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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

61/35, Copernicus Marg,  
New Delhi - 110004

Dated: 25.11.2003

From: The Principal Registrar  
Central Administrative Tribunal  
Principal Bench, New Delhi

To,

1. Ms. Prasanthi Prasad K. Counsel for the applicant,  
57, Lawyers Chambers, Supreme Court of India, New Delhi-1
2. Shri KCD Gangwani, Counsel for the respondents,  
CAT., Bar Room, New Delhi

All India Asso. of Investigators & Ors. Regn.No.OA 404/03  
 ..... APPLICANT  
 ..... VERSUS  
 UOI & Ors. .... RESPONDENT

Sir,

I am directed to forward herewith a copy of Judgment, Dtd  
 dt. 24.10.2003 ..... passed by this Tribunal in the above  
 mentioned case for information and necessary action, if any.

Please acknowledge the receipt.

Yours faithfully,

*[Signature]*  
 (SECTION OFFICER)  
 JUDL. II  
 FOR PRINCIPAL REGISTRAR

Encl: As above.

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

...

OA No. 404/2003

New Delhi, this the 24th day of October, 2003

Hon'ble Shri V.K.Majotra, Vice-Chairman (A)  
Hon'ble Shri Shanker Raju, Member (J)

1. All India Association of Investigators  
National Sample Survey Organisation,  
Field Operation Division,  
NSSO (FOD) Rep. by its  
General Secretary, Ajay Saxena.
2. Mr. Rakesh Singh,  
Investigator,  
1289, Type II, N.H.-4,  
Faridabad. ....Applicants

(By Advocate: Mrs. Prashanthi Prasad)

Versus

1. The Secretary,  
Ministry of Statistics and Programme  
Implementation,  
Govt. of India,  
Sardar Patel Bhawan,  
Sansad Marg,  
New Delhi - 110 001.
2. The Chief Executive Officer,  
National Sample Survey Organisation  
Ministry of Statistics and Programme  
Implementation, Sardar Patel Bhawan,  
Sansad Marg,  
New Delhi- 110 001.
3. The Director of  
M/O Statistics and Programme Implementation,  
Sardar Patel Bhawan,  
Sansad Marg, New Delhi - 110 001.
4. The Deputy Director General,  
National Sample Survey Organisation,  
Field Operation Division,  
East Block No. 6, Level 6-7,  
R.K. Puram, New Delhi - 110 066.
5. The Secretary,  
Department of Expenditure,  
Ministry of Finance,  
North Block, New Delhi - 110 001. ...Respondents

(By Advocate: Shri K.C.D. Gangwani)

ORDER (ORAL)

Order delivered by Shri Shanker Raju, Member (J)

All India Association of Investigators in National Sample Survey Organisation have represented through its Secretary and another affected party are seeking the following reliefs:

i) to pass an order, or any other appropriate order or direction setting aside/declaring Annexure P-1 letter inviting the application from retired Assistant Superintendents/Superintendents for contract work as illegal, arbitrary, discriminatory and violative of the fundamental rights guaranteed under Articles 14 and 21 of the Constitution and also violative of the Annexure P-2 Govt. instructions.

ii) To pass an appropriate order or direction, directing the respondents not to grant any re-employment or appointment/re-appointment on contract basis against the criteria laid down in the Annexure P-2 Government instructions.

iii) To pass an appropriate order or direction directing the respondents to grant ad-hoc promotion to the eligible applicants in the 1st applicant association to do the said supervisory field work which the respondent had proposed to get done on contract basis.

iv) Any other order or orders as this Hon'ble Court may please to pass in the facts of the case."

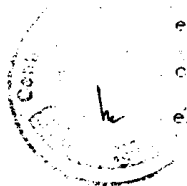
2. Briefly stated the Department of Agriculture and Cooperation as a part of their larger scheme "Planning & Management of Indian Agriculture" for conduct of a nation wide Situation Assessment Survey (SAS) of Indian farmers discussed the matter in the Governing Council of NSS and have decided to conduct the field work of SAS. As this survey was in addition to the normal survey planned for the year

All India basis followed by interviews.

5. For the purpose of engagement of Field Superintendents, names had been called from the retired Assistant Directors/Superintendents of NSSO, being experienced persons, with their consent and on examination of confidential rolls of the suitable period before their superannuation, the Committee recommended suitable persons for engagement as Field Supervisors. A panel has been formed and piece rated honorarium of Rs. 10,000/- per month has been fixed with a condition that the total honorarium plus pension should not exceed the last pay drawn. As the applicants are deprived of their promotional avenues and also denial of an opportunity to perform the field duties on ad hoc basis, they represented to the respondents. As no response had come forth, hence the present O.A.

