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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

C.P. NO.50/2005

in

O.A. NO.605/2003

This the 8th day of December, 2005.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SMT. MEERA CHHIBBER, MEMBER (J)

1. Birender Singh S/O Nandan singh Rawat
(Group 'D' employee),
R/O 455 'E' Block MCD Colony,
Azad Pur, Delhi-110003.

2. Suresh @ Suresh Sharma S/O Tale Ram
(Group 'D' employee),
R/O Village Shahzadpur Post Office,
Sandal Kalan Distt. Sonapat,
Haryana-131001.

... Applicants

(By Shri M.L.Chawla, Advocate)

versus

1. Shri Vinod Rai,
Additional Secretary
(Department of Economic Affairs),
Banking Division, Ministry of Finance,
Jeevan Deep Building, Sansad Marg,
New Delhi.

2. Shri Y.C.Satyawadi, Custodian
Special Court (Trial of Offence Relating to
Transactions in Securities) Act, 1992,
3rd Floor, Bank of Baroda Bhawan,
16 Parliament Street,
New Delhi-110001.

... Respondents

(By Shri Vivek Kohli, Advocate)

ORDER

Hon'ble Shri V.K.Majotra, Vice-Chairman (A):

O.A. No.605/2003 of these applicants was partly allowed on
31.3.2004 with the following directions:



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- “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 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.”

2. It is alleged that respondents have not taken any action towards implementation of aforesaid directions of the Tribunal. The learned counsel of applicants contended that applicants had been accorded temporary status in the pay scale of Rs.750-940 more than eight years ago. Basically, applicants ought to have been considered for regularisation under the Casual Labour (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993. Instead respondents informed applicants to send their bio data to a private concern, namely, M/s Ranhotra & Associates, for re-engagement. The learned counsel stated that the office of the Custodian in which applicants were employed is still functioning, yet instead of regularizing the services of applicants, respondents are

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continuing them on temporary basis or re-engaging them through an agency for outsourcing. The learned counsel relied upon the following:

- (1) 1990 (3) SLJ (CAT) 94 : *Durga Prasad Tewari & Others v Union of India & Another*;
- (2) 2000 (3) SLJ 332 : *Nar Singh Pal v Union of India & Others*;
- (3) 2005 (2) SLJ (CAT) 294 : *Gobinda Prasad Mula v Union of India & Others*.

3. On the other hand, the learned counsel of respondents stated that the office of the Custodian is a temporary office and is continued on yearly basis. Its work is reviewed by the Government on yearly basis. On the basis of such review, the posts are sanctioned on yearly basis. In the review made for posts to be sanctioned for the year 2003-04, four posts of Group 'D' (two at Delhi and two at Mumbai) were not continued beyond 1.3.2003 by the Government. Thus the services of applicants were disengaged. However, in pursuance of Tribunal's directions the bio data of applicants was forwarded to the Joint Secretary (ARD) with a request to give preference to applicants in Debt Recovery Tribunal (DRT) whenever a vacancy arises and they meet the eligibility criteria (Annexure-1 to the counter). The DRT Section forwarded the bio data of applicants to DRAT – Delhi with request to consider them for appointment in the existing or vacancies likely to arise in DRTs having due regard to the provisions of the recruitment rules and the orders of the Court. DRAT – Delhi has also forwarded the bio data of applicants to DRT-Delhi, DRT-Chandigarh and DRT-Jaipur for appointment in the existing and vacancies likely to arise in DRT. The learned counsel further stated that the office of the Custodian after abolition of the two posts of Group 'D' w.e.f. 1.3.2003 as stated

above, was permitted for hiring persons through outsourcing agents. With the permission of the Ministry, the outsourcing agent was asked to send suitable names for night chowkidar and photocopy operator. These posts were filled by the outsourcing agent in May-July, 2003, i.e., much before the Tribunal's directions dated 31.3.2004. Thereafter, no post or work has been available against which applicants could be considered. In the end, the learned counsel stated that applicants would certainly be considered for re-engagement in terms of Tribunal's directions as and when work is available even if the posts are filled through outsourcing.

