

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Applications Nos. 113, 119, 124, 126
129, 130, 131, 132, 139 and 152 of 2004

Gwalior, this the 18th day of May, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

(1) Original Application No. 113 of 2004

Anuj Kumar Singh,
S/o Shri A.K. Singh
Aged about 30 years,
Lower Division Clerk,
Debt Recovery Tribunal,
C/o 797-II, Shantikunj,
south civil Lines, Jabalpur

APPLICANT

(By Advocate - Shri S. Paul)

VERSUS

1. Union of India
Through its Secretary, (Banking)
Ministry of Finance & Company Affairs
Dept. of Economic Affairs
(Banking Division)
Jeevan Deep" Building,
IIIrd Floor, Parliament Street Marg,
New Delhi.

2. Presiding Officer,
Debt Recovery Tribunal,
C/o 797-II, Shantikunj,
South Civil Lines,
Jabalpur.

3. Assistant Registrar,
Debt Recovery Tribunal,
C/o 797-II Shantikunj,
South Civil Lines,
Jabalpur

RESPONDENTS

(By Advocate - Shri S. P. Singh)

(2) Original Application No. 119 of 2004

M.P. Parmar S/o Shri P.K. Pa
Aged about 43 years, Section icer
Debts Recovery Tribunal,
South Civil Lines,
Jabalpur (M.P.)

APPLICANT

(By Advocate - Shri Manoj Sharma)

VERSUS

1. Union of India
Through Secretary (Banking),
Ministry of Finance & Company

Affairs, Department of Company Affairs, Banking Division, "Jeevan Deep" Building, 3rd Floor Parliament Street, New Delhi -I.

2. Presiding Officer, Debts Recovery Tribunal, 797, 2nd Floor, Shanti Kunj, South Civil Lines, Jabalpur (M.P.)

RESPONDENTS

(By Advocate - Shri K.N. Pethia)

(3) Original Application No. 124 of 2004

Shankar Lal Yadav S/o Shri P.K. Yadav Aged about 24 years, Farash-Cum-Sweeper, Debts Recovery Tribunal, South Civil Lines, Jabalpur (M.P.)

APPLICANT

(By Advocate - Shri Manoj Sharma)

VERSUS

1. Union of India Through Secretary (Banking), Ministry of Finance & Company Affairs, Department of Company Affairs, Banking Division, "Jeevan Deep" Building, 3rd Floor Parliament Street, New Delhi-I.

2. Presiding Officer, Debts Recovery Tribunal, 797, 2nd Floor, Shanti Kunj, South Civil Lines, Jabalpur (M.P.)

RESPONDENTS

(By Advocate - Shri S.A. Dharmadhikari)

(4) Original Application No. 126 of 2004

Suresh Y. Durve
S/o Shri Yashwant Rao
Date of birth - 11.6.1956
C/o 797/II, Shakti Kunj
South Civil Lines
Jabalpur-1

APPLICANT

(By Advocate - Shri S. Paul)

VERSUS

1. Union of India, Through its Secretary, (Banking) Ministry of Finance & Company Affairs Deptt. of Economic Affairs (Banking Division) "Jeevan Deep" Building, III Floor, Parliament Street Marg, New Delhi.

2. Presiding Officer, Debt Recovery Tribunal C/o 797-II Shantikunj, South Civil Lines, Jabalpur

3. Assistant Registrar,
Debt Recovery Tribunal,
C/o 797-II Shantikunj,
South Civil Lines,
Jabalpur

RESPONDENTS

(By Advocate - Shri S. P. Singh)

(5) Original Application No. 129 of 2004

Vimal Gupta
S/o Shri KN Gupta
Aged about 50 years
R/o 62, LIG-Govind Bhawan
South Civil Line
Jabalpur-1

APPLICANT

(By Advocate - Shri S. Paul)

VERSUS

1. Union of India,
Through its Secretary(Banking),
Ministry of Finance & Company
Affairs Deptt. of Economic Affairs
(Banking Division)
"Jeevan Deep" Building,
IIIrd Floor, Parliament Street Marg,
New Delhi.

