

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 2163/92
T.A. No.

199

(70)

DATE OF DECISION 17-3-98


<u>Raja Ram & ORS.</u>	Petitioner
<u>Shri B.B. Raval.</u>	Advocate for the Petitioner(s)
VERSUS	
<u>Union of India & Another</u>	Respondent
<u>Shri P.H. Ramchandani</u>	Advocate for the Respondent

CORAM

The Hon'ble Mr. S.R. Adige, Vice-Chairman (A)

The Hon'ble Dr. A. Vedavalli, Member (T)

1. To be referred to the Reporter or not? YES
2. Whether it needs to be circulated to other Benches of the Tribunal No


 (Dr. A. Vedavalli)
 Member (T)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA-2163/92 and
MA No.112/94

New Delhi this the 17th day of March, 1998.

HON'BLE MR. S.R. ADIGE, VICE-CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. Raja Ram,
S/o Sh. Chander Bhushan
2. Shyam Lal,
S/o Shri Sumera Lal
3. Daya Chand,
S/o Sh. Hari Ram
4. Suresh Chander,
S/o Sh. Babu Lal
5. Ajay,
S/o Sh. Kishan Lal
6. Dhan Singh,
S/o Shri Lal Bahadur

...Applicants

(By Advocate Shri B.B. Raval)

-Versus-

1. Union of India,
through Secretary,
Ministry of Defence,
New Delhi.
2. I.N.S. India,
Chanakyapuri,
New Delhi through
Commander/Supply Officer,
Naval Provost Marshal Delhi Area

...Respondents

(By Advocate Shri P.H. Ramchandani)

ORDER

HON'BLE DR. A. VEDAVALLI, MEMBER (J):

The six applicants in this OA are engaged by the respondents as casual labourers from different dates for the concerned periods during the past several years. Their

grievance is that their services have not been regularised and made permanent by the respondents in spite of working for a number of years.

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2. The reliefs sought by the applicants are as under:-

- "i) direct the respondent No.2 to regularise services of the applicants from the date of their working in the department and to make them payment with all benefits permissible under the law;
- ii) direct the respondent No.2 to pay the salary @ minimum wages as permissible under provisions of law.
- iii) to restrain respondent No.2 from removing the applicants from the job of casual labourers during the pendency of the case.

3. The O.A. is contested by the respondents who have filed their counter. The applicants have filed their rejoinder to the said counter, broadly denying the various averments made therein by the respondents and generally reiterating the stand taken in the O.A."

4. The case of the applicants in a nutshell is that they have been continuously working as civilian casual labourers engaged by respondent No.2 for the past several years without any break and have a right to be regularised and made permanent Government servants under the law as they have completed 240 days of service with the respondents.

5. According to the averments made by them in the OA, applicants No.1 and 2 are working since May, 1985, No.3 is working since January, 1987 and Nos.4&5 are working since August, 1987 and No.6 since November, 1990. They have filed photo copies of the attendancesheet for some of the months in the years 1990 and 1991 (Annexure A-2 to Annexure A-8). They have also submitted that their names are registered with the Employment Exchange and as per the vacancies existing with the

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respondent No.2 in the years 1985, 1987 and 1989 the names of applicants Nos. 1 and 2 were sponsored in the year 1985. Applicant No.3's name was sponsored in January, 1987 and applicant Nos.6's name was sponsored thereafter in November, 1990. They have filed photo copies of their employment exchange cards (Annexure A-1) and their entry card/identity card (Annexures A-9, A-10 and A-10-A) and the staff minute sheet (A-11). They have further submitted that the wages being paid to them are not minimum wages and hence they should be given the salary and wages to which they are entitled to under the law.

6. A preliminary objection has been raised by the respondents in their counter-affidavit stating that the applicants were engaged on casual basis for specific private purposes by the non-public fund organisation and were liable to be terminated without any notice or reasons. They have, therefore, no locus standi to be absorbed in regular service.

