

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

**Original Application Nos. 290/00440/2014,
290/00441/2014, 290/00442/2014 and
290/00444/2014**

RESERVED ON : 10.07.2019
PRONOUNCED ON : 19.07.2019

CORAM:

**HON'BLE MRS. HINA P.SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

OA No.290/00440/2014

Mr. Dinesh Pandit son of Shri Parmeshwar Pandit, aged about 35 years, resident of Copasani Road, behind Mahesh Hostel, Panholiyo Ki Nadi, Harijan Basti, Jodhpur (Raj.)

...Applicant

(By Advocate: Shri Anirudh Purohit)

Versus

1. Union of India through Secretary, Ministry of Defence, Raisina Hills, South Block, New Delhi.
2. Directorate General Armed Force Medical Services (Headquarters), New Delhi.
3. Commandant, Sainik Asptal, Military Hospital, Jodhpur

...Respondents

(By Advocate: Shri Rameshwar Dave)

OA No.290/00441/2014

Mrs. Pinky wife of Shri Vijay Tejawani, aged about 29 years, resident of 23, Roop Nagar, Roopa Bai Ka Jav Bhadvasiya Road, Jodhpur (Raj.)

...Applicant

(By Advocate: Shri Anirudh Purohit)

Versus

1. Union of India through Secretary, Ministry of Defence, Raisina Hills, South Block, New Delhi.
2. Directorate General Armed Force Medical Services (Headquarters), New Delhi.
3. Commandant, Sainik Aspatal, Military Hospital, Jodhpur

...Respondents

(By Advocate: Shri Rameshwar Dave)

OA No.290/00442/2014

Mrs. Rajnee Gujarati wife of Shri Deepak Kumar Gujarati, aged about 35 years, resident of House No.57, Shanti Nagar, Masuriya, Jodhpur (Raj.).

...Applicant

(By Advocate: Shri Anirudh Purohit)

Versus

1. Union of India through Secretary, Ministry of Defence, Raisina Hills, South Block, New Delhi.
2. Directorate General Armed Force Medical Services (Headquarters), New Delhi.
3. Commandant, Sainik Aspatal, Military Hospital, Jodhpur

...Respondents

(By Advocate: Shri Rameshwar Dave)

OA No.290/00444/2014

Mr. Jai Kumar s/o Shri Sarwan Kumar, aged about 26 years, resident of Prathvi Pura, Rasala Road, Harijan Basti, Jodhpur (Raj.)

...Applicant

(By Advocate: Shri Anirudh Purohit)

Versus

1. Union of India through Secretary, Ministry of Defence, Raisina Hills, South Block, New Delhi.
2. Directorate General Armed Force Medical Services (Headquarters), New Delhi.
3. Commandant, Sainik Aspatal, Military Hospital, Jodhpur

...Respondents

(By Advocate: Shri Rameshwar Dave)

ORDER

Per Mrs. Hina P.Shah

These OAs were earlier heard and disposed of by this Tribunal by a common order dated 12th April, 2017. This Tribunal while disposing these OAs observed that:-

“5. The case of the respondents is that on their higher officials’ direction they have now appointed a placement agency and have asked the applicants also to work under the said placement agency which they refused. They refused correctly as under the Constitution there is no such interregnum authority monopolizing the wage and structure of wage to the labourers. Just because the applicants are labourers and working on contract, this does not mean that their constitutional right stand curtailed or rescinded in any way. It is brought to our notice that a Coordinate Bench had in OA No.140/2014 passed on 27.11.2014 held in such circumstances that termination is illegal if the applicant is replaced by any other contractual employee. If they are working satisfactorily and there is operational need and the required sanction in the respondent-department, they must be continued. But

by regularly appointed employees they can be supplanted even under Section 25(f) above of the I.D. Act but not with any other contractual appointment. Therefore, the termination of the applicant is set aside. The applicant is entitled to be reinstated back in service and they will consider them continuing from day one onwards. They will be entitled for wages also but at this point of time, the learned counsel for the respondents requests an amendment to this claim of back wages in full. After discussions at the Bar, we direct that the applicants will be entitled for 30% of the back wages, but from today onwards, they will be entitled for full wages.”