2. Presiding Officer,
Debt Recovery Tribunal,
C/o 797-II Shantikunj,
South Civil Lines,
Jabalpur.

3. Assistant Registrar,
Debt Recovery Tribunal,
C/o 797-II, Shantikunj,
South Civil Lines,
Jabalpur.

RESPONDENTS

(By Advocate - Shri P. Shankaran)

(6) Original Application No. 130 of 2004

Mithlesh Trivedi,
S/o Mr. G.P. Trivedi,
Aged about 36 years,
R/o 142, COD Colony,
Jabalpur

APPLICANT

(By Advocate - Shri S. Paul)

VERSUS

1. Union of India,
Through its Secretary,(Banking)
Ministry of Finance & Company Affairs
Dept. of Economic Affairs
(Banking Division)
"Jeevan Deep" Building,
IIIrd Floor, Parliament Street Marg,
New Delhi.

2. Presiding Officer,
Debt Recovery Tribunal,
C/o 797-II Shantikunj, South
Civil Lines, Jabalpur

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3. Assistant Registrar,
Debt Recovery Tribunal
C/o 797-II, Shantikunj,
South Civil Lines,
Jabalpur

RESPONDENTS

(By Advocate - Shri Om Namdeo)

(7) Original Application No. 131 of 2004

Manoj Kumar Tiwari
S/o Shri G.P. Tiwari
Aged about 32 years
Staff Car Driver,
Debts Recovery Tribunal,
South Civil Lines,
Jabalpur (M.P.)

APPLICANT

(By Advocate - Shri Manoj Sharma)

VERSUS

1. Union of India
Through Secretary (Banking)
Ministry of Finance & Company
Affairs, Department of Company
Affairs, Banking Division,
"Jeevan Deep" Building,
3rd Floor Parliament Street,
New Delhi-I.

2. Presiding Officer,
Debts Recovery Tribunal,
797, 2nd Floor, Shanti Kunj,
South Civil Lines,
Jabalpur (M.P.)

RESPONDENTS

(By Advocate - Shri S.A. Dharmadhikari)

(8) Original Application 132 of 2004

Dashrath Kumar Kushwaha
S/o Shri R.L. Kushwaha
Aged about 26 years
Peon, Debts Recovery Tribunal,
South Civil Lines,
Jabalpur (M.P.)

APPLICANT

(By Advocate - Shri Manoj Sharma)

VERSUS

1. Union of India
Through Secretary (Banking),
Ministry of Finance & Company Affairs,
Department of Company Affairs,
Banking Division,
"Jeevan Deep" Building,
3rd Floor Parliament Street,
New Delhi-I.

2. Presiding Officer, Debts Recovery
Tribunal, 797, 2nd Floor, Shanti
Kunj, South Civil Lines,
Jabalpur (M.P.)

RESPONDENTS

(By Advocate - Shri P. Shankaran)



(9) Original Application No. 139 of 2004

Mahesh Prasad Kushwaha
S/o Shri Ram Lal kushwaha
Aged about 30 years Peon,
R/o Civil Line
Near Navyug College,
Jabalpur.

APPLICANT

(By Advocate - Shri S. Paul)

VERSUS

1. Union of India,
Ministry of Finance,
Through its Secretary,
Non-Banking Division,
"Jeevan Deep" Building,
IIIrd Floor, Parliament Street Marg,
New Delhi.
2. Presiding Officer,
Debt Recovery Tribunal,
R/o 797-II Shantikunj,
South Civil Lines,
Jabalpur.
3. Assistant Registrar,
Debt Recovery Tribunal,
R/o 797-II, Shantikunj,
South Civil Lines,
Jabalpur.

RESPONDENTS

(By Advocate - Shri Om Namdeo)

(10) Original Application No. 152 of 2004

Ajay Kumar Nanepag
S/o Shri Vishnu Narayan
Aged about 34 years
R/o Sethi Nagar,
Near Water Tank,
Jabalpur

APPLICANT

(By Advocate - Shri S. Paul)

VERSUS

1. Union of India,
Ministry of Finance,
Through its Secretary,
Non-Banking Division,
"Jeevan Deep" Building,
IIIrd Floor, Parliament Street
Marg, New Delhi.
2. Presiding Officer,
Debt Recovery Tribunal,
R/o 797-II, Shantikunj,
South Civil Lines,
Jabalpur.
3. Assistant Registrar,
Debt Recovery Tribunal,
R/o 797-II Shantikunj,
South Civil Lines,
Jabalpur

APPLICANT

(By Advocate - Shri S. P.Singh)

Common Order

By M.P.Singh, Vice Chairman -

As the issue involved in all the afore-mentioned 10 cases is common, and the facts involved & grounds raised are identical, these OAs are being disposed of by this common order.

