

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore-560 038

Dated : 27-5-87

Application Nos. 1945 to 1954, 2030 to 2038/86(F)
and 10 to 12/87(F)

Applicant

Shri T.K. Manjunath & 21 Ors

V/s The Chief Supdt. C.T.O. & another

To

- | | |
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| 1. Shri T.K. Manjunath
Telegraphist
Central Telegraph Office
Indian P & T Dept.
Bangalore - 560 001 | 7. Kumari Benedicta Monterio
Telegraphist
Central Telegraph Office
Indian P & T Dept
Bangalore - 560 001 |
| 2. Smt B.P. Usha
Telegraphist
Central Telegraph Office
Indian P & T Dept
Bangalore - 560 001 | 8. Smt B Sunantha Bai
Telegraphist
Central Telegraph Office
Indian P & T Dept
Bangalore - 560 001 |
| 3. Kumari Sujatha N. Nazare
Telegraphist
Central Telegraph Office
Indian P & T Dept
Bangalore - 560 001 | 9. Kumari K. Seetha
Telegraphist
Central Telegraph Office
Indian P & T Dept
Bangalore - 560 001 |
| 4. Kumari V. Ramamani
Telegraphist
Central Telegraph Office
Indian P & T Dept
Bangalore - 560 001 | 10. Smt. K. Bhagyalakshmi
Telegraphist
Central Telegraph Office
Indian P & T Dept
Bangalore - 560 001 |
| 5. Shri K.V. Prabhu
Telegraphist
Central Telegraph Office
Indian P & T Dept
Bangalore - 560 001 | 11. Smt. B.A. Shashikala
Telegraphist
Central Telegraph Office
Indian P & T Dept
Bangalore - 560 001 |
| 6. Smt Shanthi
Telegraphist
Central Telegraph Office
Indian P & T Dept
Bangalore - 560 001 | 12. Smt. B.K. Radha
Telegraphist
Central Telegraph Office
Indian P & T Dept
Bangalore - 560 001 |

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| 13. Smt. N. Manorama
Telegraphist
Central Telegraph Office
Indian P & T Dept
Bangalore - 560 001 | 20. Smt. Shobha Lakshman
Telegraphist
Central Telegraph Office
Indian P & T Dept
Bangalore - 560 001 |
| 14. Smt. D.L. Padmaja
Telegraphist
Central Telegraph Office
Indian P & T Dept
Bangalore - 560 001 | 21. Shri Girish Kadam
Telegraphist
Central Telegraph Office
Indian P & T Dept
Bangalore - 560 001 |
| 15. Smt Rukminiamma
Telegraphist
Central Telegraph Office
Indian Posts & Telegraphs Dept
Bangalore - 560 001 | 22. Shri Satyanarayana Prasad
Telegraphist
Central Telegraph Office
Indian P & T Dept
Bangalore - 560 001 |
| 16. Shri Mohammed Yaccob
Telegraphist
Central Telegraph Office
Indian P & T Dept
Bangalore - 560 001 | 23. Dr M.S. Nagaraja
Advocate
No. 35, II Floor
Above Hotel Swagath
I Main Road, Gandhinagar
Bangalore - 560 009 |
| 17. Shri H. Sridhar
Telegraphist
Central Telegraph Office
Indian P & T Dept
Bangalore - 560 001 | 24. The Chief Superintendent
Central Telegraph Office
Bangalore - 560 001 |
| 18. Smt S. Vedavathi
Telegraphist
Central Telegraph Office
Indian P & T Dept
Bangalore - 560 001 | 25. The General Manager
Telecom
Karnataka Circle
Bangalore - 560 009 |
| 19. Smt Padmavathi
Telegraphist
Central Telegraph Office
Indian P & T Dept
Bangalore - 560 001 | 26. Shri M. Vasudēva Rao
Addl Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001 |

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH IN
APPLICATION NOS. 1945 to 1054, 2030 to 2038/86(F)
and 10 to 12/87(F)

Please find enclosed herewith the copy of the Order passed by this Tribunal
in the above said Application on 20-5-87.

B. V. Venkatesh
Deputy Registrar
(Judicial)

Encl : As above

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 20TH DAY OF MAY, 1987.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy,

.. Vice-Chairman.

And:

Hon'ble Mr. P. Srinivasan,

.. Member(A)

APPLICATIONS NOS. 1945 TO 1954, 2030 TO 2033 OF 1986
AND 10 TO 12 OF 1987.

