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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

R.A. NO. 136/2001

IN

O.A.NO.2623/2000

New Delhi, this the 21st day of November, 2001

Hon'ble Shri S.A.T. Rizvi, Member (Admn)

Union of India & Ors.

.... Review Applicants (Original
respondents)

(By Advocate : ~~Ms. Anuradha Priyadarshini~~)

Versus

Sanjay Kumar & ORs.

... Respondents (Original
Applicants)

(By Advocate : ~~Shri. Chittaranjan Hati~~)

O R D E R

Heard the learned counsel on either side.

2. The present RA has been filed seeking review/recall of the Order dated 15.12.2000 passed by this Tribunal in OA No.2623/2000 by which the aforesaid OA was disposed of with a direction to the respondent-authority to consider the claims of the applicants for re-engagement as and when work becomes available in their Organisation in preference over their juniors/freshers/outsideers, on the basis that the facts and circumstances of the OA in question were similar to the facts and circumstances obtaining in OA No. 2622/2000.

3. The review applicants (respondents in OA 2623/2000) have submitted that the aforesaid orders were passed without serving any notice on them and, therefore, they were deprived of the opportunity of being

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heard by the Tribunal. According to them, the aforesaid OA lacks merit inasmuch as the applicants were admittedly contractual labours and the relationship of employer-employee never existed between the review applicants and the applicants in the OA. On this basis, they contend that this Tribunal has no jurisdiction in the matter and the aforesaid OA, in the circumstances, should have been dismissed. Further, ^{since} no contract of any kind existed between the applicants in the OA and the review applicants, the latter, being respondents in the OA could not be directed to consider the applicants' claims for re-engagement in the review applicants' set-up.

4. In their reply to the present RA, the applicants in the OA have stated that though engaged through contractors the applicants had worked for three years and more and they fulfil the qualifications prescribed for conferment of temporary status and regularisation in terms of the DOP&T's Scheme of September 1993. According to them, if one has regard to the ratio of the judgement rendered by the Supreme Court in Hussainbhai Vs. The Factory Tezhilali Union & Ors, 1978 LAB. I.C. 1264, the existence of a direct employer-employee relationship is not essential if on lifting the veil it is found that the real employer is the management and not the immediate contractor. On this basis, they contend that it should be possible for the review applicants to comply with the orders dated 15.12.2000 sought to be reviewed in the present RA. ²

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5. I have considered the submissions made by the learned counsel.

6. The present RA has been taken up for hearing after final hearing in OA 2622/2000 on the same day. After a detailed discussion on the contentions raised by the parties with the same learned counsel in position, in OA No.2622/2000 it has been held that the applicants' case was devoid of merit on the ground, inter alia, that they had been engaged through a contractor and no worthwhile evidence has been produced in support of the contention that the contractor was a mere name lender and that the relationship which existed between the applicants and the respondents in that OA was to all intents and purposes employer-employee relationship. The aforesaid OA No.2622/2000 has accordingly been dismissed.

7. For the reasons stated above and for whatever else has been held in the aforesaid order passed in OA No.2622/2000, the present RA is found to have merit and is allowed. The OA No.2623/2000 is restored to file. However, for the very same reasons which have weighed in allowing the present RA, the aforesaid OA, being OA No. 2623/2000 is also dismissed.

8. There shall be no order as to costs.


(S.A.T. RIZVI)
Member (A)

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