CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OAs Nos.78, 264, 1354 & 1443 of 1999

Decided on 23rd July, 1999

(13)

Name of the applicants : Vijender Singh & ors

By Advocate : Shri O.P.Khokha & Shri S.C.Luthra

Versus

Union of India & others

By Advocate S/Shri Rajeev Bansal, Vijay Pandita, K.K.Patel, & Shri Surat Singh

Coram: Hon'ble Shri N.Sahu, Member (Admnv)

1. To be referred to the reporter - Yes

2. Whether to be circulated to the other benches of the Tribunal - No.

(N.Sahu)
Member (Admnv)

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.As.Nos 78,264, 1354 & 1443 of 1998

New Delhi, this the 23rd day of July,1999

Hon'ble Mr. N. Sahu, Member(Admnv)

(1) Original Application No. 78 of 1998

1. Vijender Singh, S/o Shri Phool Singh, r/o House No.WZ 5- Village Dasgara, New Delhi-110012.
2. Shri Sunil Kumar s/o Harpal Singh, House No. 147, Ext. No. 2- C, Nangloi, Delhi.
3. Shri Hukam Singh s/o Shri Prem Singh, Manglapura Village, House No. E-56, Palam Colony, New Delhi-110045.
4. Shri Gulshan Sharma, s/o Shri Muni Lal Sharma, r/o N-71/B-99, Old Chanderawal, Majnu Ka Tilla, Delhi-54 -APPLICANTS

Versus

1. Union of India through the Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi.
2. Director General of Works, C.P.W.D., Nirman Bhavan, New Delhi-110001.
3. Chief Engineer, Govt. of N.C.T. of Delhi, Zone -II, MSO Building, New Delhi-110002.
4. Manager, Delhi College of Engineering Project, Bawana Road, Delhi-110042 -RESPONDENTS

(2) Original Application No.264 of 1998

Laxman Prasad S/o Sh. Kent, R/o B-53, Khanpur Extension, New Delhi-110062 - APPLICANT

Versus

1. Union of India through the Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi.
2. Director General of Works, C.P.W.D., Nirman Bhavan, New Delhi-110001.
3. Chief Engineer, Govt. of N.C.T. of Delhi, Zone -II, MSO Building, New Delhi-110002.
4. Supdtg. Engineer Planning, Flyover Project, MSO Building, New Delhi, 110002 - RESPONDENTS

(3) Original Application No. 1354 of 1998

Shri Kishan Lal, son of late Shri Roshan Lal, resident of Jhuggi No.6, Bharat Sewak Samaj, Mata Ka Mandir,Khyber Pass, Delhi-110006 - APPLICANTS

Versus

(15)

1. Union of India through the Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi-110011.

2. Director General of(Works),Central Public Works Department, Ministry of Urban Development, Nirman Bhavan, New Delhi-110011

3. Chief Engineer, Govt. of N.C.T. of Delhi, Zone -II, MSO Building, I.P.Esate, New Delhi-110002.

4. The Executive Engineer, Division No. XIX, Govt. of NCT of Delhi, MSO Building, 9th Floor, I.P.Estate, New Delhi-110002 - **RESPONDENTS**

(4) Original Application No. 1443 of 1998

Shri Ashok Kumar, son of Shri Kalyan Mal, resident of 611, Prem Nagar, Kotla Mubarak Pur, New Delhi. - **APPLICANTS**

Versus

1. Union of India through the Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi-110011

2. Director General (Works), Central Public Works Department, Ministry of Urban Development, Nirman Bhavan, New Delhi-110011.

3. Chief Engineer, New Delhi Zone, Central Public Works Department, Nirman Bhavan, New Delhi-110011.

4. The Executive Engineer, Safdarjang Hospital Divison, Central Public Works Department, Safdarjang Hospital campus, New Delhi - **RESPONDENTS**

Present:

S/Shri O.P.Khokha & S.C.Luthra, learned counsel for the applicants in all the cases.

Shri Rajeev Bansal, Shri Vijay Pandita,Shri K.K.Patel, and Shri Surat Singh through proxy counsel Shri Vijay pandita, learned counsel for the respondents.

