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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-415/99

New Delhi this the 17th day of September, 1999.

Hon'ble Sh. S.P. Biswas, Member(A)

Sh. Dinesh Kumar Yadav,
S/o Sh. Lakhmi Chand,
R/o D-15/674, Ganesh
Nagar-II, Shakarpur,
Delhi-92. Applicant

(through Sh. D.S. Wable, Advocate)

versus

1. Union of India through
its Secretary,
Ministry of Urban Development,
Govt. of India,
Nirman Bhawan,
New Delhi-1.
2. The Executive Engineer(Elect.),
Central Public Works Department,
E-D-15 (Div.), B-505,
I.P. Bhawan, I.P. Estate,
New Delhi-1. Respondents

(through Sh. VSR Krishna, Advocate)

ORDER

Applicant, who claims to be a driver under the respondents is aggrieved by the actions of the respondents by which his services have been terminated without any notice. The applicant claims to have worked as Driver from 20.10.95 to 20.03.98 i.e. more than two years five months without any breaks. The applicant has sought relief in terms of setting aside the oral impugned order dated 20.03.98 passed by Respondent No.2 and issuance of instructions to the same authority to allow him to resume duty as driver.

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2. The respondents have opposed the claims of the applicant. It is submitted that the applicant has never been the employee of the respondents. The work order was given to the applicant by M/s Septra Security Service of Shakarpur, Delhi who were asked to provide the services of a jeep driver. The said firm was at liberty to recruit any person suitable for the job and such persons were changed as per convenience of the firm (contractor). It has also been submitted by the respondents that there was no master and servant relationship between the applicant and the respondents. While denying the claim of the applicant the respondents have placed reliance on the decision of this Tribunal in the case of R.B. Mallik & Ors. (OA-102/98) wherein it was held as under:-

"As the petitioners are the workers of the previous contractors and there is no condition in the contract that the applicants should continue engagement under the new contractor (in any case existence of any such clause has not been proved by the learned counsel for the petitioners) it is not possible to issue a direction to Res. 1, 2 and 3 not to dis-engage the present applicants even after the contract under which they are working comes to an end after the period of extension i.e. 30.04.1998. In view of this, it is held that the petitioners have not been able to make out a case for the relief prayed in M.A. 190/98 and therefore, the same is rejected."

3. The respondents have also placed reliance on the decision of this Tribunal in yet another case

of Harbir Singh Vs. U.O.I. & Ors. (OA-651/98).

The decision in this case was as hereunder:-

"In view of the above, the present case is clearly distinguishable on facts from those relied upon by applicants' counsel and referred to above. It is well settled that the Tribunal has no jurisdiction to direct the Respondents to create the post where non exists, as the creation or abolition of the posts is a matter exclusively within executive competence. In the absence of any vacant post against which the applicant can be absorbed and regularised, no direction of the kind prayed for by the applicant can be issued in this case. If and when suitable vacancies arise, it will be open to applicant to apply for the same for consideration by the respondents subject to his eligibility, and in accordance with rules and instructions on the subject."

4. Having gone through the details of the case, I find some force in the submissions made by the learned counsel for the respondents.

5. That apart, I find that the applicant had filed a Suit (No.325/98) in the District Court (Tis Hazari). The same was dismissed. The applicant has not shown any records to establish that the appointment in his case was issued by the department. He was not holding any civil post nor was he paid any salary by the department and hence the question of termination of his services by the respondents does not arise.

6. In the background of the aforesaid details, I am in full agreement with the orders of

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this Tribunal in the two O.As as aforementioned. Based on the decisions in the aforesaid two original applications decided by this Tribunal, I find no merit in the O.A. and it is accordingly dismissed but without any order as to costs.


(S.P. Biswas)
Member(A)

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