CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.O.A.539 of 1996

Present : Hon'ble Mr.Justice A.K.Chatterjee, Vice-Chairman.
Hon'ble Dr.B.C.Sarma, Administrative Member.

PARTHA PRATIM DAS
... Applicant

Vs.

1. Union of India, through the Secretary, Ministry of Mines, Shastri Bhawan, New Delhi-110 001.
2. The Director General, Geological Survey of India, 27, Jawahar Lal Nehru Road, Calcutta-700 016.
3. The Deputy Director General, Training Institute, G.S.I., Baldlaguda Complex (Guest House), P.O. Mansoorabad, Hyderabad - 500 600.

... Respondents

For the applicant : Mr.K.Sarkar, counsel.

For the respondents: Mr.S.P.Kar, counsel.

Heard on : 20.8.1997 Order on : 1.9.1997

O R D E R

A.K.Chatterjee, V.C.

The petitioner claimed to have worked as a contingent/ contract worker from 11th March, 1991, till 15th March, 1994, in a training centre of Geological Survey of India, but on the 16th March, 1994, he was informed that his services were no longer required. He made a representation on 13th June, 1994, for regularisation of his services on the ground that he had worked for three years to which, however, he was not favoured with any reply. In such circumstances, the instant application has been filed on 30th April, 1996, inter alia for a direction upon the respondents to regularise his services

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on the basis of certain circular and judgments of this Tribunal and also the Hon'ble Supreme Court which will be noted hereinafter.

2. The respondents in their reply have inter alia stated that no appointment order was ever issued to the petitioner who was a contractual labourer and entrusted to do piecemeal works and the judgments and the circular referred to by the petitioner have no application.

3. We have heard the ld.counsel for the parties and perused the record before us.

4. Before proceeding to decide whether the circular and the judgments relied upon by the petitioner are relevant, it is necessary to determine the nature of the work which the petitioner was called upon to perform. The petitioner himself has annexed to his application several vouchers indicating that he had received from the training centre on diverse dates different amounts for the service rendered or goods delivered by him. For instance one of the vouchers disclosed that he was paid labour charges for xeroxing @ 15p. per page and typing @ Rs.2.50p. per page between 24th March, 1992 and 26th April, 1992. Again it is found from another voucher that he was paid a certain sum of money for supplying hand towels, Lifebuoy soap, etc. Thus it is amply clear that by whatever name ~~it~~ he is called, he was paid by the respondents for goods and service depending on the quantity of goods or the nature of volume of service and he was never regarded as a daily rated labourer. Now with this admitted position, it will have to be adjudicated whether the service of the petitioner can be regularised as prayed by him.

5. In the first place, the petitioner has relied upon a circular issued by the Geological Survey of India in October, 1988, stating that in terms of an office memorandum of Department of Personnel & Administrative Reforms dated 26.7.1969, a casual employee who has put in 240 days of service in each of the two preceding years and still continued to work, should be considered eligible for regularisation. It has been urged on behalf of the respondents with a good deal of force that this circular or for

the matter of that the office memorandum of Department of Personnel & A.R. is attracted only in case of ~~where there is~~ a casual employee and there is no question of regularisation of the services of the petitioner on its basis as he is not a casual employee at all. It has been noted in the preceding paragraph that the petitioner was not paid wages on a daily basis but on the quantum of goods supplied by him or the amount of service rendered on a contract basis and as such, he cannot be regarded as a casual employee for which no authority was also shown to us.

6. The petitioner then relies upon the decision of the Hon'ble Supreme Court in Hussain Bhai vs. AFT Union (AIR 1978 SC 1410) in which their Lordship had observed that where the workers or group of workers labours to produce goods or service and these goods or service are for the business of another, that another is in fact, the employer. In that case their Lordships laid down a test for determination of workmen and employer within the meaning of the Industrial Disputes Act. It has not been shown by the ld.counsel for the petitioner that the Geological Survey of India can be regarded as an industry; on the other hand, the respondents have produced before us a copy of a judgment of this Bench of the Tribunal in T.A.533 of 1986 wherein it was held that Geological Survey of India is not an organisation engaged in production, supply or distribution of goods or service which would justify it to be termed as an industry. Therefore, the decision in Hussain Bhai case (Supra) is hardly relevant for a decision of the case before us.

