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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.169 OF 1999
Cuttack this the 2^{1st} day of March/2001

Subimal Kr.Maity & Ors.

...

Applicants

-VERSUS-

Union of India & Others

...

Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Y4.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

21.3.2001
(G.NARASIMHAM)
MEMBER (JUDICIAL)



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(2)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 169 OF 1999
Cuttack this the 21st day of March/2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G. NARASIMHAM, MEMBER (JUDICIAL)

...

1. Subimal Kumar Maity, Waiter, aged about 39 years,
Son of Srikanta Maity
2. Niranjana Biswal, Waiter, aged about 34 years,
Son of Satrugana Biswal
3. Raj Kumar Rout, Receptionist, aged about 31 years,
Son of Prabhat Ranjan Rout
4. Kishore Chandra Das, Store Keeper, aged about 39 years,
Son of Ananta Chandra Das
5. Ramesh Chandra Bag, Waiter, aged about 26 years,
S/o. Parsuram Bag
6. Hasan Ali Khan, Waiter, aged about 29 years,
S/o. Fazal Ali Khan
7. Panchanan Padhi, Waiter, aged about 39 years,
S/o. Dayanidhi Padhi
8. Umakanta Rout, Kitchen Helper, aged about 35 years,
S/o. Madhusudan Rout
9. Rajaullah Khan, Cook, aged about 30 years,
Son of Sirajul Khan
10. Dilip Kumar Maity, Waiter, aged about 28 years,
S/o. Ramahari Maity
11. Deepak Kumar Sethi, Safaiwala, aged about 25 years,
Son of Bhaskar Chandra Sethi
12. Bishnu Chandra Jena, Sweeper, aged about 30 years,
S/o. Annu Jena
13. Ram Bahadur, Room Boy, aged about 26 years,
Son of Khabu Bahadur
14. Prafulla Kumar Prusty, Waiter, aged about 30 years,
S/o. Braja Kishore Prusty
15. Choudhury Gochhayat, Sweeper, aged about 35 years,
S/o. Bidhyadhar Gochhayat
16. Sambhu Khilar, Dish Washer, aged about 23 years,
S/o. Purna Chandra Khilar
17. Amiya Kumar Jena, Dish Washer, aged about 30 years,
Son of Nityananda Jena
18. Susanta Kumar Sahoo, Waiter, aged about 27 years,
Son of Amulya Sahoo
19. Ananta Kumar Panda, Kitchen Helper, aged about 28 years,
Son of Dukhiram Panda



20. Kali Charan Sahoo, Kitchen Helper, aged about 38 years, S/o. Sahadev Sahoo

Applicant Nos. 1, 3, 4, 16 to 20 are working at D.R.D.O. Guest House, Chandipur, Balasore.

Applicant Nos. 2 and 5 are working at D.R.D.O. Mess, Dhamra Island, Balasore

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Applicants

By the Advocates

M/s. Biswajit Mohanty
S. Patra

-VERSUS-

1. Union of India represented through Secretary, Govt. of India, Ministry of Defence, South Block, New Delhi
2. Scientific Adviser and Director General of Research and Development, Defence Research & Development Organisation 'B' Wing, Sena Bhawan, New Delhi
3. Director, Interim Test Range, Chandipur, Dist-Balasore
4. Commandant, Proof and Experiment Establishment, Chandipur, Balasore
5. Estate Manager, Estate Management Unit, Chandipur, Balasore
6. Director of Estate (R&D), R. & D State Management Establishment, Plot No.II, Sanjeevaiah Nagar, Co-operative Housing Society, Akbar Road, Secunderabad, Andhra Pradesh
7. Site Supervisor & Incharge, D.R.D.O. Guest House, Chandipur, Balasore
8. Kishore Kumar Swain, Contractor, D.R.D.O. Guest House, At/PO Chandipur, Dist - Balasore

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Respondents

By the Advocates

Mr. A.K. Bose,
Sr. Standing
Counsel (Res. 1 to 7)
Mr. T.K. Satpathy
(Res. 8)

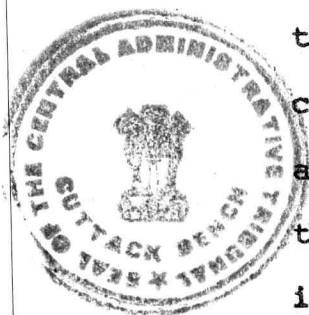
ORDER

MR. G. NARASIMHAM, MEMBER (JUDICIAL): In this Application for regularisation and for regular pay scales, the ^{prayer} case of the 20 applicants ^{are} as follows.

