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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.756/2000

New Delhi this the 23rd day of February, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. Shri Surender Kumar Sharma
S/o Shri Om Prakesh
R/o E-62, Sector-8, Part 15,
Rohini, Delhi.
2. Shri Ranbir Singh,
S/o Shri Bhaya Singh,
R/o 1/14, Roop Nagar, Delhi-7
3. Shri Satpal Singh,
S/o Shri Ranbir Singh,
R/o BH 276, Shalimar Bagh,
Delhi -6.
4. Shri Nathi Singh Nayal,
S/o Shri Govind Singh
R/o B-8, Kidwai Nagar, New Delhi.
5. Shri Naval Singh,
S/o Shri Hira Singh,
R/o A/5, Kamla Nagar,
Karawal Nagar, Delhi.
6. Shri Ranjit Singh,
S/o Late Shri Raghubir Singh,
R/o Vill. & P.O. Khera Kalan,
Delhi.
7. Shri Ruresh Kumer,
S/o Shri Inder Singh,
R/o Vill. & P.O. Kanjhawala, Delhi-82.
8. Shri Satyawan, S/o Shri Munshi Ram,
R/o C-617, Gokulpuri, Delhi.
9. Shri Joginder Singh,
S/o Shri Motra Nand,
R/o H.No.18, Mangolpuri Khurd,
Delhi.
10. Shri Singh Raj,
S/o Shri Ved Prakesh,
R/o Vill. & P.O. Rithala, Delhi.
11. Shri Sukhpal,
S/o Shri Padam Singh,
R/o Vill. & P.O. Kanjhawala, Delhi -81.
12. Shri Harpal Singh,
S/o Sahab Singh,
R/o I-Block/1830, Jahangirpuri,
Delhi.
13. Shri Ved Mitter,
S/o Shri Zile Singh,

553/31 Dr. Ambedkar Colony, Kahenyali Rd.
Rohtak (Haryana).

14. Shri Bharat Singh Rawat,
S/o Shri N.S. Rawat,
R/o A-31, J-K Laxmi Nagar, Delhi-92.

...Applicants

(By Advocate: Shri T.C. Aggarwal)

-Versus-

1. Through the Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan, New Delhi.
2. The Director,
Publication Division, Patiala House,
New Delhi.
3. The Director General,
Directorate of Advertising & Publicity,
P.T.I. Building, Parliament House,
New Delhi.

...Respondents

(By Advocate: Shri V.S.R. Krishna)

Q R D E R

By Mr. Shanker Raju, Member (J):

MA-985/2000 for joining together in one application is allowed. The applicants, 14 in number, have challenged the order passed by the respondents whereby a combined seniority list of Casual Labour Temporary Status (hereinafter called as CLTS) has been drawn in various Media Units of Ministry of Information and Broadcasting as well as orders passed on 25.2.2000 whereby the applicants have been offered the appointments to the posts of regular Group 'D' employees by way of transferring them to outside Delhi, as alleged by the respondents. The brief facts leading to the filing of the present application are that the applicants were engaged as casual workers and all of them have been granted temporary status as per the Scheme formulated by DOPT letter dated 10.9.93. At the initial stage the applicants approached this Tribunal In OA-1826/91

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and vide an order dated 7.4.92 the following directions have been issued by the Tribunal:

"Following the ratio in the judgment of this Tribunal in Nand Kishore's case, the application is disposed of with the following orders and directions:-

(i) The respondents shall consider the question of regularisation of the applicants in regular vacancies in Group 'D' posts arising in the Ministry of Information & Broadcasting, including its offices in Delhi and consider their regularisation in such vacancies, in accordance with their respective length of service.

(ii) In case, no vacancies exist in the Ministry of I&B and its offices in Delhi, the applicants should be adjusted against the vacancies of Group 'D' staff in other ministries/departments/attached/subordinate offices for appointment in accordance with the scheme directed to be prepared in Raj Kamal & Others Vs. Union of India, 1990 (2) CAT 169.

