

FORM NO. 2
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Report on the Scrutiny of Application

SB/DB

83

Presented by: S.C. Luthra and others Diary No. 916
Date of Presentation: 15/5/2011
Applicant(s): Mathesh Kumar and others
Respondent(s): Ministry of Justice Case of vibor
Nature of grievance: Registration
No. of Applicants: 3 No. of Respondents: 4

CLASSIFICATION

Subject: Civil (No. 8) Department: UD (No. 7) * If S.B.

1. Is the application is in the proper form? (PROFORMA/COMPILEDATION) Yes

2. Whether name, description and address of all the parties been furnished in the cause title? Yes

3. (a) Had the application been duly signed and verified? (SIGNED/VERIFIED) Yes
(b) Have the copies been duly signed? Yes
(c) Have sufficient number of copies of the application been filed? Yes

4. Whether all the necessary parties are impleaded? Yes

5. Whether English translation of documents in a language other than English or Hindi been filed? Yes

6. (a) Is the application in time? (See Section 21) Yes
(b) Is MA for condonation of delay filed? MA

7. Has the Vakalatnama/Memo of appearance/00 authorisation been filed? Yes

8. Is the application maintainable? (u/s 2,14,18 or U/R 6 etc.) u/s 2, u/s 14, u/s 18

U/R 6, PT u/s, 25 file

9. Is the application accompanied by IPO/DD for Rs.50/-? Yes No

10. Has the impugned orders original/duly attested legible copy been filed? LEGIBLE/ATTESTED

11. Have legible copies of the annexure duly attested been filed? LEGIBLE/ATTESTED

PT 106/2020

MA 1160/2020

FILED/PAGINATION

12. Has the index of documents been filed and pagination done properly?

13. Has the applicant exhausted all available remedies? *Yes*

14. Have the declaration as required by item 7 of Form-I been made? *Yes*

15. Have required number of envelops (file size) bearing full address of the respondents been filed? *Yes*

16. (a) Whether the reliefs sought for, arise out of single cause of action? *Yes*

(b) Whether any interim relief is prayed for? *Yes*

17. In case an MA for condonation of delay is filed, is it supported by an affidavit of applicant? *Yes*

18. Whether this case can be heard by Single Bench? *Yes*

19. Any other point?

20. Result of the scrutiny with initial of the Scrutiny Clerk.

The application is in order and may be registered and listed before the Court for admission/orders on ;

(a) MA for joining - U/R '5)(a)/4(5)(b)

(b) MA U/R 6 of CAT Procedure Rules, 1987

(c) PT u/s 25 under At ACT

(d) MA for condonation of Delay;

(E) MA for interim

OR

See 15/5

The application has not been found in order in respect at item No(s) mentioned below;

- (a) Item Nos.
- (b) Application is not on prescribed size of paper.
- (c) MA U/R 4(5)(a)/4(5)(b) has not been filed.
- (d) Application/counsel has not signed each page of the application/documents.
- (e) MA U/R 6 has not been filed.

The application might be returned to the applicant for rectification of the defects within 7 days.

SCRUTINY CLERK

SECTION OFFICER

JOINT REGISTRAR

COURT NO. *15/5* DATE *15/5/2020*

Delivery of application heard from Court

No. II, send the file to this Court

C.O. to be informed when of

Before the orders of or it is

to be passed for 16/5

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

PT 166/2000

O.A. NO. 903 OF 2000

MA 11607/2000

In the matter of -

MA 1163/2000

Shri Mahesh Kumar & Ors vs Union of India & Ors

I N D E X

S. No.	Particulars	Page(s)
1.	M.A. for joining together as	A
2.	M.A. under Rule 6 of the C.A.T. (Procedure) Rules, 1987	B
3.	M.A. under Section 25 of AT Act.	C
4.	M.A. for Interim Relief in the absence of permission being granted u/s 25 of A.T. Act.	D
5.	Original Application	1-9
6.	Anx. A-1 : Copy of DD dt. 30.4.97	10
7.	Anx. A-2 : Copy of letter dt. 18.1.96	11-12
8.	Anx. A-3 : Details of work performed by the applicants	13
9.	Anx. A-4 : Sample copy of work order	14
10.	Anx. A-5 : Copy of judgement dt. 23.7.99	15-23 ✓
11.	Anx. A-6 : Copy of scheme dt. 10.9.1993	24-25
12.	Anx. A-7 : copy of judgment in OA 256/98	26-30
13.	Anx. A-8 : copy of representation dt. 15.10.98	31
14.	Anx. A-9 : Copy of judgment in OA 2070/2071 of 1999	32-37
15.	Vakalathana	

15.5.2000 ग्रामपालिका/CAT (PB)
बाज दाविल किया

Filed T.O.

6 15 MAY 2000 416
दाविल नं/Filing No...
उपरजिस्ट्रार/Dy. Registrar

S. C. LUTHRA & O. P. KHOKHA
Advocates for the Applicants
271 (F) East of Kasturba
New Delhi - 110 065.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

1183
M.A. NO. OF 2000

in

903
O.A. NO. OF 2000

In the matter of -

Shri Mahesh Kumar & Ors. ... Applicants

vs

Union of India & Ors. ... Respondents

M.A. FOR JOINING TOGETHER

MOST RESPECTFULLY SHONETH

1. That there are 3 applicants named S/Shri Mahesh Kumar, Rajender Singh, and Chaman Lal in the accompanying OA who have common cause of action and on the basis of common pleadings they have sought for identical relief.
2. That the respondents in the said OA are also common.

P R A Y E R

In view of the submissions made herein above it is MOST RESPECTFULLY prayed that the applicants may kindly be allowed to file a common application by allowing them to join together.

DK
(O.P. KHOKHA) ADVOCATE
COUNSEL FOR THE APPLICANTS

VERIFICATION

I, O.P. KHOKHA, Advocate, do hereby verify that the contents stated above are true to my knowledge and nothing material has been suppressed.

VERIFIED at New Delhi on this 15th day of May, 2000.

DK
(O.P. KHOKHA) ADVOCATE
COUNSEL FOR THE APPLICANTS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

M.A. NO. 1160 OF 2000

Q.A. NO. OF 2000

In the matter of -

Shri Mahesh Kumar & Ors ... Applicants

Vs

Union of India & Ors ... Respondents

MISC. APPLICATION UNDER RULE 6 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL (PROCEDURE) RULES, 1987

1. That the applicants have been working at Manesar, Distt. Gurgaon, which is very near to Delhi than Chandigarh where the normal jurisdiction would for filing the OA.
2. That the applicants are casual employees and belong to weaker section of the society.
3. That it is convenient for them to file the OA in Delhi.
4. That they had also filed previous OA in Delhi which was decided on 13.5.2000.

PRAYER

In the facts and circumstances of the case, it is most respectfully prayed that the applicants may be allowed to file their OA at Principal Bench of the Tribunal.

OP
(O.P. KHOKHA) ADVOCATE
COUNSEL FOR THE APPLICANTS

VERIFICATION

I, O. P. Khokha, Advocate, do hereby verify that the contents stated above are true to my knowledge and nothing material has been suppressed.

VERIFIED at New Delhi on this 15th day of May, 2000.

OP
(O.P. KHOKHA) ADVOCATE
COUNSEL FOR THE APPLICANTS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH • NEW DELHI

P.T. NO. 106 OF 2000

in

O.A. NO. OF 2000

In the matter of -

Shri Mahesh Kumar & Ors ... Appellants
Vs

Union of India & Ors ... Respondents

P.T. UNDER SECTION 25 OF THE ADMINISTRATIVE TRIBUNAL ACT, 1988

1. That the applicants have been working at Manesar in Distt. Gurgaon which is nearer to Delhi than Chandigarh where ordinarily the OA could be filed.
2. That the applicants are casual workers and belong to a weaker section of the society.
3. That it is convenient for the applicants to pursue their case at Delhi.
4. That previously also they had filed their OA in Delhi which was decided on 12.5.2000.

PRAYER

In view of the facts and circumstances of the case it is most respectfully prayed that this OA may kindly be retained at Principal Bench, New Delhi, for adjudication.

OP
(O.P. KHOKHA) ADVOCATE
COUNSEL FOR THE APPLICANTS

VERIFICATION

1. O. P. Khokha, Advocate, do hereby verify that the contents stated above are true to my knowledge and nothing material has been suppressed.

VERIFIED at New Delhi on this 15th day of May, 2000.

OP
(O.P. KHOKHA) ADVOCATE
COUNSEL FOR THE APPLICANTS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

M.A. NO. 1184 OF 2000

in

O.A. NO. 903 OF 2000

In the matter of -

Shri. Mahesh Kumar & Ors

... Applicants

Vs

Union of India & Ors

... Respondents

M.A. FOR INTERIM RELIEF

1. That the applicants have filed an application under Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987, read with Section 25 of the Administrative Tribunal Act, 1985.
2. That the Hon'ble Chairman is away on tour and as such the P.T. and M.A. cannot be decided.
3. That as the applicants are apprehensive of their disengagement, they are approaching this Tribunal for interim relief in anticipation of the Hon'ble Chairman's approval for retaining the case at New Delhi.

PRAYER

It is, most respectfully, prayed that this Hon'ble ~~the~~ Tribunal may kindly hear the applicants on interim relief pending the approval of the Hon'ble Chairman for retaining the OA at New Delhi.

O.P.
(O.P. KHOKHA) ADVOCATE
COUNSEL FOR THE APPLICANTS

VERIFICATION

I, O.P. Khokha, Advocate, do hereby verify that the contents stated above are true on my knowledge and nothing material has been suppressed.

VERIFIED at New Delhi on this 15th day of May, 2000.

O.P.
(O.P. KHOKHA) ADVOCATE
COUNSEL FOR THE APPLICANTS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI
O.A. NO. OF 2000

In the matter of -

Shri Mahesh Kumar & Ors vs Union of India & Ors

MEMO OF PARTIES

1. Shri Mahesh Kumar
s/o Shri Bharat Singh
r/o P-34, Old Palam Gaon
Sarojini Nagar
New Delhi - 110 023.
2. Shri Rajender Kumar
s/o Shri Mehtabi Singh
r/o A-8/609, Amar Colony,
Harijan Basti,
PPoorvi Gokal Puri,
Delhi - 110 094.
3. Shri Chaman Lal
s/o Shri Lekhi Ram
r/o Village Narangpur
Bistt. Gurgaon (Haryana).

... Applicants

vs

UNION OF INDIA through

1. The Secretary,
Ministry of Urban Development
Nirman Bhawan, New Delhi - 110 011.
2. The Director General of Works,
Central Public Works Department
Ministry of Urban Development
Nirman Bhawan,
New Delhi - 110 011.
3. The Chief Engineer (DD-2),
Sewa Bhawan (2nd Floor),
R.K. Puram,
New Delhi - 110 066.
4. The Superintendent Engineer
Central Public Works Department,
N.S.C. Project
Manesar
Dist. Gurgaon
Haryana.

... Respondents

OK

APPLICATION UNDER SECTION 19 OF THE
ADMINISTRATIVE TRIBUNAL ACT, 1985.

DETAILS OF APPLICATION

1. Particulars of the order against which the application is made

1.1 The applicants are aggrieved by the exclusion of the workers employed through labour contracts on work order basis from the ambit of regularisation scheme dated 10.9.1993 as detailed in DO letter No. 38/2/97-RC-X(Pt) dated 30.4.1997, a copy of which is filed and marked as Annexure A-1, issued by the Respondent No. 2 addressed to all the Chief Engineers of Central Public Works Department..

Anx.A-1

Anx.A-2

It may be stated here that the applicants were recommended for the grant of temporary status vide letter No. 18-2/Esstt./NSGP/95/56-58 dated 18.1.96 (Annexure A-2), issued by the Chief Engineer, N.S.G. Project, CPWD, New Delhi, but in the face of letter DO (Annexure A-1) issued by Respondent No. 2, they could not be regularised.

2. JURISDICTION OF THE TRIBUNAL

The applicants declare that the main relief is against the Director General of Works, i.e. Respondent No.2, and Annexure A-1 is also issued by him and as such it is within the jurisdiction of Principal Bench, New Delhi. These applicants had filed O.A. No. 2171/99. This OA was decided on 12.5.2000 wherein it was held that the Principal Bench had no jurisdiction as the applicants were working in NSG Project at Manesar, Distt. Gurgaon, Haryana. The applicants are, therefore, filing the OA afresh along with the application for retention of their OA at the Principal Bench, New Delhi.



3. LIMITATION

The applicants declare that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985, as the case of action for being considered for regularisation under 1993 scheme is a continuous one.

4. FACTS OF THE CASE

4.1 That the applicants in number are all working as casual employees on work order basis and that they were engaged as such in the National Security Guard Projects at Manesar in the State of Haryana. The details of these applicants showing the date of their continuous engagement and the work performed by them is at Annexure A-3.

4.2 That the applicants have been engaged on work contract basis. The contract is given from month to month on the basis of monthly wages. However, the payments are made to the applicants as per the actual working days at the rates stated for normal duty hours on the basis of 1/30th of the monthly rates quoted for the so called work contract basis. A sample copy of the work order issued to one of the applicants is filed and marked as Annexure A-4.

4.3 That the applicants are stated to be the contractors as well as executors. The work contract is for providing the services of Beldars/Sewermen/Driver/Plumbers. The drivers are, however, attached with the engineers who are looking after the maintenance of civil work (residential and non-residential buildings which have been completed). The other categories are for the maintenance of civil work to the completed buildings.

of ✓

ANX-A.3

ANX.A-4

4.4 That it will thus be seen that the so called contracts ~~for~~ have continued from the date of their engagement on month to month basis and the applicants have been working through out the year except on Sundays and Holidays for more than 240 days in a year.

