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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO.3344/2001

New Delhi, this the 6<sup>th</sup> day of September, 2002

HON'BLE MRS. LAKSHMI SWAMINATHAN, VC (J)  
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

Kishore Kumar Roy,  
S/o Shri S.D. Roy,  
Aged : 46 years (DOB : 15.6.54)  
R/o RZ-69/10/1 Puran Nagar,  
Palam Colony,  
New Delhi : 110 045 ... Applicant  
(By Advocate : Shri D.C. Vohra)

Versus

1. Union of India  
Through the  
Hon'ble Foreign Secretary,  
Government of India,  
Ministry of External Affairs,  
South Block, New Delhi - 110 011
2. Deptt. of Personnel & Training  
Through its Secretary,  
North Block, New Delhi ... Respondents  
(By Advocate : Shri K.C.D. Gangwani)

O R D E R

BY S.A.T. RIZVI, MEMBER (A) :

Consequent upon the closure of the Akbar Hotel of the ITDC in 1986, the Ministry of External Affairs (MEA) which had moved into the Akbar Bhavan decided to retain the services of a number of ITDC employees and issued an Office Order on 25.6.1986 (A-4) fixing the consolidated amounts to be paid per month to 136 erstwhile employees of the Akbar Hotel (ITDC). The applicant herein stood at serial No. 13 in the list issued as above. His pay was fixed at Rs.1067.30 w.e.f. 19.5.1986.

2. It appears that by about the same time the Akbar Hotel employees' union had filed a Writ Petition (No. 468 of 1986) in the Supreme Court challenging the Government's decision to close down the Akbar Hotel and shifting of the Offices of the Government of India

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including the MEA in Akbar Bhavan, the building of the said Hotel. While the aforesaid Writ Petition was dismissed by the Supreme Court on 28.8.1988, it had noted the following statement made on behalf of the ITDC:-

"every retrenched employee has already been provided alternate service and learned counsel for the respondent No.1 has also stated before us that in regard to each of such adjusted employee, the last pay drawn before the Hotel closed down shall be paid and wherever necessary, the difference shall be treated as personal pay until appropriate pay scale is available." (emphasis supplied)

In the wake of the aforesaid factual position noted by the Supreme Court, several erstwhile employees of the ITDC filed an Original Application No. 3596/1986 before the Principal Bench of this Tribunal seeking, inter alia, the relief of regularisation of service in appropriate pay scales. The matter was decided by the Tribunal on 6.3.1992 (Annexure J-1). The Tribunal observed that "after the applicants had been absorbed formally in regular posts, they will be at liberty to file a fresh application if they still felt aggrieved". During the course of the aforesaid judgement, the Tribunal had directed the respondents to appoint an Expert Committee including a representative of the ITDC to take a final decision on the equivalence of the posts held by the various employees of the ITDC with corresponding Government posts in which the erstwhile ITDC employees could be absorbed formally on regular basis. In the light of the recommendations of the aforesaid Expert Committee, the official respondents were required to take steps to create suitable posts expeditiously.

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3. In pursuance of the aforesaid directions of this Tribunal, the official respondents (MEA) issued an order on 22.2.1993 (A-3) creating thereby 117 ex-cadre posts for the absorption of the erstwhile ITDC employees. By the aforesaid orders, the ex-ITDC employees were absorbed in the MEA w.e.f. 1.5.1986 on the basis of the recommendations of the Expert Committee referred to in the previous paragraph. The creation of the aforesaid posts was subject to the condition that these would stand abolished simultaneously with natural wastage from time to time. The other condition stipulated in the aforesaid order provides that the aforesaid posts would be reverted back to the ITDC in case the Akbar Bhavan was to be handed back to the Corporation at any point of time. It is thus seen that in pursuance of the Tribunal's order dated 6.3.1992, the MEA has created only ex-cadre posts and the erstwhile employees of the ITDC have been absorbed in the same ex-cadre posts. Five different grades of pay have been laid down in the aforesaid order for the adjustment of the 117 ex-ITDC employees who were to be absorbed in the MEA.

4. The applicant in the present OA is one of the erstwhile ITDC employees who has been absorbed in the MEA in an ex-cadre post. He was a Waiter in the ITDC/ Akbar Bhavan.

