

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO. 1820/2000
MA 2187/2000
WITH
O.A. NO. 1821/2000
MA 2788/2000

7

New Delhi, this the 19th day of March, 2001

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

OA NO. 1820/2000

1. Sh. Brij Lal, S/o Sh. Bahor Ram, Aged about 48 years R/o 1/4, Sch 'A' President's Estate, New Delhi
2. Shri Minhaj Ali, S/o Sh. Mehraj Ali, Aged about 43 years, R/o 57, Teen Murti Police Compound, New Delhi
3. Sh. Ifran Ali, S/o Sh. Mushraj Ali, Aged about 49 years, R/o Type-II/76, Sch 'B', President's Estate, New Delhi

(All the applicants are working as Senior Cooks in Household Establishment of the President's Secretariat, Rashtrapati Bhawan, New Delhi)

..... APPLICANTS

(By Shri S.S. Tiwari and Shri T.D. Yadav, Advocates)

VERSUS

Union of India through

1. Secretary to the President, Rashtrapati Bhawan, New Delhi
2. Under Secretary (Estt), President's Secretariat, Rashtrapati Bhawan, New Delhi
3. Sh. Hari Ram, working as Head Cook in the Household Establishment of the President's Secretariat, Rashtrapati Bhawan, New Delhi

..... RESPONDENTS

(By Shri N.S. Mehta, Sr. Counsel with
Shri D.S. Jagotra, Advocate)

OA 1821/2000 :

1. Shri Hirendar Lal Barua, S/o Sh. K.R. Barua, Aged about 57 years, R/o Type-II/50, Sch 'B' President's Estate, New Delhi
2. Sh. Ajeet Barua, S/o Sh. Devender Barua, Aged about 53 years, R/o Type-II/17, Sch 'B', President's Estate, New Delhi

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3. Shri K. Hanmanthu, S/o Shri K. Sanjananna, Aged about 48 years, R/o Type-II/70, Sch 'B', President's Estate, New Delhi

(All the applicants are working as Head Cook in Household Establishment of the President's Secretariat, Rashtrapati Bhawan, New Delhi)

..... APPLICANTS

(By Shri S.S. Tiwari and Shri T.D. Yadav, Advocates)

VERSUS

Union of India through

1. Secretary to the President, Rashtrapati Bhawan, New Delhi
2. Under Secretary (Estt), President's Secretariat, Rashtrapati Bhawan, New Delhi
3. Sh. R. Rajagopal, working as Chief Cook in the Household Establishment of the President's Secretariat, Rashtrapati Bhawan, New Delhi

..... RESPONDENTS

(By Shri N.S. Mehta, Sr. Counsel with Shri D.S. Jagotra, Advocates)

O R D E R (ORAL)

Shri Govindan S. Tampi, Member (A):

These two OAs i.e. 1820/2000 and 1821/2000 are being disposed of by this common order as the issues raised are the same.

2. MA No.2187/2000 in OA 1820/2000 and MA No. 2788/2000 in OA 1821/2000 for joining together of the applicants are granted.

3. In OA No. 1820/2000 the order under challenge is No. 36054/1/97-Estt dated 4th May, 2000 issued by the President's Secretariat directing the absorption of Shri Hari Ram, Head Cook, from Vice

President's Secretariat, New Delhi as Head Cook in the Household Establishment of the President's Secretariat, New Delhi, with effect from 23.3.2000. In OA No. 1821/2000 the challenge is directed against the order No. A-36054/1/97-Estt dated 26.4.2000 similarly directing the absorption of Shri R. Rajagopal, Chief Cook from Vice President's Secretariat, New Delhi, as Chief Cook in the Household Establishment of the President's Secretariat w.e.f. 27.3.2000.

4. Heard the counsel for the applicant and the respondents.

5. Shri S.S. Tiwari, the learned counsel for the applicant indicates that in the first case, the three applicants, who are Sr. Cooks in the Household Establishment of the President's Secretariat, are aggrieved by the order of absorption of Shri Hari Ram, as the Head Cook, while in the second case the applicants who are working as Head Cooks are aggrieved by the absorption of Shri R. Rajagopal as the Chief Cook. According to the learned counsel, the absorption of these two individuals as Head Cook and Chief Cook respectively have been made de hors the procedures for appointment as detailed in the President's Household Establishment Qualifications & Procedure for Recruitment instructions. In terms of these instructions, the posts of Chief Cooks and Head Cooks can only be filled by way of promotion from Head Cooks and Senior Cooks on seniority-cum-fitness basis. Against these definite prescriptions, the President's Secretariat has gone ahead and passed orders

(10)

absorbing Shri Hari Ram and Shri R. Rajagopal working earlier in the Vice President's Establishment as Head Cook and Chief Cook respectively to the ultimate detriment and prejudice to the applicants, who should have been considered for the elevation. This is not something which could have been done when specific recruitment procedure existed. The appointing authorities should have abided by the procedure and there was no reason, whatsoever, for deviating from the same and passing orders absorbing the private respondents in the concerned cases. Shri Tiwari also contends that they would not have raised any protest if the appointments made by the Household Establishment were purely on temporary as well as co-terminus basis, which would not have affected their rights. This however, was not the case as the individuals who have originally been brought on co-terminus basis have been absorbed, causing prejudice to their cause. The learned counsel also seeks to rely upon the decision of the Hon'ble Apex Court in the case Home Secretary, U.T. of Chandigarh v. Darshjit Singh Grewal reported as JT 1993 (4) S.C. 387, which, according to him squarely covered the case of the applicants. In the circumstances, Tribunal's intervention was called for to undo the injustice done to the applicants and redress their just grievances.

