

~~Use for J.D. Sohan~~

Pl. return

(16)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

Date of Decision: 10.3.1989

REGN. NO. I-962/85
(Old C.W.P. No. 2759 of 1983)

(1) KANWAR RAJENDRA SINGH AND OTHERS.....Petitioners

Versus

Union of India and others.....Respondents

REGN. NO. O.A. 1203/87

(2) SHRI AVADHESH KAUSHAL AND ANOTHER.....Petitioners

Versus

Union of India and others.....Respondents

Present : Shri R.L. Sethi, Advocate, Counsel for the applicants.
Mrs. Shyama Pappu, Advocate with Mr. Ajay Aggarwal,
Counsel for the applicant in O.A. 1203/87.

Mr. G. Ramaswamy, Additional Solicitor General
of India with Mr. P.P. Khurana, Advocate, Counsel
for the Respondents.

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Court : Hon'ble Mr. Justice J.D. Jain, Vice Chairman
Hon'ble Mr. Kaushal Kumar, Member(A).

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(Judgment of the Bench delivered by Hon'ble Mr.
Justice J.D. Jain, Vice Chairman).

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JUDGMENT:

Since both the above mentioned applications
involve common questions of law and facts, we dispose
of the same by this common judgment.

I-962/85

(C.W.P. 2759 of 1983)

There are three applicants namely, Sarvshri
Kanwar Rajinder Singh, Rameshwar Nath Sason and Naval Kishore
Singh in this case. All three of them joined service as



Youth Co-ordinators in the Nehru Yuva Kendras as direct recruits with effect from 13th July, 1973, 21st December, 1972 and 20th January, 1973 respectively. They had applied for appointment to the said posts pursuant to a public advertisement issued by the respondents as also requisitions sent to the various departments of the Government of India/State Governments/Educational Institutions etc for filling up the vacancies of Youth Co-ordinators. They continued to function on the said posts in the hope that their services would be regularised as per assurance given by the respondents to all the Youth Co-ordinators working in various Nehru Yuva Kendras. However, to their profound dismay the Ministry of Education and Culture (Department of Education), Nehru Yuva Kendras (Youth Co-ordinators) Recruitment Rules, 1980 which were published in the official Gazette dated 19th September, 1980 did not contain any provision for appointment of direct recruits to the posts of Youth Co-ordinators numbering 255, the only method of Recruitment to the said posts being "by transfer on deputation (including short term contract) failing which by direct recruitment" (for short the Recruitment Rules) whence they prejudiced against their exclusion from appointment to the post of Youth Co-ordinator by the said Recruitment Rules, but in vain. Feeling aggrieved they filed the aforesaid Civil Writ Petition in the High Court of Delhi praying for issuance of an appropriate writ/order or direction for quashing the aforesaid Recruitment Rules as being illegal, void and ultravires of the Constitution of India. They also sought an appropriate writ, order or direction, more

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particularly in the nature of a writ of Mandamus directing the respondents to continue the applicants in the service as Youth Coordinators in Nehru Yuva Kendras on regular basis and in the alternative to issue a direction to the respondents to make an amendment in the Recruitment Rules so as to make a suitable provision for absorption or regularisation of appointments of the applicants to the posts of Youth Coordinators in Nehru Yuva Kendras as direct recruits.

2. The writ petition was subsequently amended in view of the counter filed by the respondents and a prayer was added that U.P.S.C. - Respondent No. 2 be directed to incur in the Amendment of Recruitment Rules so as to make the applicants eligible for appointment to the post of Youth Co-ordinator as direct recruits.

