

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1348/2001
OA 1467/2001
OA 2003/2001
OA 1434/2001

New Delhi, this the 13th day of December, 2001

Hon'ble Shri Govindan S.Tampi, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

OA 1348/2001 & MA 1171/2001

1. Ms. Anjaly Nauriyal
D/o Late Lt. Col.B.B.Nauriyal
R/o 93, Indra Nagar Colony
Dehradun.
2. Ms. Anumita Aggarwal
R/o 307, Mohit Nagar
Lane No.9, Dehradun.
3. Ms. Meenu Goyal
R/o 5, Sornimal Bazar
Dehradun.
4. Shri Sunil Bhaskaran
R/o 11/40, Vasant Vihar
Dehradun.
5. Shri Mahesh Kumar Singh
R/o 7, Panchsheel Park
P.O.New Forest
Dehradun.

...Applicants

OA 1467/2001

1. Shri Ashok Kumar Pathak
S/o Shri R.P.Pathak
R/o - C/o Shri O.P.Sharma
290, Bhoorgaon, Pandiwar Phase-II
P.O.Prem Nagar, Dehradun.
2. Manoj Kumar Srivastava
S/o Shri Om Prakash Srivastava
R/o - C/o Shri O.P.Sharma
290, Bhoorgaon, Pandiwar, Phase-II
P.O.Prem Nagar, Dehradun.

...Applicants

OA 2003/2001 & MA 2495/2001

Mrs. Monika Chutani
W/o Major Rahul Chutani
R/o P-23-A Behind Section Hospital
Indian Military Academy.

...Applicants

OA 1434/2001

Shri S.K.Arya
S/o Late Shri R.K.Arya
R/o Vatsalya No.1, Turner Road
Clemington, Dehradun.

...Applicants

(By Advocate Mrs. Meera Chibber)

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V E R S U S

UNION OF INDIA : THROUGH

1. Secretary
Ministry of Defence,
South Block, New Delhi.
2. Commandant
Indian Military Academy
Chakrata Road
Dehradun.
3. Commander
Army Cadet College Wing
Indian Military Academy
Dehradun.

... Respondents

(By Advocate Shri R.N.Singh)

O R D E R (ORAL)

By Hon'ble Shri Govindan S.Tampi,

This combined order disposes of four OAs, all filed, seeking identical reliefs and argued together.

2. Heard Smt. Meera Chibber and Shri R.N.Singh, learned counsel for the applicants and the respondents respectively.

3. i) OA 1348/2001/MA 1174/2001

MA 1174/2001 for joining together is allowed.

Smt. Anjali Nauriyal and four other applicants in this OA are working as ad-hoc Lecturers against Civilian posts in the Army Cadet College (ACC), attached to Indian Military Academy (IMA) and affiliated to Jawaharlal Nehru University (JNU). They are functioning in ad-hoc capacity. ACC is similar to National Defence Academy, Kharakvasla (NDA), also affiliated to JNU except that the Cadets from the latter go to all the wings of defence forces, while those from ACC only goes to Army. Both the

institutions run graduate courses. Two of the applicants are Lecturers in English one each in Economics, Computer Science and History. Again, two are working from 1998 and the remaining three from 1999. All these applicants have been working for a specified period, at the end of which their services are terminated, but were again engaged by fresh selection by giving artificial breaks in between. This method has been adopted inspite of repeated directions of the Hon'ble Supreme Court against artificial breaks and the need to keep the incumbents on job, till they are replaced by regularly selected civilian Lecturers through UPSC. Keeping the above in mind, a few Lecturers of NDA, ^{Kharakuanla} similarly placed as the applicants, had moved Mumbai Bench of the Tribunal in OAs 57/95 and 490/98, which were allowed holding that the applicants should be continued on ad-hoc basis, till regular appointees join, that the applicants should not be given any artificial breaks or subjected to repeated selections for being continued ^{on ad-hoc basis} and that all the benefits available to temporary employees be extended to them. The present applicants were last appointed on 7-8-2000, till 15-6-2001 and have thus left the jobs inspite of performing jobs satisfactorily and are now aggrieved by the advertisement seeking fresh entrants on ad-hoc basis, issued by the respondents inspite of the settled law that one set of ad-hoc employees should not be replaced by another set of ad-hoc employees. Applicants' representations, bringing to the attention of the respondents, judgements in this regard and that a few of them have become overaged, though they were

well within the age limit, when they were first appointed, had not ^{been} responded to. Hence this OA.