6. Contesting the pleas raised on behalf of the applicant, Shri N.S. Mehta, learned senior counsel appearing for the respondents along with Shri D.S. Jagotra, states that the contention of the applicant that the Recruitment Rules ~~do~~ not permit direct recruitment of

(5)

Head Cook, but only permit^h promotion from Sr. Cooks/Cooks/Head Cooks mates on seniority-cum-fitness basis (OA No.1820/2000) and that the Rules permit only promotions from Head Cooks/Sr. Cooks for the post of Chief Cook (OA No.1821/2000) was wrong and mis-conceived. In fact, in terms of the guide-lines governing the Household Establishment of the President, the number and categories of staff can be varied according to the requirements of the situation and as the President may direct from time to time. Also these guide-lines can be revised as and when felt necessary. It is added that the President's Household is a unique institution primarily meant for the service and convenience of the President. It is governed by orders issued from time to time keeping in view the requirements and proper functioning of the President's Household Establishment. He adds

"In the present case, as per requirements of the President, a new additional post of Head Cook was created and respondent No.3, who was found to be having required exceptional expertise in that trade was appointed against it. Initially he was taken on deputation from the Vice President's Secretariat where he was working as Head Cook drawing the same scale. His absorption was made after creating an additional new temporary post of Head Cook. The three posts of Head Cooks which were available to the concerned staff as promotional avenue continue to be available to the Applicants as and when a vacancy arises in that post. Thus while guidelines governing the Household Establishment can be amended/revised as and when found necessary keeping in view the need of the time, the interest of the existing staff have been duly protected and there is absolutely no grievance on that account by keeping the three existing posts of Head Cooks intact and available to them for their promotion. Amongst the existing head cooks, the newly absorbed respondent has been placed at the bottom in seniority, i.e. junior to the existing Head Cooks." (Counter of OA No.1820/2000)".

"In the present case, as per requirements of the President, a new additional post of Chief Cook was created and respondent No.3, having required exceptional expertise in that trade was appointed

(6)

against it. Initially he was taken on deputation from the Vice President's Secretariat where he was already working as Chief Cook in the same scale. He was absorbed after creating an additional new temporary post of Chief Cook. Therefore, the existing post of Chief Cook which was already available as promotional avenue for Head Cooks continues to be available to the applicants as and when a vacancy arises. Thus while the guide-lines governing the Household Establishment are flexible and can be amended/revised as and when found necessary, the interests of the existing staff have been duly protected and there is absolutely no ground for grievance on that account. Therefore, the present application is devoid of any merit and is not maintainable and it deserves to be dismissed with costs in favour of respondents." (Counter of OA No.1821/2000)".

7. Shri Mehta, the learned senior counsel, further avers that the impugned appointments having made only against additional and temporary posts of Head Cooks and Sr. Cooks created, ~~and~~ the same did not cause any prejudice or injury to the interests of the applicants in any manner. He invites our attention, in this connection, to the Memorandum issued by the Establishment Section of the President's Secretariat vide No.F.13/Estt/6 (Pt X) dated 23 August, 1988, which refers to the review carried out of the job requirements in the Household, Garage and Gardens Sections in the Rashtrapati Bhavan. These instructions issued in supersession of all earlier instructions clarify that there are no established posts in the Household and the number and categories of staff can be varied according to the requirements of the situation and as the President may direct from time to time. It is further indicted that these guide-lines (regulations) may be revised as necessary. According to the learned senior counsel, it was, therefore, well within *his competence* the President's Secretariat to create additional posts on temporary basis and post against them, individuals who in

(3)

the opinion of the President, met the requirement at the relevant time. This cannot be interfered with. In this context the learned counsel also sought to rely on the decision of the Hon'ble Apex Court in the case of Champaklal v. UNOI reported at AIR (1964) SC 1854 - 1860 as follows:-

"..... It would be absurd to say that if the service of one temporary servant is terminated on the ground of unsatisfactory conduct the services of all similar employees must also be terminated along with him, irrespective of what their conduct is.A question of discrimination may arise in a case of retrenchment on account of abolition of one of several temporary posts of the same kind in one office but can in our opinion never arise in the case of dispensing with the services of a particular temporary employee on account of his conduct being unsatisfactory. We therefore reject the contention that the appellant was denied the protection of Art. 16 and was treated in a discriminatory manner..."