1. Sri T.K. Manjunath,
Son of late T. Krishna Sastry,
Aged about 25 years,
Telegraphist, Central Telegraph Office,
Indian Posts and Telegraphs Department,
Bangalore-560 001. .. Applicant in A.No. 1945/86.
2. Smt. D. L. Usha,
W/o Y.V. Hanish,
Aged about 27 years,
Telegraphist, Central Telegraph Office,
Indian Posts and Telegraphs Department,
Bangalore-560 001. .. Applicant in A.No. 1946/1986.
3. Kumari Sujatha N. Nazare,
D/o late N. B. Nazare,
Aged about 26 years,
Telegraphist, Central Telegraph Office,
Indian Posts and Telegraphs Department,
Bangalore-1. .. Applicant in A.No. 1947/1986.
4. V. Ramamani,
D/o N. S. Venkataramaiah,
Aged about 27 years,
Telegraphist, Central Telegraph Office,
Indian Posts and Telegraphs Department,
Bangalore-560 001. .. Applicant in A.No. 1948/1986.
5. Sri K. V. Prabhu,
S/o K. P. Venkatachalaiah,
Aged about 27 years,
Telegraphist, Central Telegraph Office,
Indian Posts and Telegraphs Department,
Bangalore-1. .. Applicant in A.No. 1949/1986.
6. Smt. Shanthi,
W/o Gangadasaiah,
Aged 24 years,
Telegraphist, Central Telegraph Office,
Indian Posts and Telegraphs Department,
Bangalore-1. .. Applicant in A.No. 1950/1986.



7. Benedicta Monterio,
D/o F.Monterio,
Aged about 25 years,
Telegraphist,Central Telegraph Office,
Indian Posts and Telegraphs Department,
Bangalore-l. .. Applicant in A.No.1951/1986.
8. Smt. B.Suneetha Bai,
C/o V.B.Vittal Shenoy,
Aged about 25 years,
Telegraphist,Central Telegraph Office,
Indian Posts and Telegraphs Department,
Bangalore-560 00l. .. Applicant in A.No.1952/1986.
9. K.Seetha,
D/o R.V.Krishna Murthy,
Aged about 25 years,
Telegraphist,
Central Telegraph Office,
Indian Posts and Telegraphs Department,
Bangalore-l. .. Applicant in A.No.1953/1986.
- 10.Smt. K.Bhagyalakshmi,
W/o D.K.Satyanarayana,
Aged about 26 years,
Telegraphist, Central Telegraphs Office,
Indian Posts and Telegraphs Department,
Bangalore-l. .. Applicant in A.No.1954/1986.
11. B.A.Shashikala,
W/o Srikantha Babu,
Aged about 24 years,
Central Telegraph Office,
Indian Posts and Telegraphs Department,
Bangalore-560 00l. .. Applicant in A.No.2030/1986.
12. Smt. B.K.Radha,
D/o Krishna Rao,
Aged about 26 years,
Central Telegraph Office,
Indian Posts and Telegraphs department,
Bangalore-560 00l. .. Applicant in A.No.2031/1986.
13. Smt. N.Manorama,
Wife of S.Venkataraju,
Aged about 26 years,
Central Telegraph Office,
Indian Posts and Telegraphs Department,
Bangalore-560 00l. .. Applicant in A.No.2032/1986.
- 14.Smt. D.L.Padmaja,
D/o Lakshminarayana Rao,
Aged about 25 years,
Central Telegraph Office,
Indian Posts and Telegraphs Department,
Bangalore-560 00l. .. Applicant in A.No.2033/1986.

15. Smt. Rukminiamma,
D/o M.Ramaiah,
Aged about 25 years,
Central Telegraph Office,
Indian Posts and Telegraphs Department,
Bangalore-1. .. Applicant in A.No.2034/1986.
16. Mohammed Yaccob,
S/o Abdul Rahman,
Aged about 26 years,
Central Telegraph Office,
Indian Posts and Telegraphs Department,
Bangalore-1. .. Applicant in A.No.2035/1986.
17. H.Sridhar,
S/o H.Swanirayachar,
Aged about 26 years,
Central Telegraph Office,
Indian Posts and Telegraphs Department,
Bangalore-1. .. Applicant in A.No.2036/1986.
18. Smt. S.Vedavathi,
D/o R.Shankarappa,
Aged about 26 years,
Central Telegraph Office,
Indian Posts and Telegraphs Department,
Bangalore-1. .. Applicant in A.No.2037/1986.
19. Smt. Padmavathi,
W/o R.Prakash,
Aged about 25 years,
Central Telegraph Office,
Indian Posts and Telegraphs Department,
Bangalore-1. .. Applicant in A.No.2038/1986.
20. Smt. Shobha Lakshman,
Aged about 26 years,
W/o Narasimha Raghavan,
Central Telegraph Office,
Indian Posts and Telegraphs Department,
Bangalore-560 001. .. Applicant in A.No.10/1987.
21. Girish Kadam,
S/o E.S.Venkobarao,
Aged about 27 years,
Central Telegraph Office,
Indian Posts and Telegraphs Department,
Bangalore-1. .. Applicant in A.No.11/1987.
22. Satyanarayana Prasad,
Aged about 26 years,
Son of late L.Shamanna,
Central Telegraph Office,
Indian Posts and Telegraphs Department,
Bangalore-1. .. Applicant in A.No.12/1987.

(By Dr. M.S.Nagaraja, Advocate)



1. The Chief Superintendent ,
Central Telegraph Office,
Bangalore-1.
2. The General Manager,
Telecom, Karnataka Circle,
Bangalore-9.

