

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 1318 of 1997

Present : Hon'ble Mr. Justice R. N. Ray, Vice-Chairman
Hon'ble Mr. B. P. Singh, Administrative Member

1. Madan Chouhan (aged about 24 years)

working as Chowkidar of the CPWD

Gangarampur Sub-Division, son of Sri

Charan Chowhan ,Vill- Roynagar,

P.O. Hilli, Dist- Dakshin Dinajpur,

2. Dulal Chandra Singha Roy ,

(aged about 22 years) working as

Chowkidar of the CPWD Gangarampur,

Sub-Division, son of Jitendra Nath

Singha Roy of Vill- Suhiri , P.O.

Rampur , Dist- Dakshin Dinajpur.

3. Mainuddin Mia (aged about 25 years)

working as Chowkidar, Mohipal Sub-

Division of the CPWD, son of late

Sala Mohammad of Vill Boro Damodarpur

P.O. Mahipal, Dist- Dakshin Dinajpur.

4. Sujit Kumar Bose (aged about 25

years) , working at Chowkidar, Mohipal

Sub-Division of the CPWD, son of late

Shib Bose , Vill- Boro Damodarpur P.O.

Mahipal. Dist- Dakshin

5. Arun Roy (aged about 25 years) working as Chowkidar of the Mohipal Sub-Division of the CPWD, son of Sri Nilkanta Roy, Vill- Boro Damodarpur P.O. Mahipal, District- Dakshin Dinajpur.

6. Mohasin Ali (aged about 25 years) working as Peon of the CPWD ~~Rukhbari~~ Phoolbari Sub-Division, son of Wahed Ali of Vill - Boro Damodarpur, P.O. Mahipal ,District- Dakshin Dinajpur.

7. Subhash Roy (aged about 25 years) working as Peon of the CPWD, Phoolbari Sub-Division, son of Sri Tapan Roy, of Vill- Boro Damodarpur, P.O. Mahipal, District- Dakshin Dinajpur.

8. Pradip Kumar Manna (aged about 26 years), working as LDC -cum-Typist of the CPWD , Buniadpur Division , son of Anil Kumar Manna, Vill- Khadimpur/Rabindranagar, P.O. Balurghat, Dist- Dakshin Dinajpur.

9. Anjan Kumar Das (aged about 37 years) , working as LDC-cum-Typist Buniadpur Division of the CPWD , son of Jotindra Chandra Das, Vill & P.O. Kusmandi, Dist- Dakshin Dinajpur.

10. Prabir Chakraborty (aged about 25 years) working as Steno Typist Buniadpur ~~Ex-Serv~~-Division of the CPWD , son of Parimal Chakraborty, Vill Power House, P.O. Beltala Park, District- Dakshin Dinajpur.

11. Biswajit Pahan (aged about 23 years) , working as night guard of the Buniadpur ^Division of the CPWD, son of Bihari Pahan of Village Dakshin Para, P.O. Buniadpur, Dist- Dakshin Dinajpur.

12. Dipankar Goswami (aged about 25) working as Chowkidar, Buniadpur Division of the CPWD , son of late Subodh Goswami, of Village Dakshin Para, P.O. Buniadpur, District- Dakshin Dinajpur.

13. Lakshmi Chakraborty (aged about 25 years) working as Peon , Buniadpur Division of the CPWD, son of late Dilip Chakraborty, Vill & P.O. Buniadpur, Dist- Dakshin Dinajpur.

14. Vedeshee Roy (aged about 25 years) working as Chowkidar Phoolbari Sub-Division , son of Sri Sashi Roy of Vill & P.O. Manipal District- Dakshin Dinajpur.

-Versus-

1. The Union of India, through
the Secretary to the Ministry of
Urban Affairs and Employment

Nariman Bhawan, New Delhi- 110001.

Director

2. The District General of Works,

Central Public Works Department,

Government of India, Nariman Bhawan,
New Delhi- 110001.

3. The Chief Engineer,

Central Public Works Department,

(IBB) Zone), Siliguri,

29, Buddhadeb Bose Road,

Ashrampara, P.O. Siliguri,

Dist- Darjeeling.

4. The Superintendent Engineer,

Siliguri Central Circle-11,

CPWD, (IBBZ) Siliguri, P.O.

Siliguri, Dist- Darjeeling.

5. The Executive Engineer,

Buniadpur Central Division,

CPWD (IBBZ),

P.O. Buniadpur,

Dist- Dakshin Dinajpur.

6. Bidhan Paul, P.O. Buniadpur, Dist.
Dakshin Dinajpur

7. Pulak Jha Chakraborty, P.O.
Buniadpur, Dist. Dakshin Dinajpur

... Respondents

For the Applicants : Mr. D.S. Talukdar, counsel
Mr. S.K. Basu, counsel

For the Respondents: Mr. M.S. Banerjee, counsel

Heard on 8.03.2001, 28.03.2001 :: Date of order : 25-04-2001
& 03.04.2001

O R D E R

R. N. Ray, VC

This is a joint application by 14 petitioners praying for absorption under the respondent authorities.