4. We have considered the contentions of both sides as also the material on record.

5. As to the issue of termination of the services of applicants and regularisation of their services, the same was claimed in OA No.605/2003, however, no such relief was accorded to applicants. On the basis of the contentions and records of respondents it is established that the office of the Custodian is a temporary office in which posts were sanctioned on a yearly basis. In the review for the year 2003-04, four posts of Group 'D' (two at Delhi and two at Mumbai) were not continued beyond 1.3.2003. Respondents have made efforts to implement directions of this Court inasmuch as bio data of applicants was forwarded to DRT-Delhi, DRT-Chandigarh and DRT-Jaipur for consideration for appointment of applicants in the existing and vacancies likely to arise. While no posts exist in the office of the Custodian where applicants were working, efforts have been made by respondents to re-engage applicants in DRT-Delhi, DRT-Chandigarh and DRT-Jaipur. The learned counsel of respondents has further assured that applicants' cases shall be considered for re-engagement

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as and when work is available with them or hiring is done through an outsourcing agency.

6. In the matter of *Gobinda Prasad Mula* (supra) it was held that in the case of termination simpliciter the Court should lift the veil to ascertain whether a misconduct was there and respondents had adopted a shortcut to avoid enquiry. The issue whether it was a case of termination simpliciter or the termination involved a misconduct and an enquiry, cannot be raked up in a contempt petition, the same having been addressed in the OA.

7. Similarly, the case of *Nar Singh Pal* (supra) would also not be applicable to the facts of the present case as in that case too it was found that the order of termination was in fact a penalty awarded on the basis of a preliminary enquiry and not a disciplinary enquiry as per Article 311. Again this issue having been raised in the OA, cannot be re-raised in the present contempt proceedings.

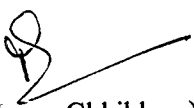
8. In the case of *Durga Prasad Tewari* (supra) it was held that although a casual labour does not hold a civil post, he is in the service of the Union and as such the Tribunal has jurisdiction to entertain cases of the casual labourers. It was directed that the question of regularisation of applicants in Group 'D' posts should be considered in any of the vacancies available in the office of the Controller of Accounts or any other officer under the Ministry of External Affairs located at Delhi or elsewhere.

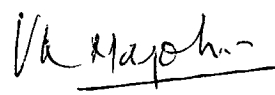
9. In the present case, respondent No.2 had been directed to consider re-engagement of applicants either on the post on which they were working or any other post available with them for which they were considered suitable. Not only that they should be accorded relaxation in

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prescribed age limit to the extent of service rendered by applicants with respondent No.2, if work is not available, applicants may be considered on contract basis on full time or even part time basis in preference to freshers and juniors, if they are otherwise found suitable for engagement. While Group 'D' vacancies do not exist with the office of the Custodian after 1.3.2003, respondents have made efforts with DRT-Delhi, DRT-Chandigarh and DRT-Jaipur for appointment in the existing and vacancies likely to arise, however, till now it has not been possible for respondent No.2 to secure re-engagement of applicants. In any case, the learned counsel of respondents has assured that applicants shall be considered as and when respondent No.2 and DRT-Delhi, DRT-Chandigarh and DRT-Jaipur have work available with them and recruitment is made directly or through outsourcing in terms of Tribunal's directions.

10. Having regard to the discussion made above, no case for contempt has been established. As such, these contempt proceedings are dropped and notices to respondents are discharged with the expectation that as per their assurance, respondents shall consider applicants for re-engagement in terms of our directions contained in order dated 31.3.2004 in OA No.605/2003 as and when work is available with them or DRT-Delhi, DRT-Chandigarh and DRT-Jaipur, when recruitment for Group 'D' posts is made directly or through outsourcing.


(Meera Chhibber)
Member (J)
/as/


(V. K. Majotra)
Vice-Chairman (A)
8.12.05