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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL


05.07.2013

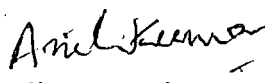
OA No. 112/2013

Mr. Prahlad Singh, Counsel for applicant.
Ms. Priyanka Pareek, Counsel for respondents.

List it on 09.07.2013 for filing rejoinder, if any.

IR to continue till the next date.


(S.K. Kaushik)
Member (J)


(Anil Kumar)
Member (A)

ahq


09-07-2013


OA No. 112/2013

Mr. Prahlad Singh, Counsel for applicants.
Ms. Priyanka Pareek, Counsel for respondents.

Heard

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.


[S.K. Kaushik]
Member (J)


[Anil Kumar]
Member (A)

~~... COPY UNDER RULE - 72~~
~~OF C.A.T. (PROCEDURE) RULES~~
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

Jaipur, the 09 day of July, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. S.K. KAUSHIK, JUDICIAL MEMBER

1. ORIGINAL APPLICATION NO. 58/2013

Shankar Lal Sharma son of Shri Gyarsi Lal Sharma, aged about 26 years, resident of Village Shri Ram Pura Lakhana, Tehsil Sanganer, District Jaipur. At present working on the post of Field Investigator in the office of National Sample Survey Office, 70/149-154, Patel Marg, Mansarovar, Jaipur.

... Applicant

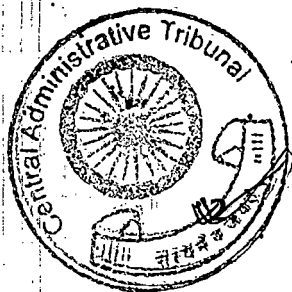
(By Advocate: Mr. Prahlad Singh)

Versus

1. Union of India through its Secretary to the Government of India, Ministry of Statistics & Programme Implementation, National Sample Survey Office (Field Operations Division) New Delhi.
2. The Director, Statistics & Programme Implementation, National Sample Survey Office (Field Operations Division), 70/149-154, Patel Marg, Mansarovar, Jaipur.
3. The Deputy Director General, Statistics & Programme Implementation, National Sample Survey Office (Field Operations Division, 70/149-154, Patel Marg, Mansarovar, Jaipur.
4. The Head Office, Office of the Deputy Director General, Statistics & Programme Implementation, National Sample Survey Office (Field Operations Division), 70/149-154, Patel Marg, Mansarovar, Jaipur.

... Respondents

(By Advocate: Ms. Priyanka Pareek)



ORIGINAL APPLICATION NO. 112/2013

1. Radha Mohan son of Shri Ram Chandra aged about 38 years, resident of G-109, Indira Nagar, Jhalana Dungari, Jaipur.
2. Rakesh Chhimpā, son of Shri Mahaveer Prasad, aged about 26 years, resident of Ward No. 14 (New), Chhimpā Mohalla, Suratgarh, District Sri Ganganagar.

3. Anand Sharma, son of Shri Mahesh Sharma, aged about 29 years, resident of Behind A.V.M. School, Ghantaghar Road, Dholpur.
4. Ashish Mittal, son of Shri Kanti Chand Mittal, aged about 29 years, resident of C/o Rakesh Cycle Store, Chhawani Chouraha, Kota.
5. Arun Raghav, son of Shri Mohan Singh Raghav, aged about 27 years, resident of 1-D-33, Mahaveer Nagar III, Kota.
6. Yadram Verma, son of Shri Sadhu Ram Verma, aged about 25 years, resident of Village Laipura, Post Pratapgarh, Tehsil Thanagazi, District Alwar.
7. Naveen Saini, son of Shri Devi Dayal Saini, aged about 30 years, resident of 63, Bhagwati Nagar II, Kartarpura, Jaipur.
8. Kamal Kumar, son of Shri Bhagwan Sahai Meena, aged about 28 years, resident of 164/285, Pratap Nagar, Sanganer, Jaipur.
9. Radhey Shyam Bunkar, son of Shri Ganga Ram Bunkar, aged about 34 years, resident of H-88, Majdoor Nagar, Ajmer Road, Jaipur.
10. Mohammed Rizwan, son of Shri Shabbir Mohammed, about years, resident of near Teliyan Maszid, Chuli Gate, Gangapur City, District Sawaimadhopur.
11. Jamna Lal Meena son of Shri Dhan Singh Meena, aged about 37 years, resident of Village & Post Gunesara, Tehsil & District Karauli.
12. Mahender Singh, son of Shri Prem Singh, aged about 29 years, resident of House No. 17, Street No. 05, 6-E, Chhati, Nehara Nagar, Near Ghantewala Hanumanji Mandir, Sri Ganganagar.

