

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

New Delhi, this the 31st day of August, 1995. (9)

1. OA No. 150 of 1995.
2. OA No. 2313 of 1994.
3. OA No. 379 of 1995.
4. OA No. 2392 of 1994.
5. OA No. 2447 of 1994.
6. OA No. 2393 of 1994.
7. OA No. 2448 of 1994.

HON'BLE MR J.P. SHARMA, MEMBER (J)

HON'BLE MR B.K. SINGH, MEMBER (A)

O.A. No. 150 of 1995

1. Parmanu Vidyut Karamchari Union, through its Executive Member, Shri Jagdish Chandra Gupta, C.I.T.U. Union Office, Phase-II, P.O. Rawatbhata, Distt. Chittorgarh, Rajasthan.
2. Shri Jagdish Chandra Gupta, S/O Shri Piarey Lal Gupta, C.I.T.U. Union Office, Phase-II, P.O. Rawatbhata, Distt. Chittorgarh, Rajasthan. Applicants.

(through Mr Ashok Aggarwal, Advocate.)

vs.

1. Union of India, through its Secretary, Department of Atomic Energy, Anushakti Bhawan, C.S.M Marg, Bombay.
2. Nuclear Power Corporation of India Ltd., through its Dy. General Manager (P & IR), Rajasthan Atomic Power Station, P.O. Anushakti Distt. Chittorgarh, Rajasthan.
3. Nuclear Power Corporation of India Ltd., through its Senior Manager (P & IR), Rajasthan Atomic Power Projects 3 to 6, P.O. Anushakti Distt. Chittorgarh, Rajasthan. Respondents.

(through Mr V.S.R. Krishna, Advocate).

O.A. No. 2313 of 1994

1. Anushakti Officers Association Rajasthan through its Joint Secretary Sh. B.B. Bhatnagar, R/O Type-II, 11-C, Anukiran Colony, Bhabha Nagar, Distt. Chittorgarh.
2. Sh. G.R. Jansari, S/O late Sh. Tulsi Dass, Scientific Officer, Scientist 'C', H2/56, P.O. Vikram Nagar, Distt. Chittorgarh.

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3. Anushakti Supervisor Association, through its Secretary, Shri J.K. Sevda S/O Sh. Devi Lalji, R/O T-III, 13 J, Anukiran Colony, Bhabhanagar, Distt. Chittorgarh.
4. Shri R.C. Purohit S/O Sh. N.L. Purohit, Scientific Assistant 'A', R/O T-II, 19G, Anukiran, Bhabhanagar, Distt. Chittorgarh.
5. Bhartiya Mazdoor Sangh, through Authorised Member, Sh. R.P. Chakarpal R/O T-II, 27 B, Anukiran Colony, Bhabhanagar, Distt. Chittorgarh.
6. Shri Madho Singh, T/E, Site Development, R/O T-II, 27 A, Anukiran, Bhabhanagar, Distt. Chittorgarh.
7. Rajasthan Anushakti Pariyojna, Karamchari Sangh through its Secretary Shri Mukesh Lalwani R/O T-II, 35-D, Anukiran Bhabhanagar, Distt. Chittorgarh.
8. Shri Bachoo Singh, Helper-B, R/O H-1-B, 260, Anuchhaya Colony, Bhabhanagar, Distt. Chittorgarh.
9. Anushakti Officers Assn. RAPP 3 to 8, through its President, Shri S.M. Mangal, H/7/7 Vikran Nagar, Distt. Chittorgarh.
10. Shri M.P. Saxena S/O Sh. J.P. Saxena R/O T-IV, 94, Anukiran Colony, Bhabha Nagar, Distt. Chittorgarh.
11. Anushakti Supervisors Association RAPP 3 to 8, through its President Shri S.L. Kashyap R/O T-III/5, ESF, Post Bhabha Nagar, Distt. Chittorgarh.
12. Shri K.L.D. Mathur S/O Late Sh. Dau Dayal ji Mathur, SA/E, QS& T, R/O T-IV-20-B, Anukiran, Bhabha Nagar, Distt. Chittorgarh.

.... Applicants.

(through Shri R.K. Kanal, Advocate.

vs.

