

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A. No.661 of 1989

25th day of April, 1994.

Shri N.V. Krishnan, Vice-Chairman(A)

Shri C.J. Roy, Member (J)

1. Shri Rajender Sharma,
351, Masjid Moth,
New Delhi.
2. Shri Raj Kumar Paswan,
S-68, Panchsheela Park,
New Delhi.

Applicants

By Advocate Shri Ashish Kalia.

Versus

Union of India through

1. The Secretary,
Ministry of Human Resource Dev.,
Deptt. of Culture,
Shastri Bhavan,
New Delhi-110001.
2. Director Publicity,
Festival of India,
Deptt. of Culture,
Maulana Azad Road,
New Delhi-110011.

Respondents

By Advocate Shri M.K. Gupta.

O R D E R (Oral)

Shri N.V. Krishnan, Vice-Chairman(A)

The two applicants before us have been appointed in the Publicity Cell of the Festival of India, Department of Culture. They are aggrieved by the Annex.A1 and Annex.A2 notice given to them by the Section Officer, Festival of India, stating that the Ministry of Finance has asked that the Publicity Cell attached to the Festival of India office should be discontinued before 31.3.1989.

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The proposal has, however, been sent to the Finance Ministry to reconsider the decision. However, the applicants were informed that in case this was not agreed to, their services would not be required beyond 31.3.1989.

2. It is in this circumstance that these two applicants filed this application on 30.3.1989 and by the interim order dated 31.3.1989, the respondents were directed to continue the applicants in the posts held by them. This was then continued until further orders on 17.4.1989. The applicants are, therefore, continuing on the posts of Typist and Messenger, respectively.

3. Though the respondents were given sufficient opportunities to file the reply, they did not file the same till 6.11.1989, when the Bench forfeited their right to file the counter-affidavit.

4. Nevertheless, the respondents filed in the Registry a reply on 19.1.1990 which has been kept separately in Part.C of the case.

5. It has been pointed out by the learned counsel for the applicants that the Festival of India is still continuing. The respondents still need their services and, therefore, the applicants should be allowed to continue in the organisation. The applicants pray for setting aside the impugned Annex.A1 and Annex.A2 orders and for a direction to allow them to continue in service on full wages.

6. The applicants have only produced the offer of appointment given to them at Annex.A3 and Annex.A4. This offer has been given by Asha Rani Mathur, Director Publicity. The offer says that the appointment is valid in the case of the first applicant for a period of six months from the date of his joining, renewable for another six months. The appointment was made on a gross monthly salary of Rs.800/-. In the case of the second applicant, it is stated that the appointment would be valid for one month to begin with and will be extended upto 31.3.1986. The gross monthly remuneration was Rs.400/-.

7. The learned counsel for the applicant felt it necessary to refer to ^{the} belated reply of the respondents to point out that the respondents have taken a stand that initially, the Publicity Cell has been engaged in work relating to ^{the} Festival in U.S.A. for which donations were received and the expenditure was met from donations. Subsequently, the Cell was concerned with the publicity in the U.S.S.R. and Japan for which no donations were received. It was, therefore, decided with the concurrence of the Ministry of Finance to appoint staff, including Typist and Messenger on contract basis for one year ending 31.12.1987. The expenditure was met from the Consolidated Fund of India from 1.1.1987 onwards. When the Finance Ministry did not agree to the continuation of the staff beyond 31.3.1989, the staff was given notice as at Annex.A1 and Annex.A2. It is stated that the applicants are purely contract

employees in respect of a temporary scheme and are not entitled to any relief. The learned counsel for the applicants states that even now the Festival of India's work is continuing.