.. Common Respondents.

(By Sri M.Vasudeva Rao,CGASC)

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These applications coming on for hearing, Vice-Chairman made the following:

O R D E R

As the questions that arise for determination in these cases are common, we propose to dispose of them by a common order.

2. In response to different, but identical Notifications issued in 1980 and 1981 by the General Manager, Telecommunications, Karnataka Circle, Bangalore ('GM') for the posts of 'Telegraphists' under two categories of 'regular' and 'reserved pools', the applicants and several others applied for selection to those posts. We will hereafter refer to these two categories as 'regulars' and 'reservists'. On an evaluation of the performance at the selection of all the competing candidates, the applicants were selected as 'reservists' and were deputed for training along with other regulars and reservists, which they have successfully completed.

3. On the completion of their training on different dates, the applicants have been appointed as reservists and have been working so ever since their appointments drawing the remuneration allowed to them on hourly basis. In these separate but identical applications made under Section 19 of the Administrative Tribunals Act, 1985 ('the Act'), the applicants have sought for a direction to the respondents to extend them the salaries and other service benefits as are extended to 'regulars' from the date of their respective appointments.

4. The applicants have asserted that the work done by them was in all respects equal to the work done by the regulars. On this basis, the applicants claim that there were no grounds to differentiate them with the regulars and therefore, they should also be extended the very same scales of pay, allowances and privileges as are extended to regulars and their denial to them, was discriminatory and violative of Articles 14 and 16 of the Constitution.

5. The respondents have resisted these applications on more than one ground. At the very threshold, the respondents have urged that the applicants were not Central Government servants to attract the jurisdiction and power of this Tribunal under the Act. Secondly, the respondents have urged that these applications are barred by time. On merits, the respondents have urged that the applicants who had accepted the terms and conditions of hourly remuneration for actual work to be done, with eyes wide open, cannot go back on the mutual and binding contracts entered into between them and the Union of India and cannot claim the reliefs sought by them. The respondents have also urged that the work done by the applicants who are not whole time Government servants, subject to all the control, discipline and disabilities of whole time Government servants was not equal to the work done by the latter and therefore, they cannot lay claim for the pay, allowances and privileges extended to them.

6. Dr. M. S. Nagaraja, learned Advocate has appeared for the applicants in all these cases. Shri M. Vasudeva Rao, learned Additional Central Government Standing counsel has appeared for the respondents in all these cases. Both sides in their elaborate arguments, extending for full three days, have relied on a large number of rulings in support of their respective cases. We will refer to them at the appropriate stages.



7. In order to appreciate the preliminary objections raised by the respondents, as also the merits, it is useful to notice in some more detail, the nature, terms and conditions on which the reservists have been and are appointed.

8. The recruitment to the posts of reservists with which we are primarily concerned, is not regulated by any law made by Parliament, or rules made by the President under the proviso to Article 309 of the Constitution. Hence, the Government in exercise of the executive powers available by Article 73 and Entry No.70 of List-I (Union List), had made an order on 3-6-1979 regulating the recruitment, appointments and the terms and conditions on which the reservists can and must be appointed. That order of Government which is material reads thus:

Sub: Employment of short-duty telegraphists
to cope with absenteeism in Telegraph
~~Off~~ Offices.

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Sir,

I am directed to state that the question of employment of short-duty telegraphist to cover absenteeism in telegraph offices has been engaging the attention of the Government for some time. The President is now pleased to decide that a scheme of short duty telegraphists in CTO/DTOs on the lines indicated below may be introduced.

2. The employment of short-duty telegraphists should be determined on the basis of the existing standards i.e., the number of short duty telegraphists should not exceed, in terms of work hours, the number of whole time telegraphists that would have been employed.

3. Candidates for appointment as short duty telegraphists should be drawn in order of their rank in the merit list of candidates for direct recruitment as telegraphists under the normal rules, after available vacancies (subject to the limit of the number of vacancies announced for the particular recruitment) for regular telegraphists are filled up. The antecedents and characters of the candidates selected for short-duty employment will be verified in the usual manner before they are appointed.

4. Candidates for short duty appointment will not be engaged for more than two spells in a period of 24 hours. Each spell of duty should not normally exceed three hours,

the exact hours of employment being determined on the basis of local requirements. The short-duty staff will be paid wages at the rate of Re.1/- per hour of duty performed. Their wages will be debitable to the head K-II Allowances and Honoraria. Payments to short-duty telegraphists should be met from the sanctioned grant.

5. The candidates will be given full training prescribed for regular candidates for employment as telegraphists. During the period of training, they will be given training allowance as admissible to the trainees for employment as regular telegraphists. Such candidates selected for employment as short-duty staff will be required to give an undertaking to serve as short duty staff for one year or till they are absorbed as regular telegraphists whichever is earlier. on their regular absorption as telegraphists they will give a fresh undertaking as is required for directly recruited telegraphists.

