

(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
PRINCIPAL BENCH
NEW DELHI

OA No.2472/2000

This the 8th day of June, 2001

HON'BLE MRS. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (J)
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

1. Shri Jatashankar Mishra S/o Sh. Girija,
House No.504, Harsaroop Colony,
New Delhi
2. Shri Vijay Bahadur Singh, S/o Sh. Faujdar
Singh, R/o H.No. 209, Harsaroop
Colony, New Delhi
3. Sh. Arun Kumar Mishra, S/o Sh. Kailas Mishra,
H.No.S-163/227 Balbir Nagar,
Bhatti Mines, New Delhi
4. Sh. Vinod Kumar Jha, S/o Sh. M.K. Jha,
R/o H.No. 28, Chhattarpur, New Delhi
5. Sh. Shiv Shankar S/o Sh. Ratneshwar Thakur,
R/o S-163/690-D, Balbir Nagar,
Bhatti Mines, New Delhi
6. Sh. Nemdhari Prasad S/o Sh. Mahadeo Mehto,
R/o Balbir Nagar, Bhatti Mines,
New Delhi
7. Sh. Rajinder Singh, S/o Sh. Srichand,
R/o 364 Asola Village, Fatehpur Beri,
New Delhi

..... Petitioners
(By Advocate: Shri S.C. Rana)

VERSUS

1. Secretary, (Services)
Government of N.C.T.
5 Sham Nath Marg, Delhi
 2. General Manager
Delhi State Mineral Development Corpn.,
Bombay Life Building, N. Block,
Connaught Place,
New Delhi
- Respondents
(By Advocate: Shri Keshev Kaushik)

O R D E R

By S.A.T. RIZVI, MEMBER (A) :

All the seven applicants in the present OA, who
are erstwhile employees of the Delhi State Mineral
Development Corporation Ltd (for short DSMDC) and who

2

978

are currently working as Sweepers, Peons and Malis in the various Departments of the Government of N.C.T. of Delhi, are aggrieved by the respondents' action in not appointing them to posts in keeping with their qualifications and work experience and also in terms of the directions given by the Hon'ble Supreme Court on 15.12.1989 while disposing of the Writ Petitions No.100 of 1988 and No.1078 of 1988 in Bhagwati Prasad vs. DSMDC and Smt. Bhagwati Devi & Ors. vs. DSMDC respectively. Accordingly the prayer made is for a direction to Secretary (Services), Government of NCT of Delhi, respondent NO.1 herein, to consider the applicants' case for promotion and to promote them in accordance with the rules and the aforesaid directions of the Supreme Court having regard to the length of service of the applicants in Class IV and the educational qualifications possessed by them.

2. The respondents have sought to contest the OA on the ground that this Tribunal has no jurisdiction to entertain the OA inasmuch as the matter in issue has already been decided by the Supreme Court by its order of 7.5.1991. The respondents have further contended that the present OA is barred by limitation for the reason that all the applicants were parties in the aforesaid Writ Petitions No.100 of 1988 and No.1078 of 1988 decided by the Supreme Court on 15.12.1989 and finally disposed of by the same Court by its aforesaid order of 7.5.1991. They have also denied that clerical jobs had been assigned to the applicants at any stage, and, due to this, they could not be considered for

2

appointment or for promotion to clerical jobs. The respondents also hold the applicants guilty of suppressing material facts by not referring to the Supreme Court's order dated 7.5.1991 and the report of the Labour Commissioner then considered by the said Court.

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

4. Briefly stated the facts of the case are the following:-

5. The applicants were appointed to work in different capacities on casual basis in the DSMDC between 1983 and 1986. Having regard to their educational qualifications various duties were assigned to them including the duties of a clerical nature. Qualification-wise, the first three applicants are graduates, the applicant No.4 has passed intermediate examination and the remaining three applicants are matriculates. Consequent upon the decision of the Govt. of NCT of Delhi to wind up the DSMDC in 1994, all the employees of the said Corporation (including the applicants) were rendered/declared surplus. Those found surplus were re-deployed/absorbed in the Govt. of NCT of Delhi in accordance with the respondents' order dated 9.5.1995 (Annexure P-3).