2. In these Original Applications the applicants have challenged the order dated 6.2.2004 by which (for short 'DRT') their appointment/absorption in the Debts Recovery Tribunal, Jabalpur have been rescinded after expiry of one month's notice period.

3. The brief facts of the cases are as under-

3.1 O.A.113/2004 - In this Original Application the applicant Anuj Kumar Singh had applied for the post of Lower Division Clerk. After holding an interview, he was selected and appointed on the post of Lower Division Clerk in the DRT Jabalpur. The applicant joined the post of LDC on 22.2.99 on probation for a period of two years. He successfully completed the probation period and thereafter on the recommendations of the duly constituted DPC, confirmation was issued. order dated 25.4.2001(Annexure-A-3) Thereafter, he has been working as such. All of a sudden, the respondents have issued the impugned order dated 6.2.2004 by which his appointment has been rescinded w.e.f. 5.3.2004.

3.2 O.A.119 of 2004 - In this O.A. the applicant M.P.Parmar was initially appointed as Assistant Group-B non-gazetted post in National Council of Educational Research & Training (for short 'NCERT') - an autonomous body under the Ministry of Human Resources Development, Government of India. He was permanent employee of the NCERT. The respondents have issued an advertisement in the Employment Exchange (dated 18-24 September, 1999) for the post of Section Officer on deputation. The applicant being eligible had applied for the said post. After due

3/2

processing he was selected for the post of Section Officer and he joined the said post on deputation on 8.3.2000. His deputation was extended upto 8.3.2003 vide order dated 7.3.2001. In the meantime he exercised his option for absorption vide his application dated 2.1.2002. On the recommendations of the duly constituted committee, he was absorbed w.e.f.1.2.2002 vide order dated 31.1.2002 (Annexure-A-8). As the applicant stood absorbed w.e.f. 1.2.2002, his lien in his parent department also came to an end w.e.f.1.2.2002 as the parent department accepted his resignation with effect from 1.2.2002 vide order dated 29/31.12.2003 (Annexure-A-9). The respondents have suddenly passed the impugned order dated 6.2.2004, rescinding his absorption w.e.f. 5.3.2004.

3.3 O.A.No.124 of 2004 - In this O.A. the applicant Shankar lal Yadav was initially appointed on the post of Farrash-cum-Sweeper w.e.f.10.11.1998 on purely temporary capacity. Vide order dated 7.5.1999 formal order\$ appointing him w.e.f.10.11.1998, on probation for a period of two years was issued. Vide order dated 11.10.2002 he was declared confirmed w.e.f. 10.11.2000 on the post of Farash-cum-Sweeper. Thereafter, the respondents have issued the impugned order dated 6.2.2004 by which his appointment has been rescinded.

3.4 O.A.No. 126/2004 - In this OA the applicant Suresh Y.Durve was appointed on the post of Time Keeper in the Cement Corporation of India on 25.6.1979. He was working in the post of Permanent Assistant in the said department when he was taken on deputation under the respondents on the post of Research Assistant w.e.f. 26.6.2000. His deputation period was extended upto 25.6.2003 vide order dated 31.7.2001(Annexure-A-8). In the meantime, he had applied for absorption as per the recruitment rules, and on the recommendations of the DPC the applicant was absorbed as Research Assistant vide

order dated 31.1.2002 (Annexure-A-10) w.e.f.1.2.2002. As the applicant stood absorbed w.e.f.1.2.2002, his lien in his parent department also came to an end w.e.f.1.2.2002 as the parent department accepted his resignation w.e.f.1.2.2002 vide order dated 18.6.2002(Annexure-A-12). The respondents have suddenly passed the impugned order dated 6.2.2004 rescinding his absorption w.e.f.5.3.2004.

