CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.631/1992 with OA No.632/1992 and OA 633/1992

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

New Delhi, this 31st day of March, 1998

OA No.631/1992

S/Shri
1. Rohtas Kumar, s/o Shri Jee Ram
2. Vinok Kumar, s/o Shri Dola Ram
3. Shri Ganesh Prasad, s/o Phool Singh
4. Som Datt, s/o Shri Ram Samajh
5. Kirat Pal, s/o Shri Harnand
6. Vimal Prakash, s/o Shri Hari Ram
   all r/o Vill. Khanjerpur, PO Roorkee
   Dt. Hardwar (UP)
7. Kiran Lal, s/o Shri Om Prakash
   Vill. Kurdi, PO Mangalore
   Dt. Hardwar (UP) .. Applicants

OA No.632/1992

Shri Anant Ram
s/o Shri Ramji Das
Mangalore, Mohalla Baharkila
P.O. Kharat, Dt. Hardwar(UP) .. Applicant

OA No.633/1992

Shri Sushil Kumar
s/o Shri Phaggan Singh
Vill. Sanjay Gandhi Colony
P.O. Roorkee, Hardwar Dt (UP) . .. Applicant

(By Advocate Shri B.S. Charya)

versus

1. Central Building Research Institute
   Through its Director
   Roorkee-247667, Dt. Hardwar, UP

2. Director General
   Council of Scientific & Industrial Research
   Anusandhan Bhawan, Rafi Marg
   New Delhi .. Respondents

(By Advocate Shri V.K. Rao)

ORDER

Hon'ble Shri S.P. Biswas

Since the details of facts, questions of law and the reliefs sought for are similar in these three Original Applications, it is proposed to dispose them of by a common order.

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A brief mention of the background of the cases is essential for proper appreciation of the issues involved.

2. Respondent No.2 is a Society registered under the Societies Registration Act having more than 42 constituent establishments all over India and Respondent No.1 Central Building Research Institute (CBRI for short) is one of them. These constituents including CBRI etc. are wholly managed, controlled and financed by R-2. Employees of one constituent establishment are transferable to another. Respondent No.1 undertakes development of rural housing environment, planning/designing/construction of houses in urban areas, laying down foundation of structural buildings planning and strengthening of damaged structures. With regard to building materials, respondent No.1 undertakes development of bricks and tiles from waste materials, development of low temperature cements, improvement of portable paddle type batch concrete mixer, development of computer packages for structural analysis and provides technical aids to industries and disaster affected areas. While undertaking such projects in the aforesaid areas, rates are quoted by R-1 and upon acceptance by sponsors of the terms and conditions of the agreement including the rates, they proceed to take up the work at different stages. Such rates quoted by R-1 include cost of materials, expenses on labour and other overhead expenses. To carry on the contracted project works, R-1 requires the services of helpers, masons, tracers, mechanics, drivers and clerks etc.

Applicants in OA 631/92 are helpers, masons and mechanics. Whereas the applicants in OA 632/92 and OA 633/92 are carpenter and typist respctively. All of them are required to work under direct control and supervision of CBRI. The applicants in OA 631/92 were appointed in differnt categories on contract basis and that too for a specified period against specified amount as wages at differnt points of time between 1987 for 1990. Applicants in the remaining two OAs were employed on 17.5.82 and 1.10.88 respectively. Services of all the applicants in OA 631/92 were terminated on different dates between 30.6.91 to 31.3.92. However, applicant Nos.1,3,5 & 7 in OA 631/92 were taken back on duty on differnt dates between 2.8.93 and 8.9.94.

3. All the applicants are aggrieved because of respondents' action in not regularising them in the capacities of Helpers/carpenters/Typists with regular scale of pay on the principle of "equal pay for equal work" and instead engaging them on contract/daily rate basis on acceptance of tenders. They are also aggrieved because of the threat of termination of their services and respondents' refusal to extend the benefits of this Tribunal's order dated 22.11.91 in OAs No.1941/89, 1989 to 1993/89. Consequntly, all of them are before us seeking relief that they are "entitled to be treated as regular and permanent employees after completion of 240 days by overlooking illegal breaks".

4. Applicants would justify their claim on the following grounds:

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(a) Activities of the applicants are not restricted to any spcific type of work, even though this may be mentioned in the so-called work award documents. They are required to do all such work as may be assigned to them from time to time. Despite this, R-1 has been wrongly showing the status of the applicant as being engaged on "contractual" basis to do the spcified jobs. This is how respondent No.1 intends to deny the relationship of "employer and employee."

