

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1485 of 1996
AND
ORIGINAL APPLICATION NO.370 of 1997

DATE OF ORDER: 01st December, 1998

BETWEEN:

O.A.NO.1485/96

1. M.Sudhakar Reddy,
2. B.Srinivas Reddy,
3. D.V.Subba Rao,
4. A.Sreenath,
5. A.Dattatreya Sarma,
6. P.Venkatesh,
7. P.Ravinder,
8. S.Ravi,
9. K.Brahmachari,
10. E.Sreenivasa Rao,
11. Dusari Veera Swamy,
12. T.Ashok,
13. G.Jaswanth,
14. P.Premkumar,
15. S.Vijaya Raju,
16. Md.Refeeq Hussain,
17. L.Sreedhar,
18. V.Ramadevi,
19. A.Bhima Shankara Giri Sharma.

.. APPLICANTS

AND

1. Union of India rep. by its
Secretary, Ministry of Defence,
New Delhi,
2. The Scientific Adviser to Raksha Mantri,
D.R.D.O.(R&D), New Delhi,
3. The Director, D.R.D.L,
Kanchanbagh,
Hyderabad 500 058.

.. RESPONDENTS

O.A.NO.370/97

1. B.Srisailender,
2. V.Ramchander,
3. N.Prabhakarchary,
4. D.Anand Kumar,
5. J.Vijay Kishore.

.. APPLICANTS

AND

1. The Scientific Adviser to Raksha Mantri &
Director General,
Defence Research & Development Organisation,
New Delhi,

of filing of these OAs, all the applicants were paid in a consolidated monthly wages.

5. The applicants also submit that they ^{had} were registered themselves in the employment exchange. As there was no employment forthcoming, the applicants herein offered their services to R-3 when they came to know that there were opportunities for employment in the said Laboratory under R-3. It is also stated that the character and the antecedents were got verified before they were engaged.

6. The applicants state that they were entrusted with sensitive works in the Laboratory which has research projects like Agni, Prudhvi, Aakash, Trishul etc. Hence they are all under obligation not to disclose any of work which they are performing and other particulars required in view of the security reasons. The contentions of the applicants are that they are engaged in connection with the latest integrated missile development programme which is a continuing research programme. For the similar work performed by the regular and permanent staff, they were paid in the appropriate regular scales of pay. The applicants submit that they are ITI qualified and are possessing qualification similar to the regular workmen. Hence they have to be paid on par with the regular workmen granting them regular scales of pay on regularisation of their services in accordance with the rules. The applicants vigorously contend that the word casual/contract basis etc, are only misnomer in their case and it was used only to camouflage the regular work done by them to avoid

R

A

regular scales of pay. They also allege that R-3 is not favourably disposed towards them and he is threatening to discontinue them and engage fresh candidates instead of them if they agitate regular scales of pay and regular appointment by submitting representations to their superior officers.

7. The applicants submit that they are skilled and experienced workmen having worked for more than 6 to 7 years in that organisation. They acquired necessary skills and expertise in attending to work which was allotted to them as they are posted as helpers to the workmen in that project. They add that the job entrusted to them is of permanent nature. Hence there is sufficient scope for continuing them regularly and pay them on daily wage basis. Not regularising their services even after continuous employment for more than 6 to 7 years is totally arbitrary, unreasonable and unfair violating Articles 14 and 16 of the Constitution of India. The applicants submit that unfair means were adopted by the organisation to exploit them.

8. To prove their cases, the experience certificate issued to one Mr. Sudhakar Reddy, 1st applicant in OA 1485/96, by the Scientist 'E', Telemetry Division is enclosed as Annexure A-1. It is stated that similar certificates were given to the other applicants also. From this certificate, the applicants add that they are carrying out the general fabrication and mechanical assembly of Telemetry Packages. They have also enclosed police verification certificate and the entry passes given to them. A bunch of sheets are enclosed at Annexure A-V

14

showing that their attendance were marked month after month and if they are on contract basis there is no need for them to mark their attendance. The fact that attendance was marked indicates that they were engaged on casual basis.

9. The applicants in OA 1485/96 have enclosed the details of contract/casual work to which they were asked to perform signed by them as Annexures to the OA. These annexures indicate that some of them ^{are} were performing clerical duties, some are working as Technicians, ^{and} some are Helpers/Fitters in Telemetry Division. Some are also shown as canteen bearers.

10. Both the OAs are filed praying for a declaration that the action of the respondents in not regularising their services in which they are doing regular and permanent nature of work from the date of their initial engagement of the work as shown in the Annexure and not granting them regular scales of pay on par with regular workmen who are doing similar jobs is totally illegal and violative of Articles 14, 16 and 30(I)(d) of the Constitution of India and for consequential direction to the respondents to consider and regularise their services granting them regular scales of pay on the principle of equal pay for equal work in the respective jobs in which they were working from the date of their initial engagement with all consequential benefits.

11. The replies filed in both the OAs are more or less same. The respondents submit that the applicants were engaged as contract labour and their services are of

R

17

contract basis. They are not casual employees in the respondents' organisation. Hence they will not come under the jurisdiction of the Tribunal.

