(12)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No.1479/2000
WITH
OA No.1523/2000
WITH
OA No.1534/2000
WITH
OA No.1560/2000

Friday, this the 6th day of July, 2001

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

Shri Subodh Kumar & Ors.
(Shri S.N. Gupta) ..Applicants

Versus

Union of India & Ors.
(Shri Vijay Pandita) ...Respondents

Corum:-

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

1. To be referred to the reporter or not? YES

2. Whether it needs to be circulated to Benches of the Tribunal? NO

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

(13)

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

OA No.1479/2000

1. Shri Subodh Kumar
son of Shri Khajan Singh
r/o WS.456/4, Wazipur Village,
New Delhi-110052.

2. Shri Navin Kumar
s/o Shri Nathu Ram
H.No.2, Village & Post Office
Pandwale Kalan,
New Delhi-110043.

3. Shri Naresh Kumar
s/o Shri Baldev Raj,
H.No.L-10, Mohan Garden,
Rama Park Road,
New Delhi-110059.

4. Shri Anil Kumar
s/o Shri Satya Pal
r/o E-601, Jahangir Puri,
New Delhi-110033.

5. Ms. Chitra Pankajavally,
d/o Shri Krishna Swami
D-2/124, Jeewan Park,
Pankha Road,
Uttam Nagar,
New Delhi-110059.

6. Shri Shiv Singh
s/o Shri S.P. Singh
C/o Dr. A.K. Chopra
C-4F/269, Janak Puri,
New Delhi-110058.

7. Shri Raghuvinder Singh,
s/o Shri Anup Singh,
310 Village and Post Office,
Mitraon,
New Delhi-110043.

8. Shri Rajesh Kumar
s/o Shri Jagdish Chand
H.No.RZG-845, Part II,
Raj Nagar,
Palam Colony,
New Delhi-110045.

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9. Shri Vijay Paswan
s/o Shri Upender Paswan
r/o B/5 DDU Hospital
Residential Complex,
Hari Nagar,
New Delhi-110064.

... Applicants

(By Advocate: Shri S.N. Gupta)

V E R S U S

1. Union of India
through Secretary,
Ministry of Home Affairs
North Block,
New Delhi.

2. Inspector General of Prison
Central Jail,
Tihar,
New Delhi-110064.

3. Lt. Governor of Delhi
Raj Niwas,
5, Sham Nath Marg,
Delhi-110054.

... Respondents

(By Advocate: Shri Vijay Pandita)

OA 1523/2000

1. Shri Jiby Jacob
DDA Flat No.51,
Lado Sarai,
Mehurali
New Delhi-110030.

2. Shri Jaison Joseph
V-C-IIE, Janta Flats,
Hari Enclave,
Hari Nagar,
New Delhi-110064.

3. Prince Joseph
V-C-IIE, Janta Flats,
Hari Enclave,
Hari Nagar,
New Delhi-110064.

4. Shri Jeevan Thomas
B-337B, Behind Gali No.1
Hari Nagar,
New Delhi-64.

5. Shri Thomas K. James
C/O Manju Pumnoose
Qr.No.650, Tihar Jail Complex
New Medical Quarters
New Delhi.

6. Shri Shajan Mathew
JC.IIE, Janta Flats
Hari Enclave
Hari Nagar
Maya Puri
New Delhi-64.

7. Shri Deepu Varghese
JC IIE, Janta Flats
Hari Enclave
Hari Nagar,
Maya Puri
New Delhi-64.

8. Shri Shaji Michael
JC IIE, Janta Flats
Hari Enclave
Hari Nagar,
New Delhi-64.

..Applicants

(By Advocate: Shri S.N. Gupta)

V E R S U S

1. Union of India
through Secretary,
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North Block,
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2. Inspector General of Prison
Central Jail,
Tihar,
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3. Lt. Governor of Delhi
Raj Niwas,
5, Sham Nath Marg,
Delhi-110054.

