

Central Administrative Tribunal
Principal Bench

O.A. No. 402 of 2001

New Delhi, dated this the 26th MARCH, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

S/Shri

1. Tapash Kumar,
L.D.C.
Election Commission of India,
Nirvachan Sadan,
Ashoka Road, New Delhi.

2. Vinod Kumar Dogra,
L.D.C. ... Applicants

(By Advocate: Shri B.P. Singh)

Versus

Election Commission of India through
the Chief Election Commissioner,
Nirvachan Sadan,
Ashoka Road,
New Delhi-110001.

... Respondent

(By Advocate: Shri Lovkesh Sawhney)

ORDER

S.R. ADIGE. VC (A)

Applicants who are LDCs from State Government of Arunachal Pradesh impugn respondents' order dated 1.12.2000 (Annexure A-7) and seek a direction to respondents not to repatriate them merely because they had not qualified in the typing test.

2. Heard both sides.

3. As per Recruitment Rules in respondents organisation (Annexure R-1) promulgated under Article 309 of the Constitution, the mode of recruitment of LDCs is by direct recruitment failing which by — transfer on deputation with a proviso which alle

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for 10% of vacancies to be filled by promotion of Group 'D' employees from within the organisation on the basis of L.D.C.E/ seniority-cum- fitness. Direct recruitment is to be made through Staff Selection Commission although in cases of urgency, if qualified candidates are not available respondents are permitted to fill the posts through Employment Exchange on short term ad hoc basis to be replaced by qualified candidates from SSC. Transfer on deputation is to be made from amongst persons holding equivalent or analogous posts in other Central offices or State Election Offices. The period of deputation is not ordinarily to exceed three years.

4. Admittedly applicants were recruited as L.D.Cs in office of Chief Electoral Office, Arunachal Pradesh Government in 1988-89.

5. As there was a shortage of L.D.Cs in respondent's organisation, and SSC could not sponsor candidate; immediately, respondents vide their letter dated 20.2.97 (Annexure R-2) invited applications from Central/State Govt. officials having requisite qualifications as per Recruitment Rules. The aforesaid letter clearly stated that the initial period of deputation would be for one year (which may be ^{extended} ~~excluded~~), or till their services were required by respondents, whichever was earlier.

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6. Pursuant to the above letter⁶, nine persons including applicants were appointed on transfer on deputation basis vide Para 5 of respondents' reply. Thus applicant No.1 was appointed on 8.5.97 and his one year period of deputation was to end on 7.5.98, while applicant No. 2 was appointed on 30.6.97 and his one year period of deputation was to end on 29.6.98.

7. From the pleadings we note that early in 1998, respondents reviewed the position with a view to deciding whether the period of deputation of these persons was to be extended or not. Finding that a few persons who had been taken on deputation did not have the necessary typing skills, they decided to conduct a typing test to adjudge the typing skills of all the deputationists in July, 1998 vide order dated 29.4.98 (Annexure R-3).

8. Out of the six persons who appeared in the test conducted by Institute of Secretarial Training and Management, Delhi, only three persons passed the test, while the two applicants and one other failed (Annexure R-4).

9. It is important to note that applicants did not lodge any protest against the holding of the aforesaid test in July, 1998.

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10. It further appears that because of the workload occasioned by the General Election to Lok Sabha in 1998 and the General Elections in 1999, the deputation was extended for the second and third year.

11. Meanwhile SSC sent nomination of candidates selected on the basis of results of Clerks Grade Examination on the basis of which respondents appointed 26 L.D.Cs.

12. In 2000, the position regarding these officials was again reviewed with a view to seeing whether the services of the deputations⁷ were still required, and whether those who had failed in the typing test conducted by ISTM had improved. Both applicants were allowed to appear in the test conducted by Staff Selection Commission on 27.9.2000. The results were declared on 20.10.2000 (Annexure R-7). Both applicants failed in the same, and against their roll numbers it is stated that they are not deemed to have made a genuine attempt.

13. Accordingly respondents ordered that applicants⁷ be repatriated to their parent office w.e.f. 29.12.2000. However, upon their filing their representations to respondents in November, 2000 (Annexure R-8) to extend their deputation till 30.4.2001 so as not to disrupt the education of their children, their deputation was extended till 31.3.2001.

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14. Meanwhile applicants have approached the Tribunal through this O.A.

15. We have heard both sides.

16. It is well settled that applicants who are deputationists have no enforceable legal right to compel respondents to retain them beyond the period of deputation. The period of their deputation which was initially for a period of one year has been extended from year to year and now expires on 31.3.2001. Even as per the Recruitment Rules which have been promulgated under Article 309 of the Constitution, the period of deputation is normally for a period of three years. The deputation of applicants which commenced in May-June, 1997 would thus expire under normal circumstances in May-June, 2000, and there are no reasons to treat their deputations as being outside the ambit of normal deputation.

17. Applicants' counsel argued that respondents were not legally entitled to hold a typing test to determine the skill levels of those who had been taken on deputation with a view to extending the deputation period. We note that applicants had not challenged the typing test

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conducted in July, 1998 and not having done so then, they cannot challenge the subsequent typing test held on 27.9.2000. Indeed we find nothing illegal or arbitrary in respondents conducting the typing test to determine whether the persons who had come on deputation, should be continued or not and if applicants had any objection to taking the same, they should not have participated in it, and indeed challenged the same at that stage itself.

18. Applicants have contended that one Smt. Langer was not put through the aforesaid typing test but has been retained. Respondents are on record as stating that she had initially been appointed by SSC in the office of A.G., Jammu & Kashmir after taking the typing test and was thus not required to take the test again. These assertions have not been successfully rebutted by applicants.

19. Applicants have also compared themselves with some persons recruited through Employment Exchange but as applicants fall into a distinct and separate class by themselves, being deputationists, they cannot compare themselves with those recruited through Employment Exchange who are in the category of direct recruits.

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20. We may conclude. Applicants are deputationists. They have no enforceable legal right to compel respondents to retain them beyond their period of deputation which expires on 31.3.2001. The O.A. warrants no interference. It is dismissed. Interim orders are vacated. No costs.

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

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