1. Union of India through Secretary, Deptt. of Atomic Energy(DAE), Anushakti Bhavan, CSM Marg, Bombay.
2. Nuclear Power Corporation of India Ltd., through Shri S.K. Sharma, Senior Manager(P&IR), Rajasthan Atomic Power Project 3 to 8)

.... Respondents.

(through Mr. M. Chander Shekharan ASG with Shri VSR Krishna)

DA No. 379 of 1995

1. Tamil Nadu Atomic Power Employees Union, Represented by General Secretary, Madras Atomic Power Station, Kalpakkam, Chengal M.G.R. Distt. Tamil Nadu.
2. Madras Atomic Power Staff represented by its President, Madras Atomic Power Station Kalpakkam, Tamil Nadu.
3. MAPS Diploma Engineers' Association, represented by its Secretary Kalpakkam Tamil Nadu.
4. K. Dayalan, employed as Tradesman 'E', R/O 58, 18th Avenue, DAE, Township, Kalpakkam.

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5. V. Janakiraman,
Employed as SAE, MAPP,
R/O No. 29, 8th Street,
DAE Township, Kalpakkam.
6. M. Ganesan, employed as SO/SC
R/O 5, 6th Street,
DAE Township, Kalpakkam. ... Applicants.

(through Counsel : Mrs Ramamurthy, Advocates)

vs.

1. Govt. of India, rep. by
the Director, Department of
Atomic Energy, Bombay.
2. Nuclear Power Corporation (Government
of India Enterprises) represented
by its Managing Director, Central-I,
16th Floor, World Trade Centre,
Cuffe Parade, Bombay Respondents.

(through : Mr M. Chandrasekharan, ASG with Mr VSR Krishna
Advocate).

OA No. 1337 of 1994 OA No. 2392/94 (PB)

1. Narora Atomic Power Officers Association
through its Secretary Shri C. D. Rajpoot,
Narora Atomic Power Station, P.G. NAPS
Township Narora Distt. Bulandshahar.
2. Shri C. D. Rajpoot, R/O C-29/4, NAPS
Township, Narora, Distt. Bulandshahar,
presently posted as Scientific Officer,
S.E.on deputation in NPCIL at Narora.

... Applicants.

(through Counsel Mr C. L. Narasimhan, Advocate).

versus

1. Union of India through Secretary
Ministry of Science and Technology
New Delhi.
2. Secretary Department of Atomic Energy,
C/O Anushakti Bhawan,
CSM Marg, Bombay.
3. Managing Director, Nuclear Power Corporation
of India Ltd., 16th Floor, Centre 1, World
Trade Centre, Cuffe Parade, Bombay.
4. Chief Superintendent, Narora Atomic Power
Station P.G. NAPS Township Narora, Distt.
Bulandshahar. Respds.

(through Mr M. Chandrasekharan with Mr VSR Krishna)

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OA No. 1384 of 1994 (OA No. 2393/94 (PB))

1. Narora Atomic Power Project Supervisors' Association, through its Secretary Sri V. N. Rajpoot Narora Atomic Power Station Post Office NAPS Township Narora, Distt. Bollandshahr.
2. Shri V. R. Rajpoot R/O B 20/S NAPP Township Narora District Bollandshahr, posted as Scientific Assistant SA 'C' on deputation in NPCIL at Narora Distt. Bollandshahr.
3. Narora Parmanu Vidyut Pariyojana Karamchari Union through its Secretary Sri Jagbir Singh, Narora Atomic Power Station Post Office NAPS Township Narora Distt. Bollandshahr.
4. Sri Jagbir Singh S/O Shri Ratan Singh, aged about 29 years R/O Qtr No. B.R. 2/3 NAPS Township distt. Bollandshahr, presently posted as Tradesman 'C' on deputation in NPCIL at Narora distt. Bollandshahr.

... Applicants

(through Mr. C.L. Narsimah, Advocate).

vs.

(same respondents as in OA No. 1337 of 1994 on pre-page)

OA No. 2447 of 1994

1. The Kakrapar Anumathak Karamchari Sangathan, representing by President Shri Y. V. Mane, Kakrapar Atomic Power Project, P.C. Anu Mala (Via) Vyara, Sura Distt.
2. Shri R. Bala Subramaniyam Secretary and affected party The Kakrapar Anumathak Karamchari Sangathan, Kakrapar Atomic Power Project, P.C. Anu Mala (Via) Vyara, Distt. Surat.