5. In 1998 the Staff Selection Commission (SSC) issued an advertisement for holding Clerks' Grade (departmental) Examination for recruitment against temporary vacancies in the post of LDC reserved for regularly appointed Grade 'D' staff. In follow up

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of the aforesaid advertisement, seven applications of the erstwhile ITDC employees including the applicant were forwarded to the Staff Selection Commission (SSC) by the MEA vide their Order of 31.7.1998 (Annexure R-1). The applicant has been shown as a Junior Clerk in the aforesaid letter presumably because the post of a Waiter which he held in the ITDC/Akbar Bhavan was found equivalent to the post of a Junior Clerk in the MEA. The other six personnel whose names were forwarded by the same letter were also ex-ITDC employees, shown in the said letter as holding the posts of Houseman and Senior Houseman.

6. According to the said letter there were, at the time, four different categories of Group 'D' employees in the Ministry. The fourth category consisted of the ex-ITDC employees appointed to ex-cadre posts as above in pursuance of the judgements of the Supreme Court/ Central Administrative Tribunal. In respect of the aforesaid seven ex-ITDC employees, the aforesaid letter contained the following statement:-

"While the employees of the first three categories have been permitted to appear in the above examination, the question of eligibility of the fourth category of employees has been under examination in this Ministry since they are ex-ITDC employees and have been appointed against specially created posts in the pay scales corresponding to Group 'D' and other scales lower than the scale of pay of Lower Division Clerks."

7. Without saying anything more about the status of the aforesaid seven ex-ITDC employees, the MEA, in the aforesaid letter of 31.7.1998 requested the SSC to determine the eligibility of these employees from the point of view of the criterion specified by the SSC for examining such applications. In other words, the SSC was required to determine the merit of the aforesaid ex-ITDC personnel for the purpose of their appointment as LDC

8. The present applicant appeared at the aforesaid examination in pursuance of the aforesaid letter and was found successful. As a matter of fact, he stood first in the list of five candidates who had qualified on the basis of the results of the aforesaid examination and who were to be appointed in Gr-VI (LDC) of the IFS (B) Service. The corresponding letter issued by the SSC is dated 30.5.2000 (A-10). Instead of offering a regular post of LDC to the applicant on the strength of the recommendations contained in the SSC's letter aforesaid, the MEA issued a Memorandum on 5.6.2000 (A-11) informing the applicant as well as the other six ex-ITDC employees whose names had been forwarded to the SSC on 31.7.1998 that their candidature for the aforesaid departmental examination, which was only provisional, had been treated as cancelled. The aforesaid cancellation has been issued by relying on the clarification given in the matter by the DOP&T which runs as under:

"It is regretted that it has not been found possible to treat ex-ITDC employees working in the Ministry of External Affairs as eligible for appearing in the Clerks' Grade Departmental Examination (for Group 'D' employees) conducted by Staff Selection Commission."

The aforesaid Memorandum cancelling the applicant's candidature has been issued without putting him to notice and without any justification. Hence the present OA.

9. The learned counsel appearing on behalf of the respondents submitted that in the letter dated 31.7.1998 (Annexure R-1) by which the name of the applicant along with the names of six others were forwarded to the SSC, it had been made clear that out of the four categories of Group 'D' employees in the Ministry, the first three categories had been permitted

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to appear in the examination while the fourth category, namely, that of ex-ITDC employees, to which the applicant belonged, consisted of persons who had been appointed against specially created posts in the pay scale corresponding to Group 'D' and in some cases to other scales lower than the pay scale attached to the post of LDC. It was, according to him, clearly indicated in the same letter that the question of eligibility of this category of employees was under examination, having regard to the aforesaid position and the fact that they were ex-ITDC employees and to this extent their candidature was to be treated as provisional. The relevant rules relating to Grade-VI employees also lay down that 10 per cent of the vacancies in Grade-VI (LDC) were to be filled by the appointment of Class IV employees borne on the regular establishment of the Ministry. Like-wise, in the advertisement issued in 1998 for holding the Clerks' Grade Departmental Examination also it had been clarified that the qualifying examination in question was meant/reserved for only those who were regularly appointed Group 'D' staff of the Ministry. According to him, having been appointed in ex-cadre posts, the applicant, as well as the others like him, namely, the ex-ITDC employees, could not be termed as regularly appointed Group 'D' staff and by the same token could not be said to be borne on the regular establishment of the Ministry. For these reasons, the ground stated in the respondents' impugned Memorandum dated 5.6.2000 (A-2) is justified. The present OA, therefore, deserves to be dismissed.