... Respondents

(By Advocate: Shri Vijay Pandita)

OA-1534/2000

Shri Sohan Lal
S/O Shri Bhagwat Ram
R/O House No.E-12, DCM Colony,
Ibrahim Pur Extension,
Delhi-36.

..Applicant

(By Advocate: Shri S.N.Gupta)

V E R S U S

1. Union of India
through Secretary,
Ministry of Home Affairs
North Block,
New Delhi.

2. Inspector General of Prison
Central Jail,
Tihar,
New Delhi-110064.

3. Lt. Governor of Delhi
Raj Niwas,
5, Sham Nath Marg,
Delhi-110054.

... Respondents

(By Advocate: Shri Vijay Pandita)

OA-1560/2000

1. Mrs. Sudesh
wife of Shri Rajbir Singh
r/o RZO-11, New Roshan Pura
Najafgarh,
New Delhi-4.

2. Mrs. Aleyamma Varghese,
w/o Shri Varghese C.O
r/o C-7-B, Sawal Nagar,
near Sadiq Nagar,
New Delhi.

3. Miss Bindumol Joseph
d/o Shri Joseph A.G.
r/o A-26, Adarsh Nagar,
Jiwan Park,
Uttam Nagar,
New Delhi.

4. Ms. Shaji Thomas
d/o Shri Thomas V.C.
r/o Q.No.636, Tihar Complex
New Delhi.

5. Mrs. Rosamma P.J.
w/o Shri Mathew
r/o WZ-291, Gali No.10,
Lajwanti Garden,
New Delhi.

..Applicants

(By Advocate: Shri S.N.Gupta)

V E R S U S

1. Union of India
through Secretary,
Ministry of Home Affairs
North Block,
New Delhi.

2. Inspector General of Prison
Central Jail,
Tihar,
New Delhi-110064.

3. Lt. Governor of Delhi
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Delhi-110054.

... Respondents

(By Advocate: Shri Vijay Pandita)

O R D E R (ORAL)

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All these OAs involve similar issues of law and fact and are taken up together for passing this common order.

2. I have heard the learned counsel on either side at length and have perused the material placed on record.

3. The applicants in these OAs have been working as Lab. Technicians (LTs), Radiographers, male and female Nurses in the Central Jail at Delhi. They have been so working from different dates and years starting 1996, so that each one of them has, on date, completed more than 4 years of continuous working. Earlier, they had apprehended termination of their engagements and have sought ad-interim orders which were granted by this Tribunal. They have continued to perform the same set of duties all along.

4. During the course of hearing, on 1.6.2001, the respondents were directed to bring complete record regarding recruitment of the applicants. The learned counsel for the respondents has accordingly produced the corresponding file maintained by the respondent-department. It was not found necessary to go through the same as it did not contain any material information which could assist either side.

5. The plea advanced by the learned counsel appearing on behalf of the applicants is that irrespective

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of the designation given to the applicants by the respondents, the applicants are required to be treated as holders of civil posts for a variety of reasons. I will henceforth deal with the same. The learned counsel has begun by placing before me a letter of 6.12.1997 (Annexure A-1) by which one of the applicants, namely, Shri Subodh Kumar, was called for interview. I am told that similar letters were issued to all the other applicants from time to time. The aforesaid letter clearly shows that interview was to be held for the post of LT and not for the posts of NGO LT, a designation given to that applicant by the respondents in various papers placed on record by either side. On pages 26-65 are placed copies of roster duties which show that the various applicants have been assigned duties on a regular basis day after day along with the regular employees performing the same duties even though they have been designated as NGO (LT) etc. in these papers. To begin with, the applicants were paid at the rate of Rs.100/- per day. Later, the rate was increased to Rs.150/- per day. For night duty, the rate applied was Rs.200/- per day. The aforesaid rates have been applied admittedly on a uniform basis to all the applicants and again admittedly payments made and received are in the nature of conveyance charges. The applicants have been regularly signing away proforma papers for claiming conveyance charges which show that the applicants have therein accepted their status as volunteers and have also agreed to receive payments from the respondents in the shape of conveyance charges. On page 68 of the OA has been placed a stray paper which shows that Radiographers and the LTs are to be placed in the pay scales of

