

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2301/89
T.A. No.

198

DATE OF DECISION 15.1.92.

Shri Jhamman Lal

Applicant (s)

Shri B.B. Srivastava,

Advocate for the Applicant (s)

versus
Union of India & Ors.

Respondent (s)

Shri P.P. Khurana,

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. T.S. Oberoi, Member (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

I.K. Rasgotra
(I.K. Rasgotra)
Member (A)

T.S. Oberoi
(T.S. Oberoi)
Member (J)

15.1.92.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.2301/89 DATE OF DECISION: 15.1.1992.

SHRI JHAMMAN LAL ...APPLICANT

VERSUS

UNION OF INDIA & ORS. ...RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT SHRI B.B. SRIVASTAVA, COUNSEL

FOR THE RESPONDENTS SHRI P.P. KHURANA, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

Shri Jhamman Lal has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the following orders of the respondents:-

- i) Order No. EST/EPN(4)80 dated 17.4.1989, asking him to show cause as to why the respondents' office order No.37/87 (EST/ECS (93) dated 16.2.1987 regarding his confirmation in the grade of L.D.C. should not be rescinded.
- ii) Order No. EST/ECS (93)/83 dated 20.1.1988 cancelling the earlier order of the respondents dated 16.2.1987 without assigning any reason and thereby withdrawing his confirmation in the grade of L.D.C. of the Central Secretariat Clerical Service w.e.f. 30.12.1983 conferred on him by the earlier order dated 16.2.1987.
- iii) Order No. EST/ECS(93)/83 dated 21.1.1988, rejecting the applicant's representation dated 17.9.1987, challenging his reversion from the

post of U.D.C. to that of L.D.C.

2. The necessary facts of the case are that the applicant was appointed in Class IV on 21.8.1958 in the office of Respondent No.1. He was promoted as Lower Division Clerk (LDC) w.e.f. 18.3.1974 after he passed the Clerks Grade Examination for the departmental Group 'D' employees 1973. He was further promoted to the next higher grade as Upper Division Clerk (UDC) in June, 1981. He was substantively appointed as LDC in the Central Secretariat Clerical Service on the cadre of Ministry of Surface Transport (Respondent No.1) w.e.f. 30.12.1983 vide Office Order dated 16.2.87. The applicant was also given the benefit of the exemption from passing the typewriting test and consequent release of his annual increment in accordance with the general exemption given vide Department of Personnel's OM dated 30.12.1983. The applicant, however, was reverted from the post of UDC to the post of LDC retrospectively w.e.f. 1.1.1987 vide order dated 27.8.1987 (Annexure A-4). The relevant part of the said office order reads as under:-

"Since the adhoc appointment of Shri Jhamman Lal in the grade of Upper Division Clerk has not been continued beyond 31.12.1986 he is entitled to draw his pay at the rate of Rs.970/- p.m. in the grade of Lower Division Clerk w.e.f. 1.1.1987 until further orders."

The applicant contends that the above order was in total disregard of the principles of natural justice and despite the fact that he had worked as UDC upto 27.8.1987 he has been denied the pay of the post he held till that date. The applicant represented against his retrospective reversion on 17.9.1987. In response he was advised vide OM dated 21.1.1988 that:-

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"The undersigned is directed to refer to Shri Jhamman Lal's application dated 17.9.87 regarding his reversion from the post of UDC and to say that as per instructions issued by the Department of Personnel and Training he is not eligible for release of his increments vis-a-vis his confirmation in the grade of L.D.C as well as promotion to the grade of U.D.C."

Accordingly, the earlier order releasing the applicant's increments and substantive appointment to the grade of L.D.C. w.e.f. 30.12.1983 was cancelled. The applicant contends that according to the Department of Personnel's OM No.12/2/67-Estt.(D) dated 21.3.1968 only orders which are void, ab initio, can be cancelled without issuing a show cause notice. Such cases are where confirmation is made contrary to the statutory rules or when there is no substantive vacancy/or where there is a mistake in identity. Neither of the situations envisaged in the OM dated 21.3.1968 are obtaining in the case of the applicant. Therefore, the order of cancellation issued in his case was illegal and ultra vires. The applicant made a representation on 11.10.1988 followed by a reminder dated 21.3.1989, praying that the order dated 20.1.1988 deconfirming him may be cancelled and his confirmation in the grade of LDC be restored. While he did not receive any reply to his representation he was served with the impugned order dated 17.4.1989 (Annexure A-1) whereby the applicant was called upon to show cause as to why his confirmation in the grade of LDC should not be cancelled within 15 days from the receipt of the said impugned order. The applicant contends that since he had already been deconfirmed vide order dated 21.9.1988 the issuance of show cause notice after over one year of the earlier

order was most illegal and uncalled for. Nevertheless, the applicant made a representation dated 1.5.1989 and when he failed to elicit any reply, he approached the Tribunal.