6. The short duty staff recruited in accordance with the provision of para 3 above will be considered for absorption by the P&T Directorate according to their turn in the merits listed in the next subsequent year of recruitment, provided they have put in atleast 120 days of service in the six months preceding absorption in the regular establishment. Such absorption will be against the direct recruitment quota after completion of all prescribed formalities. As such a mode of recruitment is not provided in the statutory rules for recruitment of telegraphist, these candidates (S.D. telegraphists) proposed to be absorbed as regular telegraphist will be shown as recruited by specific relaxation of the rules in each case and as such a reference to the Directorate is essential.

7. The short-duty telegraphists are to be employed only to meet the peak hour traffic in telegraph offices viz., that of heavy bookings in the evenings, besides periodical and seasonal spells of heavy work and to meet the situation arising as a result of heavy absorption. This scheme of ND TLs at present is vogue will continue till such time the trained staff of short-duty telegraphists becomes available.

8. The offer of appointment shall be normally valid for a period of ten days from the date of receipt of the order by the candidate. In case the candidate does not report within the stipulated period as per offer of appointment his name could be deleted from the select list and will be considered in the recruitment. If the candidate does not turn up on duty even on the next day his name will not be considered for regular appointment.

We will hereafter refer to this order as the 'Scheme'.

9. Evidently, in conformity with this scheme, the GM in his Notifications calling for applications, had separately indicated the number of posts to be filled under the two categories and the terms and conditions on which they will be recruited and appointed. That term in so far as it relates to reservists reads thus:



RESERVE POOL:- The candidates in the reserve list will also be imparted training like the candidates in select list. The candidates in reserve list after training will constitute Reserve trained pool. They will be absorbed in regular vacancies in their turn after the candidates in the main list are absorbed. They should work as short duty staff against vacancies due to absenteeism or any other reason besides for handling peak hour traffic, till they are absorbed against regular post. Any laxity in this regard will render them liable to be removed from Reserve Trained Pool along with penalties vide agreement entered into before they are sent for training.

On their selections as reservists, the Chief Superintendent of Central telegraph Office, Bangalore ('Superintendent') issued offers of appointments to each of the applicants inter alia incorporating the terms and conditions on which he proposes to appoint them. One such standard form of offer made by the Superintendent to one of the applicant reads thus:

INDIAN POSTS AND TELEGRAPHS DEPARTMENT

From:

The Chief Superintendent,
Central Telegraph Office,
Bangalore-560 009.

To

Shri/Smt/Ku.....

No.E-24/Rectt/TIs/FH-SH

No.E.11/SD/Dlgs Dated Bangalore,the 31-5-1982.

Sub:Recruitment to the cadre of Telegraphists
for the second half of 1981 -employment
of short duty Telegraphists.

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This is to inform you that based on the marks obtained by you in your SSLC/Degree examination, you have not been selected for regular appointment as 'Telegraphist'. However, it is proposed to engage you to work as 'Short Duty Telegraphist' in the Bangalore Telegraph Traffic Division.

The conditions governing the employment as 'Short Duty Telegraphists' are as follows:-

(a) You will have to undergo training in Teleprinter operation for a period of 15 days to be imparted in this office. During the period of this training you will not be entitled for any stipend or allowance.

(b)On completion of the above training you will be engaged as 'Short Duty Telegraphist' as and when required for a duration of six to eight hours per day.

(c) The wages will be Rs.2/- per hour of duty performed.

(d) You will not be entitled for any kind of leave, weekly off or benefits enjoyed by regular staff.

(e) Services rendered by you as Short Duty Telegraphist will not entitle you for a claim for any regular appointment (as a telegraphist) at a future date nor will it be counted as service.

If you are agreeable to the above conditions, you may call at this office on or before 7-6-1982 (Monday) for undergoing the training mentioned at item (a) above, with all original certificates including employment exchange card (latest renewed). If you fail to report on the stipulated date your name will be removed from the select list, of short duty telegraphist.

Sd/-(G.M.Dhanraj)
for Chief Superintendent,
Central Telegraph Office, Bangalore-1.

On these facts and orders both sides are agreed.

10. Dr.Nagaraj has contended that the work performed by the reservists was equal and even better than the work performed by the regulars and ignoring the unconscionable terms of the contracts, if any, entered into or agreed to by them, this Tribunal should direct the respondents to extend equal pay, allowances and privileges as are extended to the regulars also and that was imperative of Article 14 of the Constitution.

11. Shri Rao while supporting the two preliminary objections urged by the respondents has urged that the contracts entered into between Government and the reservists, the terms and conditions stipulated therein were neither unconscionable nor illegal and that in any event, the work performed by the reservists was not equal to the work performed by the regulars and the denial of pay and allowances and privileges extended to regulars was not violative of Article 14 of the Constitution.


12. In the very nature of things, it is first necessary to examine the preliminary objections urged for the respondents and then all other questions.



13. Indisputably, the applicants have been and are working in a department of the Central Government. They claim that they are entitled to be treated as regular Government servants, in particular, in matter of pay and allowances. Without any doubt, their claim would fall within the meaning of the extended term 'service matter' of Section 3(q) of the Act. If that is so, then this Tribunal has jurisdiction and power to adjudicate their claim under the Act. For these reasons, we see no merit in the objection of the respondents and reject the same.

