

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

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O.A. No. 2139 of 1997 decided on 28.10.1998.

Name of Applicant : Shri Sita Ram Rewar

By Advocate : Ms. Richa Goel proxy for Mrs.
Rani Chhabra

Versus

Name of respondent/s D.G. A.I.R., New Delhi & ors

By Advocate : Shri R.V. Sinha

Coram:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes/No
2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No

N. Sahu
(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2139 of 1997

New Delhi, this the, 28th day of October, 1998

Hon'ble Mr. N. Sahu, Member(Admnv)

Shri Sita Ram Rewar, S/o Shri Ballu
Ram, A-7/7, Vasant Vihar, New
Delhi-110057.

- APPLICANT

(By Advocate ~~MS~~ Richa Goel proxy for
Mrs. Rani Chhabra)

Versus

1. Director General, All India Radio,
Akashwani Bhawan, 1st Floor, Sansad
Marg, New Delhi-110001.
2. Chief Engineer (Civil), CCW, All
India Radio, 2nd Floor, P.T.I.
Building, Sansad Marg, New
Delhi-110001.
3. Executive Engineer (Civil), Civil
Division No. : 1 C.C.W. All India
Radio, C/3, 1st Floor, Room No.116,
Pushpa Bhawan, M.B.Road, New
Delhi-110062.
4. Assistant Engineer (Civil), C.C.W.
All India Radio, Siri Fort
Auditorium, Khel Gaon, New Delhi.

-RESPONDENTS

(By Advocate Shri R.V.Sinha)

ORDER

By Mr. N. Sahu, Member(Admnv) -

The applicant was taken as a casual labour on 24.11.1993 and he continued to work for over 3-1/2 years at Siri Fort Complex as a Peon. He specifically stated that he worked for 240 days in a calendar year during the years 1994 and 1996. He claims temporary status in accordance with the Casual Labourers (Grant of Temporary Status & Regularisation) Scheme of Govt. of India, 1993 (hereinafter referred to as "the 1993 Scheme") which came into force w.e.f. 1.9.1993.

Resubmitted

2. An MA No. 2366/97 was subsequently filed by the applicant on 7.10.1997 for setting aside the oral termination. It is stated in the MA that the applicant had completed 240 days of continuous work in a year for approximately four years and is fully entitled to the conferment of temporary status according to the 1993 Scheme. It is stated that when the notice of this O.A. was served on the respondents, they orally terminated his services with effect from 19.9.1997.

3. The respondents in their reply stated that the applicant had not worked for 240 days continuously in a particular calendar year and, therefore, he would not be entitled for either temporary status or eventual regularisation. It is stated that he has been employed by a contractor and cannot claim to be the employee of the respondents. The duty card issued to the applicant was only valid for a period of 10 days during the International Film Festival of India, 1996 and this duty card was not a proof that he was an employee of the department.

4. The learned counsel for the applicant cited a decision of the Hon'ble Supreme Court in the case of Union of India and others Vs. Subir Mukherji, JT. 1998 (3) SC 540. In that case also 20 labourers were engaged through a contractor which was a co-operative society. Others were engaged by different labourer contractors. The contracts were entered into between the Eastern Railway and the co-operative societies.

There was no complaint about the job done by the

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labourers. They claimed absorption and regularisation in Group 'D' and also claimed temporary status. The principal employer denied the legitimate right for regularisation on the ground of employment through a contractor. Confirming the order of this Tribunal the Hon'ble Supreme Court held that depending on the quantum of work available on a perennial basis and subject to the fitness of the labourers they should be considered for temporary status and eventual regularisation as Group 'D'.