All the applicants are working on the post of Field Investigator in the Office of National Sample Survey Office (Field Operations Division) 70/149-154, Patel Marg, Mansarovar, Jaipur.

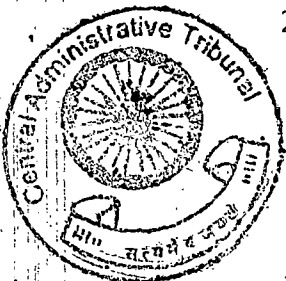
... Applicants

(By Advocate: Mr. Prahlad Singh)

Versus

1. Union of India through its Secretary to the Government of India, Ministry of Statistics & Programme Implementation, National Sample Survey Office (Field Operations Division) New Delhi.
2. The Deputy Director General, Statistics & Programme Implementation, National Sample Survey Office (Field Operations Division, 70/149-154, Patel Marg, Mansarovar, Jaipur.

... Respondents



(By Advocate: Ms. Priyanka Pareek)

ORDER (ORAL)

Since the facts & circumstances and the legal position is similar in both the OAs, therefore, by the consent of the parties, they are being disposed of by a common order.

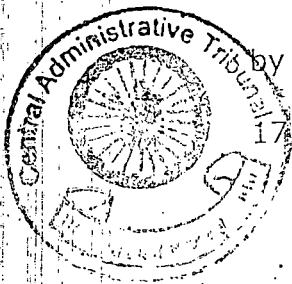
2. For the sake of convenience, the facts of OA No. 58/2013 (Shankar Lal Sharma vs. Union of India & Others) are being taken as a lead case. In this OA, the applicant has prayed for the following reliefs:-

- "(i) This Original Application may kindly be allowed and by an appropriate order or direction the impugned order of termination dated 09.01.2013 (Annexure A/1) may kindly be declared to be illegal and the same may be quashed and set aside and the applicant may be put back in service by reinstating him and he may be allowed all consequential benefits resulting from quashing of the order dated 09.01.2013 (Annexure A/1).
- (ii) By further appropriate order or direction, the respondents may be directed to either treat the applicant's service as regular i.e., having been regularly appointed on the post of Field Investigator or they may be directed to regularize the service of the applicant on the post of Field Investigator and pay him the salary in the regular pay scale of Field Investigator with all consequential benefits of a regular employee;
- (iii) By a further appropriate order or direction, the advertisement dated 10.1.2013 (Annexure A/2) may kindly be declared to be illegal and may be quashed and set aside.
- (iv) Any other appropriate order or direction, which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case, may kindly be passed in favour of the applicant.
- (v) Costs of this Original Application may kindly be awarded in favour of the applicant."



The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was appointed

on the post of Field Investigator in pursuant to the advertisement issued by the respondents. The applicant was appointed on contract basis for the period of 12 months vide OM dated 27.07.2009 (Annexure A/4). He was again appointed vide Office Memorandum dated 28.05.2010 (Annexure A/5) on contract basis for a period not exceeding 14 months. Subsequently vide Office Memorandum dated 13.06.2011; he was again engaged on contract basis for the post of Field Investigator upto 31.03.2012 (Annexure A/6). Subsequently vide office order dated 28.03.2012, the contract of the applicant was extended upto 30.06.2012 (Annexure A/8). Further the contract of the applicant was extended vide office order dated 21.06.2012 upto 31.12.2012 (Annexure A/9). Subsequently vide order dated 17.12.2012, the contract was extended upto 31.03.2013 (Annexure A/10). The learned counsel for the applicant submitted that now the respondents have again advertised for filling up 12 posts of Field Investigators vide advertisement dated 10.01.2013 published in Dainik Bhaskar (Annexure A/2). He further submitted that though the period of the applicant was extended upto 31.03.2013 but the respondents vide order dated 09.01.2013 issued notice, terminating the service of the applicant w.e.f. 24.01.2013 (Annexure A/1). Learned counsel for the applicant submitted that this notice dated 09.01.2013 is illegal and arbitrary. Therefore, it should be quashed and set aside. He further argued that the contract of the applicant was extended by the respondents upto 31.03.2013 vide their order dated 17.12.2012 (Annexure A/10) then there was no reason to

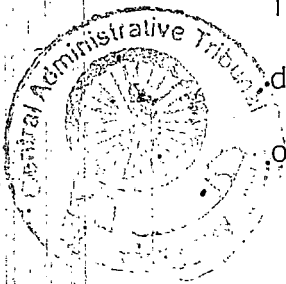


terminate the services of the applicant vide order dated 09.01.2013 (Annexure A/1) without assigning any reason.