12. In spite of the above contention, the respondents further contend that certain jobs like cleaning of shurbs, shifting of furniture, to carry fabricated items from one place to other for inspection purpose, loading and unloading of stores etc. are being given on contract basis as these jobs could more conveniently be done on job contract basis within the limited time frame. The above engagement was done because of the expansion of the Research & Development activities of the Laboratory. They further add that jobs were entrusted to the contractor on oral basis and the contractors were required to do the total job and payment was made on the basis of quantum of work and after completion of the job satisfactorily. The respondents deny the submission of the applicants that the applicants were appointed as casual labour by the respondent No. 3 in OA 1485/96 during 1980-93.

13. The allegation against R-3 is also denied and the ~~respondents~~ ^{applicants} further reiterate that as contract system has not been abolished by the Government, the applicants were employed on contract basis and the applicants have no right for claiming regular absorption in R-3 organisation.

14. The issue of entry permits is only to regulate their entry as it is a protected area. Project jobs were being executed by the petty contractors by entering into contract with them which is being done by the petty

W

D

contractors only.

15. In view of what is stated above, the respondents submit that the applications have no merit and hence have to be dismissed.

16. The first contention of the applicants is that they were engaged between 1980th and 1993 as casual labour. When they had worked for such long period, it is not understood why they have not insisted for issuing proper order for engaging them regularly. They approached this Tribunal in 1996 and 1997, after a lapse of over 13 years from the date of their initial engagement whether it is casual or contract basis. The applicants, if they are paid on consolidated amount, they could have indicated clearly the amount paid to them and their view for paying such amounts. If they are of the opinion that the amount paid to them is on the basis of the fixed wage per month on the basis of regular scale of pay of similar workmen they should have indicated clearly. The applicants in these OAs have not indicated the amounts paid to them and reasons for paying such amounts. Mere submission that they cannot reveal is not understandable. How much money is paid to them is not a secret information. If they say that any of the work to be performed by them with details may be of secret nature there may be some reasons to believe that. But even then the general type of work performed by them can easily be indicated without any reservation and also explain that such duties cannot be performed on contract basis and they should have been ^{treated as} ~~entered~~ to a regular departmental casual employees. In the Annexure A6, the

nature of work has been indicated. But it is not clear whether the nature of work can be done by contract workers or it has to be done by departmental employees whether the employees are on regular or casual basis. No elusive answer can be given as to the nature of work performed by them. If it is not in ^a detailed fashion it can at least be in general way. The applicants have not also produced any documents to prove their engagements. It is stated by them that they were engaged by oral orders. Normally, engagement of casual labour is being done by a proper order approved by the competent authority. If it is on contract basis, some sort of contract terms are to be indicated and on that basis work was entrusted to a group of employees headed by a middle man. No such information is also available in the OAs. Their allegation that R-3 is pressurising them not to go to Tribunal etc. cannot be taken at the face value unless they are supported by sufficient details.

17. The reply of the respondents on the other hand is as vague as it could be. The reply does not indicate any details of the employment of the applicants in this OA. Merely saying that they were not employed from 1980 to 1993 is not a reason to believe them fully. If that is so, they could have explained the date of engagement of these applicants and breaks if any intermittently. They could have also clearly indicated the period and what work was performed by them. But there are no such details available.

18. It is stated in the reply that the applicants were asked to perform duties of cleaning shrubs, shifting of

R

D

furniture, to carry fabricated items from one place to other for inspection purpose, loading and unloading of stores etc. If those are the duties entrusted to them, the nature of work indicated by the applicants in Annexure-VI document should have been fully controverted by the respondents. In Annexure-VI, the applicants indicted that they were performing the clerical duties, helper, fitter and technician duties in Telemetry & Tracking Division. But the respondents have not commented upon any thing when the applicants indicted the general nature of work performed by them in Annexure-VI. Hence it has to be held that the submission of the respondents in their reply is made in a cryptic way and it cannot be taken for granted that the submission is in order.

19. The respondents also have not indicated anywhere the amount paid to the applicants if they were paid on contract basis. The respondents could have easily indicated in general way how the amount was decided and the details of payment made to the applicants if not for the full engagement period, at least for certain typical months. But unfortunately no such details are available. If the applicants are paid on monthly basis on the basis of 1/30th of the scale of pay of regular workmen, they could have easily stated so comparing the amounts paid to them and the amounts paid to the casual labour, if they were engaged as casual labour as indicated above. But the reply does not talk of any such details or statistics.

20. The respondents have also not made out any case to show that the nature of duties performed by the applicants

are of limited nature, and that too was entrusted to them intermittently. Normally, even if it is a contract work, some sort of contract agreement would have been finalised. But mere saying that by oral orders they were engaged is not an acceptable proposition nor such submission can be accepted on the face value. If they were employed on casual basis, they should have been issued with orders stating so and period for which they were employed. Those details are not stated either by the applicants or by the respondents. No doubt, issue of entry passes etc. may not prove the contention of the applicants that they were casual employees. However, we find that Scientist-E issued experience certificate to the 1st applicant in OA 1485/96 (Annexure I to the OA) to the effect that the said Sudhakar Reddy is carrying out the general fabrication and mechanical assembly of Telemetry packages. The certificate does not indicate that he is a contract worker. However, we are unable to further examine the implications of this certificate. The respondents should have explained the reason for issuing such certificate to Mr. Sudhakar Reddy and to other applicants, if any such certificates were issued to them.

