

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO. 1112/2004

New Delhi this the 25th day of February 2005

Hon'ble Mrs. Meera Chhibber, Member (J)

1. Sh. Mahipal
Age 32 years
S/o Shri Nathu Singh
R/o E-24/102, Jay Bharti Camp
East Vinod Nagar,
Delhi-110091.
2. Sh. Gopal
Age 27 years
S/o Sh. Dayachand
R/o D-758, Kidwai Nagar
New Delhi-23. Applicants.

(By Advocate Shri M.L. Chawla)

Versus

1. Union of India, through
Secretary, Ministry of Defence,
South Block, Govt. of India,
New Delhi.
2. Director General & Secretary,
Govt. of India,
M/o Defence,
Defence Research & Development
Organisation, Room No. 138,
South Block, New Delhi-11.
3. Director,
Directorate of Management Services,
Defence Research & Development
Organisation Headquarters,
Ministry of Defence,
Room No. 249 'B' Wing (Sena Bhawan),
DHQ Post Office,
New Delhi-11.
4. Director,
Directorate of Personnel,
Defence Research & Development
Organisation Headquarters
(Room No. 221 'B' Wing)
New Delhi-11. Respondents.

(By Advocate Shri Madhav Panikar)



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O R D E R (ORAL)

This O.A. has been filed by two applicants claiming the following reliefs:

8.1 To direct the respondents to comply with the directions already given to them in both the earlier OAs filed by the applicants as cited hereinabove.

8.2 To further direct the respondents to reengage the applicants because both the applicants suffering from acute financial hardship and or the brinks of starvation."

2. It is submitted by the applicants that they had earlier filed O.A. 2155/1996, which was disposed of on 2.7.1997 by giving the following directions:

".... to release payment of one month's wages to the applicants within a month from the date of receipt of a copy of this order.

7. Whenever work is available, the applicants shall be preferred to outsiders and persons with lesser length of service to the organization. The moment the applicants are re-engaged, the services rendered by them with the respondents mentioned in Annexure R-2 shall be kept in view and they shall be considered for conferment of temporary status. Such an order of conferment of temporary status shall be passed within a period of one month from the date of re-engaging them. The services already put in by applicants shall be considered and kept in view while filling up any permanent vacancy to which the applicants are otherwise eligible for consideration".

3. In OA 2721/99 which was disposed of on 5.9.2000, this Tribunal had directed the respondents to consider engaging the applicant as soon as a vacancy or fresh job becomes available before offering any fresh contract.

4. It is submitted by the applicants that even though while filing reply in OA 2721/99, respondents had stated that the job work of contractor has expired on 31.5.2000 but the same contractor has been awarded contract. Therefore, a wrong statement was made before the Tribunal. The applicants have not been reengaged in spite of getting favourable orders from the Tribunal twice in the earlier O.As. They have submitted that the respondents have engaged two persons, namely, Virender and Sanjay





while denying engagement to the applicants. Thus, they have been forced to file the present O.A.

5. Respondents on the other hand have submitted that the present O.A. is barred by the principle of res judicata as applicants are filing misconceived O.As one after the other with intention to mislead the court. They have categorically denied that they have appointed Shri Virender or Shri Sanjay on regular basis. They have submitted that Group 'D' employees can be directly recruited/appointed by the office of Chief Administrative Officer and Joint Secretary (Training), Ministry of Defence and respondents have no powers to employ Group 'D' employees on regular basis. As far as contractual work is concerned, they have explained that job contract has been given to M/s ACME Enterprises for specialized repair maintenance services for open and technical area which house sophisticated scientific equipments instrumentation & computers. Therefore, its cleanliness and maintenance can be done only by competent professionals which are provided by contractors, namely, M/s ACME Enterprises. It is, therefore, for the contractor to get the work done either through the help of machines or manpower as he deems fit. The deployment of skilled manpower on 'need base' is the sole responsibility of the contractor and the respondents have no say or control over their engagement, continuity or discharge but even the contractor does not have any person by the name of Virender and Sanjay. They have thus submitted that the applicant has filed this O.A. on absolutely wrong premise. They have further explained that the contract with M/s ACME Enterprises had expired on 31.5.2000. Thereafter, contract was awarded to M/s Alert Décor and after their contract was over, M/s ACME Enterprises was again awarded fresh job contract based on competitive tender basis and this contract became effective from 01.6.2002 and even when applicants were engaged as casual labour, even at that time respondents were having a contract with M/s Sirohi Enterprises.





