CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2452/2000

New Delhi, this the 19th day of October, 2001

HON'BLE MR. S.A.T. RIZVI, MEMBER (J)

Shri Amit Kumar
S/o Shri Jai Kumar Singh,
R/o 7/A, Gali No.31, Rajapuri,
Uttam Nagar, New Delhi:31
Formerly worked under Res.3

.... Applicant

(By Advocate : Shri T.C. Aggarwal)

Versus

Union of India, through

1. The Secretary,
Ministry of Information & Broadcasting,
Shastri Bhavan, New Delhi-1

2. Dy. Director General (Administration)
Doordarshan, Doordarshan House,
Mandi House, New Delhi

3. Head of News,
Doordarshan News, Asiad Village,
CPC Complex, Khel Gaon,
New Delhi - 110 049

.... Respondents

(By Advocate : Shri R.N. Singh)

ORDER

The applicant engaged to work as a Computor Operator under respondent No.3 w.e.f. 30th December, 1999, proceeded on leave on 27th October, 2000 and remained on leave till 11.11.2000. On return from leave he was verbally told that his services were no longer required. A fresher, namely, Shri V.S. Modi had been engaged in place of the applicant in the meanwhile. Aggrieved by the termination of his service as above, the applicant has filed the present OA impugning, inter alia, the respondent's letter to M/s. Sybex Computor Systems Pvt. Limited dated 14.8.2000 (Annexure A-1) by which a decision has been conveyed to M/s Sybex that the number of days of employment of

casually booked persons should be restricted to 85 days in a calender year. The applicant also contends that the work of Computor Operator being of a perennial nature and the post itself belonging to Group 'C', Computor Operators cannot be engaged through contractors. The prayer made is for a direction to the respondents to reinstate the applicant from 11th November, 2000 with all consequential benefits. The further prayer made is for a direction to the respondents to pay to the applicant the salary attached to the post of Computor Operator from the date of his initial appointment in accordance with the recommendations of the 5th Central Pay Commission.

2. I have heard the learned counsel on either side and have perused the material placed on record and find that the fact that the applicant was engaged through a Contractor, namely, M/s. Sybex is not in dispute. The same is evident from Annexure A-1 colly. which includes besides the aforementioned letter of 14..8.2000, a letter from the same Contractor to Sr. A.O. (Admn), Doordarshan News and the Temporary pass No. 2277 issued to the applicant. The aforesaid letter from the contractor clearly shows that the services of the applicant were made available by the contractor for job work of Data Entry. The aforesaid Temporary Pass also shows that the applicant was a representative of the same contractor. There is then an application for leave dated 23.10.2000 (Annexure A-2) addressed to the Deputy Director Admn., Doordarshan News, by which a request has been made for

the grant of 15 days leave from 27th October, 2000. The learned counsel appearing on behalf of the applicant has sought to make capital out of the aforesaid leave application by contending that the same clearly showed that the applicant worked directly under the respondent-authority and that a master-servant relationship existed between the two. I do not agree as the fact that the applicant worked for the aforesaid contractor is borne out not only by the contents of Annexure A-1 colly. but also by the aforesaid leave application in which the applicant has described himself as representative of Sybex Computer Systems. Thus, there is no force in the plea advanced by the learned counsel that the applicant worked directly under the respondent-authority and the relationship of master and servant existed between the two. The fresher, namely, Shri V.S. Modi has been engaged, I find, by the same contractor and not by the respondent-authority.

3. The learned counsel appearing on behalf of the applicant has next proceeded to advance the plea that the job of a Computor Operator is of a perennial nature and, therefore, in terms of the well known judgement rendered by the Supreme Court in the past, the veil must be lifted to discover the actual relationship between the applicant and the principal employer, namely, the respondent No.3. In relation to the aforesaid plea, the learned counsel appearing on behalf of the respondent has relied on the judgement rendered by the Delhi High Court in ICM Engineering

Workers Union v. Union of India decided on 29.9.2000 and reproduced in 2001 (1) SCT p.1043. This is what the Delhi High Court has held in the aforesaid case.

> "If the contract labour feel that the employment of labour through contract is a camouflage and a smoke screen and that the work is of perennial nature, it is a question of fact to be established by evidence, the appropriate remedy for them is to raise a dispute under the Industrial Disputes Act by seeking a reference to Labour Court/Tribunal which is the competent fora to adjudicate such dispute".

4. On the basis of the aforesaid observation, the learned counsel for the respondents has contended that this Tribunal will have no jurisdiction in the matter. He has also in the same context relied on the decision rendered by the Supreme Court in Steel Authority of India Ltd vs. National Union Water Front Workers decided on 30.8.2001 and reproduced in 2001 SOL Case No. 517. In the said case the Supreme Court went to the extent of holding that even in those cases in which a notification under Section 10(1) of the Contract Labour (Regulation & Abolition) Act, 1970 (for short CLRA Act, 1970) has been issued prohibiting engagement of contract labour (in jobs of perennial nature) the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment. The related observation made by the Supreme Court runs thus.

> "Neither Section 10 of the CLRA Act nor any other provision in the Act whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under sub-section (1) of Section 10, prohibiting employment

> of contract labour, in any process, operation or other work in any establishment consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment."

5. From what the Supreme Court has held in Steel Authority of India's case (supra), it is clear that even where, after lifting the veil, it is found that the contractor has been a mere name lender and that in point of fact the relationship of master-servant actually existed between the contract labour and the principal employer, it would not be in order to direct the principal employer to absorb the contract labour in his establishment. This is what the applicant in the present OA seeks to achieve by way of relief No. 8 (b), which is as follows.

> "That respondents may be directed to pay applicant salary of the post of Computor Operator from the date of his initial appointment as recommended by the 5th Pay Commission and universally being followed in all offices/departments."

By seeking a direction to the respondents as above, clearly the applicant wishes to be absorbed in the establishment of the principal employer on the post of Computor Operator. I am prevented from issuing such a direction in view of the Supreme Court's judgement just referred to.

6. The other material relief sought by the applicant is by way of a direction to the respondents to reinstate the applicant from 11.11.2000 with all consequential benefits. I am prevented from issuing

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such a direction either for the simple reason that the applicant was hired through a contractor and the relationship of master and servant never existed between him and the principal employer (respondent No.3). For such a relationship to exist, the applicant has relied exclusively on the leave application submitted by the applicant on 23rd October, 2000 (Annexure A-2), by raising the contention that the aforesaid leave having been sanctioned by the principal employer, the master and servant relationship must necessarily be inferred therefrom. No other evidence has been produced in support of the aforesaid claim of subsistence of master-servant relationship. The contention that the said leave application was sanctioned by the principal employer has been disputed by the learned counsel for the respondents, who has submitted that since the applicant, even though a contract labour, was working in the establishment of the principal employer, it was natural for him to submit the leave application to the principal employer. The same cannot assist the learned counsel for applicant in drawing the inference of master-servant relationship. Moreover, as already stated above, in the aforesaid leave application, the applicant has himself admitted that he was working in Doordarshan News as a representative of the Labour Contractor. In this view of the matter, the aforesaid relief sought by the applicant also cannot be given.

7. For the reasons mentioned in the preceding paragraphs, the OA is found to be devoid of merit. The same is accordingly dismissed. There shall be no order as to costs.

(S.A.T. RIZVI)
MEMBER (A)

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