4.5 That the applicants are engaged on work order basis by camouflaging the order by making it to appear as an individual contract in order to avoid the ban on engagement of daily rated employees for regular jobs. Engagement of casual labour through contractors is prohibited under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, and as such the action of the Respondents to engage and continue on individual contract basis cannot be justified on any count. The Central Administrative Tribunal in case of P.S. Sivadasa & anr. Vs. NEERI reported in 1994 (26) ATC 53 has condemned the practice of resorting to contract labour.

4.6 That though the Director General of Works Respondent No. 2 had imposed a ban on engagement of daily rated workers, yet the respondents continue to employ daily rated workers on muster roll/hand receipt/work-charged basis. It was also emphasised that all those who have not completed 240 days in two consecutive years may be disengaged. It may be stated that a number of original applications and writ petitions in the various Central Administrative Tribunals, High Courts, and Apex Court had been filed for regularisation of all those employees who have put in more than 240 days in one year for grant of temporary status and for regularisation as Group 'D' employees after working for two consecutive years and it is not clear why this category of workers were excluded from the exercise to be undertaken for regularisation of daily rate workers working on contract work order.

084

4.7 That on demand made by the Unions, the Director General Works, CPWD, circulated a DO letter dated 30.4.97 to all the Superintending Engineers wherein it was observed that in spite of the complete ban on engagement of workers on muster roll was imposed w.e.f. 19.11.85 workers are being engaged on muster roll/hand receipt/work order by different field units. In the same DO, the Director General of works, requested the lower formations to furnish the information in respect of these workers categorywise. He, however, excluded from the ambit of this DO to workers employed through labour contracts on work orderbasis.

4.8 That since this was an internal communication and the applicants were not in know of the same. However, certain casual labours employed on muster roll basis had approached the Tribunal in OA Nos. 78, 264, 1354 and 1443 of 1998 which were decided by a common order by the Principal Bench of the Tribunal on 23.7.99. The Tribunal after holding that the work order was a camouflage and that the applicants themselves were stated to be contractors as well as the executors directed the respondents to grant them temporary status and regularisation as per scheme dated 10.9.1993. A copy of the judgment is at Annexure A-5.

Annexure A-5
4.9 That Shri O.P. Khokha was one of the advocate for the applicants in those OAs and the present applicants after coming to know of the judgment dated 23.7.99 contacted Shri Khokha who filed the OA No. 3171/99. It was then that the applicants came to know that the DO, CPWD, had excluded casual workers through labour contracts on work order basis from the ambit of the scheme.

4.10 That the applicants have worked for more 240 days in each and every year. As already stated, ~~make~~ their case was recommended by Chief Engineer, NSG Project, CPWD, New Delhi, to the Director General of Works, CPWD, Nirman Bhawan, New Delhi, as back as 18.1.96. copy of the letter is marked and annexed as Annexure A-5. 062

4.11 That a group of workers working as Khalasies, Wiremen and Electricians filed an OA No. 256/98 titled Vijay Narain Mishra & Ors vs Union of India & Ors which came before the Principal Bench of this Hon'ble Tribunal for declaration that they are performing the work of perennial nature and that the respondents cannot resort to contract labour practice and that accordingly the respondents should absorb them and on permanent basis by granting them temporary status and thereafter regularise them with all consequential benefits. The Tribunal after examining the case rules that the applicants are entitled to be considered for the engagement and for regularisation in accordance with the scheme dated 10.9.93. ^(Ann A6) A copy of the judgement is marked and annexed as Annexure A-7.

Ann A6

Anx.A-7.

Anx.A-8.

4.12 That the applicants made representations addressed to Respondent No. 3. Copies of the said representation is marked and annexed as Annexure A-8.

4.13 That as there was no response from the respondents the applicants were compelled to file OA No. 3171 in the Principal Bench of the Hon'ble Tribunal.

4.14 That as already stated this OA was decided by the Principal Bench on 12.5.99 and copy of the judgment is marked and annexed as Annexure A-9.

5. GROUND

5.1 Because the applicants have put in in more 240 days in two consecutive years and hence they are entitled to regularization including grant of temporary status in terms of the scheme dated 10.9.1993.

5.2 Because the applicants are fortified in their submission by various judgments of Apex Court and different benches of the Central Administrative Tribunal which are stated below :

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(i) OA No. 783/89 (Satya Prakash Sharma & Ors vs Union of India & Ors) decided by the Allahabad Bench of the Tribunal in which it was held that no distinction should be made between the casual workers on muster roll and those not paid on muster roll. The Allahabad Bench relied upon the case of daily rated labourers of P & T Department of Union of India (AIR 1988 (1) SCC 122).

(ii) The Secretary, Haryana State Electricity Board vs Suresh and Ors (JT 1999 (2) SC 435).

(iii) Shri R. K. Panda Vs Steel Authority of India (1988 (5) SCC 304).

(iv) Air India Statutory Corporation Vs United Labour Union (1987 SCC (L&S) P. 1344E).

(v) Union of India & Ors Vs Savir Mukherjee & Ors (JT 1998 (3) SC 540).

(vi) Surender Singh's case (1986 (1) SCC 136).

5.3 Because the work performed by the applicants is of perennial nature.

5.4 Because Section 10 of the Contract Labour (Abolition and regulation) Act 1970 prohibits engagement of workers on contract basis and such applicants are liable to be considered in terms of the scheme dated 10.9.1993.

6. DETAILS OF REMEDIES EXHAUSTED

The applicants declare that they have exhausted all the remedies available to them under the relevant service rules.

7. CERTIFICATE OF FILING/NON-FILING

The applicants further declare that they had previously filed OA No. 2071 of 1999 and which OA has been decided on 12.5.2000. As the Tribunal has held that the Principal Bench have no jurisdiction, a fresh OA is being

DR

filed along with petition for transfer under Section 25.

8. RELIEF/RELIEFS SOUGHT FOR

8.1 To hold and declare that the exclusion of daily rated workers employed through contract on work order basis is illegal and unjust being arbitrary and discriminatory and to direct the respondents to delete the words "details of workers employed through labour contracts on work order is not required to be furnished" in Annexure A.1. Further, the category of workers employed on contract and work basis should be brought within the purview of Annexure A-1 by including this category along with other categories.

8.2 To direct the respondents to regularise the applicants in Group 'D' post after granting them temporary status in terms of scheme dated 10.9.1993.

8.3 To further direct the respondents that after the appointment of the applicants as Group 'D' employees they may be considered for appointment as Beldar on regular basis as the applicants have worked for more than 240 days in each and every year by giving them age relaxation weightage of experience and ~~recognizance~~ benefits.

8.4 To grant any other relief/reliefs which this Hon'ble Tribunal may deem just fit in the facts and circumstances of the case.

9. INTERIM ORDER, IF ANY, PRAYED FOR

To direct the respondents to maintain the status-quo and not to disengage the applicants.

10. Not applicable.



11. PARTICULARS OF COURT FEE

Postal Order No. 29087026 dated 15.5.2000
 issued from East Coast Post Office.

12. LIST OF ENCLOSURES

As per index on front page.

MaheSh K
 (MAHESH KUMAR)
 Applicant No. 1

215) 34912
 (RAJENDER KUMAR)
 Applicant No. 2

215-1 CM/1
 (CHAMAN LAL)
 Applicant No. 3

VERIFICATION

We, the above named applicants, do hereby verify
 the contents of the above OA which are true on our knowledge
 and that nothing has been concealed therein.

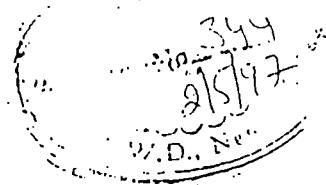
Verified at New Delhi on this 15th day of May, 2000.

MaheSh K
 (APPLICANT NO. 1)

215) 34912
 (APPLICANT NO. 2)
 (APPLICANT NO. 3)



P.B. VIJAY



अ०स०प० सच्चाय/D.O. No. 38/2/87-EC.X (P.T.) 10

निर्माण महानिदेशाल

DIRECTOR GENERAL OF WORKS

केन्द्रीय सोक निर्माण विभाग

CENTRAL PUBLIC WORKS DEPARTMENT

निर्माण भवन

NIRMAN BHAWAN

नई दिल्ली-110011

April 25, 1997

Now Delhi-110011 the

3 U APP 1947

Dear Shri

Even though a complete ban on engagement of workers on muster-roll was imposed w.e.f. 19.11.85 and the same has been reiterated in various circulars from time to time, it has come to the notice of this Directorate that workers have been engaged on muster-roll/hand receipt/work order basis by different field units which has resulted in number of litigations both in CAT and Labour Courts seeking regularisation of such workers. Information in this regard was called for by this Directorate's O.M. No. 34/17/93-EC.X dated 18.8.1993 (copy enclosed for ready reference), which has not been received from all the field units.

In the meantime, all the Unions have raised a demand for regularisation of such workers who were appointed on muster-roll/hand receipt/work order basis and who have completed 240 days of service in two consecutive years. In order to make an assessment of such workers, you are requested to furnish the information in respect of these workers category-wise as per the attached proforma. Details of workers employed through labour contracts on work order is not required to be furnished.

I shall request you to pay personal attention to this aspect and ensure that the requisite information is submitted to this Directorate latest by 15.5.1997.

With regards,

Yours sincerely,

Encl : As above.

(P.B. VIJAY)

F B + to go

today

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6/5

CTC

AN

OFFICE OF THE CHIEF ENGINEER, NSG PROJECT, CPWD, NEW DELHI

F.No. 18-2/Estt./NSGP/95/56-58

Dated 18-01-96

Shri M.L. Gupta,
Dy. Director of Administration-II
Directorate General of Works, CPWD
Nirman Bhavan, NEW DELHI-110 011

A-2
27
11

Sub: Grant of Temporary Status to casual workers
working under NSGP at Monesar

Ref: This office letter No. 18(2)/Estt./NSGP/95/14
dated 11-1-1996

In continuation of this office letter dated
11-1-1996 mentioned above on the above subject,
enclosed please find herewith a list of additional
workers who have been engaged on work order
in the above mentioned project for grant of temporary
status in implementation of the rules.

This issues with the approval of the Chief
Engineer, NSGP

List enclosed

sd/- D. Hore
Superintending Engineer (JO)

CTC

✓
AW

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LIST OF WORKERS ENGAGED ON WORK ORDER AT NSGP AT MANESAR
FOR GRANT OF TEMPORARY STATUS

S.No.	Name & Father's name	Designation	Date of appointment
1.	Shri Balbir Singh son of Shri Gopi Singh		1-1-91
① ✓ 2.	Shri Rajender Singh son of Shri Mohanta Singh	Beldar	3-3-92
② ✓ 3.	Shri Chaman Lal son of Shri Lakkshi Ram	Beldar	3-4-91
4.	Shri Tribhubhan son of Shri Kameshwar Narain Chand	Pumber	3-9-90
5.	Shri Amar Nath son of Shri Imrat	Sewerman	10-11-89
6.	Shri Dharam Pal son of Shri Jai Narain	Driver	22-11-92
7.	Shri Babu Ram son of Shri Hari Ram	Driver	5-4-90
③ ✓ 8.	Shri Mahesh Kumar son of Shri Bharat Singh	Beldar	3-4-91
9.	Shri Bhim Singh son of Shri Prabhati Lal	M.L.Driver	30-3-90

sd/- D. Hore
 Supdtg. Engineer (HQ)
 NSGP CPWD

CTC
 ✓
 AW

Jan - 89-92

Ann A3

LIST OF WORKERS ENGAGED ON WORK ORDER AT NSGP
AT MANESAR FOR GRANT OF TEMPORARY STATUS

13

<u>S.No.</u>	<u>Name</u>	<u>Designation</u>	<u>Date of appointment</u>
1.	Shri Mahesh Kr	Beldar	03.04.91
2.	Shri Rajendar Singh	Beldar	03.03.92
3.	Shri Chaman Lal	Beldar	03.04.91

This annexure is based on the record
kept by the respondents


(O.P. KHOKHA) ADVOCATE

GOVERNMENT OF INDIA
PUBLIC WORKS DEPARTMENT
WORK ORDER

NSGP Divn-V

Division

I Sub-Division

Dated.. 20/9/99

State Haryana

Branch B & R.

No. 62(1) AE-S/NSGP/Divn-V/99/13

Order for work described below given to... Sh. Rajinder Kumar.. Contractor
to be executed as per conditions on the reverse and at the rates specified below :

Description of work	Qty.	Rate	Per	Remarks
Name of works - A/R & R/O. NSG Camp at Manesar dg. 99-2000.				
SH: Day to day maintenance of civil work.-				
1. Providing the services of a Belder for maintenance of civil work (Residential area) NSG Camp at Manesar U.O. 1-10-99 to 31-12-99				
3 Months	3685/-	Per Month	11,055.00	
Terms & conditions:-				
1. The payment shall be made as per actual working month at the rate stated above for normal working duty which is 9.00AM to 5.00 PM including of lunch of one hour.				
2. For duty performed beyond these hours i.e. 9.00 AM to 5.00 PM extra payment shall be made @ 34.33 per hour excluding one hour for lunch break for which nothing extra is admissible.				
3. The payment shall be purely on contract basis and is governed by the condition for work order. The Govt. does not carry any liability for his future engagement.				
4. The payment shall be made in CASH.				
				Sd/- Assistant Engineer-I, NSGP, Divn-V, CPWD, Manesar Surgeon.
Copy to:-				
1. The Executive Engineer, NSGP, Divn-V, CPWD, Manesar.				
2. The SE, A.O., NSGP, Circle, CPWD, Manesar.				
3. Sh. M.P. Jain J.E. NSGP, Divn-V, CPWD, Manesar.				

Assistant Engineer-I.

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. Nos 78,264, 1354 & 1443 of 1998

New Delhi, this the 23rd day of July, 1999

Hon'ble Mr. N. Sahu, Member (Admnv).

