

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(24)

(5)

DA 323/1998

WITH

BA 1086/1998

New Delhi, this the 18th day of May, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)

Hon'ble Shri Govindan S. Tampli, Member (A)

DA 323/1998

1. Urban Basic Service Employees

Association (Regd.), Department
of Urban Development, Government
of National Capital Territory of
Delhi, 42, Hauz Khas Village, New
Delhi-110016 through its General
Secretary, Shri Aas Mohammed son
of Shri Mahmood Khan, 42, Hauz
Khas Village, New Delhi-110016.

2. Shri Shashi Mohan Sharma son of
Shri K.D. Sharma, 703/10, Vijay
Park, Delhi-110053.

3. Shri Ram Niwas Sharma son of Shri
Ram Kishan Sharma, Village Samaspur
Khalsa, P.O. Ujwa, New Delhi-110073.

4. Shri Ashok Kumar son of Shri Mohan
Lal, resident of 4215, Gali
Shahtara, Ajmeri Gate, Delhi-110006. . . APPLICANTS.

(By Advocate Shri G.U. Gupta)

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1. Shri Rakesh Kumar Yadav son of
Shri Baboo Ram, resident of G-50,
Sector IX, New Vijay Nagar,
Ghaziabad (U), now at New Delhi.
2. Shri Ravi Kumar son of late Shri
Balwant Singh, resident of J-280, 61d
Seemapuri, Shahdara, Delhi 110032.
3. Shri Brahmjeet son of Shri Munshi Ram,
resident of B-105, New Modern Shahdara,
Delhi 110032.
4. Shri Ramesh Prasad son of Shri
Dwarka Prasad, resident of 902,
Sector 15, Vashundara Sahibabad,
Ghaziabad (UP), now at New Delhi.
5. Ashok Kumar Yadav son of Shri R.L.
Yadav, resident of R-472, Karampura,
New Delhi 110015.

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6. Shri M.P. Singh Pundir son of Shri R.S. Pundir, resident of 181, Shivlokpur, Kankarhara, Meenut now at New Delhi.
7. Shri R.B. Prasad son of Shri Ram Avtar Singh, resident of A-556, New Ashok Nagar, Delhi-110096.
8. Shri Ram Sewak son of Shri Bhagwandas, resident of House No. F-179, Vasant Nagar, New Delhi-110057.
9. Shri Jamuna Dass Singh son of Shri Sunnu Singh, House No. 9/472, Noida, Delhi.
10. Shri Bal Kishan son of Shri B. Raj, Jangpura Extension, New Delhi.
11. Shri Radha Kishan son of Shri Ram Lal, resident of 229, Okhla Estate, Phase III, New Delhi-110020.
12. Shri Dinesh Kumar son of Shri Nepal Singh, resident of WZ-51, Village Nimir, Shastri Nagar, Delhi-110052.

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13. Shri Ram Vir Singh son of Shri
A.R. Yadav, resident of 44, New
Arya Nagar, Meenakshi Road, Ghaziabad,
now at New Delhi 1.

14. Shri Narad Muni son of Shri Meera
Prashad, resident of RZ-100/12,
Tughlakabad Extension, New Delhi 1-19.

15. Smt. Raj Kumari, wife of Shri Sheoraj
Giri, resident of 10/242, B.D.A.
Madangir, New Delhi 1-110062.

16. Smt. Raj Kumari Kaushik wife of
Shri M.C. Kaushik, resident of
H.N.D.C - 237 Near Shaw Hawdip
Malarma Road Ballabgarh Adarsh Nagar
Distt- Faridabad (Haryana) K

17. Smt. Prem Bhandari wife of
Shri V.S. Bhandari, resident of
Flat No.147, Pocket Sector 3,
Rohini, Delhi 1-110085.

18. Shri Sudhadev son of Shri
resident of Village Devli,
Khampur, New Delhi 1.

19. Shri J.S. Negi son of Shri
resident of 188, Nehru
Market, Badarpur, New Delhi.

(By Advocate Shri G.D.Gupta)

.. APPLICANTS.

