

CAT/7/12

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2069/90 with
~~P.A.~~ No. MP 2445/90

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DATE OF DECISION 14.12.1990.

<u>Shri Bishember Dass & Another</u>	Petitioner
<u>Shri B.B. Raval</u>	Advocate for the Petitioner(s)
Versus	
<u>U.O.I. through the Secretary,</u>	Respondent
<u>Min. of Surface Transport & Others</u>	
<u>Shri P.P. Khurana</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman (J))

The applicants in the present application were also applicants in OA 2118/89 (B.M. Nayyar Vs. Union of India & Others) which was disposed of by judgment dated 8.6.1990. Their grievance related to their recall from deputation with the Inland Waterways Authority of India, placing them temporarily on the strength of the Ministry of Surface Transport, declaring them surplus and thereafter transferring them to Surplus Staff Establishment of the Ministry of Surface Transport and placing their services at the disposal of other Ministries/Departments for redeployment pursuant to the revised scheme for redeployment of Surplus Staff prepared by the Ministry of Personnel, Public

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Grievances and Pensions, Department of Personnel & Training in April, 1989. The Tribunal upheld the validity of the impugned decision of the respondents to recall the applicants who were on deputation to the Inland Waterways Authority of India and to place them temporarily on the strength of the Ministry of Surface Transport and thereafter, to transfer them to the Surplus Staff Establishment of the Ministry of Surface Transport with a view to their redeployment in suitable posts wherever vacancies are available. The Tribunal directed, inter alia, in para 18(iii) of its judgment that "The respondents shall make fresh offers to the applicants of suitable jobs on redeployment in posts commensurate with their existing pay scales, as far as possible, within a period of six months from the date of communication of this order. It is open to the applicants to exercise their option to accept the jobs offered to them during this period. If the applicants express their unwillingness to accept the jobs offered to them within a period of one month from the date of receipt of the offer, or if they do not exercise any option during the said period, they would be deemed to have opted for voluntary retirement. The respondents shall, in that event, process the cases of the applicants accordingly after dispensing with the usual formalities or preconditions to the extent possible. The respondents shall also release to the applicants proportionate pension depending on the length of service, and other

retirement benefits on the basis of the last pay drawn by them while they were on deputation to the Inland Waterways Authority of India, as expeditiously as possible. They would also be entitled to the benefit of addition of period not exceeding five years to the qualifying service for the purpose of pension, as provided for in Rule 48-B of the CCS(Pension) Rules, 1972, if they are otherwise entitled to the same."

2. Thereafter, on 8.10.1990, the two applicants filed the present application and on 10.10.1990 another application which was registered as OA 2116/90 seeking similar reliefs. On 12.10.1990, the learned counsel for the applicant (Shri J.P. Verghese) appeared and when he was told about the present application filed by the same applicants, OA 2116/90 was dismissed as withdrawn at his request.

3. The prayers sought in OA 2069/90 are that: (1) the impugned Memoranda dated 13.9.1990 and 30.10.1989 be quashed and that (2) the present OA be decided along with other OAs of similarly situated employees pending in the Tribunal.

4. OM dated 13.9.1990 whereby the respondents forwarded to the applicants a copy of the offer of appointment issued by the CPWD for the post of peon, reads as follows:-

" OFFICE MEMORANDUM

Subject: Redeployment of Surplus Staff -
Judgment of Hon'ble Central
Administrative Tribunal -
Implementation of.


The undersigned is directed to refer

to the subject mentioned above and to forward herewith a copy of offer of appointment issued by CPWD for the post of Peon, to S/Shri Guna Nand, Farash, and Bishambar Das, Peon on their redeployment to CPWD. These posts were offered to them earlier also and these posts are still open for their redeployment. Shri Guna Nand, Farash and Shri Bishambar Das, Peon are requested to submit their willingness to accept this offer within a month from the date of receipt of this O.M.