(same Resps. as in OA 2449/94) ... Applicants.
(through Mr. C.L. Narsimhan, Advocate).

OA No. 2448 of 1994

1. The Kakrapar Anumathak Officers Assn. represented by Vice President Sh. P. Madhevan, Kharapar Atomic Power Project P.C. Anumala (Via) Vyara, Distt. Surat.
2. Shri B. S. Chauhan, Secretary and affected party Kakrapar Anumathak Officers Assn. Kakrapar Atomic Power Project, P.C. Anumala, (Via) Vyara Distt. Surat.
(through Mr. C.L. Narsimah, Advocate).

1. Union of India through

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the Secretary, Deptt. of Atomic Energy, CSM Marg, Bombay.

2. Nuclear Power Corporation of India Ltd., (NPCIL) represented by their Managing Director (Govt. of India Enterprise) Kakrapar Atomic Power Project, P.O. Anu Mala, (Via) Vyara, Distt. Surat. ... Respondents.

(in OAs 2447 & 2448/94)

(through Mr M. Chandrasekharan, ASG with Mr VSR Krishna, Advocate).

ORDER

(delivered by Hon'ble Mr B.K. Singh, Member (A))

The facts and legal issues involved in OAs No. 150 of 1995 and 2313, 1397, 1337, 1384, 2447 and 2448 of 1994 are common and as such these are interconnected matters both from factual and legal angles and are being dealt with together.

In all these O.As the same O.Ms dated 26.5.1994 and 15.7.1994 have been impugned. O.M. dated 26.5.1994 deals with the options available for absorption and O.M. dated 15.7.1994 deals with the terms and conditions of service of the employees and also the settlement of pensionary benefits etc.

In O.A. No. 2313 of 1994, the reliefs claimed are to restrain the NPCIL from asking the deputationists to exercise their options vide Memo. dated 26.5.1994 (Annexure A-1) on the terms and conditions specified vide Annexure A-2.

In O.As No. 2392 and 2393 of 1994, the reliefs claimed are to quash the offer of absorption dated 15.7.1994 and also to quash the O.M. dated 26.5.1994.

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In O.As No.2447 and 2448 of 1994 applicants have challenged the same orders dated 26.5.1994 and 15.7.1994. It has been prayed in both these O.As that the offer of option dated 26.5.1994 with letter dated 15.7.1994 be quashed being arbitrary, discriminatory and violative of Articles 14,16 and 77 of the Constitution and also to hold that Respondent No.2 has no power, authority or competence to issue such orders. It has further been prayed that after quashing and setting aside the impugned orders dated 26.5.1994 and 15.7.1994 the petitioners be granted consequential benefits by directing the respondents to pay all the benefits available to the Central Government employees including the additional facilities,if any, granted by respondent No.2 and also to allow them the arrears of deputation allowance etc. and payments be made to them @ 12% per annum from 4.9.1987 to all the officers and the employees who have not exercised the option and as a consequence to declare the impugned orders as illegal, arbitrary etc. and the arrangement with respondent No.2 should not be disturbed by respondent No.1 and lastly to restrain them from asking option etc.

In O.A.No.379 of 1995, the applicants have challenged the orders dated 26.5.1994 and 15.7.1995 and have sought the relief of holding the two aforesaid memoranda issued by respondent No.1 as illegal and unconstitutional and to allow them all the benefits and allowances as deputationists w.e.f.4.9.1987 and to grant them parity with those and who have opted that the optees and deputationists should be treated on par in regard to pay and perks and that the Government employees and the Corporation

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employees should have the same perks and privileges and the question of their absorption should be deferred till the implementation of the 5th Central Pay Commission's recommendations.

In O.A. No. 150 of 1995 it has been prayed that the offer of absorption dated 15.7.1994 and the O.M. dated 26.5.1994 be quashed, being illegal, unfair, unjust and in violation of the constitutional provisions. It has also been prayed that the respondents may be directed to stop the policy of discrimination in case of the deputationists and pay them the deputation allowance for the period of their deputation, with arrears since 4th September, 1987.