Rs.5000-9000/- and 4500-7000/- respectively. Admittedly, these are the pay scales applicable to the regularly appointed Radiographers and LTs in the Govt. of Delhi. On page 70 of the OA has been placed a copy of memorandum dated 23.3.2000 issued to one of the applicants, namely, Shri Naveen Kumar calling for his explanation for absence terming his absence as a serious lapse. On page 72 is placed a memorandum dated 31.8.1999 by which again the explanation of one of the applicants, namely, Shri Rajesh Kumar has been called for unauthorized absence from duty. The same memorandum promises to initiate disciplinary action against him in the event of his failure to give a reply within the stipulated period. The aforesaid memorandum also goes on to state in clear terms that at the end of the day action will be taken against him as per rules. On page 73 of the OA, I find a letter dated 1.9.1999 which does administer a warning to the aforesaid Shri Rajesh Kumar, Radiographer (NGO). The office order placed at page 74 and dated 20.9.1997 is in the nature of an order of posting consequent upon one of the applicants, namely, Shri Shiv Singh, NGO LT joining his duties. At this stage of dictation, the learned counsel appearing in support of the OA places before me yet another order passed by the respondents on 10.1.2001 (taken on record) which seeks to transfer Shri Sohan Lal, one of the applicants in the present OAs, from Central Jail No.5 to Jail No.4. The same order contains the names of six other employees who are, according to the learned counsel, regularly appointed employees in the respondents' set up. I hasten to note that, in this particular order, Shri Sohan Lal has not been shown as a NGO. The respondents

have also taken care to issue experience certificates to the applicants and these have also been placed on record at Annexure A-6. In these certificates, I find the applicants have been shown as NGOs. Then, again the certificates issued in recognition of services of the applicants have also been placed on record. These have been issued by the respondents-authority. In the certificates, the applicants have not been shown as NGOs and have been described as LTs etc. Copies of daily attendance rolls have also been placed on record to show that, like regular Govt. servants in the present OAs, they have been attending their duties as LTs etc. all along and continuously. These are common attendance rolls for NGO LTs etc. as well as for regularly appointed LTs etc. Some of the applicants have of course not been shown as NGOs in the attendance rolls. The applicants in the present OAs have, according to the learned counsel, been issued prescribed uniforms also from time to time in accordance with the general order dated 27.11.1996 which is placed on record at page 36-A of one of the OAs dealt with in this order, namely, OA No. 1560/2000.

6. On page 76 is placed a letter dated 21.2.2000 issued by the respondent-authorities which is clearly in the nature of an order dispensing with the services of NGO-Pharmacists and NGO-ward-boys. Such an order can be passed, in my view, only if the NOG-Pharmacists and NGO-ward-boys are regarded as holders of civil posts and are treated as regularly employed in the respondents' set up. The same argument will, in the circumstances of this case, apply to NGO-LTs etc. which the present applicants happen to be.

7. During the course of arguments, the learned counsel appearing for the respondents has repeatedly insisted that what was being paid to the applicants could not be termed as wages and as borne out by the papers only conveyance charges were being reimbursed to them on monthly basis. Not agreeing with this proposition, the learned counsel appearing in support of the OA submits that the uniformity of the rate of payment even though the various applicants came to attend their duties from different places and by traversing different distances abundantly proves that only wages were being paid to the applicants though described by the respondents as conveyance charge. I find myself in agreement with the contention raised by the learned counsel for the applicants in this regard. The respondents must admit that in today's world no one would be found willing to render services of the kind rendered by the applicants without receiving proper wages. At least charity has not been advanced as the sole motive behind the services rendered by them. It is another matter that, as contended by the learned counsel for the applicants, wages paid in the shape of conveyance charges were totally inadequate compared to the payments made to the regularly appointed LTs etc. admittedly for doing identical work.

