

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 211/2004

NEW DELHI THIS 26th DAY OF October 2004

HON'BLE SHRI JUSTICE V S AGGARWAL, CHAIRMAN
HON'BLE SHRI S .A. SINGH, MEMBER (A)

1. Anand Prakash S/o Mange Ram
Village & PO: Bankner,
Delhi-110040
2. Kaptan Singh Khokar, S/o Late Sh. Chand Ram,
326, Gali No.10, Swatantar Nagar,
Narela, Delhi – 110040
3. Ajit Singh, S/o Sh Rai Singh,
145, Village Naya Bans,
Delhi 110042.

.....APPLICANT(S)
(BY SHRI H.S. Dahiya with Sh. Vir Prakash Advocates)

VERSUS

1. Govt of NCT Delhi through Chief Secretary,
Govt of NCT Delhi,
Secretariat, Govt of NCT Delhi,
IP Estate, New Delhi
2. The Director of Education,
Govt of NCT, Old Secretariat,
Delhi.
3. Dy. Director of Education (Sports)
Govt. of NCT Delhi,
Chhatarshala Stadium,
Model Town, New Delhi

.....RESPONDENTS

(BY SHRI Mohit Madan proxy for Mrs. Avnish Ahlawat, Advocate)

O R D E R

BY HON'BLE SHRI S.A. SINGH, MEMBER(A)

The applicants are Kabaddi and Wrestling coaches and had been working as part time coaches with the respondents with breaks. Applicant No. 1 had been Working since 1989 and applicant No.2 since 1994 and applicant No. 3 from 1996 . The applicants had earlier filed OA No. 937/2002 which was disposed of by judgment dated 4th September 2002 with following directions:

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"In view of this position, we quash and set aside the Special Scheme (annexure A-1) and direct the respondents to reframe a well thought-out Scheme keeping in view the aforesaid directions of this Tribunal as also the judgment of the apex court cited supra, as expeditiously as possible in any event within a period of three months from the date of receipt of copy of this order and till then the service of the applicants will not be terminated. Respondents are also directed to make payment of the salary to the applicants for the period they have Actually worked immediately, if not already done. No costs."

2. The applicants challenged the scheme framed by the respondents in compliance to the directions of the Tribunal and also failure of the respondents to regularize their services. They are seeking the following reliefs:

- a) Tribunal to pass the order of regularization of services of the applicants from the date of their initial appointment in the service;
- b) to pass the order of payment of salaries to the applicant No.1 and 2 from September 2001 and to the applicant No. 3 from August 2001 to the time the applicants are re-engaged in services and started to pay salaries;
- c) to pass the order treating the applicants in continuous service from the time the applicants had filed OA No. 2010/2000and 206/2001 till the regularization of the applicants and also order counting of the entire service rendered by the applicants on regularization of their services with all consequential benefits of services such as seniority and arrears of pay and allowances from the date of their initial appointment; and
- d) to quash and set aside the latest scheme (Annexure-A1).

3 The grounds for seeking reliefs are :

- a. that the Tribunal in its order dated 18.4.2001 had observed that services of the applicants were required by the respondents to continue to engage the applicants from time to time in accordance with the need of the respondents in preference over freshers/juniors/outsiders, hence disengagement of the applicants from September 2001 is arbitrary and illegal;

b) they are claiming salaries after September 2001 on the grounds that they kept on performing their duties till June 2002 and making their attendance (applicant No. 1 & 2 upto June 2002 and applicant 3 upto February 2002) . The applicants had worked with the hope that they will be paid after regularization but this has not happened and then they filed OA 937/2002 in April 2002. Hence the applicants are entitled to be paid by the respondents;

c) the applicants also pleaded that the latest scheme prepared by the respondents is not in accordance with the order dated 18th April 2001 and also of 5th Sept 2002 instead of regularization the services of the applicants , the scheme only allows the applicants to complete in the open competition as and when the posts would be filled up by the respondents, hence the scheme is in violation of the orders of the Tribunal. The age relaxation provided in the scheme requires the applicant to serve for nine calendar months or more in an academic year or at least 270 days (excluding Sundays, 2nd Saturday, National Holidays and Gazetted Holidays) between 1st April to 31st March of the year and only then age relaxation up to one year for each year will be available. This is arbitrary because the condition of 270 days has been intentionally and malafidely put to deprive the applicants for the period they have worked with the respondents as part time coaches. Similarly the provision of weightage of ½ mark for each completed work for one year with a maximum limit of five marks in the scheme which also malafidely deprive of the service rendered by the applicants. In view of this the Tribunal was urged to grant the reliefs and get the applicants engaged and regularized their services.

