

Central Administrative Tribunal
Principal Bench

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CP 217/2000,
MA 1097/2000,
and
OA 593/2000

New Delhi this the 20 th day of October, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri V.K. Majotra, Member(A).

CP 217/2000

1. Suneel Kumar,
S/o Shri Yamuna Prasad Tiwari,
C/o S.B. Chaubey,
R/o F-64, C/16, House No. 376,
Sector 40,
Noida-201303.
2. Pankaj Kumar Pandey,
C/o Parsoti Namberdar,
Chilla Saroda, Mayur Vihar,
New Delhi-110091.
3. Dilip Kumar,
S/o Shri S.B. Chaubey,
R/o F-64, C/16, House No. 376,
Sector 40,
Noida-201303.
4. Suresh Vir,
S/o Shri Rumal Singh,
Villi-Phuldehara,
PO - Simbhaoli,
Dist. Ghaziabad U.P.
5. Vinay Kumar,
S/o Shri Chandeshwar Prasad Chaudhry,
House No. Z/319A,
Sector 12,
Noida.
6. Shiv Prakash,
S/o late Shri Salik Ram,
J-79/B-1, Pandey Nagar,
Patparganj Road,
New Delhi-110092.
7. Krishna Kumar (Raju),
S/o Shri Jagvir Singh,
House No. 11M, Kondli Gharoli,
Complex Phase II,
Pocket 4, Mayur Vihar Phase III,
New Delhi.
8. Niraj Kumar,
S/o Shri Ansuya Prasad,
B-107, Dilshad Colony,
Opp. Corporation Bank,
Delhi-110095.

9. Amrendra Kumar,
S/o late Lala Hemant Kumar,
1/4649-8B, Gali No. 10,
Budh Bazar Marg,
New Modern Shahdara,
Delhi-110032.
10. Vikesh Kumar Badola,
S/o Shiv Prasad Badola,
House No. J-185,
Sector No. 22,
Noida.
11. Nadeem Kaifi,
S/o Shri Ashfaque Hussain,
R/o C-6/25, Sector 31,
Noida.
12. Jayshanker,
S/o Shri Maheshwar Prasad Singh,
R/o 395, LIG-Ist, Shakti Khand,
Indirapuram, Ghaziabad.
13. Naresh Kumar,
C/o Shri Surender Kumar,
E-266, Sector 15,
Noida.
14. Alok Srivastava,
S/o Sri Arun Kumar Srivastava,
R/o F 7/8 IIInd Floor,
Janta Garden, Pandav Nagar,
(Behind Police Appt.),
New Delhi-92. Applicants.

(By Advocate Mrs. Rani Chhabra)

Versus

1. Mr. Ashok Kumar,
The Chief General Manager (West),
Telecom Department,
Dehradun.
2. Mr. Manjit Singh,
General Manager (Telecom),
Telecom Exchange Building,
Sector 19,
Noida.
3. Mr. Rajeev Kumar,
Director Finance & Accounts,
office of the General Manager (Telecom),
Noida.
4. Mr. Sunder Singh Yadav
DGM (East),
Noida. Respondents.

(By Advocate Shri K.R. Sachdeva)

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O.A. 593/2000

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S/o Shri Yamuna Prasad Tiwari,
C/o S.B. Chaubey,
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12. Jayshanker,
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E-266, Sector 15,
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S/o Sri Arun Kumar Srivastava,
R/o F 7/8 IInd Floor,
Janta Garden, Pandav Nagar,
(Behind Police Appt.),
New Delhi-92.

... Applicants.

(By Advocate Mrs. Rani Chhabra)

Versus

1. Union of India,
Ministry of Telecommunications,
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. Director Finance & Accounts,
office of the General Manager (Telecom),
Noida.
5. DGM (East),
Noida.

... Respondents.

(By Advocate Shri K.R. Sachdeva)

O R D E R

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

This application has been filed by 14 applicants who were stated to be working as Data Entry Operators against what they have submitted are illegal actions taken by the respondents in failing to regularise them as Class III employees.

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2. The O.A. was filed on 7.3.2000 and notice was issued to the respondents to file reply within four weeks by Tribunal's order dated 17.4.2000. In that order, it was also stated that the applicants had apprehended that they are likely to face disengagement and in the circumstances, the respondents were directed to disengage the applicants only with the permission of the Bench. Before the next date of hearing, the applicants filed MA 1097/2000 praying for a direction to restrain the respondents from engaging new persons. In this MA, they have stated that when notice was served on the respondents, they have orally disengaged applicant 7 on 2.5.2000 and all the other applicants, that is applicants 1 to 6 and 9 to 14 w.e.f. 9.5.2000 without assigning any reasons and without taking permission of the Tribunal. Mrs. Rani Chhabra, learned counsel has very vehemently submitted that in the circumstances of the case, the respondents have clearly violated the Tribunal's ex-parte order dated 17.4.2000 and she has filed CP 217 of 2000 praying for initiation of contempt proceedings against the respondents and to punish them for committing Contempt of Court under the provisions of the Contempt of Courts Act.