8. On a careful consideration of the picture revealed in paragraphs 5, 6 and 7, I find that several attributes of Govt. service proper are to be seen in no unmistakable terms in the way the applicants have been dealt with by the respondents time and again. Just to give a few instances, the applicants, on being recruited

through a proper interview, have been assigned duties and responsibilities identical with those shouldered by regular employees, and have in course of time being posted as well as transferred and even reprimanded just like regular Govt. servants. Uniforms meant for regular employees have been issued to them and the services of certain NGOs, like the applicants, dispensed with. They have been paid in the manner of daily wagers and have been given proper designations, even though the magical work NGO has been prefixed to the designations only in order to be able to continue their exploitation in the vain hope that the same will go undetected. In a nutshell, they have been unjustly treated all along as something like a temporary Govt. servant paid on a daily wage basis. What is not in doubt, according to me, is that the arrangements shown, in the preceding paragraphs, to have existed, have nearly succeeded in establishing a master-servant relationship between the respondents on the one hand and the applicants, on the other. In any case, the unfair arrangement aforesaid, violative of Articles 14 & 16 as it is, must be called in question and ended, to be replaced by a just, proper and regular arrangement in the interest of everybody and, therefore, in public interest.

9. On the basis of the totality of facts and circumstances outlined in the preceding paragraphs, which clearly show that the applicants have been dealt with and treated as regular employees in various ways and in different situations except that, with a view to perpetuating their exploitation, the word NGO has been prefixed to their respective designations, the learned

counsel appearing in support of the applicants has sought to advance the plea that the applicants have to be treated on par with regularly appointed Govt. servants, more so, because they happen to fulfil the qualifications laid down for regular appointments to the same posts. The respondents have not produced before me a copy of the relevant recruitment rules which would bring in dispute the aforesaid statement made by the learned counsel for the applicants in regard to the fulfilment of the prescribed qualifications by the applicants in these OAs.

10. The learned counsel appearing in support of the respondents has disputed the aforesaid plea raised by the learned counsel for the applicants by producing before me copy of the judgement delivered by this very Tribunal in OA-1205/2001 decided on 14.5.2001 in addition to the judgement/order of the Division Bench of this Tribunal placed by the respondents at Annexure R-1 followed by the judgement of the High Court in the same case (Annexure R-2). The latter case was decided by the Tribunal on 16.8.2000 in OA-55/2000.

11. I will first take up the order passed by this very Tribunal in OA-1205/2001. I find that in that OA, the applicant had sought her reinstatement with back wages which is different from the relief claimed by the applicants in the present OAs. The aforesaid judgement contains a statement to the effect that the applicant had been found to be rendering volunteer service as a non-Govt. official and further that there was nothing else on record to show that the applicant in that OA

enjoyed any other status. The aforesaid case is, therefore, in my view, distinguished from the present case with regard to the facts and circumstances. In the present OAs, for instance, the applicants have placed before me a series of facts and circumstances which would show that the status of the applicants was at least in practice in no way different from the status of the regularly appointed persons in relation to the performance of duties and responsibilities attached to the post of LTs etc. Moving over now to the judgement of the D.B. aforesaid, I find, after careful consideration, that the same is also distinguished from the present case for reasons more than one. According to the aforesaid judgement, it was admitted in that OA that the applicants were members of a volunteer organisation and the learned counsel for the applicants appearing in that OA had also admitted that they were not appointed as Govt. servants either by the Union Government or by the N.C.T. of Delhi. The aforesaid judgement also contains a finding to the effect that no material has been placed before the Tribunal in support of the claim that the applicants in that OA could be treated as Govt. servants. Further, in that OA, the applicants were, to begin with, working admittedly in a non-Govt. organization, known as 'Ashiana' and had subsequently been brought under the supervision of Govt. authorities. The applicants in the present OAs were never found working in a non-Govt. organisation at any point of time and this is not disputed. The applicants were also in the present OAs interviewed directly by the respondent-authorities. In the circumstances, the learned counsel placing reliance on

the aforesaid judgement of the D.B. will also not assist the respondents in any way.

