

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(5)

1) O.A. NO. 39/2002

2) O.A. NO. 81/2002
M.A. NO. 73/2002

This the 21st day of January, 2002.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)

O.A. NO. 39/2002

1. Udai Singh S/O Bal Kishan,
BB-43 (C) West Shalimar Bagh,
Delhi.
2. S. Ahmed S/O M.K. Sullam, *d*
80-Q, Sector 4, Pushp Vihar,
New Delhi.
3. Kul Bhushan S/O Amar Nath,
58, Harit Niketan,
West Enclave, Pitampura,
Delhi.
4. Kamal Singh Yadav S/O Naval Singh Yadav,
Near Gurudwara Jatwara Bahadur Garh,
Distt. Jhajjar (Haryana) 124507.
5. Davender Singh Yadav S/O Om Prakash Yadav,
House No. WZ-59, Jawala Heri,
New Delhi-110063.
6. Shamsher Singh S/O Rattan Singh,
Q.No. I-320, Sarojini Nagar,
New Delhi.
7. V.P. Singh S/O B.L. Tyagi,
C-180 East End Apartments,
Mayur Vihar, Phase-I Extn.,
Delhi-110096.
8. Jawahar Lal Dua S/O Ram Pyara Dua,
B-7/117, Sector 4, Rohini,
Delhi-85.
9. Subhash Chander S/O U.B. Giri,
G-139, Pushkar Enclave,
Pastime Vihar,
New Delhi-63.
10. Surender Singh S/O Devi Singh,
E-23, Nawada Housing Complex,
Kakrola Moar,
New Delhi-59.
11. Sunil Kumar Sharma S/O G.C. Sharma,
C-2A/16/91, Janakpuri,
New Delhi-110058.

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12. Ajay Kumar S/O S.Dass,
WZ-175/B, Street No.5,
Krishna Park, New Delhi-110018.
13. Roshan Lal Sheoran S/O Sukhi Ram,
1235, Sector 8, R.K.Puram,
New Delhi.
14. Hans Raj S/O Mool Chand,
B-III/237, Raghbir Nagar,
Delhi-110027.
15. Anil Sharma S/O Rajinder Kumar Sharma,
House No.110/1, Acharya Puri,
Gurgaon-122001.
16. Rati Ram S/O Net Ram,
WZ/H-42, Uttam Nagar,
New Delhi-110059.
17. S.C.Verma S/O Thakur Das,
R/O GH-4/35, Meera Apartments,
Pastime Vihar,
New Delhi-110063.
18. Ram Swaroop Suman S/O Karan Chand,
A-176, Moti Bagh-I,
New Delhi-110021.
19. Sat Ram Yadav S/O Ram Rattan Yadav,
R/O 59/1 Acharya Puri,
Gurgaon.
20. Sushil Kummur S/O Prabhakar Kumar,
6H/133, Sector 5,
Rajender Nagar, Sahibabad,
Ghaziabad (UP).
21. Ashok Kumar S/O Puran Chand,
369, Sector-2, Type-II,
Sadiq Nagar, New Delhi-49.
22. Virender Singh S/O M.S.Rawat,
R/O A-375, Moti Bagh-I,
New Delhi-110021.
23. V.K. Mahindru,
S/o late Shri T.C. Mahendru,
Res. NIL-37A, Malviya Nagar,
New Delhi-110017.
24. Kaushlesh Kumar,
S/o late Shri Anadishwar Prasad,
Res. 68/18, Friends Colony,
Gurgaon-122001 (Haryana)
25. K.K. Sharma,
S/o late Shri Mangi Lal Sharma,
C/o Shri Ram Kishar Sharma,
X/3284, Raghuperpura No.2,
Gali No.4, Gandhi Nagar, Delhi.
22. Attar Singh
S/o Inder Singh
R/o E-2/49,
Chanakya Place-I,
Panchs Road,
New Delhi-110059.

