

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A.Nos.2262/93 and 2263/93

Thursday this the 22th day of July, 1999

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. N. SAHU, ADMINISTRATIVE MEMBER

O.A.No.2262/93

1. Shri Kul Bhushan Dania, aged 39 years
Son of Shri S.S.Dania, Technical Assistant,
Staff Inspection Unit,
Department of Expenditure,
Ministry of Finance, Lok Nayak Bhavan,
Vth floor, Khan Market,
New Delhi.110 003.
2. Shri Sahib Singh Chahal
aged 39 years Son of Shri Bharat Singh
Working as Technical Assistant -do-
3. Shri Azad Singh, aged 36 years
Son of Shri Raghubir Singh
Working as Technical Assistant -do-
4. Shri Indresh Chander Kala, aged 35 years
Son of late Shri M.D.Kala,
working as Technical Assistant -do-...Applicants

O.A.No.2263/1993

1. Shri Kishan Panjabi, Tech:Assistant,
AGED 48YEARS, SON OF LATE Mr.Mengh Raj Panjabi
R/o CC-IA DDA Flats.
Hari Nagar, New Delhi.110064.
2. Shri Rakesh Sharma, aged 40 years
Son of Shri Des Raj Sharma
Technical Assistant
R/o 667 Joshi Road,
Karol Bagh, New Delhi.5. ...Applicants

(By Advocate Mr.Jog Singh vs. both cases)

Union of India through Secretary,
Department of Expenditure,
Ministry of Finance, North Block,
Central Secretariat,
New Delhi. ...Respondent in both cases

(By Advocate Mr.K.R.Sachdeva)

The application having been heard on 14.7.1999, the
Tribunal on 22.7.1999 delivered the following:

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O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The facts, circumstances, reliefs sought and the question of law involved in both these cases being similar the cases are being heard and disposed of by this common order.

2. The four applicants in O.A.2262/93 and two applicants in O.A.2263/93 who were initially recruited in various departments under the Government of India as Research Assistant/Scientific Assistant/Inspectors applied for appointment as Technical Assistant by transfer on deputation in response to Circular No.12023/8/87-E.I(B) dated 22.9.87 of the Ministry of Finance, Department of Expenditure and being selected by the Union Public Service Commission were appointed as Technical Assistants in the Staff Inspection Unit under the Ministry of Finance (Department of Expenditure) on various dates during the months of April, May and June, 1988. They had undergone training in Management Services organised by the Institute of Secretarial Training and Management and had also undergone computer courses. As the posts of Technical Assistant have to be filled hundred percent by transfer on deputation (including short term contract)/transfer as per the amended Recruitment Rules of the year 1985, the applicants went on making representations for absorption as there were vacancies in the posts of Technical Assistant. While so, the Government of India, Ministry of Finance, Department of Expenditure on 8.5.90 (Annexure.9 in O.A.2262/93) issued a circular inviting applications from those who

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are working on deputation as Technical Assistant with two years minimum service for absorption as Technical Assistants. The applicants applied and opted for absorption. While so, the Government of India, Ministry of Finance, Department of Expenditure issued another Memorandum dated 25.5.1990 (Annexure.10 in O.A.2262/93) restricting the chance of absorption only to those who came on deputation as Technical Assistants xxxxxxxx on the basis of 1987 panel. The applicants were aggrieved by that but it is averred that they were assured absorption in due course. Coming to know that the respondents were issuing orders repatriating the applicants to their parent departments, the applicants have filed these two applications for the identical reliefs as hereunder:

"(i) Consider the applicants for absorption and absorb them in the post of Technical Assistant as has been done in case of similarly situated employees who joined upto 31.12.1987 vide orders dated 4.1.1993;

(ii) to pass any other/further order and/or direction as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

3. It is alleged in the application that restriction of absorption to deputationists who were appointed upto 31.12.87 denying the same benefit to the deputationists like the applicants amounts to hostile discrimination and that on the basis of doctrine of legitimate expectation, the applicants are entitled to get absorption under the respondents as Technical Assistants in view of the provisions in the Recruitment Rules for such absorption.

