

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 2626 /19 99

(3)

DATE OF DECISION : 9.4.2001

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

Bharatiya Extra Departmental Employees ... Applicant(s)
Union & ors.

-Versus-

U.O.I. ... Respondent(s)

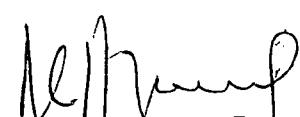
Advocates :

Mr./Ms. Sant Lal for Applicant(s)

Mr./Ms. R.P. Aggarwal & for Respondent(s)
Mr. Madhav Panikar

1. Whether to be referred to Reporter? Yes

2. Whether to be circulated to other Benches? No


(ASHOK AGARWAL)
CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2626/1999
M.A. NO. 2656/1999

(9)

New Delhi this the 9th day of April, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

1. Bharatiya Extra Departmental Employees
Union C.H.Q. through
Shri B.D.Pruthi
S/o L.Sh. Sawan Mal
its General Secretary
T.21 Atul Grove Road
New Delhi.
2. Shri Sumer Singh
S/o Shri Mehar Singh
E.D. Stamp Vendor, Subzimandi
Delhi-7 Post Office.
3. Shri Dilbag Singh
S/o Shri Chandan Singh
E.D. Mail Carrier, Rani Khera
(Kanjhawla) P.O. Delhi.
4. Shri Iqbal Singh
S/o Sh. Ram Kishan
E.D. Delivery Agent
Kanjhawla Delhi Post Office
5. Shri Rajesh Kumar
S/o Shri Rajender Singh
E.D. Deliveery Agent Jayonti
(Delhi) Post Office.
6. Shri Ved Prakash
S/o Shri Babu Ram
E.D. Branch Postmaster
Gulha (Ladwa) Post Office.
7. Shri Prem Chand
S/o Shri Karta Ram
E.D. Packer/Runner Thol
(Kurukshtra) P.O.
8. Shri Satya Pal Sharma
S/o Shri Nand Lal Sharma
E.D. D.A/R Pharal (Kaithal)
Post Office.
9. Shri Vijendra Singh Tyagi
S/o Shri Bali Ram Tyagi
E.D. SPM Chamri (Hapur)
Post Office.

... Applicants

(By Advocate Shri Sant Lal)

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1. Union of India through
the Secretary,
Ministry of Communication,
Department of Posts,
Dak Bhawan, New Delhi-110001. ... Respondent

(By Advocates Shri R.P. Aggarwal and
Shri Madhav Panikar)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

MA No.2656/1999 for joining together in a single
OA is granted.

2. Applicant No.1 in the present OA is the
Bharatiya Extra Departmental Employees Union and
applicant Nos.2 to 9 are its members who are also
Extra Departmental Employees of the Department of
Posts. By the present OA, they seek directions to the
respondent Ministry of Communication, Department of
Posts, to frame and promulgate statutory rules under
provisio to Article 309 of the Constitution in order
to regulate the appointments and conditions of service
of the Extra Departmental Employees of the Department
of Posts as recommended by Justice Talwar Committee on
Postal Extra Departmental System.

3. Prior to 1959, Extra Departmental Agents
were not treated as holders of civil posts but were
treated as employees on contract basis. The
relationship between the Department of Posts and the
Extra Departmental Agents was not treated as master
and servant but was treated as principal and agent.
In 1959, Extra Departmental Agents were declared as



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holders of civil posts within the purview of Article 309 of the Constitution. Accordingly in exercise of powers conferred by the proviso to the aforesaid Article 309, statutory rules regulating their appointments and conditions of service were framed and promulgated on 25.7.1959 vide G.S.R.No.890. These rules were repealed in the year 1964 on the ground that earlier view in regard to the nature of employment of Extra Departmental Agents was based on erroneous conception. This was on the basis of a judgement of the Madras High Court wherein it was held that Extra Departmental Agents are not to be considered as holders of civil posts. However, the Supreme Court in the case of **Union of India and others v. Gokulananda Das**, AIR 1977 SC 1677 took the view that the Extra Departmental Agents are holders of civil posts. Aforesaid Justice Talwar Committee, in the circumstances, has observed that Extra Departmental Agents are covered within the purview of Article 309 of the Constitution. They ought not to be treated as employees on contract basis or on the basis that their employment is in the nature of a contract. Based on the aforesaid recommendations, applicants in the present OA, have sought direction for framing and promulgating statutory rules governing appointment and conditions of service of Extra Departmental Employees of Department of Posts. In support of their plea, Shri Sant Lal, the learned advocate appearing on behalf of the applicants, has placed reliance on a decision of the Supreme Court in the case of



