

(17)

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

OA.No.2493/99 and OA.2494/99

New Delhi, this 6th day of September, 2000

HON'BLE MRS. SHANTA SHAstry, MEMBER(A)

OA.2493/99

1. Karam Singh
S/o Inder Singh
R/o H.No.68-D, Ashok Nagar
P.O. Milap Nagar
Tehsil Roorkee
District Hardwar (U.P.)
2. Sukhbir Singh
S/o Jasbir Singh
R/o Salampur Rajputana
P.O. Roorkee
Tehsil Roorkee
District Hardwar (U.P.)
3. Rajesh Singh
S/o Shri Jai Singh
R/o Salempur Rajputana
P.O. Roorkee
Tehsil Roorkee
District Hardwar (U.P.)
4. Jaswant Singh
S/o Baljit Singh
R/o Vill. Mahamadpur Bazurg
P.O. Mahamadpur Bazurg
Tehsil Laksar
District Hardwar (U.P.)
5. Ram Kumar
S/o Kalu Ram
R/o Village Hazarpur
P.O. Landhora
Tehsil Roorkee
District Hardwar (U.P.)
6. Gulakhan Singh
S/o Kirpal Singh
R/o Vill. & PO Milap Nagar
Tehsil Roorkee
District Hardwar (U.P.)
7. Rajender Singh
S/o Dolat Singh
R/o Village Rishi
P.O. Champy Sure
Tehsil Paudi Garhwal
District Paudi Garwal (U.P.)
8. Pawan Kumar
S/o Bishamber Singh Kashyap
R/o Village Nangla Amriti
P.O. Milap Nagar
Tehsil Roorkee
District Hardwar (U.P.) ... Applicants

(By Advocate: Mrs. Rani Chhabra)

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versus

1. Union of India, through
Department of Telecommunication
Sanchar Bhawan
New Delhi.
2. The Chief General Manager
(Telecom)
Dehradun
3. The General Manager (Telecom)
Roorkee
4. Sub Divisional Engineer (Telegraph)
Roorkee
5. Sub Divisional Engineer (phones)
Roorkee
6. Sub Divisional Engineer
(Instl. & Installation)
Telephone Exchange
Roorkee
7. Tomar Detective Security(P) Ltd.
A-56 Second Floor, Palika Bazar
G.T.Road, Gaziabad.
8. Doon Security Service
100/4 Neshvilia Road
Dehradun.

... Respondents

(By Advocate:Shri V.S.R.Krishna)

OA. 2494/99

1. Raj Kumar
S/o Brahm Singh
R/o Village Khatka
P.O. Todde Kalyanpur
Tehsil Roorkee
District Hardwar (U.P.)
2. Praveen Kumar
S/o Maheshwary Nand
R/o 48 Milap Nagar
P.O. Milap Nagar, Tehsil Roorkee
District Hardwar (U.P.)
3. Sher Ali
S/o Manjur Ali
R/o Village Jalalpur
P.O. Todde Kalyanpur, Tehsil Roorkee
District Hardwar (U.P.) ...Applicants

(By Advocate:Mrs Rani Chhabra)

versus

1. Union of India, through
Department of Telecommunication
Sanchar Bhawan
New Delhi.

2. The Chief General Manager
(Telecom)
Dehradun
3. The General Manager (Telecom)
Roorkee
4. Sub Divisional Engineer (Phones)
Roorkee
5. Tomar Detective Security(P) Ltd.
A-56 Second Floor, Palika Bazar
G.T.Road, Gaziabad.
6. Doon Security Service
100/4 Neshvilia Road
Dehradun

(By Advocate:Shri V.S.R.Krishna)

Order

By Mrs Shanta Shastry, M(A)

The issue raised in these OAs is the same. The advocates are also the same. Therefore, I am proceeding to dispose of these two OAs together by a common order. For illustrative purposes, brief facts in OA.2493/99 are given below:

2. The applicants had been engaged in March 1995 by respondent no.7 i.e. Tomar Detective Security (P) Ltd., Gaziabad and since then all the applicants have been working as security guards in different telephone exchanges in district Roorkee. According to the applicants their presence is duly marked and their attendance sheet is duly signed by the respective SDOs/SDEs i.e respondent nos.4-6. It shows that the applicants have been continuously working and have completed 240 days in a year. According to the scheme known as Grant of Temporary Status

Scheme, 1989 of the Department of Telecommunications, temporary status is to be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing 5 days week). Such casual labourers will be designated as Temporary Mazdoor.