2. Against the order of this Tribunal, the respondent department approached the Hon’ble High Court of Rajasthan by filing DB Civil Writ Petition Nos. 7083, 7089, 7090 and 7091 of 2017. The Hon’ble High Court vide order dated 12.7.2017 allowed the Writ Petitions setting aside the order dated 12th April, 2017 by which the five original applications were allowed by this Tribunal. The Hon’ble High Court directed to restore the OAs for adjudication afresh with further direction that the Tribunal would first decide whether it has the jurisdiction to entertain the original applications filed by the applicants. Accordingly, these OAs were restored for adjudication afresh on the point whether this Tribunal has jurisdiction to entertain the original applications filed by applicants. Hence, these OAs are being considered on the question of jurisdiction only.

3. Since a common question involves in these OAs, therefore, for the sake of convenience, we are taking pleadings of OA No.440/2014.

4. The applicant in this OA has prayed that by an appropriate order or direction, the impugned order dated 16.8.2014 (Annexure-A/1) may kindly be quashed and set aside and respondent department may kindly be directed to reinstate the applicant by revoking the orders of the termination with all consequential benefits.

5. In the OA, the applicant has averred that he was initially appointed on the post of Safaiwala in respondent department vide order dated 1.10.2007. Initial appointment of the applicant was purportedly made on contract basis for a fixed term of 11 months, which, according to the applicant, was made by adopting the due process of law. The respondent department has issued advertisement inviting applications for different posts in respondent department. Pursuant to the said advertisement, the applicant applied for appointment as Safaiwala and participated in the selection process. After declaring pass in the written examination he was called for physical and medical examination and was declared

successful. He was issued appointment order dated 24.7.2006. Therefore, his appointment was made after adopting due process of law. Thereafter their contractual appointment was renewed from time to time. But the respondent department issued order dated 16.8.2014 refusing to renew the period of employment beyond 31.8.2014 stating that contractual safaiwala/safaiwali are to be taken through service agencies. Therefore, according to the applicant, he was retrenched from service without complying with the mandatory provision of Industrial Disputes Act, 1947 as the respondent department (Military Hospital) falls within the ambit of the meaning of industry as defined under the Industrial Disputes Act. The applicant made oral representations for reinstatement in service or to allow him to make fresh application for appointment, but of no avail. Therefore, aggrieved by the termination order dated 16.8.2014, the applicant has filed the present OA.

6. By way of preliminary objections with regard to jurisdiction, the respondents have submitted that u/s 14 of the Administrative Tribunals Act, 1985 only service matters of the civil servants as defined u/s 2 of the Act, 1985 can be redressed or adjudged by this Tribunal, but in the instant case, the applicant is not a civil servant as he was

contractual employee and his engagement was governed by Labour Law, as such the OA is not maintainable. Further, the applicant cannot be allowed to travel in two boats simultaneously as in one hand he is seeking protection under Labour Laws saying that terms and conditions of contract were in accordance with Labour Law only and on the other hand he is claiming benefit of the civil servant under the provisions of Administrative Tribunals Act, but in fact he does not fall within the definition of civil servant as such OA is not maintainable.

The respondents have further submitted that engagement of the applicant was on contract for sweeping and cleaning for a limited period and after completion of the contractual period, the contract of the applicant was terminated by pre-notice dated 16.8.2014. The applicant was not appointed against any sanctioned post after undergoing selection process as provided under Recruitment Rules of Class-IV employee, but he was engaged as Safaiwala and was paid the wages as per Minimum Wages Act from the Corpus Fund provided by the Army Group Insurance (AGI) for the Military Hospital, Jodhpur. The AGI allotted a Corpus Fund of Rs. 40 lacs to Military Hospital, Jodhpur which would be invested by the

AGI and the interest earned there upon will be utilized for maintaining and improving cleanliness standard of Hospital as per order dated 2.5.2006. The applicant was engaged purely on contractual basis and was paid from the interest generated upon Corpus fund allowed, thus the applicant was engaged on contract basis for cleanliness by paying minimum wages as per Minimum Wages Act, 1948. Earlier the engagements of such contractual employees were directly under Military Hospital, but the AGI vide its order dated 25.3.2014 (Ann.R/2) directed that utilization of funds to hire the services or procurement of the items is in contravention to the agreement and laid down instructions. Thus, after receipt of order dated 25.3.2014 no direct contractual employee is engaged by the respondents as such the OA is liable to be dismissed as no person is engaged directly by the respondents for the same work which was being performed by the applicant.

