

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1930 of 1998

with

O.A. No. 489 of 1998

New Delhi, this the 24th day of December, 1999.

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

O.A. 1930/1998

1. Mrs. Neelam Narang
2. Mr. Mukesh Kumar Ahuja
3. Mr. Sanjay Arora
4. Mr. Prem Chandra
5. Mr. Brij Pal
6. Mr. Manoj Kohli
7. Mr. Parvendra Pal Singh
8. Mr. N.K. Tripathi
9. Mr. Devender Rana
10. Mr. Tofiq Ahmed
11. Mr. Vakil Ahmed
12. Mr. Dinesh Tiwari
13. Ms. Kiran Bala
14. Mr. R.K. Verma
15. Mr. Ajay Mayar
16. Mohd. Javed Ansari
17. Mr. Ravinder Kumar Bhati
18. Mr. Brindaban
19. Mr. Charan Dass

All Assistant Public Prosecutors, Govt. of
NCT of Delhi,
C/o Directorate of Prosecution,
Tis Hazari Courts
Delhi-54.

20. Mr. Virender Singh
S/o Shri Ghure Singh
R/o 9/35-34, Galli No. 1,
Dharampura,
Delhi-92

21. Mr. Suresh Chand
S/o Shri Harish Chand
B-29, Mata Wali Gali,
Delhi-94.Applicants

By Advocate Shri B.B. Raval.

Versus

1. Government of NCT of Delhi
5, Sham Nath Marg,
Delhi-110 054
through
Chief Secretary, Government of NCT of Delhi.

2. Shri R.K. Jain, DDO,
Directorate of Prosecution,
Government of NCT of Delhi,
Tis Hazari Courts,
Delhi-110 054.Respondents

By Advocate Mrs. Avnish Ahlawat.

O.A. 489/1998

Naresh Kumar Verma
S/o Shri Ram Kumar Verma
R/o H.No. 302, Gautam Nagar,
New Delhi-110 049.Applicant

By Advocate Shri B.B. Raval.

Versus

1. Government of NCT of Delhi
5, Sham Nath Marg,
Delhi-110 054.

2. Director of Prosecution,
Government of NCT of Delhi
Prosecution Branch, Tis Hazari Courts,
Delhi-110 054.

3. The Budget Officer/Additional Public
Prosecutor,
Head Quarter/Prosecution Branch,
Tis Hazari,
Delhi-54.Respondents

By Advocate Mrs. Avnish Ahlawat.

ORDER

By Hon'ble Shri Kuldeep Singh, Member (J)

By this common order we will be deciding two
OAs - OA No. 1930/1998 and O.A. No. 489/1998 as the
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question requiring decision in these cases is common in both the cases on facts as well as on law.

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2. The facts in brief are that the applicants had been appointed as ad hoc Assistant Public Prosecutors in the Directorate of Prosecution, Government of NCT of Delhi under the respondents. At the time of filing of the O.A. the applicants had made the following prayers in O.A. 1930/98:-

(A) Direct the respondents to pay the arrears of salary and allowances along with increments to the applicants on the basis of revised pay scales of Rs.6500-200-10500 w.e.f. 1.1.1996.

(B) It may be declared that the artificial breaks given by the respondents is illegal and arbitrary and respondents may be directed to treat the entire period as continuous service and to pay the salary for the period of breaks and other consequential benefits, allowances etc.

(C) Any other order or directions which this Hon'ble Tribunal may be deemed fit and appropriate in the facts and circumstances of the case may also be passed/granted.

3. In O.A. No. 489/98, the applicant had prayed

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for the following reliefs:-

(A) direct the respondent No.1 to 3 to issue desired certificates in prescribed format of UPSC that applicant is a government servant as on closing dates i.e. 13.3.1997 or any other particular date as desired by respondent No.4.

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(B) direct the respondent No.4 to disclose the cases wherein applicant has been adjudged overaged for want of desired certificate of government servant as on closing date by respondent No.2.

(C) direct respondent No.1 to 3 to revise the pay scale of applicant and other ad hoc appointees as per orders of Government on recommendations of the 5th Pay Commission, allow annual increments with retrospective effect, make payment for artificial breaks and stop giving breaks after every six months in future.

(D) Such and other further order/orders which this Honible Tribunal may deem fit and proper under the facts and circumstances of the case may also be passed in favour of the applicant.

4. Originally the applicant in OA No. 489/98 had claimed for issuing of certain certificates in a prescribed form of Union Public Service Commission so that the applicant may appear before the UPSC for being regularised as Assistant Public Prosecutor and now since

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the selection etc. has taken place, so the prayer as sought in paras (A) and (B) of OA 489/98 has become infructuous and we are not concerned with the same, as regularly selected Assistant Public Prosecutors have replaced the Assistant Public Prosecutors who were appointed on ad hoc basis.

