CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

1. OA No.2257/1999
2. OA No.2222/2000
3. OA No.1053/2000

27

New Delhi this the 31st day of December, 2001.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

OA No.2257/99

Amar Deep,
S/o Shri Hawa Singh,
R/o RZG-45, Mahavir Enclave,
New Delhi-110045. -Applicant

(By Advocates Shri Jayant Nath with Sh. Manish Kumar)

-Versus-

Union of India through
Director General, Council of
Scientific & Industrial Research,
Rafi Marg, New Delhi. -Respondents

(By Advocate Shri Kapil Sharma)

OA No.2222/2000

1. Pankaj Buttan S/o Sh. D.N. Buttan
2. Ms. Surabhi D/o Shri C.I. Chhiber
3. Girish Sharma S/o Shri M.P. Sharma
4. Saroj Kain d/o Sh. S. Thiyagarajan
5. Ms. Bela d/o Shri G.L. Chhiber
6. Ms. N. Sabitha d/o M. Thiyagarajan
7. Ms. Monica Bindra d/o Sh. D.S. Bindra
8. Poonam Sharma d/o Sh., M.C. Sharma
9. Smt. Poonam Talwar d/o Sh. G.R. Kapoor

-Applicants

(By Advocates Shri Jayant Nath with Sh. Manish Kumar)

-Versus-

Union of India through
Director General, Council of
Scientific & Industrial Research,
Rafi Marg, New Delhi. -Respondents

(By Advocate Shri Kapil Sharma)

OA No.1053/2000

Anand Kumar,
23/146, Lodi Colony,
New Delhi-110003. -Applicant

(By Advocates Shri Jayant Nath with Sh. Manish Kumar)

-Versus-

Union of India through
Director General, Council of
Scientific & Industrial Research,
Rafi Marg, New Delhi. -Respondents

(By Advocate Shri Kapil Sharma)

ORDER

By Mr. Shanker Raju, Member (J):

As these OAs involve common question of law, the same are disposed of by this order.

2. In the present OA the applicants are all wards of employees of the respondents having been engaged as Data Entry Operators (DEOs) and had worked for number of years continuously. Their services have been dispensed with in the year 1994. Thereafter they have been employed by the respondents through M/s National Placement Services (for short, NPS), in pursuance of a contract effected on 1.3.97. The applicants have sought for their regularisation after completion of continuous service of 206 days in the preceding calendar years.

3. The learned counsel for the applicants contended that they have been engaged by the respondents as DEOs for doing the perennial nature of work and have been paid through cheques issued by the respondents' Council and the work of DEO is of technical nature. Initially they have been engaged and had worked for about 8-9 years without any break. The contract with NPS, which is an unlicensed and the contract effected is a sham but in fact the applicants are the workers of the respondents having their work supervised by them and performing the work in the office of the respondents. Their attendance is also marked in the register formatted by the Council and the bills are audited by the respondents. The Contractor also gets a fat commission before being engaged as ward of

29

serving employee. They have been imparted training in Computer only for the purpose of absorbing them permanently. As the respondents' office is a Research Organisation their work cannot be observed as seasonal. Previously the OA filed had already been withdrawn. Their services have already been dispensed with by the respondents. It is also stated that they are working from 9 AM to 5.30 PM and their being possessing the requisite qualifications they have a right to be regularised. As their appointment was as daily wagers they should be treated at par with Group 'C' employees. It is contended that by a letter dated 27.6.94 approval has been accorded for conferring temporary status to contract workers in terms of the Scheme of the Department of Personnel & Training of 10.9.93. Meeting out differential treatment to the applicants who had worked for more than five years is in violation of Articles 14, 16 and 21 of the Constitution of India. It is also stated that neither the respondents nor contractor is having a valid permission for contract labour and having working for more than 240 days they are entitled for regularisation. It is stated that the contract is an eye-wash and they are working since 1991 would certainly show that they were appointed against the work of permanent nature. The learned counsel for the applicants has placed reliance on a decision of this Court in Shiv Prakash Tyagi v. CBRI, 1992 (21) ATC 20 to contend that when master-servant relationship existed between the staff and the employer employed in projects and their non-regularisation is an illegality. Further placing reliance on various commendations certificates issued to the applicants and the attendance register as well as the salary bills it is stated that they are in fact the workers

30

of the respondents and in their direct control and the contract is only a sham, as such this Tribunal has jurisdiction to deal with their grievances. It is also stated that from 1994-97 same management had worked and in 1994 some tests were also conducted as per Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. Engagement of casual labour through the contractor to do the work of perennial nature is to be abolished. It is lastly contended that they have been exploited and placed reliance on the decision of the Apex Court in Haryana State Electricity Board v. Suresh and others, AIR 1999 SC 1160. The applicants have sought reinstatement with back wages and further regularisation.

4. The learned counsel for the applicants has further relied on the ratio in Gujarat Electricity Board v. Hind Mazdoor Sabha & Ors., JT 1995 (4) SC 264 to contend that if the contract is sham and is not genuine and there is overall supervision of the work by the respondents and the applicants working under their control and the work was of integral part of the overall work to be executed for the purpose of the respondents' office the applicants are to be treated and deemed to be employees of the official respondents and cannot be deprived of the same treatment which is meted out to similarly circumstance Group 'C' employees. Further placing reliance on latest decision of the Apex Court in Steel Authority of India Ltd. v. National Union Water Front Workers, JT 2001 (7) SC 268 , contended that if there exists relationship of master and servant between the applicants and respondents and if the contract is camouflage and a sham then they are to be treated employees of the respondents.