2. The attention of Shri Guna Nand and Shri Bishambar Das is also invited to para 18(iii) of the Central Administrative Tribunal's Judgment dated 8.6.1990, in case of Shri B.M. Nayyar and others in which it has been mentioned that if an employee conveys his unwillingness to accept the offer or does not submit his option at all, he will be deemed to have opted for voluntary retirement". (Vide Annexure A-4, page 22 of the paper book)

5. OM dated 30.10.1989 which contains the terms and conditions of appointment as peon reads, inter alia, as follows:-

"On the basis of nomination through Surplus Cell, Ministry of Labour (D.G.E.&T) vide their office letter No.DGET-2 89-Surplus Cell, dated 11.9.1989 Shri Bishambar Dass is hereby offered purely temporary appointment as Peon which is likely to continue until further orders on the following terms and conditions.

01. On his redeployment in CPWD he will be placed in the scale of 750-12-870-EB-14-940 and his pay will be fixed accordingly in consultation with the Department of Personnel & Training.
02. He will not get any benefit of his past service/seniority and that his seniority in CPWD will be reckoned from the date of his joining this Department.
- xxx xx  xxxx xxxx
04. No gratuity or pension will be admissible for officiating service, but he may be granted leave under the Central Service Revised Leave Rules - 1972 as amended from time to time.
05. The appointment carried with it the liability to serve in any part of India or outside where the CPWD has organisation or any other Government Department where he is required to serve. He will have no choice of posting to particular station.



06. His services are liable to be terminated by the Government at any time without assigning any reason but ordinarily one month's notice will be given. If, however, he wishes to resign, he will have to submit his resignation and wait for its acceptance by the Government. In case he goes away without its acceptance, he will be treated as having been dismissed from service with a disqualification for future employment under the Central Government.

07. As he has been employed previously, he will have to submit a discharge certificate from his last employer.

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21. He will be on probation for a period of two years. The period of probation may be extended at the discretion of the appointing authority. During the period of probation he will be required to do such duty as Govt. may prescribe. Failure to complete the period of probation to the satisfaction of competent authority will render him liable to discharge from service.

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23. If he accepts offer on terms and conditions given above an undertaking on these terms and conditions may be taken before he is allowed to report for duty to the Chief /Superintending/Executive Engineer P.W.D. Division No.26(DA), New Delhi on or before 28.11.1989. If he fails to report for duty by the prescribed date, the offer will be treated as cancelled.

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27. He will have to undergo training for a period of three years of Home Guard after getting appointment as a Peon in the department. However, on the basis of attaining level of training during the training period and keeping in view the work done by the individual, the Commandent General can reduce the training period upto two years".

6. The application was listed for hearing on admission when we heard the learned counsel of both parties and reserved our orders. We feel that the application could be disposed of at the admission stage itself and we proceed to do so.

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7. The contention of the applicants is that conditions 2,4,6,7, 21 and 27 of the conditions of the offer of appointment, extracted above, are legally unsustainable. Shri P.P. Khurana, the learned counsel of the respondents submitted that the impugned Memoranda dated 13.9.1990 and 30.10.1989 are in conformity with the scheme for redeployment of Surplus Staff which has been upheld by the Tribunal in its judgment dated 8.6.1990 in OA 2118/89.


8. The redeployment of the applicants is sought to be made in accordance with the provisions of the scheme for redeployment prepared by the Department of Personnel which was upheld by the Tribunal in its judgment dated 8.6.1990 in OA 2118/89. According to the said scheme, service rendered prior to redeployment should not count for seniority. A surplus employee who is permanent will enjoy protection of lien when redeployed/readjusted in a new organisation. The surplus employee will have the benefits of past service for the purpose of pension and retirement benefits but the service on redeployment is treated as fresh service. In our opinion, there is no legal or constitutional infirmity in the impugned Memoranda dated 13.9.1990 and 30.10.1989. The other points urged in the present application is a rehash of the points raised by the applicants in OA 2113/89.

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In our opinion, the applicants cannot reagitate the same by filing another application.

In the light of the foregoing, there is no merit in the present application and the same is dismissed at the admission stage itself. There will be no order as to costs.


(D.K. CHAKRAVORTY)
MEMBER (A) 14/12/90


14/12/90
(P.K. KARTHA)
VICE CHAIRMAN (J)