

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

**O.A. No. 694/2013
O.A. No. 696/2013**

Reserved on: 16.01.2019
Pronounced on: 24.01.2019

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhyaya, Member (A)**

O.A. No. 694/2013

Dinesh Kumar Kumawat aged about 27 years S/o Shri Omprakash by Caste Prajapati resident of A-1, Ganga Marg, Kumawat Bari, Khatipura, Jaipur-302012.

...Applicant.

(By Advocate: Shri Amit Mathur)

Versus

1. The Controller General of Defence Accounts, West Block, R.K.Puram, New Delhi-110 066.
2. The Principal Controller of Defence Accounts (South Western Command), Khatipura, Jaipur-302012.
3. Ms.Pushpa Rathore, PCDA (South Western Command), Khatipura, Jaipur-302012.
4. M/S Ex-Servicemen Welfare Society, A-46/G-1, Vinoba Bhave Nagar, Near Nursery Circle, Vaishali Nagar, Jaipur through its Secretary.

...Respondents.

(By Advocate: Sh Rajendra Vaish for respondents No.1 & 2)

O.A. No. 696/2013

Ravindra Kumar aged about 27 years S/o Shri Mithan Lal by Caste Baghele resident of B-98, Sunder Vihar, Ravan Gate, Jhotwara Jaipur-302012.

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...Applicant.

(By Advocate: Shri Amit Mathur)

Versus

1. The Controller General of Defence Accounts, West Block, R.K.Puram, New Delhi-110 066.
2. The Principal Controller of Defence Accounts (South Western Command), Khatipura, Jaipur-302012.
3. Virender Mor, PCDA (South Western Command), Khatipura, Jaipur-302012.
4. M/S Ex-Servicemen Welfare Society, A-46/G-1, Vinoba Bhave Nagar, Near Nursery Circle, Vaishali Nagar, Jaipur through its Secretary.

...Respondents.

(By Advocate: Shri Rajendra Vaish)

ORDER

Per: A.Mukhopadhyaya, Member (A):

These Original Applications, (OAs), are being decided by a single order as they involve a common cause of action, namely alleged illegal termination of services, identical relief sought, i.e. reinstatement and pertain to the same respondent department.

2. As per the applicants, the facts common to these cases are that they were initially appointed as casual employees directly by the respondents on the basis of interviews conducted by them. Subsequently, they were appointed on the post of Data Entry Operator, (DEO), on 01.09.2008 and continued to serve with the respondents till their services were terminated by an oral order

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arbitrarily and without any prior notice or hearing on 03.06.2013. The applicants further state that in their place one Ms.Pushpa Rathore was employed by the respondents.

3. The applicants thereafter represented against their termination vide letter dated 11.06.2013, (Annexure A/2), and finally sent a legal notice with a demand for justice on 19.06.2013; (Annexure A/3). The respondents thereupon forwarded this notice to M/s Ex-Servicemen Wives Welfare Society, (Respondent No.4 in both cases), vide Annexure A/4 dated 03.07.2013 stating therein that the applicants were semiskilled staff who had been employed on daily payment basis through this contractor. A copy of this forwarding letter was also addressed to applicants' counsel for information. Thereafter, applicants' counsel again served legal notice on the respondents clarifying that the appointment of the applicants was done directly by Respondent No.2, i.e. the Principal Controller of Defence Accounts, (South Western Command), Khatipura, Jaipur-302012, first as casual labour, and then on the post of DEO and requested that they be permitted to discharge their duties till such time as regular employees became available for that position.

4. In reply to their legal notice dated 19.06.2013, (Annexure A/3), Respondent No.2 vide letter dated 01.08.2013, (Annexure

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A/1 – impugned order), informed the applicants that their grievance had no direct relation with the respondents' office as all matters relating to their appointments, payments and remuneration etc. had been done through the contractor, viz M/s Ex-Servicemen Wives Welfare Society , (Respondent No.4), and advised them to take up the matter with this aforementioned contractor. The applicants' further contend that they appealed against the impugned letter/order, (Annexure A/1), on 23.12.2010 and that on receiving no decision or response to the same for a period of over three months approached this Tribunal seeking the following relief:-

That the OA be accepted, record of the case be called and the impugned order dated 01.08.2013 passed by respondent No.2 be quashed and set aside and the respondent also be directed to reinstate the applicant with all consequential benefits.

That suitable directions be passed to R-2 to release withheld salary of the applicant for the month of March, April and May 2013 with interest @ 12% including cost.