2/

6. While still working in the DSMDC, i.e., before their being declared surplus and redeployed as above, the applicants, together with a large number of others, had approached the Supreme Court through Writ Petitions referred to in 1988, seeking inter alia, the benefit of regularisation. The petitioners aforesaid, who, as stated, were then daily rated casual workers had raised several disputed questions of fact in the aforesaid Writ Petitions. Accordingly the Supreme Court by its order dated 27.1.1989 directed the Industrial Tribunal at Delhi (for short Tribunal) to examine the contentions raised by the aforesaid petitioners. In its aforesaid order the Supreme Court had observed that the main relief claimed by the petitioners was that they should be given equal pay and similar service conditions as were available to those who were appointed on regular basis. The Court had, by the aforesaid order, called upon the Tribunal to make a report on whether there was any basis in the contention raised by the petitioners that they were entitled to a particular type of work. In short, the Tribunal was required by the Court to report on the tenability of the claims advanced by the petitioners in that regard. The Tribunal submitted its report on 15.9.1989.

7. In its report, the Tribunal had mentioned that the case of the workmen (158 in number) was that they were employed as casual labour on daily wages in the mines operated by the DSMDC for the last several years, but they were paid wages much less than the wages paid to regular employees of the Corporation

despite the fact that the duties performed by the aforesaid workmen were similar to the duties performed by the regular employees. The Tribunal referred to charges of unfair labour practice followed by the Corporation and found that juniors were given regular appointments etc. Based on the report submitted by the aforesaid Tribunal, the Supreme Court, by holding as follows, directed that 40 of the senior most workmen should be regularised with immediate effect and the remaining 118 petitioners should be regularised in a phased manner before April 1, 1991 and promoted to the next higher post according to the Standing Orders.

" The main controversy centres round the question whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. The Indisputable facts are that the petitioners were appointed between the period 1983 and 1986 and ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the persons to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial break in service for short period/periods created by the respondents, in the circumstances, would be sufficient for confirmation. If there is a gap of more than three months between the period of termination and re-appointment that period may be excluded in the computation of the three years period. Since the petitioners before us satisfy the requirement of three years' service as calculated above we direct that 40 of the senior most workmen should be regularised with immediate effect and the remaining 118

2

(6)

petitioners should be regularised in a phased manner, before April 1, 1991 and promoted to the next higher post according to the standing orders. All the petitioners are entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharge similar duties, and are entitled to the scale of pay and all allowances revised from time to time for the said posts. We further direct that 16 of the petitioners who are ousted from the service pending the writ petition should be reinstated immediately. Suitable promotional avenues should be created and the respondent should consider the eligible candidates for being promoted to such posts."

8. The aforesaid orders of the Supreme Court dated 15.12.89 were complied with and the process of regularising the services of the petitioners, including the applicants, was set in motion by the DSMDC. However, at about the same time, on the plea of non-compliance of the aforesaid judgement insofar as the petitioners appointment/regularisation as Clerks was concerned, a Contempt Petition, being CP No.74/1990 was filed in WP No. 100 of 1988 by 50 petitioners. Having regard to the need for detailed investigation in the matter, the Supreme Court by its order dated 16.7.1990 directed the Labour Commissioner of Delhi to submit a report. The relevant portion of the Supreme Court's aforesaid order reads as under:

".....The other aspect is the allegation of the petitioners that 25 of the persons to be benefited by the order were working as clerks and have been given appointment as sweepers and similarly 25 others have been chosen to be appointed as Beldars. It is alleged that this is in contravention of the Court's direction. The employer has filed an affidavit denying the allegation. This cannot be determined unless evidence is taken. We direct the Labour Commissioner, Delhi to look into this allegation and make a report to this Court within two months hence. He is free to receive evidence both oral and documentary as the parties choose to place before him. Both the parties are directed to appear before him

2

(7) 13

on 20th July, 1990 to take his direction. A
copy of....."

A comprehensive report of the Labour Commissioner became available to the Supreme Court on 29.1.1991 and in consequence thereof the Court passed an order dated 7.5.1991 in the following terms:

"On the basis of the report of the Labour Commissioner Satish Kumar Sharma and Ravinder Kumar should be assigned the job of clerks. Counsel for the respondent agrees that on the basis of the report that conclusion must be reached.

