

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 1739/1999

New Delhi this the 20th day of July, 2000

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

Suman Jain
D/O Sh. Y. D. Jain
R/O 3343, Gali Amar Singh,
Bada Bazar, Mori Gate,
Delhi

.. Applicant

(By Advocate Shri Narendra Kumar
Goyal through learned proxy counsel
Ms. Richa Goyal)

Versus

1. Union of India,
through its Secretary,
Ministry of Communication,
Deptt. 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,
Noida.
5. Sub Divisional Engineer (FRS),
Sector 19, Telephone Exchange,
Noida, Distt. Gautam Budh Nagar.

.. Respondents

(By Advocate Shri K. R. Sachdeva)

O R D E R (ORAL)

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

The applicant has impugned certain actions of
the respondents, including her disengagement as
Computer Operator w.e.f. 1.7.99 which she has alleged
is in violation of the provisions of Section 25 F of

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the Industrial Dispute Act (IDA). Learned proxy counsel for the applicant has stressed on the fact that after dis-engagement of the applicant, Respondent 5 has engaged fresh persons in her place on contract basis, which is ~~in~~ ^{the} utter violation of the provisions of ^{the} Contract Labour (Regulation and Abolition) Act, 1970.

2. According to the applicant, she was initially engaged directly by Respondent 5, but surprisingly the respondents have made payment to her through one Contractor, namely, M/s Sybex Computer System (P) Limited. It is also noticed that the applicant has annexed Annexure A-1, showing the attendance record for supply of Computer Operator, under the heading of the same Contractor for the month of November and December, 1998. Learned counsel for the applicant contends that in August, 1998, the applicant had been engaged directly by the Department till her disengagement from service w.e.f. 1.7.99 by an oral order. In the application, repeated submissions have been made that the action of the respondents is in violation of the provisions of Section 25 F of the IDA, particularly with regard to the engagement of ^a fresh person in her place, who is stated to be one Shri

Mohan, who is junior to the applicant and is still working in the Department. Learned counsel has, therefore, vehemently contended that the applicant has a right to be engaged by the Department as her services had been arbitrarily terminated by an oral order while retaining the services of the junior.

3. Mrs. Richa Goyal, learned proxy counsel has also contended that as the applicant has completed more than 240 days of service even though in ^a Group 'C' post as Computer Operator, she was also entitled for regularisation in the post of Computer Operator ~~as she had put in 240~~ ^{days of service}, in terms of the judgement of the Hon'ble Supreme Court in Secretary, Haryana State Electricity Board Vs. Suresh and Ors (JT 1999(2)SC 435). She has submitted that in that case the employees were basically Group 'D' employees ^{states that} and she relies on this judgement in principle. She submits that the employees in that case ~~were~~ ^{applicant} casual labourers whereas in this case ~~she~~ ^{applicant} had been engaged on contract basis as Computer Operator, which is a Group 'C' post.

4. I have seen the reply filed by the respondents and have heard Shri K.R. Sachdeva, learned counsel for the respondents.

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5. According to the respondents, the applicant was not engaged by them as they were getting computerisation ^{done} through an approved Contractor. They have stated ^{the} that Contractor had employed different employees for different times and they had made payment to the Contractor for doing the work. Sh. K.R.Sachdeva, learned counsel has submitted that the applicant was never appointed directly by Department as seen from the Annexure A-1 attendance sheet, submitted by the applicant herself. Learned counsel has relied on the judgement of the Tribunal in Taruna Mihani (Km.) Vs. The Secretary, M/O Human Resources, Adult Education and Ors (O.A 2452/1999) dated 11.1.1999. He has also submitted that the applicant, who is a Computer Operator cannot claim regularisation, as she is not a Group 'D' employee/casual labourer, to which the relevant instructions of the Department apply. He has also submitted that the judgement of the Hon'ble Supreme Court in Secretary, HSEB's (Supra) relied upon by the applicant cannot apply in the present case. The main point stressed by the learned counsel is that the applicant was not employed directly by the Department and they do not have any permanent post

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of Computer Operator in their office on the basis of which the applicant can claim regularisation.

6. I have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. As mentioned above, one of the grounds taken by the applicant in this OA is that the respondents have taken a decision to retrench the services of the applicant without following the provisions of Section 25 F of the IDA and have not even given her one month notice and without payment and so on. The grievance of the applicant as a 'workman' under the IDA is not a matter which falls within the jurisdiction of this Tribunal.

8. Further, during the course of arguments, the learned counsel has made certain other submissions and accordingly the case is also dealt with on merits. From the documents on record, other than the simple assertion that she had been earlier employed directly by Respondent 5, the records show otherwise. Even according to the Annexure A-1 documents placed on record by the applicant, it is seen that it is the attendance record of a Computer Operator for the months of November/December, 1998, under the heading of M/s Sybex Computer System ^{Pvt.} Limited. Taking into

account the relevant documents, I am unable to agree with the contention of the learned counsel for the applicant that the averments made by the respondents that the services of the applicant have been provided by the Contractor, are incorrect. These documents also show that the applicant has not been appointed by the Department but she has been paid payment through the Contractor. In the circumstances of the case, the contention of the applicant that she has been engaged by the Department against a regular vacancy cannot be accepted.

9. The judgement of the Supreme Court relied upon by the applicant deals with Casual labourers. In the circumstances, the judgement will not assist the applicant in the present case, as admittedly she was employed by a Contractor. Therefore, the claim of the applicant for conferring 'Temporary status' and regularisation as a casual labourer would not be tenable in the facts and circumstances of the case.

10. Lastly, a contention has been raised by the learned counsel for the applicant that a junior has been retained in service while disengaging her services. In that case, the applicant should have impleaded the junior, as any order that may be passed in favour of the applicant,

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will necessarily affect that person adversely. This claim, therefore, is liable to fail on the ground of non-joinder of necessary parties.

11. In the result for the reasons given above, I find no merit in this application. The same is accordingly dismissed. No costs.

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

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