(1) Original Application No. 78 of 1998

1. Vijender Singh, s/o Shri Phool Singh, r/o House No. WZ 5- Village Dasgara, New Delhi-110012.
2. Shri Sunil Kumar s/o Harpal Singh, House No. 147, Ext. No. 2- C, Mangloji, Delhi.
3. Shri Hukam Singh s/o Shri Prem Singh, Manglapura Village, House No. E-58, Palam Colony, New Delhi-110045.
4. Shri Gulshan Sharma, s/o Shri Muni Lal Sharma, r/o N-71/B-99, Old Chandrawal, Majnu Ka Tilla, Delhi-84

-APPLICANTS

Versus

1. Union of India through the Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi.
2. Director General of Works, C.P.W.D., Nirman Bhawan, New Delhi-110001.
3. Chief Engineer, Govt. of N.C.T. of Delhi, Zone -II, MSO Building, New Delhi-110002.
4. Manager, Delhi College of Engineering Project, Bawana Road, Delhi-110042

-RESPONDENTS

(2) Original Application No. 264 of 1998

Laxman Prasad S/o Sh. Kent, R/o B-53, Khanpur Extension, New Delhi-110062

- APPLICANT

Versus

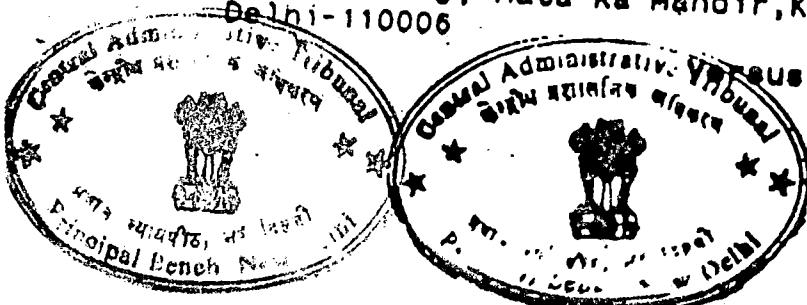
1. Union of India through the Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi.
2. Director General of Works, C.P.W.D., Nirman Bhawan, New Delhi-110001.
3. Chief Engineer, Govt. of N.C.T. of Delhi, Zone -II, MSO Building, New Delhi-110002.
4. Supdtg. Engineer Planning, Flyover Project, MSO Building, New Delhi, 110002

- RESPONDENTS

(3) Original Application No. 1354 of 1998

Shri Kishan Lal, son of late Shri Roshan Lal, resident of Jhuggi No.8, Bharat Sewak Samaj, Mata Ka Mandir, Khyber Pass, Delhi-110006

- APPLICANTS



(16)

1. Union of India through the Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi-110011.

2. Director General of (Works), Central Public Works Department, Ministry of Urban Development, Nirman Bhavan, New Delhi-110011

3. Chief Engineer, Govt. of N.C.T. of Delhi, Zone -II, MSO Building, I.P.Estate, New Delhi-110002.

4. The Executive Engineer, Division No. XIX, Govt. of NCT of Delhi, MSO Building, 8th Floor, I.P.Estate, New Delhi-110002

(4) original Application No. 1443 of 1990

Shri Ashok Kumar, son of Shri Kalyan Mal,
resident of 811, Prem Nagar, Kotla
Hubarak Pur, New Delhi. - APPLICANT
Versus

Verus

1. Union of India through the Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi-110011.
2. Director General (Works), Central Public Works Department, Ministry of Urban Development, Nirman Bhawan, New Delhi-110011.
3. Chief Engineer, New Delhi Zone, Central Public Works Department, Nirman Bhawan, New Delhi-110011.
4. The Executive Engineer, Safdarjang Hospital Division, Central Public Works Department, Safdarjang Hospital Campus, New Delhi

Presenti

Present: S/Shri O.P.Khokha & S.C.Luthra, learned counsel for the applicants in all the cases.

case. Shri Rajeev Bansal, Shri Vijay Pandita, Shri K.K. Patel, and Shri Surat Singh through proxy counsel Shri Vijay pandita, learned counsel for the respondents.

Common ORDER

By Mr. N. Sahu, Member (Admn)

Common grounds and identical facts are involved in all these four cases. They are disposed of together by a consolidated order.



2. The applicants in all these 4 OAs are aggrieved by their exclusion from the scheme as per DO letter no. 38/2/97 RC-X (Pt) dated 30.4.1997. This impugned letter reiterated the complete ban on engagement of workers on muster roll with effect from 19.11.1985. There was a demand by the Unions for their regularization if they had completed 240 days of service each year in two consecutive years. Information has been sought for about such workers.

3. I shall take the facts of Laxman Prasad in OA 264/98. He worked as a Daily Rated Mazdoor (in short 'DRM') under the "Superintending Engineer Planning Flyover Project, MSO Building, New Delhi, respondent no.4 since 21.1.1991. He performed the duties of a Driver and was paid at the rate of 1/30th of the minimum of the scale prescribed. It is claimed that his services are camouflaged by a contract to overcome the ban on engagement of DRMs. The applicant had worked for the following period - 1991 - 250 days; 1992 - 281 days; 1993 - 281 days, 1994 - 300 days; He also states that in each of the years 1995, 1996 and 1997 he had not worked for less than 280 days each year. The engagement through contract is said to be in violation of the Contract Labour (Regulation and Abolition) Act, 1970. A trade test was conducted on 7.5.1995 and he was declared successful by an order dated 31.7.1995. The question is to treat him on par with other regular employees. It is stated that the applicant is qualified and



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possesses heavy vehicle driving licence. He, therefore, claims that he should be considered for regularization.

4. The learned counsel for the applicant referred to the order dated 13.10.1983 which provided that those who were recruited before 21.2.1979 may be regularized on Group 'D' posts subject to the condition that they had put in 240 days in two consecutive years. The decision of the Supreme Court in the case of All India CPWD Employees Union Vs. Union of India, WP No. 15920/84 decided on 23.4.1987 was referred to in which the Apex Court directed the Central Government to take appropriate action to regularize all those who have been in continuous employment for more than six months. Finally, the Government of India, Department of Personnel & Training, Casual Labourers (Grant of Temporary Status and Regularisation) Scheme in OM No. 51016/2/90-Estt(C) dated 10.9.1993 was referred to. In the above facts a direction is sought for regularization of the applicant in a Group 'D' post after granting him temporary status in terms of Scheme dated 10.9.1993.

5. The respondents in their reply submitted that the applicant was engaged through a contract and is not on the rolls of the department as an employee. He was not engaged as a DRM. As he was hired by a contractor, this Court has no jurisdiction. He was only given a work order to carry out a certain task for a given length of time for a certain

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consideration after executing that contract. If necessary, another contract is considered for him. There is no master and servant relationship. The applicant is neither a regular employee nor a workman and, therefore, he cannot seek relief under the provisions of the Administrative Tribunals Act, 1985. Certain additional facts were given about negligence in driving and causing extensive damage to the Government vehicle. The contract was not renewed for some time but later on, on his representation, the ban of giving him work was lifted.

6. A perusal of the work order shows that it was a camouflage. The applicant himself was stated to be the Contractor as well as the executant. The name of the work is stated to be "operation of Government vehicle during the year 1998-99". The contract reads "Operation of Car/Jeep or any Medium Vehicle for site visit/ inspection etc. of concerned officer-in-charge New Delhi area as required single shift operation for 8 hours" at the rate of Rs.4487/- per month. Further ~~the~~ ^{terms stipulate} the rate of Rs.27/- per hour for additional hours of operation after normal working hours. In sum and substance instead of directly engaging a Driver on daily wage basis the respondents have camouflaged it as a contract. The vehicle belongs to the Government and the only thing that the applicant performs ^{is} his driving work. Even fuel is provided by the Government only. Year after year the same type of contract is signed for a period of three months and continued under the same terms. There is virtually no difference between a directly

engaged Driver and this sort of a contract. Obviously this contract is utilized to get over the ban on engaging casual workers directly for driving.

7. Shri Luthra submitted that such a practice contravenes Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. He has cited the decisions of BHEL Workers Association vs. Union of India (1985) 1 SCC 630 in which the Supreme Court held that a contract labour is entitled to the same wages, holidays, hours of work, and conditions of service as are applicable to workman directly employed by the principal employer on similar kinds of work. The decision of the Principal Bench was cited in the case of Bijay Narain Misa and others vs. Union of India and another, OA No. 256/98 decided on 28.1.98 in which the court had examined the fact that the applicants were engaged as Contractors for doing a specific job. This specific job was performed continuously for 4-5 years. It was found that the payments were made to the applicants on daily rate basis. This Court ruled that they are entitled to be considered for reengagement, for grant of temporary status and regularization in accordance with the scheme applicable to the casual workers in the CPWD. The learned counsel cited an order passed by me in the case of Baghvender Singh vs. Govt. of NCTD, O. A No. 654 of 1998 decided on 10.9.1998. In that case also the term of engagement was extended from time to time though it was not a case of contract at all. This Court directed that the benefit of temporary status shall be granted in

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accordance with the DOPT's scheme dated 10.9.93. The learned counsel cited the decision of the Supreme Court in the case of Secretary, Haryana State Electricity Board Vs. Buresh and others, JT 1999 (2) SC 435. The Hon'ble Supreme Court found that work was of perennial nature and the intermediary can be kept out after lifting the veil. The contractor was found to be a mere name tender. There was no genuine contract system prevailing at the relevant time. Accordingly the Supreme Court upheld the finding of the Labour Court that the workmen are entitled to reinstatement and continuity in service.

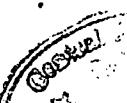
8. The learned counsel for the respondents Shri K.K. Patel cited the decision of R.K. Panda Vs. Steel Authority of India, (1994) 5 SCC 304. He stated that the 1993 Scheme is not applicable because the applicants are not casual labourers. ~~Drivers~~ Being professional drivers they come under Group 'C' and the scheme is entirely meant for Group 'D'. Shri Pandita, another learned counsel for the respondents submitted that the respondents paid to the Contractors and the Drivers are not paid directly. To this, Shri Khokha, learned counsel for the applicants replied that the contract is with the applicants and no third party was involved. In this connection he cited the decision of H. Seoni and another vs. Union of India and another (1994) 26 ATC 57.

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9. The respondents' counsel relied on a decision of this Court in the case of Dharmender Kumar Vs. Union of India and others, OA No. 1630/98 decided on 18.2.99. In that case the Court found that there was no sanctioned post of Driver, and that apart as the applicant had not succeeded in establishing that he was engaged by the respondents and paid by them as their employee, the Court held that the applicant had no legal right to ask the respondents to engage them. It is submitted by the counsel for the respondents that this decision is applicable in this case.

10. My attention was drawn also the decision of the Supreme Court in the case of Lalji Ram Vs. Union of India and another, SLP (C) No. 17385 of 1994 decided on 28.2.1995. It was also a case of daily rated casual labour seeking regularization, temporary status. At page 2 of the order of the Supreme Court it was stated that the applicant, although was a daily rated casual mazdoor, was discharging the duties of a Lorry Driver, which is a Group 'C' post. However, the post of daily rated casual mazdoor falls in Group 'D' therefore, the appellant is entitled to claim protection of the aforesaid scheme. The Supreme Court directed the respondents to consider regularization of the applicant in a Group 'D' post in accordance with the said scheme.

11. I have carefully considered the submissions of all the counsel present for both the sides. The nature of work performed was that of a Driver. There



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was no third party contractor. In all these cases the applicants are both the contractors and executors. They worked with the vehicle and they are paid their wages, euphemistically known as a contract amount. It is a clear camouflage for employing a daily rated worker as a daily mazdoor for driving a car regularly year after year. In view of the Apex Court's decision in the case of Lalji Ram (supra) I hold that the applicants are entitled to consideration for temporary status which orders shall be passed by the respondents within a period of four weeks from the date of receipt of a copy of this order in accordance with the scheme. Thereafter if there is any post vacant to be filled up, the applicants shall be considered along with others. In considering the applicants; either for a Group 'D' post or for a Driver post the earlier experience of the applicants shall be considered and given weightage. Age relaxation shall be fully provided.

All the OAs are disposed of. No order as to costs. Let a copy of this order be placed in all the above OAs.

rkv.

C.T.C

Member(Admnv)

1995
CERTIFIED TRUE COPY
Dated..... 1995

26/1/95
Section Officer (J-II)
General Administrative Tribunal

High Court of India
Principal Bench, New Delhi

A. — claiming falsely—it amounts to lack of integrity, p. 22 (Bom.)

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- legislation recruitment—jurisdiction of tribunal in the what, p. 155 (KAT—Bangalore)
- powers of, p. 230 (CAT—P.Bench-N.Delhi) (iv) and p. 118 (KAT—Bangalore) (i)

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- rule provides that no leave other than on medical grounds shall be granted to officers under orders of transfer—challenge to rule—held it could not be termed as ultravires, p. 213 (KAT—Bangalore)

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- option obtained by the—voidable, p. 27 (Gau.) (ii)

UPROOTED FAMILIES

- appointment on the basis of the—some person or authority will have to examine or bonafides of the, p. 150 (SC)

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- earlier verbal reports about conduct cannot be considered and relied upon for imposing any penalty, p. 415 (CAT—Bom.) (i)

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- natural justice principles must followed when the vested rights are affected, p. 16 (P&H)
- orders creating no vested right may be changed without giving any opportunity, p. 41 (KAT—Bangalore)

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- non promotion due to the—held it is rightly denied, p. 103 (Guj.) (ii)

VOLUNTARY RETIREMENT

- notice of the—if not refused/withdrawn, becomes absolute on expiry of 3 months, p. 206 (CAT—Bangalore)
- putting of conditions for the—not valid, p. 319 (CAT—Bom.) (i)

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- expression 'official relation with the public'—purpose and meaning of, p. 443 (CAT—P.Bench-N.Delhi) (ii)
- 'pending enquiry'—meaning—does not include contemplation of proceedings, p. 523 (CAT—Ern.) (ii)
- 'reissue'—meaning of, p. 1 (KAT—Bangalore) (v)

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- private unaided schools are not amenable to the, p. 39 (Kerala)

WRIT PETITION

- state tribunal can not go out side section 15(1) while passing order on writ petition, p. 174 (CAT—Bangalore)

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ALL INDIA SERVICES LAW JOURNAL

1994

VOLUME TWO

JOURNAL SECTION

1

Copy of O.M. No. 51016/2/90-Estt(C), dated 10.9.1993, from Ministry of Personnel, P.G. and Pensions (Department of Personnel & Training).

