

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:

HYDERABAD

O.A.No.699 of 1999.

DATE OF DECISION: 07-9-1999.

Between:

N. Gopal.

.....Applicant

A n d

1. Sr. Dy. Director General, Telecom Engineering Centre,
Taramandal Complex, Saifabad, Hyderabad-500 004.
2. The Chief General Manager, Telecom,
AP Circle, Hyderabad-500 001.

.....Respondents

COUNSEL FOR THE APPLICANT : Mr. S.Ramakrishna Rao

COUNSEL FOR THE RESPONDENTS : Mr.V.Rajeshwar Rao

CORAM:

THE HON'BLE SRI JUSTICE D.H. NASIR, VICE CHAIRMAN

: ORDER :

(PER HON'BLE SRI JUSTICE D. H. NASIR, VICE CHAIRMAN)

2. The respondents are sought to be directed in this OA to regularize the services of the applicant in any Group 'D' vacancy even if it was necessary to create a post as he had been rendering continuous service from February, 1991 till date. The respondents are also sought to be directed to continue the applicant to work as Casual Labour, which duty he was performing presently.

3. The short facts as urged by the applicant are as follows: -

4. The applicant was initially engaged as Casual Labour with effect from February, 1991 and he was discharging the duties of cleaning and sweeping floors daily, dusting tables, personal Computers and instruments, cleaning the toilets daily etc.,. Initially the applicant was engaged as Part-time Casual Labourer and he was continued as such till December, 1993. Thereafter he was engaged on 8 hours duty with effect from 1-1-1994 onwards. However, suddenly his engagement was termed as Contract Labour with consolidated payment of Rs.1050/- per month with effect from 1-7-1995.

5. During April, 1995, there was a proposal to secure a post sanctioned as Safai Karmachari/Peon for each Regional Centre and the applicant was continued on the basis of the contract labour pending sanction of the post.

6. It is further urged by the applicant that while the situation was as stated above, the first respondent contemplated to discontinue the applicant from his present post and started making efforts to fill up the post by engaging some one-else for the same duties which were performed by the applicant since 1991.

7. In the reply statement the respondents, come up with a case, that a departmental building was constructed at Charlapalli, Rangareddy District to accommodate the

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offices of TEC presently functioning from the rented premises at different locations in Hyderabad and the arrangements for cleaning etc., at the new building were contemplated to be carried out combinedly for all the offices of TEC and there was no necessity of engaging a separate person for cleaning at the new premises.

8. It is further contended by the respondents that as far as the contract work entrusted to the applicant was concerned, it was terminated as the office had to be shifted from the rental premises at Taramandal Complex, Saifabad to the new premises at Charlapalli, Rangareddy District. It is further urged by the respondents that the services of the applicant were continued even though the office premises were vacated by 31-7-1997, inspite of the fact that there was no work for the applicant, in deference to the interim directions given by this Tribunal on 6-5-1999.

9. It is true that a casual labourer cannot claim his continuance as a matter of right. He can claim such right only if temporary status has been conferred on him and subsequently when he is regularized in service. However, in the instant case as on 4-5-1999, when this OA was filed, the applicant was continuing in service right from February, 1991 without break and therefore it was not proper to give arbitrary treatment to the applicant. The mere fact that the department had shifted from one building to another does not give a cause to do away with the services of the applicant, more particularly because he was discharging the duties as a Safai Karmachari, which work was of a perennial nature; no satisfaction is also rendered to the Tribunal that the applicant's continuance was surplus as a sequel to any new system or new technique which may be introduced in the new building for cleaning and sweeping purposes. No such ground has been taken by the respondents in their reply statement except making a statement that arrangements for cleaning etc., at the new building were processed combinedly for all the offices of TEC and there was no necessity for the 1st respondent to engage a separate person for cleaning. To say the least this is a vague statement and nothing could be made out from the same that any new system was introduced which

necessitated the removal of the applicant from service. In this view of the matter, therefore, we are not inclined to accept the ground sought to be made out by the respondents for dispensing with the services of the applicant.

