

Central Administrative Tribunal
Principal Bench
O.A.No.999/2000

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Hon'ble Shri V.K.Majotra, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 8th day of March, 2001

Raj Dev Mishra
s/o Shri Chhedi Lal Mishra
aged: 45 years
House No.1/Block-C
Madhu Vihra
New Delhi - 110 059. ... Applicant

(By Shri D.C.Vohra, Advocate)

Vs.

1. Union of India through
the Secretary
Ministry of Surface Transport
Parliament Street
New Delhi - 110 001.
2. Border Roads Development Board
through its Secretary
B-Wing Fourth Floor
Sena Bhawan
New Delhi - 110 011. ... Respondents

(None)

O R D E R (Oral)

Hon'ble Shri V.K.Majotra, M(A):

The applicant was appointed as Hindi Typist vide order dated 10.4.1980 (Annexure-A3) on ad hoc basis in an ex-cadre post. He was declared quasi permanent in the grade of Lower Division Clerk (LDC for short) vide order dated 22.4.1985 in terms of Rules 3 and 4 of CCS (Temporary Service) Rules, 1965 (hereinafter called Rules of 1965). On 17.4.1986 he was appointed as UDC on ad hoc basis vide order dated 8.7.1986. Which appointment was extended until further orders, Annexures A4 and A5 respectively. He was reverted to the post of LDC on 6.10.1989. He challenged his reversion by OA No.2244/89 which was rejected vide order dated 9.5.1994 (Annexure-A6) with the observation that the respondents must devise ways

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and means of providing promotional avenues to Government servants as the applicants. The Court also hoped that this aspect will engage prompt and concerned attention from the authorities so that there is no frustration among such persons. The applicant claims to have made a representation for promotion on 4.2.1999. However, the respondents vide Annexure-A10 dated 4.3.1999 (Annexure-A10) stated that the applicant had been appointed Hindi Typist on ad hoc basis and was declared quasi permanent w.e.f. 7.4.1983 erroneously as the CCS (Temporary Service) Rules, 1965 were not applicable to employees appointed on ad hoc basis. The applicant was promoted as UDC for 3 months in 1986 without any justification. He was provided three chances to qualify the test but he failed in them. It has also been stated that he could be considered for in-situ promotion after five years upon reaching the maximum of the pay scale of Rs.4500/- but this proposition too, will be futile because Mr. Mishra's service is irregular. Vide Annexure-A2, dated 4.6.1999 the applicant was conveyed that his appointment had been on ad hoc basis from the very beginning and he had been continued on ad hoc basis. This action being irregular from the very beginning as such in view of the DoPT's instructions he was not entitled to be declared as quasi permanent/regularised in services. The applicant has sought quashing of the impugned orders dated 4.6.1999 (Annexure-A2) and 4.2.2000 (Annexure-A2/A) whereby it was conveyed to him that "non regular employees, including temporary, ad hoc and contractual employees are not eligible for ACP Scheme". He has also sought a declaration that his services in the post of

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Typist/LDC are regular in view of declaration of his quasi permanent status made under Rules 3 and 4 of Rules of 1965 and that he is entitled to all consequential benefits in the matter of regular promotion to the higher promotional grade of UDC or to the financial benefits under the ACP Scheme.

2. In their counter the respondents have contended that the applicant was given opportunity for regularisation of his services by qualifying in a special examination that was held on 12.12.1982. However the applicant did not qualify the above examination. They have further maintained that the applicant was not eligible for quasi permanent status being an ad hoc employee under the Rules of 1965. Such a status was available only to the eligible temporary Government servants, which applicant was not.

3. Whereas we have heard the learned counsel for the applicant at length, none has come present on behalf of the respondents even on second call, thus we have proceeded to dispose of the OA in terms of Rule 16 of the Central Administrative Tribunal (Procedure) Rules, 1987.