Subject *Grant of temporary status and regularisation of Casual workers formulation of scheme in pursuance of the CAT, Principal Bench, New Delhi, judgment dated 16th Feb. 1990 in the case of *Shri Raj Kamal & Others v. UOI*.*

The guidelines in the matter of recruitment of persons on daily-wage basis in Central Government offices were issued vide this Department's O.M. No. 49014/2/86-Estt(C) dated 7.6.88. The policy has further been reviewed in the light of the judgment of the CAT, Principal Bench, New Delhi delivered on 16.2.90 in the writ petition filed by *Shri Raj Kamal and others vs. Union of India* and it has been decided that while the existing guidelines contained in O.M. dated 7.6.1988 may continue to be followed, the grant of temporary status to the casual employees, who are presently employed and have rendered one year of continuous service in Central Government offices other than Department of Telecom, Posts and Railways may be regulated by the scheme as appended.

2. Ministry of Finance etc. are requested to bring the scheme to the notice of appointing authorities under their administrative control and ensure that recruitment of casual employees is done in accordance with the guidelines contained in Office Memorandum dated 7.6.1988. Cases of negligence should be viewed seriously and brought to the notice of appropriate authorities for taking prompt and suitable action.

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ANNEXURE-A

Department of Personnel & Training, Casual Labourers (Grant of Temporary Status and Regularisation) Scheme.

1. This Scheme shall be called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993."
2. This scheme will come into force w.e.f. 1.9.1993.
3. This scheme is applicable to casual labourers in employment of the Ministries/

Departments of Government of India and their attached and subordinate offices, on the date of issue of these orders. But it shall not be applicable to casual workers in Railways, Department of Telecommunication and Department of Posts who already have their own schemes.

4. Temporary status

- (i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this O.M. and who have rendered a continuous service of atleast one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week).
- (ii) Such conferment of temporary status would be without reference to the creation/availability of regular Group 'D' posts.
- (iii) Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.
- (iv) Such casual labourers who acquire temporary status will not however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts.

5. Temporary status would entitle the casual labourers to the following benefits:

- (i) Wages at daily rates with reference to the minimum of the pay scale for a corresponding regular Group 'D' official including DA, HRA and CCA.
- (ii) Benefits of increments at the same rate as applicable to a Group D employee would be taken into account for calculating pro-rata wages for every one year of service subject to performance of duty for atleast 240 days (206 days in administrative offices observing 5 days week) in the year from the date of conferment of temporary status.
- (iii) Leave entitlement will be on a pro-rata basis at the rate of one day for every 10 days of work, casual or any other kind of leave, except maternity leave, will not be admissible they will also be allowed to carry forward the leave at their credit on their regularisation. They will not be entitled to the benefits of encashment of leave on termination of service for any reason or on their quitting service.
- (iv) Maternity leave to lady casual labourers as admissible to regular Group D employees will be allowed.
- (v) 50% of the service rendered under Temporary Status would be counted for the purpose of retirement benefits after their regularisation.
- (vi) After rendering three years' continuous service after conferment of temporary status, the casual labourers would be treated on par with temporary Group D employees for the purpose of contribution to the General Provident Fund, and would also further be eligible for the grant of Festival Advance, Flood Advance on the same conditions as are applicable to temporary Group D employees, provided they furnish two sureties from permanent Government Servants of their Department.

(vii) Until they are regularised, they would be entitled to Productivity Linked Bonus/Ad-hoc bonus only at the rates as applicable to casual labourers.

6. No benefits other than those specified above will be admissible to casual labourer with temporary status. However, if any additional benefits are admissible to casual workers working in Industrial establishments in view of provisions of Industrial Dispute Act, they shall continue to be admissible to such casual labourers.

7. Despite conferment of temporary status, the services of a casual labourers may be dispensed with by giving a notice of one month in writing. A casual labourer with temporary status can also quit service by giving a written notice of one month. The wages for the notice period will be payable only for the days on which such casual worker is engaged on work.

8. Procedure for filling up of Group D posts

Two out of every three vacancies in Group 'D' cadres in respective offices where the casual labourers have been working would be filled up as per extant recruitment rules and in accordance with the instructions issued by Department of Personnel & Training from amongst casual workers with temporary status. However, regular Group 'D' staff rendered surplus for any reason will have prior claim for absorption against existing/future vacancies. In case of illiterate casual labourers or those who fail to fulfil the minimum qualification prescribed for post regularisation will be considered only against those posts in respect of which literacy or lack of minimum qualification will not be a requisite qualification. They would be allowed age relaxation equivalent to the period for which they have worked continuously as casual labour.

9. On regularisation of casual worker with temporary status, no substitute in his place will be appointed as was not holding any post. Violation of this should be viewed very seriously and attention of the appropriate authorities should be drawn to such cases for suitable disciplinary action against the officers violating these instructions.

10. In future, the guidelines as contained in this Department's O.M. dated 7.6.88 should be followed strictly in the matter of engagement of casual employees in Central Government Offices.

11. Department of Personnel & Training will have the power to make amendments or relax any of the provisions in the scheme that may be considered necessary from time to time.

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Copy of O.M. No. 1/3/88-JCA, dated 21.9.1993, (Department of Personnel and Training)

Subject : Non-wearing of uniforms by Group C & D while on duty—Action regarding.

The undersigned is directed to refer to this Department's O.M. No. 19/4/86-JCA dated 13.9.1989 and O.M. of even number dated 1.4.1992 indicating steps to be taken to ensure that the Group 'C' and 'D' employees who are supplied uniforms should be in clean and proper uniforms while on duty.

The above instructions *inter-alia* provided that

- (i) Departments should designate an Inspecting Officer to conduct periodic inspections

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 256 of 1998

New Delhi this the 28 Day of July 1998

Hon'ble Shri R.K. Ahocja, Member (A)

1. Shri Bijay Narain Misra,
Son of Shri Raghu Nandan Misra,
Working as Motor Lorry Driver,
M.S.O. Building ITO Building,
(PWD) R/o H.No. 332 Gali No. 5,
Shankar Marg, Mandawali,
(Fazalpur) New Delhi-110 092
2. Pradeep Kumar,
S/o Shri Krishan Dutt,
working as Wire Man
Veh. INP Unit, Burari (PWD),
R/o 9915 Bhagat Vihar,
Karawal Nagar, New Delhi-94.
3. Sunil Kumar
S/o Shri Ishwar Chandra,
working as Wireman at
ISBT Under Fly Over (PWD),
R/o 769, Kalyan Vas,
Kalyan Puri,
New Delhi-110 091
4. Laxman Prasad,
S/o Shri Raghbir Singh,
Working Khallasi at
ISBT under Flyover (PWD),
R/o H.No. 126/6 Pushp Vihar,
Sect. I, Saket, New Delhi-17.
5. Shri Ramesh Chandra,
S/o Shri Jay Karan,
Working as Khallasi at
ISBT Under Flyover (PWD),
R/o J/K Pocket, Dilshad Garden,
A-7, Delhi.
6. Rajendra Kumar,
S/o Shri Jay Prakash,
Working as Pump Operator at
Veh. INP Univt, Burari (PWD),
R/o C.8/75 Yamuna Vihar,
Delhi-53.


Petitioners

Service of all notices at the Applicants'
address as follows:

Shri Satya Mitra Garg,
Advocate on Record,
113-C, DDA LIG Flats,
(Near Motia Khan)
New Delhi-110 055.


ATTESTED.

-Versus-

Shri Satya Mitra Garg
Advocate on Record
113-C, DDA LIG Flats
(Near Motia Khan)
New Delhi-110 055.

Central Administrative Tribunal
for Administrative Tribunals
Delhi Bench

A-7

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1. Union of India through
the Director General (Works)
CPWD, Nirman Bhawan,
New Delhi.
2. The Executive Engineer (Electrical)
Yamuna Bridge Project,
Electrical Division,
(PWD) (DS), New Delhi-110 002. Respondents

ORDER

✓ The applicants claim that they were engaged by the respondents Central Public Works Department (CPWD) on various dates between August 1992 to July 1993 for various electrical jobs. They further claim that duties assigned to them are of perennial nature and the respondents require their services continuously and permanently. It is their allegation that in order to avoid liability for regularisation of their services, the respondents adopted an unfair labour practice and showed them as employed on contract basis. Even though no fresh contract has been given to them after 31.12.1997 it is claimed that the applicants continue to discharge their duties till date. They have therefore, come before the Tribunal for a declaration that they are performing the work of a perennial nature, the respondents cannot resort to the contract labour system and that accordingly the respondents should engage the applicants on a regular basis with all consequential benefits.

✓ 2. The respondents in reply have questioned the locus standi of the applicants as according to them there is no relationship of employer and the employee between the parties. On merit they say that the applicants were the contractors who were engaged on project work i.e. the Yamuna Bridge Project, Electrical Division which has been ordered to be closed after completion of electrical and

RIGHTS ATTESTED

✓
Vikas, Safiqa Faiz
Examiner, Judicial Deptt.
Yamuna Bridge Project
Electrical Division
CPWD, DS
New Delhi-110 002
Delhi-110 002
New Delhi

✓

civil works. Therefore, the respondents have denied the submission of the applicants that they are doing work of a perennial nature.

3. I have heard the counsel for the parties. The question to be decided is whether the applicants are contractors who had been engaged by the respondents for job specific work which has since been completed or whether they were engaged essentially as casual workers on works which are of perennial nature. The learned counsel for the applicant seeks supports from the judgement of the Hon'ble Supreme Court in Union of India & Ors. Vs. Subir Mukharji and Ors. (JT 1998(3) S.C. 540). In that case the applicants therein filed an OA No. 1045/95 before the Calcutta Bench of this Tribunal claiming that they had been working as labourers since 1988 continuously and uninterruptedly in the Railway Printing Press at Calcutta having been engaged through a Contractor. On this basis they claimed that they acquired temporary status and were entitled to be absorbed in Group 'D' posts. The Railways, on the other hand, denied this claim on the ground that the applicants were employees of a Society and therefore the Railways were not liable either to absorb or to regularise them. The Tribunal in its order dated 14.3.1997 upheld the claim of the applicants and issued a direction to absorb such of the applicants who may be required to do the quantum of work which may be available on a perennial basis. The respondents Railways thereafter went in Special Leave Petition, before the Supreme Court and the Hon'ble

~~RECORDED, AND TESTED~~

Shri, Justice (name)
Examiner, Judicial Deptt.
and Welfare Officer
and Administrative Tribunal
14/3/1998
Delhi, New Delhi

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Supreme Court distinguished its earlier decision in Civil Appeal No. 1350 of 1986 Biswanath Saha and others Vs. Union of India and observed as follows:

"There is a distinguishing feature in the case before us. In the present case admittedly the respondents who were labourers of M/s. Bandel Handing Porters Cooperative Society Ltd., were given the work under agreement No. S/489/B1/CONTRACT/HANDLING/NH/94 dated 22.11.1994. Therefore, there was already a society of which the respondents happened to be members and being the members and M/s Bandel Handing Porters Cooperative Society Ltd., the contractor supplied them for doing the work of Eastern Railway. As indicated earlier there is no denial on the part of the appellants Nos. 1 to 5 that the work which respondents have been doing is of prennial nature. Even otherwise the directions issued by the CAT in its order dated 13.3.1997 have given enough discretion to the Eastern Railways to absorb them as regular Group D employees bearing in mind the quantum of work available on prennial basis and subjet to their fitness. In our opinion, the directions contained in order dated 13.3.1997 passed by the CAT are quite fair in the facts and circumstances of the case and it is for this reason we are not inclined to interfere with the impugned order in exercise of our jurisdiction under Article 136 of the Constitution."

4. I find that the applicants before me are in a more or less similar position. The respondents themselves had admitted that they had engaged the applicants as contractors for 4-5 years. They have not come through a Society but have been engaged as a contractor individually for doing a specific job. That specific job has entailed continuous engagement for 4-5 years. There is no claim on the part of the respondents that they had undertaken that the applicants will be paid such and such amount on completion of the specific contract; on the contrary it

(30)

would appear that the payments have been made to the applicants on a daily rate basis. Therefore whatever may have been the nomenclature, the status of the applicants is that of casual labourer on daily rate basis. In that capacity they are entitled to be considered for re-engagement for grant of temporary status and regularisation in accordance with the DOP&T Scheme applicable to the CPWD.

5. In the light of the above discussion, I dispose of the OA with the direction that the respondents will reconsider the applicants for re-engagement, if work is available giving them preference on the basis of the service already rendered by them over their juniors and outsiders. After such re-engagement they will reconsider the case of the applicant for grant of temporary status and regularisation in accordance with the Scheme applicable to the casual workers in the CPWD.

There will be no order as to costs.

(R.K. Ahooja)
Member (A)

Mittal

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RECORDED/ATTESTED

Shri, Justice Suresh
Registrar, Judicial Deptt.
Central Administrative Tribunal
Central Government of India
Yashwant Singh Bhushan Bhawan
Vidhan S. Marg, New Delhi

C O P Y

Ann

A B

To

The Chief Engineer, (DD-2),
Sewa Bhawan, 2nd Floor,
R.K. Puram
NEW DELHI 110 066

(31)

Sir,

We beg to inform that we are working as daily rated Labour (Beldar) and (Sewerman) on work order basis with effect from the dates given below :-

(i) Shri Mahesh Kumar	3-4-1991
(ii) Shri Rajender Kumar	3-3-92
(iii) Shri Chaman Lal	3-4-1991
(iv) Shri Amar Nath	10-11-89

Despite working for more than 240 days in a year since inception, we have not been granted Temporary Status in view of the fact that our names have been recommended by the Superintending Engineer (HQ) NSG Project vide letter No. 18-2/estt.ONSGP/95/56-58 dated 18-1-96.