3. In the counter filed by the respondents it is averred that the policy of the respondents from its very inception was to fill up the posts of Youth Coordinators by borrowing people from various departments of the Central/State Governments on deputation basis only. However, the applicants did not disclose the fact that they were deputationists and after they had been selected it came to light that they had been selected as direct recruit inasmuch as they had no lien against any permanent post of any State or Central Government cadre. So the orders of their appointment had to be suitably amended and they were appointed to temporary post of Youth Co-ordinators on purely ad hoc basis. Respondents asserts that the applicants having accepted their appointment on purely



ad hoc basis they could not lay a claim for absorption on permanent basis. They deny that the applicants were given any understanding much less an assurance that they would be regularly absorbed on the posts of Youth Coordinators in the Nehru Yuva Kendra. Further according to them they had taken up the matter with the U.P.S.C. for necessary amendment of the Recruitment Rules so as to provide for absorption of Youth Coordinators who had been appointed by direct recruitment and the U.P.S.C. had since agreed to an amendment in the Recruitment Rules on the suggested lines.

4. It may be pertinent to notice here that the Recruitment Rules were duly amended vide Gazette notification dated 13th October, 1986 and the following note was inserted under column 10 of the Schedule to the Recruitment Rules:

"Note:- The suitability of the holders of the posts of Youth Coordinator of Nehru Yuva Kendra in the scale of Rs.700-1300, on the date of notification of these rules, will be initially assessed by the Union Public Service Commission and if found suitable, they shall be deemed to have been appointed to the post of Youth Coordinator on regular basis at the initial constitution."

5. In view of the aforesaid amendment the learned Counsel of the applicants has urged that by legal fiction embodied in the aforesaid note the applicants would be deemed to have been appointed to the post of Youth Coordinator on regular basis at the initial constitution.

6. The contention of the learned Additional Solicitor General however is that the Amended Recruitment

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Rules being prospective in nature the suitability of holders of the posts of Youth Coordinators had yet to be adjudged after the same came into force. However that was not done, because, by a policy Resolution dated 25th February, 1987 it was decided by the Government to establish an autonomous body called Nehru Yuva Kendra Sangathan which was to be a registered society wholly owned and controlled by the Government of India and which was supposed to take over, manage and run the existing Nehru Yuva Kendras.

O.A. 1203 of 1987

7. There are two applicants namely Sarvashri Avadhesh Kaushal and Deen Dayal Sharma in this case. Both of them were earlier serving as Senior Instructors in the National Discipline Scheme/-, later on called the National Fitness Corps (for short the NFC) under the Ministry of Education, Government of India. Both of them were declared as quasi permanent under Rule 3 and 4 of the Central Civil Services (Temporary Service) Rules, 1965., Applicant No.1 w.e.f. 19th August, 1967 and Applicant No.2 w.e.f. 27th November, 1970. However on the introduction of Nehru Yuva Kendras* Scheme the applicants applied for appointment to the post of Youth Coordinators and both of them were selected. Since the posts held by them in NFC (Ministry of Education and Social Welfare) were being abolished, the department refused to retain their lien on the said posts. The respondents, therefore, required the applicants to tender their resignation from



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the aforesaid posts and assured that their resignations from the posts held by them in NCC would not result in forfeiture of their past service under Article 418(b) of CCS Regulations and therefore, applicants as Youth Coordinators could be treated to have been officiating with proper permission and hence they would enjoy the benefits of past service for the purposes of leave in the new post under Rule 9(2) of the CCS(Leave) Rules, 1972. Accordingly they resigned from the aforesaid post of Senior National Discipline Scheme Instructors and were appointed to the post of Youth Coordinators in Nehru Yuva Kendras. Hence they have been continuously serving on the post of Youth Coordinators since their appointment in 1973. They also claimed to be direct recruits under the foregoing circumstances and seek

a declaration that under the deemed provisions contained in the Note referred to above of the Amended Recruitment Rules they must be deemed to have been permanently appointed to the post of Youth Coordinators. The second relief sought by them is that they cannot be required by the respondents to work under the Sangathan. They pointed out that the payscale and other conditions of service prescribed under the Rules framed by the Sangathan are highly prejudicial to them inasmuch as the scale of post offered to them by the Sangathan is only Rs.2000-2500 whereas they after having rendered continuous service of more than 17 years with Respondent No.1 were currently drawing a salary of Rs.4500/- per month approximately. They further pointed out that

age of retirement on superannuation for a Government servant is 58 years whereas the age of retirement of Youth Coordinators in the employment of Sangathan has been fixed at 50 years only. Thus if they opt for employment in the Sangathan they would be ^{automatically} thrown ^{the} on the road and they will be deprived of all/benefits of their long continuous service:

8. In the written statement filed by the respondents it is explained that the applicants were required to tender resignation ~~as M.C.I.~~ in the erstwhile National Fitness Corps, they having been appointed on deputation basis to the post of Youth Coordinator in 1973, because the scheme of N.F.C. itself was being wound up. It is, therefore, admitted by the respondents that the applicants are being treated as direct recruits. It is further stated that even though the Central Government had taken a policy decision to transfer all work and functions of Nehru Yuva Kendras to the newly created autonomous organisation called Nehru Yuva Kendra Sangathan, adequate provision for continuance of the services of the applicants who were direct recruits, under the Sangathan on the existing terms and conditions of service was being made in the Draft Service Regulations of the Sangathan and they have assured that reduction in the emoluments of the applicants shall not take place in the event of their working under the Sangathan. They admit that the Recruitment Rules were duly amended in 1986 with a view to regularise the services of the Youth Coordinators who had been appointed prior to the Notification of Recruitment Rules, but the same



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said amendment had not been given effect to because in the meanwhile the Government decided to transfer the scheme of Nehru Yuva Kendras to an autonomous organisation called the Nehru Yuva Kendra Sangathan and after the transfer of all the existing Kendras to the Sangathan all the posts in the Nehru Yuva Kendras would be abolished. Further according to the respondents the policy of repatriation to their respective parent departments was adopted only in respect of the Youth Co-ordinators who were on deputation and it was not meant for direct recruits such as the applicants. Furthermore adequate provision was being made for continuance of their service as Youth Co-ordinators on the existing terms and conditions of their service in the Sangathan.

9. We have examined the provision contained in the Recruitment Rules as well as the Amended Recruitment Rules at considerable length in our judgment of date in O.A.876 of 1987 Suraksha Markanday Vs. Union of India so we need not dwell upon the same ever again. We may however clarify that the deemed provision contained in the note referred to above would take within its sweep all the existing holders of the post of Youth Coordinators as on the date on which the Amended Recruitment Rules came into force and they will naturally cover the direct recruits also. However, we need not probe the matter further in view of the candid and frank assurance given by the learned Additional Solicitor General at the Bar that the respondents will ensure that the existing terms and conditions including emoluments

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drawn by the direct recruits to the posts of Youth Coordinators numbering about 20 shall be duly protected on their joining service as Youth Coordinator in the Sangathan. Further he has assured that all the Youth Coordinators who have been directly recruited shall be absorbed in the Sangathan and they will not be prejudiced in the matter of their service conditions including the age of retirement etc in any manner.

10. In view of the assurance given by the Learned Additional Solicitor General, we allow both these applications and direct the respondents to regularise the services of the applicants as Youth Coordinators and ensure that they are duly absorbed as Youth Coordinators in the Sangathan on the existing terms and conditions of their service including the emoluments drawn by them/the pay scale, shall be duly protected while/the service of the Sangathan. Till that is done the respondents shall be responsible for payment of salary and all allowances as admissible under the Rules to the applicants and if they or any one of them has not been paid any arrears of salary etc. the same shall be paid within three months from today. Under the circumstances no order is made as to costs.

(Kaushal Kumar)
Administrative Member

(J. D. Jain)
Vice Chairman

CERTIFIED TRUE COPY
Dated _____

(A. S. RAWAT)
Section Officer
Central Administrative Tribunal
Principal Bench, Faridkot House
New Delhi

..... CERTIFIED TO BE TRUE COPY

Dated

(ANIL SRIVASTAVA)
Section Officer
Central Administrative Tribunal
Principal Bench, Faridkot House