and also that in the case J.R. Raghupathy v. State of A.P. reported at (1998) 4 SCC 364 at 378 para 18 -

"18. Broadly speaking, the contention on behalf of the State Government is that relief under Article 226 of the Constitution is not available to enforce administrative rules, regulations or instructions which have no statutory force, in the absence of exceptional circumstances. It is well settled that mandamus does not lie to enforce departmental manuals or instructions not having any statutory force, which do not give rise to any legal right in favour of the petitioner. The law on the subject is succinctly stated in Durga Das Basu's Administrative Law, 2nd edn. at p. 144 :

Administrative instructions, rules or manuals which have no statutory force, are not enforceable in a court of law. Though for breach of such instructions, the public servant may be held liable by the State and disciplinary action may be taken against him, a member of the public who is aggrieved by the breach of such instructions cannot seek any remedy in the courts. The reason is, that not having the force of law, they cannot confer any legal right upon anybody, and cannot, therefore, be enforced even by writs under Article 226."

(8)

8. Keeping the above in mind the learned senior counsel argues that the administrative instructions of the above category are temporary in nature, liable to be revised and adopted as required and found necessary by the President from time to time and no action lies against the President's Establishment for enforcing the ^{conditions herein} ~~contentions~~ as sought to be done by the applicants as the power to revise ^{the guidelines} and act accordingly lay with the said Establishment. In the above circumstances and also on account of the fact that additional vacancies have been created only temporarily and the respondents 3 in both the OAs having ^{been} adjusted as Head Cook and Chief Cook respectively as a matter of policy, without infringing on the rights of any of the existing staff, no cause of action arose for the applicants. The applications were, therefore clearly devoid of any merit and should be rejected, argues Shri Mehta.

9. We have carefully considered the pleadings and the rival contentions. We find that the Office Memorandum issued by the Establishment Section of the President's Secretariat under No. F.13/Estt/6 (Pt X) dated 23rd August, 1988 squarely covers the situation. The same is abstracted fully as below:

"A review has been carried out of the current job requirements in the House hold, Garage and Gardens Sections in the Rashtrapati Bhavan. The nature of duties which the staff of various categories is required to perform the quality of service and levels of performance expected and the qualifications and experience which the persons should possess to match these; have been examined. Patterns prevailing in other public institutions where similar tasks are to be performed have been studied. Keeping in view the need for avoiding overlap and multiplicity and yet introducing greater professionalism and versatility, and in order to ensure greater

efficiency in performance, guide-lines (or regulations) have been framed regarding the qualifications and experience for recruitment of staff, the procedure for selection and the job description of various categories of personnel. A set of these guide-lines (regulations) is enclosed for guidance. These supersede earlier instructions on the subject.

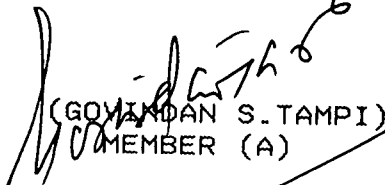
It is clarified that there are no established posts in the House hold and the number and categories of staff can be varied according to requirements of the situation and as the President may direct from time to time. Also these guide-lines (regulations) may be revised as necessary."

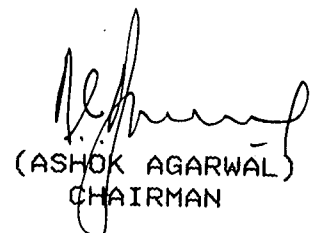
10. It is clearly evident that these instructions have been issued from the President's Establishment to deal with the circumstances as and when they arise and these cannot be assailed. The action taken by the respondents has been done invoking sanction from the above, and correctly too. What has happened in these two cases is the creation of two posts, one of Head Cook and the other of Chief Cook and absorption against the said posts of the two respondents who were originally working in the same capacity in the Vice President's Establishment. These two functionaries were earlier brought on deputation, but subsequent to the creation of the temporary additional posts, they have been absorbed in the President's Secretariat, modifying the earlier order of deputation on co-terminus basis under which they were brought. The impugned orders state that these posts are temporary in nature and to be in force until further orders. It is also clear that the posts being additional to what were existing in the President's Secretariat, the absorption of the respondents has not at all come in the way of the promotion, which the applicants were entitled to get earlier. Therefore, they cannot take the plea that their rights have been infringed or that their promotional

(16)

avenues have been blocked. In the circumstances, we do not find that any prejudice or injury has been caused to the applicants' interest, as what has been done is strictly in accordance with the powers vested in the competent authority. In the circumstances of the case, while exercising our judicial discretion, we also hold that it is not for us to arrogate to ourselves the role to advise the Head of the state, as to what he should do to administer his own Household Establishment for which he alone is the best judge. It clearly is not our domain and we ~~ab~~ not inclined to transgress into turfs which are not ours.

11. In view of the above, we hold that the two applications are totally devoid of any merits. We accordingly dismiss them. However, in the circumstances of the case we are ordering no costs.


(GOVINDAN S. TAMPI)
MEMBER (A)


(ASHOK AGARWAL)
CHAIRMAN

(pkr)