Shri R. K. Kamal argued on behalf of the applicants/Anushakti Officers Association & another in O.A. No. 2313 of 1994. The main grounds taken by the learned counsel for the applicants in this O.A. was that the manner in which the options have been called for is nothing but a case of compelling and coercing the deputationists to seek absorption in the Corporation. The deputationists are not being paid any deputation allowance and are being threatened to be kept on indefinite deputation, if they do not opt for the service in the Corporation. It was further argued that the respondents have also held out the threat that they will be deprived of the perks and privileges available to the Corporation employees if they decide not to opt for the terms and conditions of service framed for the Corporation employees. The learned counsel argued that the attitude of the respondents is wholly unreasonable and unfair. The whole attempt is to force the employees to opt for the service of the Corporation and this action is

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violative of Articles 14 and 16 of the Constitution. The Government is expected to be a model employer and its attitude is always expected to be fair and reasonable. These were the points raised by the learned counsel before proceeding abroad and on return he further argued the matter and stated that the question of exercising option should be deferred to a later date so that those employees, who are not eligible to get pension and gratuity amount having put in less than 10 years of service become eligible for the same. He highlighted the terms and conditions enclosed with the form of option and stated that these terms and conditions are not reasonable and as such if accepted this will put the government servants to a great disadvantage. He wanted the matter to be deferred till the recommendations of the 5th Pay Commission are received/giving the benefits and implemented to the employees of the Nuclear Power Board.

O.A. No. 2447 and 2448 of 1994 were also argued by Shri C.L Narsimhan and the arguments were similar to the arguments advanced in O.A. No. 350 of 1994.

O.A. No. 379/95 was argued by Ms Ramamurthy. She argued that the impugned memoranda issued by the respondents are illegal, unconstitutional since they propose to deprive the applicants of their status and also posts and the emoluments payable to the corporation employees after 16.9.1994 and as such it violates the fundamental rights under Articles 14 and 16 of the Constitution.

It has been decided to keep the applicants on indefinite deputation if they do not exercise

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the option. She argued that they are entitled to get deputation right from September 4, 1987.

It was vehemently argued by her that if the Corporation distinguishes between the government servants and the Corporation employees in regard to pay and perks it will be violating the principles of equal pay for equal work which would be against all canons of justice. She stated that respondent No.1 has decided to modify the terms contained in the memorandum dated 4.9.1987 and to withdraw all the existing benefits of the deputationists thus causing economic hardship to them and indirectly compelling them to opt for the services of the Corporation. She also argued that there is no logic in fixing the cut off date as 16.9.1994 for exercising option. The entire motive behind the impugned memoranda is coercive and not giving proper opportunity to the association and its members to exercise option freely and voluntarily. She vehemently argued that the action of the respondents is malafide and unconstitutional. She also argued that the terms and conditions of service enclosed with the form of option are also unreasonable and unfair and thus violative of Article 14 of the Constitution.

She further argued that the impugned memoranda are illegal inasmuch as it would meant that on absorption the employees will not be paid their service or retirement gratuity and therefore it is contrary to Rules 49 and 50 of the CCS(Pension) Rules. She further argued that the rights of the employees to gratuity,

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which have already accrued to them cannot be taken away by an executive fiat. The rights accrued cannot be taken away by conversion of N.P.B. into NPCIL. She argued that the applicants are entitled to deputation allowance right from 4.9.1987 when they were deputed to the NPCIL, which came into being on that date. The upshot of her argument was that by opting to become members of the Corporation the employees would be deprived of their Government status and that if they do not opt they will continue to be on indefinite deputation without any deputation allowance and that those who have not completed 10 years or more will not be eligible for getting pro-rata pension, gratuity or other retiral benefits and as such the Corporation will take away their rights as Government Servants without conferring any additional benefits on them and it is neither in the interest of the employees nor it is in the interest of the Corporation and secondly that there cannot be two sets of employees, one enjoying the perks and privileges of being Corporation employees and other government servants remaining on deputation without deputation allowance who are also being divested of those perks and privileges which are available to the Corporation employees. According to her, the whole Scheme militates against the principles of equal pay for equal work and as such the memoranda issued by the respondents should be struck down.