(iii) The emoluments to be given to the applicants till their regularisation should be strictly in accordance with the orders and instructions issued by the Department of Personnel & Training. After their regularisation, they shall be paid the same pay and allowances and shall be granted all other benefits which are given to regular employees belonging to Group 'D' category.

(iv) The interim order passed on 13.8.1991 and continued thereafter, is hereby made absolute.

(v) There will be no order as to costs."

2. Vide an order dated 11.10.99 the High Court of Delhi affirmed the directions of the Tribunal in OA-1826/91 (supra). According to the applicants the vacancies did exist in the Ministry of Information and also in the various Media, as number of juniors have been regularised in their units after 7.4.92 when the order of the Tribunal had become binding on them.

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3. According to the applicants a combined seniority list had been drawn up by the respondents in contravention of the Tribunal's order dated 7.4.92. The respondents in compliance with the seniority list issued orders for posting of the applicants outside Delhi whereas the applicants had been working in the office of the respondents for last more than 14 years. The applicants further contended that as per OM dated 7.6.98 even the norms for creation of the posts can be relaxed for the need of the Group 'D' employees. The applicants further contended that the respondents failed to adhere to the directions issued by this Tribunal in OA-1826/91 wherein the respondents had been directed to regularise the vacancies in Group 'D' posts arising in the Ministry of Information and Broadcasting, including its offices in Delhi and in the event no vacancy exists in its offices at Delhi the applicants should be adjusted in other Ministries/Departments/attached subordinate offices. The applicants further contend that the aforesaid directions have attained finality on affirmation by the High Court of Delhi. In this context it is contended that the respondents by substituting the orders of the Tribunal upheld by the High Court of Delhi have acted arbitrarily which is illegal in view of the judgement of the Constitution Bench in State of Orissa v. Gopal Chand Rath, 1995 (31) ATC 486. The applicants claim a vested right for regularisation in Group 'D' post at Delhi in the office of respondent No.2 and deprecate the policy of the respondents to appoint them outside Delhi.

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4. The applicants by way of additional affidavit contended that vide an order dated 27.9.99 the respondents after a lapse of about 7 years abolished a number of Group 'D' post against the directions of the Tribunal.

5. The respondents in their reply contended that they have meticulously complied with the directions of the Tribunal as well as High Court and with a view to implement the directions a common inter-se-seniority list has been prepared and casual labour with temporary status working in various media of the Ministry of Information and Broadcasting and had been offered appointment against the vacancies in Delhi as well as outside Delhi in accordance with the recruitment rules and as per the scheme of the DOP&T. It is further contended that the seniority list is nothing but an eligibility list whereby the seniormost casual labour had been offered vacancies in Delhi and accordingly vacancies outside Delhi have been offered in the order of seniority and merit and keeping in view the reservation their postings have been arranged in alphabetical orders of the State. Accordingly, out of 52 vacancies according to respondents 12 were available in Delhi and applying the criteria seniormost persons in the inter-se-seniority list have been proposed to be accommodated in Delhi and remaining 40 are to be regularised in the vacancies located outside Delhi. According to the respondents fifteen casual labourers with temporary status including six applicants were issued call letters by the Film Division at Mumbai and their contempt petitions filed have been rejected on 26.4.2000 with a direction to consider the cases of petitioners retaining them in Delhi if there are vacancies subject to their