We accordingly call upon the respondent to employ them as clerks with effect from 15th May, 1991. The report is accepted in regard to rest of the aspects this matter is taken as concluded in this court. Registry shall not accept any application in this matter by way of miscellaneous or interlocutory application. Parties agree that the description of Bhim Sen is misleading and he should be Bhim Singh S/o Jharia. With the consent of the respondent the name is directed to be corrected."

9. From the above, it would seem that the matter ended with only two petitioners in the CP being found fit for appointment as Clerks in the DSMDC, ~~and~~ the rest of them together with the other petitioners in the aforesaid WPs being regularised in other relevant capacities in the Corporation. Nothing more was needed to be done by the Corporation in compliance of SC's aforesaid order except that, following regularisation, the petitioners in the two WPs aforesaid were to be considered for promotion in due course in accordance with the Standing Orders during the period of their service in the DSMDC. It seems to us that before the petitioners could be so considered, the Corporation itself was wound up.

2

18

The correct factual position in this regard has however not been placed before us. Clearly nevertheless the Govt. of NCT of New Delhi was in no way obliged to take notice of the aforesaid orders of the Supreme Court in relation to the redeployment of DSMDC's surplus employees and the promotion etc. of the employees so redeployed/absorbed in the Govt.

10. After a careful consideration of the aforesaid factual position we note that the applicants were industrial workers working in the mines operated by the DSMDC and it is on this basis that they had approached the Supreme Court with several others which in turn referred the matter for enquiry and report to the Industrial Tribunal and later to the Labour Commissioner. Thus, the judgements rendered by the Supreme Court were to be complied with by the DSMDC. Accordingly, the applicants were regularised by the said Corporation as Farash-cum-Sweeper and Beldar by office orders placed on record at Annexure P-2 (collectively). We also note that insofar as their claim for appointment as Clerk is concerned, out of 50 workmen who had filed the aforesaid Contempt Petition, only two, namely, S/Shri Satish Kumar Sharma and Ravinder Kumar were found by the Labour Commissioner to be eligible for appointment to the post of Clerk, and the Supreme Court had concluded the matter in the same terms by its order dated 7.5.1991.

2

11. We have also seen that of all the petitioners before the Supreme Court only 50 workmen (petitioners in Writ Petition No. 100 of 1988) had agitated the matter before the Court in a Contempt Petition. The rest did not do so. The aforesaid 50 included S/Shri J.S. Mishra and Rajender Singh, both applicants in the present O.A. The Labour Commissioner who had examined the claims preferred by the aforesaid two applicants did not find their respective claims tenable and for the same reason their names did not figure in the order dated 7.5.1991 passed by the Supreme Court. The remaining 5 applicants have refrained from approaching the supreme Court in the manner S/Shri J.S. Mishra and Rajinder Singh had done. Thus, the Labour commissioner / Supreme Court could not pronounce on the tenability of their respective claims for appointment as Clerks in the DSMDC.

12. The learned counsel appearing on behalf of the applicants has indirectly advanced the plea that the Tribunal should proceed to give its verdict on the tenability of the respective claims of the remaining 5 applicants. For this purpose he has placed reliance on the order dated 15.12.1989 passed by the Supreme Court, the relevant portion of which has been reproduced on paragraph 7 above.

13. The aforesaid plea, we find, cannot be accepted for reasons more than one. Firstly, the matter requires detailed examination including collection of evidence, making of enquiry etc. in

2

the same manner in which such an enquiry was made by the Labour Commissioner at the instance of the Supreme Court. Furthermore, since the DSMDC has already been wound up, it will serve little purpose to have recourse to such a comprehensive enquiry at this belated stage. At the same time and more importantly this Tribunal will lack jurisdiction to move in the matter simply because qua employees of the DSMDC, the applicants were workmen subject to the Industrial Disputes Act, 1947 and, therefore, not amenable to the jurisdiction of this Tribunal. Clearly, therefore, the remaining 5 applicants who had not agitated the matter way back when S/Shri J.S. Mishra and Rajinder Singh did so, have missed the bus and cannot at this very belated stage seek any benefit which might have accrued to them while they still worked in the DSMDC.