7. By way of additional affidavit the respondents have stated that as per directions of AGI, Military Hospital, Jodhpur has published 5 vacancies through placement agency and also specified clause mentioning that the present applicants can be given preference. The answering respondents have tendered that the said work will be

through the placement agency i.e. Shri Naval Enterprises while executing an agreement. The placement agency intimated the Commandant, Military Hospital that these applicants are not interested to join the said work. The answering respondents have given full opportunity to the applicants to join the work through placement agency, but they are not interested to do so. The respondents have further submitted that there is no sanctioned post for engagement and the persons employed are as per interest generated on the corpus of Army Group Insurance which is received on quarterly basis and is not fixed.

8. Heard the learned counsel for the parties and perused the material available on record.

9. It would be pertinent to mention here that the applicants in these proceedings seek protection under Labours Laws and also claiming benefit of a civil servant under the provisions of Administrative Tribunals Act, 1985.

10. During the course of arguments, the learned counsel for the applicants has relied upon various orders/judgments including the judgment of the Full Bench of this Tribunal at New Delhi in OA No.1184/2009 – Mrs. Praveen Khan and Ors. vs. Govt. of NCT of Delhi and Ors. decided on 25th

March, 2010 wherein it is held that a set of contractual employee shall not be replaced by another set of contractual employees except if the contractual employees are not working satisfactorily. But it is not the case of the applicants that they are being replaced by other set of contractual employees. Rather the case of the respondents is that henceforth they are outsourcing the services for improving hygiene of Military Hospital, Jodhpur through a contractor and the applicants were afforded ample opportunity to come and work under the said service provider, but they refused. Earlier, these services were taken on contract by the Military Hospital, Jodhpur, which are being discontinued and now the services are being taken through contractor. Therefore, it is not a case of replacing the contractual employees by another set of contractual employees.

The learned counsel for the applicants also relied upon the following judgments on the question of jurisdiction of this Tribunal in support of his contention:-

1. Telecom District Manager and Anr. vs. Keshab Dev (2008) 8 SCC 402
2. Union of India and Ors. vs. Deep Chand Pandey and Anr., (1992) 4 SCC 432.

3. Calcutta High Court judgment in WP No.21119 (W) of 2011 Avdesh Singh vs. Union of India
4. Calcutta High Court judgment in W.P.C.T No.345 of 2012- Pashupati Sardar and Ors. vs. Union of India decided on 11.4.2013
5. Delhi High Court judgment in W.P. (C) No.3850/2010 dated 29th August, 2010 – Sagrika Singh vs. Union of India.

On going through these judgments, we find that the ratio decided in these matters, does not deal with the jurisdiction of this Tribunal with regard to the contractual labours paid from the interest generated from Army Group Insurance Fund. Therefore, these are not applicable to the facts and circumstances of the present cases.

10. On the contrary, the learned counsel for the respondents relied upon the following judgments:

1. Municipal Council Samrala vs. Raj Kumar, (2006) 3 SCC 81
2. M.P. Housing Board and Another vs. Manoj Shrivastava, (2006) SCC 702
3. Haryana State Agricultural Market Board vs. Subhash Chand and Anr., (2006) 2 SCC 794
4. Rajasthan Tourism Development Corporation Ltd. and Anr. vs. Intejam Ali Zafri, (2006) 6 SCC 275.
5. Punjab State Electricity Board vs. Darbara Singh, (2006) 1 SCC 121.

A bare perusal of these judgments reveals that these also do not deal with the jurisdiction of this Tribunal with regard to the contractual employees paid from interest generated from Army Group Insurance Fund.

