

Central Administrative Tribunal
Principal Bench

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O.A. 2050/98

New Delhi this the 5 th day of November, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Shri Inder Kumar,
S/o Shri Shyam Sunder,
R/o H.No. 533, Chaura Gaon,
Sector-22,
NOIDA (UP) ... Applicant.
By Advocate Shri R.V. Sinha proxy for Shri R.N. Singh.

Versus

1. Union of India, through
the Secretary,
M/o Urban Affairs & Employment.
2. Director General (Works),
CPWD, Nirman Bhawan,
New Delhi-11.
3. The Chief Engineer (ODZ),
CPWD, Sewa Bhawan,
Sector-I, R.K. Puram,
New Delhi-66.
4. The Executive Engineer (Civil),
Greater NOIDA, Central Division,
CPWD, 1/7, Sector 39,
Noida (UP). ... Respondents.

By Advocate Shri Madhav Panikar.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the action of the respondents in not regularising his services as a Driver against a regular/permanent post and terming his as a contractor's employee. The applicant has also claimed a number of other reliefs but during hearing, the learned counsel has pressed the relief seeking a direction to the respondents to consider the applicant for regularisation against a regular/permanent post.

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2. The brief facts of the case are that the applicant states that he was engaged as a Driver on casual basis w.e.f. 31.3.1995 through a private contractor. He claims that such a practice is illegal as it disentitles the workers the benefits of regularisation, in an arbitrary manner. According to him, Respondent 4 i.e. the Executive Engineer (Civil), Central Division, CPWD had engaged him initially w.e.f. 31.3.1995 and later he was termed as the worker of various contractors. Shri R.V. Sinha, learned proxy counsel for the applicant, has very vehemently submitted that it is the respondents who have engaged the applicant and as he has put in about three and a half years service as a Driver with them without any break, they should be directed to regularise his services. The applicant has, however, submitted in the O.A. that the respondents had never issued any appointment letter, although in the rejoinder he has reiterated that he had been initially engaged by the respondents. He has relied on the copies of log books and a copy of the Work Order at Annexure 'A' collectively which, according to him, shows that he had been working as Driver with the respondents. He has also submitted that the applicant had not been paid at par with the regular employees and had been given a consolidated amount of Rs.2800/- p.m. only when he was working as Driver. The learned counsel has submitted that the applicant has, in fact, been working against a regular and permanent post and discharging his duties to the entire satisfaction of the respondents. He has relied on a number of judgements (copies placed on record) and claims that the respondents have now adopted a different modus operandi in colourable exercise of their power in order to term him as the employee of the Contractors. This, he claims, is arbitrary and also that he has been discriminated by the respondents. It has also been contended on behalf of

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the applicant that since the work is of perennial nature, the action of the respondents in terminating his services is unreasonable and in violation of the provisions of Articles 14 and 16 of the Constitution. He has also relied on the judgements of the Tribunal in **Shri Ram Prasad Rai & Ors. Vs. Union of India & Ors.** (Guwahati Bench) (1997(3) SLJ (CAT) 226) and **Wilson Massy & Anr. Vs. Union of India & Ors.** (Principal Bench) (OA 1458/96), decided on 26.9.1997 (copy placed on record). Shri Sinha, learned counsel, has, therefore, submitted that in the facts of the case, since the applicant has put in about three and a half years service as Driver with the respondents, they should be directed to regularise his services, as directed in the Tribunal's order dated 26.9.1997.

3. The respondents in their reply have submitted that the O.A. is not maintainable because the applicant has never been their employee, but is one of the Drivers engaged by the contractors, to whom the contract for running the vehicles had been given from time to time. Shri Madhav Panikar, learned counsel, has relied on the judgements of the Tribunal in **R.B. Malik & Ors. Vs. Union of India & Ors.** (OA 102/98), decided on 1.5.1998 (Cuttack Bench) and **Harbir Singh Vs. Union of India & Ors.** (OA 651/98) decided on 23.9.1998 (Principal Bench), followed in **Dharmender Kumar Vs. Union of India & Ors.** (OA 1630/98) (copies placed on record) in which on similar facts, the Tribunal has held that as the applicant has not been able to establish that he was engaged by the respondents and he was paid through the contractor, he has no legal right to compel the respondents to engage him in service, particularly when there is no regular or permanent post against which he could be considered for absorption or regularisation. The respondents have also submitted that the

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applicant is not an employee of the Department but is one of the Drivers supplied by a contractor whose duty included supplying a driver when required, as per the terms and conditions of the contract, copy of which is at Annexure A-II. They have submitted that the question of payment of wages at par with the other regular employees in the Department does not arise. They have submitted that the log book is the permanent Government record and is maintained by the official who uses the vehicle and makes entry in the same, while the payment for the service provided has been made to the contractor by cheque only, who then in turn makes the payment to the various drivers engaged by him. They have, therefore, submitted that the applicant is not an employee of the Department and hence there is no scope for the Department to take action to regularise applicant's services. They have also submitted that there is no regular post of Driver sanctioned in the Division nor the work of perennial nature also exists with them. They have also submitted that the post of Driver is a Group 'C' post and is covered by the relevant Recruitment Rules. Shri Madhav Panikar, learned counsel, has submitted that in the light of the later judgement of the Tribunal, the earlier judgement given by the Tribunal in **Wilson Massy's case** (supra) will not apply, apart from the fact that the Scheme dated 10.9.1993 would not be applicable to Group 'C' posts but only to Group 'D' posts.