4. Learned counsel for the applicant further submitted that the applicants were appointed by the respondents after issuing an open advertisement published in the Newspaper. They have undergone Medical Examination. They have also given certificate about marital status. They have given certificate regarding taking of oath of allegiance for Indian Nationals. They have submitted their character certificate. Hence, these employees should not be treated as contract employees but they should be treated as regular employees. Therefore, the direction be given to the respondents to regularize the services of the applicants. He also submitted that the Department is considering regularization of the services of these Field Investigators but they have not taken policy decision so far.

5. Learned counsel for the applicant prayed that therefore, the direction be issued to the respondents to finalize the scheme for regularization at an early date and thereafter to consider the case of the applicants for regularization.

6. Learned counsel for the applicants also drew our attention to an order passed by the Chandigarh Bench of the Tribunal (Circuit Bench at Shimla) in OA No. 366-HP-2013 decided on 17.05.2013 in the case of Virendra Kumar vs. Union of India & Others in which the Tribunal has held that the

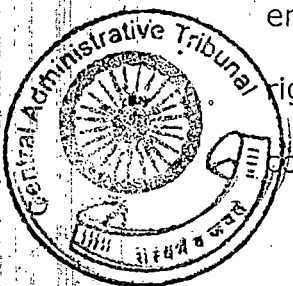


respondents cannot replace one set of contractual employee by another set of contractual employee.

7. In OA No. 112/2013 (Radha Mohan & Others vs. Union of India & Others), the applicants have also prayed that the difference of salary less paid to them from July, 2011 till March, 2012 with interest at the rate of 18% also be paid to them. In support of this prayer, the learned counsel for the applicant drew our attention to an advertisement issued in 2011 at Annexure A/5 of OA No. 112/2013 in which it has been stated that the Field Investigator will draw consolidated remuneration of Rs.15,000/- per month whereas the applicants have been paid Rs.9000/- per month. Learned counsel for the applicant prayed that, therefore, this difference may be paid to the applicants.

8. On the other hand the learned counsel for the respondents submitted that the applicants were appointed on contract basis. It was clearly stated in the advertisement issued to fill up these posts that 69 Field Investigators would be appointed on contract basis for a period of one year on a consolidated salary of Rs.9000/- per month. She drew our attention to the condition, as specified in Annexure A/3 of OA 58/2013. The applicants had accepted the engagement as Field Investigators with full understanding that the nature of their engagement is temporary and the same will not bestow any right/interest in the shape of regularization or further continuation.

A. C. Kumar



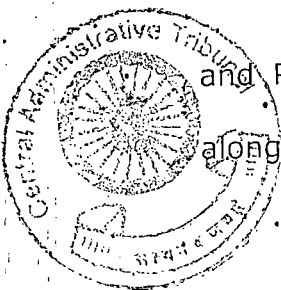
9. Learned counsel for the respondents further pointed out that the requirement of Field Investigator, which was 69 in the year 2009, came down to 28 when the contractual engagement of Field Investigator was extended upto 31.12.2012. (Annexure A/9) and the number came down to 17 (Annexure A/10). On both the occasions, the contractual engagement of the applicants was also extended but when the requirement of Field Investigator was further reduced then the services of 5 Field Investigators including the applicant was terminated vide office order dated 09.01.2013 in public interest. Hence there is no illegality in the order dated 09.01.2013.

10. Learned counsel for the respondents further drew our attention to Para 2 (b) of the Office Memorandum dated 27.07.2009 (Annexure A/4), which is reproduced below:-

"2. The terms of appointment are as follows-

- b. The engagement of the appointee is purely on short term contract basis for field survey(s) and he/she would not be entitled to get any claims, right, interests or further benefits in terms of regularization or consideration of further appointment to any post, including any claims for any casual, ad-hoc, temporary or regular service in Government. The Regional authorities are the sole authority to decide the posting of the selected candidates which will be non-negotiable. Request for change of posting will not be entertained. In case a candidate fails to report for duty by stipulated date, the offer given to him or her will automatically stands cancelled."