10. However, the intentions of the respondents become clear when a statement made in Para.4(i) of the counter affidavit is taken into consideration that from 1-1-1994 onwards, it was proposed to engage a contract labourer for the above purposes which in other words would mean that in contravention of the provisions of the Contract Labour (Regulation & Abolition) Act, 1970, the applicant's engagement was attempted to be dispensed with. Mere fact that the applicant volunteered himself for such contract vide proposal dated 24-11-1993, he cannot claim ignorance of the same, is not tenable. When a right is created by law, the same cannot be taken away taking the undue advantage of the ignorance of an employee who carries out a menial work as Safai Karmachari. It is a matter of gross injustice to him if such practise is permitted to be followed by the respondents for dispensing with the services of a person who had been continuing on the post in question for a long time.

11. The respondents in their counter affidavit admit that a proposal was initiated by the Respondent No.1 for creation of a post of Safai Karmachari, which was sanctioned on 13-8-1997 for a period of one year and that the applicant was continued on contract basis on that post.

12. However, we are not inclined to accept the submission made on behalf of the respondents that a genuine need had arisen to dispense with the services of the applicant as a Safai Karmachari merely on the ground that the premises were changed from one place to another and also on the untenable ground that the applicant was converted into a labour contract and, therefore, he was not entitled to claim continuance as Safai Karmachari with the respondents.

13. A note is required to be taken of the fact that the applicant Mr.Gopal has produced the Xerox copy of the Attendance Sheet of the Department, in which his name appears right from January, 1992 till January, 1995 as the employee of the Department. The correctness of those Attendance Sheets has not been disputed by the respondents.

14. However, it also appears from the record of the case that the applicant was submitting bills for house keeping charges every month, which is evident from Annexure-II at page.43 to 90 of the OA. From perusal of page.91 of the OA at Annexure.III, dated 23-12-1993, it appears that the applicant offered to take up house keeping maintenance for the office of the Deputy Director General, Telecom Engineering Centre, Central Region, Saifabad, Hyderabad, at Rs.1050/-per month and that the department was pleased to award the house keeping contract to the applicant for a period of one year from 1-1-1994 subject to the terms and conditions detailed in the enclosure to that letter which also appear at page.92 to 94 of the OA.

15. In our opinion, however, the respondents would have been justified in treating the applicant as a Contractor if the applicant was not initially taken up as casual worker and continued for three years before his status was converted from a Casual Worker employed by the department to a Contractor, which was not in keeping with the provisions of the Contract Labour (Regulation & Abolition) Act, 1970. We would not have even hesitated to accept this argument advanced on behalf of the respondents that the applicant was a Contractor if it was shown that the work was of a temporary or seasonal nature or that the work was such as would not last beyond the completion of any particular project which may have been taken up on hand by the respondents. No such contention has been raised by the respondents and, therefore, the conduct of the respondents gives us a strong reason to believe that the contract allegedly entrusted to the applicant was a camouflage for depriving the rightful claim of the applicant as a

person directly employed by the department and entitled to all benefits enjoyed by the regular employees directly employed with the department.

16. In the above view of the matter, therefore, we find no substance in the grounds taken by the respondents and we are firmly of the opinion that the applicant's OA deserves to be allowed.

17. As a result, the OA is allowed. The respondents are directed not to disengage the applicant and to pay him all emoluments which a regular employee is entitled to get. The respondents shall also examine the eligibility of the applicant for conferment of temporary status on the applicant and regularize his services in accordance with the rules and regulations for conferment of such benefits. No costs.


(D. H. NASIR)
VICE CHAIRMAN

DATED: this the 7th day of September, 1999

DSN

COPY TO :-

1. HDHND ✓
2. HRRN M (A)
3. HBSJP M (J)
4. D.R. (A)
5. SPARE ✓
6. ADVOCATE ✓
7. STANDING COUNSEL

one

Reportable case

1ST AND 2ND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE - CHAIRMAN ✓

THE HON'BLE MR. R. RANGARAJAN :
MEMBER (ADMN.)

THE HON'BLE MR. B.S. JAI PARAMESWAR :
MEMBER (JUDL)

* * *

DATE OF ORDER: 7/9/99

MA/RA/CP.NO.

IN

CA. No. 699/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

CA ALLOWED ✓

CP CLOSED

RA CLOSED

CA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

(13 copies)

