

(5)

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHBAD BENCH
ALLAHABAD**

Dated: this the 11 day of 4 2008

Original Application No.1067 of 2007

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mr. K.S. Menon, Member (A)

1. Parmanand Tiwari, S/o Uma Dutt Tiwari, R/o village Dewaramali Post Office Berun Chamba, Distt: Tehrigarhwal.
2. Banti Lal, S/o Bhola Nath, R/o 58-E/6 Ganga Nagar Cercular Road (Nawada), Allahabad.
3. Ramesh Chandra Maurya, S/o Ramsukh Maurya, R/o 17 A/19 B, Circular Road, Ganga Nagar, Rajapur, Allahabad.
4. Ganrav Singh, Dist, S/o Shiv Singh, Rost Office Mazura Sewalla Kala, Dehradun.
5. Anand Pandey, S/o S.K. Pandey, R/o 28 B/129 B, Ramanand Nagar, Allahpur, Allahabad.
6. Jitendra Kumar, S/o Puncham Ram, R/o 20B/1A Circular Road Ganganagar, Rajapur, Allahabad.
7. Parshant Joshi, S/o Inder Dev Joshi, R/o 955 Ksanagam Uihar Garhi Cntt. (Dakra) Dehradun.
8. Farookh Javed, S/o Rakbar Ali, R/o Dew Aiad Colony By Pass Road Majra Dehradun.
9. Sanjay Kumar, S/o Prem Lal, R/o Village Surasu Patti Churas Tehri Garhwal.
10. Lal Singh Rana, S/o M.S. Rana, R/o H. No. 91 Village Lohari Chakrata Dehradun.
11. Matvar Singh Rana, S/o B.S. Rana, R/o 93 Bhodd Gaon Pandit Wori Dehradun.
12. Yogesh Singh, S/o Sri Ram Chandra, R/o 159 P.B. Kydganj, Allahabad.
13. Balbeer Singh, S/o Kunwar Singh Rana, R/o Room No. 8 Type Ist Audit Colony Indranagar Seemadwar, Dehradun.
14. Kuldeep Singh Panwar S/o B.S. Panwar, R/o 8 Type Ist Audit Colony Indranagar Seemadwar, Dehradun.

✓

(6)

15. Nagendra Singh Bhandari, S/o S.S. Bjamdari R/o Village Nawada Dehradun.
16. Snajay Singh Kunwar, S/o P.S. Kunwar, R/o Village Pattion P.O. Mohabbe Wala Chandrabani, Dehradun.
17. Virendra Singh Panwar, S/o M.S. Panwar, R/o 43/2 Viljay Colony Hathi Barkala Dehradun.
18. Ravindra Singh, S/o V.S. Pundir, R/o House No. 474 Shuampur Gumani Wala Near Bherau Mandir, Rishikesh.
19. Anesh Kumar, S/o Sh. Mattu Lal, R/o Village Koti Patti Katulsyum Post Office, Jamnakhah, Distt: Paurigarhwal (Uttraakhand).
20. Narendra Singh Panwar, S/o Sri Kunwar Singh Panwar, R/o Village/Post Office Kurrchola V/B Tilwara, Distt: Rudraprayag (Uttrakhand).
21. Tilak Singh Punwar, S/o Shiv Singh Punwar, R/o Village Kat Bhurdar Post Office, Jakhal Bhardur, Distt: Rudraprayag.
22. Ranbeer Singh Rana, S/o Alam Singh Rana, R/o Village Sondu (Khundgawn) Post Office, Chariya.
23. Bhopal Singh, S/o Ganga Ram, R/o Village Katuyoda Post Office Godi Ganaye Distt: Almora.

By Adv : Shri Vikas Budhwar

...Applicants.

Versus

1. Union of India through Secretary, Ministry of Personnel Public Grievance and Pension (Deptt. Of Personnel and Training), New Delhi.
2. Comptroller and Auditor General of India, 10, Bahadurshah Zafar Marg, New Delhi.
3. Accountant General Audit and Accounts, Uttrakhand.

...Respondents.

By Adv: Shri S. Chaturvedi

ORDER

By Hon'ble Mr. A.K. Gaur, Member (J)

We have heard Sri Vikas Budhwar learned counsel for the applicants and Sri P. Srivastava brief holder of Sri S. Chaturvedi learned counsel for the respondents.

✓

(7)

2. Through this OA the applicants have sought following main reliefs:

- a. *to set aside the order dated 2.4.2007, 18.10.2006 passed by Respondent No. 1 respectively.*
- b. *to set aside the order on the post of which the applicants' services have been terminated.*
- c. *to issue order or direction the respondents to reinstate the applicants and consider them for absurd with all consequential benefits.*
- d. *to issue any other suitable order or direction on which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.*
- e.

3. The applicants have filed Misc. Application under Section 4 (5) of the CAT (Procedure) Rules 1987 for permitting the applicants in joining in one OA. As the cause of action and the relief sought by them the applicants are permitted to join in one OA. MA is accordingly allowed.