Q Grounds raised in the OA are as below :-

(i) respondents have not acted as model employers and had resorted to hire and fire policy at their whims.

(ii) benefit granted by a decision by the Court or Tribunal in a case should be granted to all who are similarly placed.

(iii) Tribunal's decision in respect of NDA's Lecturers should be extended to the applicants as well and they should not have been subjected to repeated selections, at the end of every term.

(iv) applicants are entitled to be continued as there was work and as no regular appointee has joined.

(v) advertisement for the above posts for being filled up on ad-hoc basis by a fresh set of ad-hoc Lecturers was irregular.

(vi) the applicants should have been given all the benefits of normal employees.

(vii) since the applicants were holding civilian posts, they cannot be replaced by Army Officers.

(viii) advertisement dated 15-4-2001 inviting applications for fresh ad-hoc appointment was improper.

(ix) the applicants were not seeking regularisation, but were only seeking protection against their termination, till regularly selected employees, join and also consideration in selection with relaxation in age.

Reliefs sought are, therefore, :-

(a) quash and set aside the advertisement Annexure P-I to the extent whereby posts already held by the applicants are re-advertised in ACC wing in IMA, Dehradun viz. Two in English, One in Economics, One in Computer Science, One in History.

(b) declare that applicants are entitled to the benefits as given by Mumbai Bench in the case of ad-hoc Lecturers in NDA College, Kharakvasla under the same Ministry of Defence

(c) direct the respondents herein to continue the applicants in the posts of Lecturers in their respective subjects till the regularly selected candidates from UPSC join the post without subjecting them to fresh selections or terminating their services or giving artificial breaks.

(d) to direct the respondents to grant them the same pay scale and allowances as are admissible to regular Lecturers with increments from the date of filing of the OA.

(e) to direct the respondents to grant the leave to the applicants which is admissible to temporary Govt. servants under the CCS (Leave) Rules, as granted by Mumbai Bench.

(f) to direct the respondents to grant age relaxation to the applicants as and when the posts are advertised so that they may be able to compete with others.

(g) and/or to pass such other order/orders that Your Lordships may deem fit and proper in the circumstances of the case.

3.(ii) OA 1434/2001

Shri Sanjay Kumar Arya, Ad-hoc Lecturer in Physics with ACC of IMA, similarly placed as the applicants in OA 1348/2001, has challenged the advertisement in question.

3. (iii) OA 1467/2001

S/Shri Ashok Kumar Pathak and Manoj Kumar Srivastava are the two applicants in this OA, who were holding the post of ad-hoc Lecturers in Physics similarly placed as the applicants in OA 1348/2001.

3. (iv) OA 2003/2001

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Smt. Monika Chutani, applicant in this case who was working as ad-hoc Lecturer in Political Science in ACC of IMA has the same grievance as the applicants in the above three OAs.