- i) Respondents 1 to 7 be directed to regularise the services of the applicants and allow the applicants the regular pay scales, which their respective counter parts are getting in the regular establishment
- ii) Any other direction/directions be given to the Respondents, which will give complete relief to the applicants under the facts and circumstances of the case



2. Applicant Nos. 1, 3, 4 and 6 to 20 are working at D.R.D.O. Guest House, Chandipur, Balasore. The other two applicants, viz. 2 and 5 are working at D.R.D.O. Mess, Dhamra Island, Balasore. Their case is that they are directly working under Respondent No.5., viz., Estate Manager, Estate Management Unit, Chandipur since last several years. Specifically, applicant No.14 is serving since 1987 and applicants 2, 4, 6, 7, 10 and 17 since 1988, applicants 1, 5, 15, 19, 20 since 1989, applicants 12 since 1990; applicants 8 and 16 since 1994; applicants 3 and 13 since 1995 and applicants 9, 11 and 18 are serving since 1996. Though they are treated as contract labourers, the contractor is only ^aname lender and is not a licensed contractor for the purpose of supplying contract labourers and thus they have employee and employer relationships with the Respondents (Department). All these applicants have been issued with passes by Respondent No.5 and such passes indicate the type of employment of the applicants. Annexure-A/1 is one of such passes issued in favour of applicant No.1, Subimal Kr. Maity. Since their initial engagements they have been discharging the duties which are perennial in nature, sincerely without any interruption. Even once, the then Sitting Judge of Orissa High Court, during his visit to the Guest House gave a certificate of commendation on 24.4.1997, recommending that their cases should be sympathetically considered for regular absorption. Still they learnt from reliable source that their further engagement is going to be discontinued and some freshers would be engaged. Their representations dated 8.11.1997 and 8.5.1998 (Annexures-A/3 and 4) did not yield any result. Hence this Original Application on 16.4.1999.



3. The Respondents (Department) in their counter challenge the maintainability of this Original Application before this Tribunal on the ground that the applicants are not civil servants. They have also never worked under the Respondents and as such question of their regularisation would not arise. They also deny the claim of the applicants having worked since several years as mentioned above. According to them every year, as per the requirement, tenders are invited for management services relating to D.R.D.O. Guest House and transit facilities for officers of Chandipur and the contractor so selected used to engage his own employees **not** exceeding 20 in number to provide the facilities as per the terms of the contract, basing on the necessity of the Establishment. Temporary passes like Annexure-A/1, are issued in favour of the employees engaged by the contractors to enable them to entry into the restricted area of the D.R.D.O. for security purpose and such pass cannot be taken as letter of appointment of the Department in favour of the pass holder. In fact passes are not issued to the applicants each year and they were not even engaged by the Department continuously, as claimed by them. In fact barring applicant No.1, other applicants had not filed their passes.

4. In the years 1996 to 98, according to Department, M/s. Utkal Management Services, Chandipur had executed the contract agreement No.8001/01/EB dated 1.4.1996 and A.M.D.T. dated 6.3.1997 and engaged all these applicants for management services in D.R.D.O. Guest House and transport facilities for officers. Accordingly, they were issued with passes, the validity of which expired on 31.3.1998. Similarly, M/s. Utkal



Management Services also executed contract dated 26.3.1998 and A.M.D.T. dated 26.3.1999 and engaged labourers including applicants bearing applicant No.20 for whom pass valid upto 30.4.1999 was issued.