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Versus

1. Union of India through the
Secretary to the Government of
India, Ministry of Urban Affairs &
Employment (Department of Urban
Employment and Poverty Alleviation),
Nimman Bhawan, New Delhi.
2. Lt. Governor, Delhi, Raj Niwas,
Delhi.
3. Chief Secretary, Government of
National Capital Territory of Delhi,
5, Sansad Marg, Delhi-110054.
4. The Chairman (U.B.S.)/Principal
Secretary, Department of Urban
Development, Government of National
Capital Territory of Delhi, B. Block,
Vikas Bhawan, Inderprastha Estate,
New Delhi-110002.

.. RESPONDENTS.

(By Advocate Shri George Paracken)

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ORDER

By Hon'ble Shri Govindan S. Tampi, Member (A)

This order disposes of two OAs No. 323/98 and 1086/98 - as the challenge in the OAs is the same, issues involved are identical, the applicants are similarly placed and the OAs have been heard together. The applicants in the two OAs are challenging the inaction of the respondents in not adjusting/regularising them against suitable posts.

(i) OA No. 323/1998

Urban Basic Services Employees Association (Registered) and three others are the applicants in this OA. The Association represents 480 Area Volunteers originally recruited by the Govt. of NCT of Delhi in April 1989 and whose services have been utilised for various jobs like Diarrhoea Management, Community Organisation, Upliftment of Slum dwellers, pre-school education, nutritional supplementation etc. after receiving training for the purpose. The other three are individual Area Volunteers. They have over the years become a link between urban basic services and the community at large. Each area volunteer deals with around 2000 households. Though the applicants were performing their duties satisfactorily, their services, instead of being regularised, were sought to be dispensed with leading to the filing of OA No. 3400/1992. During the pendency of the OA, a Scheme was formulated and notified on 1-2-1993 by the respondents seeking to absorb all the Area Volunteers in other organisations against direct recruitment.

Following this, OA was disposed of by the Tribunal on 21-9-93. By that time, only 260 of area volunteers had remained to be absorbed. It was observed by the Tribunal that keeping in view one Asstt. Project Officer for 200 households, 200 Asstt. Project Manager were required and that on 25-2-1992, Chief Secretary of Govt. of NCT of Delhi had directed in file the creation of additional posts of Asstt. Project Officers. It was also revealed by the Tribunal that the Chief Secretary and the Lt. Governor had approved the allocation of the above posts, which had the concurrence of the Finance Department as well. Evaluation Committee, set up on 24-11-1992, recommended the absorption of the Area Volunteers against the same posts, which meant that the regularisation has to be against the post of Asstt. Project Managers. In the meanwhile, meeting of the Heads of Deptts of Delhi Administration held on 26-10-1993, identified 273 posts for absorbing 263 area volunteers, as it was found that the process of absorption was slow. Ultimately on 4-2-1997, an addendum was placed with the 9th Five Year Plan of Urban Basic Services, referred to the creation of 166 posts of Asstt. Project Officers, for absorbing all the Area Volunteers. On 17-3-1997, detailed proposals for incorporating 197 posts of Asstts. were shown in the letter to the Planning Deptt. Presently all the Area Volunteers are working as Survey Officers with Directorate of Industries, in a purely temporary arrangement. As they have not been regularised as Project Officers, they are working on daily wages, at levels much below what they would have earned, had they been placed as Asstt. Project Officers in the

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scale of Rs. 1400-2600/-, as they were entitled to be placed. Hence this application, seeking their placement as Asstt. Project Officers with consequential benefits of revision in pay and allowances, including arrears.

(ii) OA No. 1086/98

Shri Rakesh Kumar Yadav and 16 others who are also Area Volunteers have filed this OA, seeking identical relief, as sought for by the applicants in OA 323/98.

3. In almost identical responses to the OAs, the respondents indicate that OAs are not maintainable. Applicants being only Volunteers, and not holding any civil post under the union of the NCT cannot agitate before the Tribunal for redressal of their alleged grievances. While admitting the facts about the OA 3400/92, and its disposal by the Tribunal, the Respondents point out that creation of the posts of Astt. Project Officers and the absorption of the Area Volunteers against those posts will have if at all, to be done strictly in accordance with the Govt's instructions on the subject. Respondents have been fully alive to the difficulties being faced by the applicants and have tried their best to alleviate them within their constraints. It was also true that a proposal was mooted by the concerned Deptt. on 17-3-1997 for creation of posts to accommodate the surplus area volunteers, but the same was not approved by the Planning and Finance Deptts. In their affidavit filed on 20-8-2000, they

also indicate that the remaining 191 Area Volunteers have also been offered appointment as LDCs during the last year. This showed their anxiety to help the applicants. In the above view of the matter, the respondents have done all that they could and should do in the matter. Nothing remained to be done and the applications deserve to be rejected, pray the respondents.