3. The respondents have filed replies to the application and contempt petition.

4. The main contention of the respondents is that the applicants are not employees of the Department and are, therefore, not amenable to the jurisdiction of the Tribunal and hence, the O.A. is not maintainable here. Accordingly,

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they have submitted that they have also not committed any contempt of the Tribunal's orders and have prayed that the O.A., MA and CP may be dismissed.

5. We have heard the learned counsel for the parties and perused the records.

6. The applicants have stated in paragraph 4.3 of the O.A. that they were initially engaged through contractor in 1997 under the respondents. After their engagement, they have been continuously working with the respondents regularly. The respondents in their reply have submitted that the applicants are not Central Government servants and as such the Tribunal does not have jurisdiction in the matter. Shri K.R. Sachdeva, learned counsel has also submitted that applicant No. 1, Shri Suneel Kumar and applicant No. 3, Shri Dilip Kumar are contractors and are having partnership firm, namely, M/s S.D. Computers Service at Noida and had been awarded job work for data entry in the Computer by the Department in October, 1999. He has drawn our attention to the bills submitted by M/s S.D. Computer Services which has been signed by applicant No. 3. He has also referred to the annexures filed by the applicants in which they have signed as witnesses in respect of certain payments. Learned counsel for the respondents has submitted that these documents relied upon by the applicants would, therefore, not assist them as some of the applicants have merely signed them as witnesses.

7. Mrs. Rani Chhabra, learned counsel in reply has contended that although the applicants have been continuously working with the respondents in the Department, they have

illegally and arbitrarily obtained the signatures of the applicants on ACG 17 form. She has also further contended that the Department has forced some of the applicants to form a Partnership Firm called M/s S.D. Computers which is, therefore, a fraud committed by the respondents/department against the poor employees who have no other option but to do so, just to show that they were only doing contract jobs. These submissions of the applicants are neither proved nor justified in view of the documents placed on record and seem to have been made in order to mislead the court.

8. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

9. In the application, applicant No. 1, Shri Sunil Kumar has signed in the Annexure-I document as a witness in respect of certain payments made to one Shri Sushil Kumar. Similarly, applicant No. 2, Shri Pankaj Kumar has signed as a witness on a similar document (Page 22 and 23 of the paper book). The respondents have also annexed copies of documents from one M/s S.D. Computers Service dated 1.10.1999 in which Shri Sunil Kumar has signed on their behalf. In this document, tenders for processing and other billing work in GMT Noida have also been referred to which terms M/s S.D. Computers Service have been agreed to. In the facts and circumstances of the case, we find that some of the applicants are working with the respondents on behalf of M/s S.D. Computers Ltd. and, therefore, they are not Government servants. These averments have not been in any way successfully refuted by the applicants and we are not persuaded by the submissions made by Mrs. Rani Chhabra, learned counsel that the applicants have continuously worked for more than two years in the Department and the departmental officials were committing fraud on the system by paying them on ACG-17 form. We are also not persuaded by the

arguments of the learned counsel for the applicants that the respondents have forced the applicants to form a Partnership Firm and so on. From the documents on record which have been referred to during the course of arguments also, it is seen that some of the applicants, for example, 1 and 3 have signed for M/s S.D. Computers Service. In the circumstances of the case, we agree with the submissions made by the learned counsel for the respondents that as the applicants are not Central Government servants, the O.A. is not maintainable in the Tribunal.

10. In **Amit Yadav & Ors. Vs. Delhi Vidyut Board through its Chairman** (2000 (2) AISLJ 412), relied upon by the respondents, the claim of the petitioners who are appointed on ad hoc and contractual basis for regularisation, was rejected.

11. In the facts and circumstances of the case, since at least some of the applicants had entered into contract of service with the respondents through a Partnership Firm, and are, therefore, not Government servants, the O.A. is not maintainable in the Tribunal under the provisions of Sections 14 and 19 of the Administrative Tribunals Act, 1985. Accordingly, M.A. 1097/2000 is also not maintainable and rejected. In the facts and circumstances of the case, we consider it appropriate to dismiss the O.A. awarding costs of Rs. 1000/- against each of the applicants and in favour of the respondents. We order accordingly.

12. In view of the above, CP 217/2000 filed by the applicants in OA 593/2000 is also dismissed. Notices issued to respondents are also discharged.

V.K. Majotra
(V.K. Majotra)
Member (A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)