

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 84/96

Date of Decision: 9th March 2000

Mrs. Rajinder Kaur Rathaur
Miss Uma Sanhotra

Applicant.

Shri A. Shivade

Advocate for
Applicant.

Versus

Union of India and others

Respondent(s)

Shri R.K. Shetty.

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. B.N. Bahadur, Member (A)

Hon'ble Shri. S.L. Jain Member (J)

(1) To be referred to the Reporter or not? **No**

(2) Whether it needs to be circulated to other Benches of the Tribunal? **No**

(3) **Library.** **yes**

(S.L.JAIN)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:84/96
DATED THE 9th DAY OF MARCH ,2000

CORAM: HON'BLE SHRI B.N.BAHADUR, MEMBER(A)
HON'BLE SHRI S.L.JAIN, MEMBER(J)

1. Mrs.Rajinder Kaur Rathaur,
Residing at
95/3, NCO Quarters, NDA
Khadakwasla, Pune - 411 023.

2. Miss Uma Sanhotra,
Residing at Kondhwa,
Pune.

... Applicants.

By Advocate Dr.A.Shivade.

v/s.

1. Union of India,
through the Secretary,
Ministry of Defence,
South Block,
New Delhi-110 011.

2. National Defence Academy,
through the Commandant,
Khadakwasla,
Pune-411 023.

3. The Commandant,
National Defence Academy,
Khadakwasla,
Pune - 411 023.

... Respondents.

By Advocate Shri R.K.Shetty

(ORDER)

Per Shri S.L.Jain, Member(J).

This is an application under Section-19 of the Administrative Tribunals Act 1985, for appropriate writ/orders/directions to the effect that Impugned orders Exhibit A-1, and A-2 dated 20/11/1995 be quashed and set aside.

2. There is no dispute between the parties in respect of the facts that Applicant Nos.1 & 2 are MA B.Ed. Applicant No.2 also

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had called UPSC members to the N.D.A and appointed Professors to various posts - Mr.Malakar in Chemistry Department, Mr.S.r.L.Rao in Physics Department, Mr.Padmanabhan in Mathematics Department, Mr.S.P.Sharma in English Department and Mr.P.C.Haldar in Department of History by conducting such inhouse interviews. The same could be done in the case of Applicants. They further allege that Head of Department of Hindi has addressed a letter against the Impugned order to the Respondent No.3. However, no steps have been taken by the NDA. The respondents have taken a decision to appoint Applicant No.1 on lower post, i.e. Upper Division Clerks as to absorb her in some other service. The Applicant No.2 as Librarian which is a Class-III post. The applicants were asked as to the choice of posting. The Applicants have sought for equivalent posts. However, the respondents have orally informed them that they are unable to give equivalent posts and the Applicants can work on lower posts. The respondents are therefore forcibly either reverting the applicants or throw them out of services. Applicant No.2 has also been informed that there is no guarantee of post of Principal where she has been sent on deputation vide Annexure A-8., hence she should contact her parent department. The said action of the respondents is revengeful on account of filing of OA 1313/95 for higher scale, UGC pay scales of Hindi Tutors. The applicants state that the said action is violative of Article 16(3), 16(4), 14 and 21 of the Constitution of India. They had represented the matter, but no reply so far.

5. The respondents resisted the claim of the applicants on

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the ground that Revised Peace Establishment, the post of Hindi Tutors is reduced to Zero in the year 1991. Hence, the applicants services are terminated. Because the applicants were in surplus, respondents advised the applicants to give their choice of station for being absorbed elsewhere vide reply. The post of Lecturer in the scale of Rs.500-900 (pre-revised) is a Group 'C' post and are only entitled to the UGC scale. The applicants are not willing to go elsewhere. The duties and ^{and} payscale of Lecturers is different one, ~~but~~ applicants had been appointed in the scale of of Rs.330-560 (pre-revised). The posts of Lecturers and tutors have been reduced due to reduce in work to the extent of 70%. The applicants have refused to accept the equivalent appoint~~men~~^{ment} where their pay is protected. Now the applicants cannot put ~~the~~ theory the Promissory Estoppel. The post of Lecturer is not a promotional post. The post of Hindi Tutor is not converted into post of Lecturer. The Lecturers are appointed through UPSC on the basis of All India Advertisement. Dr.Upadhyay, Dr.Mishra and Mrs.Mirpuri were appointed under the said procedure. The applicants were at liberty to apply alongwith them. Even the first applicant does not possess the basic qualification required for appointment as lecturer and Applicant No.2 did not apply. The Professors are appointed from amongst existing reader~~g~~^g who have rendered qualifying and satisfactory service through Departmental Promotion Committee Governed by laid down rules on the subject. They are Governed by different Recruitment Rules being Group 'C' employees.

6. The Head of Department of Hindi has expressed a

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personal view on the subject and he was not aware of the complete case. He has no power to cancel the order declaring the applicants as surplus and he has acted in excess of his powers.

7. Since the salary of the applicants is being protected, they are being posted as Group 'C' employees, they can't have any grievance to the same. Post of Storekeeper is equivalent and in the same scale, hence the respondents pray for the dismissal of the OA.

