

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

C.A. No. 626/1994

New Delhi this the 26th Day of July 1999

Hon'ble Mr. V. Ramakrishnan, Vice Chairman (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

1. Yadubir Singh, Ad-hoc LDC,
son of Shri Nathuri Singh,
R/o Sector D-691, Mandir Marg,
Gole Market, New Delhi.
2. Santosh Kumar son of Shri Kundan Lal
resident of, Adhoc Clerk, Ministry
of Def. D/Estt./G P-d, C-II Hutmant,
New Delhi.
3. Vivekanand Dkoundiyad Son of Shri
Rewadhar, resident of 655, Aliganj,
Near Lodhi Road, New Delhi.
4. Ram Prakash Pandey, Ad-hoc LDC,
Ministry of Defence, D(EST I/Gr.II,
C-II Hutmants, DHQ Post Office,
New Delhi.
5. Banwari Lal son of Shri Itwari Lal,
resident of Y-743, Mangol Puri,
Delhi - 83.
6. Davinder Singh son of Shri Jagat Ram,
T-29 N 3/A, Baljeet Nagar,
New Delhi - 110 008
7. Braham Prakash Khatri son of Mehar Singh,
resident of, Adhoc LDC, Min. of Def.
D/Estt. I/Gp II C-II Hutmehbt,
New Delhi.
8. Vikram Singh, Ad-hoc LDC,
Ministry of Defence, DHQ, P.O.,
New Delhi - 110 011.
9. Vikram Singh son of Shri Bhuttu Ram,
H.no. 271, Bhagwat Gali No.1,
Brahampuri, Delhi - 110053
10. P.D. Mishra son of Sh. Bikram Mishra,
resident of RZ-159, B Block,
Nursing Garden
P.O. Tilak Nagar, New Delhi.
11. Surender Singh Rawat
son of Shri Thab Singh
resident of 25/300 Panchkuan Road
New Delhi - 110 001
12. Shri S.K. Tyagi
son of Shri Om Prakash Tyagi
resident of B-1/2 Tibya College
Karol Bagh,
New Delhi - 110 005.

Applicants:

(By Advocate: Shri Kulbir Prashar)

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versus

Union of India, through
the Secretary,
Ministry of Defence,
South Block,
New Delhi-110 011.

... Respondent.

(b)

By Advocate - None.

ORDER (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

We have heard Shri Kulbir Prashar, learned counsel for the applicants. None for the respondents. We have also perused the pleadings on record.

2. There are 12 applicants in this O.A. who seek a direction to the respondents to regularise their appointment as LDCs and to quash the reversion order dated 25.2.1994.

3. We note from the Tribunal's order dated 25.3.1994 that the applicants obtained an ex parte interim order to restrain the respondents from giving effect to the impugned order dated 25.2.1994 in which the Tribunal had directed maintenance of status quo. Later, in order dated 10.11.1994 in M.A. 2052/94 it was ordered that in the event the applicants made a representation to the respondents for consideration of the appeal for appointment/promotion as LDCs against any short-term vacancies that may be available, the respondents are to consider the same and dispose of the representation by a reasoned/speaking order. The learned counsel for the applicants submits that this has been done and the applicants are in fact continuing as ad hoc LDCs and that they have not been reverted so far even though a formal order to continue them in those posts is not there except that it is for ad hoc periods of three months each. In this way, the learned counsel for the applicants submits that the applicants are continuing in those posts between seven to twelve years.

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4. The applicants have submitted that they have qualified in the written examination under the 10% quota of Limited Departmental Examination for promotion to the post of LDCs under the Central Secretariat Clerical Service Rules, 1962. The learned counsel has also submitted that the applicants have also qualified in the typing test conducted by the SSC on the basis of which the respondents are continuing them on ad hoc basis as LDCs. In the circumstances, the learned counsel has prayed that taking into consideration the facts and circumstances of the case, particularly that the applicants are continuing in the higher post of ad hoc LDCs for a number of years, a direction may be given to the respondents to regularise them as LDCs. He also submits that to the best to his knowledge vacancies under 10%/5% LDCs' quota have existed during the relevant period.

