

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.

271/87

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~~T.A.x.x.No.~~DATE OF DECISION 19th Sept. 1990R.N.Tiwari and others

Petitioner

R.K.Kamal, Advocate

Advocate for the Petitioners)

Versus

Union of India and others

Respondent

P.P.Khurana, Standing Counsel

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. J.P.Sharma, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

O R D E R

(Pronounced by Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application the four applicants who have been working as Peon in the office of the Controller of Accounts, Ministry of External Affairs have prayed that they should be allowed to be repatriated to the Ministry of External Affairs by virtue of the option exercised by them in accordance with the relevant rules and instructions. The brief facts of the case are as follows.

2. The four applicants were originally recruited as Casual Labour by the Ministry of External Affairs for servicing the office of the Controller of Accounts of that Ministry. They were regularised on 2.9.83 (Annexure A.2) in accordance with the rules framed under Article 309 of the Constitution of the Ministry of Defence (Controller General of Accounts) a copy of which is available at Annexure-A.3. It appears that the Ministry of Finance, on 4th July, 1986 (Annexure-A.4) decided that Group 'D' staff recruited by the concerned Ministry/Department in terms of the 1980 Rules for servicing the office of the Controller of Accounts of those Departments should be given an option either to be absorbed in the proposed departmentalised Accounts Service (Group 'D' Posts) if they are willing for such absorption and if they express their willingness by writing by 30th September, 1986 or be surrendered^{ed} to the Ministry/Department concerned. The 1980 Rules were also amended on 5.11.1986 (Annexure A.3) to accommodate the optees in the proposed Departmentalised

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Accounts Service (Group 'D') post. In pursuance of the decision of the 4th July, 1986 it appears that a circular was issued on 30.7.86 inviting the options of the applicants. Admittedly they exercised their ^hfor repatriation to Ministry of External Affairs. options before 30.9.86. While the office of the Controller of Accounts are willing to send back the applicants to the cadre of the Ministry of External Affairs, the Ministry of External Affairs are reluctant to absorb them on the plea that they were originally recruited by and for the Controller of Accounts of ^{the}Ministry of External Affairs. ^h

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. Admittedly the applicants were recruited and regularised as Peon under Rule 6(1) of the Rules of 16th July, 1980 (Annexure-A.3). The Rule 6(1) reads as follows:

"Method of recruitment, qualification etc--(1) Vacancies in the grade of Peons, farashes/ chowkidars/safaiwals (in the scale of Rs.196-232) shall be filled by recruitment in the same manner as prescribed for similar posts in the administrative Ministry/Department concerned and the persons so recruited shall not be members of this service but shall be members of the corresponding cadres of the administrative Ministry/Department of offices concerned." (emphasis added)

It will thus be clear from the above that even though the applicants were recruited/regularised in the Ministry of External Affairs for the post of Peon, for servicing the Controller of Accounts of that Ministry, they were ^{be}to ^hmembers of the Group 'D' cadre of the Ministry of External Affairs. This position, however, underwent a change by the decision of 4th July, 1986 (Annexure A.4)

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and the amendment to the 1980 Rules ^{were} issued on 5th November, 1986 (Annexure A.3). By this decision the departmentalised Accounts wings were to have their own Service for Group 'D' posts and were not to depend upon those in the cadre of the Ministries for the departmentalised accounts of which the office were working. However, to accommodate the Group 'D' Peers already working in the departmentalised accounts organisation, they were given an opportunity to exercise the option to be inducted in the proposed Departmentalised Accounts Service, in writing by 30th September, 1986. The applicants in pursuance of that decision and the circular issued on 30.7.86 validly exercised their option not to be absorbed in the proposed Departmentalised Accounts Service but to be repatriated to the Ministry of External Affairs. Even though the word 'repatriation' seems to be a misnomer as in accordance with the 1980 rules they were already members of the External Affairs Ministry's cadre, the ^{nonetheless} word ^{assumed} a meaning in view of the fact that from 4.7.86 the proposed Departmentalised Accounts Service has been in the offing.

4. We are not impressed by the arguments of the learned counsel for the respondents that since the applicants had been recruited for the Controller of Accounts office and have been working right from the date of their casual employment in that office, the Ministry of External Affairs will have nothing to do with them even if they opt out of the Departmentalised Accounts Organisation. Since the applicants were recruited/regularised under Rule 6(1) of the 1980 Rules, they are governed by the

provision and in that Rule that they " shall be members of the corresponding cadres of the administrative Ministry/Department or office concerned." By virtue of the amendment of 1986 since they did not opt for absorption in the Departmentalised Accounts Service, they will continue to be in the Group 'D' cadre of the Ministry of External Affairs under which they were recruited.

5. ^{conspectus of} In the ⁶ facts and circumstances, we allow this application with the direction to the respondents that the applicants shall be deemed to be in the Group 'D' cadre of the Ministry of External Affairs right from the date of their regularisation from 1983 with all consequential benefits including seniority. There will be no order as to costs.

J. P. Sharma
(J.P.Sharma)
Member(Judicial)

S. P. Mukerji
(S.P.Mukerji) 19.9.90
Vice Chairman

19.9.90

Ksn.