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27. R.S. Gupta,
S/o Shri Udmil Ram,
R/o E-23, Ranjit Singh Road,
Adarsh Nagar,
Delhi-110033
28. Ram Singh,
S/o Shri B.R. Saini,
80, Saini Enclave,
Delhi-110092

... Applicants

O.A. No. 81/2002

1. Shri Pritam Lal
Son of Late Krishan Lal
M-303, Guru Har Kishan Nagar,
New Delhi-87.
2. Subhash Chander
son of Shri Krishan Lal
A-26, Vivek Vihar Phase II,
Delhi-95
3. K.V.Kaushik,
son of Shri Laxmi Narain
1052/31, Kamla Nagar,
Rohtak Haryana.
4. Shri R.K. Bhatta,
son of late Shri R.L. Bhatta,
CC-29F Hari Nagar,
New Delhi-64.
5. M.C. Khulbe
s/o late Shri R.D.Khulbe
A-187, New Ashok Nagar,
Delhi.
6. Sharwan Kumar Gupta,
s/o Late Shri J.P. Gupta,
1/9306 Partap Pura
Gali No.2/2, West Rohtash
Nagar Shahdra,
Delhi-110032.
7. Ramesh Chandra Sharma,
son of Shri H.L. Sharma,
H.No.252, Sector 6,
Bahadur Garh, Haryana.
8. Ravi Kant Sharma
son of Shri B.D.Sharma,
F-464 Vikaspuri,
New Delhi-18.
9. R.K. Jain
son of Shri C.L. Jain,
Sector 13, Plot-14
Rohini, Delhi-85



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10. Jasbir Singh,
son of Shri Partap Singh,
546 Mukeem Pura
Subzimandi Delhi-7
 11. Ramesh Chandra Pant,
son of Shri C.B. Pant,
F-2, Mitra Dweep Apartment
Plot No.38, I.P.Extension
Delhi-110092.
 12. Avnish Chander
son of Shri Ishwar Dass
C-4/16-B, Keshavpuram,
Delhi.
 13. Bhoop Singh
son of Shri Sobha Ram,
373, Housing Colony,
Sonapat Haryana.
 14. Shri S.C. Sharma,
S/o late Shri C.L. Sharma,
28, Nirmar Apartment, Mayur Vihar,
New Delhi.
 15. K.S.Bhatia,
son of late Shri Des Raj Bhatia
B-7, Vikalp Apartment, Plot No.92,
I.P. Extension, Delhi-92.

... Applicants

(By Advocate: Shri V.K. Rao in both OAs)

-Versus-

1. Union of India
through Secretary Ministry of Urban
Development and Poverty Eliviation,
Nirman Bhawan, New Delhi.
2. Chief Controller of Accounts,
Ministry of Urban Development and
Poverty Eliviation, Nirman Bhawan,
New Delhi.
3. Chief Secretary,
Govt. of NCT of Delhi,
Delhi Sachivalaya, I.P. Estate,
Delhi.
4. Principal Secretary (Finance)
Govt. of NCT of Delhi
Delhi Sachivalaya,
I.P. Estate, Delhi.

... Respondents
(in both OAs)

(By Advocates: Shri M.M. Sudan for Respondents 1 & 2
Dr. Sumant Bhardwaj for Respondents
3 & 4)

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O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Member (A) :

These OAs have been taken up together for disposal by a common order as they raise similar facts, issues and points of law.

2. The applicants in these OAs are working as Assistant Accounts Officers (AAOs)/Junior Accounts Officers (JAOs) in different Divisions of Public Works Department and Flood Control Department of the Government of National Capital Territory of Delhi on being posted by respondent No.2, i.e., Chief Controller of Accounts, Ministry of Urban Development, Government of India. The cadre controlling authority of these personnel is the Controller General of Accounts. The Government of NCT of Delhi have created their own Accounts Service and vide order dated 3.1.2002 they have ordered transfer/posting of certain JAOs/AAOs in the Departments/Divisions of I&F and PWD, Government of NCT of Delhi, which would result in the repatriation of these applicants to the Government of India. These applicants had earlier on filed OAs in the Tribunal against such repatriation to the Central Government. This issue was finally decided by the Hon'ble Supreme Court in Civil Appeal Nos.2971-73/1997 vide their orders dated 3.10.2001 setting aside the order of the Tribunal and directing the Union of India "to take appropriate steps to give effect to the proposal made by the appellants or to take steps for absorption in Delhi Administration Accounts Service as indicated by the Tribunal.....within three months from today."