4. During the oral submissions, Smt. Meera Chibber, learned counsel for the applicants forcefully reiterated the pleas raised in the OAs and prayed that the applicants who have been denied justice, should get the protection of the Tribunal

5. Respondents stoutly defend their actions and state that the applicants have no case at all. All the applicants have been appointed for specifically 11 months from August 2000 to June 2001, and it was clear to all concerned that once the period was over, the applicants had to vacate their positions. They were infact civilian employees, appointed on contract basis, and they cannot in any way seek parity with regular employees. Respondents have every right to go ahead with recruitment from open market for meeting their requirement, though presently they were not continuing the selections process, initiated by the advertisements, challenged by the applicants. As the posts have been filled on contractual basis, the jurisdiction in the matter was with the Civil Court in Dehradun and not with this Tribunal or if it was with the Tribunal, it should have been with the Allahabad Bench. A.C.C., it is admitted was a wing of IMA, having both uniformed and Civilian Staff and has adopted the curriculum of JNU and nothing beyond the same was relevant. As

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applicants are only contractual employees, they have no locus standi to seek employment against any sanctioned posts even on ad-hoc basis. They cannot, therefore, ask for any extra benefits. ACC is slowly in the process of dispensing with the civilian faculty as they have qualified army personnel to perform the duties. This phasing out of civilian staff is the implementation of Govt. Policy and, therefore, the applicants cannot have any objection to the same. While it is true that the applicants had been given Civilian Gazetted Officer (CGO) status, it was only for protocol and nothing further be read into it. The applicants were all selected by a local selection method and the said selection was not by any statutory sanction. Respondents have the right that the vacancies filled up when the 11 months engagement of the incumbents was over but have not gone ahead with the selection process and, therefore, the OA had become infructuous. In view of the fact that the applicants had no claim at all at any stage as far as the above posts against which they were working only on contractual basis, the OA deserved to be dismissed, pray the respondents.

6. Shri R.N. Singh, learned counsel for the respondents reaffirmed the positions, as stated by them in their written pleadings. According to him, the decisions of the Mumbai Bench of the Tribunal in the OAs filed by the Lecturers of NDA and in Sangita Narang's case are not applicable in the present case. What was relevant was the decisions of the Tribunal in OA No. 1452/2000, filed by a similarly situated individual Ms. Suman Sharma, whose plea has been

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negatived by the Principal Bench on 12.01.2001. He also referred to the decision of the Punjab & Haryana High Court in Anil Kumar & Ors. Vs. State of Haryana and Others (2000 (3) SCT 896), which he felt supported his case.

7. We have carefully deliberated upon the rival contentions. Preliminary objections raised by the respondents on jurisdiction has no basis and is rejected. Coming to the merits of the OA, we find that what the applicants seek are, protection against removal by another set of adhoc appointees and repeated selection for adhoc appointment and grant of benefits like leave and other concessions as permitted in law. On the other hand, the respondents state that the applicants have no case at all being contractual employees. On examining the issues in Deptt., we are convinced that the applicants indeed have a very strong case. Orders of appointment issued to all the applicants show that they had all been appointed as Lecturers on adhoc basis for specified periods and that their services are liable to be terminated when a UPSC appointee reports for duty or when their work was not found satisfactory. It is thus clear that the status of the applicants was not of contractual employees, dispensable at the fancy of the employer, as strenuously sought to be made out by the learned counsel for the respondents. There is also nothing brought on record to show that the work of the applicants was not found satisfactory. It is also a matter of record, despite the protestations made on behalf of the respondents without any basis, that the Army Cadet College under IMA where the applicants work

and NDA, are similar institutions training Cadets for Defence Services, affiliated to INU for academic purposes and functioning under the Ministry of Defence. It stands to reason therefore the Civilian teaching staff, holding Gazetted rank in both the establishments are at par with one another and the service conditions for one groups is equally applicable to the other. It is in this context that the decision of the Mumbai Bench of the Tribunal issued while disposing the OAs 57/95 and 490/98 on 23.09.1998 becomes relevant. The OAs filed by the Lecturers in NDA Kharakvasla were decided upon by the Tribunal relying upon the decision of the Hon'ble Supreme Court in Karnataka State Private College Stop-gap Lecturers Association Vs. State of Karnataka & Ors. [AIR 1992 SC 677] Ratan Lal & Others Vs. State of Haryana & Ors. [1983 (4) SCC 43] and Dr. A.K. Jain & Others Vs. U.O.I. & Others [JT.1987 (4) SC 445] that the applicants services should be allowed to continue till the vacancies are duly filled up through UPSC that the applicants should get salary and allowances as regularly appointed lecturers, and that they should not be subjected artificial breaks so long as work was available. Evidently the main pleas of the applicants in these OAs also cover the same ground. It is also worth mentioning that the applicants herein have not asked for regularisation, a plea raised by the applicants before the Mumbai Bench which was negatived. That being the case. The benefits granted to the applicants in the above OAs are clearly available to the applicants before us also. Decisions of the Hon'ble Supreme Court in Dr. Sangita Narang & Ors. Vs. Delhi Administration &