14. The jurisdiction of this Tribunal clearly takes effect from the date or dates from which the applicants were re-deployed/absorbed in the various Departments of the Government of N.C.T. of Delhi. Having been re-deployed/absorbed as above, the future of the applicants will be governed by the respondents order dated 9.5.1995 (Annexure P-3), the provisions of the CCS Re-deployment of Surplus Staff Rules, 1990 (for short Re-deployment Rules of 1990) and the relevant Recruitment and Promotion Rules in place in the Departments in which the applicants are currently working. The applicants can and will indeed be

(11)

considered for promotion according to the relevant rules in force in Govt. and in no case in compliance of Supreme Court's directive aforesaid for considering them for promotion according to the standing orders. It is to be noted, however, that as per the Scheme/order of 1995, as re-deployed personnel, the applicants are to be treated as fresh entrants for purposes of seniority, promotion etc.

15. The aforesaid Redeployment Rules of 1990 explicitly excluded from the scope of benefit those employed on ad-hoc, casual, work charged or on contract basis. Thus, the applicants who admittedly were daily rated casual workers in the DSMDC could not have been re-deployed/absorbed in the Govt. of N.C.T. of Delhi before their appointment in the same Corporation on regular basis. They have been made regular by virtue of the aforesaid orders of the Supreme Court. Thus the applicants have been re-deployed / absorbed in the Govt. of N.C.T. of Delhi under the aforesaid Redeployment Rules of 1990 only because they had already been made regular employees of the DSMDC. Since all the applicants have already benefited from the aforesaid judgements of the Supreme Court by way of regularisation in the DSMDC, the only grievance which they can have is with respect to the posts on which they have been appointed by way of redeployment/absorption in the Government of NCT of Delhi.

ad

16. We have already seen that the applicants have been appointed in that Govt. on the posts of Sweepers, Peons and Malis. They, however, wished to be appointed as Clerks on the basis of the educational qualifications and work experience possessed by them and to which references have already been made in some of the earlier paragraphs. In this context, we have already noticed that, of the 7 applicants in the present OA, the matter concerning S/Shri J.S. Mishra and Rajinder Singh was considered by the Labour Commissioner and the Supreme Court and they were not found eligible to hold the post of a Clerk. We are, therefore, required to see whether the claims of the remaining five applicants whose cases were not considered by the Labour Commissioner/Supreme Court could be dealt with by this Tribunal at all, and if so whether it would be in order to do so at this very belated stage. Both the answer are clearly in the negative. The benefit of the orders made by the Supreme Court could be extended only in relation to the period of the aforesaid applicants' service under the DSMDC and we have already noted that the jurisdiction of the Tribunal does not extend to cases otherwise required to be dealt under the Industrial Law. We cannot also, by any means, extend the benefit granted by the Supreme Court as above to the aforesaid remaining applicants in their present positions as employees of the Govt. of N.C.T. of Delhi. The said applicants, if they had actually felt aggrieved by the respondents not appointing them as clerks while

2/

still working under the said Corporation, were free to approach the Supreme Court in the same way in which 50 Petitioners had approached that Court through a Contempt Petition or else seek any other remedy available to them under the law at that time. The Supreme Court had finally closed the matter in question on 7.5.1991. It is more than 10 years since the Supreme Court passed the aforesaid order. An abnormally long period of time has since elapsed but the aforesaid remaining applicants have not proceeded in the matter except by way of the present OA which itself was filed on 20.11.2000, i.e., more than 9 years after the Supreme Court passed final orders dated 7.5.1991. In the meanwhile the DSMDC has admittedly been wound up sometime in 1994. In this view of the matter, we are of the considered view that even if the aforesaid remaining applicants wanted to seek a remedy before the Supreme Court or any other appropriate judicial forum as pointed out above, the delay, unusually long in this case, will stand in their way. It has been established through a catena of judgements of the Supreme Court that matters already settled for long cannot be unsettled in such cases and further that those who sleep over their rights lose their rights. In the circumstances, no remedy is available to the aforesaid remaining applicants at this belated stage.