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3. The learned counsel of the applicants, Shri Rao, stated that vide Annexure A-1 dated 3.1.2002, 59 persons have been ordered to be transferred/posted in the places where the applicants are functioning. Consequently, the applicants would be dislodged and repatriated to the Ministry of Urban Development. The learned counsel submitted that repatriation of these applicants would be contrary to the directions of the Hon'ble Supreme Court. The learned counsel stated that the Government of India had taken up the matter of absorption of the applicants with the Government of NCT of Delhi. However, the Government of NCT of Delhi have, instead of absorbing the applicant, resorted to their repatriation. The learned counsel stated that as per the rules, namely, Delhi Administration Accounts Service (DAAS) Rules, 1982 in combination with the directions of the Hon'ble Supreme Court, the Government of NCT have no other alternative except to absorb these applicants as the applicants have given their option for their absorption in the Government of NCT. He further pointed out that ten personnel who had been working in a similar situation as the applicants, had opted for their repatriation to the Government of India and the Government of India have accepted them for repatriation. Now that the Government of NCT have a separate cadre of DAAS under the 1982 Rules, they have to take steps for applicants' absorption ^birrespective of these ^brules ^bas per the directions of the Hon'ble Supreme Court, the Government of NCT were required to absorb the applicants in the DAAS.

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4. Shri Sudan, the learned counsel of respondents 1 and 2, stated that the Government of India had conveyed to the Chief Secretary, Delhi vide their letter of 23.11.2001 (Annexure R-I) that as these personnel had opted for absorption in DAAS, formal orders for taking them into the DAAS be issued. The learned counsel further stated that the Government of India continued communication on the subject with the Government of NCT, and vide Annexure R-II dated 20.12.2001 conveyed that Secretary of the Union ^{Govt. of} had ^{the} approved in consultation with the Controller General of Accounts absorption of 49 officials from the Civil Central Accounts Service and that the Government of NCT may issue formal orders of absorption of these personnel. The learned counsel maintained that the rules of 1982 have been made by the Administrator of Delhi with the approval of the Central Government, and that if the Government of NCT have any problem in the absorption of these personnel in their rules, they are within their powers to make appropriate provision in the rules or exercise their power to relax them under rule 30 *ibid.*

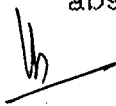
5. Dr. Sumant Bhardwaj, the learned counsel of respondents 3 and 4, stated that the applicants have suppressed the fact that they do not occupy the post of Divisional Accountants in the Government of NCT of Delhi anymore as their substitutes had already been appointed. He further stated that order of the Tribunal dated 23.8.1996 has been set aside by the Hon'ble Supreme Court in the aforestated order dated 3.10.2001. According to him, the Union Government have arbitrarily taken a

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unilateral decision not to accept the applicants on repatriation but recommended their absorption in the DAAS. According to the learned counsel, absorption in the Service was available under the rules only at the initial constitution of the Service under rule 5(2)(b).

6. We have carefully gone through the orders of the Hon'ble Supreme Court whereby the Union of India has been directed to take appropriate steps to give effect to the proposal of the appellants in the related Civil Appeals or to take steps for their absorption in DAAS. From the facts of the case, it is obvious that although the personnel of the Union Government have been working with the Government of NCT of Delhi for long number of years, in terms of the directions of the Supreme Court they were either to be repatriated to the Union Government or absorbed in the DAAS. Respondents 1 and 2 by way of their correspondence of 23.11.2001 (Annexure R-I) and 20.12.2001 (Annexure R-II) addressed to the Government of NCT of Delhi have asked them to absorb these personnel as per the approval of the Secretary, Ministry of Urban Development. Vide Annexure R-IV dated 2.1.2002, the Government of NCT of Delhi have taken the stand that with the promulgation of DAAS Rules, 1982, a separate cadre of Accounts has been constituted by the Government of NCT and that as per the rules absorption of the applicants in the services of DAAS is not permissible and, therefore, the Government of India cannot order absorption of the applicants in DAAS.



