

Central Administrative Tribunal, Principal Bench

(17)

Original Application No. 938 of 1998

with

Original Application No. 322/98

New Delhi, this the 17th day of November, 2000

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. S.A.T. Rizvi, Member (A)

OA 938/98

J.S. Aurora S/o Late Shri Gopi Chand
R/o H.No. 30/68A
Street No.8, Vishwas Nagar,
New Delhi-110 092.

- Applicant

OA 322/98

1. Pramod Kumar S/o Shri Mukhan Singh
R/o F-2889, Netaji Nagar,
New Delhi-110 023.

2. Mrs. Visalakshi Sivanandan
W/o Mr. P. Sivanandan
R/o F-128 Mohamad Pur,
R.K. Puram, New Delhi. - Applicants

By Advocate Sh. S. S. Tewari.

Versus

1. Union of India
Through Its Secretary,
Ministry of Textiles,
Udyog Bhawan,
New Delhi.

2. The Development Commissioner
For Handlooms,
Ministry of Textiles,
Udyog Bhawan,
New Delhi. - Respondents

By Advocate - Shri D. S. Jagotra.

ORDER

By Hon'ble Mr. Kuldip Singh, Member (J)

By this common order we will dispose of OA Nos. 938 and 322 of 1998 which involve a common question of law.

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2. In the OA 938/98 the applicant is seeking revision in his seniority as he claims that he was initially appointed on ad hoc basis as an LDC by the respondents and subsequently he was regularised so he is entitled to count his seniority from the date of his initial appointment on ad hoc basis. He made a representation on this aspect to the authorities but the representation was rejected vide letter dated 24.1.1997 (Annexure-I). Assailing this, the learned counsel for the applicant submitted that applicant was initially appointed on ad hoc basis on the basis of typing test conducted on 9.8.1986 and an interview was held on 18.8.1986 and he was duly considered by a Committee constituted by the respondents and as per Annexure A-2 he was appointed w.e.f. 11.11.1986.

3. Counsel for the applicant further pleaded that the respondents had Recruitment Rules of 1981 which regulated the method of recruitment of Group 'C' posts. The said rules were later on amended in the year 1996. It was further stated that when the applicant joined on 6.11.1986 he was taken on daily wages but respondent No.2 issued instructions that all the LDCs will have to qualify the typing test from ISTM, i.e., Institute of Secretariat Training and Management of Department of Personnel. The applicant had undergone that typing test also and qualified the same as per Annexure A-4. Thus again vide an order dated 9.3.87, i.e., Annexure A-5 the applicant who was

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working as daily wage clerk/typist was appointed on ad hoc basis as Lower Division Clerk in the scale of Rs. 950-20-50-EB-25-1500 w.e.f. 2.3.1987.

4. It is further stated that on 24.8.93 the applicant was regularised w.e.f. 12.8.93 vide Annexure A-6 on the recommendations of the DPC. So now the applicant says that since he was initially appointed as LDC on ad hoc basis in accordance with the rules and as per the procedure laid down in the rules, since he has continued in the said post uninterruptedly till the regularisation of his services, so the period of officiating service is to be counted and the seniority of the applicant has to be counted from the date of ad hoc appointment and not from the date of his regularisation.

5. In OA 322 of 1998 applicants state that they were appointed as LDCs on 20.8.86 (applicant No.1) and 26.11.1985 (applicant No.2) on daily wage basis as LDCs. Vide Annexure A-5 the applicants qualified the typing test held at ISTM. It is further stated that the applicants were appointed as ad hoc LDCs on 2.3.87 (in respect of applicant No.1) and 7.3.86 (in respect of applicant No.2). It is further stated that the applicant in OA No.938 of 1998 though junior to the applicant No.1 in the present OA was shown senior vide office order dated 2.3.87. It is further submitted that applicant No.1 in the present OA joined the service as LDC on 20.8.86 whereas petitioner in OA 938/98 joined the service after 2-3 months. As such

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it is prayed that the applicant No. 1 should rank senior than Shri J.S. Arora, petitioner in OA No. 938/98.