10. We have considered the submissions made by the learned counsel on either side at length and have perused the material on record. We find both substance and merit

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in the case put forward on behalf of the applicant.

11. We have in the preceding paragraphs noticed that the applicant as also the other ex-ITDC employees have been absorbed under the directions of the Tribunal. The Tribunal had nowhere indicated/directed that such absorption would be against ex-cadre posts to be created for the purpose. Thus, the decision to absorb the ex-ITDC employees including the applicant by creating ex-cadre posts in various pay grades vide respondents' order dated 22.2.1993 (A-3) is entirely their own, and has been taken in the discretion of the respondents. In service jurisprudence, the term absorption/regularisation is used to denote appointment in the regular cadre. It would, therefore, have been in order, just as well as proper if the respondents had created regular posts in the relevant cadre itself for absorbing the ex-ITDC employees. By not doing so, the respondents have succeeded in creating a strange situation, largely uncommon in service jurisprudence, in which a large number (117) of ex-cadre posts have been created in various pay grades for doing regular work, however, without providing for any promotional opportunities for the (ex-ITDC) employees appointed against the said posts by way of absorption.

12. The learned counsel appearing on behalf of the applicant has stressed, inter alia, on the discriminatory treatment meted out to the applicant in this regard. S/Shri Mam Raj Behami and Baj Pal Singh were appointed on the basis of consolidated payment per month by the same order dated 25.6.1986 (A-4) by which the present applicant was similarly appointed. In the list at

Annexure A-4, the aforesaid personnel figure at serial Nos. 38 and 39 whereas the applicant figures at serial No.13. The aforesaid personnel are shown therein as Telephone Operators. These two ex-ITDC employees, both being Telephone Operators, have been appointed on the basis of the result of the Clerks' Grade Examination conducted by the SSC in 1987. The relevant orders both dated 25.1.1989 are placed at Annexures A-5 and A-6. Both of them are also reported to have since been promoted to the post of UDC. The names of both of them were forwarded to the SSC on 1.7.1987 (R-2). In the aforesaid letter (R-2) by which the names of a total number of six Telephone Operators have been forwarded to the SSC along with their application forms for the aforesaid examination of 1987, nothing has been stated to suggest that they were ex-ITDC employees who stood appointed against ex-cadre posts, and no reservation was expressed in regard to their status on the lines mentioned by the same respondents in relation to the applicant and six other whose names were forwarded to the SSC in connection with the same examination of 1987. As stated, both of them had qualified in the aforesaid examination of 1987. In the letter dated 29.11.1988 (R-3) issued by the SSC and addressed to the MEA it has been stated that the applicants, being Telephone Operators, were employed in the MEA as on 1.8.1987. There is no indication in this letter relating to the status of the aforesaid S/Shri Behamni and Singh they they were ex-ITDC employees appointed against ex-cadre posts. Clearly, therefore, the aforesaid S/Shri Behamni and Singh have been treated as regular employees of the MEA and have, on that basis alone, been allowed to take part in the aforesaid 1987 examination and thereafter secure appointment as LDC. Rule 16 (1-A) of the IFS Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964, which deals with Telephone Operators reads as follows:-

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"16. Recruitment to Grade VI of the General Cadre. - \*(1) Vacancies in Grade VI shall be filled in the following manner, namely:-

- (i) Ten per cent of the vacancies may be filled by appointment of Class IV employees (borne on regular establishments) working in the Ministry of External Affairs, on the basis of competitive examination held for the purpose by the Institute of Secretariat Training & Management.

xxx            xxx            xxx            xxx            xxx            xxx

\*(1-A) Notwithstanding anything contained in sub-rule (1), vacancies in Grade VI of the service may be filled also by appointment of persons holding the posts of Telephone Operators in the Ministry of External Affairs (wherever they may be employed) who have been declared qualified for induction to Grade VII of the service on the results of an examination held for this purpose by the Institute of Secretariat Training and Management."

