

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2460/2000

New Delhi, this day the 91st September, 2001

(16)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri S.A.T. Rizvi, Member (Admn)

1. Shri Rich Pal Singh S/O Sh. Mohan Lal,
R/o Village & PO : Fatehpur Beri,
Mehrauli, New Delhi
2. Gulab Singh S/o Sh. Prem Singh,
R/O H.No.91, Har Saroop Colony,
Fatehpur Beri, New Delhi
3. Braham Dutt Tyagi S/o Sh. Bishamber Dayal
Tyagi,
R/O H. No. 38, Village Chhatterpur,
Mehrauli, New Delhi ... Applicants
(By Advocate : Shri Raj Singh)

Versus

1. Govt. of N.C.T. of Delhi
Through its Chief Secretary,
5, Sham Nath Marg, Delhi
2. Medical Superintendent,
L.N.J.P. Hospital,
Delhi ... Respondents
(By Advocate : Shri Ajesh Luthra)

O R D E R

BY SHRI S.A.T. RIZVI, MEMBER (A) :

On being declared surplus in the Delhi State
Mineral Development Corporation (DSMDC), the
applicants, 3 in number, have been absorbed/redeployed
under the Government of NCT of Delhi as group IV/LDC
and have been posted/appointed in the LNJPN Hospital
w.e.f. 4.8.1994 in each case. The relevant orders
placed on record are dated 1.6.1994 (Annexure-3) and
dated 17.8.1994 (Annexure-5). By respondents' office
order dated 17.11.1994 (Annexure-9) the monthly pay of

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each of the applicants has been fixed at the stage of Rs.1600/- in the pay scale of Rs.1200-30-1560-EB-40-2040 w.e.f. 4.8.1994 with D.N.I. falling on 1.5.1995. The applicants were accordingly drawing salary and allowances in terms of the aforesaid order when by an order passed on 6.9.2000 the respondents have re-fixed the pay drawn by them as on 4.8.1994 by placing each of them at the stage of Rs.1640/- (pre-revised). The aforesaid orders were to take effect from 1.9.2000 and recovery of over-payments on account of inadmissible increments awarded to them was to be made in six monthly instalments from the regular pay bills starting with the month of September 2000 onward. Insofar as the grant of periodical increment is concerned, the aforesaid order further provided that the same will be regulated henceforth in accordance with the DOP&T's OM dated 29.9.1992. The aforesaid order was preceded by respondents' Memorandum dated 5.9.2000 which highlighted the fact that the applicants had not cleared the typing test and stressed upon all concerned, including the applicants, to make best possible efforts to clear the typing test going to be held on 31.12.2000. Aggrieved by the aforesaid Order and the Office Memorandum respectively dated 6.9.2000 and 5.9.2000, the applicants filed representations before the respondents on 7.9.2000 and 8.9.2000. However, before the said representations could be disposed of, the applicants, apprehending large scale recoveries from their monthly salary bills, have approached this Tribunal by filing the present OA praying that the aforesaid Order and the Office

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Memorandum respectively be quashed and set aside and a declaration made to the effect that the applicants cannot be subjected to typing test. They also sought interim relief which was granted by this Tribunal on 27.11.2000. The said ad-interim order continues to date.

2. We have heard the learned counsel on either side and have perused the material placed on record.

3. Consistent with the provisions of the CCS (Re-deployment of Surplus Staff) Rules, 1990, the respondents issued orders dated 1.6.1994 (Annexure-3) for the re-deployment/absorption of the applicants and several other persons. That Order again in keeping with the provisions of the aforesaid CCS (Re-deployment of Surplus Staff) Rules, 1990 stipulated, *inter alia*, as follows:

"1. xxxxxx

2. The surplus staff sponsored by this Govt. against the vacancies shall not be subject to any tests or interviews for the purpose of appointment.

3. xxxxxx

4. xxxxxx

5. In case the absorbed staff has been appointed on a lower pay scale than that he was holding at the time of being declared surplus shall be allowed to carry his current pay scale to the re-deployed post as personal to him.

6. A surplus employee re-deployed in the Govt. is treated to have been transferred in public interest, and thus his services remain continuous and he will normally draw his next

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increments as admissible to him under the rules. (emphasis supplied)

7. xxxxxx

8. xxxxxx "

The above mentioned points/conditions have been reproduced in the respondents' Order dated 17.8.1994 (A-5) by which they have been appointed/re-deployed in the LNJP Hospital, New Delhi.