4/ The management of the D.R.D.O. Guest House etc., being not the main activity of the Establishment, the provisions of the contract labour (Regulation & Abolition) Act, 1970 (in Short Act, 1970) is not applicable relating to the engagement of contractors. The Establishment at Chandipur relating to research and development of defence service is connected with scientific experiment relating to Interim Test Range etc. and thus the main object of the Establishment is not for construction or maintenance of D.R.D.O. Guest House and so on. However, With abundant precaution one application was made to the Labour Commissioner to issue the Certificate of Registration under the Act of 1970 and rules made thereunder. Annexure-R/4 is that Certificate.

5. In the year 1999, an agreement was signed between Respondent No.8 and the Management for the aforesaid work and at present 14 numbers of employees are engaged under Res. 8.

6. With these averments the departmental respondents pray for dismissal of this Original Application.

7. Respondent No.8 in a separate counter stated that he is not a mere name lender. He is the sole proprietor of the Firm M/s.D.P.Services and for the first time an agreement was executed on 29.4.1999 with Respondent No.5 for undertaking the management services of the D.R.D.O. Guest House and to provide transit facilities. The nature and quantum of work does not require this firm to be licensed under the provisions



of the Act, 1970. After assignment of the contract work 17 numbers of employees were engaged by him, 7 of whom are not the applicants and the remaining 10 appear to be some of the applicants. In other words, according to Respondent No.8 this Original Application ^{against him} is not maintainable.

8. Applicants filed rejoinder to the counter of the Department as also, ^{the} counter of Respondent No.8, by reiterating the facts as mentioned in the Original Application enclosing therein Exhibit 5 series, which are some Gate Passes.

9. We have heard Shri Biswajit Mohanty, the learned counsel for the applicants, Shri A.K.Bose, learned Senior Standing Counsel for the Department (Res. 1 to 7) and Shri T.K.Satpathy, learned counsel appearing for Respondent No.8. Also perused the records.

10. Exhibit A/5 series and Exhibit A/1, the Gate Passes filed on behalf of the applicants do not reveal that these were valid upto the date of filing of this Original Application, nor these passes would establish that applicants have been in engagement since several years, as claimed by them in this Original Application.

Even these passes would not show that the applicants were engaged by the departmental respondents. It is not in dispute that the D.R.D.O. Guest Houses are ^{inside} prohibited area because of defence arrangement and for entry into those Guest Houses, security passes are needed and these passes have been issued to enable a pass-holder to enter into the prohibited area.

11. At least the counter of the Department reveals, for the years 1996-97, 1997-98 and 1998-99, they were under



engagements in the D.R.D.O. Guest House and engagement was made by the Contract Labourer M/s.Utkal Management Services, Chandipur. Simply because the applicants served in the DRDO Guest House, Chandipur during 1997-97, 97-98 and 98-99, it cannot be established that they were engaged directly by Respondent No.5.

12. It is true, as mentioned in Para-4.2 of the O.A. and not denied in the counter that the then Sitting Judge of the Orissa High Court, during his visit to D.R.D.O. Guest House on 24.4.1997, wrote in the visitors book of the Guest House suggesting that the people working in that Guest House should be sympathetically considered for regular absorption, as contract labour system all over the country is being abolished. This being only a recommendation is not binding on the departmental respondents to absorb those workers where specific case of the Department is that they were not directly engaged by them and they were supplied by the contractors.

13. Thus, there is no material before us to establish that the applicants have in fact been engaged by the Department and serving under the Department since last several years, as claimed by them in this Original Application. The learned Sr.Standing Counsel Shri Bose, filed xerox copy of judgment dated 25.5.2000 of this Bench in O.A.346/97 in support of his case. Following several decisions of the Apex Court and other C.A.T. Benches, as mentioned therein, this Bench ultimately upheld the plea of the Department that there was no relationship of Master and Servant directly between the Department and the applicant therein. We have carefully perused this judgment and are not inclined to take a contrary view. Since Master and



Servant relationship has not been established between Respondents 1 to 7 and the applicants and the applicants being not the holder of civil posts or casual posts directly under the Department, this Original Application by itself is not maintainable.

14. In the result, Original Application is held to be without any merit and the same is dismissed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 2001

B.K.SAHOO//



21.3.2001
(G.NARASIMHAM)
MEMBER (JUDICIAL)