7. In their reply on merits the respondents have submitted that the applicants were engaged as casual labourers for specific period and for specific nature of job. Services of the applicants got automatically terminated on the expiry of engagement period on casual basis. This will be treated as termination order. For each spell of 89 days they were engaged as fresh casual labourers. The respondents have denied the contention of the applicants regarding uninterrupted continuous service without break as incorrect and misleading. They have averred that the applicants have not been engaged against any regular post. Hence, they have no right to be absorbed in regular service. Further, there are no vacancies or regular posts available against which any

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of the applicants could be considered subject to fulfilling the criteria laid down in the relevant recruitment rules. They have filed certain particulars regarding the date of joining and period of engagement regarding each of the applicants (Annexure R-I).

8. In addition, the respondents in their reply to MA-112/94 filed by the applicants have submitted that they were engaged by a non-public organisation unconnected with the affairs of the State and were paid from a non-public fund called regimental fund which is controlled unofficially by one of the officers of the department beyond the official work. According to the respondents the said fund consists of contributions made by Naval Officers and is spent on various welfare measures such as providing a bus to take officers from their place of work and also to transport the children of Naval officers to and fro from the school and respondents etc. and many other welfare facilities. As and when some of the welfare facilities are withdrawn due to certain reasons including paucity of fund etc. casual labourers engaged and paid out of the said fund are dispensed with. The respondents in the aforesaid reply to MA-112/94 also have raised a preliminary objection as to the maintainability of the O.A. in view of the above position.

9. Without prejudice to the preliminary objection the respondents have submitted on merits in the said reply to MA-112/94 that the casual labourers being paid from the non-public regimental fund are engaged on purely casual and ad hoc basis for a specific time bound job which are need based and none of them can be treated as monthly rated casual labourers and are paid a fixed amount per month. They cannot

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be equated with the casual labourers employed in Central Government departments. The applicants are thus not entitled for payment of DA, HRA, CCA etc. and the question of discrimination, therefore does not arise and they have no legal right to claim the same. The respondents contend that the OA and MA-112/94 are, therefore, devoid of any merit and prayed for their dismissal.

10. In the rejoinder filed by the applicants to the aforesaid counter reply to MA-112/94 they have vehemently opposed the preliminary objection raised by the respondents as to the maintainability of the present OA and the said MA as well as their reply on merits. They have contended that even if they are paid from a non-public fund their services were not utilised solely for private purpose as domestic servants and that they were performing other duties such as maintenance of office units, playgrounds, barracks etc. In support of the above contention they have filed photo copies of certificate issued by one Shri V.C. Barthwal, Commander regarding two of the applicants (Annexures MA-1 & MA-2). The applicants have also contended that if the respondents wanted to employ only domestic servants and pay them wages out of a non-public fund there was no need to get persons sponsored by the Employment Exchange and employ them for private work. The above practice, according to the applicants, is illegal. The applicants have submitted that certain similarly situated casual labourers were paid at the rate mentioned in the paymentsheet (Annexure MA-3), i.e. Rs.49.50 per day. Ultimately, the applicants have prayed that the respondents may be directed to pay them at least as per the above rates for the entire length of service they have rendered with the

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respondents and pay them the difference between the amount so calculated deducting Rs.850/- being paid to them with 18% interest till realisation.

11. We have heard the learned counsel for both parties and have gone through the pleadings, material documents and papers on record. We have also perused the original records made available by the respondents for reference.

12. At the outset, the preliminary objection raised by the respondents (supra) regarding this Tribunal to entertain the present O.A. and MA-112/94 and the locus standi of the applicants have to be considered and a view taken before we proceed further in the matter.

13. The learned counsel for the respondents Shri P.H. Ramchandani relied strongly on a judgement of this Tribunal dated 13.8.93 in OA-1237/93, OA-1238/93, OA-1239/93, and OA-1240/93 - Subhash Chander and Ors. vs. Secretary, Ministry of Defence and another, judgement dated 20.8.93 in OA-984/93 - Subhash Chander and Ors. vs. Union of India in support of the aforesaid preliminary objection. He submitted that the ratio laid down in the aforesaid judgements is equally applicable to the facts of the present OA since the applicants in the aforesaid OAs (supra) were also casual labourers doing private work and were paid out of Regimental non-public fund like the applicants in the present OA. He argued that the aforesaid OAs were dismissed as not maintainable for want of jurisdiction on the reasons stated therein and the present OA deserves to be dismissed on the said ground itself.