4. The brief facts of the case are that vide order dated 02.04.2007 an administrative officer (APP) of the office of the Controller and Auditor General of India, New Delhi wrote the Accountant General, Uttranchal, Dehradun on the subject of direct recruitment of Group 'D' posts wherein it is observed that instead of permitting direct recruitment to Group 'D' posts, it has been decided to outsource the routine services performed by the Group 'D' Staff. General guidelines in this regard have already issued vide circular dated 18.10.2006. The applicants have prayed for quashing of both these circulars and also seek for their reinstatement. The applicants have been working in Group 'D'

w

post w.e.f. 2001 and onwards to the entire satisfaction of their superiors and ~~have~~^{get} no point of time they were subjected to disciplinary proceedings.

5. The grievance of the applicants is that the respondents have restrained them from functioning on the post since 2007. The applicants have been orally informed that their services have been terminated, but no written termination order has been passed and served upon the applicants patently illegal, contrary to law, besides to terminal of Articles 14 and 16 read with 311 of the Constitution of India. According to the applicant a large number of vacancies are lying vacant in Group 'D' posts.

6. It is seen from order dated 02.04.2007 that general guidelines in this regard have already been issued vide respondents office circular dated 18.10.2006. A perusal thereof clearly indicates that in the interest of economy and efficiency in the department, the issue of outsourcing the routine job such as cleaning, maintenance, moving papers/dak etc., performed by the Group 'D' staff, was under consideration by the respondents and the respondents have duly considered the outsourcing of routine services performing by Group 'D' staff. The competent authority after careful analysis of the case vide order dated 18.10.2006 has taken the policy decision that offices ~~were~~^{where} such work cannot be manage due to shortage of regular employee, may consider the desirability of getting these work done wholly or partially through outsourcing. While getting the work done through outsourcing

✓

(9)

certain guidelines certain guidelines were to be kept in mind such as:

- a.
- b.
- c. The total cost involved in outsourcing must not exceed the cost, which would have been incurred while getting the job done through regular employment.
- d. In the contract entered into with the outsourcing agency, the terms of contract must be definite, unambiguous and containing provisions for revocation or cancellation of the said contract at any time before the expiry of contract period if the outsourcing agency fails to carry out any of the provisions of the contract satisfactorily.
- e.
- f.

7. Sri Vikas Budhwar learned counsel for the applicant has vehemently argued that since the applicants have been discharging their duties successfully for the last several years, the order of termination passed against them is clearly in violation of principle of natural justice and fair play. He has also invited our attention to the noting of the office dated 15.03.2007 whereby the Headquarters office vide letter dated 18.05.2006 had suggested the future possibility of recruitment of Group 'D' posts. In the whole it is clearly observed that the case may also be considered for recruitment. In pursuance of the said note the applicants were recruited.

8. Sri P. Srivastava brief holder of Sri S. Chaturvedi learned counsel for the respondents has stated that the appointment of the

for

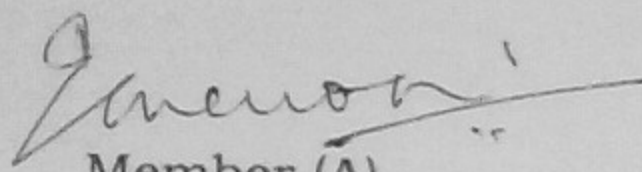
applicants was totally ^{on} contractual basis and the issue of outsourcing the routine jobs performed by Group 'D' posts has been under consideration for some times in the past and after a careful analysis of the case it was decided that where such work cannot be managed due to shortage of regular staff the respondents may consider desirability of getting these works done wholly or partially through outsourcing. While issuing proposal of outsourcing it was clearly stipulated in the guidelines that in the contract with the outsourcing agency the terms of contract must be definite, unambiguous and containing provisions for revocation or cancellation of the said contract at any time before the expiry of contract period if the outsourcing agency fails to carry out any of the provisions of the contract satisfactorily.

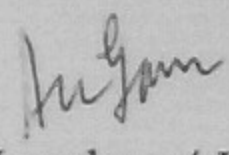
9. We have heard the learned counsel for the parties at length and we are satisfied that the appointment of the applicants was purely contractual in nature and it contains provision of revocation or cancellation of the said contract at any time before the expiry of contract period in the event of default and in view of said guidelines the services of the applicants have been terminated orally. No written order was required to be passed in this regard. We are fully satisfied that regularization is not and cannot be a mode of recruitment by any ^{state} ~~stage~~ under the provisions of the Constitution. Moreover, no appointment could be made in violation of statutory rules as observed by Hon'ble Apex Court in its decision rendered in **2006 (4) Scale 197, Secretary State of Karnataka Vs. Uma Devi and others**, this Tribunal has no

h

jurisdiction but to direct the framing of scheme for appointment or regularization.

10. In view of our aforesaid observations we are of the considered opinion that the applicants have failed to make out any case warranting interference in the oral order of termination. The OA is accordingly dismissed in limine at admission stage itself. No cost.


Member (A)


Member (J)

/pc/