

Central Administrative Tribunal
Principal Bench

O.A. 195/2000
and
O.A. 1921/99

(9)

New Delhi this the 9 th day of October, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

O.A. 195/2000

Shri Harbir Singh,
House No. 342,
Gali No. 9,
Mauzpur, Shahdara,
Delhi.

... Applicant.

(By Advocate Shri P.I. Oomen)

Versus

Union of India through

1. The Secretary,
Ministry of Communications,
Sanchar Bhavan, New Delhi.

2. The General Manager Telecom,
Sagar Complex,
Sector 16,
Faridabad.

... Respondents.

(By Advocate Shri R.P. Aggarwal)

O.A.1921/99

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Hon'ble Smt. Lakshmi Swaminathan, Member(J).

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O.A. 195/2000.

Both the learned counsel have been heard in O.A. 195/2000 and M.A. 224/2000 which has been filed by the applicant praying for condonation of delay. In this Miscellaneous Application, the applicant states that he had been disengaged by a verbal order on 17.4.1998 and he had submitted a written representation on 20.4.1998 to which he did not receive any reply. According to him, the respondents had verbally promised him that they will re-engage him. Shri Oomen, learned counsel has submitted that the applicant was engaged only as a casual labourer and could not afford to file the O.A. earlier. He has also pleaded that as the applicant does not have any other means of livelihood, the delay in filing the O.A. may be condoned as it was not intentional and he otherwise fulfils the period of service as casual labourer under the Scheme formulated by the respondents for grant of "Temporary Status". He has prayed for condonation of delay of four months so that the O.A. may be heard and allowed on merits.

2. The respondents have submitted that the applicant was engaged as casual labourer by M/s Sehrawat Construction Co., Rohtak, whose contract was terminated on 11.7.1996. He had never been engaged as labourer thereafter by them directly or otherwise. Shri R.P. Aggarwal, learned counsel has submitted that the application is, therefore, barred by limitation, apart from the fact that there is no relationship of master and

servant between the applicant and the respondents. Hence, he has submitted that the O.A. itself is not maintainable in the Tribunal. He has also submitted that the applicant has been terminated by the contractor w.e.f. 11.7.1996 whereas the O.A. has been filed beyond the period of limitation on 3.2.2000. He has, therefore, prayed that the O.A. may be dismissed both on the grounds of limitation and merits. He has relied on the judgement of the Tribunal in **Ram Pal Singh & Ors. Vs. U.T. Chandigarh & Ors.** (OA 365/CH/99-Chandigarh Bench with connected cases), decided on 13.8.1999 which has been followed by the Principal Bench in **Gurmit Singh Vs. The Secretary, Ministry of Urban Development and Others** (OA 92/98), decided on 4.6.1999 and **Suman Jain Vs. Union of India & Ors.** (OA 1739/99), decided on 20.7.2000 (copies placed on record).

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3... I have carefully considered the grounds taken by the applicant in MA 224/2000 praying for condonation of delay. Even according to the applicant's own version, he was disengaged by a verbal order on 17.4.1998 and this O.A. has been filed beyond the period of limitation as provided under Section 21 of the Administrative Tribunals Act, 1985. The grounds urged by the applicant in the Miscellaneous Application are not at all sufficient to condone the delay of several months, having regard to the settled principles of law. (See the observations of the Supreme Court in **State of Punjab Vs. Gurdev Singh** (1991(17) ATC 287(SC), R.C. Sammanta & Ors. Vs. Union of India & Ors. (JT 1993(3) SC, 418), **Secretary to Govt. of India Vs. Shivram H. Gaikwad** (1995 (Supp. 3) SCC 231)). Moreover, if the date of disengagement is taken as 11.7.1996 as stated by the respondents, then the delay of more than 4 years is further not at all fully explained, to justify allowing the

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Miscellaneous Application for condonation of delay. It is also noticed that the applicant had submitted a representation to the respondents on 20.4.1998 against his disengagement and from this date also the O.A. is barred. Therefore, on the ground of limitation itself, this O.A. is liable to be dismissed, subject to what is stated below.

