

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1854/1999

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Friday, New Delhi this the 12th day of January, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri S.A.T. Rizvi, Member (A)

1. Shri Chander Prakash Batt,
82, Aliganj,
Lodhi Road,
New Delhi-3.
2. Shri Ramesh Datt,
Village Safiabab,
Nathupur P.O.,
Sonapat Distt.,
Haryana.
3. Shri Bhagat Singh Rawat,
House No.E/351,
Sector 15,
Noida-201 301.

..Applicants.

(By Advocate: Shri R.P.Kapoor)

VERSUS

Union of India,
Through the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-110 001.

..Respondents.

(By Advocate: Shri Madhav Panikar through
Shri D.S.Mahendru)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J):-

The applicants, three in number, are aggrieved by the order passed by the respondents dated 11.8.99 reverting them to the substantive Group 'D' post which they had earlier held, from the ad hoc posts of Lower Division Clerks (LDCs). They had been promoted as LDCs on purely ad hoc basis vide order dated 5.10.88.

2. Shri R.P.Kapoor, learned counsel has submitted that applicant No.3 has been declared qualified in the monthly typewriting test in English held by the Staff

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✓ Selection Commission (SSC) on 29.12.1988 vide order dated 12.5.1989. In the case of the other two applicants, he states that they have been similarly declared passed in the typewriting test vide order dated 22.2.91 (Annexure A-5) in which it has been stated that they have passed the test held on 14.2.91. From the order dated 5.10.88, it is noticed that appointment of the applicants as LDCs were on purely ad hoc basis against posts temporarily excluded from the purview of the Central Secretariat Clerical Service Cadre (CSCS) of the Ministry of Home Affairs. This was also subject to their passing typewriting test at the speed mentioned in that order for appointment on ad hoc basis. In this order, it has been further mentioned that the appointment is for four months or till the qualified candidates of the Clerks' Grade Examination become available for appointment, whichever is earlier.

3. One of the contentions of the learned counsel for the applicants is that in the impugned reversion order dated 11.8.99, the respondents have nowhere stated that the applicants have been reverted to their substantive posts in Group 'D' as they now have regularly qualified candidates to replace them. Further, he has contended that the applicants had qualified in the monthly typewriting tests and, therefore, they are qualified to continue and be regularised as LDCs. The applicants have also contended that as there were no complaints against them and their work was satisfactory, the impugned order of reversion should be quashed and set aside with consequential benefits, including pay for the intervening period.

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4. We have seen the reply filed by the respondents and had heard Shri Madhav Panikar, learned counsel on 5.1.2001. According to the respondents, they had promoted Group 'D' employees to the posts of LDCs on an ad hoc basis in the years between 1988 and 1991 because of non-availability of direct recruit LDCs from the SSC. However, the Govt. of India through DOP&T vide their OM dated 13.3.1991 (Annexure-I) had directed that all appointments of existing ad hoc LDCs, excepting those in whose cases there are orders of Courts may be discontinued from service with immediate effect. At that time, they had 31 ad hoc LDCs and they had taken a decision to defer the implementation of the order in the end of May, 1991. Another order was issued by the DOP&T vide OM dated 31.5.91 (Annexure-II) reiterating their earlier stand that ad hoc LDCs should not be continued with the exception where the court orders were there. The respondents have submitted that in pursuance of this decision, they had necessarily to pass the impugned order reverting the applicants to their substantive posts and, therefore, there is nothing unlawful or arbitrary in the matter.