6. It is further stated that applicants were regularised as LDCs w.e.f. 12.8.93 in the scale of Rs. 950-1500.

7. It is further stated that they made representations for counting their service from the date of ad hoc appointment but the same were rejected vide letter dated 24.6.94 and 7.6.96.

8. It is, therefore, prayed that they be assigned seniority w.e.f. 7.3.86 and 2.3.87, i.e., from the date of ad hoc appointment and not from the date of regularisation and as such they be allowed seniority from the date they were appointed on ad hoc basis in the post of LDCs.

9. The respondents are contesting the application and, they stated that the applicants had been erroneously regularised for the purpose of further promotion and other consequential benefits as he was required to qualify the examination conducted by the Staff Selection Commission.

10. The respondents further claim that as per the law laid down by the Hon'ble Supreme Court, the ad hoc services cannot be counted for the purpose of seniority. The respondents simply claimed that in the year 1975 the Government of India setup the

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Subordinate Service Commission for Clerks' Grade Competitive Examination for recruitment of Lower Division Clerk in the Departments of the Government of India so the appointment of LDCs can be made only through SSC and could not have been regularised by the Departmental Promotion Committee. Various other candidates who were working in the department appeared in the examination conducted by the SSC. The applicants could have also appeared there and should have been regularised.

11. We have heard the learned counsel for the parties and have gone through the records of the case,

12. The learned counsel appearing for the applicants submitted that since the applicants were regularised vide Annexure A-5 by order dated 9.8.1987 (in OA 938/96) and on 12.8.93 (in OA 322/96) so till then the rules for recruitment which were applicable were the then existing Recruitment Rules of 1981. The Recruitment Rules of 1981 do not provide that an LDC could be appointed only through SSC. Even after amendment the 1996 rules also did not provide that the candidates be appointed as a LDC have to pass a selection test conducted by SSC. So the learned counsel for the applicants submitted that since the applicants had been appointed on an ad hoc basis in accordance with the rules and the vacancies were available and they had been regularised subsequently so they are entitled to get their services counted which they had rendered on ad hoc basis for the purpose of seniority and in support of their case,

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they relied upon the observations made by the Hon'ble Supreme Court in the case of Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra reported in AIR 1990 SC 1607 wherein it has been held that "once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. It was further held that if the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted". But in reply to this, the learned counsel for the respondents submitted that since the appointment as well as regularisation is erroneous so the applicants cannot be allowed the benefit of ad hoc service and cannot be given benefit of past service for the purpose of seniority.

13. We have gone through the pleadings as well as the documents placed on record.

14. The Recruitment Rules, as placed on record vide Annexure A-3 nowhere suggests that what is the method of recruitment in the Col. meant for method of recruitment, i.e., Col. 10 of the rules where it is simply stated that 90% of post can be filled by direct recruitment and 10% of the post the post shall be reserved for being filled up by Group D employees who are subject to the conditions of selection through

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departmental examination confined to Group 'D' employees along with typing test. The rules do not suggest that for direct recruitment an employee has to pass a test to be conducted by the SSC.

15. Thus we are of the considered opinion that the applicants in this case had been appointed regularly in accordance with the rules and their appointment as an LDC when they were given ad hoc appointment as well as when his appointment was regularised, that was all together in consonance with the rules. So in view of the judgment cited by the learned counsel for the applicant in Direct Recruit Class II Engineering Officers Association (Supra) the applicants are entitled for counting of his past service when they were appointed on ad hoc basis for the purpose of seniority. Hence, the OA deserves to be allowed.

16. In view of the above, OAs are allowed and the impugned orders are quashed. The respondents are directed to count the services rendered by the applicants w.e.f. 2.3.87 (in respect of applicant in OA No.938/98) and w.e.f. 7.3.86 and 2.3.87 (in respect of applicants in OA 322/98) vide which the applicants were appointed on ad hoc basis. These directions should be complied with within a period of 2 months from the date of receipt of a copy of this order. No costs.

17. Let a copy of this order be placed in OA Nos. 938/98 and 322/98.

(S.A.T. RIZVI)
MEMBER (A)

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(KULDIP SINGH)
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