Therefore, the task entrusted to the job contractor is different in content and nature of job of casual labour for which the applicants were engaged.

They have specifically stated that respondents have not resorted to the task of casual labours since the discharge of applicants.

6. They have further submitted that applicants have never shown any inclination in contract work, nor they ever approached the respondents with a request that the contractor be persuaded to employ them in his work force. Therefore, no case for interference has been made out by the applicants and the O.A. may be dismissed.

7. Applicants have filed an advertisement dated 16.10.2004 wherein some posts for Office Attendants were to be filled in the Defence Institute of Psychological Research. Counsel for the applicants ,therefore, submitted that the vacancies were also available with the respondents. Therefore, in compliance with the earlier directions given by this Tribunal, they could easily have considered the applicants for the said posts.

8. Since this advertisement was annexed by the applicants in the rejoinder, counsel for the respondents had taken time to take instructions on the said advertisement. Today, when the case was called out, counsel for the respondents submitted that under the Defence Research & Development Organisation, there were as many as 22 institutes, laboratories or establishments but they were all to be headed by a Director or Chief Resident Engineer or Office In-charge in that particular establishment and powers were delegated to the heads of such Institutes or establishments for appointing Class III and Class IV non-industrial or industrial staff to the said establishment. He placed on record the order dated 8.2.1972 whereby the powers were delegated to the Heads of the Institutes under CCS (CCA) Rules 1965. He thus submitted that the advertisement which has been annexed by the applicants with this rejoinder was for Defence Institute of Psychological Research whereas applicants had worked in the Headquarters at Directorate of Management





Services, Defence Research and Development Organisation, Ministry of Defence. Therefore, the advertisement which has been annexed by the applicants with the rejoinder cannot give any right to the applicants to claim absorption against the posts of Office Attendants in a different institute.

9. After going through the records, I find that respondents have categorically denied having engaged Virender and Sanjay which was the basic contention of the applicants while filing the present O.A. They have, in fact, clarified that after the services of applicants were dispensed with, they have not engaged any casual labour thereafter. As far as the job contract is concerned, that also they have clarified by stating even at the time when applicant was engaged on casual basis, even at that time they had given the specific work to the contractor. Therefore, the work ~~not~~ given to the contractor is different from the nature of work which was being done by the applicants. In this view of the matter, when respondents have ~~been~~ given the job contract for specialized repair maintenance services for open and technical areas which house sophisticated equipments instruments and computers, naturally no directions can be given by the court to give the said work to the applicants. However, respondents have themselves stated in the counter affidavit that applicants never requested the authorities to permit them to work under the contractor. Therefore, taking the cue from there, at best I can give liberty to the applicants to make request to the respondents where they had worked earlier to at least allow them to work with the contractor by persuading him. In fact, I had put a specific question to the counsel for respondents with this regard and counsel for the respondents had fairly conceded that in case the applicants were willing to work with the contractor and there is any such work which can be done by the applicants, they would definitely try to persuade the contractor to utilize the services of applicants as well.





10. Therefore, the applicants are given liberty to make an application to the authorities concerned to allow them to work with the contractor by persuading him, within a period of two weeks from the date of receipt of a copy of this order. In case such a request is given by the applicants, respondents are directed to take up the matter with the contractor and persuade him to utilize the services of applicants in case he finds them suitable for the job performance under his contract.

11. With the above directions, this O.A. is disposed of. No order as to costs.



(MEERA CHHIBBER)
MEMBER (J)

'SRD'