Shri C.L. Narasimhan, learned counsel argued on behalf of applicants Narora Atomic Power Officers Association and others in O.A. No. 2392 of 1994, Narora Atomic Power Project Supervisors' Association & Ors. in O.A. No. 2393/94 and the Kakrapar Anumathak Officers

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and others in O.A. 2448/94 and the Kakrapar Anunathak Karamchari Sangathan & others in O.A. No. 2447 of 1994. The same orders dated 26.5.94 and 15.7.1994 have been challenged. It was stated that all these officers and employees were originally working in the Nuclear Power Board minus the purchase/store offices and O.M. No. 8/3(1)/86-PP was issued dated 4.9.1987 stating that the Government have decided to set up Nuclear Power Corporation of India Ltd. ^{under} / Department of Atomic Energy as a Public Limited Company and it was envisaged that the manpower for the aforesaid Corporation will be initially drawn from the DAE. The personnel of the NPB, including those belonging to the centralised Administrative and Accounts Cadres, shall be transferred on deputation to the Company from the date the NPC takes over the operations of the NPB and commences business. It was further envisaged that the staff placed on deputation to the Corporation in respect of matters not covered in this Office Memorandum, will be governed by rules applicable to the Central Government Employees. They will continue to be government servants till they are absorbed and absorption would take place only when the terms and conditions are finalised. Terms and conditions could not be finalised in 12 months as envisaged in the letter issued on 4.9.1987. Delay was caused on account of representations received from the officers and employees of the NPB and various rounds of discussions and these terms and conditions could be finalised after ^{at} great deal of deliberation and consultation with the staff side. It is only after several rounds of discussions that these terms and conditions were finalised and issued for the purpose of absorption because the original

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letter dated 4.9.1987 clearly envisaged that they will be absorbed only on the finalisation of the terms and conditions of their absorption. The learned counsel argued that the respondents have assumed that the applicants were transferred to the Corporation on the formation of the Corporation and they have also further assumed in that/its conversion into NPCIL, no consent of the applicants was required before transferring them on foreign service/deputation and therefore, the learned counsel argued that Fundamental Rule 110-A has been violated. It provides that "no government servant may be transferred to foreign service against his will." It was further argued that this kind of transfer is not a case covered under proviso to Fundamental Rule 110. The proviso to Fundamental Rule 110 covers a situation of transfer of a Government servant to the service of a body, which is wholly or substantially owned or controlled by the Government. It was argued that there has been no transfer of the applicants to the service of the Corporation and that it was only a proposal to transfer the employees on deputation and that the applicant should continue to be Central Government Employees till they opt for absorption and if they do not opt for absorption, they will continue to be Central Government employees. He further argued that there is no provision or Rule of law to indicate that the applicants could have been transferred by the Central Government to the Corporation in the manner this is being done.

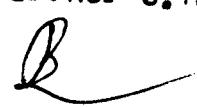
He further pointed out that there is no formal order for transfer of any of the applicants

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on deputation and that it has never been indicated that the proposed deputation could be on permanent basis. He further argued that clause 310(c) of O.M. dated 4.9.1987 envisages the period of deputation to last till the terms and conditions are finalised. He concluded by saying that in the absence of option having not been exercised, the officers and staff would revert to the Central Government in DAE and they would continue to be governed by CCS(CCA) Rules and would be eligible for CCA and HRA etc. as admissible to other government employees. He has also submitted his written submissions on the same lines as argued by him. In the written submissions, it has been pointed out that the option given to the employees is absolutely no option at all and withdrawal of benefits earlier given to the employees in case they do not opt would naturally attract articles 14 & 16 of the Constitution. In the written submission it was pointed out that the posts of NPB were transferred to NPCIL. He has highlighted how the options given are arbitrary, unreasonable and illegal. He says it violates the doctrine of equal pay for equal work.

Learned Addl. Solicitor General Mr. M. Chander Shekharan pointed out that O.M. dated 4th September, 1987 is based on OMs No. 4/8/85-P, Govt. of India, Ministry of Personnel, Public Grievances & Pensions (Dept. of Pension & Pensioners). This O.M. was issued on 30.10.1986 and it relates to the settlement of Pensionary terms in respect of Government employees transferred to Autonomous Organisations/ Public Undertakings consequent on the conversion of Govt. Department/Office into an autonomous body or public undertaking. Further O.M. issued on



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13th January, 1986 vide No.4/8/85-P & PW by the Ministry of Personnel, Public Grievances & Pensions (Department of Pension & Pensioners' Welfare) also relates to the same subject.