In this connection we would like to inform that that Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi in their judgement dated 28-7-1998 in O.A. No. 256/1998 titled 'Bijay Narain Misra & Ors. vs. Union of India & Ors.,' copy enclosed for ready reference have recently decided for the grant of temporary status to similarly placed persons.

In view of the judgement of the Hon'ble Central Administrative Tribunal, New Delhi, it is requested that our case may kindly be considered for grant of temporary status, and regularisation.

An early favourable action will be highly appreciated.

Thanking you,

Yours faithfully,

Dated:

15-10-1998

sd/- Mahesh Kumar (Beldar)

sd/- Rajender Kumar (Beldar)

sd/- Chaman Lal (Beldar)

sd/- Amar Nath (Sawerman)

CK

AN

Central Administrative Tribunal
Principal Bench

Aug 19

O.A. 2170/99
with
O.A. 2171/99

32

New Delhi this the 12th day of May, 2000

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

Q.A.2170/99

1. Shri Dharam Pal, son of
Shri Jai Narain,
R/o T-510/C-58, Patel Nagar;
New Delhi.
2. Shri Babu Ram, son of
Shri Hari Ram,
R/o Village- Bhagilla,
Palwalt (Haryana).
3. Shri Bhim Singh, son of
Shri Prabhati Lal,
WZ-1, Palam,
Delhi.
4. Shri Tribhubhan Singh, son of
Shri Kameshwar,
P-123, Old Palam Gaor,
Sarojini Nagar,
New Delhi-110 023.

... Applicants.

(By Advocate Shri O.P. Khokha)

Versus

Union of India through

1. The Secretary,
Ministry of Urban Development,
Nirman Bhawan, New Delhi-110 011.
2. The Director General of Works,
Central Public Works Department,
Ministry of Urban Development,
Nirman Bhawan, New Delhi-110 011.
3. The Chief Engineer (D-2),
Sewa Bhawan (2nd Floor),
R.K. Puram,
New Delhi-110 066.
4. The Superintending Engineer,
Central Public Works Department,
N.S.G. Project,
Manesar
Distt. Gurgaon (Haryana).

... . Respondents .

(By Advocate Shri Rajeev Bansal)

O.A.2171/99

33

1. Shri Mahesh Kumar, son of Shri Bharat Singh, R/o P-34, Old Palam Gaon, Sarojini Nagar, New Delhi-110 023.
2. Shri Rajender Kumar, son of Shri Mehenti Singh, R/o A-8/609, Amar Colony, Harijan Basti, Poorvi Gokal Puri, Delhi-110 094.
3. Shri Chaman Lal, son of Shri Lekhi Ram, R/o Village Narangpur, Distt. Gurgaon (Haryana).
4. Shri Amar Nath, son of Shri Imrat, R/o B-1/234, Sultan Puri, Delhi.

... Applicants.

(By Advocate Shri O.P. Khokha)

Versus

Union of India through

1. The Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi-110 011.
2. The Director General of Works, Central Public Works Department, Ministry of Urban Development, Nirman Bhawan, New Delhi-110 011.
3. The Chief Engineer (OO-2), Sewa Bhawan (2nd Floor), R.K. Puram, New Delhi-110 066.
4. The Superintending Engineer, Central Public Works Department, N.S.G. Project, Manesar Distt. Gurgaon (Haryana).

... Respondents.

(By Advocate Shri Rajeev Bansal)

O R D E R

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

The learned counsel for the parties have submitted that the facts and issues raised in both the O.A.s (O.A.2170/99

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and O.A. 2171/99) are identical and hence they are being disposed of by a common order. For the sake of convenience, the facts and issues raised in O.A. 2170/99 have been referred to.

2. The respondents have in their reply filed on 21.2.2000 to the O.A. taken a preliminary objection regarding jurisdiction of the Principal Bench of the Tribunal hearing these cases in Paragraphs 2-3.

3. The applicants have filed rejoinder on 24.3.2000 and controverted the above averments. They have relied on Annexure A-3 order and Shri C.P. Khokha, learned counsel for the applicants, states that since this has been issued from the office of Chief Engineer, NSG Project, CPWD, New Delhi, the Principal Bench has jurisdiction in the matter. He has also submitted that the applicants have impugned the order issued by the Director General of Works, CPWD dated 25/30.4.1997 and there is, therefore, no merit in the contention of the respondents that the Principal Bench of the Tribunal does not have jurisdiction in the matter. They have, however, admitted that the applicants are working in NSG Project, Manesar, District Gurgaon, State of Haryana, with Respondent 4. Although they have submitted that they were appointed by the other respondents, namely, Respondents 1-3 who are in New Delhi, but they have not placed on record any such appointment order issued by the competent authority at New Delhi and, in fact, relied on the work order sheets issued to them by the Assistant Engineer (Electrical) IV, NSGP, Elect. Division-I, C.P.W.D., Manesar, Gurgaon (Annexure A-5).

4605, 4606, 4607
Enrolment, Judicial Deptt.
Enrolment, Legal Deptt.
Enrolment, Tribunals
Central /

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4. Shri Rajeev Bansal, learned counsel for the respondents has contended that as there is no prayer made by the applicants for quashing the order issued by Respondent 1 dated 30.4.1997, the O.A. is also not maintainable and the same is also barred by limitation. This has been stoutly controverted by Shri O.P. Khokha, learned counsel, who has submitted that as the applicants rely on this order which was never brought to their notice till the judgement of the Tribunal was given in Vijender Singh & Ors. Vs. Union of India & Ors. (O.A. 78/98 with connected cases) (Annexure A-4), decided on 23.7.1999, there is no question of limitation. Learned counsel for the applicants has also relied on the judgement of the Tribunal in B.N. Mishra & Ors. Vs. Union of India & Ors. (OA 256/98), decided on 28.7.1998. Shri Rajeev Bansal, learned counsel for the respondents has, however, submitted that in Vijender Singh's case (supra) the applicants were admittedly working in New Delhi in various projects undertaken by the CPWD, for example, Delhi College of Engineering Project, MSO Building, I.P. Estate and other projects in Delhi, whereas that is not the case with the applicants who are employed and working outside New Delhi at Manesar, State of Haryana. He has, therefore, submitted that the Principal Bench of the Tribunal does not have jurisdiction in the matter and the applications are, therefore, not maintainable as they have also not cared to move a PT till date. The learned counsel for the applicants was also heard at some length in reply who had vehemently submitted that the Principal Bench indeed has jurisdiction in the matter because of Annexure A-1 and Annexure A-3 orders issued from New Delhi as well as the fact that they have made a representation to the Chief Engineer, CPWD at New Delhi on 15.10.1998 (Page 35 of the Paper Book).

(5)

5. After hearing the learned counsel for the parties at some length on these two cases, the orders were reserved on the preliminary objections raised by the respondents, namely, jurisdiction and limitation. After the next case was taken up for hearing, Shri O.P. Khokha, learned counsel for the applicants, entered the court room and made a submission that he prays for withdrawing the O.A.s so that he could move a PT for obtaining appropriate orders from the Hon'ble Chairman to retain the matter in the Principal Bench. As Shri Rajeev Bansal, learned counsel, was representing the respondents in the next case, also (OA 533/98), which was taken up for hearing, he submitted that as the orders have already been reserved, such a prayer may not be entertained at that stage although he has fairly stated that it is the discretion of the court. However, in another few minutes, Shri O.P. Khokha, learned counsel, again withdrew his prayer for withdrawing the O.A.s and prayed that the earlier order "Orders reserved" may stand.

6. The applicants are admittedly working as Drivers, Plumbers, Beldars and Sewermen at Marnesar in the State of Haryana. In their rejoinder, they have also tried to controvert the submissions of the respondents regarding the question of jurisdiction of the Principal Bench to adjudicate in these matters. Having regard to the provisions of Section 19 of the Administrative Tribunals Act, 1985, read with Rule 6(1) of the Central Administrative Tribunal (Procedure) Rules, 1987, the contention of the learned counsel for the applicants that the Principal Bench of the Tribunal has jurisdiction in the matter cannot be accepted. As the applicants have been

employed and are admittedly continuing to work at Manesar, the Principal Bench of the Tribunal does not have territorial jurisdiction in the matter, as the same lies with the Chandigarh Bench. No PT had either been filed or allowed to retain these cases here. The reliance placed by the applicants on Annexures A-1 and A-3 orders issued from New Delhi will not assist them in these cases. The applicants have to comply with the provisions of law as laid down in the Administrative Tribunals Act, 1985 and the Central Administrative Tribunal (Procedure) Rules, 1987, which they have not done.

7. The facts given in Paragraph 5 above are also relevant which show that the submissions made by the learned counsel for the applicants to withdraw the O.As and re-file them after filing P.T and so on are all after thought and not tenable. As the reply of the respondents had already been filed on 21.2.2000, the same could have been done earlier if they had wanted to. In the facts and circumstances, the two O.As are liable to be dismissed on jurisdiction. In this view of the matter, it is not necessary to express any views on merits or limitation.

8. In the result, for the reasons given above, O.A. 2170/99 and O.A. 2171/99 are dismissed on the ground of jurisdiction. No order as to costs.

9. Let a copy of this order be placed in
O.A. 2171/99.

(Smt. Lakshmi Swaminathan)
Member (J)

SRD

RECORDED, 10.10.2000
RECORDED, Judicial Deptt.
Central Administrative Tribunal
New Delhi

C-1C
12/12/2000
ACW

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

MA No. /2000

IN

O.A. NO. 903/2000

Mahesh Kumar & ors.
(By Sh. O.P. Khokha)
Advocate

VS

Union of India
(By Sh. Rajeev Bansal)
A.S.C.

N.D.O.H. 31.5.2000

I N D E X

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Rajeev Bansal

(RAJEEV BANSAL)
Additional Central Government Standing Counsel

B-7/60/2, DDA Flat,
Safdarjung Enclave,
New Delhi-110 029.

New Delhi

प्रधान न्यायपीठ/CAT (I.B)

Phone (R) 610-4343

Date: 29.5.2000

आज दाखिल किया

Filed Today

31 MAY 2000

दाखिल नं. Tiling No... 5873

उपरजिस्ट्रार/Dy. Registrar

MK.SAM

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

MA No. /2000

IN

O.A. NO. 903/2000

Mahesh Kumar & ors. VS Union of India

**SHORT REPLY ON BEHALF OF RESPONDENTS ON
INTERIM RELIEF/ REPLY TO MA FOR INTERIM RELIEF**

MOST RESPECTFULLY SHEWETH:

BRIEF FACTS OF THE CASE:

1. Government departments have to undertake various projects for which C.P.W.D. has been undertaking the job by inviting tenders from contractors for various purposes such as construction of building, running and maintenance of Photostat machines, installation and maintenance of lifts, laying of roads, maintenance and running of vehicles etc.

2. There are certain projects of other departments such as the present one belonging to the National Security Guards Garrison's works at Manesar. The project is of a temporary nature which had sanction only till March 2000 and therefore the Unit is not a permanent Unit. There are no sanctioned post of Beldar in this Project. Apart from it, there are For

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the purpose of completing the Project, contracts have been awarded for constructions of the building, installation of lifts and operation of jeep under the supervision and control of Executive Engineer, who are posted from C.P.W.D. for the said purpose. The contractor employ different categories of staff for providing services as per contract and work order and this project is not of a permanent nature. Executive Engineer concerned has to supervise the completion of the job entrusted to the contractor.

3. The applicants were engaged as Contractor by the answering Respondents.

4. The payment is also made to the contractor through running bill. In view of this, there is no direct relationship of master and servant between the applicant and the answering Respondent.

5. Material and machines are provided by the department to the contractors to complete work in time.

PRELIMINARY OBJECTIONS:

1. There is no proper application seeking interim relief before this Hon'ble Tribunal. As such, this application is not maintainable.

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2. The present application is vexatious in nature and is hit by principles of constructive res-judicata. It is cardinal principle of law that nobody should be vexed twice over one issue.

3. The present application (OA itself) is not maintainable as the present applicants had filed OA No. 2170/99 before this Hon'ble Tribunal praying for the similar relief. However, the said OA was dismissed on the point of territorial jurisdiction. Lengthy arguments were advanced by both the parties on this question and ultimately, this Hon'ble Tribunal was pleased to hold that the Principal Bench has no territorial jurisdiction to entertain the application and hence dismissed the said OA without giving any liberty to the applicants to file a fresh OA after seeking permission from the Hon'ble Chairman. The intention of the court is also clear from the fact that after the judgment was reserved, the counsel for the applicants sought to withdraw the OA, which was disallowed by the court, as is observed by the Tribunal in para 5 of its Judgment dt. 12.5.2000, which is reproduced below:

"After hearing the learned counsel for the parties at some length on these two cases, the orders were reserved on the preliminary objections raised by the respondents, namely jurisdiction and limitation.

After the next case was taken up for hearing, Sh. O.P. Khokha, learned counsel for the applicants,

entered the court room and made a submission that he prays for withdrawing the OAs so that he could move a PT for obtaining appropriate orders from the Hon'ble Chairman to retain the matter in the Principal Bench. As Sh. Rajeev Bansal, learned counsel, was representing the respondents in the next case also (OA 533/98), which was taken up for hearing, he submitted that as the orders have already been reserved, such a prayer may not be entertained at that stage although he has fairly stated that it is the discretion of the court. However, in another few minutes, Sh. O.P. Khokha, learned counsel, again withdrew his prayer for withdrawing the OAs and prayed that the earlier order 'Orders reserved' may stand."

Under these circumstances, a fresh OA before this Hon'ble Tribunal on the same cause of action is not maintainable.

4. The present applicants are working as contractors with ~~with~~ Respondent No. 4 at Manesar, Gurgaon in the National Security Guards Garrison's works Project. The project is of a temporary nature and does not have any sanction after March 2000. Therefore the Unit is not a permanent Unit. There are no sanctioned post of Beldar in this Project.