4. I have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

5. From the facts mentioned above, as claimed by the applicant himself, it is seen that he was engaged in the job of Driver but he has not been posted against any regular or permanent post although he might have been discharging his

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duties with Respondent 4 during the project. The applicant himself has submitted that respondents had never issued any appointment letter to him. He has relied on the entries in log book in respect of certain vehicles regularly being used by the respondents which records show payment being made to the applicant through the concerned contractor. His further contention that although he has been paid through the concerned contractor for the services rendered by him in respect of the respondents, that should be construed as continuous employment with the respondents would be contrary to the applicant's own averments and the documents on record. The respondents in their reply have categorically stated that the applicant is not their employee but is one of the Drivers supplied by the contractor as per the terms and conditions of the contract. I find that the facts and circumstances of the present case are in all fours with the facts and circumstances dealt with by the Tribunal in order dated 23.9.1998 in **Harvir Singh's case (supra)**. In that case, it was noted that the applicant had not produced any document that he was engaged or paid by the respondents which is also the situation in the present case. I am in respectful agreement with the judgements of the coordinate Benches of the Tribunal in which it has been held that the applicant has not been able to establish that he was engaged by the respondents and paid by them as a regular employee but there are adequate materials to show that he was engaged by the private contractors. Therefore, he has no legal right to compel the respondents to engage him, especially when the respondents have submitted that the project work of Greater Noida Authority for the development of Sector GAMA-1 and BETA-1 where they had worked as Consultants for Execution and Supervision of the work had also been completed.

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6. I have also considered the submissions of Shri R.V. Sinha, learned counsel, based on the judgements he has relied upon. It is relevant to note that the Tribunal in the earlier order dated 23.9.1998 has also referred to some of the judgements of the Hon'ble Supreme Court relied upon by the applicant's counsel, who is the same counsel in both the cases. In the absence of a regular post/vacancy against which the applicant should be regularised as Driver as claimed by him in the O.A., and for the reasons given above, his claim for regularisation cannot be granted. As the applicant himself admits that he had been paid through a contractor, there is no legal right for him for reinstatement or regularisation in the post of Driver where no regular post exists.

7. During the hearing, learned proxy counsel for the applicant had submitted that this case may be referred to a Larger Bench for decision as there is a conflict between the order passed in **Wilson Massy's case** (supra) and subsequent orders of the Tribunal in **Harvir Singh and Dharmender Kumar's case** (supra). I am unable to agree with this contention as it is settled law that a later decision will prevail over the earlier decision. Apart from that, the contention of Shri Madhav Panikar, learned counsel, that the Scheme referred to in **Wilson Massy's case** (supra) refers to regularisation of an employee in a Group 'D' post whereas the post of Driver is a Group 'C' post cannot also be overlooked. Hence the decision in **Wilson Massy's case** (supra) would not be applicable to the facts of the present case as the post of Driver is a Group 'C' post, especially having regard to the subsequent decisions of co-ordinate Benches of the Tribunal in **Harvir Singh and Dharmender Kumar's case** (supra) which are on all fours with

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the facts and law raised in the present case. In K. Ajit Babu & Ors. Vs. Union of India & Ors. (JT 1997(7) SC 24), the Hon'ble Supreme Court has held;

...One of the basic principles of administration of justice is, that the cases should be decided alike. Thus, the doctrine of precedent is applicable to the Central Administrative Tribunal also. Whenever an application under Section 19 of the Act is filed and the question involved in the said application stands concluded by some earlier decision of the Tribunal, the Tribunal necessarily has to take into account the judgement rendered in earlier case, as a precedent and decide the application accordingly. The Tribunal may either agree with the view taken in the earlier judgement or it may dissent. If it dissents, then the matter can be referred to a larger bench/full bench and place the matter before the Chairman for constituting a larger bench so that there may be no conflict upon the two Benches..."

(Emphasis added)

As observed above, as I do not find any reason to differ from the reasoning and conclusions arrived at by the co-ordinate Benches of the Tribunal in the aforesaid two cases of Harvir Singh and Dharmender Kumar, the plea of applicant's counsel to place the matter before a larger Bench is also rejected.

8. In the result, for the reasons given above, O.A. fails and is dismissed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)