(emphasis supplied)

13. We gave time to the respondents to produce record to show that the applicant and the aforesaid Telephone Operators were similarly treated in the matter of appointment to the post of LDC. They (respondents) have instead filed an additional affidavit on 27.8.2002 to say that the relevant files could not be traced. In the same affidavit, the respondents have, however, stated that "of the 137 persons, those who were Telephone Operators started working as Telephone Operators in the Ministry of External Affairs" and that accordingly, being eligible to appear at the examination in question, according to the aforesaid Rules, both of them appeared at the examination and qualified. In the circumstances, it is all too evident that the aforesaid telephone operators were sponsored as regularly employed operators for the examination in question. Thus we have no option but to conclude that the aforesaid S/Shri Behamni and Singh have been treated as regularly appointed Telephone Operators of the MEA in terms of the aforesaid

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rule 16 (1-A). The learned counsel appearing on behalf of the applicant had vehemently argued that the present applicant ought to have been treated similarly as he too had been appointed against an ex-cadre post. In the reply filed on behalf of the respondents also nothing has been stated which would clarify the position of the aforesaid S/Shri Behamni and Singh in the context of the allegation that they have been given a special treatment, denying the same to the present applicant.

14. Drawing our attention pointedly to the contents of the respondents' letter of 31.7.1998 (R-1), the learned counsel appearing on behalf of the applicant has submitted that by the said letter the respondents have themselves admitted that the ex-ITDC employees appointed to ex-cadre posts constituted one of the four categories of Group 'D' employees of the MEA. Further, having been appointed to the said ex-cadre posts by way of absorption in accordance with the directions of the Tribunal, no room is left for arguing that these employees were to be treated other than as regular Group 'D' employees. The statement contained in the aforesaid letter (R-1) to the effect that the question of eligibility of the ex-ITDC employees was under examination in the background of the fact that they had been appointed against specially created posts cannot, in our view, materially alter the situation. The aforesaid statement, in any case, as argued by the learned counsel cannot be said to amount to a declaration that their candidature for the Clerks' Grade Departmental Examination of 1998 was to be treated as provisional. If the respondents actually wanted their candidature to be treated as provisional, for this or that reasons, they could always say so in clear enough terms in the same letter. In these circumstances and the others discussed earlier in this order with regard to the telephone operators, we are convinced that the respondents' impugned action in cancelling the

applicant's candidature for the aforesaid examination is devoid of any justification.

15. The result of the Clerks' Grade Departmental Examination 1998 has been communicated after a lapse of nearly two years on 30.5.2000. Names of five persons including the present applicant have been recommended by the SSC (A-10) for appointment in Grade VI of the IFS (B). In the intervening period of nearly two years, the respondents have not communicated anything about the candidature of the applicant to the SSC. Had they expressed any reservations about the applicant's candidature, the SSC would, no doubt, have with-held their recommendations in regard to his candidature. The respondents also do not appear to have communicated their reservation about the applicant's candidature to him before the result of the examination was notified by the SSC on 30.5.2000 (A-10). The contents of the respondents' letter dated 31.7.1998 (R-1) were also apparently not disclosed to the applicant so that if found necessary he could make a proper representation in good time. Within a week of the notification of the result of the aforesaid examination on 30.5.2000, the respondents have issued the impugned Memorandum of 5.6.2000 cancelling the applicant's candidature for the aforesaid examination. The impugned Memorandum merely states that it has not been found possible to treat the ex-ITDC employees as eligible for appearing in the Clerks' Grade Departmental Examination. No specific reason based on the rule position has been indicated. If the applicant's status as one appointed against an ex-cadre post stood in the way, the respondents should have said so. The rule position is available in the IFS

Branch 'B' (Recruitment, Cadre, Seniority and Promotion)



