

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

(5)

O.A. No. 2729/90 With
 M.P. A. No. 533/91 199

DATE OF DECISION 23.4.1991.

Shri Ashok Kumar & Ors.	Petitioner Applicants
Shri B.B. Raval	Advocate for the Petitioner(s) Applicant
Union of India & Ors.	Respondent
Shri P.H. Ramchandani	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

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 ? *Yes*
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*

(Judgement of the Bench delivered by Hon'ble
 Mr. D.K. Chakravorty, Administrative Member)

The applicants, who have worked as Tally Clerks in the grade of Rs.825-1200 in the Delhi Milk Scheme (D.M.S.), filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying that the respondents be directed to adjust them on Group 'C' posts and not on Group 'D' posts. In MP-533/91, they have prayed that the respondents be directed to allow them to perform their normal duties ~~as~~ ^{or} as Tally Clerks in the D.M.S. as there are many vacancies according to them. Alternatively, they have prayed

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that they may be paid "monthly payment" till the final disposal of the application.

2. The facts of the case in brief are as follows.

The applicants joined service in the D.M.S. in 1984.

In 1988, they were appointed substantively in the post of Tally Clerk. On 29.3.1990, the respondents issued an office order declaring them surplus. They were transferred to the Surplus Staff Establishment w.e.f. 1.4.1990 for the purpose of redeployment. It was added that they would continue to perform their duties in the D.M.S., as may be assigned to them, till they are borne on the Surplus Staff Establishment.

On 15.11.1990, the office of the respondents wrote to the Archaeological Survey of India at Jhansi to the effect that the applicants had been offered the posts of Attendant in their office. On 12.10.1990, the Archaeological Survey of India issued an office order stating that on the recommendations of the Department of Personnel & Training, the applicants were being appointed as Attendants in their office at Jhansi in the scale of Rs.750-12-870-E8-14-940 plus usual allowances. It was also added that their appointment was subject to the rules and instructions

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regarding the redeployment of surplus employees.

Pursuant to the above, the applicants joined at Jhansi as Attendants.

3. The applicants have contended that the scale of pay of Attendant is lower than that of Tally Clerks and that adjustment from Group 'C' to Group 'D' is illegal.

4. The Department of Personnel & Training have informed the applicants in reply to the representations submitted by them that they may apply for readjustment after joining the post in question under rule 6 of the C.C.S. (Redeployment of Surplus Staff) Rules, 1990, and that in view of the non-availability of an alternative post, they cannot be nominated against another post at this stage.

5. The respondents have stated in their counter-affidavit that the applicants, who were holding the posts of Tally Clerk in Delhi Milk Scheme, were declared surplus as a result of the study conducted by the SIU, Ministry of Finance w.e.f. 1.4.1990 and their particulars were reported to respondent No.1, i.e., Department of Personnel & Training (in the Ministry of Personnel, Public Grievances & Pension, and not Ministry of Home Affairs

as stated in the application), for arranging their redeployment to alternative posts in the Central Government. In this connection, it may be stated that a Revised Scheme for Disposal of Surplus Staff (hereinafter referred to as the SCHEME) was brought into force by the Government of India w.e.f. 1.4.1989. Further, the rules, known as the Central Civil Services (Redeployment of Surplus Staff) Rules, 1990 (hereinafter referred to as RULES) were notified in terms of the Revised Scheme, and in replacement of the rules already in force, w.e.f. 28.2.1990.

6. Efforts were made to find posts in matching pay-scale for the applicants in accordance with the provisions of the Scheme and the Rules aforesaid; however, as it was not possible to arrange suitable posts for them in the matching scale, they were nominated against the post of Attendants (pay-scale of Rs.750-940) in Group 'D', reported by Respondent No.3 (i.e. Office of the Deputy Superintending Epigraphist, Archaeological Survey of India, Jhansi (U.P.)). Such a nomination to Group 'D' posts could be made by the Surplus Cell under clause (iv) of sub-rule (2) of Rule 4 of the said Rules.

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Consequent upon this nomination, Respondent No.3, aforesaid, issued offers of appointment to them and thereupon the Respondent No.2 (i.e. Delhi Milk Scheme) relieved them under their order dated 15.11.90 (Annexure A-1), effective from 16.11.1990 (Afternoon). The applicants joined the posts of Attendant in the Office of Respondent No.3 at Jhansi on 26.11.1990.