4. In their rejoinder, the applicants point out that the scheme of the respondents to engage them as LDCs was incorrect and illegal. As all of them are performing duties as Asstt. Project Officers, and are academically qualified to be appointed so, the attempt to accomodate them as LDCs on a much lower level was unfortunate and irregular.

5. Heard learned counsel for the applicants and the respondents. Forcefully reiterating the pleas made in the application, Shri G.D.Gupta, learned counsel for the applicants, urges that in view of (i) the respondents own scheme notified on 1-2-1993 proposing to adjust the Area Volunteers against direct recruitment posts, (ii) decision dated 21-1-1993 of the Tribunal while disposing of the OA 3400/1992 and (iii) the various proposals formulated by the Deptt. to create additional posts of Asstt. Project Officers in pursuance of the approval of the Lt. Governor and Chief Secretary in file as reflected in the letters dated 4-2-1997, 10-2-1997 and 17-3-1997, it was evident that the applicants were entitled to be adjusted as Asstt. Project Officers, against the posts created/being created for the purpose. This

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would have to be done at the earliest, according to Shri G.D.Gupta, learned counsel. On the other hand, Shri George Paracken, learned counsel for the respondents points out that the letter No. F.3/11/02.Service II dated 1-2-1993, communicating the ban on direct recruitment permits that such recruitment can be made by absorbing surplus staff of DSMDC and DRDA and thereafter by taking Area Volunteers from the Urban Basic Services on adjustment against Grade III or Grade IV posts. But this cannot be considered as having created a perpetual right for absorption for the applicants, as the Tribunal had itself directed while disposing the OA 3400/92, that services of Area Volunteers shall continue till their absorption or till 31-3-1994. Deptt. could have dispensed with their services in 1994 itself, but it was still trying to help them in whatever way possible. The scheme to adjust them as LDCs was also the result of such an approach and the applicants cannot claim anything further. With regard to the averment on the proposals made in February and March 1997, Shri Paracken, learned counsel states that they had not been concurred by the Finance Deptt. and as such they only remained as proposals and nothing more. He also denies that any policy decision has been taken by the Lt. Governor and the Chief Secretary for creating posts of Asstt. Project Officers as alleged by the applicants. Applicants have no case for any further relief, according to the learned counsel.

6. In their additional affidavit, filed on 1-3-2001, as directed by the Tribunal, respondents have specifically denied that the Chief Secretary or

the Lt. Governor had approved any proposal for creation of posts of Asstt. Project Officers as indicated by the applicants. In terms of the Tribunal's order itself, Area Volunteers were to be continued only upto 31-3-1994. There was no direction at all from the Tribunal, Lt. Governor or the Chief Secretary to create posts of Asstt. Project Officers to absorb surplus Area Volunteers. The only direction was that the list of Area Volunteers not absorbed be maintained for their absorption in different posts in different departments in future vacancies. It is also submitted by the respondents that the letters dated 4-2-1997 and 10-2-1997 were only proposals from the Project Director (UBS) to Dy. Director (Planning) for creation of posts, but the same have been turned down by the latter on 13-3-1997 itself, though it reached UBS only on 26-3-1997, by which time the proposal was sent once again on 17-3-1997 by UBS. Respondents, therefore, state these have been no directions for creating additional posts of Asstt. Project Officer, as claimed by the applicants.

7. In their final written submissions, the applicants plead that it was the Tribunal which observed during the hearing of OA No. 3400/92, that in terms of the relevant guidelines, 200 posts Asstt. Project Officers were required and that Planning Deptt. had no objection to creation of these posts and that Chief Secretary, Govt. of NCT of Delhi had passed orders on 25-1-1992 in file for the above. This was the basis for para 4.9 of their OA. Chief Secretary's directions were agreed to by the Lt. Governor on 3-2-1992. The posts so created were to be