fulfilling the prescribed requirement. The respondents in turn consider the request of the applicant who have expressed difficulty in attending interview or to go out of Delhi and accordingly and other similarly placed casual labourers were offered options and in the order of seniority place has been assigned to them. According to respondents failure to opt for an offer of appointment would result in loss of claim for future regularisation. The respondents have given details of the merits and the posts offered to the respective applicants in their counter reply. According to them applicants no 1, 2, 4,5, 11 and 13 though accepted the offers but requested them to consider them for being posted in Delhi on personal ground. According to the respondents these applicant have not accepted the offer and applicants no. 3,6,7,8,9 and 14 had also not attended the interview held on 2.6.2000. The interview by the selection committee is not a transfer order as the casual labour are not holders of regular posts and cannot be transferred. The interview letters are only offers of appointment for the purpose of regularising the services of the applicants in pursuance of the Tribunal's direction. It is vehemently contended that it is not obligatory on the applicants to accept the offer or to attend interview for appointment to Group 'D' posts and this has been done in pursuance of the Tribunal's directions. It is further contended that in the event of not accepting the offers the applicants could be treated under the relevant instructions of DOPT 1993 and would be offered regularisation as per the terms contained therein. It is also stated that if the juniors of the applicants accept the posts offered to them the senior CLTS will have to suffer. The respondents further contended that the

Scheme of Government of India dated 10.9.93 governs the casual labours by a different set of instructions in a decentralised manner. Since AIR and Doordarshan are part of Prasar Bharti the vacant posts in Group 'D' are no longer available for regularising the applicants.

6. In this conspectus it has been contended by the respondents counsel that drawal of seniority of CLTS and further offering them appointments in Group 'D' posts outside Delhi is within the ambit of the directions issued by the Tribunal as the Tribunal in order dated 7.4.92 directed regularisation of applicants in Group 'D' posts in the Ministry of Information and Broadcasting, including its offices at Delhi and the interpretation of this order would entail regularisation in Group 'D' posts even outside Delhi.

7. The applicants in their rejoinder re-iterated their contentions taken in the OA and further contended that the transfer of casual labour to another Division is not legally sustainable and they are not supposed to undergo any test for their regularisation. The applicants vehemently stressed upon the fact that since 1992 the respondents had engaged casual labour and regularised them who are juniors to the applicants, illegally ignoring the directions of the Tribunal as well as the claims of the applicants. The applicants supporting their plea cited examples of All India Radio, their External Service Division, Delhi Doordarshan Kendra and Department of Advertisement and Visual Publicity where juniors to the applicants have been regularised viz. Parsadi Lal, Bakshi Ram, Munna etc. and sought details of the same from the

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respondents. The applicants further contended that the action of the respondents by preparing a seniority list in pursuance of the directions of the Tribunal by including casual labour from outside office from all over the country is not legal.

8. We have carefully considered the rival contentions of the parties and perused the material on record. The contention of the applicants that the Tribunal in its order dated 7.4.92 directed the respondents to consider the applicants for regularisation in Group 'D' post only in Delhi by referring to Ministry of Information and Broadcasting, including its offices in Delhi and affirmation of this order by the High Court of Delhi is not correct. In fact what has been directed was the consideration of applicants for regularisation in Group 'D' posts in the Ministry of Information and Broadcasting including its offices at Delhi (emphasis added). In our considered view it was not the import of the order that all the applicants should be regularised in Delhi Offices only. This has been subjected to availability of vacancies. The Ministry of Information and Broadcasting had its offices all over the country. The contention of the respondents is that as per the directions of the Tribunal they have prepared an inter-se seniority list and recommended regularisation in various Media Units of Ministry of Information and Broadcasting. It has been correctly stated by the respondents that the applicants are not bound to accept the offers of appointment, they may accept or reject but in case the post is accepted by a junior the senior has to suffer. The action of the respondents, therefore, cannot be found fault with. Having prepared the list,

