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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 1439/98

New Delhi: this the 5th day of October, 1998.

HON'BLE M.R.S.R. ADIGE, VICE CHAIRMAN (A).

1. Jai Prakash,
S/o Shri Kalu Ram,
R/o House No.48/581,
East Gokulpuri, Loni Road,
Shahdara,
Delhi- 110 094.
2. Rantej Singh,
S/o Shri Late Puran Singh,
E-390, Gali No.15,
Shahdara Gali,
Ashok Nagar,
Delhi - 110 093.
3. Chandrapal Sharma,
S/o Late Shri Laxmi Narayan Sharma,
AB- 151, Amarpuri, Ram Nagar,
Paharganj,
New Delhi -055.
4. Devendra Kumar,
S/o Shri Rajendra Prasad,
H.No.34, V.P.O. Hoshambi Kalan,
Delhi -082.
5. Anil Kumar,
S/o Sh. Ram Singh,
122/2, Meer Dard Lane,
Lok Nayak Jai Prakash Hospital,
New Delhi - 002
6. Pravesh Kumar,
S/o Shri Prem Singh,
WZ-522, Nangal Rai,
New Delhi-046.
7. Rupesh Kumar,
S/o Sh. Babu Lal,
Nangal Dairy,
New Delhi-037
8. Trilok Chand,
S/o Shri Anand Rao,
H.No.7/367, Trilok Puri,
Delhi.
9. Rajesh Kumar,
S/o Shri Prabhati Lal,
R/o H.No.270,
V & PO Kakraula,
New Delhi-043.
10. Om Prakash,
S/o Sh. Sub Ram,
H.No.269,
V & PO: Kakraula,
New Delhi-043

11. Nand Kishore,
S/o Shri Bharosa Beta,
R/o WZ-522, Nangal Rai,
New Delhi -046

..... applicants.

(By Advocate : Shri K. C. Mittal)

Versus

1. Union of India
through
Secretary,
Department of Revenue,
Ministry of Finance,
Govt. of India,
North Block,
New Delhi.
2. Commissioner,
Central Excise,
C.R. Building,
I.P. Estate,
New Delhi.
3. Commissioner (General),
Customs,
New Custom House,
IGI Airport,
New Delhi-037
4. Addl. Commissioner (P&V)
New Custom House,
IGI Airport,
New Delhi -037
5. Commissioner,
Customs, ACU,
New Custom House,
IGI Airport,
New Delhi-037.
6. Asstt. Commissioner(Admn),
New Customs House,
IGI, Airport,
New Delhi -037

..... Respondents.

(By Advocate: Shri R. R. Bharti)

ORDER

HON'BLE MR. S. R. ADIGE VICE CHAIRMAN (A).

Applicants seek a direction to respondents not to discontinue their services and to grant them salary on regular scale without artificial breaks, and to give them temporary status in terms of OM dated 1.9.93.

2. On 7.8.98 when the OA had come up for hearing

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for the first time, notice was ordered to be issued to respondents and ^{regarding} the prayer for interim relief made by applicants' counsel to restrain respondents from terminating the services of applicants, as according to him, his clients had been orally informed that they would be disengaged on 11.8.98, respondents were directed to maintain status quo as of 7.8.98 and the case was ordered to be listed on 21.8.98.

3. After a couple of adjournments the case came up on 11.9.98 by which time respondents had filed short reply dated 7.9.98 in which it was stated that applicants were initially engaged as Daily Wagers for cleaning, sweeping etc. in October, 1997 purely on contract basis for 85 days, after which their services stood terminated, but a week later they were again engaged on contract basis for 85 days for similar jobs and continued to be so engaged till April, 1998 when they were disengaged for want of work. They were again engaged on contract basis for 85 days for filling water in room coolers during the summer season, and the contract expired on 11.8.98, and with the summer season coming to a close they are no longer required.

4. The order sheet dated 11.9.98 shows that on that date applicants' counsel had brought to the Bench's attention two letters dated 10.8.98 and 11.8.98 which was an exchange of correspondence between the Superintendent Custom (Hq) and the Superintendent Custom (Estt) which went to show that there was enough work for retention of the applicants

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and in fact they needed more persons. Accordingly the interim order was extended and meanwhile Shri Bharti sought time to place these letters before the Head of Department and obtain further comments, and for this purpose wanted to be heard further in the matter.

5. The case was ordered to be listed on 23.9.98 but on that date applicants' proxy counsel sought a short adjournment as he stated, he was not feeling well. The prayer for adjournment was opposed by respondents' counsel in view of the interim order operating and he further stated that respondents' short reply may be taken as their final reply. The case was ordered to be listed for final hearing on 25.9.98.

6. Accordingly I have heard applicants' counsel Shri Mittal and respondents' counsel Shri Bharati. During the course of hearing Shri Bharati invited my attention to photo copy of letter dated 3.9.98 from the Asstt. Commissioner (Admn) addressed to the Deputy Commissioner (P & V) Central Excise Commissionerate, referring to the Tribunal's order dated 11.9.98 and emphasising that there is no work available for the applicants and the letter dated 11.8.98 from supdt. (Hq) was only a requisition and could be in no way considered to have been issued with the competent authority.

7. Shri Mittal opposed the bringing of the contents of the aforesaid letter dated 3.9.98 on record through an affidavit and emphasised that respondents' short reply dated 7.9.98 must be taken as reflecting their final position as respondents' counsel had stated that their short reply should

be taken as respondents' final reply, and cognizance could be taken of the contents of the aforementioned letter 3.9.98.

8. I have considered the rival contentions carefully. The question whether work is available for the continue retention of the applicants or not is a pure question of fact, which is to be left for determination of the appropriate fact finding authority and it is not for the Tribunal as a writ court to determine, as has been held by Hon'ble Supreme Court in D.R. Meena Vs. Rajasthan High Court AIR 1997 SC 896. Accordingly this O.A. is disposed of, holding that in the event respondents find that there is work available with them for the continued retention of the applicants they shall do so, but in the event that they conclude that work is not available to retain any or all the applicants, they cannot be legally compelled to retain them.

9. In this connection Shri Mittal has alleged that respondents have disengaged the applicants w.e.f. 24.99.98 despite the order passed on 7.8.98. Shri Bharti has stated that he had no information regarding this allegation. If any orders of the Tribunal have been violated, it is open to the applicants to agitate the same through appropriate proceedings in accordance with law if so advised.

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10. Shri Mittal has ^{also} stated that applicants have not been paid their wages since 21.8.98. Respondents are directed to clear all legitimate dues of the applicants forthwith.

11. This OA stands disposed of in terms of paras 8, 9 and 10 above. No costs.

Andige
(S. R. ADIGE)
VICE CHAIRMAN (A).

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