

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH

O.A.NO.203/2003

February 2,2005.

CORAM : **HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN.**

Karan Singh S/o Shri Brij Lal aged about 40 years, resident of 4/156, Vidhyadhar Nagar, Jaipur, at present working as Security Guard at NEERI Zonal Laboratory, Jaipur.

....

Applicant

By : Mrs.Nirja Khanna, Advocate
for Mr.Jai Kumar Yadav, Advocate .

Versus

1. The Union of India through the Secretary to the Government of India, Ministry of Science & Technology, New Delhi.
2. The Director General, Council of Scientific & industrial Research, 2-Rafi Ahmed Kidwai Marg, New Delhi.
3. The Director, National Environmental Engineering Research Institute, Nehru Marg, Nagpur.
4. The Scientist & Head, national Environmental Engineering Research Institute, Zonal Laboratory CFC-1, Malviya Industrial Area, Jaipur-17.
5. The Administrative officer/Section Officer, National, Environmental Engineering Research Institute, Nehru Marg, Nagpur.

By : Mr. V.S.Gurjar, Advocate.

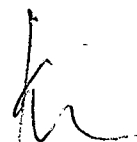
....

Respondents

ORDER (ORAL)

KULDIP SINGH, VC

This Original Application was dismissed in default of appearance of the applicant on 9.3.2004. On filing of an M.A.No.138/2004, the order was re-called and the O.A. Was restored to its original no.



However, again on 7.12.2004 on account of non-appearance of the applicant, the O. A. was dismissed in default. Thus, the applicant has filed M.A.No.7/2005 for restoration of the O.A. Considering the averments made in the M.A. and as a matter of indulgence, it is allowed. Original Application is restored to its original place. The arguments have been heard for disposal of the O.A. on merits.

In this O.A. The challenge of the applicant is to the order dated 23.4.2003 (Annexure A-1), by which the security contract has been awarded to M/s Kaloti Security Agency Nagpur w.e.f. 1.5.2003 for deployment of three security guards in the office of respondent no.4 where the applicant is working as security Guard and consequently direction has also been issued to discontinue the services of the existing personnel, including the applicant.

The facts relevant for decision of this case are that the respondent no.4 issued interview letters to 10 ex-servicemen, on or about 26th July,2001, on sponsorship of their names by the Zila Sainik Welfare Board, Jaipur for appointment as Security Guard under the respondents. Out of 10 candidates, two candidates appeared before the Selection Committee on 9.8.2001, and thus further request was made for sending some more names. In pursuance of this subsequent request, the applicant received a telephonic call from Zila Sainik Welfare Board, Jaipur to appear before the Selection Committee for security duties. He appeared before the committee on 9.8.2001. Five persons including him were interviewed and three persons including applicant were selected. On 14th September, 2001, the applicant was



issued appointment letter for security work from the Administrative Officer of National Environment Engineering Institute, Nagpur, for his engagement as security guard, NEERI Zonal Laboratory, Jaipur, on contract basis for a period of six months w.e.f. 1.10.2001, subject to certain conditions mentioned therein, which inter-alia, included that applicant is to be paid consolidated amount of Rs.4,000/- per month; his engagement is purely on contract basis and does not confer any right implicit or explicit for regular appointment; his contract may be terminated at any time by a month's notice or in lieu of notice payment of consolidated amount; and his contract may be terminated at any time without any notice and without assigning any reason if his services are not satisfactory. The applicant claims that payment of fixed amount of Rs.4000/- is violative of Articles 14, 21 and 39 (d) of the Constitution of India. Condition No.2 is also contrary to the selection process and the condition no.3 of giving one months notice or pay in lieu of that is contrary to provisions of I.D.Act, 1947 and that condition no.4 is not applicable to him as the nature of job is permanent. The applicant was given appointment vide order dated 14.9.2001 (Annexure A-2) for a period of six months, which was extended from time to time. Copies of the extension orders are enclosed as Annexures A-3 to A-6. However, by order dated 23.4.2003 (Annexure A-1), the security contract has been awarded to M/s Kaloti Security Agency, Nagpur w.e.f. 1.5.2003, which is under challenge. Apprehending that the services of the applicant would be terminated w.e.f. 1.5.2003, he filed the present Original Application. It is



submitted by him that the three posts of Security Guards are permanent one and the applicant was duly sponsored by the Zila Sainik Welfare Board, Jaipur along with others. His work has been appreciated from time to time. There is no justification of firstly continuing the applicant on contractual basis and now to engage security guards through contractor with a view to disengage the applicant and others is illegal and arbitrary. The Military personnel are best suited security guards and there cannot be alternative to services provided by them. No notice has been issued by the respondents to applicant as required in terms of his appointment which is illegal. The applicant is a workman and the respondent no.4 is an industry within the meaning of Section 2 (s) and 2 (j) respectively and further he has completed more than 240 days in a preceding year, thus, he is entitled for notice and compensation both but neither any notice nor any pay in lieu of notice nor any compensation has been given to him under section 25-F of the Industrial Disputes Act, nor any fresh opportunity to continue in employment has been given to him and the substitution of the security guard through contractor is violative of Section 25-F of the Industrial Disputes Act. The applicant is entitled to pay and allowance at par with regular incumbents.

Respondents have filed a detailed reply contesting the Original Application. They submit that M/s Kaloti Security Agency, Nagpur, has not been impleaded as respondent and as such the O.A. is not maintainable. Earlier the applicant and others were engaged directly by the respondents and were granted extension from time to time.