7. Even though the applicants were redeployed in a post carrying a lower pay-scale, they are entitled under the Rules to carry their own pay-scale (i.e. Rs.825-1200) as personal to them while working in the lower post of Attendant in the pay-scale of Rs.750-940. Besides, they were also entitled to exercise an option within one month of their joining to retain, on personal basis their status as Group 'C' employees while working in Group 'D' posts, to which they had been deployed. Further, under Rule 6 of the Rules, they could also exercise an option within two months of their joining the new posts for their readjustment in post carrying a matching pay-scale and located in the State in which they were last posted or desired to be redeployed (i.e. Union Territory of Delhi in this case). It may be mentioned here that the

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three applicants having joined their new posts on 26.11.90 could exercise option for retention of Group 'C' status on personal basis till 25.12.1990 and for their readjustment under Rule 6 to posts carrying matching pay-scale and located in Delhi till 25.1.1991. However, no such options are known to have been filed by them with Respondent No.3 as required under the relevant Rule and orders.

7. We have gone through the records of the case and have considered the contentions of both sides. The redeployment of surplus staff is governed by the Central Civil Services (Redeployment of Surplus Staff) Rules, 1990, made by the President in exercise of the powers conferred by the proviso to Article 309 of the Constitution. The validity of the said Rules has not been challenged in the present proceedings. The provisions of the said Rules provide adequate safeguards to the employees concerned. Rule 4 (2) (iv) and (6) and Proviso to Rule 5(2), which are relevant in the present context, read as under:-

"(iv) If the Cell in the Department of Personnel and Training, on review of the vacancies reported to it, comes to the conclusion that it may not be possible for it to arrange a suitable placement in a Group 'C' post, it may, as far as possible, with prior intimation to the Cell in the Directorate General, Employment & Training,

nominate a Group 'C' surplus employee for appointment to a vacancy in a Group 'D' Service or post, and in that case, these rules shall apply to such nomination, as are applicable to the nomination of a Group 'D' surplus employee made by the Cell in the said Directorate General."

Rule 4(6)

"(6) Absorption of surplus staff within the Ministry or Department:-

Notwithstanding anything contained in sub-rules (2), (3), (4) and (5), and subject to the provisions of rule 12, the Ministry or Head of Department may, under intimation to the concerned Cell, adjust an employee declared surplus by it against a vacancy (if any available at the time he is declared surplus or before he is redeployed through the Cell) in any post located in any office under its control and carrying equivalent pay scale for appointment to which he is considered by the appointing authority to be suitable."

Rule 5(2) (ii)

"(ii) When redeployed in a post carrying a lower scale of pay, the surplus employee shall be permitted to carry his current pay-scale along with him to the next post but this benefit shall not be extended where, despite availability of a post in a matching or a higher pay-scale, a person is redeployed in a post carrying a lower pay-scale at his own request."

8. Thus, according to the scheme of things, a Group 'C' employee may be appointed in a Group 'D' post but in that event, he will be entitled to the protection of his pay-scale in Group 'C' post. He may also be adjusted against any vacancy in Group 'C' post located in any office that may arise in the future.

9. The aforesaid provisions were not explicitly brought to the notice of the applicants when the

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Archaeological Survey of India issued their office order dated 12.10.1990.

10. In the light of the foregoing, the application is disposed of with the following orders and directions:-

(i) Respondent No.3 (Archaeological Survey of India) are directed to issue to the applicants the terms and conditions of their redeployment, including the provision relating to the protection of their pay-scale of Rs.825-1200 during the period of their appointment in Group 'D' post under them. The respondents shall release the pay and allowances on the said basis w.e.f. 26.10.1990, if this has not already been done.

(ii) The applicants may make representation to Respondent No.1 (Department of Personnel & Training) for arranging suitable placement in Group 'C' posts at New Delhi as and when vacancies arise. Respondent No.1 shall consider such representation sympathetically and in accordance with the rules.

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11. The application and MP-533/91 are disposed of on the above lines at the admission stage itself. There will be no order as to costs.

Chakraborty -
28/4/49,
(D.K. Chakravorty)
Administrative Member

Kartha 23/4/81
(P.K. Kartha)
Vice-Chairman (Judl.)