filled only by Area Volunteers. The applicants feel that the observations in the Tribunal justify their stand about the approval of the proposal for creating posts by both the Chief Secretary and the Lt. Governor. Observations of the Tribunal, on 18-10-1993, while disposing the Review Application also endorse it. Still it took more than four years for the respondents to determine the actual number of vacancies, which they finally did by their proposals of 4-2-1997, 10-2-1997 and 17-3-1997, inviting reference to the orders of the Chief Secretary and Lt. Governor. They allege that the respondents who had declined to bring up the relevant files, finally conceded the existence of the letter dated 17-3-1997, having reference to the orders of the Chief Secretary/Lt. Governor, but were still attempting to confuse the issue. According to them, they had never referred to the direction of the Chief Secretary/Lt. Governor for creation of 197 posts, but had only referred to creation of posts as per the guidelines as far back as 1992 itself. Tribunal also had not fixed any number, but had left it to the Administration to do the needful as per the guidelines. Letter dated 17-3-1997 was itself ample evidence thereof. Further, if there was no approval by the Chief Secretary/Lt. Governor, respondents could not have created a few posts of Asstt. Project Officers in 1994. The applicants also refer to the number of a few files of the respondents wherein decisions were taken to create additional posts as well as those from which the necessary proposals were sent. According to them, their case deserved to succeed in the above circumstances.

8. We have carefully deliberated upon the rival contentions raised on behalf of the applicants and the respondents and also analysed the facts brought on record. While the applicants hold that in view of the Tribunal's decision while disposing OA No. 3400/92 and the various proposals formulated with the approval and under the directions of the Chief Secretary and the Lt. Governor, they should have been adjusted against the posts of Asstt. Project Officers, sanctioned or to be sanctioned, respondents aver that there was no such decision, approval or direction and, therefore, the applicants have no case. Undisputed facts in this matter are that as many as 480 Area Volunteers, were selected by Delhi Administration in April-May, 1989 for dealing with Public Health/ community related issues, and urban basic services. All of them could not be regularised, though the Govt. appeared to be keen to help them. One of the measures adopted was to direct by their Circular No. F.3/11/02-Service-II dated 1-2-1993, banning the filling up of all direct recruitment posts lying vacant for more than two years and filling them by absorption of surplus staff of DSMDC and DRDA as well as Area Volunteers from Urban Basic Services. The latter was to be given no relaxation in qualification or experience, but only in age, if they are found otherwise suitable for the job. Keeping the above in mind, this Tribunal had disposed of on 21-9-1993 the OA No. 3400/92 filed by those similarly placed as applicants. The relevant portion of the order reads as below :-

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"A perusal of the records shows that though the scheme has been transferred to the Delhi Administration, the Planning Commission insisted on the guidelines in the All India ABS Scheme may be followed. It is also clear that positive steps have been taken by the administration to adjust as many as Area Volunteers in different departments and that for the approved plan for 1993-1994 provisions have been made for this scheme. We have also seen a letter dated 11-12-1992 whereby the Secretary, Legal Cell, Govt. of India, Delhi Administration has requested the Commissioner of Police to consider adjusting the Area Volunteers against the vacancies in appropriate grades in that department. It is not known whether there has been any response from the Police department which would be in a position to absorb a large number.

In view of the foregoing discussion, we hold that the process of absorption of Area Volunteers in expedited and the progress has to be monitored regularly. The applications are, therefore, disposed of with the directions to the respondents to take all steps for absorption of the Area Volunteers within a period of six months from the date of receipt a copy of this judgement. The services of the Area Volunteers shall continue till all of them have been absorbed or till 31-3-1994 whichever is later. At the end of this period, it will be open to the respondents to discontinue the engagement though a list of Area Volunteers still remaining to be absorbed may be maintained for absorption against future vacancies. As regards the relief sought in OA No. 517/93 we direct the respondents to strictly follow the instructions contained in Circular No. F.3/11/92-Services-II dated 1-12-1993 i.e. only after specified groups of employees including the volunteers of Urban Basic Services have been absorbed any recruitment from outside will be resorted to.

Not being satisfied with the above decision the applicants filed Review Application No. 372/93, which was dismissed on 18-10-93 as being without merit, with following observations.