4. Dr. D.C.Vohra, learned counsel for the applicant has drawn our attention to order dated 10.4.1980, Annexure-A3 whereby the applicant was appointed as Hindi Typist stating that though the expression 'ad hoc' has been used in the order, the applicant had been selected through a due process of selection and as such his appointment as Hindi Typist

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was regular for all purposes. He stated that not only that the applicant had continued in service since 10.4.1980 he was also accorded temporary status and promoted as UDC for a period of four years. According to him such appointment cannot be considered as ad hoc. An ad hoc appointment is normally made only as a stop gap arrangement for a temporary period. He further stated that in Annexure-A3 no period has been specified after which the so called ad hoc appointment of the applicant was come to an end. He referred to the expression "selected for appointment" particularly to contend that proper procedure had been followed to select the applicant as Hindi Typist. Thus the learned counsel maintained that the applicant having continued as LDC/UDC since April, 1980, it cannot be said that he had been working on ad hoc basis and that it must be held that the applicant had been working against a substantive post.

5. The learned counsel referred to the order dated 9.8.2000 passed in OA No.558/1993 (Swamysnews 2/200) 65, (Jaipur) (Deepak Sardana Vs. Union of India & Others) in which the petitioner who had worked as LDC for as long as 23 years was recommended for consideration for regularisation on the basis of evaluation of his confidential reports for the past years with consequential benefits. It was held that "it would be an act of cruelty at this stage to ask them to appear for written test and viva-voce to be conducted by Public Service Commission for fresh selection." He further relied upon JT 1990 (4) SC 474, H.C. Puttaswamy and Others Vs. Hon'ble Chief Justice of Karnataka, High Court, Bangalore, wherein it was

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held that appointments in the cadre of Second Division Clerks on the establishment of Subordinate Courts were made by circumventing statutory provisions, however, these appointments were treated to be regular appointments with all the benefits of the past service. The learned counsel also drew our attention to 1980(4) SCC 226, Baleshwar Dass and Others Vs. State of UP and Others, wherein dilating upon the concept of substantive capacity, the Court held as follows:

"29. Substantive capacity is a flexible expression which cannot be frozen by current officialese, nor by the conditions that obtained in the remote past when the rule was framed. On the contrary, its meaning must be consistent with Article 16 and must avoid the pitfalls of arbitrariness and irrational injustice. So viewed, we hold that the appointment need not necessarily be to a permanent post. It is sufficient even if it is to a temporary post of long duration. In a department which had permanent posts and temporary posts of a quasi-permanent nature, there is not much to distinguish the quality of service as between the two. Patwardhan case and Chauhan case have primarily or in passing clarified the equal value of officiating service.

30. In Patwardhan case, Chandrachud, J. (as he then was) observed in the course of the discussion:.....

.....Of course, an appointee to a permanent post acquires certain rights which one who fills a temporary post cannot claim. Nevertheless, when the post is not purely temporary or ad hoc or of short duration or of an adventitious nature, the holder of such temporary post cannot be degraded to the position of one who by accident of circumstance or for a fugitive tenure occupies the temporary post for a fleeting term. We must make this distinction not only to be truthful to the facts of Service life but also to do justice to those who have otherwise rendered long and satisfactory work in the Irrigation Department. In short, while we do make a distinction between permanent and temporary posts, when we come to the dimension of mere seniority,

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we whittle down the difference considerably. A post of short duration, say of a few months, is different from another which is terminologically temporary but is kept on for ten or more years under the head 'temporary' for budgetary or other technical reasons. Those who are appointed and hold temporary posts of the latter category are also members of the Service provided they have been appointed substantively to that temporary post.

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33. Government will ascertain from this angle whether the capacity in which posts have been held was substantive or temporary. If it is not, the further point to notice is as to whether the appointments are regular and not in violation of any rule, whether the Public Service Commission's approval has been obtained and whether probation, medical fitness etc., are complete. Once these formalities are complete, the incumbents can be taken as holding posts in substantive capacities and the entire officiating service can be considered for seniority. For other purposes they may remain temporary. It may well be that another interpretation may make Rule 23 vulnerable. If a public servant serves for a decade with distinction in a post known to be not a casual vacancy but a regular post, experimentally or otherwise kept as temporary under the time-honoured classification, can it be that his long officiation turns to ashes like a Dead Sea fruit because of a label and his counterpart equal in all functional respects but with ten years less of service steals a march over him because his recruitment is to a permanent vacancy? We cannot anathematize officiation unless there are reasonable differentiations and limitations."

