

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 274/97

New Delhi, this the 2nd day of July, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Ajit Kumar Mukherjee, Clerk (Fire Unit),
C.P.W.D., Fire Brigade,
Central Secretaries Division, C.P.W.D.,
New Delhi - 59. Applicant
(By Advocate: Sh. A.K. Bhardwaj)

Vs.

1. Union of India
Through
The Director General,
Central Public Works Department,
Nirman Bhawan,
New Delhi-110011.
2. The Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances
and Pension,
North Block,
New Delhi.
3. The Chief Engineer (NDZ - I),
Central Public Works Department,
Nirman Bhawan, New Delhi.
4. The Executive Engineer,
Central Co-ordination Division,
Central Public Works Department,
South Block,
New Delhi.
5. The Fire Officer,
Central Secretaries Fire Service,
North Zone, New Delhi - 1. Respondents
(By Advocate: Sh. Harvir Singh proxy for
Ms. Pratima K. Gupta)

O R D E R

Hon'ble Shri T.N. Bhat, Member (J)

The applicant is presently working as Clerk
(Fire Unit), C.P.W.D. Fire Brigade, Central Secretariat
Division of C.P.W.D., New Delhi. However, he has not been
regularised nor appointed to the said post in accordance

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with the relevant rules. He has continued to work on the post of LDC right from the year 1979 on Muster Roll basis and as a temporary employee. Prior to that he had worked for about 5 years and a few months in the Rashtrapati Bhawan, New Delhi, in the office of the Curator of Paintings on temporary basis. It was, however, intimated to the applicant that he was "shifted/posted" in the Central Secretariat Fire Service. The applicant claims regularisation on the basis of his long service extending over nearly two decades and has averred in the OA that his non-regularisation would be inequitable and unjust. He has also relied upon the judgment of the Apex Court in **Prabhavati Devi vs. Union of India and Others** 1996 (1) SC SLJ 89, as also the judgment of the Principal Bench of this Tribunal in **Hemraj and Others vs. Union of India and Others**, reported in 1997 (1) ATJ 16. Another case relied upon is reported as 1996 (2) ATJ 584.

2. The applicant admits that in the year 1993 applications were called by the SSC pursuant to OM dated 2.8.93 issued and circulated by the Department of Personnel & Training for appearing in an examination which was to be conducted specifically for those ^{working as} casual LDCs, daily wages employees, ad hoc Stenographers Grade III and grade 'D' working in various attached and subordinate offices. The said examination was a special qualifying examination held with a view to regularise the services of the said employees. The last date for submission of the applications was 4.10.93 and the examination was conducted by the SSC on 26.12.93. However, the applicant states that the aforesaid OM was not circulated in time so as to enable the applicant to submit his application and that it

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was only on 6.12.93, when the last date for submission of applications had already expired, that the copy of the OM was received in the C.P.W.D. In this regard the applicant places reliance on the office memorandum issued by the Director General of Works, C.P.W.D., a copy of which has been annexed to the OA. It appears that when this OM was submitted to the Department of Personnel & Training in the Ministry of Personnel, Public Grievances and Pensions with the proposal to give one more chance to the employees who had not come to know about the OM issued by the aforesaid Department dated 2.8.93, the same was rejected by the said Department of Personnel etc.

3. The applicant prays for the following reliefs:-

"a) To mandate the respondents to absorb the applicant as Regular LDC against the existing vacancy on which he has been working since long, with all consequential benefits.

b) To command the respondents to take final decision pursuant to their O.M. No./100/95-EC IV (C) dated 8.12.1995 issued from the Directorate General of Work (CPWD). (Annexure A-1).

c) To mandate the respondents to reckon the service of 24 years rendered by the applicant as Muster Roll LDC on a regular existing sanctioned post for pension etc.

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d) To allow the Original Application with cost of the litigation.

e) To pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case."

4. The essential facts mentioned by the applicant in the OA have not been disputed by the respondents in their counter. It is admitted that the applicant has been working in the respondents' department since the month of January, 1979 and that the copy of the OM dated 2.8.93 issued by the Department of Personnel & Training for the purpose of holding a special qualifying examination had reached the C.P.W.D. only after the last date for submitting the applications was over. It is also not denied that the Director General of Works, C.P.W.D., had sent a proposal for holding some sort of a supplementary examination to give a last opportunity to those who had missed ^{the} a chance due to non-receipt of the copy of the OM dated 2.8.93. It is, however, asserted by the respondents that apart from circulating the OM dated 2.8.93 the DOP&T had also issued an advertisement notice and got it published in Employment News. Thus, according to the respondents, there was no justification ^{for} holding any supplementary examination as proposed by the Directorate General of Works.

5. We have heard the learned counsel for the applicant and the learned proxy counsel for the respondents. We have also examined the documents on the

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record as also the notes on the relevant file of the respondents, a copy whereof has been furnished for our perusal.

