

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 256 of 1998

New Delhi this the 28th Day of July 1998

Hon'ble Shri R.K. Ahooja, Member (A)

1. Shri Bijay Narain Misra,
Son of Shri Raghu Nandan Misra,
Working as Motor Lorry Driver,
M.S.O. Building ITO Building,
'(PWD) R/o H.No. 332 Gali No. 5,
Shanker Marg, Mandawali,
(Fazalpur) New Delhi-110 092
2. Pradeep Kumar,
S/o Shri Krishan Dutt,
working as Wire Man
Veh. INP Unit, Burari (PWD),
R/o 9915 Bhagat Vihar,
Karawal Nagar, New Delhi-94.
3. Sunil Kumar
S/o Shri Ishwar Chandra,
working as Wireman at
ISBT Under Fly Over (PWD),
R/o 769, Kalyan Vas,
Kalyan Puri,
New Delhi-110 091
4. Laxman Prasad,
S/o Shri Raghubir Singh,
Working Khallasi at
ISBT under Flyover (PWD),
R/o H.No. 126/6 Pushp Vihar,
Sect. I, Saket, New Delhi-17.
5. Shri Ramesh Chandra,
S/o Shri Jay Karan,
Working as Khallasi at
ISBT Under Flyover (PWD),
R/o J/K Pocket, Dilshad Garden,
A-7, Delhi.
6. Rajendra Kumar,
S/o Shri Jay Prakash,
Working as Pump Operator at
Veh. INP Univt, Burari (PWD),
R/o C.8/75 Yamuna Vihar,
Delhi-53.

Petitioners

(Service of all notices at the Applicants'
Counsel's following address:

Shri Satya Mitra Garg,
Advocate on Record,
113-C, DDA LIG Flats,
(Near Motia Khan)
New Delhi-110 055.

-Versus-

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1. Union of India through
the Director General (Works)
CPWD, Nirman Bhawan,
New Delhi.
 2. The Executive Engineer (Electrical)
Yamuna Bridge Project,
Electrical Division,
(PWD) (DS), New Delhi-110 002. Respondents

ORDER

The applicants claim that they were engaged by the respondents Central Public Works Department (CPWD) on various dates between August 1992 to July 1993 for various electrical jobs. They further claim that duties assigned to them are of perennial nature and the respondents require their services continuously and permanently. It is their allegation that in order to avoid liability for regularisation of their services, the respondents adopted an unfair labour practice and showed them as employed on contract basis. Even though no fresh contract has been given to them after 31.12.1997 it is claimed that the applicants continue to discharge their duties till date. They have therefore, come before the Tribunal for a declaration that they are performing the work of a perennial nature, the respondents cannot resort to the contract labour system and that accordingly the respondents should engage the applicants on a regular basis with all consequential benefits.

2. The respondents in reply have questioned the locus standi of the applicants as according to them there is no relationship of employer and the employee between the parties. On merit they say that the applicants were the contractors who were engaged on project work i.e. the Yamuna Bridge Project, Electrical Division which has been ordered to be closed after completion of electrical and

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civil works. Therefore, the respondents have denied the submission of the applicants that they are doing work of a perennial nature.

3. I have heard the counsel for the parties. The question to be decided is whether the applicants are contractors who had been engaged by the respondents for job specific work which has since been completed or whether they were engaged essentially as casual workers on works which are of perennial nature. The learned counsel for the applicant seeks supports from the judgement of the Hon'ble Supreme Court in Union of India & Ors. Vs. Subir Mukharji and Ors. (JT 1998(3) S.C. 540). In that case the applicants therein filed an OA No. 1045/95 before the Calcutta Bench of this Tribunal claiming that they had been working as labourers since 1988 continuously and uninterruptedly in the Railway Printing Press at Calcutta having been engaged through a Contractor. On this basis they claimed that they acquired temporary status and were entitled to be absorbed in Group 'D' posts. The Railways, on the other hand, denied this claim on the ground that the applicants were employees of a Society and therefore the Railways were not liable either to absorb or to regularise them. The Tribunal in its order dated 14.3.1997 upheld the claim of the applicants and issued a direction to absorb such of the applicants who may be required to do the quantum of work which may be available on a perennial basis. The respondents Railways thereafter went in Special Leave Petition, before the Supreme Court and the Hon'ble

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Supreme Court distinguished its earlier decision in Civil Appeal No. 1350 of 1986 Biswanath Saha and others Vs. Union of India and observed as follows:

"There is a distinguishing feature in the case before us. In the present case admittedly the respondents who were labourers of M/s. Bandel Handling Porters Cooperative Society Ltd., were given the work under agreement No. S/489/B1/CONTRACT/HANDLING/NH/94 dated 22.11.1994. Therefore, there was already a society of which the respondents happened to be members and being the members and M/s Bandel Handling Porters Cooperative Society Ltd., the contractor supplied them for doing the work of Eastern Railway. As indicated earlier there is no denial on the part of the appellant Nos. 1 to 5 that the work which respondents have been doing is of prennial nature. Even otherwise the directions issued by the CAT in its order dated 13.3.1997 have given enough discretion to the Eastern Railways to absorb them as regular Group D employees bearing in mind the quantum of work available on prennial basis and subje^t to their fitness. In our opinion the directions contained in order dated 13.3.197 passed by the CAT are quite fair in the facts and circumstances of the case and it is for this reason we are not inclined to interfere with the impugned order in exercise of our jurisdiction under Article 136 of the Constitution."

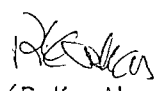
4. I find that the applicants before me are in a more or less similar position. The respondents themselves had admitted that they had engaged the applicants as contractors for 4-5 years. They have not come through a Society but have been engaged as a contractor individually for doing a specific job. That specific job has entailed continuous engagement for 4-5 years. There is no claim on the part of the respondents that they had undertaken that the applicants will be paid such and such amount on completion of the specific contract; on the contrary it

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would appear that the payments have been made to the applicants on a daily rate basis. Therefore whatever may have been the nomenclature, the status of the applicants is that of casual labourer on daily rate basis. In that capacity they are entitled to be considered for re-engagement for grant of temporary status and regularisation in accordance with the DOP&T Scheme applicable to the CPWD.

5. In the light of the above discussion, I dispose of the OA with the direction that the respondents will reconsider the applicants for re-engagement, if work is available giving them preference on the basis of the service already rendered by them over their juniors and outsiders. After such re-engagement they will reconsider the case of the applicant for grant of temporary status and regularisation in accordance with the Scheme applicable to the casual workers in the CPWD.

There will be no order as to costs.


(R.K. Ahooja)
Member (A)

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