2. The case of the applicants is that they were appointed by Contractors as Chowkidar, Peons as also Clerk-cum-Typist/ Steno (in respect of Applicants No.8, 9 and 10) on the basis of work order issued by the respondent authorities in connection with the construction of roads along Indo-Bangladesh Border under the IBB Zone with controlling office at Siliguri. The details of the applicants have been given at para 4(ii) at page 6 of the OA. It is their case that they were appointed by the Contractors (respondents No.6 and 7) from 1992 onwards and have worked for more than 4 to 5 years, but suddenly their services have been disengaged in 1997 or thereafter.

3. The respondents have contested the application by filing a reply. It is stated that the CPWD has been entrusted by the Government with the construction of a portion of border road and fencing along with Indo-Bangladesh Border for which a temporary office was opened at Buniadpur Central Division and for completion of this work temporary recruitment has been made through private contractors. It is contended that this is only a project work and therefore, no regular employment could be made and that is why the private contractors were engaged to provide some personnel on payment of daily wage basis. Such

employment was only for three to six months initially which was renewed subsequently as per need. It is stated that the applicants were engaged through private contractor and therefore, the respondent authorities had no obligation regarding their absorption. It is also contended that the respondents have no particulars about the applicants. It is also stated that knowing that the work was going to be completed and the temporary offices of the respondents were also going to be closed down, the applicants have approached this Tribunal. A rejoinder has also been filed to the reply.

4. We have heard the learned counsel for both the parties and have gone through the various documents produced. Learned counsel for the applicant has mainly contended that as per the Contract Labour (Regulation and Abolition) Act, 1970 the applicants though engaged through contractors are entitled to regular absorption under the respondent authorities because they were actually working for the respondents and the contractors were only intermediaries. He has relied on various decisions of the Hon'ble Supreme Court on the subject of contract labourers and their rights.

5. Learned counsel for the applicants has also stated that initially the respondents took steps for regularisation of the applicants and various correspondences were also made with the higher authorities, but ultimately no action was taken. He has drawn our attention to Annexures to the application in support of his claim.

6. Learned counsel for the respondents has, however, contended that the applicants were engaged through contractors and no direct payment was made to them by the respondent authorities and therefore, there was no relationship of master and servant between the respondents and the applicants. It is stated that this was only a project work and therefore, there was no regular post and hence in order to complete the

construction of roads, the contractors were engaged to provide service of some personnel and after completion of the work the services of the applicants have been dispensed with. It is stated that the work has since been completed and most of the temporary offices have since been closed and therefore, the applicants cannot be regularised for want of regular vacancies. It is also contended that initially some steps were taken for regularisation of the applicants on the basis of the decision of the Director General of the CPWD, but ultimately it was noticed that the said circular of the Government was not applicable to the case of the applicants as they were not sponsored by the Employment Exchange and their engagement was subsequent to the cut off date of 1.8.92.

7. Learned counsel for the applicants by referring to various provisions of the aforesaid Contract Labour (Regulation and Abolition) Act, 1970 and extensively quoting from various decisions of the Hon'ble Supreme Court relating to contract labourers, has contended that after the contract was terminated the applicants are entitled to get regular absorption under the respondents. He has relied on the decision of the Hon'ble Apex Court in the following cases:

i) Air India Statutory Corporation & Ors. vs. United Labour Union & Ors. - (1997) 9 SCC 377

ii) Secretary, Haryana State Electricity Board vs. Suresh & ors. - JT 1999(2) SC 435,

iii) Durgapur Steel Plant vs. Kishan Jawanjal & Ors. - 2000(1) CHN 21

iv) International Airport Authority Employees Union & Others vs. International Airport Authority & Ors. - 2000 AIR SCW 4381

8. We are, however, not convinced by this argument of the learned counsel. The aforesaid decisions of the Hon'ble Supreme Court, in our opinion, are not applicable to the applicants' case. Here admittedly the applicants were engaged through Contractors for a particular project and after completion of the project the need of the service of the applicants will be over and this is not a perennial type of job. Moreover, in a recent decision the Hon'ble Calcutta High Court in the case of the Food Corporation of India & Ors. vs. The Godavari Labour Contractor Coop. Society Ltd., reported in 2001(1) SLR 200 has held that in the absence of any notification under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, the ratio of the decisions of the Hon'ble Suprme Court in the aforesaid cited cases are not applicable.

9. The learned counsel for the applicants has taken much pains to argue that the work which the applicants are/were doing is of perennial nature. He has contented that construction also includes maintenance. He has argued that after the construction of the roads were completed, maintenance will be required throughout the year and therefore, it is a perennial nature of job. Hence the applicants' services will always be required. We are, however, not convinced by this argument. It is admitted position that the project in question was along the international boundary line which is known as Indo-Bangladesh border. The roads are along with this border and this is a very sensitive area and the Security of the country is also involved. Therefore, it is for the appropriate Government to decide whether maintenance of the roads will be done by the CPWD or by any other organisation particularly when there is an expert organisation like Boarder Roads Organisation for doing such job. Moreover, defence of the country is also involved and therefore, the applicants cannot contend that the CPWD will be entrusted with the maintenance work and hence, their job will be perennial

in nature and so, they are entitled to be absorbed as per rules. In our view, this is a policy decision and no Court or Tribunal can agree with the contention of the applicants in this regard. Admittedly, the applicants were engaged by the CPWD only for the construction work of border roads and after completion of the work or project the need for the applicants' service will be over. Therefore, this Tribunal cannot direct the respondents to create permanent posts for absorption of the applicants.