Any other relief which is deemed fit and proper in the facts and circumstances be granted.

5. In support of their contentions, the applicants have brought on record a copy of a note sheet of the respondent department, (Annexure A/6), where their temporary appointment as DEO on contract basis at the rate 5000/- per month from 01.09.2008 to 31.03.2009 has been recommended. They state that the note sheet on record also shows that their employment as DEO was

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extended thereafter. The applicants further state that during the period of their employment, they were allowed to sign the regular attendance register of the department; (Annexure A/7).

6. In reply, the respondents state that the applicants were not engaged directly as casual labour as the respondents have been outsourcing their requirement for the services of unskilled/semi skilled manpower for various kinds of work through contractors who made available the necessary personnel for these functions. The kind of work undertaken by such casual staff provided through contractors and the list of such contractors used yearwise have been brought on record at Annexures R-1/1 and R-1/2 respectively. The respondents further state that the applicants were deployed by the contractor, (Respondent No.4), in order to assist in Electronic Data Processing, (EDP), with effect from 01.09.2008. However, since the CGDA, New Delhi, (Headquarters Office), discontinued the sanction for the outsourcing of the services of DEO vide its letter dated 13.10.2010, (Annexure R1/3), the services of the applicants were provided by the contractor as semiskilled/skilled labour only as per the requirement of the respondents for the period between April 2011 and 31.05.2013.

7. In specific terms, the respondents contend that the decision to dispense with the services of the applicants was that of the

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contractor as the respondents have never issued any appointment letter to the applicants and have procured their services only through a service contract with the contractor. They state in addition that the work and behaviour of the applicants who had been provided by the contractor was not found satisfactory for some time and therefore the contractor, on being informed of these facts, deployed another person in place of the applicants to perform EDP tasks.

8. The respondents reiterate that since they dealt directly only with the service contractor, the engagement of personnel, payments for their services and all related issues lay between the applicants and the contractor. The respondents had only made payments for services rendered to the contractor and not directly to the applicants at any time. In support of their contention, they have placed on record some cheque slips and contingent bills and contract bills; (Annexures R-1/5 and R-1/6). The respondents further clarify that since the applicants were never their employees, they did not make any direct payments to them nor did they deduct or deposit amounts related to Employees State Insurance, (ESI), contributions, Provident Fund etc.

9. Learned counsels for the parties were heard and the material available on record was perused.

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10. While conceding that no letter of appointment was directly issued to the applicants, learned counsel for the applicants nevertheless asserted that the note sheet of the respondent organisation, (Annexure A-6), and the attendance register in which the applicants marked their presence on duty, (Annexure A/7), clearly showed that the applicants were employed by the respondents directly and not through any contractor.

11. *Per contra*, learned counsel for the respondents argued that the documents placed on record by them showing details of the jobs outsourced, contract agreements and payments made pursuant to the same proved beyond any doubt that the applicants were never employed by the respondents directly and that they were seeking to use their deployment with the respondents by the contractor for carrying out contractual services as a means of backdoor entry into the respondent department.

12. It is undisputed in this case that while the applicants assert that they were employed by the respondents directly, they have not been able to produce any documentary evidence of the same in terms of any letter of appointment or even a contractual document between themselves as individuals and the respondent

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department. A perusal of the note sheet, (Annexure A/6), relied upon by the learned counsel for the applicants, also does not reveal any evidence of such direct employment in unequivocal terms. Rather, there is reference in this note to their being recommended for appointment temporarily as DEO on contract basis without any specific statement to the effect that such a contract is to be entered into with them on an individual basis. Given that the applicants have not been able to produce any individual appointment letters or contracts with the respondents on an individual basis, and further bearing in mind that the documents placed on record by the respondents to the effect that they engaged the services of staff like the applicants only through contractors, the inescapable conclusion that emerges is that the assertion of direct employment made by the applicants is nowhere supported by the documents on record. On the contrary, the documents on record, whether placed therein by the applicants or by the respondents, consistently appear to indicate that the services of the applicants were provided to the respondent department through contractors with whom the respondent department had specific agreements. While it is for the applicants to establish their case for being directly employed by the respondents, given the material produced on record, our finding is that they have failed to do so as there is no unequivocal evidence on record to indicate that they were ever employed directly by the respondents.

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13. In view of the foregoing facts and circumstances, we find no force in these OAs and the same are dismissed.

14. There will be no order on costs.

(A.Mukhopadhyaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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