

(20)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 1611/1998

New Delhi, this 14th day of May, 1999

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri S.P. Biswas, Member (A)

1. Girish Kandpal
X-352, Sarojini Nagar, New Delhi
2. Abid Ali
90A, Basti Hazrat Nizamuddin, N. Delhi
3. Iftakhar Wasi
1, Red Cross Road, New Delhi .. Applicants

(By Shri Sunil Malhotra, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Industry
Udyog Bhavan, New Delhi
2. Chairman
Bureau of Industrial Costs & Prices
Lok Nayak Bhavan
New Delhi .. Respondents

(By Shri K.C.D. Gangwani, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

The three applicants herein, who were engaged as Data Entry Operators (DEO for short) on contractual basis are seeking a direction to the respondents restraining them from terminating their services. When this case came up before a Single Bench, on 21.8.98, respondents were directed, as an ad-interim measure, not to dispense with applicants services till 4.9.98 except on the principle of "last come first go". However, by an order dated 15.12.98, the Hon'ble Vice-Chairman (A) sitting in a Single Bench, opined that since the

of

applicants were engaged as DEO (Group C) they cannot be termed as casual labourers and their case may be listed before a Division Bench.

2. We have heard the learned counsel for both parties and perused the materials available on record.

3. The claim of the applicants is that they were engaged as full time DEO on contractual basis with effect from 28.8.93, 28.8.97 and 26.6.97 respectively initially for a period of six months, which was extended from time to time by separate orders. They further claim that they are doing work of regular nature without any break and that four regular vacancies in the grade of DEO are available. The respondents have appointed seven full time fresh DEOs and in this background the proposed termination of their services while retaining new recruits ignoring superior claims of the applicants is arbitrary and discriminatory.

4. Opposing the claims, respondents would submit that the OA is not maintainable. It is contended that the applicants were engaged initially for six months on purely contractual basis on a consolidated remuneration of Rs.3500 p.m. and that they would not have any claim for regularisation. Learned counsel for the respondents would further contend that applicant No.1 had worked from 28.8.93 to 17.1.95 in the first spell and again from 23.1.98 to 22.8.98, which was extended upto 4.9.98 on the interim direction of this Tribunal, while

Q.P.

the other two applicants have not yet completed two years as DEO. He would further contend that there are no regular sanctioned posts of DEO in BICP and applicants were engaged as and when jobs were available. Hence the question of juniors and seniors does not arise. However, they do admit that the length of period as DEO of the applicants is more than some others engaged later on. It is the case of the respondents that engagement of DEOs is based on the workload from time to time and as such on completion of specific projects/two years, the DEOs who were working on specific studies/two years had to go and therefore the principle of "first come last go" does not apply herein. The applicants are not working against regular posts. Their assignment is dependent upon the workload of the studies in BICP from time to time and is initially for a period of 6 months which is extendable upto a maximum period of 2 years depending upon the workload. BICP is engaged in different types of studies from time to time and to cope up with the work, DEOs' services are utilized depending on the workload. They are, therefore, not engaged on a regular basis.

5. On cosidering all the facts and circumstances of the case, we find that the applicants have not exhausted the alternative remedies available to them and have directly approached this Tribunal on the presumption that their services were likely to be terminated on completion of their present assignments.

8.

(23)

6. We also find that applicant No.1 worked as DEO from 28.8.93 to 17.1.95 and thereafter from 18.1.95 to 17.1.98 he worked as young professional ~~as~~ ^{with} a ~~as~~ ^{and} consolidated salary of Rs.4200 p.m. He continued to work as DEO thereafter without any break. Whereas, applicants No.2 and 3 have completed 206 days of working in the year 1997-98. That apart, respondents have appointed as many as 7 such DEOs on different dates between July, 1997 and October, 1998. It is not in dispute that sufficient work load and job of Data Entry Operators in BICP are available because different study-oriented jobs are being taken up on several subjects by the BICP on national economic and social issues. Such projects continue getting offered which is evident from the subsequent appointment of DEOs made by the respondents after the appointment of applicants. There are also two vacant posts of Computer Operator (Grade C) in the scale of Rs.3050-4590 as per Annexure R-1.

7. We are satisfied that the present case before us is not like the doctors appointed on contract basis even though there were regular vacancies, as decided by this Tribunal in the case of Sangeeta Narang & Ors. Vs. Delhi Admin. ATR 1988 (1) CAT 556. Nor it is a case like the teachers of Delhi Admin. appointed on contract basis but against regular vacancies as decided by this Tribunal in a group of 38 OAs (OA No.673, 674, 678, 679 etc.) on 7.5.99. In the present case sufficient work is available but on project-to-project basis.

8. Though the work available may not be of perennial in nature and would depend on availability of future projects to be offered to BICP, it does not provide any legal right to the respondents to subject the applicants to an arbitrary/discriminatory "hiring and firing" policy. The applicants constitute a bulk of educated unemployed and have been compelled to accept jobs on contract basis because of unequal bargaining powers. Even in engaging such contract employees, ^{The respondents} are required to follow the broad principles as enunciated by the apex court in the cases of State of Haryana Vs. Piara Singh JT 1992(5) SC 1798, Rattan Lal Vs. State of Haryana, 1995 (4) SCC 43 and Inder Pal Yadav Vs. UOI & Ors. 1985 (2) SCC 648.

9. In the result, the OA is partly allowed with the following directions:

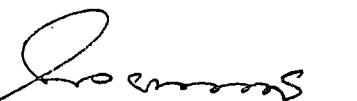
(i) Applicants shall be allowed to continue on the projects they are working till those projects are over and shall be replaced, if necessary, only by seniors awaiting such jobs;

(ii) Before appointing any such fresh contract appointee, the respondents shall consider engaging those already working in projects likely to be finished or those who are awaiting such appointments after having completed some projects earlier depending on comparative seniority.

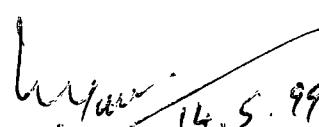
(23)

(iii) Since some of the applicants have worked for 2 to 5 years and may have become now overaged, the respondents shall consider providing relaxations in age to deserving applicants while filling up the regular vacancies of Computer Operators (Rs.3050-4590) alongwith others.

(iv) There shall be no order as to costs.



(S.P. Biswas)
Member (A)


14.5.99

(T.N. Bhat)
Member (J)

/gtv/