

(18)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 201/86

DECIDED ON : September 13, 1992

Smt. Gayatri Devi & Ors. ... Applicants

Vs.

Union of India through General
Manager, Delhi Telephones ... Respondents

CORAM : THE HON'BLE MR. JUSTICE RAM PAL SINGH, V.C. (J)
THE HON'BLE MR. P. C. JAIN, MEMBER (A)

Shri M. K. Gupta, Counsel for Applicants

Shri A. K. Sikri, Counsel for Respondents

J U D G M E N T

Hon'ble Shri P. C. Jain, Member (A) :-

All the eleven applicants in this case while working as Lady Telephone Operators, Kidwai Bhawan, New Delhi filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 against not being treated as regular employees having been regularly absorbed with effect from the date of joining the service after completion of three months' training mentioned in letter dated 20.2.1984. They have prayed for the following reliefs :-

"(i) That the respondents be directed to treat the petitioners as regular employees having been regularly absorbed w.e.f. the date of their joining the service after completion of three month's training mentioned in the letter dated 20/2/1984 sent by the Assistant General Manager (R&E), Delhi Telephones, New Delhi.

(ii) That the respondents be directed to fix the pay and emoluments payable to the petitioners by treating them to be regular employees as mentioned in clause (i) above.

(iii) The respondent be directed to give all the benefits that may be available to the petitioners treating them to be regular

employees having been regularly absorbed w.e.f. the date of their joining the service after completion of three month's training as mentioned above.

(iv) Any other and further relief as this Hon'ble Tribunal may consider proper under the circumstances of the case be also awarded to the petitioners."

2. The respondents have contested the O.A. by filing a reply as also an additional reply to which rejoinder has also been filed by the applicants. We have perused the material on record and also heard the learned counsel for the parties.

3. The relevant facts which have given rise to this O.A. are briefly stated as below :

An advertisement was issued in Navbharat Times, New Delhi dated 15.9.1983 (Annexure-A) inviting applications by Delhi Telephones for 189 regular vacancies and 575 vacancies in the Reserve Trained Pool of Lady Telephone Operators for the recruitment year 1983. The claim of the applicants is that they applied and were selected for regular vacancies of Telephone Operators against the recruitment year 1983, as is stated in para 1 of offer of appointment dated 20.2.1984 (Annexure-B). It is their further contention that even after completion of formalities pertaining to medical examination, filling in the character antecedents verification papers and undergoing three months' training they have not been treated as regular employees. The case of the respondents on the other hand is that before issuing the aforesaid advertisement the position of vacancies was seen according to which 195 vacancies were identified for recruitment and after the selection in which the applicants were also selected, they were appointed as short-duty telephone operator and which appointment was purely casual and temporary in nature which was clearly stated in the

offer of appointment dated 20.2.1984. Accordingly, it is contended that even though the applicants were selected against the post of Lady Telephone Operators, yet no appointment was made on that basis and only casual/temporary appointment was made without conferring any right or claim whatsoever. It is further stated that before the persons selected could be appointed/recruited, a general ban order of the Government of India for making fresh appointments came, and in view thereof the applicants as well as other similarly situated could not be given any appointment on the basis of 1983 selection. It is their further case that mere selection does not confer any right upon a person to be given the appointment as well, particularly when no person out of the said panel drawn for the recruitment in the year 1983, was given any appointment on regular basis in view of the aforesaid ban order and that was the reason that the applicants were not given any appointment on regular basis. It is also their case that whenever regular vacancies became available, persons already working on temporary/casual basis for quite some time and who were senior to the applicants, were to be regularised first. Accordingly, as and when the ban order was lifted and the vacancies were created, persons working as Lady Telephone Operators in order of seniority and the applicants have since been regularised w.e.f. 9.4.1987. The respondents have also stated that before the regularisation of the applicants as aforesaid, there were no vacancies against which they could be appointed on regular basis and no person can be appointed on regular basis when there are no vacancies.

4. We have carefully considered the rival contentions of the parties. There is no dispute that the advertisement issued was both for regular vacancies as well as Reserve

Trained Pool vacancies for the recruitment year 1983 and it also appears that the applicants secured positions in the selection which would have normally entitled them to be appointed against regular vacancies. The offer of appointment, however, clearly mentioned inter alia the following conditions :-

- "i) You have to serve the department as Short Duty Telephone Operator till such time you are regularly absorbed after the completion of the above mentioned formalities.
- ii) You will be employed as Short Duty Telephone Operator as and when required, upto a maximum of 8 hr. of duty per day.
- iii) You will be paid remuneration @ Rs.2.75 per hour of Short Duty performed.
- iv) These duties are purely casual and temporary in nature and will confer no right or claim whatsoever."

