

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1095/2000

Tuesday, this the 8th day of May, 2001

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

1. Krishna Gopal,  
s/o Shri Dev Karan Singh  
New Sadarpur Khajoor Colony  
Sector-44, Noida.
2. Manoj Rai  
s/o Sh. Janardan Rai  
r/o F-256 Sector 40, Noida.

..Applicants

(By Advocate: Ms. Meenakshi Singh for  
Mrs.Rani Chhabra)

VERSUS

1. Union of India,  
Ministry of Telecommunication  
Sanchar Bhawan, New Delhi.
2. The Chief General Manager (West)  
Telecom Department,  
Dehradun.
3. The General Manager (Telecom  
Telecom Exchange Building,  
Sector 19, Noida.
4. Sub-Divisional Engineer (FRS)  
Telephone Exchange, Noida.
5. C.O. (East)  
O/o D.G.M. (East) Noida  
Godwari Complex  
Room No.2, 5  
Sector 37, Noida

..Respondents

(By Advocate: Shri K.R.Sachdeva)

O R D E R (ORAL)

The applicants' case is that even though both of them have worked as Computer Operators, a class III post, for more than two and half years and simultaneously for more than 240 days in a year, they have not been regularized/absorbed in the corresponding post and without assigning any reason, their services have been dispensed with w.e.f. 25.4.2000 and 3.4.2000 respectively by oral orders. The respondents deny the

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claim of the applicants mainly on the ground that both of them have never been employed by the respondents themselves and instead have worked for a contractor and, therefore, they cannot claim regularization/absorption against any post under the respondents.

2. I have heard the learned counsel on either side and have perused the material placed on record.

3. The applicants themselves admit that though rendering service to the official respondents, they have actually worked for the contractor right upto the middle of 1999 when the contract ended. They submit and the respondents deny that they have worked directly for and under the official respondents after the termination of the aforesaid contract. The attendance sheet placed on record at Annexures A-2 & A-3 by the applicants also show that till the contract subsisted, they were working for the contractor and not for the official respondents. The applicants have failed to produce any document in support of their submission that they worked directly under the official respondents after the termination of the aforesaid contract in the middle of 1999. This is so despite the applicants' submission that the official respondents made payments to them on a ACG-17 w.e.f. June, 1999 @ 85/- per day. According to the learned counsel for the respondents, the aforesaid ACG-17 cannot provide any evidence to that effect. Moreover, no document in the nature of ACG-17 has been filed by the applicants.

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4. The applicants claim that the work of a Computer Operator is of perennial nature has been disputed by the respondents who submit that data feeding job is a work of casual nature awarded to a contractor according to the exigencies of work, and there is no post of Computer Operator in existence in the official respondents' set up. Accordingly, statutory rules or executive/administrative instructions for recruitment to the post of Computer Operator also do not exist. In view of this, according to the respondents, a comparison of the post of Computer Operator with class III post is not at all justified. The respondents have categorically denied that the applicants ever worked under them in the manner stated in the OA.

5. That the applicants could be regularized/absorbed in accordance with the Casual Labourers (Grant of Temporary Status and Regularization) Scheme of 1989 framed by the official respondents is also disputed by the respondents who contend that the aforesaid scheme is applicable only in respect of casual labourers and not in respect of computer professionals like the applicants. They have relied on Hon'ble Supreme Court's judgement rendered in Yasoda Rani Vs. Union of India, reported as (1988) 38 ATC 231 in which it has been held that computer professionals whose services are hired for specific jobs and engaged for a long period on daily wage basis, cannot claim the benefit of either temporary status or regularization because they cannot be equated with casual labourer.

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6. According to the learned counsel, the applicants relying on the judgement referred to in para 4.12 of the OA in respect of Telephone Operators will also not assist them inasmuch, whereas no post of Computer Operator is available in the respondents' department, regular posts of Telephone Operators did exist and corresponding recruitment rules and executive/administrative instructions relating thereto were also available. Furthermore, the respondents have reiterated that Computer Operators have been used by them for purely temporary work for which engagement of regular Computer Operators is not feasible at all. Placing reliance on Supreme Court's judgement in State of U.P. Vs. Ajay Singh, reported as (1997) 4 SCC 88, the respondents have reiterated that Data Entry Operators, like the applicants in the present case, cannot be given temporary status just because they cannot be equated with casual labourers.

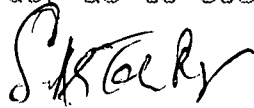
7. The learned counsel for the respondents has also placed reliance on the case of Taruna Mihani (Km.) Vs. The Secretary, Ministry of Human Resources, Adult Education, New Delhi & Ors., reported in 1/2000 Swamysnews 93 (P.B., New Delhi), and decided on 11.1.1999. If one has regard to the aforesaid judgement, computer professionals whose services are hired for specific jobs and who are engaged for a long period on daily wage basis cannot claim temporary status or regularization. Taking a look at the aforesaid judgement this is what this Tribunal has held in the aforesaid case:-

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"...The Government Departments entrust the work of Data Entry Operator or networking or installation of systems either directly or through reputed agencies by a contract. The Government has every right as any other Private operator to hire a Professional for executing a specific type of work within a time frame. It can also hire any number of Data Entry Operators by paying daily wages. The applicant does not have any right to claim regularization merely because she had been engaged for a long period. It is well known that such regularization can take place only when a post is available. Even when a post is available there are well defined methods of recruitment by open advertisement, competition and selection. These procedures are undertaken by impartial bodies like Public Service Commission. The applicant has been hired only for specific type of work and as long as the Project continues the applicant's services will be taken provided the employer considers such services as satisfactory. Thus, even if a post is available the applicant cannot stake a claim for appointment to that post only on the ground that she rendered the services earlier. Such services rendered may count for experience which might be considered by the recruiting agency at the time of selection..."

In passing the aforesaid order, the Tribunal had in turn relied on the Supreme Court's judgement in the cases of Ajay Singh (supra) and Yasoda Rani (supra).

8. For all the reasons that have been brought out in the preceding paragraphs, the relief sought for by the applicants cannot be given. The OA fails and is accordingly dismissed without any order as to costs.

  
(S.A.T. Rizvi)  
Member (A)

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