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Ramchandra Shankar Deodhar and others v. State of Maharashtra and others, 1974 SCC (L&S) 137 wherein it has, inter alia, been observed as under:-

"22. Before we part with this case we may add a paragraph by way of epilogue. We find in the course of our judicial experience, and we notice this fact with some apprehension, that members of public services in alarmingly large numbers resort to legal remedies in Courts of law for agitating their grievances in regard to service matters. This phenomenon is symptomatic of a sense of injustice and subversive of that undivided and devoted attention to official duties which is so essential for efficient and dynamic functioning of the Government. It can, therefore, hardly be over emphasised that there is great need for simplifying and streamlining service rules and giving them statutory shape so as to promote contentment among the services by extending the areas of equal treatment and imparting stability to conditions of service. It is not desirable that the fortunes of such a vital and strategic instrument of Government as the public services should be left to be governed by mere departmental resolutions and executive instructions. These cannot take the place of statutory rules which alone can impart stability and security and ensure observance of the rule of law. Legal rules must govern the recruitment and conditions of public servants so that there is no arbitrariness or inequality in state action in regard to them and the rule of law is not eroded. And such rules should preferably be framed without avoidable delay and after consultation with groups which apprehend discriminatory treatment as that would go a long way to produce a sense of contentment and satisfaction. We make these observations not with a view to casting any reflection on the administration but to highlight a problem which has come to our notice quite often, in the hope that it will help appreciate the social dimensions of the problem and the damage to public interest which may be likely to result if the problem is not promptly and satisfactorily resolved."

4. Shri R.P. Aggarwal and Shri Madhav Panikar, the learned advocates appearing on behalf of the

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respondent have resisted the aforesaid plea by pointing out that though statutory rules have not been formally framed under proviso to Article 309 of the Constitution, appointments and conditions of service of Extra Departmental Employees of Department of Posts are regulated by executive instructions which give full protection to them as provided under Article 311(2) of the Constitution. They are accordingly granted the rights and privileges of civil servants as provided under Article 311 (2) and for no other purpose. As far as the prayer for issue of direction for framing and promulgating statutory rules is concerned, they have placed reliance on a decision of the Supreme Court in the case of **Mallikarjuna Rao and others v. State of Andhra Pradesh and others**, (1990) 2 SCC 707 wherein it has, inter alia, been observed as under:-

"10. The State of Andhra Pradesh has challenged the judgement of the Tribunal in Civil Appeal No.1519 of 1986, Civil Appeal No.124 of 1987 and Civil Appeal No.3677 of 1987 have been filed by the officers who have been affected by the judgment of the Tribunal but were not parties before the Tribunal.

"11. The observations of the High Court which have been made as the basis for its judgement by the Tribunal were only of advisory nature. The High Court was aware of its limitations under Article 226 of the Constitution of India and as such the learned Judge deliberately used the word "advisable" while making the observations. It is neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. Imagine the executive advising the judiciary in respect of its power of judicial review under the Constitution. We are bound to react scowlingly to any such advice.

V.A.

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"12. This Court relying on *Narinder Chand Hem Raj vs. Lt. Governor, Administrator, Union Territory, Himachal Pradesh*, (1971) 2 SCC 747 and *State of Himachal Pradesh v. A Parent of a Student of Medical College, Simla*, (1985) 3 SCC 169, held in *Asif Hameed v. State of Jammu & Kashmir*, 1989 Supp (2) SCC 364 as under (SCC p.374, para 19)

"When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgement on the action of a coordinate branch of the government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive..."

"13. The Special Rules have been framed under Article 309 of the Constitution of India. The power under Article 309 of the Constitution of India to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution of India. The courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution of India."

5. In our judgement, if one has regard to the aforesaid judgements cited by the learned counsel appearing for the contending parties, no positive directions can be issued to the respondent to frame

M.J.

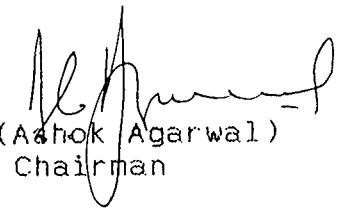
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statutory rules under proviso to Article 309 of the Constitution. However, we do hope that the respondent will consider advisability of framing requisite rules if considered appropriate. The field we are conscious lies in the exclusive domain of the executive. We are holding out our hope only in line with that expressed by the Supreme Court in the case of **Ramchandra Shankar Deodhar** (supra).

6: Present OA in the circumstances is disposed of with the aforesaid observations. No costs.



(S.A.T. Rizvi)
Member (A)



(Ashok Agarwal)
Chairman

/sns/