Common O R D E R

By Mr. N.Sahu, Member(Admnv)

Common grounds and identical facts are involved in all these four cases. They are disposed of together by a consolidated order.

2. The applicants in all these 4 OAs are aggrieved by their exclusion from the scheme as per DO letter no. 38/2/97 RC-X (Pt) dated 30.4.1997. This impugned letter reiterated the complete ban on engagement of workers on muster roll with effect from 19.11.1985. There was a demand by the Unions for their regularization if they had completed 240 days of service each year in two consecutive years. Information has been sought for about such workers.

3. I shall take the facts of Laxman Prasad in OA 264/98. He worked as a Daily Rated Mazdoor (in short 'DRM') under the Superintending Engineer Planning Flyover Project, MSO Building, New Delhi, respondent no.4 since 21.1.1991. He performed the duties of a Driver and was paid at the rate of 1/30th of the minimum of the scale prescribed. It is claimed that his services are camouflaged by a contract to overcome the ban or engagement of DRMs. The applicant had worked for the following period - 1991 - 250 days; 1992 - 281 days; 1993 - 281 days, 1994 -300 days; He also states that in each of the years 1995, 1996 and 1997 he had not worked for less than 280 days each year. The engagement through contract is said to be in violation of the Contract Labour (Regulation and Abolition) Act, 1970. A trade test was conducted on 7.5.1995 and he was declared successful by an order dated 31.7.1995. The question is to treat him on par with other regular employees. It is stated that the applicant is qualified and

possesses heavy vehicle driving licence. He, therefore, claims that he should be considered for regularization.

4. The learned counsel for the applicant referred to the order dated 13.10.1983 which provided that those who were recruited before 21.2.1979 may be regularized on Group 'D' posts subject to the condition that they had put in 240 days in two consecutive years. The decision of the Supreme Court in the case of **All India CPWD Employees Union** Vs. **Union of India**, WP No.15920/84 decided on 23.4.1987 was referred to in which the Apex Court directed the Central Government to take appropriate action to regularize all those who have been in continuous employment for more than six months. Finally, the Government of India, Department of Personnel & Training, Casual Labourers (Grant of Temporary Status and Regularisation) Scheme in OM No. 51016/2/90-Estt(C) dated 10.9.1993 was referred to. In the above facts a direction is sought for regularization of the applicant in a Group 'D' post after granting him temporary status in terms of Scheme dated 10.9.1993.

5. The respondents in their reply submitted that the applicant was engaged through a contract and is not on the rolls of the department as an employee. He was not engaged as a DRM. As he was hired by a contractor, this Court has no jurisdiction. He was only given a work order to carry out a certain task for a given length of time for a certain

consideration after executing that contract. If necessary, another contract is considered for him. There is no master and servant relationship. The applicant is neither a regular employee nor a workman and, therefore, he cannot seek relief under the provisions of the Administrative Tribunals Act, 1985. Certain additional facts were given about negligence in driving and causing extensive damage to the Government vehicle. The contract was not renewed for some time but later on, on his representation, the ban of giving him work was lifted.

6. A perusal of the work order shows that it was a camouflage. The applicant himself was stated to be the Contractor as well as the executant. The name of the work is stated to be "operation of Government vehicle during the year 1998-99". The contract reads "Operation of Car/Jeep or any Medium Vehicle for site visit/ inspection etc. of concerned officer-in-charage New Delhi area as required single shift operation for 8 hours" at the rate of Rs.4487/- per month. Further, the terms stipulate the rate of Rs.27/- per hour for additional hours of operation after normal working hours. In sum and substance instead of directly engaging a Driver on daily wage basis the respondents have camouflaged it as a contract. The vehicle belongs to the Government and the only thing that the applicant performs is his driving work. Even fuel is provided by the Government only . Year after year the same type of contract is signed for a period of three months and continued under the same terms. There is virtually no difference between a directly

engaged Driver and this sort of a contract. Obviously this contract is utilized to get over the ban on engaging casual workers directly for driving.

