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Central Administrative Tribunal
Principal Bench

OA No. 1028/89

New Delhi this the 9th Day of December, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Smt. Lakshmi Swaminathan, Member (J)

1. P.N. Yadava,
S/o Sh. Shiv Nath Yadava,
R/o Sector VII/1113,
Pushp Vihar Colony,
New Delhi-17.

2. Ashok Kumar Sharma,
S/o Sh. Mangal Sain Sharma,
R/o GI-910, Sarojini Nagar,
New Delhi.

Applicants

(By Advocate Sh. T.C. Aggarwal)

Versus

Union of India, through
Chief Producer, Films Division,
24, Dr. Deshmukh Road,
Bombay-26.

Respondents

(By Advocate Sh. K.C. Sharma)

ORDER (ORAL)

Hon'ble Mr. N.V. Krishnan:-

The two applicants before us were officiating as Upper Division Clerks (UDC) when, by the Annexure A-3 order dated 3.1.86 of the respondents, they were appointed on ad hoc basis w.e.f. 16.12.85 as Technical Assistants making it clear that it will not confer upon them any right for regular appointment. The applicants continued on these posts for about three years when, by the Annexure A-5 order dated 22.9.88 of the respondents, three surplus officials of the office of the F.A. & C.A.O, Dandakaranya Project, nominated by the Deputy Secretary, Ministry of Personnel, were appointed and directed to report for duty to the respondents as Technical Officer. That order also informed the Administrative Officer of the Films Division, that three persons holding the post of Technical Assistant on ad hoc basis be reverted, one of whom was the first applicant P.N.

Yadav. It was directed that he would revert to the regular post of U.D.C. Likewise, by the Annexure A-6 order dated 21.9.88, another surplus person from the Mana Camp, Raipur, similarly nominated by the Deputy Secretary, Ministry of Personnel, was appointed and the second applicant A.K. Sharma was directed to be reverted to the post of UDC. These two persons are the applicants before us. They are aggrieved by these orders and they seek a direction to quash the reversion order and to promote them retrospectively with consequential benefits.

2. The respondents have filed a reply, contesting these claims.

3. A rejoinder has been filed by the applicants, furnishing certain additional details about the vacancies in this cadre.

4. We have heard the learned counsel for the parties.

5. The thrust of the argument of the learned counsel for the applicants is two fold.

i) He states that, admittedly, the recruitment rules stipulate that only 25% of the vacancies can be filled up by direct recruitment. The remaining 75% are to be filled up by promotion which is done by two methods, i.e., by a departmental competitive examination and by selection by merit. The vacancies held by the applicants were vacancies to

be filled by promotion and, therefore, the surplus staff could not be appointed to them, as that would be a direct recruitment.

ii) The applicants have been working for three years on ad hoc basis and the induction of the persons on the Surplus Cell is contrary to the recruitment rules.

6. These were contested by the learned counsel for the respondents.

7. In so far as the arguments based on the rules of recruitment is concerned, we wanted to know from the learned counsel for the applicants whether he has a case that, immediately prior to the induction of the Surplus Cell personnel, the direct recruitment quota had already been exhausted. He has not been able to produce any documentary evidence to show the strength of the cadre and the persons appointed as direct recruits to establish that the appointment of the surplus cell personnel is in excess of the quota fixed for direct recruits.

8. In so far as the second argument is concerned, the learned counsel admits that the applicants have been appointed only on ad hoc basis, i.e., based on their seniority. However, he contends that the applicants are the seniormost UDCs, next eligible to be promoted as Technical Assistants. Therefore, their reversion by the induction of the surplus personnel is bad.

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9. The respondents in their reply have stated that the appointments are regulated as per "statutory" rules "Redeployment of Surplus Staff against vacancies in Central Civil Services and Posts Class III Rules, 1967." The learned counsel for the applicants submits that during the relevant period there were no statutory rules. The statutory rules came into being only some time in 1992. He, however, points out that the Films Division (Group 'C' Administrative Posts) Recruitment Rules, 1987 (Annexure A-2 of the OA) provide for relaxation in Rule 6. Therefore, the 1967 Rules should be read as relaxation made by Government.

10. We are of the view that this has no bearing on the issue under consideration. The fact is that the Government has taken a policy decision to redeploy surplus personnel who would have been otherwise retrenched. The surplus persons are treated as 'direct recruits' for the purpose of such retrenchment/absorption. Admittedly, the persons appointed by the Annexures A-5 and A-6 orders are surplus personnel and, therefore, are to be treated as direct recruits.

11. As pointed out above, the applicants have not been able to establish that the direct recruitment quota had already been exhausted and, therefore, these persons could not have been appointed. Indeed, if such was their case, the applicants would have impugned their appointments also, which has not been done. Secondly, even if it is assumed that the Surplus Cell personnel have been taken against vacancies not pertaining to direct recruitment quota, the persons who will have a locus standi to object to this are not mere UDCs, who are senior enough to be considered for promotion but they

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should be UDCs who have been selected either by the departmental examination method or by the other method of selection on the basis of merit. The applicants do not come under either category. They cannot, therefore, object to the induction of the surplus staff personnel.

12. In the circumstances, we do not find any merit in this O.A. It is dismissed. No costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

N.V. Krishnan
9.12.94

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

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