

-18-

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

OA NO. 1992/2000

New Delhi, this the 19<sup>th</sup> day of October, 2001

HON'BLE SH. KULDIP SINGH, MEMBER (J)

In the matter of:

Jagdish Singh Bisht  
(long term daily wager employee)  
S/o Shri Tula Singh Bisht  
Office of the Station Engineer  
All India Radio/Broadcasting Corporation of India  
AGRA (U.P.).

Present Address :-

C/o Kumaon Restaurant, Rajpur Chungi  
Shamshabad Road, Agra (U.P.). .....Applicant  
(By Advocate: Sh. D.N.Sharma)  
Versus

1. Union of India  
(Through : The Secretary to the Govt. of India)  
M/o Information & Broadcasting  
Prasar Bharti Board, Shastri Bhawan  
New Delhi.
2. The Director General  
All India Radio/Broadcasting Corporation of India  
Akashwani Bhawan, Parliament Street  
New Delhi.
3. The Station Engineer  
All India Radio/Broadcasting Corporation of India  
Shamshabad Road  
AGRA - 282001 .....Respondents  
(By Advocate: Sh. N.K.Aggarwal)

ORDER

By Sh. Kuldip Singh, Member (J)

The applicant has filed this OA under Section 19 of the AT Act seeking following reliefs:-

- a) That applicant is fully eligible for grant of temporary status in view of his long nine years continuous service as daily wages Group 'D' employee. Such an order conferring temporary status under the said Scheme may kindly be issued retrospectively w.e.f. 28.8.1992, when the applicant completed 240 days of daily-wages

h

employment between 1st January, 1992 to 27th August, 1992. He may be provided with all consequential benefits resulting with the grant of temporary status.

- b) that under the said temporary status, the applicant is also eligible for grant of wages at daily rates with reference to the minimum of the pay scale for corresponding regular post of Peon/Helper in Group 'D' cadre including D.A., H.R.A., C.C.A. etc.
- c) He may be considered for absorption in the newly sanctioned additional post of Helper, under provision of rules.
- d) allow any other and further relief to the applicant which in the circumstances of this case may be deemed fit and proper in order to safeguard the interests of justice and
- e) to allow the costs of the application.

2. The applicant claims that he was engaged by the respondents on daily wages w.e.f. 1.1.92 for attending the similar duties as assigned to regular Group 'D' employees. The certificate to that effect that he was working their w.e.f. 1.1.92 to 30.9.92 has also been issued vide Annexure A-1 and A-2. The applicant further claims that he continued to be employed on daily wages with artificial breaks even after 1.10.92 and certificates to that effect are also annexed

ku

20-

at Annexure A-3. Similarly he continued with artificial breaks upto September 2000, when he was verbally informed about his disengagement. The applicant further claims that after the additional post of Helper was sanctioned, he made a representation dated 18.8.2000 to the authorities to consider his regularisation/absorption but instead of that he had been disengaged by verbal orders which is stated to be illegal and arbitrary.

3. The applicant further claims that the office of the applicant is covered under the Department of Personnel & Training Scheme dated 10.9.93 and as per the instruction of Department of Personnel & Training applicant is entitled for being conferred that temporary status and subsequent absorption in accordance with the Scheme.

4. The respondents contested the OA and filed their counter affidavit. The respondents submitted that applicant was working with them through a contractor and it is a contractor who has terminated his services on 20.9.2000 and since the applicant was a contract employee so he has no legal enforceable right to compel the respondents to retain him again or to regularise his services. Respondents also submitted that the applicant was working with a proprietary firm known as S.K.Electric Works owned by Mr. Shaif Khan and it is he who placed the services of the applicant at the disposal of the respondents and it is the said firm who has been engaging and disengaging him. It is also submitted that the case of the applicant is barred by time as the applicant has never been engaged by the department after April, 1992

Ku

(4)

which means the applicant was initially engaged by the Department but after April, 1992 he has never been engaged by the department.

5. The respondents further submitted that the certificates placed on record by the applicant are all false and bogus as they do not bear register entry Nos. and the date of discharge No. as such these certificates have no effect. The certificates have either been issued under a bonafide error or a mistake which is regretted. It is submitted that the applicant has no cause of action, the OA should be dismissed.