11. Considered the rival contention of both the parties. It is admitted fact that the applicants were working with the respondent department on contract basis for a fixed period on a fixed consolidated amount. The payments to the applicants were made from the interest generated out of the Army Group Insurance Fund. The said fund cannot be said to be a public fund, and the applicants cannot be said to be holder of civil posts. It would be pertinent to mention here that a similar controversy arose before the Hon'ble Apex Court in the case of Union of India vs. Chotelal AIR 1999 SUPREME COURT 378, wherein the Hon'ble Apex Court has observed as under:-

"3. In view of the rival contentions raised, the most crucial question that arises for consideration is what is the nature of the post against which the Dhobis get their appointment for discharging the duties of washing clothes of the cadets ? From the terms and conditions of the letter of appointment issued to such Dhobis it is crystal clear that the appointment cannot be held to be one against any civil post. On the other hand, it clearly indicates that the appointment is purely private payable out of Regimental Fund. Initially these Dhobis were being paid at a particular rate per cadet on the basis of actual number of cadets a Dhobi is required to serve, but later on a monthly salary, no doubt, has been fixed for being paid to such Dhobis. The terms of appointment, no doubt, vest certain control over such Dhobis on the Commandant of the Academy but nonetheless such control cannot impress the post of Dhobis with the character of a Civil post. It is also borne out from the record that each cadet is granted a monthly Dhobi Allowance and the said allowance is put into a fund called 'Regimental Fund'

under the management of Commanding Officer of the institution. At this stage it would be appropriate to notice some provisions of the Defence Services Regulation which would give an idea as to the characteristic of the Regimental Fund. Under Para 801 of the Regulation Public Funds have been defined as such:-

"801 (a) Public Funds – Include all funds which are financed entirely from public money, the unexpended balance of which are refundable to Government in the event of not being devoted to the object for which granted, and also

- (i) Unissued pay and allowances;
- (ii) Office allowance fund; and
- (iii) The estates of deceased men and deserters."

Para 801 (b) defines 'Regimental Fund' to mean comprising all funds, other than public funds maintained by a Unit.

4. Rule 820 provides for administration of such Regimental Fund and 820(a) clearly indicates that all funds other than public funds as defined in Para 801 maintained by a unit, which are financed either wholly or partly from public money. Regulation further provides that the Commanding Officer act as a trustee in relation to the 'Regimental Fund' and is responsible that the funds are properly applied with special reference to the object of the fund and for the benefit of the personnel or unit as a whole.
5. In view of the character of the Regimental fund, as discussed above, we have no hesitation to come to the conclusion that the said fund cannot be held to be public fund by any stretch of imagination and the Dhobis paid out of such fund cannot be held to be holder of civil post within the Ministry of Defence so as to confer jurisdiction on the Central Administrative Tribunal to issue direction relating to their service conditions. It is of course true that the Commanding Officer exercises some control over such Dobhis but on that score alone it cannot be concluded that the posts are civil posts and that payments to the holders of such post is made from out of Consolidated Fund of

India or of any public fund under the control of Ministry of Defence.

6. In the aforesaid premise the contention of Mr. Mahajan, learned senior counsel that the Central Administrative Tribunal has no jurisdiction to go into the question of service conditions of such Dhobis has to be sustained and consequently, the impugned order of the Tribunal has to be set-aside. We accordingly, set aside the impugned judgment of the Tribunal and dismiss the OA. This appeal is allowed, but in the circumstances.”

12. This Tribunal in OA no.252/2013-**Chandu vs. Union of India and Anr.** decided vide order dated 18.1.2019 also came across to deal with a similar controversy wherein the question for consideration before the Bench was whether the Gardeners employed by Air Force Museum were holding civil post and thereby conferring jurisdiction upon the Tribunal to decide a service dispute. The applicant therein was paid wages from Service Institute Fund which is regimental fund generated through contributions raised by Air Warriors for welfare activities. After considering the matter in detail and after relying on the ratio decided by the Hon’ble Apex Court in the case of Chotelal (supra), it was held that the applicant was not a holder of civil post as the payment of the holder was not made out of the Consolidated Fund of India. Therefore, the Tribunal has no jurisdiction to go into the question of service conditions of the applicant.

13. Here, in the present cases also, the ratio of the judgment of the Hon'ble Apex Court in the case of Chotelal (supra) squarely applies. In these cases, the applicants were contractual labourers paid from the interest generated from Army Group Insurance Fund to be utilized for maintaining and improving the cleanliness standard of the Military Hospital. Therefore, the applicants cannot be said to be holder of the civil post. Accordingly, we hold that this Tribunal has no jurisdiction to entertain these OAs.

14. In view of above discussions, all these OAs are dismissed with no order as to costs.

(ARCHANA NIGAM)
ADMV. MEMBER

(HINA P.SHAH)
JUDL. MEMBER

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