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5. In another case cited by the applicant in Shri Ram Prasad Rai and others Vs. Union of India and others, 1997 (3) SLJ 226, the Guwahati Bench of the Tribunal, citing a decision of Air India Statutory Corporation Vs. United Labour Union and others, AIR 1997 SC 645, allowed a similar claim. In paragraph 58 of the decision of the Hon'ble Supreme Court in the above case, their Lordships held that as the object of the Contract Labour (Regulation and Abolition) Act 37 of 1970 is to regulate the contract labour so long as the contract labour is not perennial. The labour is required to be paid the prescribed wages provided with other welfare benefits envisaged under the Act under direct supervision of principal employer. The violation visits with penal consequences. Their Lordships have further held thus

" The Act did not intend to denude them of their source of livelihood and means of development, throwing them out from employment. As held earlier, it is a socio-economic legislation. Right to Socio-economic justice and empowerment are constitutional rights. Right to means of

liveliness is also constitutional right. Right to facilities and opportunities are only part of and means to right to development. Without employment or appointment, the workmen will be denuded of their means of livelihood and resultant right to life, leaving them in the lurch since prior to abolition, they had the work and thereby earned livelihood. The Division Bench in Dena Nath's case, (1991 AIR SCW 3026) has taken too narrow a view on technical consideration without keeping at the back of the mind the constitutional animations and the spirit of the provisions and the object which the Act seeks to achieve. The operation of the Act is structured on an inbuilt procedure leaving no escape route. Abolition of contract labour system ensures right to the workmen for regularisation of them as employees in the establishment in which they were hitherto working as contract labour through the contractor. The contractor stands removed from the regulation under the Act and direct relationship of "employer and employee" is created between the principal employer and workmen, Gujarat Electricity's case (1995 AIR SCW 2942) being of the co-ordinate Bench appears to have softened the rough edges of Dena Nath's ratio. The object of the Act is to prevent exploitation of labour. Section 7 and Section 12 enjoins the principal employer and the contractor to register under the Act, to supply the number of labour required by the principal employer through the contractor; to regulate their payment of wages and conditions of service and to provide welfare amenities, during subsistence of the contract labour..... On abolition of contract labour, the intermediary, i.e. contractor is removed from the field and direct linkage between labour and principal employer is established. Thereby the principal employer's obligation to absorb them arises. The right of the employee for absorption gets ripened and fructified.The contractor is an intermediary between the workmen and the principal employer. The moment the contract labour system stands prohibited under Section 10(1), the embargo to continue as a contract labour is put an end and direct relationship has been provided between the workmen and the principal employer. Thereby, the principal employer directly becomes responsible for taking the services of the workmen hitherto regulated through the contractor."

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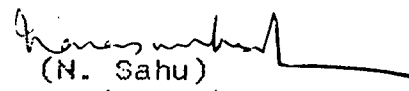
6. In the circumstances of the case I am of the considered view that the engagement of the applicant through a contractor cannot by itself deprive him of the benefits of the 1993 Scheme. It is reiterated that the applicant had worked continuously for more than 240 days each year during the last 3-1/2 years. It is stated that in the year 1994 he completed 252 days. In the year 1995 although he completed more than 240 days but he was given credit only for 207 days. In the year 1996 he completed 293 days and so also in the year 1997 he completed 240 days. Under the 1993 Scheme even if he completes 240 days in one year, he is entitled for benefits under the Scheme. There is no specific rebuttal of these averments by the respondents. There is a presumption of perennial need for the work of the applicant because he was continuously engaged for nearly 43 months. He cannot be retrenched simply because he filed this O.A. before this Tribunal. It is not a mere coincidence that his termination followed the notice sent by the Tribunal.

7. In view of the above, we direct the respondents to consider the period of service rendered by him and examine his claim in accordance with the 1993 Scheme. An order shall be passed by the competent authority within a period of 4 weeks considering his claim for temporary status under the 1993 Scheme. The applicant shall be re-engaged as and when work is available and if the job he was doing before oral termination still requires to be manned now, he shall be immediately engaged. I find

that there is no averment that services of the applicant were unsatisfactory or that he was disciplined. In view of the above, no junior or outsider can be engaged without considering the applicant's case as and when work is available.

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8. The O.A. and the M.A. are disposed of with the above directions. No costs.


(N. Sahu)
Member (Adminv)

rkv.