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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

1). O.A.NO. 1830/93

New Delhi: this the ^{15th} day of July, 1999.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MR. P. C. KANNAN, MEMBER (J)

1. Indira Devi Kutty,
W/o Shri V. K. Velukutty,
R/o 383/KG. II Vikaspuri,
New Delhi -110018

2. Mrs. Rama Patial,
W/o Shri S. K. Patial,
R/o D/15, Fine Home Apartments,
Mayur Vihar Delhi-110092

3. Sardar Singh,
S/o Shri Dalip Singh,
R/o Village Nangli H.No.3,
P.O. Alipur,
Delhi-110036.

4. Jag Mohan Jain,
S/o Shri P. S. Jain,
R/o B/17, Ashoka Niketan,
Vikas Marg Extension,
Delhi-110092

..... Applicants.

2) O.A.No. 1932/93

Mrs. Saraswathy Nair,
W/o Shri Surendran Nair,
R/o Tranvandoor House,
New Delhi -110001

..... Applicants.

Versus

1. Union of India,
through
the Secretary,
Ministry of Surface Transport,
Transport House,
Parliament Street,
New Delhi - 110001

2. Deptt. of Personnel & Training,
through its Secretary,
North Block,
New Delhi- 110011

..... Respondents.

Advocates:

Shri D. C. Ubhra for applicants.

Shri A. K. Bhardwaj for respondents.

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ORDER

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

As these two OAs involve common questions of law and fact, they are being disposed of by this common order.

2. In OA No. 1830/93 applicants pray for a direction that they be deemed to belong to the CSS since the date of their absorption in the office of Respondent No.1 and to quash Respondents' order dated 26.2.92 proposing reduction of their pay.

3. Similarly in OA No. 1932/93 applicant seeks a declaration that she be deemed to belong to CSSS since the date of her absorption in the office of Respondent No.1.

4. We have heard both sides.

5. Applicants in OA No. 1830/93 were employed as Assistants in erstwhile Shipping Development Fund Committee (SDFC), a body corporate under the Surface Transport Ministry. Similarly in OA No. 1932/93 applicant was appointed as Stenographer in that organisation. The aforesaid Committee was abolished under the Shipping Development Fund Committee (Abolition) Act, 1986.

6. Section 7(1) of the said Act provides as follows:

"Every person, who has been, immediately before the appointed day, employed under the Committee, shall become, on and from the appointed day, an employee of the Central Government and shall hold office under the Central Govt. with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting and shall continue

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to do so unless and until his employment under the Central Govt. is duly terminated or until his remuneration and other conditions of service are duly altered by the Central Govt."

7. Pursuant to the above, Respondents issued order dated 29.4.87 (Annexure-E) taking 17 posts in the erstwhile SDFC along with their incumbents temporarily on the strength of Ministry of Surface Transport w.e.f. 3.4.87. Para 2 of the said order made it clear that the incumbents of the posts of Section Officer, Asstt., UDC, LDC, Stenographers mentioned above did not belong to organised CSS/CSSS^{Ex-cadre} and the incumbents of these posts would continue to be on the strength of the Ministry of Surface Transport until further orders. Thereafter, in continuation of the aforesaid order dated 29.4.87, respondents issued order dated 22.1.90 (Annexure-G) reiterating that the incumbents of these posts including applicants would continue on the respective ex-cadre posts so long as they continue to be in service. As and when these posts fell vacant due to retirement/ resignation/ death etc., the posts would be filled by promotion from amongst the eligible employees of erstwhile SDFC. In case no one was eligible for promotion, the posts would be included in the CSS/CSSS/CSCS and would be filled up by the persons of these services, except the posts of Accounts Officer and Accountant. It was also made clear that according to Section 7(1) of the Act, the incumbents of these posts would hold office under the Central Govt. with same rights and privileges as to pension, gratuity etc. and the service rendered in SDFC would qualify for such benefits.

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8. Applicants' counsel Dr. Ubhra has argued that because Respondents No.1 and 2 are the participating cadre and the cadre controlling authority respectively of the CSS/CSSS they are duty bound to formalise the encadrement of the applicants into the CSS/CSSS as per the mandate of Section 7(1) of the Act. It is contended that the respondents have illegally distinguished between ex cadre and cadre posts and the non-encadrement of applicants would mean condemning them to a single post throughout their service career.

9. These arguments cannot stand judicial scrutiny. The mandate contained in Section 7(1) of the Act was to make the applicants employees of the Central Govt. and this mandate has been fulfilled by respondents' orders dated 29.4.87 and dated 22.1.90. There is nothing contained in section 7(1) of the Act which requires respondents to encadre applicants in the CSS/CSSS. Both CSS as well as CSSS have service rules promulgated under Article 309 of the Constitution. Those persons appointed in accordance with the provisions of those rules are alone entitled to be members of the cadre of CSS/CSSS. It is for this reason that the orders dated 29.4.87 and 22.1.90 have distinguished between cadre posts and ex cadre posts and the distinction is a legal and valid one. Furthermore a decision whether or not to encadre any post is a matter of policy which is exclusively within the executive domain.

10. In the light of the above facts and circumstances

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it cannot be said that respondents' action in not encaderning applicants in CSS/CSSS is illegal or arbitrary and the Hon'ble Supreme Court's ruling cited in JT 1992(3) SC 423 WOI Vs. Pratap Narain Singh relied upon by Shri Vbhra which is clearly distinguishable on facts, does not advance the applicants' case.

11. Applicants had earlier filed MAs 2358/98 and 2356/98 for direction to respondents to expedite the acceptance of 5th Pay Commissions^{in para 87.4} of Chapter 87 in which recommendations had been made regarding encadrement of erstwhile SDFC employees. During hearing applicants' counsel Dr. Vbhra states that he was not pressing these MAs. However, respondents' counsel Shri A.K.Bhardwaj has shown us copy of DOPT's OM dated 9.11.98 which is taken on record from which it is clear that the aforesaid proposals were not found acceptable and it had been accordingly decided by the competent authority not to accept the same.

12. During hearing Shri Vbhra agreed that the question of quashing of respondents' order dated 26.2.92 would arise only if applicants' prayer for encadrement in CSS succeeded. As that prayer does not succeed, the prayer for quashing of the order dated 26.2.92 also fails.

13. In the light of the facts and circumstances

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discussed above, both OAs fail and are dismissed. No costs.

14. Let copies of this order be placed in both OAs.

Dhananjay

(P.C.KANNAN)
MEMBER (J)

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(S.R.ADIGE)
VICE CHAIRMAN (A)

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