

Central Administrative Tribunal  
Principal Bench

O.A.2119/1999

New Delhi this the 25th day of May, 2001

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

Hon'ble Shri Govindan S. Tampi, Member(A).

1. Rishipal  
S/O Late Shri Chandan Singh  
Working at Security Office,  
'H' Block, Ministry of Defence,  
DHQ, PO, New Delhi-110011
2. Gopi Chand  
S/O Shri Harpat  
NHQ
3. Naresh Chander  
S/O Shri Ramanand  
DGAFMS,
4. Ramesh Chandra,  
S/O Sh. Shiv Datt,  
G.S. Branch
5. Rishi Pal  
S/O Shri RS Varma  
Air HQ
6. S.K. Dogra  
S/O Shri Amar Chand  
QMG Branch
7. Surya Prakash  
S/O Late Shri Keshav Dutt  
RCPO

8. Surender Kumar Sharma  
S/O Shri Harbans Lal  
E-in-C Branch

9. Naresh Kumar  
S/O Shri Sis Ram  
Air HQ

10. Harak Singh  
S/O Shri Hayat Singh  
Air HQ

11. Kishan Pal  
S/O Shri Ranbir Singh,  
E-in-C Branch

12. Mohan  
S/O Late Shri Deva Ram  
DGQA

13. Sate Singh  
S/O Late Shri Sunder Singh  
QMG Branch

14. Smt. Urmila Badyal  
W/O R.K. Badyal  
AG Branch

15. Ramphal Singh  
S/O Late Shri Dharam Singh  
MGO Branch

16. Gulab Singh Bora  
S/O Late Shri Prem Singh  
Air HQ

17. Daya Nand S/O Shri Krishan Chand  
QMG Branch

18. Sudhir Salhotra  
S/O Shri Madan Mohan Lal  
AG Branch

19. Prem Lal Chauhan  
S/O Shri Surat Ram, Air HQ

20. Dharam Pal Singh  
S/O Shri Udi Ram  
Air HQ

21. Shiv Raj Singh  
S/O Shri Jagat Singh  
Air HQ

22. Gagan Singh  
S/O Shri Diwan Singh  
Air HQ

23. Madan Singh Rawat  
S/O Shri Shiv Singh  
E-in-C Branch

24. Smt. Chander Prabha  
W/O Shri P. Ram  
R&D

25. Dharam Vir Singh  
S/O Shri Arjun Singh  
Air HQ

26. Radha Charan ... Applicants  
S/O Shri Bhajan Lal  
R&D Office

27. <sup>440</sup> Jaswant Singh S/O D. K. Singh  
all working as Lower Division Clerks  
in the Office of JS (TRG.) and CAO, C-II  
Hutments, DHQ, P.O., New Delhi-110011

(service of all notices on the Applicants'  
Counsel's following address:

Satya Mitra Garg,  
113-C, DDA, LIG Flats, Motia Khan,  
Near Jhandewalan, New Delhi-110055)

(By Advocate Shri R. Venkatramni, Sr. Counsel  
with Shri S.M. Garg)

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1. Union of India through  
The Secretary, Ministry of Defence,  
South Block, DHQ PO,  
New Delhi-110 011.
2. The Joint Secretary (Trg.)  
and Chief Administrative Officer,  
Ministry of Defence,  
C-II, Hutmants,  
DHQ PO New Delhi-110 011.
3. The Deputy CAO (P),  
Ministry of Defence,  
C-II, Hutmants,  
DHQ PO New Delhi-110 011.
4. The Senior Administrative  
Officer, CAO/P-1,  
Ministry of Defence,  
C-II, Hutmants DHQ, PO  
New Delhi-110001. ... Respondents.

(By Advocate Shri P.H. Ramchandani, Sr. Counsel)

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

This application has been filed by 27 applicants, in which they have challenged the O.M. dated 22.6.1999 issued by the respondents and rejection of their representation dated 10.6.1999 regarding fixation of their seniority by counting their past service rendered as LDC on ad hoc basis.

2. This application is a sequel to an earlier application filed by the applicants along with others in Rishi Pal & Ors. Vs. Union of India & Ors. (OA 1761/97) which was disposed of by the Tribunal's order dated 16.9.1998. In this order, the Tribunal had considered the Full Bench order of the Tribunal dated 27.9.1996 in Hem Raj & Ors. Vs. Union of India & Ors. (OA 1751/88 with connected cases).