3.5. O.A.No.129 of 2004 - In this OA the applicant Vimal Gupta , while he was working as Private Secretary in the Cement Corporation of India, had applied for appointment as Private Secretary on deputation basis under the respondents, and he was taken as such w.e.f. 4.4.2001. He submitted his option for absorption. Accordingly vide order dated 31.1.2002 he was absorbed on the post of Private Secretary. He submitted his technical resignation vide letter dated 8.5.2002 which has been accepted by his parent department vide order dated 3.6.2002(Annexure-A-10). Then all of a sudden the respondents have passed the order dated 6.2.2004 rescinding his absorption w.e.f. 5.3.2004.

3.6 O.A.No.130 of 2004 - In this OA the applicant Mithlesh Trivedi was initially appointed vide order dated 9.11.1998 on the post of Process Server on temporary basis for a period of six months which was extended from time to time. Vide order dated 28.2.2000 he was appointed on probation for two years. He was promoted to the post of LDC vide order dated 25.4.2001. He was also declared confirmed vide order dated 25.4.2001,as Process Server. Thereafter, the respondents have issued the impugned order dated 6.2.2004 rescinding his appointment w.e.f.5.3.2004.

3.7. O.A.No.131 of 2004 - In this OA the applicant Manoj Kumar Tiwari was initially appointed as Staff Car Driver w.e.f.21.3.1998 on adhoc basis. Thereafter,vide order dated 22.2.1999 the applicant was appointed on



~~on probation~~ for a period of one year. Vide order dated 25.4.2001 (Annexure-A-5) he was declared confirmed as Staff Car Driver, w.e.f.1.7.2000. Thereafter, the respondents have issued the impugned order dated 6.2.2004 (Annexure-A-1) rescinding his appointment.

3.8 O.A.No.132 of 2004 - In this OA, the applicant Dashrath Kumar Kushwaha was appointed as Peon initially on temporary basis w.e.f.7.8.1998 on consolidated amount. Vide order dated 1.3.2000 he was appointed on probation for a period of two years. He was declared confirmed vide order dated 11.10.2002 (Annexure-A-3) w.e.f.1.3.2002. Thereafter, vide impugned order dated 6.2.2004 his appointment has been rescinded with effect from 5.3.2004.

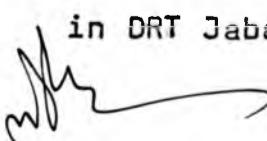
3.9. O.A.No.139 of 2004 - In this OA, the applicant was initially appointed on a fixed salary of Rs.1637/- per month vide order dated 8.1.1999 on the post of Farrash. Thereafter vide order dated 3.5.2001 he was appointed on adhoc basis as Peon for a period of six months. Then, vide order dated 28.5.2001 (Annexure-A-4) he was appointed on probation for a period of two years. The applicant has submitted that he has already crossed the maximum period prescribed under the rules for probation and had acquired the status of a permanent employee. However, the respondents vide impugned order dated 6.2.2004 (Annexure-A-1) has rescinded the appointment of the applicant w.e.f.5.3.2004.

3.10. O.A.No.152 of 2004 - In this O.A., the applicant Ajay Kumar Nanepag was initially appointed on 26.7.1999 on a fixed salary of Rs.1637/-. Vide order dated 11.10.2002 (Annexure-A-3) he was appointed as Peon on probation for a period of two years. The applicant submits that in the absence of any provision of the rules for extension of probation period, on successful completion of probation, the applicant has acquired the right of permanent employee automatically. However, the respondents vide impugned order dated 6.2.2004 rescinded his appointment w.e.f.5.3.04.