6. Whereas the learned counsel for the applicant has contended that the applicant had been appointed through a due process of selection as indicated by Annexure-A3, the respondents have not clarified how the applicant had been selected. Thus we go along with the applicant's counsel to hold that the applicant had been selected through a due process for appointment as Hindi Typist. There is no doubt

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that applicant had been appointed on ad hoc basis but no period had been mentioned in his appointment. Not only that he has continued for 21 years, he was also declared quasi permanent and also held position of UDC for a period of four years on promotion on ad hoc basis. The question is whether the respondents can now, after a long gap of about 21 years of applicant's appointment, be allowed to state that the applicant had been appointed in an irregular fashion ab-initio and that he could not have been declared quasi permanent in terms of the rules which are applicable to temporary employees and not ad hoc employees.

7. The Hon'ble Supreme Court in Direct Recruit Class-II Engineering Officers Association and Others Vs. State of Maharashtra and Others, JT 1990(2) SC 264 has laid down the principle 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 services in accordance with the rules, the period of officiating service will be counted". A three Judges Bench of this Court in State of West Bengal & Ors. Vs. Aghore Nath Dey & Ors. [JT 1993(2) SC 598 = 1993(3) SCC 371] considered the above principle and explained as under:

"There can be no doubt that these two conclusions have to be read harmoniously and conclusion (B) cannot cover cases which are expressly excluded by conclusion (A)- we may, therefore, first refer to conclusion (A). It is clear from conclusion (A) that to enable seniority to be counted from the date of initial appointment and not according to the date of confirmation, the incumbent of the post has to be initially appointed 'according to rules.' The corollary set

out set out in conclusion (A), then is, that 'where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such posts cannot be taken into account for considering the seniority.' Thus, the corollary in conclusion (A) expressly excludes the category of cases where the initial appointment is only ad hoc and not according to rules, being made only as a stop-gap arrangement. The case of the writ petitioners squarely falls within this corollary in conclusion (A), which says that the officiation in such posts cannot be taken into account for counting the seniority."

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8. When we take into consideration the facts and circumstances of the present case and apply the principles arrived at in the above cited cases, we find that the applicant had been selected as a Hindi Typist/LDC by following a due process of selection in 1980. When he has continued for over 20 years, during which period not only that he was declared quasi permanent but was promoted as UDC as well, it has to be held that he was appointed in a substantive capacity and not on ad hoc basis. Even if he was accorded quasi permanent status by wrong application of rules, it cannot be held against him after such a long period. Having rendered a service of over 20 years he has developed legitimate expectation for regularisation and further promotions in career. It is not the case of the respondents that the applicant was not eligible at the time of his initial appointment or that he was not fulfilling necessary qualifications or that he did not possess the typing skills. The applicant has completed almost two thirds of his service life in the same post on the so called ad hoc basis. This appears completely unjustifiable and in fact is unjust exploitation of an unemployed person. As held in the case of Deepak Sardana supra

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in the peculiar back ground of this case too, regularisation of the applicant on the post of LDC is the least that can be done. The applicant having continued to serve with the respondents for so long, deserves consideration for regularisation immediately. In the totality of the circumstances as also in the light of catena of judgements we are of the considered view that humanitarian approach is required in the present case in the peculiar back ground of this case and in the result, the respondents have to regularise services of the applicant.

9. In the circumstances, the impugned orders dated 4.6.1999 and 4.2.2000 (Annexures A-2 and A-2A) are quashed. We further direct the respondents to consider the services of the applicant in the post of Hindi Typist/LDC as regular in view of the declaration of quasi permanency made ^{more than 15 years ago b} under Rules 3 and 4 of the Rules of 1965. The applicant shall also be entitled to all the consequential benefits in the matter of regular promotion to the higher grade of UDC as per relevant Rules. The OA is accordingly allowed. No costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)

V.K. Majotra

(V.K. MAJOTRA)
MEMBER(A)

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