"2. The request that Area Volunteers maybe absorbed in these departments has been considered in the aforesaid judgement. The number of vacancies of A.P.C. calculated by petitioners on the basis of one area volunteer for 2000 families assumes, that posts have in fact been sanctioned. The record shows that such sanctions were limited and therefore posts were to be created in a phased manner. This Tribunal cannot decide as to what exact

number of vacancies should be created by the respondents. The judgement adequately safe-guards the interest of the petitioner by providing that no outsiders will be taken till their absorption. It was felt that the Tribunal cannot direct as to what tests should be prescribed by the respondents before selecting area volunteers for different posts. The request for keeping the original application alive was also considered, but it was felt that this Tribunal cannot function as monitoring and supervisory body and its task finishes after adjudication of the matter. No doubt, the petitioners will be free to move an application if they find that the judgement dated 21st September, 1993 is not being properly implemented.

3. In view of the above considerations, we see no merit in the review application and it is hereby dismissed with no order as to costs.

It is evident from the perusal of the above orders, that while the Tribunal has found some merit in the case for regularisation of the Area Volunteers, it did not pass any direction about creation of any posts - that of Asstt. Project Officers or any other - or fix any number of such posts. What was directed that the services of Area Volunteers shall continue till all of them have been absorbed or till 31-3-1994 whichever is later. It was further pointed out that at the end of the above period, it was open for the respondents to dis-continue the engagement though a list of area volunteers still remaining to be absorbed may be maintained for absorption against future vacancy. The decision of the Tribunal did not, therefore, create any right in perpetuity in favour of the applicants as claimed by them. Respondents are fully justified, when they say that the Scheme had come to an end by 31-3-1994. Respondents were still exploring possibilities to retain and regularise as many of the Area Volunteers as possible. Hence the letter No. F.1(3)/89/EVP/PLG. dated 21-4-94, from Dy. Director (Evaluation), to adjust the Area Volunteers in other

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Deptts. following the meeting taken by the Chief Secretary on 26-10-1993. But nothing much has been done till the issue of letters No. 8 (126) 9th F.Y.P./96/UBS/UD dated 4-2-1997, 10-2-1997 and 17-3-1997. All these letters addressed to the Planning Deptt. from the Project Director (UBS) in the Department of Urban Development, speak of creation of 166 or 197 posts of Asstt. Project Officers in the Grade of Rs. 1400-2600/- and incorporation thereof in the Ninth Five Year Plan. The letter dated 17-3-1997 ends with the following reference.

"Please ensure that these posts are incorporated in the said plan to implement the judgement of the Court and the order of Lt. Governor/Chief Secretary.

This is the only reference in this connection. However, it is not clear as to which is the Court's order referred to. If the reference is to the Tribunal's order while disposing of OA No. 3400/92, the said order did not direct creation of any posts, let alone that of Asstt. Project Officer. As far as the orders of the Lt. Governor/Chief Secretary are concerned, nowhere have the same been produced. In fact the averment in the additional affidavit filed by the respondents dated 1-3-2001 is to the contrary. They deny specifically that either the Chief Secretary or the Lt. Governor had approved any proposal for creation of posts of Asstt. Project Officers. They further state the letters dated 4-2-1997, 10-2-1997 and 17-3-1997 are only proposals sent from UBS to Planning Deptt. which have been rejected vide their letter dated 13-3-1997, as there was no proper justification for its inclusion. In view of the above averment on oath by the respondents, the applicants' averment that the creation of additional posts of

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Asstt. Project followed from the decision of the Tribunal dated 21-9-1993 and the directions of the Lt. Governor/Chief Secretary and that the said proposal had the approval of the Finance Deptt. is without any basis and cannot be accepted. Their plea cannot gain any support from such an averment which is not based on facts, inspite of their making reference to some file numbers.

9. It is also pertinent in this connection that the respondents have by their order No. 3/30/S.II/97 dated 26-6-2000 and in pursuance of the Tribunal's order in OA 3400/92 directed the absorption of all of 189 Area Volunteers in Grade IV/LDC's post in relaxation of age, recruitment procedure ^{and} that SSC /DSSSB/Employment Exchange and temporary relaxation of typing test. (This has incidentally been upheld by this Tribunal in OA 1186/2000 on 3-7-2000). Therefore, nothing further remains to be done from the respondents side in this matter as they have done their job. In the absence of any specific direction for creation of posts of Asstt. Project Officers and to adjust the Area Volunteers against those posts, the applicants' plea does not merit any acceptance.

10. In the result, we are convinced that the applicants have not made out any case for interference. The applications being devoid of merits fail and are accordingly dismissed. No costs.

11. Let a copy of this order be placed in OA 1086/98.

(Govindan S. Tampi)
Member (A)
vikas/

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)