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5. Applicants are only contractors and not Govt. servants.

There is no relationship of master and servant. Hence this application is liable to be dismissed.

6. The applicant are only contractors (and not Government servants) who are given contract for doing specific works in the project for execution of National Security Guards Garrison's works at Manesar (Gurgaon). The said project was for a short duration (i.e. upto March 2000) and thereafter, there has been no sanction. On completion of the project, the contract will come to an end. The work is neither of a permanent nor of perennial nature.

7. If employees of the contractor or the contractors are taken as employees of the department, this will amount to a complete anarchy as thousands of workers in different categories are employed by the contractor to complete the work, in time, on contract basis.

8. The petitioners have not exhausted the departmental remedy and have approached this Hon'ble Tribunal directly.

9. The applicants have made false averments in the application making the application liable to be dismissed.



10. This Hon'ble Tribunal has already dismissed a similar case vide Judgment dated 23.9.1998 in OA No. 651/98.

11. In Dr. M.A.Haque Vs. UOI, (JT 1993(2) 265) Hon'ble Supreme Court held that "*if a disregard of the Rules and the bypassing of Public Service Commission are permitted, it will open a back door for illegal recruitment without limit.*"

12. In 1992 (4) SCC 18 State of Haryana Vs. Piara Singh, Hon'ble Supreme Court laid down that "*The Court must, while giving directions for regularisation of service, act with due care and caution. A practical and pragmatic view has to be taken, in as much as every direction tells upon the Public Exchequer.*"

13. In Madhyamik Shiksha Parishad Vs. Anil Kumar Mishra, (AIR 1994 SC 1638), Hon'ble Supreme Court held that "*in the matter of services, no appointment can be made by way of regularisation in violation of any statutory provisions of the Recruitment Rules.*"

PARAWISE REPLY ON MERITS:

1-2. Contents of these paras are matter of record. However, it is humbly submitted that the application under Rule 6 is not maintainable in

view of the fact that the previous OA of the applicants has already been dismissed and new OA cannot be filed to overcome the lacunae in the previous OA.

3. Contentions raised in this para are wrong and denied. The applicants are not casual workers. They are contractors on work order to complete the specific job and are being paid through Running Account Bill. There is no regular post or permanent nature of work. So far as their apprehension is concerned, the Project does not have any sanction to continue after March 2000 and on any day it can come to an end.

It is therefore most respectfully prayed that the interim order dt. 17.5.2000 directing status quo regarding services of the applicants, may kindly be vacated, more so when this Hon'ble Tribunal has no jurisdiction in the matter.

It is prayed accordingly.

For & on behalf of Respondents

through

(RAJEEV BANSAL)
A.S.C.

VERIFICATION

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I, S.P.Goyal, working as Executive Engineer NSGP Division
V, CPWD, Manesar (Gurgaon) in the office of Respondents do hereby
verify that the contents of above paras of the reply are true and correct to
my knowledge and belief, gathered from official record. No part of its is
false and nothing material has been concealed therefrom.

Verified at Manesar on this



For & on behalf of Respondents

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MEMORANDUM OF APPEARANCE

OF

SH. RAJEEV BANSAL,
Additional Central Government Standing Counsel

IN

O.A. NO. 903/2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, NEW DELHI

RE :

Sh. Mahesh Kumar & ors. ... Applicant

VERSUS

Union of India ... Respondent

The undersigned is appearing on behalf of Union of India.

He has been authorised to appear by Union of India.

Rajeev Bansal

(RAJEEV BANSAL)
A.S.C.

NEW DELHI

Date 30.5.2000

B-7/60/2, DDA Flats,
Safdarjung Enclave,
New Delhi - 110 029.

Phone: 610-4343

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 903 OF 2000

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In the matter of -

Shri Mahesh Kumar & Ors Vs Union of India & Ors.

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4th July, 2000

Shubha (O.P. Khokha)
S. C. LUTHRA (O.P. Khokha)
Counsel for the Applicant
G-71 (FF) East of Kailash
New Delhi - 110 067.

प्रधान न्यायपाल/ अधिकारी (पंडित)
अधिकारी (पंडित)
File No.
- 6 JUL 2000
सचिव नं. 110400...6634
उपरजिस्टर/Dy. Registrar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. No. 903/00

In the matter of -

Shri Mahesh Kumar & Ors. ... Applicants

Vs

Union of India & Ors ... Respondents

REJOINDER TO THE SHORT REPLY ON BEHALF OF APPLICANTS
ON INTERIM RELIEF

BRIEF FACTS OF THE CASE

1. The averments made in this para are of the mark since the duties carried out by the applicants could not be equated with contracts for various purposes such as construction of building, running and maintenance of photostat machine etc.

2 & 3) Controverted and denied. It may be stated that though the project of the National Security Guards Garrison's works at Manesar may have been completed but the job of maintenance of the complex is permanent one and of perennial nature and as such it does not

make difference whether the project had sanction till ^{as it is still continuing & from last it is available} March, 2000. The applicants have been continuing even

after that and that shows that their services are still required. Plumber, baledars, sewer men, are required for the maintenance of the civil work of residential and non-residential buildings which have been completed. The drivers are, however, attached with the engineers who are looking after the maintenance of the civil work and thus it goes without saying that their services are still required. Their job is of permanent nature.

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3. The so called contract with these applicants has already stated is quite different from the contract like construction of building etc. Moreover, in this case these applicants/employees are themselves contractors as well as executors and as such it is only a camouflage, to deny the applicants their legitimate rights/which would otherwise accrue to them had they been ~~employed~~ ^{as} daily wage labourers.

4. Controverted. Notwithstanding, the fact that the payment is paid to the applicants through running bill, there is direct relationship of master and servant between the applicant and the answering respondents.

5. The respondents are trying to confuse the issue. By supplying material and machines, the nature of so called contract is exposed because in that event they become the direct employees of the respondents. If the applicants were contractors than the respondents should have asked for tenders including material and machines etc. to be provided by the contractors which is done in contract like construction/building etc.

PRELIMINARY OBJECTIONS

1. Controverted. The application is not hit by the principle of constructive res-judicata. It is a well settled principle of law that if the issues have not been decided, then there is no res-judicata. In this case the OA was dismissed for want of jurisdiction. Since the applicants have now obtained permission u/s 25 of the AT Act to file the OA at Principal Bench, and also permission has been granted for retaining the same in Delhi, this objection cannot be sustained.

2. As already stated in para 1, the OA was only dismissed on a technical ground and that technical ground having been now removed, there is no question of res-judicata.

3. As already stated, the applicants are themselves contractors as well as executors. The applicants have already demonstrated that the jobs^{are} of perennial nature. Even in the absence of sanctioned strength, the applicants have been carrying the maintenance work for the last so many years and as such the respondents' contention that the project is of temporary nature is not borne out by the facts. It may be stated that the applicants have been working for the last 9 to 11 years.

4. Controverted. In view of what has been stated already, no further comments are required.

5&6) The respondents are harping again and again that the applicants are only the contractors and not the Government Servant. The applicants have met this point repeatedly in the foregoing paras. Further, controverted that the work is neither permanent nor of perennial nature. The respondents have not cared to attach the copy of the sanctioned staff and in the absence of that the applicants are not in a position to comment.

7) Being repetitive and already replied no further comments are required.

8. In view of the Supreme Court's judgment in Lalji Ram Vs Union of India & Anr, this objection has no legs to stand.

9. Controverted. The applicants have made representations to the respondents to grant them temporary status in accordance with the scheme dated 10.9.93.

10. Controverted. The applicants have not made any false averments.

11. The Tribunal has already allowed a number of cases and the judgments of those cases have been annexed along with the OA.

12, 13 & 14) These averments fall in the legal realm and as such they will be met adequately at the time of oral arguments.

15. Unlike writ, in the High Court, no separate application is required for interim relief under the A.T. Act interim orders are prayed in para 9 of the permuta of the application. Interim orders in para 9 of the application have been prayed and granted in terms of the prayers.

PARAWISE REPLY ON MERITS

1 & 2) In view of the application under Rule 6 and u/s 25 to transfer the petition have been allowed, this objection is of no avail to the respondents.

3. Contentions raised in this para are wrong and denied. All these points have been met separately and as such are not being repeated for the sake of brevity.

Manesh K
(APPLICANT)

VERIFICATION : I, the above named applicant, do hereby verify the contents of the above which are true on my knowledge and that nothing has been concealed therein.

Verified at New Delhi on this 4th day of July, 2000.

Manesh K
(APPLICANT)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 903/2000

Mahesh Kumar & ors.
(By Sh. O.P. Khokha)
Advocate

VS

Union of India
(By Sh. Rajeev Bansal)
A.S.C.

N.D.O.H. 24.7.2000

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Rajeev
(RAJEEV BANSAL)

Additional Central Government Standing Counsel

New Delhi

B-7/60/2, DDA Flat,
Safdarjung Enclave,
New Delhi-110 029.

Date: 14.7.2000

Phone (R) 610-4343

11 SEP 2000

8832/1

MAHESH1.SAM

पंचाल नं.
नवराजिस्ट्रार/L.J. Registrar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 903/2000

• Mahesh Kumar & ors.

VS

Union of India

COUNTER REPLY ON BEHALF OF RESPONDENTS

MOST RESPECTFULLY SHEWETH:

BRIEF FACTS OF THE CASE:

1. Government departments have to undertake various projects for which C.P.W.D. has been undertaking the job by inviting tenders from contractors for various purposes such as construction of building, running and maintenance of Photostat machines, installation and maintenance of lifts, laying of roads, maintenance and running of vehicles etc.
2. There are certain projects of other departments such as the present one belonging to the National Security Guards Garrison's works at Manesar. The project is of a temporary nature and will come to an end in March 2000 and therefore the Unit is not a permanent Unit. There are no sanctioned posts of Beldars in this Project. Apart from it, for the purpose of completing the Project, contracts have been awarded for constructions of the building, installation of lifts and operation of jeep under the supervision and control of Executive Engineer, who are posted from C.P.W.D. for the said purpose. The contractor employ different

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categories of staff for providing services as per contract and work order and this project is not of a permanent nature. Executive Engineer concerned has to supervise the completion of the job entrusted to the contractors.

3. The applicant was engaged as a Contractor by the answering Respondents.
4. The payment is also made to the contractor through running bill. In view of this, there is no direct relationship of master and servant between the applicant and the answering Respondent.
5. Material and machines are provided by the department to the contractors to complete work in time.

PRELIMINARY OBJECTIONS:

1. Applicants are not Govt. servants. There is no relationship of master and servant. Hence this application is liable to be dismissed.
2. The present application is vexatious in nature and is hit by principles of constructive res-judicata. It is cardinal principle of law that nobody should be vexed twice over one issue.

3. The present application (OA itself) is not maintainable as the present applicants had filed OA No. 2171/99 before this Hon'ble Tribunal praying for the similar relief. However, the said OA was dismissed on the point of territorial jurisdiction. Lengthy arguments were advanced by both the parties on this question and ultimately, this Hon'ble Tribunal was pleased to hold that the Principal Bench has no territorial jurisdiction to entertain the application and hence dismissed the said OA without giving any liberty to the applicants to file a fresh OA after seeking permission from the Hon'ble Chairman. The intention of the court is also clear from the fact that after the judgment was reserved, the counsel for the applicants sought to withdraw the OA, which was disallowed by the court, as is observed by the Tribunal in para 5 of its Judgment dt. 12.5.2000, which is reproduced below:

"5. *After hearing the learned counsel for the parties at some length on these two cases, the orders were reserved on the preliminary objections raised by the respondents, namely jurisdiction and limitation. After the next case was taken up for hearing, Sh. O.P. Khokha, learned counsel for the applicants, entered the court room and made a submission that he prays for withdrawing the OAs so that he could move a PT for obtaining appropriate orders from the Hon'ble Chairman to*

retain the matter in the Principal Bench. As Sh. Rajeev Bansal, learned counsel, was representing the respondents in the next case also (OA 533/98), which was taken up for hearing, he submitted that as the orders have already been reserved, such a prayer may not be entertained at that stage although he has fairly stated that it is the discretion of the court. However, in another few minutes, Sh. O.P. Khokha, learned counsel, again withdrew his prayer for withdrawing the OAs and prayed that the earlier order 'Orders reserved' may stand.

7. The facts given in para 5 above are also relevant which show that the submissions made by the learned counsel for the applicants to withdraw the OAs and re-file them after filing PT and so on are all after thought and not tenable. As the reply of the respondents had already been filed on 21.2.2000, the same could have been done earlier if they had wanted to. In the facts and circumstances, the two OAs are liable to be dismissed on jurisdiction. In this view of the matter, it is not necessary to express any views on merits or limitation.

8. In the result, for the reasons given above, OA 2170/99 and 2171/99 are dismissed on the ground of jurisdiction. No order as to costs."

Under these circumstances, a fresh OA before this Hon'ble Tribunal on the same cause of action is not maintainable.

4. The present applicants are working as contractors with Respondent No. 4 at Manesar, Gurgaon in the National Security Guards Garrison's works Project. The project is of a temporary nature and does not have any sanction after March 2000. Therefore the Unit is not a permanent Unit. There are no sanctioned post of Beldar in this Project.

5. Applicants are only contractors and not Govt. servants. There is no relationship of master and servant. Hence this application is liable to be dismissed.

6. The applicant are only contractors (and not Government servants) who are given contract for doing specific works in the project for execution of National Security Guards Garrison's works at Manesar (Gurgaon). The said project was for a short duration (i.e. upto March 2000) and thereafter, there has been no sanction. The Project is likely to be complete by August 2000. On completion of the project, the contract

will come to an end. The work is neither of a permanent nor of perennial nature.

7. If employees of the contractor or the contractors are taken as employees of the department, this will amount to a complete anarchy as thousands of workers in different categories are employed by the contractor to complete the work, in time, on contract basis.