14. The applicants have claimed for arrears from the date of their appointment. We will even assume that their claim for periods beyond one year before the date of respective petitions are barred by time. But, that does not make their applications as not maintainable as urged by the respondents. We see no merit in this objection either and we reject the same.

15. We have earlier set out the Scheme framed by Government, the term of the notification calling for applications from reservists, the terms and conditions of offer of appointments and their acceptance by the applicants and the consequent orders of appointment issued thereto. In all of them, Government and the authorities had made clear that the job requirements and the remuneration to be paid to the reservists were not similar to the job requirements, remuneration and other privileges extended to regulars. In all of them, it is expressly stipulated that the reservists will be employed whenever there was extra work that could not be attended to by regulars and that they would be paid only on hourly basis. With eyes wide open, the applicants with the minimum educational qualification of SSLC had voluntarily accepted those terms and conditions and had joined service subject to those terms and conditions only.



16. The constitution and the laws of this country, in particular, the Indian Contract Act of 1872 (Act No. IX of 1872) do not prohibit employment on contract and actual work basis on payment of hourly remuneration for the actual work done by employees. The terms and conditions on which the Government offered the applicants to be appointed or the acceptance of those offers by the applicants are really contractual appointments and is not opposed to the Constitution, the Contract Act or any of the well accepted principles of 'Public Employment' or 'Public Service'. Even the principles enunciated by the Supreme Court in ROSHAN LAL TANDON AND ANOTHER v. UNION OF INDIA AND ANOTHER (AIR 1967 SC 1889) do not militate against the above legal position. If that is so, then it is difficult to hold that there is anything unconscionable in the offers made by Government or their acceptance by the applicants. We find no grounds to hold that any of the terms are unconscionable, opposed to 'public policy' or contravene the Constitution and the Contract Act. On the other hand, far from being an unfair contract, the terms and conditions of employment of the applicants were such that even though they would not otherwise have been eligible for appointment they were given an opportunity to work and earn a reasonable income. The hourly wage which was Re.1/- in the scheme as originally adumbarated in 1979, was progressively increased to meet increases in the cost of living; the total earnings of a reservist now are almost equal to the monthly salary and allowances of a regular. This can by no means be called 'exploitation'. When that is so, the applicants cannot challenge the terms and conditions of their appointments and seek relief from this Tribunal to the contrary.



17. In PEOPLE'S UNION FOR DEMOCRATIC RIGHTS AND OTHERS v. UNION OF INDIA AND OTHERS (1982 SCC (L&S)275)


(ASIAD Case)

/on which strong reliance was placed by Dr.Nagaraja to ignore the terms of the contract and come to the succour of the applicants, the Supreme Court was dealing with "uneducated daily workers or coolies" that were exploited by contractors in violation of Article 23 of the Constitution and other laws. The workers in those cases were unaware of their legal position and the exploitation they were subjected to by the private contractors. But, that is not the position in the present cases. The applicants who are educated and aware of the legal position and rights with eyes wide open have voluntarily accepted them and joined service only on those terms conditions noticed by us. We are, therefore, of the view that the ratio in ASIAD's case on this aspect does not govern the question that arises before us. This is also the position in the ruling of the Supreme Court in SURENDRA SINGH v. THE ENGINEERS IN CHIEF, CPWD (AIR 1986 SC 76).

18. We are also of the view that the conduct of the applicants who have consciously accepted their appointments with full knowledge of being remunerated on hourly basis for the extra work only disentitles them to seek the declaration and reliefs they have sought in their applications.

19. The applicants have not challenged the order of Government, the terms and conditions of the notifications calling for applications, the offer of appointments and the appointment orders to the extent they stipulate the payment of hourly wages. In the absence of a challenge to them, we cannot invalidate any of them. Without invalidating them, we are of the view that we cannot really grant the reliefs sought by the applicants.

20. On the foregoing discussion, we hold that on the terms of the contract, the applicants cannot claim the benefit of the



pay and allowances extended to regulars. But, notwithstanding all these we now proceed to examine the question on merits ignoring all of them.

21. The true scope and ambit of Article 14 of the Constitution has been explained by the Supreme Court in a large number of cases and it is enough to refer to two of them only. In SHRI RAM KRISHNA DALMIA AND OTHERS v. SHRI JUSTICE S.R. TENDOLKAR AND OTHERS (AIR 1958 SC 538) a Constitution Bench of the Supreme Court speaking through S.R. Das, C.J. reviewing all the earlier cases till then decided, summed up the true scope and ambit of that Article at paras 11 to 13 (pages 547-550), which has been referred to with approval in all the later cases decided by the Court. In re: THE SPECIAL COURTS BILL, 1978 (AIR 1979 SC 478) a larger Bench of seven learned Judges again reviewing all the earlier cases speaking through Chandrachud, C.J. summed up the scope and ambit of that Article in these words:

"There are numerous cases which deal with different facets of problems arising under Article 14 and which set out principles applicable to questions which commonly arise under the Article. Among those may be mentioned the decisions in Budhan Choudhary Vs. State of Bihar (1955) 1 SCR 1045; (AIR 1955 SC 191); Ram Krishna Dalmia vs. S.R. Tendolkar, 1959 SCR 279; (AIR 1958 SC 538) 1; C.I. Imden vs. State of U.P.-1960-2 SCR 592; (AIR 1960 SC 548); Kangshari Halder Vs. State of West Bengal, (1960) 2 SCR 646; (AIR 1960 SC 457); Jyoti Pershad vs. Administrator for the Union Territory of Delhi, (1962) 2 SCR 125; (AIR 1961 SC 602) and State of Gujarat vs. Shri Ambika Mills Ltd., Ahmedabad (1974) 3 SCR 760; (AIR 1974 SC 1300). But, as observed by Mathew, J. in the last mentioned case.

"It would be an idle parade of familiar learning to review the multitudinous cases in which the conditional assurance of equality before the law has been applied."

"We have, therefore, confined our attention to those cases only in which special Tribunals or Courts were set up of Special Judges were appointed for trying offences or classes of offences or cases of classes of cases. The survey which we have made of those cases may be sufficient to give a fair idea of the principles which ought to be followed in determining the validity of classification in such cases and the reasonableness of special procedure prescribed for the trial of offenders alleged to constitute a separate or distinct class.




73. As long back as in 1960, it was said by this court in *Kangshri Haldar* that the propositions applicable to cases arising under Article 14 have been repeated so many times during the past few years that they now sound almost platitudinous. What was considered to be platitudinous some 18 years ago has, in the natural course of events, become even more platitudinous to-day, especially in view of the avalanche of cases which have flooded this Court. Many a learned Judge of this Court has said that it is not in the formulation of principles under Article 14 but in their application to concrete cases that difficulties generally arise. But, considering that we are sitting in a larger Bench than some which decided similar cases under Article 14, and in view of the peculiar importance of the questions arising in this reference though the questions themselves are not without a precedent, we propose, though undoubtedly at the cost of some repetition to state the propositions which emerge from the Judgments of this Court in so far as they are relevant to the decision of the points which arise for our consideration. Those propositions may be stated thus:

1. The first part of Article 14, which was adopted from the Irish Constitution is a declaration of equality of the civil rights of all persons within the territories of India. It enshrines a basic principle of republicanism. The second part, which is a corollary of the first and is based on the last clause of the first section of the Fourteenth Amendment of the American Constitution, enjoins that equal protection shall be secured to all such persons in the employment of their rights and liberties without discrimination or favouritism. It is a pledge of the protection of equal laws, that is, laws that operate alike on all persons under like circumstances.

2. The State, in exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

3. The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or specific exclusion or inclusion of persons or things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

4. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is substantially the same.



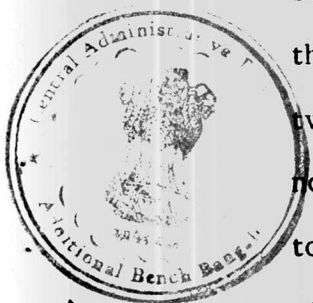
posted to work. The regulars exercise more power and shoulder greater responsibilities than the reservists.

25. The nature of work performed by the reservists is undoubtedly the same as performed by the regulars. But, this solitary fact does not convert their work as equal to the work done by the regulars.

26. Equality is only among equals and not among the unequals. This basic postulate of Article 14 of the Constitution is the very foundation on which the theory of "equal pay for equal work" has been evolved by the Supreme Court. This theory cannot be examined on a superficial consideration like the nature of work performed only, but must be examined with due regard to every one of the fact situations and the differences that are inherent in the two types of work, rights, privileges, duties and obligations.

27. On a conspectus of all the above factors bearing the true principles of Article 14 of the Constitution, it is even odd to hold that the reservists are comparable to regulars in all respects. In other words, reservists are not equal to regulars. On all these and other factors, if any that are not noticed also, we have no hesitation in holding that the work done by the reservists is not equal to the work done by the regulars.

28. In *RANDHIR SINGH v. UNION OF INDIA AND OTHERS* (1982) ISLJ 490 the facts in brief were thus: Randhir Singh, the petitioner before the Supreme Court, was working as a Driver-Constable in the Delhi Police Force of the Delhi Administration, which allowed two scales of pay one for metriculate drivers and the other for non-metriculate driver constables, both of which were however, lower to the scales of pay allowed to the drivers in the Railways and other departments of the Central Government working at Delhi.