O.M. No.1/61/89-P&PW(C) dated 18th July, 1989 further clarifies how the settlement of pensionary terms etc. in respect of Central Government employees transferred en masse to Central Public Undertakings/Autonomous Bodies will be determined. There is a further circular on the same subject dated 18th July, 1989 which incorporates certain clarifications. There is further Circular dated 12.6.1992 issued on the same subject by the same Ministry. He argued that the O.Ms of 26th May and 15th July, 1994 have taken into consideration in a comprehensive manner the terms and conditions laid down by the Department of Pension and Pensioners' Welfare, Ministry of Personnel Public Grievances and Pensions and therefore, it cannot be faulted with.

A careful perusal of the pleadings on record and the various minutes of discussions held between the Management and the staff side clearly indicates that NPCB was converted into NPCIL and the entire staff alongwith posts were transferred to this new Corporation. This new Corporation was created with a view to achieve a target of 10,000 MW (megawatt) nuclear power capacity by the year 2000 A.D. In view of paucity of funds and gradual reduction of the budgetary support of the Government, the Corporation could be in a position to enter the market internal and external for raising funds for achieving the target fixed for it by 2000 A.D. It seems

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that the Government were constrained to create the Corporation on a par with N.T.P.C., Hydro Electric Power Corporation etc. which are all Corporations and have achieved the targets fixed for them and their performance in the field of power generation ^{as compared to dismal performance of} has been phenomenal Electricity Boards etc. Similarly, the Book-let contains a decision to convert NPB into NPCIL and the staff ^{were} en-masse transferred. NPB does not exist now and its staff, assets and liabilities have all been transferred to NPCIL. There is no question of reversion of the staff to Government or to the DAE. All the posts along-with staff in NPB have been abolished and these have been surrendered and transferred in dock stock and barrel to NPCIL. The O.M. No.8/3(1)/86-pp was issued by the ^{Union} Govt. Department of Atomic Energy dated 4.9.1987 on the subject of transfer of personnel to Nuclear Power Corporation India Ltd. envisages a goal of 10,000 Mg Watts of nuclear power by the year 2000 A.D. and to achieve this goal they have set-up NPCIL as a Public Limited Company. Para 2 reads as under:

"The manpower for the aforesaid Corporation will be initially drawn from the DAE. The personnel of the NPB, including those belonging to the Centralised Administrative and Accounts Cadres, borne on rolls of the Nuclear Power Board and the Atomic Power Projects and Atomic Power Stations under its control whose Pay and allowances were paid by these units as on 9.7.1987 shall be transferred on deputation to the Company from the date the NPC takes over the operations of the NPB and commences business. "

It is true that the finalisation of the terms and conditions of service of the employees was

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abnormally delayed and this delay was on account of several rounds of discussions which were held between the management and various associations and Unions on different dates over a period of 5 to 6 years in order to achieve a consensus and ultimately after discussions and deliberations the letters dated 15.7.1995 and prior to it, letter dated 26.5.1995 were issued which are under challenge before this Tribunal. The learned Addl. Solicitor General placed his reliance on a judgment of the Hon'ble Supreme Court in 1994 AIR SCW 3277(State of Tamil Nadu and others vs. V. S. Balakrishnan and others with Tamil Nadu Co-operatives Milk Producers Federation, Madras vs. V. S. Balakrishnan and others) in Civil Appeal Nos. 1387 to 1395 with 1396 to 1404 of 1993. The concluding paras 14, 15 and 16 of the judgment are as follows:

"14. We may now examine the terminal benefits offered in GO 1921. We have already enumerated in detail the said benefits in earlier part of the judgment. We are of the view that except the provisions regarding family pension and application of Future Liberalised Pension Rules(item 3(c) and 3(f) of GO are reasonable and no fault can be found therewith. We are of the view that once an optee for permanent absorption in the Federation is entitled to pro-rata pension in respect of the period of service rendered by him under the Government, he is not entitled to the benefit of the family pension. We, therefore, strike down para 1(c) of the GO and direct that the respondents

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shall be entitled to the benefit of family pension on the basis of pro rata pension given to them. Similarly, we see no justification why the employees, after their permanent absorption in the service of Federation, be not given the benefit of further liberalisation of pension rules, if any, in respect of the pension which they are already drawing from the Government. This provision is also on the face of it arbitrary. We, therefore, strike down para 3(f) of the said GO and hold that the employees after their permanent absorption with the Federation shall be entitled to the benefit of the liberalised pension rules, if any, in future. All other provisions of the GO 1921 are reasonable and as such we uphold the same.

