

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

NEW DELHI, THIS THE 12th DAY OF MARCH, 1997.

HON'BLE MR. JUSTICE K.M. AGARWAL, CHAIRMAN
HON'BLE MR. N. SAHU, MEMBER (A).

1. O.A. No.512/1992

Shri P.K. Pillai Shri R.K.Pillai (As per order
Daftary dated 21.4.1997 in
O/o Managing Director MA 938/97)
Chukha Hydel Power Corporation *first*
Tsimalakha *5/3/97*
Bhutan *21.4.97*
(By Advocates Shri E.X.Joseph and Shri K.L.Bhandula) *Applicant*

Versus

1. The Union of India
Secretary to the Government,
Ministry of Water Resources
Shram Shakti Bhawan,
Rafi Marg, New Delhi.
2. The Central Water Commission
through its Chairman
Sewa Bhawan, R.K.Puram, ... *Respondents*
New Delhi-110066.
(By Advocates Shri M.L.Verma and Shri M.M.Sudan).

2. O.A. No.750/1992

1. Shri Shyam Sundar Mukhopadhyay
S/o Shri Krishna Chandra Mukhopadhyay
Works Assistant (relieved from service)
O/o Executive Engineer
Stores Disposal Division
Chukha Hydel Project
Phuntsholing, Bhutan.
2. Shri Suresh Chandra Dey
S/o Shri Rajani Kanta Dey
Khalasi (relieved from service)
O/o Chukha Hydel Project,
Phutsholing, Bhutan.
3. Shri K.C. Abraham
S/o Shri K.T.Chacko
Wireman (relieved from service)
O/o Chukha Hydel Project
Phutsholing, Bhutan.
4. Shri P.Chandrasekharan
S/o Shri A.N.Nair
Work Assistant (relieved from service)
Chukha Hydel Project,
Phuntsholing, Bhutan. *Applicants*

(By Advocates Shri E.X. Joseph and Shri K.L. Bhandula)

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Versus

1. The Union of India through the
Secretary to the Government
Ministry of Water Resources
Shram Shakti Bhawan
Rafi Marg, New Delhi.

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2. The Central Water Commission
through its Chairman
Sewa Bhawan, R.K.Puram
New Delhi-110066.

.... Respondents

(By Advocates Shri M.L.Verma and Shri M.M.Sudan).

3. O.A. No. 1230/1992.

Shri R.N.Jha,
UDC
Office of the Managing Director,
Chukha Hydro Power Corporation,
CHIMAKOTHI (Bhutan). ... Applicant

(By Advocates Shri E.X.Joseph and Shri K.L.Bhandula).

Versus

1. The Union of India through the
Secretary to the Government,
Ministry of Water Resources
Shram Shakti Bhawan,
Rafi Marg,
NEW DELHI-110001.

2. The Central Water Commission
through its Chairman,
Sewa Bhawan, R.K.Puram,
New Delhi-110066. ... Respondents

(By Advocates Shri M.L.Verma and Shri M.M.Sudan).

4. O.A. No. 1590/1996.

Shri K.Balakrishnan
S/o Late Shri K.Kochuraman,
Ex.Head Clerk, Chukha Hydel Project. ... Applicant

(By Advocate Shri K.L.Bhandula)

Versus

1. The Secretary to the Govt. of India,
Ministry of Water Resources,
Shram Shakti Bhawan, Rafi Marg,
New Delhi-110001.

2. The Chairman,
Central Water Commission,
Sewa Bhawan, R.K.Puram,
New Delhi-110066. ... Respondents

(By Advocates Shri M.L.Verma and Shri M.M.Sudan).

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ORDER

BY MR. JUSTICE K.M. AGARWAL :

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In all these 4 applications under Section 19 of the Administrative Tribunals Act, 1985, the applicants are making a common prayer for directing the respondents to absorb them in the service of the Central Water Commission or under any other department of the Government of India after quashing the impugned letters expressing unwillingness to absorb in the service of the Central Water Commission, (in short the "CWC"), on more or less common set of facts. Accordingly all the 4 O.As are disposed of by this common order. In addition to this and apart from the facts adumbrated in general, it may be specially mentioned that O.A. No.1590 of 1996 is palpably and barred by time/in the absence of any reasonable excuse for the delay and an application in that regard, it is liable to be dismissed on the ground of limitation alone.