6. Ms. Prashanthi Prasad, learned counsel for the applicants contends that in the guise of piece rated honorarium, the retired officers had been re-employed on contract basis which is not permissible beyond the age of 60 years as laid down by G.P. P.G. Notification dated 9.12.2002.

7. According to her, persons at the age of even 74 years had been re-appointed. She further contends that work proposed to be performed by these employees as Supervisors had already been on earlier



occasions entrusted to regular Investigators i.e. applicants as the work requires physical fitness and extensive touring. Engaging old aged people is arbitrary, shows favouritism without any object sought to be achieved.

8. It is stated that method of recruiting retired Superintendents on piece rated honorarium is nothing but a contract. The continuance of ad hoc promotion of the applicants has been curtailed which is violative of their fundamental rights guaranteed under Articles 14 & 16 of the Constitution of India. In the context of this backdrop, it is stated that since their inception to service as Investigators they had been stagnating on the post and were only granted financial upgradation under the Assured Career Progression Scheme.

9. On the other hand Shri K.C.D.Gangwani, learned counsel for the respondents, vehemently opposed the contentions and stated that as re-organisation and constitution of SSS and as the old rules are repealed for want of posts, applicants have no infeasible right to seek ad hoc promotion. It is further stated that creation of posts is the prerogative of the Government requiring no judicial review and courts have no jurisdiction to encroach upon that arena.

10. As regards re-employment is concerned, it is stated that the retired persons have been engaged in

the absence of refusal by the Ministry of Finance to sanction posts. These persons had been hired on piece rated honorarium basis and is for a period ending November, 2003. Moreover, it is contended that as the applicants have no fundamental right, the retired people have been engaged keeping in view their vast experience and duties performed in the past.

11. We have carefully considered the rival contentions of the parties. In view of the constitution of SSS, the old recruitment rules are impliedly repealed, applicants who were Investigators had promotion avenues in the old recruitment rules as Assistant Superintendents and Superintendents. We find that the engagement on piece rated honorarium basis is to assign the particular job on a consolidated amount but in such a case the time limit cannot be assigned. Moreover, as per Govt. of India's instructions contained in G.I. P.G. Notification dated 9.12.2002 on a contract basis a Central Government servant cannot be re-appointed after the age of superannuation i.e. 60 years though we find that the nomenclature to the engagement given given by the respondents is piece rated honorarium, it is a camouflouge for a contract whereby retired persons have been re-appointed. Moreover, the aforesaid re-appointment has no reasonable nexus with the object sought to be achieved. It violates Articles 14 & 16 of Constitution of India. In a field duty, extensive touring and field work does not require even persons with vast experience having

attained the age of superannuation i.e. 60 years and where young persons with vast experience like applicants are in plenty for performance of such duties. However, as the decision has been taken though recommendations has been made to create the post on approval by the Department of Expenditure and the aforesaid piece rated honorarium would continue till the end of this year i.e. 2003 while entrusting the work of survey in future after the aforesaid stipulated date. We hope that the respondents shall keep in view the aforesaid directions and the directives of the Govt. of India not to re-employ or re-appoint the retired persons beyond the age of 60 years.

12. In so far as promotional avenues of the applicants are concerned, in view of formation of constitution of SSS and grades in Senior Investigators, the old rules had outlived their utility. We earnestly hope that the Govt. shall expedite formation of the new recruitment rules so that the promotional avenues of the applicants can be worked out. However, as the applicants are performing the work of Investigators and survey, they can be useful for being assigned the present work which had been assigned to the retired people. The ways and means are to be worked out by the Govt. A policy decision should be in consonance with the principles of equality and not to deprive the applicants' their rightful claim to perform similar duties even in addition to the present one which is permissible under FR 49. Moreover, in so far as ad hoc

promotion is concerned, the respondents in consultation with the appropriate authorities may also explore this possibility.

13. In this view of the matter, we do not subscribe to the engagement of retired people on piece rated honorarium basis but as the same is to continue till the end of this year, which is to expire in near future, we do not interfere in the decision of the Government. However, we direct the respondents to finalize the recruitment rules and consider deployment of the applicants in survey work and further consideration of creating promotional avenues for the applicants even exploring the possibility of their placement even on ad hoc basis to perform such duties. With these observations, the DA is partly allowed with no order as to the costs.

(Shanker Raju)  
Member (J)

/na/

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



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Date

2002  
15/11/02

Central Board of Secondary Education  
New Delhi