In the present case, there is not enough work for all the three applicants and the govt. is being burdened by asking them to be kept when there is no sufficient work for them.

8. The petitioners have not exhausted the departmental remedy and have approached this Hon'ble Tribunal directly.

9. The applicants have made false averments in the application making the application liable to be dismissed.

10. This Hon'ble Tribunal has already dismissed a similar case vide Judgment dated 23.9.1998 in OA No. 651/98.

11. The Hon'ble Tribunal has already dismissed the earlier OA No. 2171/99 filed by the applicants.

12. That the applicants filed a PT without serving any advance copy of the same on the answering Respondents, and the same was allowed without notice to the answering Respondents. Allowing the PT without notice to the answering Respondents, is irregular.

PARAWISE REPLY ON MERITS:

1. Contentions raised in this para are wrong and denied. The applicants are not casual workers. The applicants are not included in regularisation scheme as they are not the casual workers prescribed in the scheme. On the other hand, they are only contractors. However, it is humbly submitted that their application under Rule is not maintainable in view of the fact that the previous OA No. 2171/99 of the applicants has already been dismissed and a new OA cannot be filed to overcome the mistakes of the previous OA.

ii. Contentions raised in this para are wrong and denied. The applicants are not covered under the Scheme dt. 10.9.1993 as they are contractors, who does not come under the purview of the Scheme. Moreover, there is no permanent nature of work.

2-3. Jurisdiction is denied as there is no relationship of master and servant. The PT has been got allowed by the applicants without serving any copy of the same on the answering Respondents. Apart from

it, the applicants have earlier also filed OA No. 2171/99, which was dismissed by this Hon'ble Tribunal for want of territorial jurisdiction. Second application, on the same cause of action is not maintainable. The application is barred by limitation also.

4.1 Contention raised in this para are wrong and denied. The applicants were never engaged as Beldar by the answering Respondents. On the contrary, the applicants were given a contract to provide the services of a licensed ~~Severance~~/Beldar for fixed period purely on contract basis which can be closed earlier also as per requirement of the answering Respondents. Copy of this is annexed herewith as Annexure R-2. The applicants have not filed any proof of their appointment by the answering Respondents.

4.2 Contentions raised in this para are wrong and denied. The contract is given as per requirement. It may be for 3 months or for any period. The payments are made on monthly basis through Running Account Bills. Work Orders are annexed herewith as Annexure R-2.

4.3 Contentions raised in these paras are wrong and denied except that the applicants are being given the work as per the terms and conditions of the contract.

4.4 Contentions raised in this para are wrong and denied. It is wrong and denied that the applicants were ever engaged by the answering Respondents as Beldar. The applicants are working as contractors and are being paid accordingly. They were given contracts by different officers to provide the services of licensed ~~Surveyor~~/Beldar for fixed period purely on contract basis, which can be closed earlier as per requirement of the department.

4.5 Contentions raised in this para are wrong and denied. The applicants are working as contractors and are being paid accordingly. As submitted above, the applicants are working as a contractor in a Project which is of purely temporary nature. Neither there is any sanctioned post of Beldar in the project team nor the work is of a perennial nature as the project itself will come to an end on completion of the work. The Project on which the work is in continuation these days, is a temporary project and was created only upto March 2000 and is likely to be completed by August 2000. As such, the work is not of a perennial nature. The ratio of the judgment of P.S. Sivadas is not applicable to the facts of the present case.

4.6 Contentions raised in this para are wrong and denied. As stated above and again reiterated here, the applicants are contractors and not casual workers.

4.7 Contentions raised in this para are wrong and denied. The Director General (Works) had asked only details of the workers working on Muster Rolls/Hand Receipt and nothing more. He did not ask the details of workers on contract basis because they are not Casual/Muster Roll labour and are not covered under the Scheme.

4.8 Contentions raised in this para are matter of judgment. However, the facts of the judgment cited are distinguishable from the facts of the present case, and hence the same would not apply here.

4.9 In reply to this para it is humbly submitted that the OA 2171/99 of the applicant was dismissed by this Hon'ble Tribunal and now this OA has been filed, which is not maintainable.

4.10 & 4.11 Contentions raised in these paras are wrong and denied. They were wrongly recommended by the previous Chief Engineer office as they were not aware of the actual facts as the applicants are not covered under the Scheme being contractors and do not fulfill the requirements of the Scheme. The judgment cited in this para was based on different set of facts and is not applicable here. Rest of the contentions raised in these paras are wrong and denied.

4.12

Contentions raised in this para are wrong and denied. The applicants never made any representation to the Chief Engineer (ODZ). The alleged representation (A-8) was made to CE (DD-2) who is not the concerned authority. Moreover, the representation ought to be routed through proper channel.

4.13 & 4.14

Contentions raised in this para are wrong and denied. As stated above, no representation was made by the applicants. The applicants do not fulfill the requirements of the Scheme. The applicants are working as contractors. OA No. 2171/99 was dismissed by the Hon'ble Tribunal and a fresh OA cannot be filed.

5.

GROUND:

Contentions raised in the grounds are wrong and denied. None of the ground is available to the applicant. The applicants are only contractors. Apart from it, in all these citations, the work was of perennial nature and the availability of vacancy post was not in doubt. In the present case, neither the work is of perennial nature. Project is for a limited period i.e. upto march 2000 only and there is no vacancy available. There is no violation of Article 14, 16 and 21 of the Constitution of India. The applicant is not an employee of the Government. In the **Gujarat Electricity Board** case it was held that no court or industrial adjudicator can abolish casual labour if the contract is a genuine one.

The abolition of contract labour system is exclusively vested with the appropriate government and not in the Court or Tribunal.

In Dr. M.A.Haque Vs. UOI, (JT 1993(2) 265) Hon'ble Supreme Court held that "*if a disregard of the Rules and the bypassing of Public Service Commission are permitted, it will open a back door for illegal recruitment without limit.*"

In 1992 (4) SCC 18 State of Haryana Vs. Piara Singh, Hon'ble Supreme Court laid down that "*The Court must, while giving directions for regularisation of service, act with due care and caution. A practical and pragmatic view has to be taken, in as much as every direction tells upon the Public Exchequer.*"

In Madhyamik Shikha Parishad Vs. Anil Kumar Mishra, (AIR 1994 SC 1638), Hon'ble Supreme Court held that "*in the matter of services, no appointment can be made by way of regularisation in violation of any statutory provisions of the Recruitment Rules.*"

Rest of the contentions raised in the grounds are wrong and denied.

6. Contentions raised in this para are wrong and denied. The applicant has not exhausted the departmental remedies and has approached the Hon'ble Tribunal directly.

7. In reply to this para it is humbly submitted that the applicants had earlier filed OA No. 2171/99 before this Hon'ble Bench of the Tribunal and the same was dismissed. Now a fresh OA cannot be legally filed before this Hon'ble Tribunal.

8. In the above facts and circumstances of the case it is humbly prayed that the application may kindly be dismissed with costs.

9. In reply to this para it is humbly submitted that on 17.5.2000 the following interim order was passed by this Hon'ble Tribunal:

"To maintain the Status quo as on today regarding the services of the applicants."

The answering Respondents have maintained the status quo although the applicants obtained the same by misrepresentation, without bringing it on record that their earlier OA No. 2171/99 has already been dismissed by this Hon'ble Tribunal. The answering Respondents have already filed a short reply praying therein for vacation of the

56

aforesaid interim order. It is therefore, most humbly prayed that the interim order dt. 17.5.2000 may kindly be vacated.

10-12. These paras need no reply.

SuPrg

For & on behalf of Respondents

through

Rajeev Bansal

(RAJEEV BANSAL)
A.S.C.

VERIFICATION

I, S.P.Goyal, working as Executive Engineer NSGP Division V, CPWD, Manesar (Gurgaon) in the office of Respondents do hereby verify that the contents of paras 1 to 12 above are true and correct to my knowledge and belief, gathered from official record. No part of its is false and nothing material has been concealed therefrom.

Verified at Manesar on this

SuPrg

For & on behalf of ~~Respondents~~

No.11011/1/99-PF.I
Government of India
Ministry of Home Affairs
(Grah Mantralaya)

New Delhi, the 2nd Dec., 1999.

To

2-12-1999

The Director General of Works,
Central Public Works Department,
Nirman Bhavan,
NEW DELHI.

Subject: CONTINUATION OF TRUNCATED CIRCLE OF CPWD CONSISTING OF 70
POSTS FOR COMPLETION OF THE PROJECTS OF NSG AT
MANESAR/SAMALKHA.

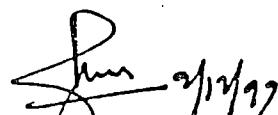
Sir,

I am directed to convey sanction of the President to the continuation of project construction team of 67 posts in the Central Public Works Department mentioned in Annexure at the NSG projects at Manesar/Samalkha for the period from 1.9.1999 to 31.3.2000.

2. The expenditure involved is debitable to the head of Account "2059-Public Works-A (1) (2)-Execution" in Grant No. Public works for the year 1999-2000.

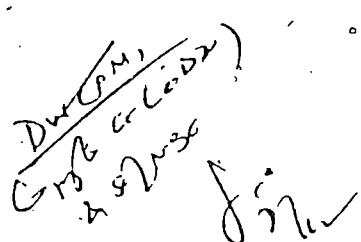
3. This sanction issues with the approval of Ministry of Finance, Deptt. of Expenditure and IFD, Ministry of Home Affairs vide their Dy. No.1398/E.Cood.I/99 dated 29.11.1999 and Dy.No.2308/99/Fin.III dated 30.11.1999 respectively.

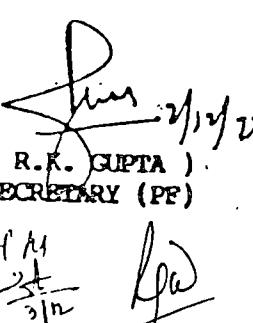
Yours faithfully,


(R.K. GUPTA)
DEPUTY SECRETARY (PF)

Copy forwarded for information and necessary action to:-

1. Ministry of Urban Affairs, CPWD, Nirman Bhavan, New Delhi.
2. PAO, MHA, New Delhi.
3. PAO, NSG, CGO Complex, New Delhi.
4. Director General of Audit, Central Revenue, New Delhi.
5. IFD (Fin.III), MHA, North Block, New Delhi.
6. Min. of Finance, E.Cood.I Branch, Deptt. of Expenditure, North Block.
7. DG of Works (Shri J. Raj, Dy.DG of Works), Nirman Bhavan, New Delhi.
8. Pay and Accounts Officer (Food Zone), CPWD, Nirman Bhavan, New Delhi.
9. Chief Engineer, NSG, New Delhi.
10. JS (P), MHA.
11. Guard File.


(R.K. GUPTA)
DEPUTY SECRETARY (PF)


(R.K. GUPTA)
DEPUTY SECRETARY (PF)

Government of India
Ministry of Home Affairs
(GRIH MANTRALAYA)

Sub: Continuation of 70 Posts in National Security Guard for construction of various projects.

S.No.	Post	No.of posts	Scale of pay
1.	Suptdg Engr.	1	14300-400-18300
2.	Ex. Engr.	4	10000-325-15200
3.	Asstt. Engr.	10	6500-200-10500
4.	Jr. Engr.	16	6500-200-10500 6500-175-9000
5.	Acct. Officer	1	8000-275-13500
6.	Divn Acct	2	5500-175-9000
7.	Supertendent	1	5500-175-9000
8.	Steno Gr.II	1	5000-150-8000
9.	Steno Gr.III	3	4000-100-6000
10.	UDC	6	4000-100-6000
11.	LDC	10	3050-75-3950-80-4590
12.	Barkandaz	1	2610-60-3150-65-3540
13.	Peon	6	2610-60-3150-65-3540
14.	Chowkidar	5	2550-40-4000

P.W.D. II
F2

GOVERNMENT OF INDIA
PUBLIC WORKS DEPARTMENT
WORK ORDER

State **Haryana**

Branch **B & R**

No.62(1) AE-I/NSGP/Divn-V/99/12

NSGP Divn-V Division

I Sub-Division

Dated. 30/12/99

Order for work described below given to..... **Sh. Amarnath**.....Contractor
to be executed as per conditions on the reverse and at the rates specified below :

Description of work	Qty.	Rate	Per	Remarks
Name of work:- A/R & M/O NSG Camp at Manesar				dg. 99-2000.
SHz Day to day maintenance of civil work.				
1. Providing the services of a sewerman for maintenance of civil work(Residential areas NSG camp at Manesar).	3 Months (u.e.f. 1-10-99 to 31-12-99)	440/- Per month	13,224.00	

Terms & conditions:-

1. The payment shall be made as per actual month at the rate stated above for normal working duty which is 9.00 AM to 5.00 PM i/c of lunch break of one hour.
2. For duty performed beyond these i.e. 9.00 AM to 5.00 PM extra payment shall be made @ 41.00 per hour excluding one hour for lunch break for which nothing extra is admissible.
3. The payment shall be purely on contract basis and is governed by the condition of work order. The Govt. does not carry any liability for his future engagement.
4. The payment shall be made in ~~cash~~ CASH.

Saf!
Assistant Engineer-I,
NSGP, Divn-V, CPWD,
Manesar, Gurgaon.

Copy to:-

1. The Executive Engineer, NSGP, Divn-V, CPWD, Manesar.
2. Sr. A.O. NSGP, Circle, CPWD, Manesar.
3. Sh. M.P. Jain J.E. NSGP, Divn-V, CPWD, Manesar.

Assistant Engineer-I.

JH/12/11/01

P.W.D. II

GOVERNMENT OF INDIA
PUBLIC WORKS DEPARTMENT
WORK ORDER

NSGP DIVN-V Division

I Sub-Division

Dated: 30/9/99

State Haryana

Branch B & R.

