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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 651/98

New Delhi : Dated this the 23rd day of September, 1998.

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

Shri Harbir Singh,

S/o Late Shri Malkhan Singh,
R/o Village & PO Bannoli,

New Delhi-045

..... Applicant.

(By Advocate: Shri R.N. Singh)

Versus

1. UOI,
M/o Urban Affairs & Employment,
Nirman Bhawan,
New Delhi,
through its Secretary.

2. The Director General (Works),
CPWD, Nirman Bhawan,
New Delhi.

3. Superintending Engineer (Civil),
DCCV, East Block-IV, R.K. Puram,
New Delhi - 66.

4. Executive Engineer (Civil),
Delhi Aviation Division,
CPWD, East Block-III,
Level-7, R.K. Puram,
New Delhi-66.

..... Respondents.

(By Advocate: Shri Rajeev Bansal)

ORDER

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

Applicant impugns respondents' action in terminating his services though he claims that he has been working with them since 18.7.95 and discharging duties of perennial nature. He seeks a declaration that he continues to be an employee of respondents and their action in terminating as a Contractor's employee is arbitrary and discriminatory.

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2. Applicant claims that he was engaged by Respondent No.4 w.e.f. 18.7.95 for the job of Motor Lorry Driver. He also claims that he is also driving the vehicle of Respondent No.3 since that date, and since 6.12.96 a new Ambassador Car replaced in place of the former one. Copies of the Log Book, over-time allowance paid to him have been filed. He states that he has been paid monthly wages on daily rates basis but not at par with other employees of the same cadre/grade by Respondent No.4 despite his performing duties like other regular employees in the grade. He further states that Respondent No.4 had not issued fresh work order for the purpose after 1.4.98, despite ^{which} he is continuing to work, and performing his duties. He further states that he was verbally told by Respondent No.4 and his subordinate Staff Members that his services would be discontinued w.e.f. 1.4.98 which has compelled him to come to Tribunal.

3. Respondents in their reply states that applicant is not a Civil Servant and there is no relationship of Master and Servant between applicant and the answering Respondents. They state that the applicant was engaged through a Contractor namely M/S Satish Travels to perform the duties of the Driver on the terms and conditions favourable to him on perfect business terms. They denied that the applicant was ever engaged by Respondents, and aver that they have been getting the work executed by work order basis. The work order is awarded on the basis of quotations. Every time the work was awarded to different agency. The work order is issued to a firm which quotes lowest rates in their

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bid. Payment in respect of the work is also made to the firm by way of cheque. In so far as Log-Book entries are concerned, they are required to be maintained as per terms and conditions of the work order given from time to time to different agencies. Respondents submit that last work order was issued to M/S Satish Travels on 31.12.97 which was valid upto 30.4.98 and it was the responsibility of M/S Satish Travels to employ and send a person to get the work order executed. It is solely the domain of M/S Satish Travels as to whom he wants to employ and from whom he gets the order executed. Respondents vehemently deny that the applicant had been engaged since 18.7.95; that he is being paid monthly wages on daily rate basis and that his services are sought to be terminated.

4. In their supplementary affidavit, Respondents state that there is no vacant post of any Staff Car Driver in the Division and no fresh Driver has been engaged in place of applicant nor anyone in future is likely to be engaged because of non-availability of post of Staff Car Drivers in the Division. They state that the applicant was engaged through a Travel Agent who has been running business of supplying vehicles and Drivers who are always available with the Travel Agent. He was engaged as a Stop-gap arrangement because of non-availability of any departmental Car Driver. Consequent to some Departmental Car Drivers ^{becoming} surplus, one of those was posted to the Division of answering Respondents due to which there has been no vacancy available to

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allow the applicant to continue and after the expiry of contractual period applicant's services were discontinued automatically.

5. I have heard applicant's counsel Shri Ravi Singh and Respondents' counsel Shri Rajeev Bansal.

6. Applicant has not produced any document that he is being engaged by or paid by respondents and at page 2 of his OA itself applicant concedes this fact that he is being engaged on work order basis, which is what the respondents have averred, and which is ^{borne} ~~borne~~ out by the photocopies of Log Book entries viz. over-time-allowances for July and August, 1995 showing the name of private contractor Shri M. Chauhan (Pages 2 and 4 of the OA). Respondents' assertion in their reply that there is no Master and servant relationship between themselves and the applicant and that they are under no longer obligation to engage him, has not been challenged by him in any rejoinder. There is no denial by him by way of rejoinder to the contents of the Respondents' additional affidavit dated 29.6.98, that there is no vacant post of any Staff Car Driver available in the Division and that no fresh Driver has been engaged in place of applicant, nor in ^{the} ~~near~~ future is likely to be engaged.

7. As applicant has not succeeded in establishing that he was engaged by Respondents and paid by them as their employee, ^{as} ~~and that~~ there are adequate materials to establish that he was engaged by a Private Contractor, he has no legal right to compel Respondents to engage him and the CAT PB's judgment dated 12.3.92 in

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OA No.1127/91 Tika Ram Vs. UOI & ors., discussing similar claim by contract Labourers for regularisation of their services in suitable posts in OPWD, is squarely applicable to the facts and circumstances of the present case.

8. Applicant has relied upon the rulings in UOI Vs. S.Mukherjee 1998(14)AD SC 365; All India Statutory Corporation etc. Vs. UOI & Ors- 1997(3) AISLJ 81; and Ram Prasad Rai & 5 Ors. Vs. UOI & Ors. 1997(3) AISLJ 226 . In all these cases, the availability of vacancies against which applicants could be regularised , was not in doubt. It needs no reiteration that an employee can be regularised only if a regular vacancy is available, but the respondents have stated in their affidavit that there is no any vacant post of Staff Car Driver available in the Division, and with ^{their} ~~that~~ additional affidavit Respondents have filed copies of letters showing that surplus Motor Lorry Drivers are available. These assertions have not been denied by the applicant in any rejoinder filed by him. In view of the above, the present case is clearly distinguishable on facts from those relied upon by applicants' counsel and referred to above. It is well settled that the Tribunal has no jurisdiction to direct the Respondents to ^r create the post where none exists, as the creation or abolition of the posts is a matter exclusively within executive competence. In the absence of any vacant post against which the applicant can be absorbed and regularised, no direction ^{of the kind} ~~prayed for~~ by the

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applicant, can be issued in this case. If and when
suitable vacancies arise, it will be open to applicant
to apply for the same for consideration by the
respondents subject to ^{his} ~~the~~ eligibility, and in
accordance with rules and instructions on the subject.

9. The GA stands disposed of accordingly in
terms of para 8 above. Interim orders are vacated.
No costs.

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

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