

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

CP No.206/94 in OA No.1429/93

NEW DELHI THIS THE 31ST DAY OF MARCH 1995

MR.JUSTICE S.C.MATHUR, CHAIRMAN  
MR.P.T.THIRUVENGADAM, MEMBER(A)

1. Shri R.K.Saini,  
S/o Shri B.R.Saini,  
Ganesh Nagar Complex  
Pandava Nagar,  
Delhi-110092
2. Shri A.K.Lakra  
S/o Shri Dhir Singh  
Village & P.O.Mundka  
Delhi-110041
3. Shri A.K.Chauhan  
S/o Shri Harvir Singh  
RZ-111/298-A, Gali No.2  
West Sagarpur  
New Delhi-110046.
4. Shri P.K.Tyagi  
S/o Shri H.D.Tyagi  
N-136/4 Andrews Ganj  
New Delhi-110049.
5. Trilochan Kaur  
W/o Shri Bhupinder Singh Lamba  
H.No.K-373, Rishi Nagar  
Shakurbasti  
Delhi-110034.
6. Shri Rajbir Singh  
S/o Shri Kartar Singh  
House No.773  
P.O.& Village Bawana  
Delhi-110039. ....

Petitioners

(BY ADVOCATE SHRI INDERJIT SINGH)

vs.

1. Shri M.S.Dayal  
Secretary  
Ministry of Health & Family  
Welfare, Govt. of India  
Nirman Bhavan,  
New Delhi-1
2. Shri S.P.Aggarwal  
Medical Superintendent  
Dr.Ram Manohar Lohia Hospital  
New Delhi. ....

Respondents

(BY ADVOCATE SHRI V.S.R.KRISHNA)

ORDER(ORAL)

JUSTICE S.C.MATHUR:

The petitioners allege disobedience by the respondents of the Tribunal's order dated 25.11.1993 passed in OA No.1429/93.

2. The petitioners were working as daily wage<sup>14</sup> telephone operators: They approached the Tribunal seeking a direction to regularise their services. The Tribunal through its judgement of which disobedience is alleged issued direction in following terms:

" The application is partly allowed and respondents are directed to consider the applicants for regular appointment on the availability of posts giving them benefit of pay and allowances etc. which are allowed to permanent establishment. According to extant Rules, they shall also be considered for weekly off."

The grievance of the petitioners is that despite this direction, they have not been considered for regular appointment.

3. In the reply dated 3.12.1994 filed by Dr.S.P. Agarwal, Medical Superintendent, it has been stated that reference has been made to the Director General Health Services for creation of adequate number of posts. The posts have not so far been created. It is asserted that as soon as the posts are created, the petitioners will be considered for regular appointment in accordance with rules.

4. The Tribunal's order itself provides that the petitioners shall be considered for regular appointment on availability of posts. The reply of the respondents shows that the posts have not yet become available. Accordingly, it cannot be said that there is any contumacious disobedience of the Tribunal's order.

5. The learned counsel for the petitioners has cited **Smt.Urmila Ganapati vs. State of Orissa and others( 1994 LAB.I.C. 269)** for submitting that where a daily wager has worked for 5 years that is sufficient to adjudge suitability for regular absorption and that there is no necessity for testing such an appointee for suitability. The Tribunal has not directed the regularisation of the

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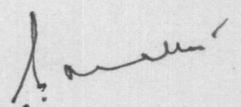
petitioners on the basis that they shall not be tested for suitability. The Tribunal's direction is that they shall be considered for regular appointment on availability of posts. Obviously, regular appointment can be made against a regular post. If a regular post is not available, there can be no question of regular appointment. The authority cited by the learned counsel may have application when despite availability of regular post regular appointment is arbitrarily denied. It has no application to the facts of the present case.

6. In view of the above, we are not satisfied that the respondents have deliberately disobeyed the direction of the Tribunal.

7. In view of the above, the Contempt Petition is dismissed but without any order as to costs. The notices issued are hereby discharged.

P. J. 262  
(P.T. THIRUVENGADAM)  
MEMBER(A)

SNS

  
(S.C. MATHUR)  
CHAIRMAN