12. The learned counsel for the respondents has further gone on to argue, even at the expense of repetition, that the services of the applicant were utilized in the Central Jail only in their capacity as NGOs and, for each visit the applicants used to make to the hospital, they were paid only conveyance charges and no other charges. He further argues that the applicants were not appointed against any posts and they were instead volunteers pure and simple, who received conveyance charges only and no other payments. He contends that the only purpose behind interviewing the applicants was to check their antecedents and by the factual circumstance that the applicants were called for interview, no other inference could be drawn. According to him, regular appointment to the posts of LT etc. is made by DHS, Govt. of NCT of Delhi.

13. The learned counsel appearing for the applicants has next proceeded to place reliance, inter alia, on the following judgements rendered by the various courts in support of his contention that the applicants are entitled to receive payments for the service rendered by them on par with the emoluments received by the regularly appointed LTs etc. and are also entitled to be regarded as holders of civil posts and as Government servants.

i) Food Corporation of India Vs. Shyamal K. Chatterjee and Ors. decided by the Hon'ble Supreme Court on 28.9.2000 and reported in 2000 AIR SCW 3472.

ii) Hindustan Machine Tools & Ors. Vs. M. Rangareddy & Ors. decided by the Hon'ble Supreme Court on 29.9.2000 and reported in 2000 AIR SCW 3586.

iii) Dhirendra Chamoli & Anr. Vs. State of U.P., reported as (1986) 1 SCC 637 and decided on 5.8.1985.

iv) Samir Kumar Mukherjee & Ors. Vs. General Manager, Eastern Rly. & Ors., reported as ATR 1986 (2) CAT 7 and decided on 25.3.1986.

14. After a perusal of the aforesaid judgements, I find that the common ratio brought out in all these would clearly support the claim of the applicants that they deserve to be paid for the services rendered by them at the same rate at which the regularly appointed LTs etc. are paid (by placing them in regular pay scales). Equal pay for equal work being the burden of the song in the aforesaid cases, the Courts had derived support from Articles 14 & 16 of the Constitution providing for equality of treatment, inter alia, in matters concerning employment and payment of remuneration.

15. For all the reasons brought out in the preceding paragraphs, I find considerable merit in the OAs

which are allowed by setting aside the various pleas raised by the respondents. I also note that considering that the applicants have been working as NGO-LTs etc. continuously for a number of years, there is the obvious need on the part of the respondents to create several additional posts of NGO-LTs etc. to maintain and even improve upon the efficiency of their organisation.

16. I am now left with the consideration of the relief sought by the applicants in these OAs. I find that the relief sought is for a direction to the respondents to prepare a scheme within a given time frame whereby regular pay scales are made available to the applicants having regard to their qualifications etc. The further relief sought is grant of benefit to the applicants, after the scheme has been framed and the applicants have been regularly employed thereunder, with effect from the respective dates from which they have been working as NGO-LTs etc. After a careful consideration of the matter and in view of what has been held by me in the preceding paragraphs, I am inclined to grant the aforesaid relief. The respondents are accordingly directed carefully to assess the additional number of posts of LTs etc. required to carry on the work of their organisation efficiently and thereafter to frame a proper scheme within a period of three months from the date of receipt of a copy of this order for absorption/regular employment of the applicants on posts, the duties and responsibilities of which they have been discharging over the years, keeping in view the qualifications possessed and the experience gained by them. Since most of the applicants,

having already served for four to five years or even more, are likely to have crossed the maximum age of recruitment to the aforesaid posts, the aforesaid scheme to be framed by the respondents will contain a relaxation clause to enable the applicants to be considered for regular appointment as and when the scheme is framed/implemented. If the applicants are found fit to be regularly appointed in accordance with the aforesaid scheme, the respondents will make payments of arrears to them in respect of the past services rendered in accordance with ~~the~~ regular pay scales, needless to say, subject to the provisions of the law of limitation.

17. The OAs are disposed of in the aforestated terms. There shall be no order as to costs.

S.A.T. Rizvi

(S.A.T. RIZVI)
MEMBER (A)

/sunil/