4. The respondents in their replies have stated that the DRT was established at Jabalpur in the year 1998. When the DRT was established at Jabalpur, there were no recruitment rules to any of the posts sanctioned to the DRT. The DRT felt it necessary to recruit the required staff against the sanctioned post in the absence of recruitment rules. Accordingly, the Presiding Officer of the DRT resorted recruitment from the open market and also on deputation basis from other Central/State Governments. According to the respondents, the Ministry of Finance, Department of Economic Affairs (Banking Division), New Delhi issued an office memorandum for filling up various posts in the DRT at Mumbai and Jabalpur. It was specifically mentioned in the memorandum that the applications were invited for filling up the posts from suitable candidates on deputation basis. According to them, the recruitment could be made only on deputation basis before the notification of the recruitment rules but the Presiding Officer of the DRT, Jabalpur deliberately and willfully disobeyed the directions/guidelines issued by the Ministry of Finance and made a recruitment from the open market and appointed some of the applicants as Peon/LDC, in the DRT, Jabalpur, which is contrary to the norms and guidelines issued by the Ministry of Finance. According to the respondents, few of the applicants were over-aged, who were appointed directly from the open market against Group-C and D posts. They have further submitted that as per the Recruitment Rules, the post of Peon shall be filled 100% by direct recruitment failing which by absorption, and the direct recruitment can be made through local Employment Exchange. It is also stated by the respondents that there were three sanctioned posts of Peon. Therefore, the orders relating to reservation in Government service have not been followed. They have also stated that the nomination for recruitment required to be invited from the local Employment Exchange. In the cases of direct recruitment it is alleged by the respondents that

the names of the applicants have not been sponsored through the Employment Exchange and they have been considered for appointment, from open market. It has further been alleged that some of the applicants did not apply in response to a common circular/notification in newspapers/employment exchange ~~for wider publicity~~ and thus denying equal opportunities to all eligible candidates. Therefore, the appointments made by the Presiding Officer to Group-C and Group-D posts are not in accordance with the prescribed norms. The respondents have also submitted that in one DPC Shri Jagdish Swaroop Recovery Officer/AR DRT, Ahmedabad Bench has been appointed as a Member in the said committee. The DOPT has clarified that any modification for constitution of DPC could be allowed only by amending the rules and following the prescribed procedure. It was also learnt by the respondents that some of the DRTs had engaged persons without making reference to the Employment Exchange which is against the guidelines issued by them. Accordingly, the respondents had issued order dated 18.5.1999(Annexure-R-10 in OA No.131/2004) to the Presiding Officers of all the DRTs stating that services of all such persons recruited directly on the post of LDC and Steno'D', without making reference to Employment Exchange or SSC may be dispensed with.

5. The main contention of the respondents is that the cause of action for issuing the impugned orders in the present cases arose only when the High Court of Madhya Pradesh Bar Association filed a Writ Petition No. 7290/2002 in the Hon'ble High Court praying inter alia to hold that the Presiding Officer, DRT, Jabalpur has disqualifed himself in the matter of discharge of his duties as Presiding Officer of DRT Jabalpur and to hold that the misconduct reported against and committed by him has rendered him unfit for discharging function as a Presiding Officer of the DRT. The Hon'ble High Court issued notices to the respondents. The respondents have submitted that they got verified the allegations regarding certain appointments in DRT Jabalpur and it was found that the appointments



have been made contrary to Recruitment Rules and without following the procedure. Accordingly, the respondent no.2 was directed to issue order to rescind the appointment of the applicant. The respondents have also stated that it was also found that certain applicants do not possess the requisite qualifications required for the post against which they were appointed. They have stated that the applicant Shankarlal Yadav in OA 124/2004 is only 5th pass whereas as per the recruitment rules for the post of Peon 8th pass is required, therefore, he does not possess the minimum required qualification which is against the recruitment rules.

5.1 The respondents have further submitted that as per the Recruitment Rules for the post of LDC, 90% posts are required to be filled up by direct recruitment through Staff Selection Commission or Local Employment Exchange, but the applicant in OA 113/2004 has been directly recruited. Therefore, in terms of the orders issued by the Ministry on 18.5.1999 the applicant's services were liable to be dispensed with.