2. Briefly stated, the applicants were local recruits, appointed on temporary basis as peon, wireman, khalasi or Barkandaz during the years 1973, 1974 and 1975 by the Chukha Hydel Project Construction, which was earlier under the management of the C.W.C. and subsequently transferred to the Chukha Project Authority with effect from 27.11.1975. The services of the officers and the staff, including those of the applicants were also transferred to the Chukha Project Authority. While in service, the applicants or some of them also secured promotions in service, but that is not

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material for the purpose of their applications. "With the completion of the works of the Chukha Hydel Project and in view of the decision to hand over the Project to the Royal Government of Bhutan and closure of Chukha Project Authority Organisation as decided by the Chukha Project Authority in its 29th meeting held on 4.6.1991, the services of the directly recruited staff of General Manager's Office, Chukha Hydel Project, Chimakothi, Bhutan" were decided to be dispensed with and accordingly the applicants were served with termination orders. Faced with this situation, the applicants started themselves to be treated as employees of C.W.C. and accordingly claimed absorption by asserting that at the time of transfer of the management to the Chukha Project Authority, their option was not ascertained. They also made representations which were rejected or overruled by the respondents. The applicants, therefore, filed their aforesaid G.As for the said reliefs.

3. The learned counsel for the applicants submitted that they were appointed by the C.W.C. and, therefore, when the management of the Chukha Hydel Project Construction was handed over by the C.W.C. to the Chukha Project Authority, the option of the applicants ought to have been ascertained as to whether they were willing to work under the Chukha Project Authority. That having not been done, they ought to be treated as continuing in service with the C.W.C. and accordingly they were entitled to be absorbed with the C.W.C.

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or with any other department of the Government of India. They also placed reliance on the decision of this Tribunal in the case of SHRI M.JOYKUTTY Vs. U.G.I. & OTHERS (OA No.2213/1990) decided on 24.7.1991 and submitted that as directed in that case, the respondents in the present case be also directed to circulate the particulars of the applicants to all the establishments under the C.W.C. and other Government establishments for possible absorption after age relaxation to the extent of service rendered by them with the C.W.C. and the Chukha Project Authority.

4. The learned counsel for the respondents resisted the claim of the applicants by submitting that they were local recruits and appointed in connection with the construction work undertaken by the Chukha Hydel Project. As soon as the construction work was over, they could not claim continuance in service with the C.W.C. According to the learned counsel, they could get no advantage of the aforesaid decision of the Tribunal and their applications are liable to be dismissed.

5. After giving serious consideration to the rival contentions of the learned counsel for the parties, we are of the view that all the aforesaid applications deserve to be dismissed. It has to be noted that the appointment of the applicants was purely on temporary basis and it was terminable at any time without any notice. Secondly, it was in connection with the construction work of Chukha Hydel Project initially undertaken by the C.W.C. and subsequently

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transferred to the Chukha Project Authority. The decision to terminate the services of the applicants was not taken arbitrarily but it was due to the completion of the work of Chukha Hydel Project and pursuant to the decision to transfer the Project to the Royal Government of Bhutan and closure of Chukha Project Authority. In other words, the decision to terminate the services was not taken as a measure of punishment but on the basis of administrative exigencies and, therefore, the action cannot be said to be arbitrary, illegal or without any basis. It is true that initially the applicants were appointed by the C.W.C. and with the transfer of the work to the Chukha Hydel Project, their services were also automatically transferred to the said Project. It is also true that the respondents did not obtain the options of the applicants before transferring their services to the Chukha Hydel Project but it may not be overlooked that had the applicants not opted to continue in services with Chukha Hydel Project, their services would have been terminated immediately as their appointments were purely on temporary basis and since the C.W.C. did not appear to have any other work or project in Bhutan. Further the Project was transferred to Chukha Project Authority in the year 1975 and the impugned relieving orders were passed in or about 1991. During this long period, none of the applicants came forward with a claim for absorption with the C.W.C. and, therefore, it must be inferred that they had willingly continued to work with the