15. We make it clear that all those employees who have retired after February 1, 1983 ~~they~~ shall be deemed to have opted to join the service of the Federation permanently and as such, they would be entitled to the terminal benefits in terms of the GO 1921.

16. We allow the appeals in the above terms, set aside the judgment of the Tribunal and dismiss the transfer applications and original applications filed by the respondents before the Tribunal. No costs.."

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The learned A. S. G. argued that this case is squarely covered by the Judgment of the Hon'ble Supreme Court as contained in the above Civil Appeals.

The various circulars issued by the DOPT contained in the book-let indicate that the Government have the power to divest itself of certain duties and responsibilities and to create a corporation to perform the duties and functions and to discharge those responsibilities and to transfer en masse all the employees who were entrusted with the performance of those duties and responsibilities. It is well established that the Government has wide powers to divest itself of those duties and responsibilities and functions performed by them (Central or State Government) and to transfer the same to a Corporation or an authority. The Government of India by an act of Parliament transferred all the functions of electricity generation, transmission and distribution to the State Electricity Boards divesting the State Governments of those functions of power generation, transmission and distribution. Similarly, by an act of Parliament, the Road Transport Act was brought into being. The Transport undertakings undertook the job performed by the State Governments. Similarly, by an act of parliament of 1964, the Govt. of India divested itself of the functions of foodgrains procurement and distribution and handed over the same to the Food Corporation of India and the staff working were transferred to the Food Corporation of India. These are just

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illustrations to show that the Government can divest itself of the duties and responsibilities either by an act of parliament as was the case with the creation of the Electricity Boards, Road Transport Corporations and Food Corporation of India, or by conversion of a Govt. Depot, into a corporation and to transfer the staff performing those duties and responsibilities which were being done by the Government to the Corporation. The DO PT lays down the guidelines in this regard how it can be done and what would be the modality of fixing of pensionary and other benefits once the department is converted into a Corporation.

Thus, the Govt. have powers to create Corporations, Companies (Limited and unlimited) and to make and amend the rules divesting itself from all those functions and responsibilities under the proviso to Article 309 of the Constitution and also to lay down policies and frame the terms and conditions of service.

The impugned orders do not abridge or curtail the rights accrued or reduce the chances of their promotions, perks and privileges. The status symbol as a civil servant, once a department of Government is converted into a Corporation is bound to undergo a change. This loss of status is made good by giving a number of other perks and privileges which are not available to a government servant. It will be seen that the accrued rights of the Govt. servants are not being abridged or curtailed and they will be

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eligible to get pro rata pension and if one is not eligible to get pension he would be granted gratuity as compensation in lieu of the service put in by him. If those who do not opt and will continue to be on indefinite deputation without deputation allowance retaining their status as a Govt. employee and getting emoluments admissible to government employees as a result of the 5th Pay Commission but they cannot claim the perks and privileges of those employees who have opted to become the Corporation employees. There is no chance of their reverting back and there to D.A.E. is no chance of their reversion to NPB since it does not exist, and cannot be revived, since NPB itself has been converted into NPCIL. In case of Col. Sangwan vs. Union of India (AIR 1981 SC 1545) it was held:

" It is perfectly within the competence of the Union of India to change it, re-change it, adjust it, re-adjust it according to the compulsion of circumstances."

It was further held;

".... it is entirely within the reasonable discretion of the Union of India. It may stick to the earlier policy or may give it up."

In B.T. Khanzode vs. Reserve Bank of India 1982 SC 917, K. Nagraj vs. State of Andhra Pradesh 1985(1) SCC 523 and Mohd. Suja Ali vs. Union of India, AIR 1970 SC 1631 similar views were expressed by the Hon'ble Supreme Court.

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The respondents have issued impugned O.Ms for good and weighting reasons and the charge of arbitrariness is not maintainable. The respondents have not acted arbitrarily or with any malafide intention in issuing these O.Ms. The reasons that prompted the D.A.E., G.O.I. to issue the O.Ms gives justification of the same and these justifications cannot be dubbed as arbitrary or violative of Articles 14 and 16. The reasons have been fully and satisfactorily explained.