(b) While dealing with similar problems in a batch of six OAs as aforesaid, this Tribunal vide its order dated 22.11.91 held that:

> "In our opinion, the practice of inviting tenders and awarding contracts to employees on the basis of competitive rates is a retrograde step, having regard to the fact that the nature of the activity of the CBRI and the nature of the work done by the applicants have all the trappings of master and servant relationship. The existing practice cannot be said to be fair and just. There is an element of discrimination in the matter of remuneration for the work done and other conditions of service between the applicants and the regular employees and this has been perpetiated for some years by now. We cannot also ignore the human element involved".

(c) Learned counsel for applicant also submitted that the applicants who have put in more than 240 days in a year are entitled to be absorbed as regular employees in the respective positions held by them and for reckoning the period of 240 days, intervening breaks are to be ignored. Hence, R-1 has also been directed that the concerned applicahts shall be paid the minimum of the

grade of pay scale payable to regular employees on monthly basis and that their services should not be terminated. Applicants accordingly approached the respondents for absorbing them on regular basis after pronouncement of this Tribunal's aforesaid order since they have been working from 1986-87 but the respondents decided to turn Nelson's eye on their grievances.

(d) Respondents have arbitrarily terminated the services of applicants No.6 & 7 (in OA 631/92) after 13.1.91 and 30.6.91 respectively and by doing so they have gone against the orders of the Tribunal in para 7 of the aforesaid judgement. In the said para, the Tribunal held that:

> "The respondents are restrained from engaging persons with lessor length of service or fresh recruits overlooking the preferential claim of the applicants and others similarly situated, for doing similar type of work, till they are regularised in accordance with the scheme. The interim orders already passed are accordingly made absolute".

(e) Arbitrariness in the actions of the respondents is evident from the fact that persons junior to the applicants have been offered appointments. Names of S/Shri O.P. Sharma, Sagar, Jai Prakash, Santosh Kumar, Krishan Gopal, Satish Kumar and Madan have been mentioned in particular to substantiate superior claims of applicants No.6 & 7 inOA 631/92. The counsel argued that the applicants in these 3 OAs are even senior to those in the aforequoted judgement. But they

had to face the wrath of the respondents only from 18.3.92 when the order of the Tribunal was served on them.

6. In the counter, respondents have submitted that the applicants were engaged on contractual basis to do specific jobs undertaken by R-1 and that applicants are not the employees of the respondents. A particular work to be completed in a pre-determined duration of time on payment of specific amount as wages was awarded to the individual applicants. Not being in the roll of employees of R-1, there can be no relationship of "Master" and "servant".

7. Pursuant to the directions of this Tribunal in its order dated 22.11.91, respondents have since prepared a scheme for regularisation of the contract/casual workers who have worked for more than 240 days in a year. Based on the principles in the scheme, respondents have since initiated actions for regularising only the cases of applicants No.1,3, 5 & 7. Other applicants namely 2,4 and 6 were left out since they did not complete more than 240 days in a year.

8. Drawing strength from the decision of the Hon'ble Supreme Court in **Delhi Development Authority Horticulture Employees' Union Vs. Delhi Admn. & Ors. JT 1992(1) SC 394**, respondents submitted that employees working on a project of temporary duration cannot claim regularisation as a matter of right. Nor the court/tribunal can give direction for their

regularisation by invoking provisions of Articles 14 and 16 of the Constitution of India as such directions would have pernicious consequences.

9. We have heard Shri B.S. Charya, learned counsel appearing for applicants and Shri V.K.Rao,learned counsel for respondents. As per the counsel for applicants, even assuming that applicants were not engaged by the controlling department i.e. R-2 as casual labourers, provision of Contract Labour (Regulation and abolition Act ,37, 1970) would be attracted and services of the applicants are to be regularised accordingly. As per learned counsel for respondents, applicants were engaged by R-1 as contract labourers and in the present facts and circumstances they are not entitled to get their services regularised. Under these circumstances, what is very crucial in these OAs is whether refusal of R-1 to regularise the services of the applicants herein as contract labourers (employer - employee relationship) is sustainable in law. We shall now proceed to examine the legal issues involved.