[Handwritten signature]

However, the CSIR decided vide letter dated 13.1.2003 to contract out the job of security and cleaning to the contractors who are holding the valid licence under Contract Labour (Regulation & Abolition) Act, 1970. In pursuance of this decision, the Institute has awarded the work of security arrangement to M/s Kaloti Security Agency, Nagpur w.e.f. 1.5.2003. The applicant and others were dis-engaged as their contract came to an end by efflux of time. Having accepted the contractual appointment with the terms and condition contained in the offer document, the applicant is estopped from challenging the same. The applicant had submitted an application dated 1.5.2003 to M/s Kaloti Security Agency, who has offered him a post of Security Guard vide order dated 1.5.2003 and the applicant after accepting the terms and conditions of the offer dated 1.5.2003, joined the said Agency as Security Guard and since then he is working with the respondents. The applicant has suppressed this material fact and is not entitled to any relief. No rejoinder has been filed by the applicant.

Learned counsel appearing for the parties have been heard at length and record has been examined. In so far as claim of the applicant based on violation of provisions of the Industrial Disputes Act, 1947, is concerned, the same is not tenable before this Tribunal in view of the law declared by the Apex Court of the country that a claim based on violation of provisions of Industrial Disputes Act, 1947, cannot be lodged before Central Administrative Tribunal by filing an application under section 19 of the administrative Tribunals Act, 1985. It has been settled in the cases of The Premier Automobiles Ltd. Vs.



Kamlakar Shantaram Wadke & Others & Automatic Electric Pvt. Ltd.
Vs. Engineering Mazdoor Sabha & Others, AIR 1975 SC 2238 and
Manohar Lal Vs. State of Punjab & Others, Full Bench of Punjab &
Haryana High Court, 1983 (2) SLR, page 658 that a remedy provided
to a workman to claim a reference under section 10 of the Industrial
Disputes Act is an alternative remedy, efficacious and ordinarily bars
the filing of a Writ Petition. In view of this, the various pleas raised by
the applicant based on violation of provisions of I.D. Act, 1947 are not
tenable and resultantly the relief claimed on the basis of the same is
also not tenable.

Undisputedly, the applicant was engaged only on contract
basis with certain terms and conditions. It is the allegation of the
applicant that there is violation of provisions of the contract and as
such the action of the respondents may be quashed. At this stage, I
am reminded of a decision of Hon'ble Supreme Court in the case of
Nandgunj Sihori Sugar Co.Ltd. Rae Bareli Vs. Badri Nath Dixit, AIR
1991 SC, 1525, in which it has been held that if there is allegation of
violation of contract, a party to contract can sue the other party for
damages. In view of this proposition of law, the applicant cannot take
any benefit with the allegations that there has been violation of
provisions of the terms and conditions of the contract.

It is the consistent stand of the respondents that the services of
the applicant were disengaged on the expiry of the contractual period
and once the contract was not renewed, he had no right to continue on
the post. It is the settled proposition of law that on the expiry of a

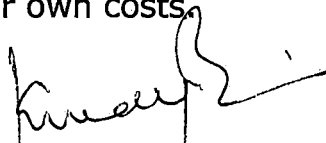


contractual period, right to remain on the post of an incumbent comes to an end. For this, one can place reliance on the celebrated decision of Apex Court in the case of Director Institute of Management & Development U.P. Vs. Smt. Pushpa Srivastava, 1992 (3) SCT, Page 742. It is also well settled that an appointment is liable to be terminated in accordance with its terms and conditions as settled in the case of State of U.P. Vs. K.K.Shukla, 1991 (1) SCT, Page 760; State of Punjab Vs. Surinder Kumar, JT 1991 (6) SC, 540; Full Bench of Punjab & Haryana High Court in the case of S.K.Verma Vs. State of Punjab etc., 1979 (2) SLR, 164; Harjot Kamal Singh Vs. State of Punjab, 1997 (1) RSJ, Page 96; Kiran Bala & Others Vs. State of Punjab, CWP No.7361 of 1996, decided on 22.5.1996 and Anil Kumar Etc. Vs. State of Haryana, 2000(3) ATJ, Page 150. The High Court of Punjab & Haryana has gone to the extent of recording in the case of Sunil Kumar Vs. State of Haryana, 1994 (2) SCT, page 604 (P&H), that even if a junior is retained, a senior has no right to be retained in service. In view of all this, one cannot find fault with the impugned action of the respondents.

There is another very interesting thing to be noticed in this O.A. Admittedly, the applicant has challenged the engagement of the fresh incumbents through the new security agency, rather, he has challenged the order dated 23.4.2003 by which the contract has been awarded to M/s Kaloti Security Agency, Nagpur w.e.f. 1.5.2003. On the one hand the applicant has himself applied to the said agency and took up the job through this Agency under the respondents as Security

h

Guard. It has already been held that applicant has no right to continue on the post in view of the terms and conditions of his appointment and if his plea for quashing of the order dated 1.5.2003 is accepted, such relief would be self-destructive inasmuch as the applicant is working after engagement through the new agency and his service would also have to be terminated. Moreover, the applicant has not disclosed his fresh engagement through the new Agency in this O.A. It is well settled that a person who does not approach a court of law with clean hands is not entitled to any relief. In view of what has been stated and discussed above, this O.A. turns out to be devoid of any merit and is rejected, leaving the parties to bear their own costs.



(KULDIP SINGH)
VICE CHAIRMAN

February 2, 2005.

HC*