6. According to the learned counsel for the applicant the fact that applicant had continued to work ever since 1979 till date would entitle the applicant to regularisation. It is, however, not disputed by him that according to the relevant rules an appointment to the post of LDC can be made only through the SSC while the applicant has continued to work on temporary basis and on the Muster Roll throughout without coming through the SSC. If such appointments are allowed to be made this would encourage back door entry which would certainly not be an ideal situation in a welfare State. We find ~~that~~ the applicant's reliance on the judgments cited by him to be misplaced. A Full Bench of the Tribunal in Hemraj & Others vs. Union of India & Others (OA No. 1751/98 and a Bench of other OAs) held that where a group 'D' employee who had initially been appointed on regular basis as per the recruitment rules has been given ad hoc promotion to group 'C' posts though purely on ad hoc basis but the arrangement has continued for a long time the Government/Appropriate Authority should consider regularising his services by making suitable exception and that in appropriate cases the Tribunal can also direct a Competent Authority to consider such regularisation. It has, however, been further held that this course can be adopted if no regularly selected candidate is awaiting posting to the group 'C' post and if there are circumstances to indicate that the reversion of the ad hoc promotee to group 'C' post would cause undue hardship and

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would be iniquitous. Thus, clearly the Full Bench was dealing with a regularly appointed group 'D' employee who had been promoted on ad hoc basis to group 'C' post. In the instant case the initial appointment of the applicant was de hors the rules as he was not at all appointed in accordance with the relevant rules. The Full Bench decision would therefore not be applicable in such a case.

7. Similarly, the judgment of the Tribunal in Sh. Mam Chand & Others vs Union of India & Ors., reported in 1997 (1) ATJ 16 ~~and~~ would have no application to the facts of the instant case. In that case discriminatory treatment was sought to be meted out to diploma holders who had been working against class III posts for several years and they were sought to be regularised against lower post in class IV. The Principal bench of the Tribunal accordingly directed the respondents in the OA to prepare a scheme for regularisation of such employees against class III posts provided they had acquired temporary status. The facts of the instant case are clearly distinguishable.

8. Lastly, we may notice the judgment of the Apex Court in Prabhavati Devi vs. Union of India and Others, reported in 1996 (1) SC SLJ 89. In the case before the Apex Court the widow of a casual labourer who had acquired the status of a Substitute in 1983 died in harness in 1987 had claimed family pension. On consideration of the provisions contained in Indian Railway Establishment Manual paras 2311, 2315 and 2318 the apex court held the widow to be ~~and~~ entitled to grant of family pension. In the instant case we are not dealing

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with a Railway employee nor have any corresponding rules been brought to our notice which would entitle the applicant herein to the status of a regular employee. However, we still see a ray of hope for the applicant. Admittedly, he has worked for nearly two decades on the post of LDC though on Muster Roll basis. It is also not disputed that the Government of India, Ministry of Personnel, had thought it appropriate in the year 1993 to enable such persons to avail the opportunity of appearing in a special qualifying examination before the SSC and had issued the OM dated 2.8.93.

9. From the letter/OM dated 8.12.95 issued by Govt. of India, Directorate General of Works, C.P.W.D. it becomes clear that the Office Memorandum issued by the DOPT did not reach the aforesaid Directorate General in time and as a result the applicant lost that opportunity for which he was not at fault. The only ground on the basis of which the request of the Directorate General of Works, contained in the OM dated 8.12.95, was rejected by the DOPT is that simultaneously an advertisement was got published in the Employment News. The copy of that advertisement notice has been annexed by the respondents with their counter.

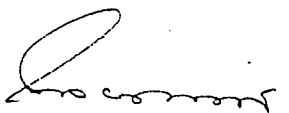
10. In the peculiar circumstances mentioned above we treat the applicant's case as a special case and further consider it appropriate to issue directions to the respondents to hold a qualifying examination to enable the applicant to pass the selection. We make it clear that this shall not be taken as a precedent in other cases.

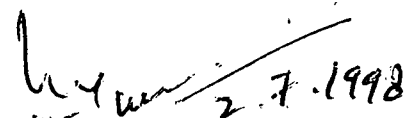
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The applicant, in the circumstances of this case, would not be entitled to any other relief claimed by him in the OA like automatic regularisation etc.

11. In the event, this OA is partly allowed and the respondents are directed to offer the applicant one opportunity to apply for and appear in a special qualifying examination like the one envisaged in the OM dated 2.8.93 issued by the DOPT. The DOPT which is a respondent in this case shall issue a notification for this purpose to enable the applicant to apply to the SSC within a prescribed time and as far as practicable such a notification shall be issued within 2 months from the date of receipt of a copy of this order. If the applicant qualifies in the special qualifying examination so conducted, he shall be entitled to all the benefits flowing from the OM dated 2.8.93 with effect from the date of the qualifying examination held in pursuance to the above directions.

12. There shall be no order as to cost.


(S.P. BISWAS)
Member (A)


(T. N. BHAT)
Member (J)