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On that basis, Randhirsingh moved the Supreme Court under article 32 of the Constitution, to extend him the very scale of pay extended to others as Drivers in other departments of the Central Government. On these facts, the Supreme Court found that the work done by Randhirsingh was equal to the work performed by the Drivers of other departments of Central Government at Delhi. In reaching that conclusion the Supreme Court speaking through Chinnappa Reddy, J. expressed thus:

"9. There cannot be the slightest doubt that the drivers in the Delhi Police Force perform the same functions and duties as other drivers in service of the Delhi Administration and the Central Government. If anything, by reason of their investiture with the "powers, functions and privileges of police officer," their duties and responsibilities are more arduous. In answer to the allegation in the petition that the driver-constables of the Delhi Police Force perform no less arduous duties than drivers in other departments, it was admitted by the respondents in their counter that the duties of the driver constables of the Delhi Police Force were onerous. What then is the reason for giving them a lower scale of pay than others? There is none. The only answer of the respondents is that the drivers of the Delhi Police Force and the other drivers belong to different departments and that the principle of equal pay for equal work is not a principle which the Courts may recognise and act upon. We have shown that the answer is unsound. The classification is irrational. We, therefore, allow the writ petition and direct the respondents to fix the scale of pay of the petitioner and the drivers-constables of the Delhi Police Force atleast on a par with that of the drivers of the Railway Protection Force. The scale of pay shall be effective from 1st January, 1973, the date from which the recommendations of the Pay Commission were given effect."

But, this is not the position in the present cases. In Randhirsingh's case, the Court was dealing with cases of wholetime Government servants all performing similar duties at one and the same place. In that case, the Court was not dealing with part-time Government servants and whole time Government servants under different, distinct and varying conditions. Hence, the ratio in Randhirsingh's case does not govern the question that arises in these cases.

29. In adjudging claims for equal pay, the court in Randhir Singh's case itself cautioned thus: "We concede that equation of

of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the pay Commission and not for the courts but we must hasten to say that where all things are equal i.e., where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments". (emphasis supplied). Bearing these principles also, the Court in Randirsingh's case found that the duties performed by driver in other Government departments were the same as those performed by drivers of the Delhi Police. In the matter of responsibilities borne by the drivers in Delhi Police also, the Court found that they were in no way less than those borne by the drivers of other departments; if anything, the burden on the driver constables of the Delhi Police was more onerous because they were, in addition to being drivers, members of the Police force. There was thus, no doubt, in that case, that apart from the nature of duties performed by the two kinds of employees, "all relevant considerations" were the same and "all things" were equal and in view of this there was only one way that the decision could go and that was in favour of the petitioner. But, we have found in these cases that all things were not equal and all relevant considerations were not the same and, therefore their claim for equal pay with the regulars was not well founded.

30. In P.SAVITA AND OTHERS v. UNION OF INDIA AND OTHERS (1986) I LLJ 79; SURINDAR SINGH v. ENGINEER-IN-CHIEF (1986) I LLJ 403; THE STATE OF TAMILNADU, REP.BY ITS SECRETARY v. P.MUNUSAMY (1986) II LLJ 437; WEST BENGAL STATE GOVERNMENT HOMOEOPATHIC OFFICERS' ASSOCIATION AND OTHERS v. STATE WEST BENGAL AND OTHERS (1987) I LLJ 175; SANTOSH SHENKARSINGH PERDESHI AND ANOTHER ETC.v.



THANE MUNICIPAL CORPORATION AND ANOTHER ETC. (1986 LAB.I.C.482) and SHRI KAMALANAND v. UNION OF INDIA AND OTHERS (1986 LAB.I.C.1858) the Courts were dealing with cases similar to Randirsingh's case. Every one of the reasons on which we have distinguished Randirsingh's case equally apply to distinguish these cases also.

CHAMOLI

31. In DHIRENDRA /AND ANOTHER v. STATE OF UTTAR PRADESH (1986)1 SCC 637) the facts in brief were these: Dhirendra Chamoli and others, had been employed as casual workers on daily wages at Nehru Yuvak Kendra of Dehradun for performing the duties of Class IV employees of that Kendra appointed on regular basis and paid regular salaries and allowances. Dhirendra Chamoli and others moved the Supreme Court under Article 32 of the Constitution claiming regular salary and allowances as allowed to Class IV employees. In answer to the same, the respondents while admitting that the petitioners were performing the very duties performed by Class IV employees appointed on regular basis urged that the former who were appointed against non-sanctioned posts were not entitled to equal pay. On these facts, the Court speaking through Amarendra Nath Sen,J. expressed thus:

The argument envisaged in the counter-affidavit is that since there are no sanctioned posts to which regular appointments can be made, the casual employees employed by different Nehru Yuvak Kendras cannot claim to receive the same salary and perquisites as Class IV employees appointed regularly to sanctioned posts. But, while raising this argument, it is conceded in the counter-affidavit that "the persons engaged by the Nehru Yuvak Kendras perform the same duties as are performed by class IV employees appointed on regular basis against sanctioned posts". If that be so, it is difficult to understand how the Central Government can deny to these employees the same salary and conditions of service as class IV employees regularly appointed against sanctioned posts. It is peculiar on the part of the Central Government to urge that these persons took up employment with the Nehru Yuvak Kendras knowing fully well that they will be paid only daily wages and, therefore, they cannot claim more."