7. Shri Luthra submitted that such a practice contravenes Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. He has cited the decisions of **BHEL Workers Association** Vs. **Union of India** (1985) 1 SCC 630 in which the Supreme Court held that a contract labour is entitled to the same wages, holidays, hours of work, and conditions of service as are applicable to workman directly employed by the principal employer on similar kinds of work. The decision of the Principal Bench was cited in the case of **Bijay Narain Misra and others** Vs. **Union of India and another**, OA No.256/98 decided on 28.1.98 in which the court had examined the fact that the applicants were engaged as Contractors for doing a specific job. This specific job was performed continuously for 4-5 years. It was found that the payments were made to the applicants on daily rate basis. This Court ruled that they are entitled to be considered for reengagement, for grant of temporary status and regularization in accordance with the scheme applicable to the casual workers in the CPWD. The learned counsel cited an order passed by me in the case of **Raghvender Singh** Vs. **Govt. of NCTD**, O. A No.654 of 1998 decided on 10.9.1998. In that case also the term of engagement was extended from time to time though it was not a case of contract at all. This Court directed that the benefit of temporary status shall be granted in

accordance with the DOPT's scheme dated 10.9.93. The learned counsel cited the decision of the Supreme Court in the case of **Secretary, Haryana State Electricity Board** Vs. **Suresh and others**, JT 1999 (2) SC 435. The Hon'ble Supreme Court found that work was of perennial nature and the intermediary can be kept out after lifting the veil. The contractor was found to be a mere name lender. There was no genuine contract system prevailing at the relevant time. Accordingly the Supreme Court upheld the finding of the Labour Court that the workmen are entitled to reinstatement and continuity in service.

8. The learned counsel for the respondents Shri K.K.Patel cited the decision of **R.K.Panda** Vs. **Steel Authority of India**, (1994) 5 SCC 304. He stated that the 1993 Scheme is not applicable because the applicants are not casual labourers. ~~[illegible]~~ Being professional drivers, they come under Group 'C' and the scheme is entirely meant for Group'D'. Shri Pandita, another learned counsel for the respondents submitted that the respondents paid to the Contractors and the Drivers are not paid directly. To this, Shri Khokha, learned counsel for the applicants replied that the contract is with the applicants and no third party was involved. In this connection he cited the decision of **M.Seeni and another** Vs. **Union of India and another** (1994) 26 ATC 57.

9. The respondents' counsel relied on a decision of this Court in the case of **Dharmender Kumar** Vs. **Union of India and others,** OA No.1630/98 decided on 18.2.99. In that case the Court found that there was no sanctioned post of Driver, and that apart as the applicant had not succeeded in establishing that he was engaged by the respondents and paid by them as their employee, the Court held that the applicant had no legal right to ask the respondents to engage them. It is submitted by the counsel for the respondents that this decision is applicable in this case.

10. My attention was drawn also the decision of the Supreme Court in the case of **Lalji Ram** Vs. **Union of India and another**, SLP (C) No. 17385 of 1994 decided on 28.2.1995. It was also a case of daily rated casual labour seeking regularization, temporary status. At page 2 of the order of the Supreme Court it was stated that the applicant, although was a daily rated casual mazdoor, was discharging the duties of a Lorry Driver, which is a Group'C' post. However, the post of daily rated casual mazdoor falls in Group'D' therefore the appellant is entitled to claim protection of the aforesaid scheme. The Supreme Court directed the respondents to consider regularization of the applicant in a Group'D' post in accordance with the said scheme.

11. I have carefully considered the submissions of all the counsel present for both the sides. The nature of work performed was that of a Driver. There

was no third party contractor. In all these cases the applicants are both the contractors and executors. They worked with the vehicle and they are paid their wages, euphemistically known as a contract amount. It is a clear camouflage for employing a daily rated worker as a daily mazdoor for driving a Car regularly year after year. In view of the Apex Court's decision in the case of Lalji Ram (supra) I hold that the applicants are entitled to consideration for temporary status which orders shall be passed by the respondents within a period of four weeks from the date of receipt of a copy of this order in accordance with the scheme. Thereafter if there is any post vacant to be filled up, the applicants shall be considered along with others. In considering the applicants; either for a Group'D' post or for a Driver post the earlier experience of the applicants shall be considered and given weightage. Age relaxation shall be fully provided.

All the OAs are disposed of. No order as to costs.
Let a copy of this order be placed in all the above OAs.

(N. Sahu)
Member(Admnv)

rkv.