7. The ld.counsel for the petitioner has placed great reliance on the decision of the Hon'ble Supreme Court in Gujarat State Electricity Board vs. Hind Mazdoor Sabha (AIR 1995 SC 1893). In this case, their Lordships had considered certain provisions of Contract Labour (Regulation & Abolition) Act, 1970, and upheld an award of an Industrial Tribunal which held that workmen of the contractors should be deemed to be workmen

of the Board. Their Lordships noticed certain vital lacuna in the said Act as there was no provision for determination of the status of the workmen of erstwhile contractor after abolition of contract labour. Their Lordships regretted that even undertakings in the public sector were indulging in unfair labour practice by engaging contract labour when workmen could be employed directly even according to the tests laid down in the said Act. The ld.Judges recommended that all undertakings which were employing contract labour system in any process should on their own discontinue it and absorb as many of the labour as is feasible as their direct employees. It is clear, therefore, that their Lordships were considering the cases of workmen who could be regarded as contract labour as defined in Contract Labour (Regulation & Abolition) Act, 1970. In this Act it has been stated that the workman shall be deemed to have been employed as contract labour in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor with or without the knowledge of the principal employer. Therefore, in order that a workman can be regarded as a contract labour, it is absolutely essential that he should be hired by or through a contractor and not directly by the principal employer. So the present petitioner who admittedly had a contract directly with the Geological Survey of India for doing certain job work cannot be regarded as a contract labour in the sense the expression has been used by the Hon'ble Supreme Court in the case of Gujarat State Electricity Board (Supra). The result is that the recommendation of the Hon'ble Judges to absorb as many as contract labour as is feasible by discontinuing the system of contract labour does not apply in the present case.

8. In the application in paragraph 5(ii), a passage from the aforesaid judgment of the Hon'ble Supreme Court has been quoted as if it was a finding of the ld.Judges. If only the ld.counsel had cared to go through the judgment, he would at once discover

that it was not a finding by the Hon'ble Judges but merely a part of the definition of workman as occuring in section 2(i) of the Contract Labour (Regulation & Abolition) Act, 1970. The definition of workman as given in section 2(i) excludes certain category of persons and the passage quoted in paragraph 5(ii) of the application is one of such excluded categories. Therefore, even if the petitioner satisfies the criterion as stated in paragraph 5(ii) of the application, though he does not, he would still not be regarded as a workman. Therefore, what has been stated in paragraph 5(ii) of the application is of no relevance .

9. The ld.counsel for the petitioner has then referred to a decision of the Hyderabad Bench of this Tribunal in O.A. 225 of 1990. Unfortunately, no copy of such judgment has been produced before us and all that we can learn about it is from a communication of the Geological Survey of India Training Institute at Hyderabad to the Director General of the Geological Survey of India. This communication dated 16.6.1992 which has been annexed to the application shows that an interim order was made that if the respondents were engaging any casual labour, the petitioner, in said case, should be engaged in preference to an outsider or any casual labour junier to the applicant and that they should be paid daily wages in terms of a certain office memorandum. This again is not relevant as the present petitioner cannot be regarded as a casual labour nor is there any material on record to show that the petitioners of the case in the Hyderabad Bench were also contract labourers like the present petitioner. We are, therefore, unable to grant any relief to the petitioner on the basis of the said cases.

10. For foregoing reason, we see no merit in this application which is rejected.

11. No order is made as to costs.

(B.C.Sarma)
Administrative Member
1/9/97

(A.K.Chatterjee)
Vice-Chairman
1.9.97