10. As reproduced in the case of **K. Ramakrishnan & Ors. V. Bharat Petroleum Corporation, Madras and Ors., 1997 LAB I.C. 3078,** Section 10 of the Contract Labours Act, 1970, relevent for our porpose, reads as follows:

> "10. Prohibition of Employment of Contract Labour:- (1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultaton with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

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(2) Before issuing any notification under sub-section (1) the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establshment such as -

(a).....

(b) Whether the work is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) .....

(d) Whether it is sufficient to employ considerable number of whole-time workmen"

11. The Madras High Court in the above case has examined chronologically all the important case laws on the subject. In December, 1996, the Apex Court while interpretating the above provisions of Contract Labour Act, 1970 in the case of **Air India Statutory Corpn. Vs. United Labour Union & Ors. 1997 SCC (L&S) 1344,** held that:

> "The explanation to Section 10(2) provides that when any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final. It would thus give indication that on the abolition of the contract labour system by publication of the notification in the official Gazette, the necessary concomitant is that the whole time workmen are required for carrying on the process, operation or other work being done in the industry, trade, business, manufacture or occupation in that establishment. When the condition of the work which is of perennial nature etc.,as envisaged in sub-section (2) of Section 10, thus are satisfied, the continuance of contract labour stands prohibited and abolished. The concomitant result would be that source of regular employment becomes open."

12. A similar view was taken by the Hon'ble Supreme Court later on while examining the case of casual labourers employed as trolley retrievers, loaders, bird chasers, conveyor belt workers, car parking clerks,

electrical maintenance workers etc. etc.in **International Airports Authority Employees Union Vs. Airport Authority of India, JT 1997(4) SC 757.**

13. From the above position, it is seen that if the work is perennial in nature and the contract labourers continued working over years, casual labourers under the Contractor shall become an employee directly under the principal employer. Even assuming for argument sake that the applicants were not working under the principal employer i.e. R-2 but were under the Contractor (R-1), their services are to be regularised provided the vital condition precedent i.e. "availability of jobs" is not disputed.

14. It has to be also remembered that most of the cases decided by the Hon'ble Supreme Court and Madras High Court are on the context of industrial dispute and the Respondent No.1 herein is not an 'industry'. These cases, however, have brought out the governing principles to be applied in settling, claims of the contract labourers of the types we have on hand. That apart, materials placed before us do not indicate that the activities being handled by Respondent No.1 are of permanent nature and that the contract labourers had continued without any breaks over decades as in Railways or in the Airports. Moreover, regularisation can be made pursuant to a Scheme or an order in that behalf and against regular vacancies as pointed out in **Mukesh Bai Chotabai Patel V. Joint Agriculture & Marketing Adviser, Govt. of India and Ors. AIR 1995 SC 413.** Respondents do have a scheme but the availability of regular vacancies of the appropriate type either in CBRI

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or CSIR is in dispute. It would, therefore, be not a fit case where provisions under section 10 of the Act could be invoked. Any direction by the Tribunal to regularise the applicants herein straighaway would only result in imposing unmerited financial burden onthe respondents. We are, therefore, unable to countenance the contentions of the learned counsel for the applicants in respect of his pleas for regularisation.

15. At the same time, we find that submission of respondents are not acceptable in respect of the following:-

> " As per directions at para 17.4 of the aforesaid judgement dated 22.11.91 in the Central Administrative Tribunal case of S.P. Tyagi and Others, only petitioners were entitled for their continuous engagements on on going projects till the question of their absorption is settled and not every one who has worked for more than 240 days in a year".

16. Such a contention cannot be accepted in terms of the orders of the Tribunal in para 17(2) wherein it has been mentioned that respondents are directed to prepare a Scheme on rational basis for absorption of all persons (including the applicants), who are working or have worked on casual or contractual basis with CBRI for more than 240 days in a year. The position was made clear once again by this Tribunal in its decision on 21.7.93 in CCP-380/92, though dismissed. SLP filed by the respondents was also dismissed on 15.5.92 much afterwards the DDA Horticulture Case (supra) heavily relied upon by the respondents.