She also drew our attention to Para 2(h) of Annexure A/4 and Para 8 of the Agreement (Annexure VII), which is filed along with Annexure A/4, which are as under:-



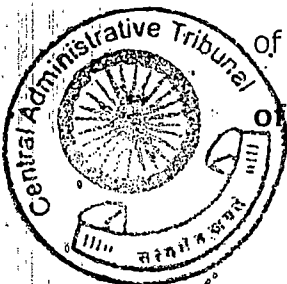
"h The services of the appointee may be terminated at any time by the appointing authority without any prior notice and without assigning any reasons."

"8. The service of the First Party may be terminated at anytime by the Second Party without any prior notice and without assigning any reason."

Therefore, she argued that the termination order dated 09.01.2013 (Annexure A/1) is in accordance with the terms of appointment and there is no illegality or infirmity in this order.

11. Learned counsel for the respondents further argued that applicants cannot challenge the advertisement dated 10.01.2013 which has been published for inviting fresh applications for engagement of Field Investigator on contract basis for a period of nine and a half months with effect from 01.04.2013 because the contract period of the applicant is over on 31.03.2013.

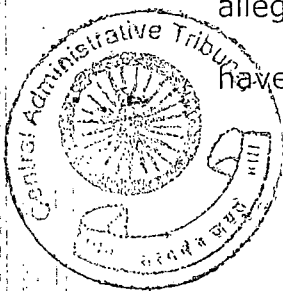
12. With regard to the submission made by the learned counsel for the applicants that they may be regularized or a direction be issued to the respondents to frame the policy of regularization of the applicants, the learned counsel for the respondents submitted that it is an internal matter of the respondents and no policy direction can be issued by the Tribunal to the respondents in this regard. She also submitted that as per the terms of the applicants' engagement on contract basis, they are not entitled for any regularization and in support of her averment, she also referred to the judgment of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka & Others vs. Uma Devi (3) and Others, 2006**



SCC (L&S) 753. Thus she submitted that there is no irregularity/illegality in the action of the respondents and the OA be dismissed with costs.

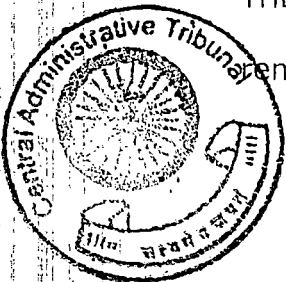
13. With regard to the prayer of the applicants in OA No. 112/2013 (Radha Mohan & Others vs. Union of India & Others) regarding difference of salary paid to them from July, 2011 till March, 2012 with interest at the rate of 18% per annum, the learned counsel for the respondents argued that a pare perusal of Annexure A/5 of OA No. 112/2013 would show that this remuneration of Rs.15,000/- was subject to the approval of the competent authority and since the competent authority did not approve this remuneration. Therefore, they were paid remuneration which was prevalent at that time.

14. Heard the learned counsel for the parties, perused the case law referred to by the learned counsel for the parties and the documents on record. From the perusal of the advertisement issued at Annexure A/3 of OA No. 58/2013 (Shankar Lal Sharma vs. Union of India & Others), it is clear that Field Investigators were to be appointed on contract basis for one year. Further offer of appointment dated 27.07.2009 (Annexure A/4) was also on contract basis. The applicants accepted this offer and worked as Field Investigator. Merely because they have undergone medical check up, filed declaration regarding their marital status, have taken oath of allegiance/faithfulness to the Constitution of India and they have submitted character certificate will not entitle them for



regularization. In doing so, the applicants have only complied with the conditions of offer of appointment on contract basis dated 27.07.2009 (Annexure A/4).

15. Learned counsel for the respondents have clearly stated in their written reply as well during the course of arguments that the requirement of Field Investigators, which was 69 in the year 2009, came down to 28 (Annexure A/9) and number again came down to 17 (Annexure A/10). On both occasions, the contractual appointment of the applicants was extended but when the number further came down then the services of the five Field Investigators including the applicant was terminated vide order dated 09.01.2013 in public interest (Annexure A/1). In view of the submission made by the learned counsel for the respondents, we find no illegality/infirmity in the order dated 09.01.2013 (Annexure A/1). Moreover, as per Para 2 (h) of Annexure A/4 and Para 8 of Agreement (Annexure VII), which is filed alongwith Annexure A/4, the services of the applicants were liable to be terminated without any prior notice. In any case the applicant has already worked beyond his period of contract i.e. 31.03.2013 in pursuance of interim relief granted to him by this Tribunal. However, it is made clear that if the applicant has been working in compliance of the interim order passed by this Tribunal dated 23.01.2013 then he would be entitled for his remuneration till the date of his engagement.