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14. The learned counsel for the applicant Shri B.B. Raval on the other hand argued that the aforesaid preliminary objection raised by the respondents is not maintainable. In support of his arguments reliance was placed by him on a decision of this Tribunal in OA-2262/92 dated 19.7.93 and the common judgement of a Full Bench of this Tribunal dated 5.8.93 in OA-859/92, OA-861/92 and OA-863/92.

15. We have given the matter our utmost consideration. It is seen that the question of jurisdiction of this Tribunal in respect of regularisation of service of casual labourers engaged by officers of the Indian Navy for purposes of private work who were being paid from non-public Regimental fund was considered by the Tribunal in the judgement dated 13.8.93 - Subhash Chander vs. Union of India. It has been held by the Tribunal thus:-

"6. We have also considered the matter from the point of casual labour engaged in other organisations of the Union of India, but the applicants herein cannot be equated with such casual labourers or daily-wagers, mainly because they are not paid from the Public Funds or Consolidated Fund of India, but rather they are paid from the private funds, or Regimental Funds, as defined in para, 801 of the Army Regulations. Merely because the whole affair is controlled by the respondent No.2, i.e., Commanding Officer, I.N.S. India, would not by itself make the applicants serving under the Government of India.

7. We, therefore, find no merit in these applications regarding jurisdiction of this Tribunal.

8. The applications are, therefore, not maintainable and the Tribunal has no jurisdiction to decide the issue involved. The applications are, therefore, dismissed as not tenable with the liberty to the applicants to assail their grievance in the proper forum. There will be no order as to costs."

16. The aforesaid judgement dated 13.8.93 was followed by the Tribunal in a subsequent judgement dated 20.8.93 in Sh. Subhash Chander vs. Union of India (supra)



stated to be an identical case. Moreover, the relevant ratio laid down and the observations made by the Hon'ble Supreme Court in Union of India vs. Tej Ram Paras Ramji Bombay and Ors. (1991 SCC (L&S) 809 and All India Railway Institute Employee Association vs. Union of India, (AIR 1990 SC 1952) were also referred to by the Tribunal and it was held thus:

"5. The ratios laid down and the observations made in the above cases are equally applicable to the present case. The provision of transport services to the officers and children is not mandatory. It is being done as a welfare measure from Regimental Funds by contribution, as distinct from consolidated fund. The staff engaged are not recruited on the basis of any Government approved rules and their service conditions are also not governed by any statutory rules and regulations. There is no master-servant relationship between the Government and these employees. Hence this Tribunal will have no jurisdiction to deal with the service conditions of the applicant.

6. In view of the above, the application is dismissed for want of jurisdiction and the interim order dated 25.5.1993 is vacated. The applicants may, if so desired, assail their grievances in the proper forum. No costs."

17. Nothing has been brought to our notice to indicate that the aforesaid judgements have not become final. While so, it is noticed that the judgement in OA No.2262/92 Shri Dhan Ram & Ors. vs. Union of India & Ors. dated 19.7.93 given by a Division Bench of this Tribunal (supra) and the judgement of Full Bench (supra) dated 5.7.93 appear to have been given on the particular facts and circumstances peculiar to those cases only and in our view are not applicable to the facts of the present case.

18. In view of the ratio laid down in the judgement dated 13.8.93 in OAs No.1237/93, 1238/93, 1239/93 & 1240/93 (supra) by a coordinate Bench of this Tribunal and the relevant ratio and observations of Apex Court referred to therein which are applicable to the facts of the present case,

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we are of the opinion that the preliminary objection raised by the respondents regarding jurisdiction of this Tribunal in respect of the present OA deserves to be sustained.

19. In view of the foregoing discussion, the O.A. as well as MA No.112/94 are dismissed, as not maintainable on the ground of lack of jurisdiction to decide the issues involved. However, the applicants are given the liberty to seek redressal of their grievances from the appropriate forum, if so advised, in accordance with law. No costs.

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)

S.R. Adige
(S.R. Adige)
Vice-Chairman(A)

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