(3)

5. The only controversy which has been left is with regard to the payment of difference in pay scales as the applicants were appointed on ad hoc basis and the salary having been revised after the 5th Pay Commission's Report had been accepted by the Government. So the dispute which survives for adjudication is only with regard to the fact whether the ad hoc Assistant Public Prosecutors who were working during a particular period on particular pre-revised scale are entitled to the benefit of revised pay scales after the report of 5th Pay Commission, which incidentally covers that period when the applicants were appointed on pre-revised scales.

6. We have heard Shri B.B. Raval for the applicant and Mrs. Avnish Ahlawat for the respondents.

7. The main contention of the respondents to deny the benefit of revision of pay scales is that the applicants were appointed on contract basis for a short span of time till the regularly selected Assistant Public Prosecutors are able to join. The learned counsel appearing for the department referred to a Notification No.GIMF (Department of Expenditure) F No. 50(1)/IC/97

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dated 30.9.97 and stated that as per the Notification Central Civil Services (Revised Pay) Rules, 1997, the persons who are employed on contract cannot be given the benefit of revision of pay scales recommended by 5th Pay Commission and accepted by the Government of India and are applicable to Govt. of NCT of Delhi. So the relief, as claimed by the applicants, cannot be granted and the OA merits dismissal.

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8. In reply to this, the counsel appearing for the applicants submitted that the applicants had been appointed vide appointment letters issued to them, according to which, it is mentioned as under:-

"That the Chief Secretary of Government of NCT of Delhi is pleased to appoint the concerned person to the post of Assistant Public Prosecutor in the pay scale of Rs.2000-60-2300-EB-75-3200 plus usual allowances as admissible from time to time on purely ad hoc and emergent basis in the Directorate of prosecution, Tis Hazari, Delhi with effect from a particular date for a contract period of six months only or till such time appointment of candidates is made on regular basis through the Union Public Service Commission, whichever is earlier. This appointment will not confer any right on the candidate to claim seniority, continuance in service or appointment as such on regular basis."

9. The counsel for the applicant on the basis of this extract, which has been reproduced above, submitted that for all practical purposes, the applicants were governed in the matter of payment of salary in the pay scale of Rs.2000-3200 plus usual allowances as admissible from time to time. So as regards payment of salary is concerned, they are governed by the pay scale admissible to the post of Assistant Public Prosecutor and it was not a fixed salary contract and since the pay scale has

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been revised for the period during which the applicants had worked as Assistant Public Prosecutors, so they are entitled to the revised pay scales also.

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10. However, Smt. Aynish Ahlawat appearing for the department submitted that since the appointment was purely on contract basis and the pay scales had been revised after the recommendations of the 5th Pay Commission and as per Central Civil Services (Revised Pay) Rules, 1997, the contract employees are exempted from being paid revised pay, so the contentions of the applicants have no merits.

11. In this perspective, we have to see whether the appointment of the applicants is purely on contract basis and even if it is so, whether they fall in the exempted category to which Central Civil Services (Revised Pay) Rules, 1997 apply and the applicants can be denied the benefit of revised pay or not. For this purpose, we will have to see whether the applicants have been appointed in pursuance of the provisions under the Cr.PC and Article 309 of the Constitution or the applicants have been appointed on purely contract basis for which the only provision in the Constitution governing the contract entered between a private person and the Government of India are regulated under Article 299 of the Constitution of India.

12. Article 299 of the Constitution of India says that all contracts made in the exercise of the executive power of the Union or a State shall be expressed to be

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made by the President, or by the Governor of the State.

But the appointment letters issued in this case show that the appointment letters had been issued by the Chief Secretary, Government of NCT of Delhi and the contract has not been made between the Union of India or between the Lt. Government and the applicants. The Chief Secretary may be a competent authority to appoint Assistant Public Prosecutors under the relevant rules but certainly is not competent to enter into an agreement on behalf of the Union or on behalf of the State/N.C.T. of Delhi. In this regard we may also quote the Commentary on the Shorter Constitution of India by Basu 12th Edition page 863 where commenting upon the service contract it has been observed after citing various judgments as under:-

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"Service Contracts. A Single Judge of the Calcutta High Court held that employment in Government service also comes within the purview of Article 299(1) and that, consequently, a person who has not been employed under a contract which complies with the requirements of the Articles has no right enforceable in a Court of law.