Ors. (ATR 1998 (1) CAT 556) and Dr. J.P.Paliya & Ors. Vs. Govt. of NCT of Delhi (OA 2564/97 decided on 23-4-98) relied upon by the applicants should come to their help. Hon'ble Apex Court having pronounced in the case of State of Haryana Vs. Piara Singh (1992 (3) SLJ 34) that an adhoc or temporary employee can be replaced only by a regular employee. The respondents' reliance on the decision of the Punjab & Haryana High Courts in the case of Anil Kumar, is misplaced and is of no assistance to them. The reliance placed by the learned counsel for respondents on the decision of Principal Bench in OA No. 1452/2000 filed by Ms. S. Sharma, on 12.01.2001, also has no basis. We have tried hard to find anything in that decision, in which one of us [Sh. Shanker Raju, Member (J)] was also concerned, which would help the respondents. In fact the said decision reiterates the position that an adhoc employee cannot be replaced by another adhoc employee, which is the plea in these OAs as well. (Tribunal in its judgement, however, did not bar the decision of the respondents to engage a service officer to teach a subject, earlier being taught by a civilian officer).

8. Learned counsel for the respondents had averred that they had decided not to go ahead with the selection process initiated by the advertisement and, therefore, the OA has become infructuous. We find it difficult to accept. If the respondents honestly decided to do so, what prevented them from rescinding or cancelling the advertisement ? They have not done so and it is for us to quash it.

9. In view of the above, the conclusions that emerge are :-

- a) The applicants who are adhoc lecturers cannot be replaced by anyone other than a lecturer regularly selected by UPSC.
- b) The applicants are entitled to be continued as long as there is work and no regular lecturer is available.
- c) they cannot be subjected to artificial breaks or fresh selections at the whims and fancies of the respondents.
- d) the applicants shall be entitled to pay and allowances and increments and other benefits like leave as are admissible to regular staff.
- e) the move by the respondents to initiate fresh recruitment of ad-hoc Lecturers though advertisement was wrong and deserve to be interfered with.

10. In the above view of the matter, all the four applications succeed and are accordingly allowed with the following directions :-

- (a) The impugned advertisement dated 15-4-2001 inviting applications for ad-hoc appointment for the post of Lecturers, which the applicants have been holding, is quashed and set aside.

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(b) The respondents shall permit all the applicants to continue to work in the post they are/were holding on ad-hoc basis without subjecting them to any fresh selections or interviews for holding such ad-hoc post, till such time, replacement regularly selected by the UPSC arrive to join duty.

(c) If the services of any one of the applicants have been terminated, he/she should be re-engaged and permitted to continue till regular appointee is report for duty, though such persons would not be entitled for backwages during the period between their dis-engagement and re-appointment.

(d) All the applicants would be entitled for monetary benefits like pay and allowances, increments and service benefits like leave etc. as are granted to a regular staff.

(e) The applicants shall also be permitted to appear for selection for regular appointment in accordance with the Rules. No costs.

11. Operative portion of this order has been pronounced in the Court, at the conclusion of the oral submissions on 13-12-2001.

S. Raju

(SHANKER RAJU)
JUDICIAL MEMBER

(GOVINDAN S. TAMPI)
ADMINISTRATIVE MEMBER

~vKs~

Pradeep

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Principal Bench, New Delhi
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