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4. It is also stated that there has been two decisions by the Tribunal regarding the right of persons similarly situated like the applicants for absorption and the applicants have produced copies of these judgments/ as in O.A. 597/87 and O.A. 2978/92 Annexure XII (i), and (ii) in O.A. 2263/93.

5. We have carefully gone through the materials placed on record and have heard the learned counsel appearing for the parties. The fact that the applicants were appointed on deputation as Technical Assistants in the Staff Inspection Unit under the respondent during the months of April to June, 1988 and that persons who were brought on deputation during the previous year have been absorbed are not in dispute. The learned counsel of the applicant argued that restriction of absorption to deputationists who were appointed upto 31.12.87 leaving out those ^{were} ~~why~~ appointed after that date amounts to hostile discrimination and offends the provisions of Article 14 and 16 of the constitution of India. We are of the considered view that there is no merit in this contention. Apart from the fact that the applicants are barred by limitation in raising these points because the discrimination, if at all, was made in the year 1990 by issuing the Circular dated 25.5.90 (A.10) the classification of deputationists on the basis of ^{different} the/ panel cannot be said to be an illegal or unjustifiable classification. When the posts were limited, the respondents considered that induction would be made stage by stage considering the deputationists of each batch. The deputationists of the year 1987 and the deputationists of the year 1988

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cannot be considered equal in all respects. Equality means equal treatment among equals and as deputationists of the year 1987 cannot be considered^{equal} as deputationists of the year 1988 as they had more standing as deputationists the contention of the applicants that leaving out them while absorbing deputationists of the year 1987 was unjustified, has no force at all.

6. It is not disputed that according to the Recruitment Rules the posts of Technical Assistant is to be filled hundred percent by transfer on deputation (including short term contract)/transfer and that those who were appointed on transfer on deputation can be considered for absorption. However, such a provision in the Recruitment Rules does not clothe a deputationist with a right to claim absorption. Whether the deputationists should be absorbed or not is ^{to be} left to the decision of the concerned Ministry/Department taking into account the requirement of service and other relevant factors.

One Shri Harilal Upadhyay who was similarly appointed on deputation as Technical Assistant in the Department of Expenditure, Ministry of Finance (Staff Inspection Unit) on 1.4.98 approached the Tribunal challenging his repatriation and seeking a direction to regularise him as Technical Assistant by filing O.A.2978/92 and the Tribunal held:

"in regard to the facts of the case as stated above, the applicant cannot claim the deputation post as a matter of right and it is a conceded fact that the borrowing department had absorbed only the ...6

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deputationists who had joined in the year 1987 and had not taken anyone who joined in the year 1988. As explained earlier even the option had been given by the applicant suo motu conveyed the concurrence of his parent department which he has accepted to do. Therefore, in all ground the applicant cannot claim the deputation post as a matter of right and we are convinced that this application is devoid of merit and require to be dismissed."

7. A copy of the judgment has been produced by the applicant as Annexure Xi (ii). The applicants in both these cases are similarly situated as the applicant in O.A.2978/92. A review application filed by the applicant in O.A. 2978/92 (RA 225/93) was also dismissed by the Tribunal. A copy of this review order also has been appended as Annexure.XI (b) by the applicant in O.A.2262/93. Therefore by the documents annexed to the application itself, it is established that the applicants' claim for absorption and the reliefs as sought for in the application is unsustainable. The applicants in O.A.2263/83 had been repatriated earlier and the applicants in O.A.2262/93 also have been repatriated during the pendency of this application. As they were working under the respondents only as deputationists they have no right whatsoever to claim absorption. The decision in O.A.577/87 Annexure.A.XII (i) in O.A.2262/93 has no bearing to the issue involved in this case. In O.A.577/87 the issued involved was one of seniority which is not the issue in these cases.

8. In the light of what is stated above finding no merit in these applications, we dismiss them leaving the parties to bear their costs.

Dated the 22 th day of July, 1999



N. SAHU
ADMINISTRATIVE MEMBER

A.V. HARIDASAN
VICE CHAIRMAN

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