3. It is the contention of the learned counsel for the applicants that though the applicants have been engaged by the private contractor, still the work being performed by the applicants is of perennial nature and in such cases employment of contract labourers cannot be resorted to as the same amounts to exploitation of labour as held in the judgement of the Hon'ble Supreme Court dated 3.9.1994 in the case of Secretary Haryana Electricity Board Vs Suresh & Ors reported in JT 199(2) SC 435. The applicants are aggrieved that in spite of making representations the respondents have not engaged and granted them temporary status. On the contrary, the applicants apprehend termination of their services.

4. The learned counsel for the respondents has submitted that the applicants are not entitled for grant of temporary status under the

Casual Labour-Grant of Temporary Status Scheme, 1989 since they are not covered under the terms and conditions of the scheme. The said scheme is available to only those casual labourers who were appointed by the Department of Telecommunications and not persons employed through contractors. The applicants cannot be termed as casual labourers since they are looking after the security of Telecom installations and are security guards. The applicants were employees of M/S Tomar Detective Agency, Ghaziabad as per the contract. All relevant records are to be maintained by the agency and there will not be any liability on the contractee, i.e. General Manager (Telecom), Saharanpur. The applicants were not working/serving under the Department of Telecom. There is no master and servant relationship with them. They were working under the contractor and the contractor was responsible for over all security arrangement. They had been engaged by the contractor on a fixed pay for a fixed period, on contract basis. They were not engaged against the regular posts available in the department and no post of security guard is available in the department. These applicants, therefore, could not be regularised. The learned counsel for the respondents urges that the applicants have simply reiterated the grounds stated by them in para-1 of the application. The allegations about

unfair labour practices and discrimination are denied since the applicants' services were provided by the contractor through valid agreement. Even the casual labourers are engaged through a valid agreement through a proper requisition from employment exchange. The applicants cannot seek employment through backdoor.

5. Heard the learned counsel for both the parties. According to the respondents the applicants' case is not covered by Department of Telecommunications Scheme of 1989 and there is no master and servant relationship. Nothing is there to show that they are casual labourers. They are rank outsiders. The ruling given in the case of Secretary Haryana State Electricity Board Vs. Suresh Kumar & Ors (supra) is more a Labour Court matter which was decided by the Supreme Court. The respondents have nothing to do with these applicants as they have been recruited by the private agency.

6. I have given careful consideration to the pleadings. It is the claim of the applicants that they should be given temporary status and regularisation on the basis of work of more than 240 days in a year put in by them and hence their case is covered by the scheme of 1989 of the department. No matter that they are working

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under private agency, all their work is for the department of Telecommunications. There is no dispute at all about the number of days of work put in. However, I find that the applicants have never been appointed directly by the Department of Telecommunications i.e. respondent nos 2&3. The learned counsel for the respondents has rightly pointed out that this is a fit case for a Labour Court as even the judgement of the Hon'ble Supreme Court is against the decision of the Labour Court. In my view since the applicants were never engaged directly by the Department of Telecommunications but only through the contractor, there is no case for grant of temporary status to the persons working as security guards. As far as the respondents are concerned, there is no vacancy nor is there a post of security guard to absorb them. Had it been that the applicants had worked initially with the Department of Telecommunications and thereafter worked with the contractor, the applicants perhaps would still have had a case. But since right from inception they had been working under a contractor, I do not consider this to be a fit case for grant of temporary status or for regularisation.

Original placed
in OA No 2493/99

7. In the circumstances, both the OAs are dismissed. No costs.

Cor-CY

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(Mrs. Shanta Shastray)
Member(A)