No. 62(1) AE-I/NSGP/DIVN-V/99/13

Order for work described below given to....Sh. Rajinder Kumar..Contractor

to be executed as per conditions on the reverse and at the rates specified below:

Description of work	Qty.	Rate	Per	Remarks
---------------------	------	------	-----	---------

Name of works - A/R & M/O NSG Camp at Manesar dg. 99-2000.
Sh: Day to day maintenance of civil work.

1. Providing the services of a Beldar for maintenance of civil work (Residential area) NSG Camp at Manesar w.e.f. 1-10-99 to 31-12-99

3 Months	3685/-	Per Month	11,055.00
----------	--------	-----------	-----------

Terms & conditions:-

1. The payment shall be made as per actual working month at the rate stated above for normal working duty which is 9.00AM to 5.00 PM including of lunch of one hour.
2. For duty performed beyond these hours i.e. 9.00AM to 5.00PM extra payment shall be made @ 34.33 per hour excluding one hour for lunch break for which nothing extra is admissible.
3. The payment shall be purely on contract basis and is governed by the condition for work order. The Govt. does not carry any liability for his future engagement.
4. The payment shall be made in CASH.

Sd/-

Assistant Engineer-I,
NSGP, DIVN-V, CPWD,
Manesar Gurgaon.

Copy to:-

1. The Executive Engineer, NSGP, DIVN-V, CPWD, Manesar.
2. The Sr. A.O. NSGP, Circle, CPWD, Manesar.
3. Sh. M.P. Jain J.E. NSGP, DIVN-V, CPWD, Manesar.

Assistant Engineer-I.

30/9

GOVERNMENT OF INDIA
PUBLIC WORKS DEPARTMENT
WORK ORDER

P.W.D.

State **Haryana**
Branch **S&R**

NSGP Division **V**
Sub-Division **II**

No. **67(1)/AE.II/NSGP/Dn.V/99/16**

Dated **1.11.1999**

Order for work described below given to **Sy. Chawhan Lal** Contractor
to be executed as per conditions on the reverse and at the rates specified below:

Description of work		Rate	Per	Remarks
Name of work is A/R & B/O	NSG complex at Manesar dg. 1999-2000.			
Services of a Pdg. for the services of a Labour (beldar) for help of mason.				
S.No.	Description of item	Qty.	Rate	unit
1.	Pdg. services of a beldar for help of mason for attending day to day complaints of mason for maintaining various residential non resdl. buildings under sub Divn.II at NSG complex Manesar from 9.00 AM to 5.00 PM. All material required will be supplied by the deptt. free of cost.		3 months 360/-	each 11055/-

TERMS & CONDITIONS :

1. The payment shall be made on per actual working days at the rate stated above for normal duty i.e. 9.00 AM to 5.00 PM including of lunch of one hour.
2. For duty performed beyond 9.00 AM to 5.00 PM payment shall be made @ 20.12 per hour excluding one hour for which nothing extra is admissible.
3. The engagement is purely on contract basis and is governed by the conditions of work order. The Govt. does not carry any liability for his future engagement on work order beyond the period of the work order. Any future engagement, if made, will be assumed to be a fresh spell of work unconnected with past spell.
4. Period of the work order is from 1.11.99 to 31.1.2000.
5. Payment may be made in cash.
6. Sunday will be paid after continuous six working days, otherwise Sunday will not be paid for purpose of payment.

Sd/-
Asstt. Engineer.II,
NSGP Dn.V, CPWD,
Manesar.

Copy to :

1. The Executive Engineer, NSGP Dn.V, CPWD, Manesar.
2. The Sr. A.O., NSGP Circle, Manesar.

Sd/-
Asstt. Engineer.II.

P.W.D. II

A

GOVERNMENT OF INDIA
PUBLIC WORKS DEPARTMENT
WORK ORDER

State Haryana
Branch D.R.

No. 57(1)/99-NSGP/AE.II/Dn.V/92

Order for work described below given to....gtr. Chaman Lal.....Contractor

to be executed as per conditions on the reverse and at the rates specified below:

Description of work	Rate	Per	Remarks
Name of work is A/R & M/O NSG Complex at Mangesar dg. 1999-2000. SH & Pdg. the services of a labour (beldar) for help of mason.			
S.No.	Description of item	Rate	Unit
1.	Pdg. services of a beldar for help of mason for attending day to day complaints of mason for maintaining various residential non resdi. buildings under sub divn. II at NSG complex Mangesar from 9.00 AM to 5.00 PM. All material required will be supplied by the Deptt. Free of cost.	3months 355/-	month 1067/-

TERMS & CONDITIONS:

1. The payment shall be made as per actual working days at the rates stated above for normal duty i.e. 9.00 AM to 5.00 PM i.e. of lunch of one hour.
2. For duty performed beyond 9.00 AM to 5.00 PM payment shall be made @ 20.12 per hour excluding one hour for which nothing extra is admissible.
3. The engagement is purely on contract basis and is governed by the conditions of work order. The Govt. does not carry any liability for his future engagement on work order beyond the period of the work order. Any future engagement, if made, will be assumed to be a fresh spell of work unconnected with past spell.
4. Period of this work order is from 1.5.1999 to 31.7.1999.
5. Payment may be made in cash.
6. Sunday will be paid after continuous six working days otherwise sunday will not be paid for purpose of payment.

Approved for 1067/- only

cc: Asstt. Engineer-II,
NSGP Dn.V, CPWD,
Mangesar

Copy to:

1. The Executive Engineer, NSGP Dn.V, CPWD, Mangesar.
2. The Sr. A.O., NSGP Circle, Mangesar.

Asstt. Engineer-II.
L. R. Patel

No. B:- C/o. Residential site for NSG at Smalhka.

P.W.D. 16

SH:- C/o. Type-II GOVERNMENT OF INDIA

Appx. 13,800/-

PUBLIC WORKS DEPARTMENT

WORK ORDER

State Haryana

VI Division

Branch B&R

V Sub-Division

No. 11/AGII/NSGP D/99-200

Dated...../...../.....

Order for work described below given to..Sh....Rakesh Kumar.....Contractor

to be executed as per conditions on the reverse and at the rates specified below :

Description of work	Rate	Per	Remarks
1- providing the services of Beldar.			
Basic Pay Rs. 2550/-			
B.O.A. Rs. 944/-			
HRA 7.5% Rs. 191/-			
	Rs. 3685/-	Rs. 3685/- Month	
2- Extra for over time duty performed beyond normal working hours i.e. 9.00 am to 5.00 p.m. excluding one hours break i.e. 5.00 p.m. to 6.00 pm continuous duty.		Rs. 33.95 per hours	
Terms & conditions:-			
1- The payment shall be made as per actual working days at the rate stated for normal duty hours 9.00 pm to 5.00 pm i/c. lunch break one hours.			
2- Nothing shall be paid for gazetted holiday until the worker called for duty.			
3- The employment is purely on contract basis and is governed by the conditions of work order only. The Govt. does not carry any liability for his future engagement on work order beyond the period of this work order. Any future engagement if made will be deemed to be fresh spell of work unconnected with spell.			
4- The rates are net nothing shall be paid extra. The payment shall be made by cash.			

Assistant Engineer-V
NSGP, Divn. VI, CPWD
Mansarovar, Gurgaon(HR)

RW

CHIEF ENGINEER

TEL:

भारत सरकार
प्रधानमंत्री कीक नियंत्रण विभाग
नियंत्रण विभाग विभाग
भवन विभाग, राजपथ, नई दिल्ली-110001
GOVERNMENT OF INDIA
Central Public Works Department
National Security Guard Project
'B' Block, Curzon Road Barracks
मो.प्र० ५०/८०८०, नो. ८०/८०८०/१०२८/१०२८/१०२८
पद्धि नियंत्रण-110001
नई दिल्ली-110001 23/2/96

dt. 6/3/96

To
Shri B.K.Chugh,
Superintending Engineer(C)
NSGP Circle I, CPWD,
Manesar.

Sub: Continuance of NSGP Circle at Manesar.

A proposal has been sent for continuance of the staff and officers for the proposed circle at Manesar vide this office letter No.164 dated 22.2.96. If any staff or officer is surplus to the proposed strength, he should be relieved on 31.3.96 as per their seniority of stay at Manesar. The names of officers and staff should be sent to the office of DG(W)/SE(Coord) for transfer and posting as the case may be by 29.3.96.

Prasad
(S.C.Prasad)
Chief Engineer(NSGP)

Copy to:

1. Shri A.V.K.Krishna Rajendra, SE(E) NSGP, CPWD, New Delhi for similar facility
2. Sh.D.Bhole, SSW/SE(HQ) NSGP, CPWD, New Delhi. He should send copy of the proposal to both the SEs if not already sent.

Prasad
S.C.Prasad

today
1/3/96

R.P.

ANNEXURE - I

ONE CIRCLE FOR NSG AT MANESAR

NSG Circle	SC	EE	AE	JE	AO	DA	SUPERIN- TENDENT	STENO Gr.II	STENO Gr.III	UCC	LOC	BARKAN- DAZ	PEON	CHOW- KIDAR
NSG Circle	1	2	2	1		1	1			2	2	1	2	1
NSG MAINTENANCE DIVISION		1	2	4	1				1	1	1	2		1
NSG FLECT. MAINTENANCE DIV.		1	2	3	1				1	1	1	2		1
NSG MORT. DIV.		1	2	3	1					1	2		1	1
NSG CONSTRUCTION DIVISION		1	2	4					1	1	2		1	1
ARCHITECTURAL PLUMBING UNIT		1	2	2										
	1	5	12	16	1	2	1	1	1	2	6	10	1	8
												3		5.

Total : 72 posts.

DO NO. 2003/10/89-Engg/NSG-S/1

महानियंदेशालय

राष्ट्रीय सुरक्षा गार्ड

सूण 'बी', सी.जी.ओ. कॉम्प्लेक्स, लोधी रोड

नई दिल्ली-110003

Directorate General,

National Security Guard

Block 'B', C.G.O. Complex, Lodhi Road

New Delhi-110003

A.K. Trivedi
Chief Engineer

Dear Shri Mehta Dated 18 August '98.

During the last CIE Meeting for Manesar Project, the cost of the Manesar Project was frozen as 103 crores (-16.5 lacs, -8.1 lacs). We have yet to receive the minutes of the meeting. However, it was also committed by Addl. DG (Northern Region) CPWD that this Project will be over by June 2000.

Therefore, may I request you, efforts should be made to ensure that there is no cost escalation and the project including finalisation of accounts, settlement of arbitration cases, audit paras, quality control paras, is completed by June 2000 positively.

With best regards.

Yours sincerely,

(A.K. Trivedi) 18.08.98
(A.K. Trivedi)

Shri G.S. Mehta
Supdtg Engineer
NSGP Circle, CPWD
KGG Campus, Manesar.

Copy to:-

1. Shri S.B. Jhamb, CE (CDZ) Sewa Bhawan, CPWD, R.K. Puram, New Delhi - w.r.t. discussion and commitment of CPWD given to Secy (Exdr) during CIE Meeting.
2. Shri Ravinder Lal, Addl. DG (Northern Region) CPWD - w.r.t. commitment given by CPWD regarding completion of the Project by June 2000.

(A.K. Trivedi)
Chief Engineer
NSGP

In the Central Administrative
Tribunal (PB) New Delhi

6 A 903 / 2009

In the matter of
Mahesh Kumar vs. U.S.O. & ors

Order

S. No	list of documents	Pages
1.	Rejoinder	1-3

27/9/2009

DR
(D. P. KHOOKHA)

RPW
16/10

भारत स्थायीठ/CAT (PB)
आज दाखिल किया
Filed Today
10 OCT 2009
दाखिल दो/Filing : 00464
रजिस्टर/Dy. Register

1
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH:
NEW DELHI

O.A. NO. 903 OF 2000

IN THE MATTER OF:

Manohar Kumar & Ors. vs. U/T & Ors

REJOINDER ON BEHALF OF THE APPLICANTS

RESPECTFULLY SHOWETH:

PRELIMINARY OBJECTIONS:

All the preliminary objections have already been dealt with in rejoinder to the short reply on interim relief and the applicants would refer to the same and are not repeating them for the sake of brevity.

PARAWISE REPLY ON MERITS:

(i) & (ii) Contents as raised are repetitive and they have been already been met with in the previous rejoinder as referred to above.

2 & 3 The respondents are herping again and again the same contentions and as such in view of what has already been said no further comments are called for.

4.1 to 4.6 As already stated, the so called contracts are mere camouflage. The work is of perennial nature. The respondents have nowhere stated that all the projects have come to an end. This is a continuous process and even after completion of a project,

the services of these classes of workers is required. The ratio of judgement of P.S. Sivadasa is fully applicable to the facts of the ~~xx~~ present case. The averments in original paras are once again reiterated. Needless to state that the applicants are both contractors and well as executors.

4.7 Controverted. The applicants were engaged on work order basis (Ann.A4 refers) and as such the contentions of the respondent is nothing but a deliberate ~~xx~~ lie to mislead the Hon'ble Tribunal.

4.8 & 4.9 ^{realm 2} Falling in the legal ~~realm~~, the same will be dealt with at the time of oral arguments.

4.10 & 4.11 The respondents are estopped to raise this plea for the first time after such a long gap.

4.12 The respondents by harping on technicalities can not pass the buck on the applicants.

4.13 & 4.14 Controverted and the contents of the original paras are reiterated.

GROUND

Controverted and once again the original grounds are reiterated. The judgements cited by the respondents are not relevant.

6,7, Controverted and once again the contents of the
4,8 original paras are reiterated.

9. The applicants did not obtain interim orders by
suppressing any material.

10-12 No reply.

Manesh K
APPLICANT NO.1

THROUGH:

NEW DELHI

DT. : 9.10.2000

Shukla
COUNSEL

VERIFICATION:

I, the above named applicant do hereby verify
that the contents of the above Rejoinder are true and
correct to the best of my knowledge & belief.

Verified at New Delhi on this 9/10 day of October,
2000.

Manesh K
APPLICANT NO.1