But, this is not the position in the present cases. The applicants have been appointed under the scheme providing for part-time employments only to clear the extra work. The applicants' position is not similar to the position of Dhirendra Chamoli and others. Hence, the principles enunciated in Dhirendra Chamoli's case do not govern the case of the applicants.

32/ In Dhirendra Chamoli's case the respondents expressly conceded that the casual workders of Nehru Yuvak Kendra performed identical duties as regular Class IV employees of the Government. The objection of the respondents to give them the same pay was based on considerations which had nothing to do with the principle of equality. It was stated in the defence that Nehru Yuvak Kendra was a temporary organisation and there were no sanctioned posts of class IV employees. This argument was not accepted by the Court because the provision of funds or the temporary character of Nehru Yuvak Kendra did not displace the plea of equality before the law as between the casual employees of Nehru Yuvak Kendra and Class IV employees of the Government. In fact there was no plea made on behalf of the respondents to show that there were any other considerations which made the casual employees of Nehru Yuvak Kendra unequal to the class IV employees of the Government. Here the respondents have shown clearly that the reservists were not equal to the regulars.

33. In Surindar Singh's case the Court was dealing with a case similar to Dhirendra Chamoli's case. Every one of the reasons on which we have distinguished Dhirendra Chamoli's case equally apply to distinguish this case also.

34. Basically in Randhir Singh's and Dhirendra Chamoli's cases and in other cases that followed them, it was not urged by the



the respondents before the Courts that there was any element of inequality between the petitioners and others with whom they claimed equal remuneration. Such facts as were before the Court pointed only towards equality and then, applying Article 14, the Courts came to the inevitable conclusion that the remuneration should be equal. But, here the facts urged on behalf of the respondents, which we have found to be correct have clearly brought out that the reservists were not equal in all respects to regulars. Article 14 of the Constitution which guarantees equal treatment to persons equal in all respects or as it is usually stated, similarly circumstanced has no application at all. In other words the same satisfies the twin tests of classification evolved by Courts. There was no arbitrariness in the classification or in the appointments of regulars or as reservists on the terms and conditions that are different. We cannot, therefore, on principle or authority uphold the claim of the applicants for equal pay with the regulars.

35. In ALL INDIA POSTAL EMPLOYEES UNION v. UNION OF INDIA AND OTHERS (T.A.No.82/86 decided on 16-12-1986 by the Jabalpur Bench of the CAT) ('AIPE's case) the facts, in brief, and the questions that arose were these: In the postal department there were two categories of Postal Assistants one employed on hourly wages and the other on regular salary basis. Before the Jabalpur Bench, the AIPE Union, espousing the cause of the former category sought for two directions (1) to regularise the hourly wage employees as regular or whole time Government servants and (2) for a direction to pay equal salary as paid to regular postal Assistants. On the latter claim of the AIPE union with which we are concerned in these cases, the Bench accepted the same and issued appropriate directions as set out at para 12 of its order. But, in deciding the question, the Bench has proceeded on the assumption

assumption that there was no difference in the work of hourly waged Postal Assistants and regular Postal Assistants. We have shown earlier that that is not the position in the present cases at all. Hence, the AIPE Union's case is clearly distinguishable and the principle, if any, in that case, even if correct, on which we express no opinion, does not govern the question at all. In this view, the question of referring the question to a larger Bench as ruled by a Full Bench of the Tribunal in VIJAYAKUMAR SRIVASTVA AND OTHERS v. UNION OF INDIA AND OTHERS (ATR 1987(1)CAT 233) does not arise as strongly urged by Dr.Nagaraja.

36. We are of the view that the order of Government, the terms and conditions of appointment and payment of hourly remuneration for actual work done are in no way arbitrary to attract the new dimension of Article 14 of the Constitution evolved by the Supreme Court in Royappa's case elaborated in Smt.MANEKA GANDHI v. UNION OF INDIA AND ANOTHER (AIR 1978 SC 597).

37. On the foregoing discussion, we hold that the claim of the applicants for equal salary extended to the regulars which is founded on a total misconception of facts and law, cannot be upheld.

38. We have rejected the claim of the applicants on merits. We are also of the view that the claim made by two unions in Writ Petitions Nos. 11764 of 1986 and 570 of 1986 before the Hon'ble Supreme Court of India in its interim and final orders and the consequent implementation of those orders by Government ensuring almost equal pay to the reservists indirectly negatives their claim for equal pay with the regulars. On this ground also, the claim of the applicants cannot be accepted by us.

39. In A.Nos. 1905 of 1986 and connected cases decided on 31-3-1987 filed by the applicants and others, we have already directed



their regularisation for regular service on the terms and conditions set out in that order.

40. In the light of our above discussion, we hold that these applications are liable to be dismissed. We, therefore, dismiss ~~this~~ these applications. But, in the circumstances of the cases, we direct the parties to bear their own costs.

Sd---

VICE-CHAIRMAN
21/5/87

Sd---

MEMBER(A)

"True copy"

np/

B. V. Venkatesh
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE
21/5/87