8. The learned counsel for the respondents submits that initially, the applicants were appointed by the Publicity Cell and the expenditure was met out of donations. At the conclusion of the Festival of India in U.S.A., work relating to the Festival of India U.S.S.R. and Japan was taken up. It was then that the Finance Ministry agreed to appoint other staff for one year, i.e., 1.1.1987 to 31.12.1987 on contract. Hence, the applicants were appointed on contract which was extended upto 31.3.1989. The Typist was paid Rs.1800/- consolidated and the messenger Rs.950/-. As the Finance Ministry did not agree to further continuance beyond 31.3.1989, all staff, including the applicants, were given notice of termination from 31.3.1989. In the circumstances, it is stated that no relief is due to the applicants.

9. We have heard the rival contentions. As the applicants' learned counsel has referred to the reply, we take it on record for a proper disposal of this case.

10. Obviously, the appointment of the applicants is purely of a contractual and temporary nature as the Festival of India itself is stated to be a temporary

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scheme. Such being the case, it would not be fair if the Festival of India organisation is directed to continue the applicants indefinitely. No doubt, the two applicants have been continuing respectively from 15.4.1985 and 24.12.1985 as Typist and Messenger till 31.3.1989. Thereafter, they are continuing in pursuance of our interim order. Nevertheless, we are of the view that a temporary organisation like the Festival of India, must have the flexibility to dispense with the services of persons who are no more required by it. Therefore, the right of the organisation to discontinue the services of these employees, cannot be assailed.

11. We do not have anything on record as to what happened to the reference stated to be made in Annex.I by the organisation to the Ministry of Finance, particularly when it is stated that the Festival of India is still continuing. We are, therefore, of the view that the respondents should take a considered decision in this regard and until such a decision is taken, the services of the applicants should not be terminated.

12. Undoubtedly, the Festival of India is a Wing of the Department of Culture of the Government of India. That being the case, the respondents are bound to give a proper remuneration to the applicants, particularly when the work continued not for a limited period but for about 4 years before the applicants approached the Tribunal. The post of Typist is a regular one in Government. The post of Messenger seems to be the equivalent of the post of Peon.

We are, therefore, of the view that the applicants ought to have been given remuneration at the minimum of the pay-scales applicable to the Typists and Messengers (Peon) with allowances, even if it be a consolidated emolments.

13. The applicants would further be entitled for consideration at the hands of the Ministry for continuance in their jobs in case vacancies arise in that department.

14. Keeping in view these considerations, we dispose of this O.A. with the following directions/orders:-

- (i) The second respondent is directed to take a decision as to whether the services of the applicants are still required, considering the allegation that the Festival of India is still continuing and the services of the applicants are still required. Until a decision is taken by the second respondent in consultation with the concerned authorities, as required by the standing instructions, the services of the two applicants under second respondent shall be continued. In case the second respondent decides that the services of the two applicants are no more required, their services may be terminated by giving them either one month's notice or emoluments in lieu thereof.

(ii) In so far as the emoluments are concerned, the applicants had no grievance in this regard before they filed this application on 30.3.1989. We are, therefore, of the view that consolidated emoluments equal to the minimum pay-scale of the post of Typist and of a Peon plus the dearness allowance due thereon from time to time shall be paid to the first and the second applicants respectively w.e.f. 1.4.1989, i.e., the date subsequent to their filing the O.A. We also make it clear that in case their actual appointment was on a daily-wage basis and not necessarily continuously for a period of one month, the applicants will be entitled to proportionate consolidated emoluments on this basis. The difference in emoluments shall be paid to them within two months from the date of receipt of this order.

(iii) In case the services of the applicants are terminated by the second respondent, it is open to them to file a representation to Respondent No.1, seeking employment in the Ministry of Human Resource Development in any vacancy that may arise thereafter. In case such an application is

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received, the first respondent is directed to consider the case of the two applicants, along with others, in accordance with the provisions of law for appointment to suitable posts, considering the fact that these two persons have been engaged in an attached organisation in the Ministry for a very long time, granting them relaxation in age, if required.

15. With these directions, this O.A. is disposed of. No costs.

C.J. Roy
(C.J. Roy)
Member(J)

N.V. Krishnan
25.9.94
(N.V. Krishnan)
Vice-Chairman(A)

SLP