5.2 The respondents have also submitted that the applicant in OA 119/204 was an employee of the NCERT which is an autonomous body. Therefore, he was never employee of the State Government/Central Government. Therefore, his deputation was itself illegal. As he was appointed dehors the rules his subsequent absorption was illegal. Moreover, he was called to join back his service in the parent department but his parent department did not give its consent for absorption of the applicant. According to the respondents, his parent department had, at no point of time, given permission of deputation of the applicant in DRT. It was further stated by the respondents that the applicant M.P. Parmar was asked by the parent department that he was given repeated warning and intimation by the NCERT that if he fails to resume his duties in the parent department, action

will be initiated against him for termination of his lien. Since he has filed to join the NCERT by 21.12.2001, his lien was terminated vide order dated 1/3.1.2002(Annexure-R-11 of OA 119/04.

5.3 In the case of applicant Durve in OA 126/04, the respondents have mentioned that the applicant had not made any application for appointment to the post of Research Assistant but he submitted an application for the post of Section Officer. They have further submitted that the recruitment rules for Group 'A' & 'B' gazetted posts and Group-B non-gazetted post, the post of Research Assistant has not been mentioned. The applicant in his case has been absorbed as Research Assistant - against a post which has not been sanctioned. They have also submitted that the applicant in this case also does not belong to the Central Government/State Government or Court. He is an employee of the Cement Corporation which is not a Central Government, therefore, he was not entitled for deputation as per the recruitment rules. In OA 129/2004, the respondents have taken the same stand that the applicant Vimal Gupta was not an employee of the Central/State Governments, therefore, he was not eligible for absorption as per the recruitment rules.

6. The learned counsel for the applicants has submitted that all the applicants were either first taken on deputation and subsequently absorbed as per the recommendations of the duly constituted DPC, or they were taken from open market after making due selection by the respondents. There was no misrepresentation on the part of the applicants. They have faced the interview and they have been appointed on the basis of the recommendations of the Selection Committees and were also confirmed employees. Therefore, their services could not be dispensed with by giving one month's notice as it is against the provisions of Articles 14,16 & 311 of the Constitution.

6.1 As regards the contention of the respondents that few of the applicants were over-aged, the learned counsel for

the applicants had submitted that the applicants had not concealed any facts from the respondents. The respondents must have granted the age relaxation to them at the time of regularising their services by applying the provisions of Rule 5 of the Recruitment Rules which gives protection to the existing employees at the time of publication of the recruitment rules and also provide for their absorption. In this context the learned counsel for the applicants relied on the decision of Hon'ble High Court of M.P. in WP No.5623/2001 decided on 20.8.2002; Delhi Transport Corporation Vs. DTC Mazdoor Congress & ors., 1991 SCC(1)SCC600 and Mahendra Kumar Chaurasiya Vs. State of MP and others, 2002(3)MPLJ 112 to support his case.

7. On the other hand the learned counsel for the respondents has stated that in the Writ Petition No.7290/2002 (supra) several allegations were made against the appointment of certain Group-B,C & D staff and irregularities committed by the Presiding Officer. On receipt of the notice it was found that the Presiding Officer of the DRT has not made the recruitment as per the recruitment rules and the laid down procedure, and a number of irregularities were committed by him; even in some of the cases prior approval of the Government was not obtained by him; he has also constituted the selection committee/DPC which were not in accordance with the recruitment rules. For that purpose a clarification was sought from the DOPT which advised that if a DPC is to be constituted which is not in accordance with the recruitment rules, the recruitment rules are required to be amended and in view of the advice of the DOPT, the selection committee, constituted by the Presiding Officer DRT Jabalpur, was dissolved. Moreover, the recruitment rules do not provide for absorption of a person who was not employee of the Central/State Government/Courts. Therefore, it was found that all the applicants have been appointed/absorbed without following the prescribed procedure, therefore,



the appointment/absorption of the applicants has been rescinded vide order dated 6.2.2004. The learned counsel for the respondents has relied on the decision of Anand Moghe Vs. Chairman, Special Area Development Authority, Harda & anr. 2003(3)MPLJ 493.

8. We have considered the rival contentions of the learned counsel for the parties and perused the pleadings and documents produced by both the sides.

