

CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA NO. 1696/2003

WITH

OA 1852/2003 AND OA-1250/2003

New Delhi, this the 20th day of July, 2004

Hon'ble Sh. Sarweshwar Jha, Member (A)

OA No. 1696/2003

1. Mrs. Sudesh
Wife of Shri Rajbir Singh
R/o RZO-11, New Roshan Pura,
Najafgarh,
New Delhi
2. Mrs. Aleyamma Varghese,
W/o Shri Varghese C.O.
R/o C-7-B, Sawal Nagar,
Near Sadiq Nagar,
New Delhi
3. Miss Bindumol Joseph
W/o Shri Varghese A.G.
R/o A-26, Adarsh Nagar,
Jiwan Park, Uttam Nagar,
New Delhi
4. Ms. Shaji Thomas,
D/o Shri Thomas V.C.
R/o Q. No. 636, Tihar Complex,
New Delhi
5. Mrs. Rosamma P.J.
W/o Shri Mathew
R/o WZ-291, Gali No.10,
Lajwanti Garden,
New Delhi
6. Shri Sohan Lal
S/o Shri Bhagwant Ram,
R/o House No.. E-12, DCM Colony
Ibrahimpur Extension,
Delhi-110036

...Applicants

(By Advocate Shri S. N. Gupta)

V E R S U S

1. Govt. of N.C.T. of Delhi
Through Inspector General of Prison
Central Jail, Tihar,
New Delhi - 110064.
2. The Director General (Prison)
Prison Head Quarter, Central Jail
Tihar, New Delhi-110064

...Respondents

(By Advocate Shri Vijay Pandita)

8. Mr.

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OA No. 1852/2003

1. Shri Anil Kumar
S/o Shri Satya Pal
R/o E-601, Jahangir Puri,
Delhi-110033

2. Ms. Chitra Pankajavally
D/o Shri Krishna Swami
R/o D-2-125, Jiwan Park,
Pankha Road, Uttam Nagar
New Delhi

....Applicants

(By Advocate Shri S. N. Gupta)

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Through Inspector General of Prison
Central Jail, Tihar
New Delhi-110064

2. The Director General (Prison)
Prison Head Quarter, Central Jail,
Tihar, New Delhi-110064

....Respondents

(By Advocate Shri Vijay Pandita)

OA No. 1250/2003

1. Shri Subodh Kumar
S/o Shri Khajan Singh
R/o WS-456/4, Wazirpur Village,
New Delhi-110052.

2. Shri Naveen Kumar
S/o Shri Nathu Ram
R/o H.No.-2, Village & Post Office,
Panndwalle Kalan,
New Delhi-110043

3. Shri Rajesh Kumar
S/o Sshri Jagdish Chand
R/o H.No. R-ZG-854, Part-II,
Raj Nagar, Palam Colony,
New Delhi-110045

...Applicants

(By Advocate Shri S.N. Gupta)

V E R S U S

1. Govt. of N.C.T. of Delhi
Through Inspector General of Prison
Central Jail, Tihar,
New Delhi-110064.

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Prison Head Quarter, Central Jail,
Tihar, New Delhi-110064

...Respondents

(By Advocate Shri Vijay Pandita)

S. [Signature]

O R D E R

As the cause of action and the reliefs prayed for in the above mentioned OAs are identical, these are being disposed of by this common order.

2. The learned counsel for the parties have been heard.

3. These applications have been filed seeking quashing of the orders of the respondents dated 24th April, 2003/ 3rd May, 2003/11th July, 2003 whereby the services of the applicants have been dispensed with and for directions being given to the respondents to allow the applicants to work till the case is decided by staying the operation of the impugned orders.

4. The facts of the matter, briefly, are that the applicants had been employed by the respondents during the period 1995-96 for performing duties in shifts during morning and also in the night according to the roaster maintained by the respondents. Their duties were to be the same as those performed by the regular employees. They were also to be paid the same salaries as were paid to the regular female and male nurses. However, they were paid salary @ Rs. 100/- per day in the form of conveyance allowance and which was subsequently enhanced to Rs. 150/- per day for morning shift and Rs. 200/- for night shift. They were assured by the respondents that they would be given proper pay scales; but they have complained that despite their having submitted representations seeking payment of salary as paid to the

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regular staff and also regularisation of their services, the same have been turned down by the respondents, forcing them to approach the Tribunal. They have claimed that they have attained temporary status and are being treated as regular employees. They were also transferred from one hospital to another hospital of the Central Jail. They also handed/taken over the charges in the duty register. But the respondents have been refusing to pay them the salary as is being given to the regular employees. They had earlier filed OA No. 1560/2000 as Sudesh and Ors. vs. Union of India and OA No. 1534/2000 as Sohan Lal vs. Union of India and Ors. It has been claimed by them that the said OAs were allowed by the Tribunal vide its orders dated the 6th July, 2001 (Annexure A-1).

5. On perusal of the orders given by the Tribunal in the said OAs it is observed that the respondents were directed to frame a proper scheme within a period of three months from the date of receipt of a copy of the said orders for absorption/regular employment of the applicants in the posts, the duties and responsibilities of which they have been discharging over the years, keeping in view the qualifications possessed and the experience gained by them and it was further directed that if the applicants were found fit to be regularly appointed in accordance with the aforesaid scheme, the respondents would make payment of arrears to them in respect of the past services rendered in accordance with regular pay scales.