Rules, 1964, the relevant portion of which have already been reproduced in paragraph 12 above. The advertisement issued for the 1998 examination contains stipulations consistent with the aforesaid rule position. Rule 16(1) provides that 10 per cent of the vacancies in the post of LDC can be filled by appointing Class IV employees borne on the regular establishments of the Ministry and working in the Ministry. We find it impossible to understand as to how the applicant or for that matter any other ex-ITDC employee, appointed against ex-cadre posts could be treated as not borne on the regular establishment of the Ministry. These persons, after all, are working in the MEA following their absorption in the Ministry. They are, in our view, as regular as anyone else. They are to be retained in the Ministry till they retire on reaching the age of superannuation. The ex-cadre posts held by them could be phased out only with the retirement of individual incumbents, but this cannot mean that they are to be treated as not borne on the regular establishment of the Ministry. In the circumstances, we come to the conclusion that it has been a mistake on the part of the respondents not to treat them as part of the regular establishment (Grade-IV) of the Ministry, specially since the aforesaid Telephone Operators have been treated as such and have been, on that basis, appointed as LDCs and later promoted as UDCs. Discrimination is writ large on the face of things insofar as the treatment meted out to the applicant is concerned. The principle of natural justice has also been violated by the respondent's action in revoking the applicant's candidature without first putting him to notice.

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16. The learned counsel appearing on behalf of the applicant has, in support of the applicant's case, also relied on Gopal Krushna Rath vs. M.A.A. Baig and Others decided by the Supreme Court on 16.9.1998 (J-3). It has been held by the Supreme Court in the aforesaid case that -

"6. When the selection process has actually commenced and the last date for inviting applications is over, any subsequent change in the requirements regarding qualifications by the University Grants Commission will not affect the process of selection which has already commenced.  
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In the present case the selection process, insofar as the applicant is concerned, started with the forwarding of his name on 31.7.1998. According to the rule based position when the names of all the categories of Group 'D' employees of the Ministry were to be communicated to the SSC the only requirement was that such persons should be borne on the regular establishment of the Ministry. The applicant's name was accordingly communicated. There was no change in the aforesaid rule position till the last date for the receipt of application in response to the advertisement in question expired. The applicant's case is that while his name was forwarded to the SSC wholly in accordance with the rule position, the respondents have sought to make a change in that position much after the expiry of the last date for the receipt of the applications by issuing the impugned Memorandum dated 5.6.2000. This cannot be allowed, according to the learned counsel for the applicant, in accordance with the rule laid down by the Supreme Court as above. We agree.

17. The learned counsel appearing on behalf of the applicant has further placed reliance on the Office

Memorandum dated 8.2.1982 (J-2) which lays down that -

"4. Once a person is declared successful according to the merit list of selected candidates, which is based on the declared number of vacancies, the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change, after his name has been included in the list of selected candidates."

Relying on the above, the learned counsel has argued that since the applicant's name stood included in the merit list issued on 30.5.2000, an obligation is cast on the respondents to appoint him as LDC even at this stage. We agree.

18. In the background of the above discussion, we find that the respondents have failed to disclose clear and convincing reasons for not treating him as eligible for participating in the Clerks' Grade Departmental Examination of 1998. In the impugned Memorandum dated 5.6.2000, no specific rule has been cited in support of the respondents' stand that they did not find it possible to treat ex-ITDC employees as eligible for appearing in the said examination. A discriminatory treatment has definitely been meted out to the applicant vis-a-vis S/Shri Behamni and Singh, both Telephone Operators, who have been treated as eligible for a similar examination and have been appointed as LDCs. There was no distinction at all between the status of the applicant and the status of the aforesaid S/Shri Behamni and Singh. Article 14 of the Constitution is, therefore, attracted. The respondents also failed to communicate to the applicant that they were not likely to treat him as eligible for the aforesaid examination. The respondents woke up late in the day only after the applicant had been declared successful in the said examination of 1998. Having been declared successful in the aforesaid departmental examination and placed at

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No.1 in the merit list, the respondents are duty bound to consider the applicant for appointment as LDC even at this stage. A well reasoned and detailed representation was filed on behalf of the applicant on 9.3.2001. The respondents failed to apply their mind to the various issues raised in the said representation and have in the process failed to do justice.

19. In the light of the foregoing, the OA succeeds and is allowed. The impugned order dated 5.6.2000 together with the consequential orders of 7.8.2000 and 9.2.2001 is quashed and set aside. The respondents will consider the claim of the applicant for appointment as LDC on the basis of the result issued by the SSC on 30.5.2000. This the respondents shall do within a period of two months from the date of receipt of a copy of this order. We direct accordingly.

20. The present OA is allowed and disposed of in the aforesaid terms. No costs.

(S.A.T. RIZVI)  
Member (A)

(MRS. LAKSHMI SWAMINATHAN)  
Vice Chairman (J)

6/9/2002

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