8. The learned counsel for the applicant relied on Annexure A-6, which is as under:-

"Civilian Academic Officers will be appointed as and when the present incumbents of the posts of Hindi Tutors are wasted ~~out~~ due to death/retirement/superannuation."

The learned counsel for applicant contended that there is no express order of surrender of the post. It is further contended that even by implication, the posts are not surrendered. It is true that there is no express order regarding surrender of the post of Hindi Tutors. According to the ~~Applicants~~ counsel, Exhibit A-6 is the policy decision and it is to be acted upon till the conditions mentioned therein which are not furnished.

9. The learned counsel for the respondents relied on Exhibit R-8, order that Hindi Tutors are reduced to five.

10. Thus the post of Lecturers is ^{governed by} different Recruitment Rules, the duties and responsibilities of the Lecturers are not similar or same to the duties of Hindi Tutors. The applicants are not entitled ^{to} claim ^{the} post of Lecturers is

having payscale different from the Hindi Tutors and Hindi Tutors are placed in the scale of Rs.330-560 while Lecturers in the scale of Rs.500-900. The applicants claim on ^{Parity} of Dr. Upadhyay, Dr.Mishra, Mrs.Mirpuri cannot be entertained as they are not equivalent.

11. Regarding appointment of Professors in various departments, Mathematics, English, History, Physics and Chemistry are appointed from amongst the existing Readers who have rendered qualifying and satisfactory service through Departmental Promotion Committee governed by laid down rules on the subject. The same does not apply to the applicants as they are governed by different Recruitment Rules being Group 'C' employees.

12. We agree to the submission of the Respondents that the Head of Department of Hindi vide letter dated 22/11/95, has expressed his opinion regarding continuation of the post of Hindi Tutors, as it is not within his powers to cancel the order of termination of services of the applicant.

13. It is for the respondents to decide the sanctioned strength of Hindi Tutors and when they come with a plea that work is reduced to the extent of 70%, that there being no case of malafides, there is no reason to disagree.

14. Exhibit R-9 dated 18/9/95, adoption of Revised Peace Establishment vide No.VI/277/1946/8 of Headquarters, NDA, Khadakwasla., we find that the post of Hindi Tutors does not exist. In such circumstances, it was not possible for the respondents to continue the applicants on the post Hindi Tutors. Thus, the post of Hindi Tutors becomes Surplus.

15. The Ministry of Defence in exercise of the powers conferred by subsection 2 of section 12 of the N.C.C. Act 1948 (31 of 1948) read with sub rule 42 of the N.C.C. Rules, 1948 has issued Statutory Rules and Orders amongst which Special Army Order 8.5.1976 which deals with disposal of surpluses and deficiencies- Class III and IV civilian establishment under the Ministry of Defence. A perusal of the same makes it clear that it is the Ministry which is competent to deal with such matters. The Ministry has passed the orders, the applicants being surplus, they only have a right to be posted, with their pay protection. First they have to be considered in the same unit against a post from which they possess requisite qualification and if found suitable. It is true that absorption in NDA would be carried out only if the applicant accepts the alternate appointment. In case of persons who refuse to accept the lower post will not be considered for any appointment and would be discharged from service.

16. We are not inclined to agree with the contentions of the learned counsel for applicant that in view of OA 1313/95, the respondents have taken the said decision which is malafide, arbitrary, illegal.

17. The learned counsel for the applicant relied on 1979 (2) SCC 409 M/s. Motilal Padampat Sugar Mills Co.Ltd. V/s. State of Uttar Pradesh and Others and argued that Promissory estoppel or equitable estoppel is not restricted to parties already contractually bound to one another or having a pre-existing legal relationship. It applies to government policy. On perusal of the same authority we find that it was a case of giving exemption from Sales Tax for a period of three years under Section 4-A U.P. Sales Tax Act 1948.

This was not a service matter. Hence the said authority does not help the applicant in any way. Creation of post, up-gradation of post, surrender of post etc. are within the province of the Government and the said decision is liable to be challenged only on the ground of malafide, which is not established as stated above.

18. The learned counsel for the applicant finally submitted that in case the OA does not find favour then the interim relief which is granted in view of para 9(a) and (b) of the OA be continued for further period of two months. The interim relief is granted till the matter is being investigated. Now the Tribunal has come to the definite finding that post of Hindi Tutors does not exist. Hence the said interim relief which was granted in view of para 9(a) and (b) cannot be continued.

19. Before parting with this case, however, we would like to make some observations as below. Although a case for judicial intervention has not been made out, mainly in view of the fact that an equivalent suitable post has been offered, within the scheme of things, it is seen that the equivalence is mainly because of the protection of pay granted. We cannot help feeling that it is a little odd that a Teacher will have to do work which has no relationship of any kind Teaching assignment. We suggest for the consideration of the Government the possibility of posting the applicants to any Teaching assignment if possible, in the future - for example in Schools under the Defence Ministry or some such similar assignment. As stated above, this is an observation made in the facts and circumstances of the case, and

we express the hope that respondent No.1 will consider this observation. Respondent No.2 may accordingly bring this to the notice of Respondent No.1 for action, as judged appropriate by Government within the rules.

20. In the result the OA is liable to be dismissed and is dismissed accordingly. No order as to costs.

S.L.J
(S.L.Jain)
Member (J)

B.N.Bahadur
(B.N. Bahadur)
Member (A)

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