

Central Administrative Tribunal, Principal Bench

Original Application No. 772 of 2001

New Delhi, this the 29th day of August, 2001

Hon'ble Mr. M.P.Singh, Member(A)
Hon'ble Mr. Shanker Raju, Member(J)

1. Sunil Dutt S/o Shri Omparkash
H.No.189, Village Sanoth P.O. Narela
Delhi
2. Shakuntla Sharma D/o Shri Dayaram Sharma
R/o F-2, Shastri Nagar,
Delhi
3. Jayant Kumar
Ad-hoc LDC, Hindi Education Plan
Department of Official Language
Delhi

- Applicants

(By Advocate: Shri M.K.Bhardwaj)

Versus

1. Secretary(O.L.)
Ministry of Home Affairs
Lok Nayak Bhawan
New Delhi
2. Deputy Secretary
Ministry of Home Affairs
Lok Nayak Bhawan
New Delhi
3. Director,
Central Hindi Training Institute
M.H.A.
7th Floor, Paryavaran Bhawan
C.G.O. Complex, Lodhi Road,
New Delhi
4. Deputy Director(Exam)
Ministry of Home Affairs
Hindi Teaching Scheme
Janpath 'A' barracks
Janpath, New Delhi

- Respondents

(By Advocate: Shri B.S.Jain)

O R D E R (ORAL)

By Mr. M.P.Singh, Member(A)

The applicants, three in number, have filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking direction to respondents to regularise their services as Lower Division Clerk (in short 'LDC')



from the date of their initial appointment.

2. Brief facts of the case are that the applicants were appointed as LDC on ad-hoc basis during the period from 1994 to 1996. According to the applicants, they had appeared in the typing test conducted by the respondents and also they were medically examined before their appointment to the post. Applicants have contended that they are entitled for regularisation as LDC but the respondents have not taken any steps to regularise their services. Being aggrieved by this, they have filed the present OA claiming aforesaid relief.

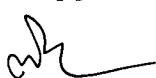
3. Respondents in their reply have stated that as per recruitment rules i.e. Department of Official Language Upper Division Clerk and Lower Division Clerk (Central Hindi Training Institute/Hindi Teaching Scheme) Recruitment Rules, 1990 notified on 27.11.90, 90% posts of LDC are to be filled by selection by direct recruitment through Staff Selection Commission (in short 'SSC'). Remaining 5% are to be filled by Departmental Qualifying Examination and the remaining 5% are to be filled on seniority-cum-fitness basis from group 'D' employees who possess Matriculation or equivalent qualifications. According to the respondents, there is no provision whatsoever to make ad-hoc appointments and consequently to regularise those ad-hoc appointees in the recruitment rules. It is stated by the respondents that three candidates selected through SSC have already been posted against clear vacant posts. Only four posts of LDC are vacant for a limited period due to regular incumbents being on deputation to other departments. As and when the deputationists come back, there will be no

vacant post of LDC in the office of respondents. It is also submitted by the respondents that applicants were appointed purely on ad-hoc basis in exigency of work through local employment exchange. It is clearly mentioned in their appointment letter that in case their services are not required, they can be terminated at any stage even before the expiry period shown against their names and it was also clearly mentioned in the offer of appointment that no claim for regular appointment would accrue to the applicants on the basis of these ad-hoc appointment orders. Every time they were appointed, they were given the initial pay scale afresh.

4. According to the respondents, the applicants have failed to qualify in the examination conducted by the SSC for the post of LDC. Therefore, they cannot be appointed or absorbed against regular vacancies. As per the procedure, the regular appointment on group 'C' post i.e. LDC is to be made on the basis of qualifying the examination conducted by the SSC for the said post. In view of the aforesaid submissions, the OA has no merit and is liable to be dismissed.

5. Heard the learned counsel for the parties and perused the records.

6. During the course of arguments, learned counsel for the applicants stated that these applicants have worked with the respondents for a period ranging from 5 to 7 years. Therefore, their services should be regularised as they have become over-age and cannot compete in any other examination. To support his contention, he



has relied upon the judgement of the apex court in the case of Gujrat Agricultural University vs. Rathod Labhu Bechar & ors., 2001 (1) SCALE. Learned counsel for the applicants has also relied upon the judgement of the Full Bench of the Tribunal in the case of Hem Raj & ors. vs. UOI & ors. in OA No. 1751/98 with other connected OAs. In this case, the Full Bench of the Tribunal has held that where appointments are made to Class-III clerical posts or Class-IV posts on ad-hoc basis and if appointees continued for a long period, it is open for the Government to regularise their services by making appropriate provisions consistent with the reservation policy of the State. Courts can also give proper directions in that regard in equity.