5. Shri R.P.Kapoor, learned counsel has submitted that the aforesaid decision of the respondents taken in pursuance of the DOP&T OM, was based on extraneous circumstances where they had stated that such an arrangement had led to a number of court cases. He has relied on the D.B. order of the Tribunal in Rishi Pal & Ors. Vs. Union of India & Ors. (OA-1761/97), decided

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On 16.12.98. He has contended that as the present applicants had continued on ad hoc basis as LDCs for a number of years, i.e., from 1988 to 1999, there was no reason to revert them and a direction should instead be given to the respondents to regularise their appointments. He has referred to the judgement of the Hon'ble Supreme Court in Rudra Kumar Sain & Ors. etc. Vs. Union of India & Ors. [2000 (2) SCSLJ 168, Constitutional Bench]. In that case, we note that it has been held that the appointee possesses the requisite qualification, has been appointed with the approval and in consultation of the appropriate authority, continued on the post for a fairly long period and in the circumstances, it was also held that it cannot be held as a stop gap or fortuitous or purely ad hoc appointment. That situation does not prevail in the present case, as it is evident from the documents on record. In particular from the annexures to the reply filed by the respondents, it is seen that from May, 1991, the DOP&T have repeatedly and consistently been telling the other Departments, including the present respondents, to discontinue the arrangements on ad hoc basis. However, in spite of these various reminders from the DOP&T, taking into account the exigencies of service, the respondents appear to have managed to continue with the ad hoc appointments of the applicants as ad hoc LDCs till they finally decided to fall in line with the DOP&T's instructions, which has led to the reversion of the applicants vide the impugned order dated 11.8.99. In other words, if the respondents had taken the appropriate decision in 1991 itself in accordance with the DOP&T's

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Instructions, the applicants could not have been continued even on ad hoc basis as LDCs for the remaining 8 years. This position cannot, therefore, be taken advantage by the applicants which is a fortuitous circumstance. Besides, in the present case, the appointment of the applicants as LDCs on ad hoc basis initially vide order dated 5.10.88 cannot be stated to have been made with the approval and in consultation with the appropriate authority as in the case of Rudhra Kumar Sain & Ors. (Supra) and that this case will, therefore, not assist the applicants. In view of what has been stated above and as observed by the Tribunal in Rishi Pal's case (supra) any direction to the respondents to regularise the applicants, will be de hors the recruitment rules which cannot, therefore, be done.

6. One other contention raised by the learned counsel for the applicants is at the time when the ad hoc appointments of LDCs had been given to the applicants vide order dated 5.10.88, the posts against which they were so appointed had been temporarily excluded from CSCS, in terms of the instructions earlier issued by the DOP&T OM dated 13.2.1979. The OM of 13.2.1979 is also referred to in the DOPT's OM dated 31.5.1991. As mentioned above, the DOPT had in no unmistakable terms, issued their instructions to all the Ministries and Departments who participate in the CSCS that they should revert all existing ad hoc employees to their substantive Group 'D' posts immediately, except where such appointments have to be continued on the basis of Court orders. In the circumstances, the ad hoc arrangement resorted to by the respondents in appointing the


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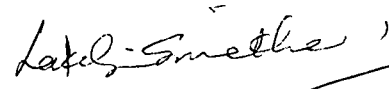
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Applicants vide order dated 5.10.1988 ought to have ceased in 1991 itself. In the circumstances of the case, we are unable to agree with the contentions of Shri R.P.Kapoor, learned counsel that the impugned order has been made on any extraneous considerations but on the contrary has been passed in accordance with the law and rules. It is settled law that an ad hoc appointee does not have a right to continue in that post. In any case, the appointment order relating to the applicants dated 5.10.1988 has clearly stated that the appointment is for four months or till the qualified candidates of the Clerk's Grade Examination become available for appointment and they do not also have any right for regularisation in the grade of LDC or for counting their services for the purpose of seniority.

7. For the reasons given above, we find no merit in this application and it is liable to be dismissed. However, before parting with the case, we would like to state that in case the respondents require the services of ad hoc LDCs, taking into account the fact that the applicants have worked in that capacity for a number of years, they shall be considered in preference to outsiders.

8. Subject to the observations made in para 7 above, the OA fails and is dismissed. There shall be no order as to costs.


(Smt. A.T. Rizvi)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)