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Chukha Project Authority after the date of transfer of the project to this Authority. In so far as the decision of this Tribunal in JOYKUTTY's case (supra) is concerned, it may be noticed that there are several distinguishing features in the case of JOYKUTTY as compared to that of the case of the present applicants. Joykutty was appointed as LDC in the regular establishment, whereas the applicants were appointed in the work charged establishment. As per terms of agreement between the C.W.C. and the Chukha Project Authority, the officers and staff of the Project were to be placed at the disposal of Chukha Project Authority for a period of 3 months during which period they were to be governed by the rules framed by the Govt. of India. The Chukha Project Authority had to offer terms and conditions to them within this period of 3 months and those who did not volunteer for absorption in Chukha Project Authority were to go back to their parent department on or before 29.2.1976. However, no such offer was made to the applicants. His representation, however, elicited inquiries from the Commission as to whether he had exercised his option within the specified period of 3 months and whether there were other similarly placed members of the staff in the project. The issue of absorption in the circumstances remained under the consideration of the CWC till January 1987, when the Commission expressed its inability to absorb any more surplus staff. Under these circumstances and in view of the finding that from the correspondence exchanged between the Project Authority and the C.W.C.,

Shri Joykutty's case was unique, because there was no

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other L.D.C. who was recruited on the strength of the regular establishment, that certain directions in favour of Joykutty were made by the Tribunal. These directions were to the effect that the particulars of Joykutty be circulated to all the establishments under the C.W.C. and other Government establishment for possible absorption and that the age relaxation to the extent of service rendered by him with the C.W.C. and the Chukha Project Authority should be allowed to him in terms of the Department of Personnel & Training O.M. No.15012/7/90-Ett.(D) dated 7.11.1990. We may also refer to the following observations of the Supreme Court in the case of CHARAN SINGH AND OTHERS Vs. STATE OF PUNJAB (AIR 1975 SC 246):

" In the context of what value should be attached to the statements of the witnesses examined in this case our attention has been invited by the learned counsel for the appellants to a number of authorities. We have refrained from referring to those authorities because, in our opinion reference to those authorities is rather misplaced. The fate of the present case like that of every other criminal case depends upon its own facts and the intrinsic worth of the evidence adduced in the case rather than what was said about the evidence of witnesses in other decided cases in the context of facts of those cases. The question of credibility of a witness has primarily to be decided by referring to his evidence and finding out as to how the witness has fared in cross-examination and what impression is created by his evidence taken in the context of the other facts of the case. Criminal cases cannot be put in a straitjacket. Though there may be similarity between the facts of some cases, there would always be shades of difference and quite often that difference may prove to be crucial. The same can also be said about the evidence adduced in one case and that produced in another. Decided cases can be of help if there be a question of law like the admissibility of evidence. Likewise, decided cases can be of help if the question be about the applicability of some general rule of evidence, e.g., the weight to be attached to the evidence of an accomplice. This apart, reference to decided cases hardly seems apposite when the question before the court is whether the evidence of a particular witness should or should not be accepted."

Extending the said principle, we are of the view that the decision of this Tribunal in the case of JOYKUTTY (supra)

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cannot be said to be binding on us as it does not lay down any general principle of law or rule of evidence.

6. For the foregoing reasons, all these applications deserve to be dismissed and accordingly hereby dismissed, but without any order as to costs. However, on humanitarian grounds, we hope and trust that the respondents would sympathetically consider the cases of the applicants for their absorptions if possible by giving them age relaxation and/or by circulating their names to the departments of Government. But we also wish to say that here all litigations must stop.

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(K.M.AGARWAL)

CHAIRMAN

N.SAHU
(N.SAHU)
MEMBER (A)