7. Learned counsel for the applicants has also taken support from the judgement of the Tribunal in OA No. 206/2001 with OA-2010/2000 decided on 18.4.2001, wherein the Tribunal has directed the respondents to frame the Scheme to regularise the services of the applicants (applicants being part-time wrestling coaches). He relied upon another judgement of the Tribunal in OA No. 2564/97 with connected OAs decided on 23.4.98, wherein the Tribunal held as under:

13. In the result, the aforesaid OAs are allowed. The respondents shall grant the applicants the same pay scale and allowances and also the same benefits of leave, increment on completion of one year, maternity leave and other benefits of service conditions, as are admissible to Medical Officers appointed on regular basis in the corresponding pay scales. Notwithstanding the break of one or two days in service stipulated in their contract, they shall be deemed to have continued in service from the date of their first appointment till regular appointments are made by the respondents to these posts in accordance with the extant rules and instructions. In the circumstances of the case, respondents shall also consider giving age relaxation to the applicants in accordance with

S. S.

the rules, if they are candidates before UPSC for regular appointment, to the extent of the number of years of service they have rendered on contract/ad-hoc basis."

8. On the other hand, learned counsel for the respondents submitted that the applicants were appointed purely on ad-hoc basis. According to him, they were appointed de hors the rules and it was made clear in their appointment order that they were being appointed on ad-hoc basis till such time the regular candidates recommended by the SSC report for joining. He also submitted that the applicants who were appointed during the period from 1994 to 1996, have not worked continuously as LDC and there is a break in their appointment after a period of six months. He also submitted that they were appointed on ad-hoc basis keeping in view the exigencies of service and with a clear understanding that their services would be terminated when the regular incumbents join the post on the basis of the recommendations of SSC. Learned counsel for the respondents has taken support from the judgement of the Hon'ble Supreme Court in the case of State of Haryana & ors. vs. Piara Singh & ors., (1992) 21 ATC 403. He drew our attention to para 45 of this judgement where the Hon'ble Supreme Court has held that "the normal rule, of course, is regular appointment through the prescribed agency but exigencies of administration may sometimes call for an ad-hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad-hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly



selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad-hoc/temporary employee."

9. Learned counsel for the respondents also relied upon the Tribunal's judgement in the case of Harvinder Kaur & ors. vs. UOI & ors., AISLJ 1991 (1) (CAT) 167. In this case, the Tribunal has held that in OA-1103 of 1986 (Sushil Kumar Chandel & ors. vs. UOI decided on 24.9.90 by the Principal Bench), a similar question of regularisation of LDCs on daily wages in Central Hindi Directorate was under consideration. The applicants in that case were working since 1981 and their services were dispensed with vide order dated 4.9.86. They filed an application before the Tribunal. The Tribunal rejected their prayer for treating them as permanent staff but only directed that the applicants should be called for fresh engagement against such posts if sanctioned and they will be considered by the respondents in preference to those who have put in lesser days of service. In the above referred case, there were relevant recruitment rules for the post of LDC who were to be selected through SSC.

10. After hearing both the learned counsel and perusing the record, the admitted facts are that the applicants were appointed purely on ad-hoc basis during the period from 1994 to 1996 with the clear understanding that their services would be terminated as and when the regular candidates are appointed to the post on the recommendation of the SSC. The applicants have not been appointed by following the procedure ^{as} _^ laid down in the recruitment rules. It is also a fact that the SSC has already recommended



three candidates on the basis of selection held by them for appointment as LDC against the regular vacancies. However, there are some posts lying vacant because certain LDCs have gone on deputation/transfer to other departments.

11. We have given our careful consideration to the matter. In the facts and circumstances of the case, we are of the considered view that ends of justice would meet if the applicants are given an opportunity to appear in the next available selection to be held by the SSC after giving relaxation of age by reducing the period for which they have worked as LDC with the respondents and if they qualify in the selection, they may be considered for regular appointment. We order accordingly. Respondents are also directed to obtain the applications from the applicants and forward the same to the SSC for their consideration. Till the time selection is made by the SSC, the applicants will continue to work with the respondents, if necessary by creating supernumerary posts. This however, will not be treated as a precedent.

12. O.A. stands disposed of with the above directions. No costs.

S. Raju
(Shanker Raju)
Member(J)

M.P. Singh
(M.P. Singh)
Member(A)

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