(12)

4. The applicant has also filed MA 2457/2000 seeking to place on record certain documents on which he relies upon issued by the respondents. The learned counsel for the respondents has no objection to taking on record the documents. These relate to certain letters and orders issued by the respondents in respect of recruitment in the cadre of regular Mazdoors which contain the provisions regarding their eligibility and regularisation which according to the respondents' counsel are not applicable to the facts of these cases. MA 2457/2000 is allowed.

5. Apart from the above, I have also considered the other issues raised by Shri R.P. Aggarwal, learned counsel for the respondents. He has referred to the averments made by the applicant in paragraph 4.9. of the O.A. wherein he has stated that he was engaged on 15.11.1994 "through a Contractor" and continued with Respondent 2 till 17.4.1998. Shri Oomen, learned counsel, relying on the annexures to the O.A. has very vehemently submitted that the attendance sheets of the applicant have been counter-signed by a duly authorised officer of the respondents which show that the applicant has, therefore, worked with the respondents. To this, the learned counsel for the respondents has explained that as per the terms and conditions of the contract entered into by the contractor with the Department of Telecommunications, the concerned

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SDO/AE had to maintain the record of work done by the individual labourer for purposes of payments to be made to the contractor. On the other hand, Shri Oomen, learned counsel has placed much reliance on the signatures appended on the attendance-sheets by the concerned departmental official, although there is a clear averment by the applicant himself that he was employed through a contractor. It is also relevant to note that the attendance sheets annexed by the applicant are only upto May, 1996, and the learned counsel contended that the rest would be with the respondents which they have denied.

(B)

6. Taking into account the facts and circumstances of the case, and the decisions of the Tribunal relied upon by the respondents, referred to above, as the applicant in the present case was also not directly employed by the Department against any post, the observations in those judgements would be fully applicable to the facts in the present case. The respondents have disputed the contentions of the applicant that he has been engaged directly by them and the applicant himself states that he was employed through a contractor. In the circumstances of the case, it cannot be held that there is a master and servant relationship between the applicant and the respondents. The judgement of the Hon'ble Supreme Court in **Secretary, Haryana State Electricity Board Vs. Suresh & Others** (JT 1999(2) SC 435) which has been relied upon by the learned counsel for the applicant, has been dealt with in the aforesaid cases. In the facts of the case, as the applicant has been employed by a contractor and not by the official respondents, his claims for conferring on him "Temporary Status", regularisation and other benefits in

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terms of the Scheme prepared by the respondents in respect of casual labourers employed by them would also not be applicable.

(A)

7. In the circumstances of the case, the reliefs sought for by the applicant cannot, therefore, be granted by the Tribunal. The O.A. is accordingly disposed of leaving it to the party to seek his remedy in accordance with law. No costs.

O.A. 192/99

Both the learned counsel have submitted that the facts and issues in the present O.A. are similar to the issues raised in O.A. 195/2000. These two applications were heard together. They have relied on the same judgements and have made similar submissions as in OA 195/2000 (supra). MA 2452/2000 filed by the applicant to bring on record certain letters issued by the respondents is unopposed. That M.A. is allowed.

2. However, in the present O.A., as the applicant states that he was disengaged by the respondents w.e.f. 13.7.1999 and has filed this application on 31.8.1999, so the question of limitation does not arise. The applicant was also engaged through a contractor. He has relied on the attendance sheets annexed to the O.A. which have been signed by the officials of the respondents. The respondents have taken the same pleas that the applicant was never engaged by them but through a contractor and, therefore, the applicant has no locus standi and cause of action to file the application in the Tribunal.

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3. For the reasons given in O.A.195/2000, the O.A.
is similarly disposed of. No costs.

Lakshmi Swaminathan

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(Smt. Lakshmi Swaminathan)
Member(J)

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