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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.2296 of 2002
with
Original Application No.2295/2002

New Delhi, this the 5th day of February, 2003

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

OA 2296/2002

Kamla Devi
W/o Sh. Baljeet Singh
R/o Village and P.O. Chandpur
Delhi-110 081.

-APPLICANT

OA 2295/2002

Kamlesh
D/o Sardar Singh
R/o H.No.147 Pooth Kalan,
Delhi-110 41.

-APPLICANT

(By Advocate: Shri Y.S. Chauhan)

Versus

1. Union of India
Through
Secretary,
Department of Post,
Dak Bhawan,
Parliament Street,
New Delhi.
2. Chief Post Master General,
Circle Office,
Meghdut Bhawan,
New Delhi.
3. Sr. Superintendent of Post Office,
North Delhi Division,
Delhi-110 054. -RESPONDENTS

(By Advocate: Shri R.P. Aggarwal)

O R D E R (ORAL)

By Hon'ble Mr.Kuldip Singh, Member(Judl)

By this common order, I will decide two OAs bearing No.OA 2295 and 2296 of 2002 having the common facts.

2. Applicant in OA 2296/2002 (Kamla Devi) was appointed to the post of EDPM Chowkidar on provisional



basis which was terminable after the disciplinary proceedings against the regular incumbent Om Prakash were finally dropped. She was appointed on 13.7.88. Now she has filed this OA apprehending that her services would be terminated soon and that is why the respondents have issued a memo dated 6.8.2002 whereby the respondents are proposing to select another person to a post on which the applicant was duly appointed and have been performing duties for the last over 17 years.

3. Applicant in OA 2295/2002 (Kamlesh) was appointed as EDPM Pooth Kalan which had fallen vacant. In this case the applicant was appointed on provisional basis and the appointment letter was issued on 20.7.92. The applicant in this case also seeks quashing of a memo dated 5.8.2002 whereby the respondents are proposing to select another person on which post the applicants were duly appointed. It is also pleaded that it should be declared and directed to the respondents to treat the appointment of the applicants as regular and grant them all the benefits of seniority as available to the said post.

4. The main grievance of the applicants is based on the length of service rendered by them. Since they are working for the last so many years on the post after having been duly appointed so they should be treated as regular employees.

5. The respondents are contesting the OA. The respondents say that the method of recruitment to the



post of EDA is governed by the instructions issued in that behalf and the same were not applied in the case of the applicants, as they were not appointed regularly even on provisional basis, so their appointment cannot be regularised.

6. The respondents also pointed out that as per the method of recruitment, certain procedure has to be gone into and now since the respondents are going to fill up these posts by way of regular appointment, so applicants cannot raise any objection and they cannot claim for quashing of the memo for filling up of vacancies.

7. I have heard the learned counsel for the parties and gone through the records of the case.

8. The applicants have relied upon various judgments of the Apex Court such as AIR 1992 SC 1574 entitled as N.S.K. Nayar and Others VS. U.O.I. & Others and also 1992 (19) ATC 292 entitled as H.C. Puttaswamy and Others Vs. The Hon'ble Chief Justice of Karnataka High Court, Bangalore and Others which relate to the regularisation of the persons who continue to hold posts for a longer period ranging from 10 years to 15 years and in this case the Kamla Devi (applicant in OA No. 2296/2002) was appointed in 1988 and Kamlesh in 1992 (applicant in OA 2295/2002) so the learned counsel for the applicants pray that they should be declared as regular employees and the memo for calling people to make applications for appointment should be quashed.

Law

9. As against this Shri R.P. Aggarwal appearing for the respondents submitted that since these applicants were not appointed even on provisional basis in a regular manner so they cannot claim regularisation, as such they cannot restrain the Government from filling the vacancies.

10. I have considered the rival contentions of the parties and also gone through the record.

11. I may point out that when the applicants filed the rejoinder they had also annexed the latest instructions issued by the Department regulating substituting/provisional arrangements made in place of regular Gramin Dak Sevaks. These instructions have been issued on 21.10.2002. The instructions also provide that the extant provisions provide for a provisional appointee to be placed on a waiting list for being considered for a regular appointment after he/she has completed three years of continuous employment. To avoid prolongation of such provisional appointments, approval of the next higher authority should be taken in respect of all provisional appointments exceeding 180 days and where the period exceeds one year, express approval of the Head of the Region/Circle, as the case may be, is necessary. The perusal of these instructions show that if the provisional employee has continued beyond a period of three years then he or she can be considered for a regular appointment and their name has to be placed in the waiting list. In this case both the employees have completed more than 3 years since one had been appointed


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in 1988 (Kamla Devi in OA 2296/2002) and another employee in 1992 (Kamlesh in OA 2295/2002). So as per these instructions they can be considered for regular appointment. Since these instructions came on 21st October, 2002 and OA had been filed on 2.9.2002 that goes to show that these instructions came during the pendency of the OA meaning thereby that no representation at all had ever been made by the applicants based on these representations.

12. So in these circumstances I am of the considered opinion that both these OAs can be disposed of with a direction to the parties that the applicants may make a consolidated representations based on these instructions within a period of 15 days from the date of receipt of a copy of this order and respondents shall pass a reasoned and speaking order thereon within a period of 2 months from the date of receipt of a copy of this order.

13. OA stands disposed of with the above directions. No costs.

14. Let a copy of this order be placed in OA Nos.2296 and 2295 of 2002.


(KULDIP SINGH)
MEMBER(JUDL)

/Rakesh