21. In view of the above discussion, it is not clear whether the applicants were engaged on casual basis or contract basis as both sides are not touching the scope of the works and the method of engagement of the applicants. Mere verbal statement of the respondents that they were not casual labour and the verbal statement of the applicants that they are casual labour and not contract labour, is not a proper material to come to the conclusion in one way or



the other. Hence the status of the applicants could not be decisively decided by us. When we asked the learned standing counsel for the respondents to show some proof that the jobs done by the applicants are not perennial, the respondents counsel submitted that the applicants were asked to work on oral instructions and that the respondents have got no tangible proof in this connection.

22. From the above appreciation, whether the applicants are casual labour or contract labour, whether they have been working continuously or with small breaks in between under R-3 cannot be decided without doubt. When they were working since long time, it cannot be said that the work is not of perennial nature. If such is the position, denying them the benefit of regularisation even if they are contract labour may not be proper. Their cases have to be considered for regular absorption in a phased manner as and when vacancies arise by framing a scheme.

23. The above view of ours was also the view of the Apex Court reported in 1998(2) SLR 718 (Union of India & others v. Subir Mukharji and others). In that case, the requisite number of man power was supplied by M/s Bandel Handling Porters Cooperative Society Ltd. When they approached the Central Administrative Tribunal, the Calcutta Bench of the Tribunal had given orders to the respondents' organisation to absorb them as regular Group-D employees bearing in mind the quantum of work available on a perennial basis subject to their fitness. The Apex Court had held that the above order had given enough discretion to the Eastern Railways to absorb them as regular Group-D employees and are quite fair in the facts and circumstances of the case. The order given in that case is quite

W

A

relevant in the present case. In this case also even ^{if} though the applicants were working as contract labour, the respondents could not categorically say that the works performed by them are not of perennial nature. Certain type of works ^{were} ~~was~~ entrusted to them and they were doing it as instructed by the respondents' organisation. Hence throwing them from that duty without regularising their services, even if they are contract labour, is not considered as a fair practice. Hence the respondents should frame a scheme to absorb them as regular Group-D employees in their organisation by creating posts in the sphere of work which are of perennial nature. It may be possible that the work performed by the applicants may not be of continuous nature to be performed every day. But definitely there can be work which is continuous nature and has to be performed day by day which has to be sorted out and to that extent regular posts are to be created. It is stated for the respondents that the projects are of continuous nature. If so, there may not be any reason to discharge the applicants herein for want of work as they could be shifted from project to project to perform duties in the project where work is available. In that way, there may not be any reason to retrench them. But if it is necessary to retrench some of the applicants for want of work, then their names should be kept on record for reengaging them as and when work is available instead of engaging freshers from the open market.

24. Even if the respondents term them as contract labour, if they are performing the duties continuously for certain period, those contract labour may have to be

(84)

treated as casual labour and having extracted work from them for a long spell, they cannot be allowed to languish without regularisation. In such circumstances, the respondents should frame a scheme for regularisation. The above view is also supported by the Apex Court in Piara Singh's case reported in AIR 1992 SC 2130 (State of Haryana v. Piara Singh).

25. Even on humanitarian grounds, the applicants cannot be denied for regularisation of their services in the respondents' organisation. In a similar OA viz, OA No. 1157/96 decided on 6.12.96, this Tribunal had taken a view that claims of the applicants in that OA who had worked as job contractors for more than 60 days, though intermittently, have to be considered and they have to be called for interview to the post of Shop Floor Helpers on humanitarian grounds. That direction also supports our view for framing a scheme for regularisation of the services of the applicants herein.

26. In the result, following direction is given:-

The respondents-organisation should immediately decide the perennial nature of work performed by the applicants and assess whether that work requires posts in Group-D cadre. On that basis, a scheme has to be formed to regularise the services of the applicants. If all the applicants cannot be regularised at one time, their cases should be considered as and when necessity arises in future. For that, a scheme has to be framed to absorb the applicants herein on regular basis in Group-D posts. Till

J

N

such time the applicants are ^{replaced} ~~engaged~~, they should be continued in the present capacity either as casual or on contract basis instead of engaging out-siders from open market to perform duties. At the time of regularisation, if any age qualification is fixed, the applicants should be given relaxation in the age qualification to the extent they worked either as contract or casual labour under the respondents-organisation.

27. The ^{two} ~~one~~ OAs ~~is~~ ordered accordingly. No order as to costs.

प्रमाणित प्रत
CERTIFIED TO BE TRUE COPY

न्यायालय अधिकारी
COURT OFFICER
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद बेंच
HYDERABAD BENCH