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3. The main contention of Shri R. Venkatramani, learned Sr.Counsel for the applicants, is that in the impugned order passed by the respondents, the past ad hoc service rendered by the applicants in the grade of LDC has been completely wiped out which is neither fair nor equitable, considering the long service rendered by them in that grade. He has submitted that the Full Bench in its order dated 27.9.1996 has held that the appointments of the applicants, including the applicants in the present case, have been held in accordance with the Rules, that is, under Rule 9 (3) of the Armed Forces Headquarters Clerical Service Rules, 1987. (hereinafter referred to as "the Recruitment Rules"). He has submitted that the Tribunal had observed that merely because the appointment order states that the appointment is purely on ad hoc basis as a stop gap arrangement, it does not mean that the Government cannot later regularise their services either invoking the provisions of Rule 9(3) of the Recruitment Rules or making appropriate provisions. It was also observed that "in such cases where ad hoc appointees continued for a long time and where no regularly selected candidate is awaiting posting and if the circumstances are such that his reversion to a Group-D post after such a long officiation in a Group-C post would cause undue hardship or is inequitous the Government or the appropriate authority as the case may be, can regularise his services by making suitable exception or provision....". Learned Senior Counsel has submitted that in the Division Bench order of the Tribunal dated 16.9.1998

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also, it had directed that "the respondents shall in considering the appointment also take a decision on the past services of the applicants". He has submitted that this indicates that the applicant's past service cannot be ignored totally, as the respondents have done while preparing the impugned seniority list. In the impugned order issued by the respondents along with the order dated 10.2.1999, it has been stated in paragraph 2 (c) and (e) that the ad hoc services rendered by the LDCs, as well as the five individuals named in sub-para 2(c), would not count for the purpose of future promotions. The respondents have submitted that these sub-paragraphs show that they have complied with the directions of the Tribunal in its order dated 16.9.1998 in OA 1761/97 as regards taking a decision on the past services of the applicants. This has been disputed by the learned Sr. counsel for the applicants who has submitted that this cannot be the intention of the aforesaid judgement of the Tribunal. He has submitted that the applicants have been working in the posts of LDC for a continuous period from 27.7.1982 to 25.1.1988, later they were continued by virtue of the interim order from 1989 to 1995 and thereafter they had been regularised in 1999, in pursuance of the aforesaid order of the Tribunal. According to him, the decision of the respondents that no part of the applicants ad hoc service as LDC would count at all even though they have been appointed under Rule 9(3) of the Recruitment Rules is not only contrary to this Rule but is also

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arbitrary and uncalled for. Later, Shri S.M. Garg, learned counsel for the applicants, has submitted that the applicants would be satisfied if a direction is given, that at least from 1988 their services should be counted. The applicants are shown at Serial Nos. 1484 onwards and upto 1533 in the impugned seniority list whereas he has submitted that if their claims are allowed at least from 1988, they would be placed before Serial No. 918.

4. We have seen the reply filed by the respondents and heard Shri P.H. Ramchandani, learned Senior counsel. He has submitted that the DB judgement of the Tribunal in OA 1761/97 is final and finding. He has also submitted that the respondents have taken into account the directions contained in that order and, particularly paragraphs 10 and 12. His contention is that persons appointed under Rule 9(3) of the Recruitment Rules are a separate class. He has submitted that, in fact, there has been a gap in the ad hoc service of the applicants, apart from the fact that they continued on that basis from 1989 to 1995 by virtue of the interim order passed by the Tribunal. He has, therefore, contended that the applicants have lost their entire ad hoc service when they were reverted in 1995 and later on regularised as LDCs from 1999. He has submitted that in the Tribunal's order, reference has been made to the principles laid down by the Apex Court in the case of Dr. M.A. Haque & Ors. Vs. Union of India and Ors. (JT 1993(2) SC 265) for fixing the order of prioritisation

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between direct recruits and promotees. Shri R.Venkatramani, learned Sr. counsel has, on the other hand, submitted that the judgement in M.A. Haque's case (supra) is not applicable to the present case where the applicants have rendered 10-12 years ad hoc service with the respondents. The respondents have also submitted that the applicants had submitted a representation on 10.6.1999 regarding counting their past ad hoc service as LDCs, which they have considered and a decision taken, as mentioned in Paragraph 2(c) and (e) of the impugned order. He has submitted that the Tribunal had ordered that regularisation of the applicants should be done from the date when the vacant post exists at the time the regularisation order is issued which they have done. In the circumstances, learned Sr. counsel has submitted that there is nothing improper or illegal in the seniority list prepared by the respondents which has been done in accordance with the relevant Recruitment Rules and the judgement of the Tribunal, referred to above.

6. We have considered the pleadings and the rival contentions of the learned counsel for the parties.

7. We have read and re-read the observations and the directions of the Full Bench judgement of the Tribunal in Hem Raj's case (supra) as well as the Tribunal's order in OA 1761/97. The Full Bench in its judgement (in which one of us, Mrs. Lakshmi Swaminathan, was also a Member)

had held, inter alia that it cannot be said that the appointments were made not in accordance with Rule 9(3) of the Recruitment Rules. Rule 9 (3) of the Recruitment Rules reads as follows:

"9. Mode of appointment in the Service:-

(1) and (2) x x x x x x

(3) If sufficient number of qualified candidates are not available for appointment to the Lower Division Grade on the results of competitive examinations held by the Staff Selection Commission, the vacancies may be filled either provisionally or on a regular basis in such manner as may be decided by the Government".