9. We find that the three applicants M.P.Parmar (OA 119/2004), Suresh Y.Durve (OA 126/2004) and Vimal Gupta (OA 129/2004) who were working in the NCERT/Cement Corp. of India were initially taken on deputation for a period of one year which was subsequently extended and thereafter they have been absorbed. We find that these applicants had been taken on deputation after observing due procedure for selection. They have applied to the posts on deputation in response to the circular issued by the Ministry of Finance. The circular does not itself provide that persons of Central/State Governments & Courts are eligible for appointment. A copy of the advertisement issued by the DRT in the Employment News(18-24 September, 1999) has been filed by the respondents themselves at Annexure-R-12, which simply states that -

"applications from eligible candidates, who are desirous of being appointment on deputation basis may please be forwarded to this office....."

Most of the applicants have been appointed by the Presiding Officer, DRT in pursuance of the circular issued by them before the promulgation of the recruitment rules. The "DRT Jabalpur 'A' and 'B'(Gazetted) and Group 'B'(Non-Gazetted) Posts Recruitment Rules, 2001 were notified on 01.12.2001 and DRT, Jabalpur(Group 'C' and 'D' Posts)(Non-Gazetted) Recruitment Rules, 1998 were notified on 9.1.1999, Rules 5 & 7 of these rules read as under-

"5. Initial Constitution -
The employees holding the posts mentioned in the

Schedule to these rules in the Debts Recovery Tribunal, Jabalpur, on the date of commencement of these Rules shall be deemed to have been appointed at the initial constitution stage of the said posts, if so opted within 30 days of publication of these rules ~~for the services~~ rendered by them before the publication of these rules shall count for the purpose of probation period, qualifying service for promotion, confirmation & pension.

7. Regularisation/absorption - (1) Notwithstanding anything contained in the provisions of these rules, the persons holding the posts in the Debts Recovery Tribunal, Jabalpur, on the date of commencement of these rules, either on transfer or on deputation basis and who fulfil the qualifications and experience laid down in these rules and who are considered suitable by the Departmental Promotion Committee shall be eligible for regularisation/absorption in the respective grade subject to the condition that such persons exercise their option for the absorption and that their parent departments do not have any objection to their being absorbed in the Tribunal".

9.1 We find that the respondents have considered the absorption of the applicants as irregular mainly on the ground that they do not belong to Central Govt/ State Government/Courts. A similar matter had come before the Ahmedabad Bench of this Tribunal in O.A.Nos. filed by 409/2003 and 417/2003/ Mr. Anil Kumar Sharma and Shri A.P. Nimje, which were disposed of by the Tribunal vide order dated 23.4.2004. In the said order the Tribunal has observed as under -

"11.....This conduct of the respondents clearly estopped them from contending now that the persons other than those belonging to Central Govt./State Govt./Court/Tribunal were not eligible for being appointed on deputation basis to the DRT and that they are no more eligible for absorption in DRT. Having advertised the posts and having accepted the applications from the employees of Public Undertaking and appointed them in DRT on deputation basis and further extended their deputation period, it does not lie in the mouth of the respondents to contend that these applicants are not eligible and are not eligible for absorption in DRT. Their conduct clearly goes to indicate that they had relaxed the Recruitment Rules to the extent of inviting applications from candidates of Public Undertaking and having relaxed those rules once, cannot now turn back and say that they cannot be absorbed in further relaxation of the rules. No explanation is forthcoming from the respondent No.2 also why the notification invited applications even from the candidates of Public Undertaking when the Recruitment Rules do not provide for the same.

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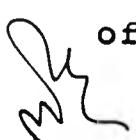
18. In view of the above discussions, we have no hesitation in holding that the action of the respondents to deny absorption to the applicants in their respective posts in DRT has been illegal, unjustified, arbitrary and discriminatory".

In view of the aforesaid finding of the Ahmadabad Bench of the Tribunal, we are of the view that the contention of the respondents that the absorption of the applicant-deputations was irregular because they do not belong to Central Govt./State Government/Courts, is not sustainable in the eye of law.

9.2 We find that most of the applicants have been initially recruited before the notification of the recruitment rules and, therefore, Rule 7 of the Recruitment Rules, which has been reproduced in para 9 above, will be applicable in this case for their absorption. The only condition required under that rule is that the persons who fulfil the qualifications and experience laid down in the rules and are considered suitable by the DPC shall be eligible for regularisation/absorption, subject to the condition that their parent department should agree for their absorption. In the present case of applicant-deputationists we find that they possess the necessary qualifications as prescribed in the recruitment rules and no objection has also been given by their parent department by accepting their technical resignations. We also find that there is also a provision of 'Power to Relax' in Rule 8 of the Recruitment Rules, which reads as under-

"8. Power to Relax - Where the Central Government is of the opinion that it is necessary to expedient so to do it may, by order and for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons".