5. We note from the reply filed by the respondents that the applicants are regularly appointed as Group 'D' employees who have been appointed as LDCs on purely ad hoc basis due to non-availability of regularly appointed persons through Staff Selection Commission. According to them, the applicants had been appointed on ad hoc basis for short term vacancies as LDCs due to non-availability of regular candidates recommended by the Staff Selection Commission as per the DOP&T instructions to give reference to the Departmental Group 'D' employees. In the reply to MA 2052/94 they have also submitted that they do not have any short term vacancies in the grade of LDC. They have referred in detail to the deployment of the temporary and regular LDCs in their department. They have also submitted that against the sanctioned strength of 209 LDCs there were actually 228 in position as on 15.9.1994 and hence there were

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no short term vacancies of LDCs with them. This position has been disputed by the learned counsel for the applicants who submits that since the respondents themselves are continuing them on ad hoc basis as LDCs, they must have the vacancies as there was no direction from the Tribunal to continue them in the higher post in the absence of vacancies as ad hoc LDCs.

6. We have carefully considered the submissions and the pleadings. From the documents on record, we are unable to come to a conclusion on the facts whether there are sufficient number of vacancies in LDC cadre and whether the applicants can be adjusted under the percentage earmarked for appointment of Group 'D' employees against LDCE quota under the relevant Recruitment Rules of 1972. This is a question of fact. Although we note the submission of the respondents in their reply that they did not have any vacancies in the LDCE quota, however, we further note the submission of the learned counsel for the applicants that they have chosen to continue the applicants on ad hoc LDCs. This perhaps has been done against the Direct Recruitment quota, as mentioned by them in their reply, referred to earlier.

7. The learned counsel for the applicants has relied on the judgement of the Tribunal in the case of Shri Ved Prakash & Ors. vs. Union of India & Ors. (OA 668/88 with connected OA) decided on 12.4.1991 against which he states that appeal filed by the Union of India has been dismissed by the Supreme Court. We, however, note that the respondents have relied on another judgement of the Tribunal in Manohar Lal & Ors. vs. Union of India & Ors. (OA 1536/91 with connected OAs) decided on 27.2.1992.

Yours,

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8. The learned counsel for the applicants has submitted that in the judgement in Manohar Lal's case (supra) with connected O. As the Tribunal had observed that most of the candidates have failed in the qualifying examination more than once and hence it was held that a direction to regularise them de hors the recruitment rules cannot be given. He has contended that this case is, therefore, not applicable to the present case.

9. In the Tribunal's Full Bench judgement in Hem Raj and Ors. Vs. Union of India & Ors. (1994-1996 A.T.F.B.J (KALRA'S) 232), decided on 27.9.1996, similar issues have been dealt with as have arisen in the present case. Para 30 of the order reads as follows:

"In the light of foregoing discussion, the point referred to the Full Bench is answered as follows:

Normally where an employee initially appointed on regular basis in Group 'D' Service as per the Recruitment Rules has been given ad hoc promotion/appointment to Group 'C' post purely on ad hoc basis till a regular selection and appointment is made he cannot be regularised against the provisions of the Recruitment Rules, for, if that is done, the Recruitment Rules would be rendered nugatory. But 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 hardship or is inequitous, the Government or the

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appropriate authority as the case may be can regularise his services by making suitable exception or provision without offending the reservation policy of the State. In appropriate cases the Tribunal also can direct the competent authority to consider such regularisation.

10. The observations in the judgement of the Full Bench in Hem Raj's case (supra) are applicable to this case. However, the vacancy position is not clear and there is only a bald assertion of the learned counsel for the applicants that there are vacancies as they are continuing as LDCs against which posts they could be regularised. In the circumstances, we direct the respondents to verify the factual position of the vacancies in the first instance. Therefore, they shall examine the case of the applicants in the light of the provisions of the Recruitment Rules and regularise such of the applicants who have qualified in the test and are eligible for regularisation against the quota meant for them under the relevant Rules. In respect of the others who have continued on ad hoc basis for a long time, they may keep in view the facts and observations of the Full Bench judgement and take an appropriate decision in accordance with the relevant Rules within four months from

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the date of receipt of a copy of this order with
intimation to the applicants.

11. OA is disposed of as above. No order as to
costs.

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)
Member (J)

V.Ramakrishnan

(V. Ramakrishnan)
Vice Chairman (A)

vtc.