

(27)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. NO 624 of 1997

Date of Decision 28. -5-99

Jagdish \_\_\_\_\_ Applicant(s)

Sh. Ak. Bharadwaj \_\_\_\_\_ Advocate for the Applicant(s)

Versus

W.P.I. 20rs. \_\_\_\_\_ Respondent(s)

Sh. R.N. Sinha \_\_\_\_\_ Advocate for the Respondent(s)

C O R A M: (Single/Division)

Hon'ble Shri Rites Ahuja, Member (A)

Hon'ble Shri \_\_\_\_\_

1. Whether Reporters of local papers may be allowed to see the Judgement?  Yes/No

2. To be referred to the Reporter or not?  Yes/No

Raj  
(R.K. AHOOJA)  
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A. No. 2624/97

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

New Delhi, this the 28<sup>th</sup> day of May, 1999

Jagdish S/o Radhey Shyam  
R/o 11/146, Prem Nagar  
New Delhi. .... Applicant

(By Advocate: Shri A.K. Bhardwaj)

Versus

1. Union of India  
Through Director General  
Central Public Works Department  
Nirman Bhawan, New Delhi
2. The Executive Engineer  
Central Public Works Department  
Yojna Bhawan, New Delhi
3. The Assistant Engineer  
Central Public Works Department  
Yojna Bhawan, New Delhi .... Respondents

(By Advocate: Shri R.V. Sinha)

O R D E R

The applicant claims that he had been engaged by the respondents, i.e. Central Public Works Department, as a casual labourer (Sewerman) since 1985 for eight months till 1995. From 8.4.86 he has been working as a casual labourer without any break. As such he claims that he is entitled to temporary status and absorption in terms of DOPT O.M. dated 10.9.92, a copy of which has been annexed as 'Annexure A5'.

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2. The claim of the applicant is denied by the respondents. They state that he was never engaged and in fact the work of Sewerman has been done through a contractor. They say that the applicant was

employed by various contractors, for which payment was made by the CPWD to the contractor and not to the applicant.

3. Shri N.K. Bhardwaj, who argued the case for the applicant, submitted that the security passes, copies of which have been annexed with the O.A., clearly show that the applicant is recognised by the respondents as a regular Sewerman. Further, his work diary virtually maintained by the CPWD also carries the signature of the applicant. In other words, requisitions for attending to cleaning and maintenance of sewers were sent directly to the applicant and not to the contractor. He also submitted that though the applicant is entitled to a daily payment of Rs.64/-, he is being paid only Rs.40/- per day. Citing the judgment of the Hon'ble Supreme Court in Secretary, Haryana State Electricity Board Vs. Suresh and Others, JT 1999(2) SC 435, he submitted that the work of Sewerman was of a perennial nature, the applicant had been working since 1985 more or less continuously and was thus to be treated as in direct employment of the respondents.

4. I have carefully gone through the orders of the Hon'ble Supreme Court in Secretary, Haryana State Electricity Board Vs. Suresh and others (supra). In that case it was found by the Labour Court that the so called contractor was a mere middleman and had procured labour from the open market. It had been found that there was no genuine contract system and neither the Board was a principal

employer nor the so called contractor was a licensed contractor under the Contract Labour (Regulation and Abolition) Act, 1970. It was thus concluded by the Labour Court that the so called contract system was a mere camouflage and thus the contractual relationship between the Electricity Board on the one hand and the employees on the other. This finding was upheld by the Punjab and Haryana High Court. The Supreme Court, amongst other points, also came to the conclusion that finding of fact defining points by the Labour Court could not be interfered with by the High Court under Article 226 unless the finding was perverse or there was an apparent error on the face of the record.

5. In the present case, there is no finding by the Labour Court. On the other hand, the applicant prays that this Tribunal should lift the veil and give a finding that the contractor, if any, was merely an embodiment of respondent's device to deny the applicant his legitimate due. It was held by a Full Bench judgment in A. Padmavalli and others Vs. CPWD & Telecom (Full Bench judgments, Vol.II at page 334 that the Administrative Tribunal does not exercise concurrent jurisdiction with authorities under the Industrial Disputes Act and hence matters over which the Labour Courts or the Industrial Tribunals have jurisdiction under the Industrial Disputes Act, do not come within the purview of Administrative Tribunal. The applicant has tried to show on the basis of the security passes issued to him and copies of the work order that he has been directly employed by the respondents. This claim is denied by the respondents,

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who also say that they never made any direct payments to him. As held by the Supreme Court in Bharat Ram Meena Vs. Rajasthan High Court and others 1997 SCC (L&S) 797 when disputed questions of fact arise in a writ petition, it is a matter of appreciation of evidence and the Courts are justified in dismissing the petition by declining to enter into controversy.

6. I, therefore, find that it is not for the Tribunal to determine the factual position as was done by the Labour Court in Secretary, Haryana State Electricity Board Vs. Suresh and others (supra) or to appreciate the evidence produced by applicant and respondent in support of their respective stands in the case of a judicial review.

7. I am conscious of the fact that the Coordinate Bench of this Tribunal in Calcutta had in O.A. No. 1045/95 wherein labourers working in the Printing Press of the Eastern Railway at Calcutta through contractors had sought regularisation under the Railways, had considered their claim and granted the relief and subsequently, an appeal against this order of the Tribunal was also dismissed by the Hon'ble Supreme Court. In Union of India Vs. Sudhir and others JT 1998(3) SC 540 the Supreme Court in its order noted that submissions had been made before it that the CAT had no jurisdiction to entertain O.A. No. 1045 of 1995 on the basis of Biswanath Saha and others Vs. Union of India and others civil appeal No. 1350 of 1986. Considering, however, that the order passed by the CAT was quite fair, in the facts and

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circumstances of the case, the Apex Court declined to interfere with the impugned order in exercise of its jurisdiction under Article 136 of the Constitution and also observed that the order was passed in the peculiar facts and circumstances of the case, leaving the question of law open.

8. The learned counsel for the applicant has also cited the orders of Coordinate Bench of this Tribunal in O.A. No.378/93 decided on 25.3.98. In that case it was held that the status of the applicant was more of the employee than a temporary recruit of the contractor and submitted that the question here also was of determining the status of the applicant. Having gone through that order, I find that the question of law was not raised before the Bench and the order was passed in the its own peculiar facts and circumstances. The decision of the Tribunal in that case was, therefore, per incuriam.

9. The O.A. is accordingly dismissed as the claim of the applicants as an employee of the respondents has been denied and as question of disputed fact in involving appreciation of evidence have been raised which cannot be gone into by the Tribunal.

Ahochia—  
(R. K. Ahochia)  
Member (A)

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