

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.173/96
M.A. 162/96

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 1st day of December, 1999

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1. The Chaturth Shreni Karamchari Association
through Shri Fulena Manjhi
President
Government of India Press
Minto Road
New Delhi.
2. Shri Hari Pal
r/o H.No.4/23
Rouse Avenue
New Delhi.
3. Shri S.K.Mudgal
r/o 35 Jahangir Road
Minto Road
New Delhi.
4. Shri Desh Raj
r/o 67/828 Mandir Marg
New Delhi.
5. N.S.Adhikari
r/o 67/826 Mandir Marg
New Delhi.

... Applicants

(By Shri C.Hari Shankar, Advocate)

Vs.

1. Union of India through
The Secretary
Ministry of Urban Affairs & Employment
Nirman Bhavan
New Delhi.
2. The Director
Directorate of Printing
Ministry of Urban Affairs
Nirman Bhawan
New Delhi.
3. Manager
Government of India Press
Minto Road
New Delhi.

Or

4. Shri M.C.Modi
 Peon/LDC, Government of India Press
 Minto Road
 New Delhi. Respondents

(By Shri V.S.R.Krishna, Advocate)

O R D E R (Oral)

By R.K.Ahooja, Member(Admn.)

The applicants are members of the Association of Group 'D' Staff working in the Government of India Press. They submit that there is a provision in the Rules for promotion of Group 'D' staff to Group 'C' Post of Lower Division Clerk upto 10%. 85% of the posts are to be filled by direct recruitment. They point out that the Government had imposed a ban on direct recruitment and hence a large number of posts of LDCs are lying vacant. They also claim that all the applicants are being directed on ad hoc basis to discharge the duties of the Lower Division Clerks. On that basis they submit that considering their long service as Group 'D' staff, and also the fact that they fulfil all the requisite qualifications laid down for promotion to the Class-III posts, respondents be directed to promote them against the vacancies of LDC. The claim of the applicants is contested by the respondents.

2. We have heard the counsel on either side. The learned counsel for the applicants points out that the rules provide for relaxation. While the 10% quota for promotion of Group 'D' staff to Group 'C' staff had been availed of, the respondents had relaxed the rules in regard to the direct recruitment in respect of one post to which one Shri M.C.Modi had been

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appointed. The learned counsel for the applicants points out that as per the Recruitment Rules such relaxation can be affected only after giving reasons in writing. This had not been done by the respondents. It may be that the basis on which relaxation had been granted in respect of Shri Modi would be equally applicable to the applicants. He also submits that the order of relaxation states that the post should be filled up strictly on merits and not by the procedure by which promotions are made under the Recruitment Rules.

3. We have carefully considered the above submissions. It is an admitted fact that the applicants have no right for promotion under the Recruitment Rules against the direct recruitment quota. As regards their plea that the posts are available and since these cannot be filled up otherwise, the applicants should be appointed against the same, we find that it lies in the discretion of the respondents whether to fill up or not to fill up the available vacancies. A Constitution Bench of Hon'ble Supreme Court in Shankarasan Dash Vs. Union of India, JT 1991(2) SC 380 had stated that unless the relevant Recruitment Rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. Therefore the mere fact that the vacancies are available in the direct recruitments does not create any entitlement for the applicants/respondents to be adjusted against the vacancies.

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4. Even if we record that the order passed by the respondents was not as per rules, we do not see how the same can create a vested right for the applicants. The Supreme Court has also held in State of Haryana & Others Vs. Ram Kumar Mann, JT 1997(3) SC 450 that a wrong order/decision by the Government does not give a right to enforce the wrong order and claim parity or equality; The doctrine of discrimination is founded upon existence of an enforceable right; Article 14 of the Constitution would only apply when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis.

5. For the aforesaid reasons, OA is dismissed. There shall be no order as to costs.

R.K.Ahooja
(R.K.Ahooja)

Member(A)

/rao/

V.Rajagopala Reddy
(V.Rajagopala Reddy)
Vice Chairman(J)