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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.Nos. 604 & 605 of 2003

New Delhi, this the 31st day of March, 2004

Hon'ble Shri R. K. Upadhyaya, Member (A)

OA-604/2003

1. Shri Vijay Kumar Singh
(Data Entry Operator)
s/o Shri Bharat Prasad Singh
r/o WZ-693, 1st Floor,
Palam Village, Badyal,
New Delhi-19
2. Ms. Anju
(Clerk/Typist)
r/o 15/476, DDA Flat, Kalkaji
New Delhi-19

..Applicants

OA-605/2003

1. Shri Birender Singh
(Group C Employee)
s/o Shri Nandan Singh Rawat
r/o 455 E Block MCD Colony
Azad Pur, Delhi-33
2. Shri Suresh @ Suresh Sharma
(Group D Employee)
S/o Tale Ram
r/o Village Shahzadpur Post Office
Sandal Kalan Distt. Sonapat
Haryana - 131001

..Applicants

(By Advocate: Shri M.L.Chawla)

Versus

1. Union of India
through the Secretary
Ministry of Finance
Deptt. of Economic Affairs
(Banking Division)
Govt. of India, 3rd Floor
Jeevan Deep Building, Sansad Marg
New Delhi-1
2. The Custodian
Office of the Custodian
The Special Court (Trial of offences
relating to Transactions in Securities)
Act, 1992 Banking Division (Dept. of
Economic Affairs) Ministry of Finance
3rd Floor, Bank of Baroda Bhawan
16, Parliament Street
New Delhi-1
3. Shri A.K.Poddar, Director
Office of the Custodian
The Special Court (Trial of offences
relating to Transactions in Securities)

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Act, 992 Banking Division (Dept. of
Economic Affairs) Ministry of Finance
3rd Floor, Bank of Baroda Bhawan
16, Parliament Street
New Delhi-1

..Respondents

(By Advocate: Shri Vivek Kohli)

O R D E R

Both these applications filed under Section 19 of the Administrative Tribunals Act, 1985 are disposed of by a consolidated common order as the issue involved in both the applications is similar.

2. Both the learned counsel of the applicants as well as of the respondents have jointly addressed their arguments in these cases. Therefore, these are dealt with hereinafter.

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3. This original application has been filed by Shri Vijay Kumar Singh, Data Entry Operator (DEO) along with Ms. Anju, Clerk/Typist. Both of them were working with the respondents-Custodian and their services had been dispensed with by Office Order No.21 of 2003 dated 4.3.2003 (Annexure A-1) and Office Order No.22 of 2003 dated 4.3.2003 (Annexure A-2). These applicants have also claimed a direction to quash and set aside the orders of termination with a further direction to reinstate them with continuity in service and consequential benefits.

3.1 It is stated by the learned counsel of the applicants that Shri Vijay Kumar Singh was appointed as DEO vide letter dated 27.11.1998. Amongst other

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conditions, it was also mentioned that the appointment was of a 'temporary' nature for a period of one year or until further orders with the condition that such an employment will not make him eligible for regular employment under the Government of India. The terms and conditions further stipulated that "The appointment may be terminated at any time by a month's notice given by the either side viz. the appointee or the appointing authority without assigning any reason". Applicant No.2 - Ms. Anju - was appointed vide letter dated 2.7.1998 for a period of one year or until further orders, subject to the condition that this employment would not make her eligible for regular employment under the Government of India.

OA-605/2003

4. The applicants in this OA, namely, S/Shri Birender Singh and Suresh were appointed on daily wage basis w.e.f. 29.8.1992 and were granted temporary status ~~of~~ by order dated 29.9.1994 w.e.f. 1.7.1994. The learned counsel claims that both these casual employees with a temporary status working against Group 'D' posts, could have been regularised in terms of the Government of India, DoP&T instructions dated 10.9.1993. They could have also been absorbed against regular vacancies in terms of condition contained in para 7 of that scheme.

5. The main grievance of applicants' learned counsel is that all these applicants have been removed and in their place, others who were juniors and freshers, were appointed. All the applicants were required to be given proper notice before dispensing with their services. The

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learned counsel alleged that the entire exercise of termination of service of the employees is with malafide intentions, e.g., in the case of Shri Vijay Kumar Singh, the order dated 4.3.2003 (Annexure A-1) states that he was working on 'casual basis' whereas the appointment letter dated 1.12.1998 (Annexure A-3) states that he was selected for appointment and was offered appointment to the post. Such appointment was to be of 'temporary' nature. The appointment of all these applicants have been continued for several years. It is also stated by the learned counsel of the applicants that respondent No.2 Organization may be a temporary Organization but it has its existence even now. If the work was there, the applicants could not be removed. According to the learned counsel of the applicants, respondent No.2 vide letter dated 21.11.2002 proposed periodical staff review. The proposal dated 21.11.2002 stated that it is imperative to continue all the existing posts, except the posts of DEO, Clerk/Typist, Staff Car Driver and Group 'D'. The justification for surrender of two posts of DEOs was that the post could not be filled either through regular persons or by deputation. On account of some objections raised by Internal Finance Wing, it was decided by the respondents "to surrender two posts of DEOs and outsource the work to external agencies". Regarding justification for surrender of two posts of Clerk/Typist, it was stated that the posts could not be filled in either through recruitment or deputation. The work was again to be proposed to be outsourced to external agencies. Regarding four Group 'D' posts, it has been stated that these posts were meant by casual labourers and were proposed to be surrendered. It was