We also find that all these persons have been recommended for absorption by the duly constituted DPC. The only flaw with regard to constitution of the DPC was that one of the Members of the DPC was from DRT Ahmedabad instead of from DRT, Jabalpur. However, it is the settled legal proposition that if one of member of the DPC was absent, it did not vitiate the proceeding of the DPC (See: V.S. Arora Vs. Union of India & ors, (1993) 25 ATC 31



and Union of India Vs. Somasundaram, (1989) 1 SCC 175).

9.3 As regards contention of the respondents that as the names of the applicants were not sponsored by the Employment Exchange, therefore, their appointment is illegal, we find that now it is the settled proposition of law that restricting the selection only to the candidates sponsored by the Employment Exchange is not proper (see : Excise Supdt. Vs. K. B. N. Vishweshwara Rao & ors, 1996 SCC (L&S) 1420). Therefore, just because the names of some of the applicants were not sponsored by the Employment Exchange, their appointment at this stage cannot be questioned. Therefore, this objection of the respondents is also not sustainable in the eye of law.

9.4 We also find that the applicants had not misrepresented any facts before their appointment either on deputation or as a direct recruit. If there was any omission on the part of the respondents by committing any irregularities, it was not the fault of the applicants and they should not be made to suffer at this stage when the lien of the deputationists has already been terminated and they cannot go back to their parent department. The respondents have utilised the services of the applicants when there was acute shortage of staff and the Tribunal was in the initial stage of functioning. Now after setting up of the DRT the persons originally recruited cannot be dealt with in such a fashion with the policy of hire and fire, and the Government should act as a model employer.

9.5 We also find that at this stage, all the applicants have acquired the status of permanent employees of the DRT and, therefore, their services cannot be rescinded by one month's notice, without invoking the provisions of Article 311 of the Constitution. From this point of view also, the action taken by the respondents is illegal and against the provisions of Constitution.

9.6 We also find that the respondents have not produced the relevant records relating to the initial selection/appointment of the applicants and have produced only personal files of some of the applicants. However, we find that earlier to finalisation of the Recruitment Rules, all advertisements and also the terms of deputation (Annexure A-14 Employment News 11-17 April, 1998 in O.A. No. 126/2004 and letter dated 14.1.2001 Annexure R-4 in O.A. No. 119/2004) were being issued by the Ministry of Finance, Department of Economic Affairs (Banking Division), New Delhi. Therefore, the appointments which were made before finalisation of the Recruitment Rules in the DRT, Jabalpur had the approval of the Ministry of Finance, and now in order to defend the action/wrong committed by them, they are throwing all blames on the then Presiding Officer of the DRT Shri C.K.Solanki and making him a scape-goat, after his retirement from the D.R.T.

10. In the result, for the reasons recorded above, all these Original Applications are allowed. The impugned orders in all the O.As., which are dated 6.2.2004, are quashed and set aside. The respondents are directed to re-instate the applicants in their respective position and grant them all consequential benefits. The respondents are directed to comply with these directions within a period of one month from the date of communication of this order. No costs.

(Madan Mohan)
Member (J)

(M. P. Singh)
Vice Chairman

/rkv/

Fusseel
26/5/04

मुख्यमंत्री सं. ओ/व्या..... जबलपुर, दि.....
युलियरि अडीटिन:-
(1) सहित, उप सचिव वर एवं विवाह, जबलपुर
के कार्यसल S. Paul
(2) अधिकारी एवं विवाह.....
के कार्यसल M. S. Sharma
(3) एवं विवाह.....
के कार्यसल M. N. Naik
(4) एवं विवाह.....
सूचना एवं अवधारणा कार्यालयी हेतु
S. A. Dhanwadikar
R. Bajaj
S. P. Singh, Adv.
K. W. P. Chharia
26/5/04