We have heard the learned counsel for the parties at great length. We have considered the impugned O.Ms dated 26.5.94 and 15.7.1994 issued after joint consultation with various Unions and associations and we have also perused the minutes, which have been placed on record and we do not find any arbitrariness or unreasonableness involved in it.

There is no dispute about the fact that the Government have taken a major policy decision to convert NPB into NPCIL and to transfer the staff on deputation only till the terms and conditions are finalised. (emphasis applies). It was not a deputation in the strict sense of term. It was an en masse transfer of the staff to N.P.C.I.L. with posts they were holding and the duties and responsibilities which they were performing and were attached to these posts. The various pronouncements of the Hon'ble Supreme Court are to the effect that the Union of India are fully competent to amend the policy decision. Thus, they are competent to convert NPB into NPCIL and this does not require the consent of the employees.

(30)

The basic question to be considered is whether the policy decision of the Government can be challenged in the present proceedings? It is well settled by the Hon'ble Supreme Court in case of the Director, Lift Irrigation Corporation Ltd, and others etc, etc, vs. Pravat Kiran Mahanty and others, JT 1991(1) SC 430 wherein their Lordships laid down:

"Policy decision is not open to judicial review unless it is malafide, arbitrary or bereft of any discernible principle".

In case of Col. A. S. Sangwan (Supra) the Hon'ble Supreme Court had this to say in respect of the policy decision of Union Government;

"The Executive power of Union of India, when it is not trammelled by any statute or rule as void and pursuant to it can take executive policy decisions. Indeed, in a strategic and sensitive area of defence, the Court should be cautious although the Courts are not powerless. The Union of India having framed a policy decision relieved itself of the charge of acting capriciously or arbitrarily or in response to any ulterior consideration so long as it pursued a constant policy."

The Hon'ble Supreme Court further held that a policy once formulated is not good for ever; it is perfectly within the competence of the Union of India to change it, re-change it, adjust it, re-adjust it according to the compulsions of the circumstances or imperatives

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national considerations.

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The conversion of NPB into NPCIL is a major policy decision prompted solely by the national interest of achieving a goal of 10,000 Mg Watts of Power by the end of 2000 AD and enables NPCIL to stand on its own legs without looking for budgetary support for its commercial operations and to enter the market - National and Inter-national for raising resources. It can also approach World Bank, IMF for loans to achieve its goal. It is well settled that a policy made by the Government can be changed and re-changed as per compulsions of the circumstances. We are not satisfied with the submissions having been made for interference with the policy decision of DAE, GOI.

Though Articles 14 and 16 forbid class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification two conditions must be satisfied, namely ; (i) that the classification must be founded on an intelligible differentia, which distinguishes persons or things that can be grouped together from those that are left out of the group; (ii) that the differentia must have a rational relation to the objects sought to be achieved by the statute in question, that is, there must be a nexus or causal connection between the basis of classification and object of the statute under consideration.

Article 14 is not to be held identical

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with the doctrine of classification. In E.P. Royappa vs. State of Tamil Nadu (1974) 4 SCC 3, it was held that the basic principles which involves both the Articles 14 and 16 is equality and inhibition against discrimination. The fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation and classification must satisfy the tests and the decisions are to be founded on intelligible differential which distinguishes from persons & things that are grouped together from those that are left out of the group and that differential must have a rational nexus to the object sought to be achieved by the statute in question.

On whom does the burden lie to affirmatively establish the rational principles on which the classification is founded co-related to the object sought to be achieved? The onus lies on the applicants as has been held by the Hon'ble Supreme Court in case of Shyam Babu Verma vs. Union of India that the classification of the corporation employees and government employees is based on an intelligible arbitrary and unreasonable criteria and therefore if the government employees do not opt to be corporation employees they are not entitled to get those perks and privileges and they will not be entitled to equal pay for equal work even their qualifications may be the same.

In the conspectus of the facts and circumstances of the case, we find that all the applications are devoid of any merit or substance and we decline to interfere in the major policy decision of the Government and the OAs are

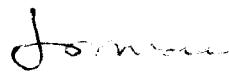
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accordingly dismissed leaving the parties to
bear their own costs.

Interim orders passed by various Benches
of the Tribunal stand vacated.


(D.N. SINGH)
MEMBER(A)


(J.P. SHARMA)
MEMBER(J)

/sds/