17. Again, the respondents vide their reply statement dated 9.1.96 have submitted that "eligible candidates are being paid minimum salary payable to a regular

employee of their status as per the directions of this Tribunal." This has been disputed by the applicants and no evidence like payment vouchers or books of accounts relating to the payments made to the contract/casual labourers have been adduced to enable us to draw definite conclusions. The applicants, on the contrary, have submitted fairly that a large number of documents to show that the jobs awarded to the them were of a specific nature, to be commenced and completed by a pre-determined date and payments of specific amounts have been made on bills submitted by applicants. The appointment letters were issued by respondent No.1 and bills have been cleared by Accounts Department at different points of time even in 1990. We do not propose to travel beyond the facts available before us. What is apparent is that the "casual/contract" status assigned to the applicants were intended to be only for the purpose of payment of wages and not for the work extracted from them. It is indeed shocking that respondent No.1, an instrumentality under the Government of India, has been engaging employees as "casual/contract" labourers and paying them wages much less than the required wages otherwise payable for the work taken from regular employees.

18. There is yet another area where the respondents have not come out with clean hands. It has been alleged that several juniors to the applicants (S/Shri Om Prakash, Santosh Kumar, Krishan Gopal, Satish Kumar and

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Madan) have been engaged. In the entire counter, there is no whisper, what to speak of details, as to whether such juniors have been allowed to continue. That apart, the respondents have categorically stated "prior to 22.11.91 i.e. the date of pronouncement of the judgement, the concept of seniority was not applicable." Where do the respondents get legal right to make such submission is not known. This is particularly so in the face of the law laid down by the Apex Court in the case of **Inder Pal Yadav & Ors. Vs. U.O.I. & Ors., 1985(2) SCC 648,** wherein the principle of "First to come, last to go/Last to come first to go" for such employees were enunciated on 18.4.1985. It is also well settled in law that where a point/allegation raised in an application is not specifically denied, it amounts to admission. (Please see **UOI & Ors. V. Basant Lal & Ors. SLJ 1992(1) SC 190).** It eludes comprehension as to how the scheme formulated bythe respondents, as earlier ordered by this Tribunal, to provide reliefs to persons like the applicants herein could be effectively implemented in the absence of approved seniority list of relevant categories.

19. The question then would arise how will the interests of contract labourers in the instant case could be protected! We get an answer to this question in para 66 of the judgement of Apex Court in the case of Air India Statutory Corporation (supra) wherein it has been held that:-

"It is seen that the criteria to abolish the contract labour system is the duration of the work, the number of employees working on the job etc. That would be the indicia to absorb the employees on regular basis in the respective services in the establishment. Therefore, the date of engagement will be the criteria to determine their inter se seniority. In case, there would be any need for retrenchment of any excess staff, necessarily, the principle of "last come, first go" should be applied subject to his reappointment as and when the vacancy arises. Therefore, there is no impediment in the way of the appellants to adopt the above procedure".

20. The respondents seem to have initiated actions under the Scheme formulated by them apparently on the lines of the OM dated 10.09.93 issued by the Government of India, Ministry of Personnel, Public Grievance & Pension. On that basis, the respondents apparently have processed cases of 5 persons while others continue to remain outside the Scheme. Those not considered are to be informed of the decisions with a speaking order. We are of the firm view that steps recommended by the Hon'ble Supreme Court as in para 19 above and those directions of this Tribunal in para 17(i) to (v) in its judgement dated 22.11.91, if complied with properly, will go a long way in providing desired reliefs to applicants and similarly placed persons.

21. Considering the facts and circumstances of the case as aforesaid, we allow the O.A. partly with the following orders:-

ORDER

(i) Respondents shall draw up seniority list of all contract/casual labourers engaged for various works and projects from 1986-87 onwards;

(ii) assign proper seniority to the applicants and other similarly placed with reference to their initial date of engagement as well as length of service.

(iii) Consider re-engaging the applicants as and when the work is available hereafter in preference to freshers/outsiders in any level, but they shall not be entitled to any pay and allowances during the intervening period when they were not engaged;

(iv) Consider the question of conferment of temporary status and regularisation of the services of the applicants as per rules/law and the Scheme taking the date of initial engagement as the base, with wages as paid to regular employees (i.e. @ one-thirtieth of the regular scale as applicable to the category of individual worker).

(v) Actions in respect of (i) & (ii) above shall be completed within a period of 6 months from the date of receipt of a copy of this order.

There shall be no order as to costs.

(S.P. Biswas)
Member(A)

(Mrs. Lakshmi Swaminathan)
Member(J)

/gtv/