5. The respondents, on the other hand, strongly rebutting the contentions of the applicants stated that the applicants are not entitled for the reliefs prayed for. It is stated that suitable and willing children of the employees of CSIR were engaged for the job of data entry without any assurance for absorption or according them temporary status. The work was of not regular nature and used to be done during odd hours when the computers were free. They are being paid after verification of their work as a purely temporary arrangement. On the advice of the Joint Secretary (Admn.) and Financial Advisers the services of the applicants have been dispensed with on 31.7.94. Merely to help them being the wards of employees of respondents they have been engaged for a limited period on a work of seasonal nature and are being paid in cash through the cashier in a routine manner. As they are neither the workers of the respondents nor the contractual labours but workers of NPS this Court has no jurisdiction to entertain their grievances being not the holder of civil posts. It is stated that in case of any termination, being the workers of contractor for all practical purposes and as the respondents have nothing to do with them they can approach the NPS for necessary action. By placing reliance on the contract for Data Entry it is contended that the same has been entered between the NPS and thereafter they have been engaged by the NPS, with the stipulation that the contract would be terminated without assigning any reasons. They have not been engaged by the respondents on contract basis. In fact the contract was between the NPS and the respondents and the applicants have been engaged by the NPS The payment was made by the respondents to the NPS. The

contractor used to pay them to avoid exploitation. The applicants have not marked any attendance and were workers of the said Agency. The respondents only paid to the contractor 50% as service charges of the total wages paid to the applicants for providing manpower. The earlier service rendered by them was of purely seasonal nature and of temporary duration. As the applicants are not on the rolls of the respondents there is no question of their being threatened for termination being the workers of the NPS and they have no right to seek relief through the respondents. As the applicants were neither contract workers nor daily wager but staff of NPS the application of the ratio cited supra would have no application in the facts and circumstances of the present case. The contract is neither a sham and the applicants are not at all under the control of the respondents nor have been paid by them.

6. The applicants in their rejoinder re-iterated their contentions taken in the OA and have placed documents to show that they have been paid through cheques by the respondents and have marked attendance.

7. We have carefully considered the rival contentions of the parties and perused the material on record. The question which is to be decided is whether the applicants are either daily wagers or contract labours and are amenable to the jurisdiction of this court?

8. From the perusal of the pleadings and after careful consideration of the matter I am of the considered view that this court has no jurisdiction to entertain the grievance of the applicants for regularisation as they do

not come within the ambit of Section 14 of the Administrative Tribunals Act, 1985. The applicants who are the wards of the serving employees have been engaged on a seasonal work and have performed the duties on odd hours which cannot be treated as the work of perennial nature. They had worked under the supervision of officers whenever the computers were free for use. They have been paid on the basis of their work and not on daily wages. As this was only a temporary arrangement to help the wards of the employees of the respondents for a limited period this would not give any rise to any claim or right to seek regularisation. In view of the decision taken by the respondents in consultation with the Financial Adviser and Joint Secretary (Admn.) the engagement was reviewed and the services of the applicants have been dispensed with w.e.f. 31.7.94. Subsequently, the contract for doing this job which was not of perennial nature has been assigned to one M/s NPS, who in turn entered into an agreement with the respondents and the applicants have been engaged as employees of NPS. The contract for Data Entry has been entered between the NPS and the respondents where one of the conditions was to carry out the work ensuring satisfactory service of the employee and the payment is to be made by cheque verified by the competent authority the right of termination of contract was with the respondents without assigning any reasons. The applicants who have been engaged by M/s NPS as their staff by no stretch of imagination can be treated as either employees on daily wages or contract labour. The contract entered between the NPS and the respondents cannot be treated to be a sham. The applicants have been under the employment of NPS have no master and servant relationship with the official

34

respondents. There is no question of Section 10 of the Contract Labour (Regulation and Abolition) Act in the facts and circumstances of the present case. Even applying the ratio in Steel Authority of India's case (supra) it is incumbent for the applicants to prove that the contract was sham and camouflage and the contract labours working were in fact the employees of the principal employer. Even lifting the veil this cannot be observed that the applicants were having any relationship with the official respondents were having any direct employment of the Council. The attendance register shown is not an attendance register maintained by the official respondents but it is the attendance register of NPS to ensure that their employees attend to the work. In absence of any authentication or signature of the respondents the same cannot be treated to be an official document to show that the applicants have been working under the direct supervisory control of the official respondents.

9. As regards cheques are concerned, the payment is to be made to the contractor and who in turn will disburse the wages to applicants would not be a valid proof or an authentic document to show that the applicants have been under the employment of principal employer and were having master and servant relationship.

10. As regards the certificates issued by the Council, this has been done with a view to give a certificate to the applicants which can be used for their further assignment and employment but would not indicate that they were the employees of the respondents.

35

11. In this view of the matter when the applicants have failed to establish that they are having any master-servant relationship with the respondents and are either daily wagers or contractual labours directly in control of the respondents this court has certainly no jurisdiction to entertain their grievances as per the provisions of Section 14 of the Administrative Tribunals Act, 1985.

12. In the result and having regard to the reasons recorded above, these OAs are dismissed, but without any order as to costs.

13. Let a copy of this order be placed in the case file of each case.

S. Raju

(SHANKER RAJU)
MEMBER (J)

'San.'