6. Alongwith the rejoinder, applicant has submitted various documents that the service record was verified in the year 1995 which shows that the applicant was working directly under the department. His attendance was regularly marked which also shows that he was appointed by the department. On that basis also the applicant submitted that he was an employee of the respondent and not of the contractor.

7. After the rejoinder was filed the respondents filed an additional counter which contained various affidavits to show that all these certificates have been issued either by mistake or through bonafide errors. Thus, it is re-asserted that the applicant was never the employee of the respondents.

8. I have heard the learned counsel for the parties and gone through the records.

9. As far the initial engagement of the applicant on 1.1.92, is concerned same is admitted but it is contended that from 30.3.92 onwards the applicant was never engaged by the

*K*

respondents. So a short question involved in this case is whether after 30.3.92 the applicant had a relationship of master and servant with the respondents. During the course of arguments a specific query was put to the counsel for the applicant to show any document which may prove that the applicant had been paid wages by the department but the applicant was unable to show if at any point of time after 30.3.92 the wages had been paid to the applicant from Government account. Though the applicant had placed on record various documents such as certificates obtained from various officers that the applicant had been working in the office and insisted upon that these certificates do show that the applicant had been employed by the respondents itself and not by the contractor and he was not working in the office of the respondents through contractor. But to my mind this contention of the counsel for the applicant has no merit, since the respondents by placing additional affidavits on record have explained how and in what circumstances these documents have been issued by the various officers. One of such affidavit is by Sh. H.R.Khanduja who is Station Engineer who withdrew the Annexure R-2 submitted by the respondents and had submitted that this certificate was issued by him on misleading facts brought to his knowledge by the applicant. Then there is another document filed by the applicant regarding requisition of cars and person who had signed the requisition had also filed his affidavit that how the applicant himself had insisted that his name should be included in the requisition for the cars and he also says in his affidavit that he did not know the applicant was the employee of the contractor and not of the department. Similarly there is another affidavit of one Gambir Singh, LDC, who had also signed the requisition slips for requisition of

K

(6)

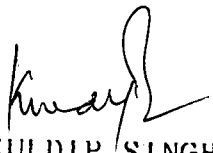
cars and he also stated that how the applicant's name was included without his knowledge that the applicant was an employee of a contractor. All the three deponents deny about the correctness of the contents of those documents which have been filed by the applicant alongwith the rejoinder to show that the applicant was a employee of the respondent department.

10. As already observed by me that the only significant thing was to see that the applicant was employed with the respondent is to see as to who was making payment of wages to the applicant. The applicant could not establish on record that during the period of April 1992 and thereafter though he had been working with the respondents with some intermittant breaks, the wages for the said period was paid by the respondents. On the contrary the respondents have placed on record the affidavit of the contractor also who stated that he had terminated the services of the applicant. I may also mention that the respondents have also admitted in the counter affidavit that at the initial stage when the applicant was engaged upto 30.3.92 he was engaged by the department. Had the applicant worked for a subsequent period and the wages had been paid by the respondent department probably the respondent could not have denied his further engagement by the department. It appears that in the year 1992 itself the respondent department has changed over the system for engaging the labour through contractor and in that context some of the documents filed alongwith the rejoinder by the applicant might have been issued by the various employees though those documents do support that the applicant had been working in the office from time to time but the authors of those documents have explained in their affidavits that how

km

bonafidely they have issued those documents. But that does not show at all that the applicant had been engaged by the department and had been paid wages for that period after 30.3.92 by the department.

11. In these circumstances, I am of the considered opinion that from 1.4.92 the applicant had never been engaged by the department. He was an employee of the contractor. So this Court has no jurisdiction to give any directions to the respondents to re-engage the applicant or to confer temporary status on him. The OA also appears to be time barred since the applicant has come to the Court in September, 2000 whereas he had not been re-engaged by the department after March, 1992. I find that the OA has no merits and does not call for any interference. No costs.

  
( KULDIP SINGH )  
Member (J)

'sd'