If the terms and conditions mentioned in the offer of appointment dated 20.2.1984 were accepted, the candidate was required to report personally on 1.3.1984 with documents mentioned therein. This clearly shows that even though the selection was for a regular post of Telephone Operator the offer of appointment which was accepted by the applicants was only for working as Short Duty Telephone Operators. Further, no person similarly selected is shown to have been given appointment as a regular Telephone Operator in preference to the applicants except in accordance with the merit list of the selection.

5. The respondents have filed a chart indicating as to how the vacancies were worked out before the aforesaid advertisement was issued. This chart clearly shows that out of the estimated vacancies for the year 1983, 505 regular vacancies have been kept reserved for absorption of Reserve Trained

Pool—1982 candidates. This also shows that even persons selected for the Reserve Trained Pool in the preceding year of 1982 were required to be absorbed first against the regular vacancies and this is what the respondents have shown to have done. The averment of the applicants that persons junior to them were absorbed has not been substantiated by them by giving any particulars of any such person. The relevant instructions of the department, a copy of which has been filed as Annexure to the additional reply, also shows that existing short-duty staff will be accommodated first and the short fall, if any, will be met from the current recruitment, and in case the number of existing short-duty Telephone Operators are more than that of Reserve Trained Pool, the surplus short duty Telephone Operators would be brought on to Reserve Trained Pool of subsequent recruitments. These instructions also stipulate that Reserve Trained Pool candidates would first be accommodated as regulars.

6. As the applicants have since been regularised w.e.f. 9.4.1987, as already stated above, the learned counsel for the applicants submitted that the question which remains for adjudication is about the rate of payment to the applicants for the period from the date of appointment till the date of regularisation. On this point, learned counsel for the respondents submitted that this matter had already been decided by the Supreme Court in Writ Petitions (Civil) No. 11764/85 and 570/86 between (1) National Federation of P & T Employees & Anr., and (2) All India Telegraphs' Engineering Employees' Union Class II vs. Union of India & Ors., and he further stated that the applicants before us shall also be

(Clerk)

(20)

benefitted by the orders passed by the Supreme Court in the above cases. Learned counsel for the applicants, therefore, submitted that if the orders passed by the Supreme Court are applied to the applicants also for purposes of payment for the period as aforesaid, the matter could be decided accordingly. Learned counsel for the respondents made available to us the copies of the orders dated 1.5.1986 and 28.7.1986 passed by the Supreme Court in the aforesaid two writ petitions. They are being reproduced below :-

"Dated:1.5.86....

The matter is adjourned to 28.7.86 to enable the newly added respondent No.3 to file counter affidavit on or before 15.7.86. Rejoinder, if any, will be filed within one week thereafter. Meanwhile, the respondent will pay to the Operators drawn from the Reserve Trained Pool of the telephone operators from Bombay and Delhi telephones @ Rs.4.90 per hour provided that the total salary of the telephone operators from the Reserve Trained Pool shall not exceed the salary of regularly appointed telephone operators."

"Dated:28.7.86

We have heard learned counsel for the parties. We are of the view that the order passed by the Court on 1.5.86 (By Hon'ble CJI, Khalid J and M.M. Dutt J) in this Petition shall be the final order in this case. The wages shall be paid in accordance with the terms contained in that order. We, however, make it clear that if the Dearness Allowance and other allowances are varied hereafter the workers concerned shall get D.A. and allowances accordingly subject to the limit that the total emoluments would not exceed the salary of regularly appointed Telephone operators. Both these Petitions are disposed of accordingly. If the petitioners have any other grievance they are at liberty to agitate. This order will apply to all R.T.P.A. employees who are similarly situated."

7. In the light of the foregoing discussion, this O.A. is disposed of in terms of the directions that the applicants herein shall also be given the benefits of the aforesaid Supreme Court orders within a period of two months from the date of receipt of a copy of this order, if not already done. No costs.

Ce an 18/9/92
(P. C. JAIN)
MEMBER (A)

Laubh 18.9.92
(RAM PAL SINGH)
VICE CHAIRMAN (J)