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further stated in this letter that many of the posts are being manned by the retired persons on re-employment basis as it became almost impossible to get officers on deputation. The learned counsel of the applicants drew my attention to the reply where it has been stated that the posts of DEO, Clerk/Typist, Staff Car Driver and Group 'D', i.e., total 9 posts, were surrendered as per letter dated 28.2.2003. Therefore, the respondents have taken a plea that the applicants could not be retained "in view of the abolition of the posts". He referred to Annexure A-16 filed along with his rejoinder wherein it has been stated that Ms. Renu Bhinder and Ms. Barkha Arora were deputed by the Chambers of Law to work as DEOs on contract basis.

6. The respondents have opposed these applications. According to the learned counsel of the respondents, there was no sanction of the post for the applicants beyond 28.2.2003. Therefore, their services were dispensed with as per impugned order dated 4.3.2003. The learned counsel of the respondents invited attention to the decision of the Hon'ble Supreme Court in the case of Union of India & others v. Tara Chand Sharma & others, AIR 1996 SC 428, wherein it has been stated that if the posts were abolished and the employees were appointed temporarily, there could not be any grievance. Placing reliance on the decision of the Hon'ble Apex Court in the case of Joyachan M. Sebastian v. Director General & others, (1996) 10 SCC 291, he stated that it is a settled legal position that on abolition of the post, the holder of that post has no right to continue on the post.

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7. In the rejoinder, learned counsel of the applicants stated that his information is that certain employees are engaged by respondent No.2 for performing similar nature of duties which were performed by the applicants. Therefore, respondent No.2 be directed to take the applicants back in service with all consequential benefits.

8. The arguments of learned counsel of both the parties have been considered and the relevant material available on record has been perused. There is no dispute that the Office of respondent No.2 was a temporary organization. The appointments of the applicants made initially in the years 1992 and 1998 were continued on year to year basis. In such a temporary organization, the requirement of staff is constantly reviewed and on account of the review by the respondents, certain posts had been abolished. May be that respondent No.2 made certain recommendations but the ultimate decision was taken by respondent No.1. However, on the facts of these cases, it is noticed that these applicants have worked for quite a long period. Therefore, they should have been given preference to others for being engaged even on contract basis. The Hon'ble Supreme Court in the case of Joyachan M. Sebastian (supra) has observed as under:-

"7. It is now settled legal position that on abolition of the post, the holder of the post has no right to continue on the post. Instead of retrenching him as surplus, the Government have accommodated him in the available vacancy and, therefore, it must be deemed to be a fresh appointment for the purposes of seniority. After joining in Salem in Tamil Nadu, he made a request for

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transfer to Trivandrum and it is at his request that he was transferred. Consequently, on his undertaking in the application that he would not claim his seniority at Salem Station, the transfer was effected at his request. It is settled legal position that he would take his seniority as juniormost among the confirmed employees in the transferee region."

9. In case respondent No.1 had any requirement for persons like the applicants herein, they could have been re-deployed in view of their long satisfactory service. This has not been done. On the other hand, it has emerged that certain DEOs were engaged by respondent No.2 whereas Shri Vijay Kumar Singh, applicant No.1 in OA-604/2003 was not even considered. He was also not given one month's notice or one month's pay in lieu thereof as per terms and conditions of service.

10. Considering the facts of these cases, the applications are partly allowed and the following directions are issued:

- i) The applicant No.1 will be paid one month's salary in lieu of mandatory notice for termination of service in terms of conditions of his service,
- ii) Respondent No.1 may also consider re-deployment of the applicants in the Office where there is need of such employees provided they are otherwise eligible and their service record was satisfactory. While so considering the cases of

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these applicants, they may be given relaxation in prescribed age limit to the extent of services rendered with respondent No.2,

iii) Respondent No.2 is directed to consider re-engagement of the applicants either on the post on which they were working or any other post available with them for which they are considered suitable. If these applicants cannot be taken against regular jobs and if there is any work available with them, they may be considered on contract basis whether on full time basis or even part-time basis,

iv) Respondent No.2 is also directed to give preference to the applicants as compared with the freshers and juniors, if they are otherwise found suitable for such an engagement; and

v) The above directions shall be implemented within three months from the date of receipt of a copy of this order.

11. A copy of this order may be placed in OA-605/2003. No costs.


(R. K. Upadhyaya)
Member (A)