Of course, where the appointment takes place under a formal contract, it must comply with the formal requirements of Article 299, but it would be too much to say that all appointments by the Government must take place by a formal contract, otherwise, they would be invalid. In fact, most of the appointments take place by the issue of a letter of appointment followed by acceptance. Perhaps it would detract from the principle of 'holding office during pleasure' of the Government (Article 310), if it be held that there cannot be any appointment without a formal contract. This view of the Author, expressed at p.417 of Vol.III of the 3rd Edition of the Commentary, now finds support from subsequent decisions which hold that no formal contract is necessary for appointment to the regular service of the Government whose conditions of service are laid down in the Constitution and the Rules made under Article 309 and that outside Article 310(2), a formal contract would confer no rights upon the employee. Article 299 would be called

into operation only where the Rules made under Article 309 require a formal contract to be executed for appointment".

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13. The language used in the appointment letter does show that there is no formal contract between the Union and the State and the applicant. So the respondents cannot take the plea that the applicants were appointed on contract basis.

14. Now coming to the next condition regarding salary as mentioned in the appointment letter states that the applicants were appointed in the pay scale of Rs.2000-60-2300-EB-75-3200 plus usual allowances as admissible from time to time. This condition would show that the applicants were not appointed on a fixed salary for a period of six months or for a period till they are replaced. But this condition does show that they are to earn increments, even they are to cross Efficiency Bar and the use of the word pay scale shows that they are to be given a regular pay scale and other usual allowances which is admissible from time to time. So now the question arises if the Pay Commission had recommended revision of pay scales and which has been accepted by the Government of India and Government of NCT of Delhi, this revision of pay scale had been made with retrospective effect and it covers the period when the applicants were working as Assistant Public Prosecutors. So the period when they were working for that particular time on a particular grade, the scale of Assistant Public Prosecutors had been revised. As such the respondents cannot take the shelter of contract period and deny them the benefit of admissible

pay scales for the time when they were in the appointment and as per the revised pay scale for that particular period of time the pay scales had been revised. (36)

15. Now coming to the Central Civil Services (Revised Pay) Rules, 1997, the rules which have been emphasised by the learned counsel for the respondents are stated hereinbelow:-

"2. Categories of Government servants to whom the rules apply-

(1) Save as otherwise provided by or under these rules, these rules shall apply to persons appointed to civil services and posts in connection with the affairs of the Union whose pay is debitible to the Civil Estimates as also to persons serving in the Indian Audit and Accounts Department.

(2) These rules shall not apply to :-

(a) persons appointed to the Central Civil Services and posts in Groups "A", 'B', 'C' and 'D' under the administrative control of the Administrator of the Union territory of Chandigarh;

(b) persons locally recruited for service in Diplomatic, Consular or other Indian establishments in foreign countries;

(c) persons not in whole-time employment;

(d) persons paid out of contingencies;

(e) persons paid otherwise than on a monthly basis including those paid only on a piece-rate basis;

(f) persons employed on contract except where the contract provides otherwise;

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16. The learned counsel for the respondents

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highlighted sub-rule(2) of Rule 2 where it is mentioned that the rules shall not apply to the various categories and then the counsel for the respondents highlighted half portion of clause (f) and suggested to this Tribunal that the revised pay rules had not been applied to the persons employed on contract basis. However, if we read the clause (f) in full, it provides that the rules shall not apply to persons employed on contract except where the contract provides otherwise.

(37)

17. Assuming for the sake of arguments we hold that the appointment letter is a documents of contract then also it says that in the matter of pay scale the applicant shall be paid salary in the pay scale of Rs.2000-6--2300-EB-75-3200 plus usual allowances as admissible from time to time (emphasis supplied). So in this case the Government after accepting the 5th Pay Commission's report had made the revised pay scales admissible even for the period when the applicant's were working as ad hoc Assistant Public Prosecutors and exception for application of revised pay rules has itself been provided in clause (2)(f). So on that basis also we are of the considered opinion that the applicants are entitled to the revised pay scales as per the Central Civil Services (Revised Pay) Rules, 1997.

18. In view of our discussion above, the OA is allowed to the extent of payment of revised pay scales to the applicants in pursuance of the recommendation of the 5th Pay Commission plus usual allowances for the period

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recommended by the 5th Pay Commission as per the instructions and rules on the subject. Order be complied with within a period of 3 months from the date of receipt of a copy of this order.

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No order as to costs.

Let a copy of this order be placed in O.A. No. 1930/98 and OA No. 489/98.

(KULDIP SINGH)
MEMBER (J)

(S.R. ADIGE)
VICE CHAIRMAN(A)

Rakesh

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Court Officer
Central Administrative Tribunal
Plot No. 10, Sector 1, New Delhi
Faridkot House,
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New Delhi 110091