8. It is noticed that the respondents had filled the vacancies of LDCs on ad hoc basis and allowed the applicants to continue in those posts for a number of years because of insufficient number of qualified candidates who were made available to them by the Staff Selection Commission. In the circumstances, it cannot be denied that the applicants have worked as ad hoc employees for a number of years i.e. from 1982 to 1995 although they were continued after 1988 by virtue of the interim order passed by the Tribunal. They were reverted in 1995. Much emphasis has been placed by the learned Sr. Counsel for the respondents on the observations of the Tribunal's order dated 16.9.1998 which reads as follows:

"...With regard to the benefit of past service, the retrospective benefits claimed cannot be allowed by this Court for two reasons. No Court can substitute for the competent authority and assume the power of relaxation itself. Right or wrong, the power of relaxation conferred by the statute has to be exercised only by the respondents. Once such a relaxation is assumed it can be only for the

vacant posts existing at the time the regularisation order is issued. The respondents shall in considering the appointment also take a decision on the past services of the applicants. Because of the gap of three years, such past services would not ipso facto enable the applicants to claim seniority over the direct recruits..."

9. We, however, find force in the submissions made by Shri R. Venkatramani, learned Sr. Counsel that in the above judgement of the Tribunal, it was not intended that the entire ad hoc service of the applicants should be completely wiped out. The applicants have continued as ad hoc LDCs for a number of years, say 12-13 years. Their appointments have also been held to be in accordance with Rule 9(3) of the Recruitment Rules. The applicants have also stated that their eligibility has been considered and only those who have been found suitable and qualified in the typing test conducted by the respondents were promoted as LDCs on ad hoc basis and continued. In pursuance of the Tribunal's orders, the respondents have appointed them as LDCs on regular basis vide order dated 10.2.1999. In the circumstances of the case, they have not taken an appropriate decision, in terms of the Tribunal's order in OA 1761/97, by discarding the entire past ad hoc services of the applicants for all purposes, including future promotions. This appears to be contrary to the intention of the Tribunal. The Tribunal had suggested and commended to the respondents that the principles laid down by the Apex Court in Dr. M.A. Haque's case (supra) for fixing the order of prioritisation among direct recruits, Rule 9(3) employees and promotees but this cannot be taken to mean that the decision of the respondents in totally discarding

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the past services of the applicants is in terms of the Tribunal's order dated 16.9.1998. We find that in Paragraph 15 of this order, the Tribunal has referred to the period of service gap from 1995 till the date of their re-appointment, during which period they will not be entitled to any pay and perquisites as LDCs on the principles of "no work no pay". It is also clear that the appointment of the applicants is in terms of Rule 9 (3) of the Recruitment Rules, in which case it has also been stated that the appointments cannot be called as appointments *de hors* the Rules. That being the case, we find merit in the submissions made by the learned Sr. Counsel for the applicants that the entire service of the applicants as ad hoc LDCs cannot be totally ignored after they have rendered more than 12-13 years of such service. The initial appointment on ad hoc basis has been done by the respondents as they did not have sufficient duly selected persons. It has also been observed in that judgement that the applicants have continued under Rule 9(3) and are qualified and they have served the Department creditably as LDCs. In the circumstances, the applicants have relied on another judgement of the Supreme Court in *The Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra* (JT 1990 (2) SC 264). They have submitted that their appointment under Rule 9(3) of the Recruitment Rules is in accordance with the Rules and, therefore, their past services cannot be ignored.

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11. Taking into account the aforesaid observations and judgements of the Tribunal, as well as the judgement of the Supreme Court in **Direct Recruit's case (supra)**, we are of the view that the decision of the Department to discard the entire ad hoc service of the applicants as LDCs is not justified or intended in the Tribunal's order dated 16.9.1998. No doubt, there is a gap from the time they were reverted in 1995 to the date of their regularisation in 1999 by order dated 10.2.1999. The issues raised by the applicants regarding their regularisation and seniority, etc. have been the subject matter of litigation for a number of years. In the circumstances, considering also the fact that the applicants are Group 'D'/'C' employees of the Government, as a special case, we consider that 50% of their past service should be reckoned in fixing their seniority. This is so because it cannot be disputed that they have been appointed on ad hoc basis earlier by the Government under Rule 9 (3) of the Recruitment Rules but there is also a gap in the continuity of their service as ad hoc LDCs, as noted in the Tribunal's order dated 16.9.1998.

12. In the result, for the reasons given above, the O.A. partly succeeds and is allowed. The impugned order dated 22.6.1999 and rejection of the applicants' representation with regard to their assignment of seniority as LDCs of the respondents are quashed and set aside. In

the particular facts and circumstances of the case, the respondents are directed to count 50% of the ad hoc service rendered by the applicants and accordingly revise the provisional seniority list of LDCs issued by them on 12.8.1999. No order as to costs.

Govindan S. Tampi)  
Member (A)

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

'SRD'