16. With regard to the advertisement issued by the respondents to fill up 12 posts of Field Investigators w.e.f. 01.04.2013 vide advertisement dated 10.01.2013 published in Dainik Bhaskar (Annexure A/2), we are unable to quash the advertisement. The respondents have issued this advertisement to give contract appointment to suitable candidates after the tenure of the applicants is over that is after 31.03.2013. We cannot direct the respondents to allow the applicants to continue after their contract period is over on 31.03.2013. However, it is made clear that the applicants can also apply in pursuant to the advertisement issued on 10.01.2013. If they apply then the respondents are directed to consider their claim following the ratio, as laid down by the Hon'ble Supreme Court in the case of **State of Haryana & Others vs. Piara Singh & Others**, 1992 (4) SCC 118, and if they are found suitable then they will be given contract appointment according to the provision of law. A similar controversy has also been settled by the Hon'ble High Court of Uttarakhand at Nainital in Writ Petition No. 142 of 2013 (M/S) in the case of **Kamal Karki & Others vs. Government of India & Others** decided on 07.03.2013

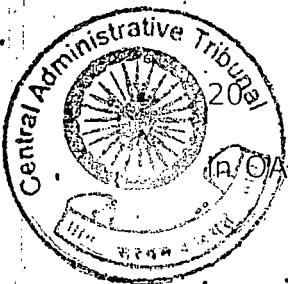
17. With regard to the submission of the applicants in OA No. 112/2013 regarding the payment of remuneration of Rs.15,000/-, we are of the view that the applicants are not entitled to this remuneration. The bare perusal of Annexure A/5 of OA No. 112/2013 makes it clear that this remuneration of Rs.15,000/- was subject to the approval of the competent



authority. The learned counsel for the respondents categorically stated that the approval was not given by the competent authority. Therefore, the applicants were paid remuneration, which was applicable at that point of time. Moreover, the applicants have accepted the contractual engagement without raising any objection about the remuneration at the relevant time. Therefore, we are of the considered opinion that the applicants are not entitled for the remuneration of Rs.15,000/- as prayed by them.

18. With regard to the submission of the learned counsel for the applicant that the respondents be directed to regularization of services of the applicants or the Department should be directed to take policy decision regarding the regularization of these contractual employees, we are of the opinion that the Tribunal cannot issue any such policy direction to the respondents. It is for the respondents to take a view about regularization of the employees who have been working with them on contract basis.

19. It is made clear that if the respondents have continued in the service of the applicants beyond their period of contract i.e. 31.03.2013 due to the interim order passed by this Tribunal then they shall be entitled for their remuneration till the date they are engaged by the respondents.

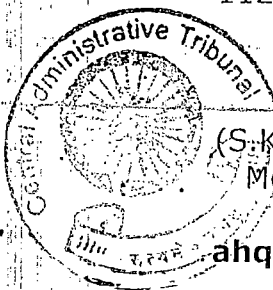


In view of the above directions, the interim order passed (R/O) No. 58/2013 (Shankar Lal Sharma vs. Union of India) on

23.01.2013 and the interim direction passed in OA No. 112/2013 (Radha Mohan & Others vs. Union of India & Others) on 14.02.2013 are vacated.

21. With these observations, both the OA are disposed of with no order as to costs.

22. A copy of this order be kept in the file of OA No. 112/2013 (Radha Mohan & Others vs. Union of India & Others).



(S.K. Kaushik)
Member (J)

(Anil Kumar)
Member (A)

~~Copy of this order is being sent to the concerned authorities for their necessary action.~~
~~As per the order of the Tribunal, the matter is being disposed of with no order as to costs.~~
~~And it is directed that the matter be kept in the file of OA No. 112/2013 (Radha Mohan & Others vs. Union of India & Others) for future reference.~~
~~There is no further order to be passed.~~
~~Copy of this order is being sent to the concerned authorities for their necessary action.~~

Copying Clerk, Section (Judicial)
C.A.T. Jaipur Bench

Copy given vide No. 670 to 671
dated 11-7-13

Handwritten signature/initials