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which is stressed upon by the respondents, as an eligibility from all over India on the basis of the merit of CLTS and assigning them posting at Delhi on the basis of merit and further offering appointments to the applicants in Group 'D' posts, arranging their posting in alphabetical order of the State is not contrary to the directions of the Tribunal and rather with a view to balance the exigencies of service and with a view to formulate a uniform criteria they had adopted a right procedure. The applicants' contention that they have to be regularised only at Delhi in Group 'D' posts is not borne out from the directions of the Tribunal. Apart from it the High Court of Delhi while affirming the orders of the Tribunal has also directed the respondents to regularise the applicants in Group 'D' posts arising in the Ministry of Information and Broadcasting, including its offices in Delhi, in accordance with the length of service, also indicates that the regularisation is not restricted to the offices in Delhi itself, but Delhi offices are inclusive among other offices of the Ministry of I&B spread all over the country. The applicants have not put challenge to the seniority assigned to them by the respondents. In our view the action of the respondents offering appointments to the applicants in pursuance of formulation of the eligibility/seniority list and arranging their posting in an alphabetical order of State on account of merit is reasonable and does not suffer from the vice of discrimination or arbitrariness.

9. It has been next contended that by offering appointments to the applicants outside Delhi would amount to their transfer. As the Tribunal in its directions dated 7.4.92 (supra) had directed the respondents to consider the

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applicants for regularisation in the attached offices of the respondents and further the fact that the applicants are not incumbents of regular posts there is no question of their being transferred, is the correct view in the present case. The respondents contention that the letters issued to the applicants are only offers of appointments and the applicants are within their rights to accept the offers or attend the interviews and this would not amount to their transfer appears to be correct view of the situation. The ratio relied upon by the applicants counsel in Munim Singh's case would not be applicable as the respondents have issued these orders in compliance with the directions of the Tribunal and have not regularised the services of the applicants under the DOPT Scheme. The DOPT Scheme would be made applicable to the applicants in case they refused to accept the offer issued to them in pursuance of the directions issued by the Tribunal and in that event they would be governed by the conditions in the OM dated 10.9.93. The respondents have already admitted this position at the time of arguments.

10. As regards the contention of the applicants that 23 regular posts had been abolished on 21.9.99 and right from 1992 persons junior to the applicants were regularised in defiance of the directions of the Tribunal is refuted by the respondents by contending that with a view to implement the directions of the Tribunal for 78 vacant group 'D' posts a special dispensation was obtained from the Ministry of Finance and out of 78, 52 vacancies were included in CSIL in accordance with the seniority and reservation and 12 vacancies were allotted to Delhi offices for the seniormost persons in CISL, subject to fulfilling

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their reservation conditions and accordingly the offer of appointments have been issued to the applicants. In our view the respondents have meticulously complied with the directions of the Tribunal dated 7.4.92 (supra) and as AIR and Doordarshan have become part of Prasar Bharti Corporation the posts available with them are not available for the applicants to be regularised as Group 'D' employees. In our considered view whatever vacancies the respondents were having at Delhi offices the applicants have been given due consideration but as the applicants were below in the merit of the eligibility/seniority list more meritorious persons have been offered Group 'D' posts at Delhi and the applicants in accordance with the criteria adopted by the respondents have been offered appointment outside Delhi, which cannot be faulted with. As regards creation of posts on supernumerary basis, the Tribunal has no jurisdiction to direct the respondents to issue any directions in this regard. The applicants have also failed to establish that the juniors have been given regularisation w.e.f. 1992 and the CCP was also rejected. As such this contention of the applicants does not hold water and the same is rejected.

11. As regards the contention of the applicants that they have to be considered for regularisation in the office of Delhi, even according to the admission of the respondents in the event the applicants do not opt for the offer of appointment they would be covered under the DOPT Scheme dated 10.9.93 and would be regularised as per its terms and conditions. The applicants having failed to

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establish a claim for their being regularised as Group 'D' employees at Delhi offices, they have their alternative avenues for regularisation under DOPT Scheme of 1993.

12. In the result, having regard to the above discussion, the OA is found bereft of merit and the same is rejected, but without any order as to costs.

S. Raju

(Shanker Raju)
Member (J)

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V.K. Majotra

(V.K. Majotra)
Member(A)