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7. As to the contention of Dr. Bhardwaj that this Tribunal does not have the jurisdiction and powers to interpret the directions of the Hon'ble Supreme Court, we are not in disagreement with him. However, we are not prohibited in any manner to require the respondents to implement the directions of the Supreme Court as they are. The contention of the learned counsel is that they have already posted substitutes on the posts which were held by the applicants and, therefore, it would not be possible to retain them on those posts. In this regard, we find that the Secretary, Ministry of Urban Development had been corresponding with the Government of NCT of Delhi to take steps for absorption of the applicants in terms of the judgment of the Hon'ble Supreme Court. The Union Government would have either taken the applicants back or taken steps for the absorption of the applicants in the DAAS. From the correspondence of the Union Government it is clear that the Secretary approved absorption of 49 officials from the Central Civil Accounts Service to DAAS and asked the Government of NCT of Delhi to issue formal orders. However, instead of complying with the orders of the Union Government, the Government of NCT appears to have acted post haste in passing the impugned order rather than taking steps for absorption of the applicants. They should not have issued Annexure A-1 relating to the substitutes of the applicants before the issue regarding the applicants was resolved between the Union Government and the Government of NCT of Delhi. The Government of NCT have created the problem themselves and in terms of the Supreme Court's orders, position obtaining prior to the date of the

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impugned orders, i.e., 3.1.2002, has to be maintained. Whereas Annexure A-1 has to be quashed and set aside, in terms of the Supreme Court's orders ^{personnel} ~~and concerned~~ ^{lb} can be transferred back to the Divisions/Departments where they were working prior to orders of 3.1.2002.

8. It is a fact that the applicants have been working for a long time with the Government of NCT of Delhi although they have been on deputation from the Government of India after the 1982 rules came into effect. From the orders of the Hon'ble Supreme Court, it is quite clear that irrespective of the rules, they have directed the Government of India to take appropriate steps for repatriation or for absorption of the applicants in the DAAS. In this view of the matter, it is irrelevant that the applicants' absorption had arisen after the promulgation of the 1982 rules. The balance of convenience also indicates that as the applicants who belong to the service of the Union of India have been working with the Government of NCT of Delhi for long ^{lb} ~~number of years~~ ^{their repatriation} ^{lb} and ^{lb} would certainly disturb the arrangements of the Government of India. The 1982 rules have been made by the Government of NCT of Delhi themselves which contain power of relaxation of the rules as well as the Government of NCT are competent to make ^{lb} ~~suitable amendments also in them~~ ^{if necessary} ^{lb} to consider the cases of absorption of the applicants.

9. Having regard to the reasons recorded and discussion made above, we quash the order Annexure A-1 dated 3.1.2002 to the effect that the applicants continue

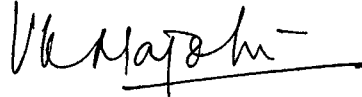
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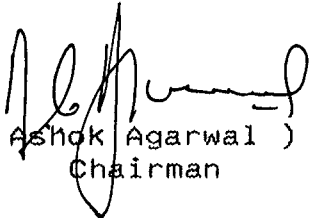
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in the DAAS till such time that the Government of NCT of Delhi takes a decision in terms of the directions of the Government of India contained in their memorandum of 23.11.2001. Government of NCT of Delhi are further directed to take a decision on the absorption of the applicants in DAAS within a period of three months from the communication of these orders.

10. The OAs are disposed of in the aforestated terms. No costs.


(V.K.Majotra)
Member (A)


(Ashok Agarwal)
Chairman

/as/