4. The learned counsel appearing on behalf of the applicants has vehemently argued that in accordance with the condition No.2 reproduced above, the applicants could not be subjected to typing test. Similarly, according to him, the applicants are, in terms of the condition No.6 reproduced above, to be treated as transferred to the Govt. of NCT of Delhi/ LNJP Hospital in public interest and that being so as per the same condition their services would remain continuous and they will be entitled to draw their next increments without any problem. Furthermore, according to him, the respondents have incorrectly placed reliance on DOP&T's OM dated 29.9.1992 (A-8) for the purpose of re-fixing the applicants' pay in the manner done by means of the impugned order dated 6.9.2000. The learned counsel appearing on behalf of the respondents has disputed the claim made by the applicants and has submitted that the action taken by the respondents is totally in accord with the relevant instructions.

5. We have considered the rival contentions raised on behalf of the applicants and the respondents.

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The condition No.2 reproduced in paragraph 3 above, in our view, provides that at the time of appointment in the Govt. of NCT of Delhi/LNJPN Hospital the applicants were not to be tested or interviewed. This is what has been done by the respondents. All the three applicants have been appointed as LDCs in the LNJPN Hospital vide respondents' Order dated 17.8.1994 (A-5) without being interviewed or tested in any manner. The aforesaid condition, according to us, does not imply that even after the applicants have been appointed, the normal rules applicable to LDCs will not be applied to them. The condition No.6 clearly provides that the applicants will draw their next increments as admissible to them under the rules. The reference to the "rules" herein is, in our view, to the rules which are normally applied to LDCs unless modified by statutory rules or administrative/executive instructions. The question raised here has been answered in clear terms by DOP&T's OM dated 29.9.1992 wherein the following stipulation has been made in respect of surplus employees:

"(9) Surplus Employees:

In respect of surplus employees re-deployed as Lower Division Clerks the provision for stoppage of increment for not passing the typing test may be enforced from the date of next but one increment after re-deployment."

The aforesaid provision makes it abundantly clear that the applicants who are surplus/re-deployed employees now working as LDCs are required to clear the typing test and in the event of their failure to do so they

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are to be subjected to stoppage of increments. One increment is, of course, to be given to them after redeployment. No further increments can be given unless the applicants clear the typing test.

6. We have already noted that the pay of each of the applicants has been fixed at the stage of Rs.1600/- in the pay scale of Rs.1200-2040 at the time of their re-deployment/appointment. They are, in accordance with the aforesaid stipulation made in the DOP&T's, OM dated 29.9.1992, entitled to one increment in the same pay scale of Rs.1200-2040/-. On that increment being given, the pay of each of the applicant must go up to Rs.1640/-. Thus, keeping in view the aforesaid various provisions made in the relevant rules, we do not find any mistake in the order passed by the respondents on 6.9.2000 (Annexure A-1) which has been impugned in the present OA. Similarly, no mistake has been committed by them by issuing Memorandum dated 5.9.2000 (A-8). Incidentally, the grant of the aforesaid pay scale which is higher than the pay scale of Rs.900-1500/- given to LDCs is wholly in accord with the condition No.5 reproduced in paragraph 3 above.

7. The learned counsel appearing on behalf of the applicant had occasion to submit that the DOP&T's aforesaid OM dated 29.9.1992 is in the nature of routine administrative instructions and the same cannot over ride the provisions made in the CCS (Re-deployment of Surplus Staff) Rules, 1990 and, therefore, stoppage of increments due to the applicants on the ground of

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not clearing the typing test, a condition imposed by the OM dated 29.9.1992, is illegal. We have considered this matter and find no force in the aforesaid plea. According to us, the Government (DOP&T) possess the right to issue administrative/ executive instructions to fill in the gaps or to supplement the existing rules provided the instructions so issued are not inconsistent or in conflict with the provisions made in the rules. We have not been able to discover any conflict between the provisions made in the aforesaid OM dated 29.9.1992 and the CCS (Re-deployment of Surplus Staff) Rules, 1990. Reliance placed on the aforesaid OM is thus in order.

8. For all the reasons mentioned in the preceding paragraphs, the OA is found to be devoid of merit. The same is accordingly dismissed. There shall be no order as to costs.

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

Lakshmi Swaminathan
(MRS. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (J)

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