17. Insofar as the Tribunal is concerned,

the fact of lack of jurisdiction ^{& states} ~~states~~ us directly in the face, a fact already mentioned in an earlier paragraph. Insofar as the re-deployment/absorption of the applicants in the various departments of the Govt of NCT of Delhi and their subsequent promotion is concerned, no case whatsoever has been made out that according to the relevant scheme of 1995 and Redeployment Rules of 1990 they could have been so redeployed/absorbed on the post of clerk, or that they have been overlooked in the matter of promotion in terms of the relevant Rules in force in the Govt.

18. The learned counsel appearing in support of the OA has towards the very end argued that the applicants have a good case for deriving benefit under the Assured Career Progression Scheme (ACP Scheme) for the Central Government civilian employees promulgated by the DOP&T vide their office Memorandum dated 9th August, 1999. A copy of the said Scheme has also been placed before us by the learned counsel. We have perused the same and find that the benefit under the aforesaid Scheme can be extended only to the regular employees, and that the regular service rendered in the previous organisation can be counted for the purpose of giving financial upgradation under the Scheme. We have noted that the applicants became regular employees of the DSMDC sometime in 1990/91 following the orders of the Supreme Court referred to. They have thereafter been re-deployed/absorbed

2

in the Government of N.C.T. of Delhi. We are confident that as and when the applicants complete the required number of years of regular service they will also be considered by the Govt. of N.C.T. of Delhi for the grant of benefit under the aforesaid Scheme by counting/adding the regular service rendered by them under the DSMDC. Needless to say that the grant of the aforesaid benefit will also be subject to the other terms and conditions laid down in the aforesaid Office Memorandum of 9th August, 1999. Beyond observing as above, we do not consider it necessary to give any direction to the respondents in this behalf. This is because the relief of benefit under the ACP Scheme has not been specifically sought by the applicants in the present OA.

19. In the concluding stages of the arguments, the learned counsel appearing on behalf of the applicants wanted to place before us case law in support of his contention that the applicants deserved to be given appointments commensurate with their educational qualifications and work experience. We gave him liberty to do so. Accordingly he has placed before us copies of Judgements and orders passed by the Supreme Court in the following cases:-

- 1) AIR 1999 SC 1624 (V.M. Chandra V. UOI and others) decided on 6.4.1999.
- 2) JT 2000 (10) S.C. 561 (State of Haryana V. Haryana Veterinary & A.H.T.S. Asson. & Anr.) decided on 19.9.2000.

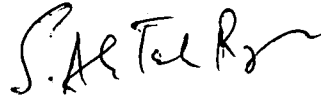
- 3) AIR 1982 Bombay 135 (Yousuf Ali Abdulla Fazalbhoj and Others v. M.S. Kasbekar and Another) decided on 16.4.1981 and 20.4.1981.
- 4) 1998 SCC (L&S)1747 (Distt. Collector/Chairman and Others v. T. Devenderpal Singh and Others) decided on 6.2.1998.
- 5) 2000(3) SCC 588 (Nar Singh Pal v. UOI & Others) decided on 29.3.2000.
- 6) AIR 1984 SC 1361 (A.L. Kalra v. The Project and Equipment Corporation of India Ltd) decided on 23.7.1981.

We have perused the aforesaid judgements and find that none of them would find application in the present OA, the facts and circumstances relating to which are clearly distinguishable from the facts and circumstances obtaining in the aforesaid cases primarily because the applicants in the present OA have crossed over from a Public sector Corporation to the Government and have been redeployed/absorbed in the Govt. of N.C.T. of Delhi as surplus employees of the Corporation. The cases dealt with by the Supreme Court do not relate to the absorption / redeployment of surplus employees migrating from a Corporation to the Government. The employees involved in the aforesaid cases, whether as appellants or as respondents are Govt. employees in all cases all along. There are other material differences as well between the facts and circumstances which obtain in the present OA and those obtaining in the aforesaid cases. The applicants' cause is, therefore, not furthered in any way by placing reliance on the judgements rendered by the Supreme Court in the aforesaid cases.

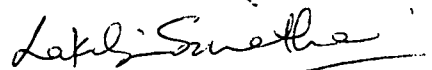
2

7/4

20. In the totality of the circumstances outlined by us in the preceding paragraphs, we find no merit in the present O.A. which is accordingly dismissed. There shall be no order as to costs.



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



(MRS. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (J)

(pkr)