

In the Central Administrative Tribunal
Principal Bench, New Delhi

(6)

Regn. Nos.: 1. OA-1237/93
2. OA-1238/93
3. OA-1239/93
4. OA-1240/93

Date: 13.8.93

1. Shri Subhash Chander
2. Shri Ram Kumar
3. Shri Surender Kumar and six Others
4. Shri Guru Prasad & Ors. } Applicants

Versus

Secretary, Ministry of Defence ... Respondents

For the Applicants Shri V.K. Rao, Advocate

For the Respondents Shri P.H. Ramchandani, Advocate

CORAM: Hon'ble Mr. J.P. Sharma, Member (Judl.)
Hon'ble Mr. N.K. Verma, Administrative Member.

1. To be referred to the Reporters or not? Yes.

(Judgement of the Bench delivered by Hon'ble
Mr. J.P. Sharma, Member)

The facts of these cases are similar and common
issues for decision are involved. So, all the cases are
disposed of by a common judgement.

2. We heard the learned counsel for the parties at
length and perused the records. Shri Subhash Chander,
applicant in OA-1237/93, has been doing a job of L.D.C.
on a monthly salary of Rs.1275/- w.e.f. 15.2.1990 on
casual basis with respondent No.2, Commanding Officer,
I.N.S. India and respondent No.3, Deputy Director of
Driving, Naval Headquarters, New Delhi. The grievance of

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the applicant is that he is serving for more than three years and his services have not been regularised. He, therefore, filed this application for regularising his services with all benefits with a direction to the respondents not to terminate his services.

3. Similarly, Shri Ram Kumar is doing the job of a Tyreman on a monthly salary of Rs.850/- w.e.f. 10.9.1987 on casual basis with respondent Nos.2 and 3 and has the grievance of non-regularisation of his services by the respondents and prays for regularisation of his services with a direction to the respondents not to terminate his services till regularisation.

4. Shri Surender Kumar and six others are the applicants in OA-1239/93 and they are all working as Conductors with respondent Nos.2 and 3 and are being paid fixed wages. They have got different dates of joining - Surinder Kumar and Suresh Ram since 1986, and the rest of the applicants, except Gandhi Ram, since 1992 and Gandhi Ram from January, 1993.

5. Shri Guru Prasad and seven others, applicants in OA-1240/93 are working as Bus Drivers with respondents 2 and 3 from different dates on a fixed salary. Guru Prasad and Bhattacharjee since 1984, Naresh Kumar since 1984, Mahipal Singh and Vinod Kumar since 1991 and the rest since 1992. These applicants have also claimed the

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regularisation of their services and a direction to the respondents not to terminate their services. The matter was placed before the Bench on 4.6.1993, when these original applications raised the same issue as was in OA-984/83 and this O.A. was also listed on the same date, i.e., 8.6.1993. On 8.6.1993, the Bench considered the matter and an ex parte order on admission was passed. In all the cases, an interim direction was issued to the respondents not to terminate the services of the applicants till 21.6.1993. On 22.6.1993, the matter was listed again and the interim direction was continued till the next date and 27th July, 1993 was fixed. On 27.7.1993, the counsel for the parties were heard. Since the issue of jurisdiction was raised by the learned counsel for the respondents, Shri P.H. Ramchandani, the learned counsel for the applicants again took time to argue the matter and 30th July, 1993 was fixed. On 30.7.1993, the applicant's counsel was heard again on the point of jurisdiction. It is not disputed that the applicants are engaged casually. The contention of the applicants' counsel is that their emoluments are paid from the Army Funds. This contention is disputed by the learned counsel for the respondents, who argued that there is a Regimental Fund collected by the contribution of the Army employees in a certain ratio and it includes all

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funds, except the Public Funds. He referred to para. 801 of the Army Regulation which defines Public Fund as well as the Regimental Funds. The salary of the applicants are paid from the Regimental Funds. It is, therefore, contended that the applicants are not holders of civil posts under the Union of India. The contention of the learned counsel for the respondents is that the applicants are not working in any Government office, nor are they working under the Government. Thus, the matter is not within the jurisdiction of the Tribunal. The applicants are contractual employees engaged privately for entirely private nature of work and are paid from private subscription paid by various officers and sailors of Indian Navy for travelling in the buses and the money obtained by hiring out of transport. None of the applicants is paid from the Public Funds, nor any budgetary grant is ever sanctioned by the Government for this purpose. Respondent No. 1, therefore, is not at all concerned with their employment out of non-Public Funds. Respondent No. 2 is overall responsible for maintenance of the Fund so that there is no misappropriation of the Funds. Respondent No. 3 is totally non-existent, as there is no such authority functioning. It is further contended by the learned counsel for the respondents that the applicants were engaged as

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casual workers purely for private job to be paid from the Regimental Fund known as "Non-Public Vehicles Welfare Fund". As stated above, this Regimental Fund consists of private subscription collected from all officers and sailors of Indian Navy to travel in the buses and by the money obtained by hiring out the cars and buses. The subscription thus collected is pooled into the said Regimental Fund and is utilised in meeting the expenditure incurred on the personal welfare of the officers and sailors of Indian Navy and their families. The said Regimental Fund is utilised for purchasing buses for transporting the Naval officers and sailors from their residence to the places of their duty and back and also for taking their children from residence to their respective schools and back. The expenditure required for hiring the bus drivers and conductors, Clerks and other meagre expenditure and for upkeep and maintenance of the motor-vehicles and other items of contingent expenditure is incurred out of the said Regimental Fund. Thus, it is evident that all the applicants were hired purely on temporary and contractual basis and their continuance ultimately will depend on the availability of the Regimental Fund at a given point of time. It is also argued by the learned counsel for the

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respondents that such temporarily engaged employees paid out of the said Regimental Fund, cannot be given any assurance of their permanent continuity on the job. This fact was made clear to the applicants at the time of their initial engagement. Thus, the applicants cannot be said to be the holders of civil posts under the Union of India and when they are not the holders of civil posts under the Union of India, the Tribunal cannot have the jurisdiction.

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 but to decide the issue involved. The applications are, therefore, dismissed

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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.

N. K. Verma

(N. K. Verma)
Member (A)

J. P. Sharma

13.8.93

(J. P. Sharma)
Member (J)

Drawn and signed by me.

J. P. Sharma

13.8.93