10. However, on going through the Annexures we find that the CPWD authorities issued work orders from time to time for providing service of the some personnel for appointment to several posts like Clerk-cum-Typist, Night Guard, Mali etc. etc. and this was done through contractors or private agency. The amount of daily wage for the job has also been fixed and the total amount involved has also been sanctioned. The terms and conditions for the employment have also been mentioned in the work order. It is, therefore, obvious that there was need for such posts at the material time and necessary sanction of the Govt. was also there for such post. But the respondents did not take steps for directly employing personnel to fill up these posts by observing the procedure for employment under the Government. They have taken a short-cut way of entrusting the job with the private contractors or agencies to supply such personnel and paid only minimum wages to them. From Annexure 'E' dated 22.8.94 we find that the Executive Engineer, CPWD, IBB Zone, Buniadpur wrote to his higher authorities impressing upon them for providing staff and it is mentioned that day to day work had been gradually increasing and there was no scope to reduce the staff strength already appointed through agencies. Similar request was also made on 29.5.96 at p. 50. It is, therefore, obvious that there was some sanctioned strength of posts against which no regular appointment was made and the applicants' services were utilised against these posts by paying

them less and they have been engaged only through contractors. This attitude of the Government Department cannot be supported. When there is need and sanctioned post is available, the respondents should not have resorted to such practice which tantamounts to exploitation of labour. However, the respondents have categorically stated that it was only a project work and in order to overcome the additional job some additional staff was required and this was met by engaging some persons through contractors and therefore, they have no liability in respect of such persons. Even if it was a temporary job then also the Government cannot resort to such an unfair practice which has been deprecated by the Hon'ble Supreme Court time and again and the Government itself has passed legislation like the Contract Labour (Regulation and Abolition) Act, 1970.

11. We find from Annexure at page 56 which is dated 3.7.97 that the Executive Engineer prepared a list of the contractors' employees like the applicants who were working in the IBB project and it was stated therein that their engagement had been necessitated for safety at Sub-Divisional Offices/godowns and for smooth functioning of the Divisional/Sub-Divisional Offices. It was also stated that no person was engaged directly or on HR/MR payment basis. Our attention has also been drawn by the side of the applicants to the fact that this list was prepared for the purpose of regularisation of watch and ward staff and Peon engaged in the IBB Zone as will appear from page 62 of the OA. However, the respondents have stated that this action was taken on the basis of a direction of the Director General, CPWD (vide Annexure dated 8.12.95 at p.48), wherein a direction was given to the subordinate offices for preparing a list of casual LDC, Stenographers and Group 'D' staff working in various offices of the CPWD. It was provided therein that as per DOPT's order in order to give a chance to such casual employees an examination was to be held because earlier opportunity given by

the DOPT could not be availed by such employees because of late receipt of the DOPT's order. However, in that order it was clearly mentioned that those casual workers who had rendered one year's continuous service as on 1.8.93 and who were rerecruited through the Employment Exchange and had passed the Matriculation examination would be eligible to avail this opportunity. It is contended that the applicants were never engaged through the Employment Exchange and that they were also not working under the CPWD through Contractors before 1.8.93 and therefore, this circular was not applicable to the applicants and initially the case of the applicants were considered wrongly but when it was found that the aforesaid circular was not applicable to them no further action was taken. It was also contended by the respondents that because of ban in recruitment the applicants had to be engaged through contractors.

12. We have given our anxious consideration to the facts and circumstances of the case as also the arguments advanced by both the parties. We have already held that the Contract Labour (Regulation and Abolition) Act, 1970 is not applicable to the applicants case.

13. However, it is a fact that the applicants had worked under the respondents directly under their supervision and control though appointed through the contractors for about 4 to 5 years and after completion of the project their services were dispensed with. So far as the casual employees under the Government are concerned it is now well settled that their cases for regularisation should be considered by the authorities in preference to fresh faces. However, in respect of Group 'C' employees like Typist-cum-Clerk etc. no person can be appointed under the Government without clearance through Staff Selection Commission, but in the instant case the three applicants who were working in Group 'C' posts were not engaged through the Staff Selection Commission or through Employment Exchange and

they were also not covered by the aforesaid DOPT OM. However, those of the applicants who were working as Chowkidar or Peon i.e., Group 'D' posts, their cases need to be considered sympathetically.

14. Accordingly, we dispose of this OA by directing that if any vacancy in Group D category is available or may arise in future in any office under the respondent authority within its IBB Zone, then the case of the applicants, who may be willing, be considered for re-engagement in preference to fresh faces, in order of their seniority. There will be no order as to costs.

B.P.Singh

(B.P.SINGH) 28042001

MEMBER(A)


(R.N.RAY)

VICE CHAIRMAN