4. The above pleas made by the applicant have been vehemently opposed by the respondents stating that the reliefs sought in the present OA have already been challenged in earlier OAs and hence are barred by principles of res judicata .

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5. As far as the Scheme is it is perfectly legal and valid. There cannot be any directions to frame a scheme as per the liking of the petitioner. As regards pay and allowances claimed by the applicants , the present application nothing is due as their claim for such pay and allowances is false and bogus. The records in respect of applicants attendance etc. filed by the Vice Principal were manipulated and are forged, for which disciplinary action is being taken against Vice Principal.

6. We heard counsel for the parties and gone through the documents placed on record. As far as the preliminary objection of the respondents is concerned that the applicant is barred by the principles of res judicata, it is clear from the directions passed by the Tribunal in OA 397/2002l, relevant portion of which has already been reproduced in para 1 above, directions were given to the respondents to reframe a well thought out scheme and to make payment of the salary to the applicants for the period they have actually worked. In this OA the applicants are basically claiming according to the directions and hence the principles of res judicata would not apply in this case.

7. First we take up the question of the impugned scheme for appointment and regularization of coaches, which had been prepared as per the direction in OA 937/2002, and impugned order is annexed as A-1. Para 2 of the scheme read as under: -

“The part time coaches who are working or had worked in the Date. Of Education, Govt. of Delhi if apply against the vacancies advertised by DSSSB or any other prescribed recruitment agency will be eligible for relaxation in the upper age limit prescribed in Recruitment Rules. Such part time coaches will be provided relaxation in the age corresponding to the number of years they have served as part time coach in the Date. Of Education. Delhi Govt. If a part time coach has served for 09 (nine) calendar months or more in an academic year i.e. at least 270 days (excluding Sundays, 2nd Saturday, National Holidays and Gazetted Holidays) starting from 1st April and ending on 31st March of next year, he/she will be given age relaxation of one year for that academic year.”

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8. We also found that the respondents in their counter to para 5.9 have said the following:

"5.9 para 5.9 is wrong and is denied. It is submitted that scheme is perfectly legal and valid. It is submitted that Sunday, Second Saturday, and national holidays when excluded, the working days will be between 230 to 240."

9. From the reading of para 2 of the scheme the stipulation is that a person will have to work for nine calendar months or more in an academic year or at least 270 days (excluding Sundays, 2nd Saturdays, national holidays and gazetted holidays) for one year age relaxation. According to para 5.9 of the counter filed by the respondents it has been indicated that the number of working days will be between 230 to 240 days. So we fail to understand how the condition of 270 days stipulated in the scheme for one year age relaxation will be fulfilled if Sundays, National holidays are excluded. In fact by this exclusion the remaining working days are likely to be even less than 240 days, hence it is not practically possible to fulfil this condition in getting the benefit under the scheme.

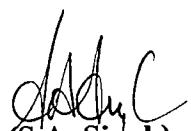
10. In view of this we quash the scheme and direct the respondents to review the scheme and come out with a well thought out scheme which is equitable for applicants and others who will be regularized along with them, within a period of four months.

11. We now take up the question of payment of salaries to applicants from 01.9.2001 onward in the case applicant 1 and 2 and from August 2001 in the case of applicant 3. The applicants have placed on record certain attendance records in support of their claim. These have been contested by the respondents as being fabricated and false. It is not possible for the Tribunal to go into the authenticity or otherwise of the records. In view of this we direct respondent No. 2 to set up a fact finding enquiry for determining the authenticity of these attendance records. If the attendance sheets/records are found authentic then the applicants will be entitled to all



pay and allowances as per rules/norms. This process be completed within six months.

12. With these directions the OA is disposed of. No costs.



(S.A. Singh)

Member(A)



(V.S. Aggarwal)

Chairman

Patwal/