operator on contract basis and as contended by the respondents, through a private Corporation, that is M/s Fedders Lloyd Corporation Ltd., then his services cannot be considered as that of a civil servant. Having regard to the provisions of Sections 2, 14 and 19 of the Administrative Tribunals Act, 1985, the O.A. is also not maintainable before this Tribunal.

7. In the result, for the reasons given above, O.A. fails and is dismissed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

'SRD'