6. However, the said orders of the Tribunal were appealed against by the respondents by filing Civil Writ

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Petition bearing CW-7203/2001 in the name of Government of NCT and Ors. vs. Sudesh and Ors. and also CW-195/2002 in the name of Government of NCT and Ors. vs. Sohan Lal in the Hon'ble High Court who stayed orders of the Tribunal in the said OAs and disposed of the matter with leave to withdraw the petitions with liberty to take recourse to appropriate remedy as may be available to the applicant in accordance with law. But respondents thereafter dispensed with the services of the applicants vide their impugned orders. The applicants did endeavour to file a CM in CW-7203/01 for getting stay of the impugned orders, but the Hon'ble Court was of the view that it being a separate cause of action, the applicants could move the Tribunal in accordance with law. Hence the OAs.

7. The respondents have, however, maintained that the applicants do not come within the definition of Government employees, as they have rendered their services in the Jail Hospital on voluntary basis as NGOs and were paid only conveyance charges to which they never objected. The posts against which the applicants worked had been advertised by the DHS/DSSSB and the applicants engaged following the process of selection and their services utilised as NGOs. The applicants being NGOs were never appointed/selected under any Recruitment Rules nor appointment orders issued to any of them, treating them as private persons. They have also taken the plea that the applicants cannot be allowed to enter Government jobs against the relevant Recruitment Rules through back door entry. In this connection, they have placed reliance on the judgement of the Tribunal in the case of Kumari Grihalakshmi Srivastava vs. Director/Chief

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Engineer, Rural Engineering Services and Ors. [1999(2) ATJ-331] in which, among other things, it had been held that judicial process cannot be utilised to support mode of recruitment de hors the rules. It has been further held that regularisation can be made as per Rules and Courts could not issue directions for regularisation. Reliance has also been placed on the decisions of this Tribunal in OA-1205/2001 in Mrs. Selvin Rani vs. Union of India which was dismissed on 14-05-2001 (Annexure R1) in which the following had been observed:

"There is nothing on record to show that the applicant has been holding a civil post. The experience certificate placed on record at Annexure A-V goes to show that the applicant is a Non-Govt. official working in the Central Jail at Tihar. Similarly, the impugned letter of 5-2-2001 shows that the applicant had been rendering voluntary service as Non-Govt. official. There is nothing else on record to show that the applicant enjoyed any other status."

8. A reference has also been made to the OA-1479/2000 in Subodh Kumar vs. Government of NCT as decided on 6-7-2001 along with OA numbers 1523, 1534 and 1560/2000 (Annexure A-1 to the OA); against which the department filed a writ petition before the Hon'ble Delhi High Court, as already mentioned above by the applicants. The said matter together with the other writ petitions in Government of NCT of Delhi vs. Subodh Kumar and Ors. and Government of NCT of Delhi vs. Sohan Lal are still pending consideration before the Hon'ble High Court. The stay as ordered by the Hon'ble High Court is operating. The respondents have also taken me through paragraph 4 of their counter reply in which it has been submitted that similar matters as raised in OA 1718/2000 and 4478/2000 have also been dismissed by the Hon'ble Tribunal on 28-8-2002

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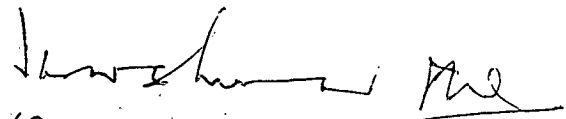
(Annexure R2). Similar dispensation has also been recorded in OA-2020/2001 in the case of Dr. Bharat Singh (BAMS) and Ors. vs. Union of India and Ors. vide decision given on 25-9-2002 (Annexure R3). In all these decisions a common view has been taken that the applicants have no right to seek any relief since they have never been appointed by the Government. It has been stated in the orders of the Tribunal in OA-2020/2001 that "they (applicants) even admitted this that they are NGOs. If they had come for voluntary service and were not recruited in terms of any Recruitment Rules, indeed they cannot claim parity with any other Government servant." The contrary view which has been taken by the Hon'ble Single Bench of the Tribunal in the case of Subodh Kumar (supra) is subjudice and operation of the impugned order has since been stayed. The said application, i.e. OA-2020/2001 was, therefore, found to be without merit and was accordingly dismissed by the Tribunal vide its order dated 25th September 2002.

9. The respondents have also argued that similar matters had been dealt with earlier in the said OAs and which have been dismissed for want of any merit. The instant OAs also should merit the same dispensation. They have also argued that the Tribunal has no jurisdiction in the matter, as the applicants are not Government servants paid from the Consolidated Fund of India and that they are NGOs and similar cases having already been decided earlier.

10. They have also relied upon the decisions of the Hon'ble High Court of Delhi dated 21st February 2002 as given in CW-3600/2001 and CW-3602/2001 in which, among other things, the following has been held :-

"In view of the aforementioned binding precedents of this Court, we are of the opinion that the petitioners cannot be said to be the civil servants and as such the Tribunal has rightly held that they have no jurisdiction to entertain the application under Section 19 of the Administrative Tribunals Act."

11. On perusal of the facts and circumstances of the cases in the said OAs and also in the OAs which have already been referred to and relied upon by the parties being similar and the said OAs having been dismissed by this Tribunal mainly for the reason that the applicants were not holding civil posts nor posts under the Government and further that they were NGOs rendering voluntary service, and that the applicants in the instant OAs are similarly placed, I do not see any reason as to take a different position. Accordingly, I have no hesitation in dismissing the above mentioned OAs as devoid of merit. No order as to costs.


(Sarweshwar Jha)
Member (A)

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22/08/93

Co, Secy II