By way of relief the applicant has prayed that the respondents be directed to produce the record of his case and the respondents' impugned orders dated 20.1.1988 (Annexure A-7), 21.1.1988 (Annexure A-6) and order dated 17.4.1989 (Annexure A-1) be set aside and quashed with all consequential benefits. He further prays that the respondents be directed to restore the applicant's confirmation in the grade of LDC and his promotion in the grade of UDC with consequential benefits.

3. The respondents in their counter-affidavit have taken the stand that the exemption granted from passing the typewriting test and consequent release of the increments was erroneously made in the case of the applicant, as the said instructions of the Department of Personnel were applicable only in the case of LDCs recruited through the open competitive examination and not to the LDCs recruited through the limited departmental competitive Examinations open for departmental group 'D' candidates only. The show cause notice issued on 17.4.1988 also reflects this stand. The next point made in the counter-affidavit is that the applicant was promoted as UDC purely on adhoc basis vide order dated 13 July, 1981 for a period 1.6.1981 to 30.6.1981 or till the select list officers become available whichever is earlier. He was further continued as UDC from 1.4.81 to 30.8.1981 on adhoc basis vide order dated 25.8.1981. It was clarified in the said order that the appointment is purely temporary on adhoc basis and will not confer any right for regular appointment or in the matter of seniority in the grade of UDC. The appointment was further extended on adhoc basis vide order dated September 19, 1981 for the period 1.9.1981 to 31.10.1981

and further continued from time to time on short-term adhoc basis by various orders upto 31.12.1986 or till the select list officer become available whichever is earlier. The last of the office order bears No. EST/ECS-(6) 85 dated 28.10.1986. This means that the applicant worked as UDC on adhoc basis continuously for $4\frac{1}{2}$ years.

4. The applicant has filed a rejoinder, reiterating his earlier stand taken in the OA.

5. We have heard the learned counsel for both the parties and perused the record carefully. The office memorandum of the Department of Personnel dated 30.12.1983 dealing with release of annual increment of LDCs stipulates that:-

2. At the 33rd Ordinary Meeting of the Departmental Council of the Department of Personnel & A.R., held on 30.8.82, the Staff Side pleaded that the annual increments of those LDCs recruited on the basis of the Clerks Grade Examinations held between 1964 and 1973, which were withheld for their failure to pass the typewriting test, may be released. After due consideration that the number of this category of LDCs who have not been able to qualify the typewriting test is small and that they have suffered loss of increments for a long period, the request of the Staff Side was acceded to. Accordingly, it has been decided that those of the LDCs recruited on the basis of the Clerks Grade Examinations between 1964 and 1973, and who have not so far been able to qualify the typewriting test, will be exempted from qualifying in such test, and that their withheld increments may be released with immediate effect, subject to the condition that no arrears will be payable on account of

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refixation of pay on the release of withheld increments."

It will be apparent from the above that the issue raised and decided in the said OM related to those LDCs who were recruited on the basis of Clerks Grade Examinations held between 1964 and 1973 and whose increments were withheld for their failure to pass the typewriting test. No distinction was made between the LDCs recruited through the open market and the LDCs recruited through the Clerks Grade Examinations for the Group 'D' employees. In fact the increments for failure to pass the typewriting test were withheld irrespective of the source of recruitment. It is observed here that the typewriting test was not part of the open competitive Clerks Grades Examination for the period 1964 to 1973. According to the Central Secretariat Clerical Service Rules, 1962 the vacancies in Lower Division Grade are filled in the following manners:

"(a) Ten per cent of vacancies in each cadre may be filled by appointment, by promotion of Group D employees (borne on regular establishment) working in the Ministries and Offices participating in the Central Secretariat Clerical Service, in the following manner, namely:-

(i) Five percent of the vacancies may be filled on the basis of qualifying examinations held for this purpose by the Staff Selection Commission; and

(ii) Five percent of the vacancies may be filled on the basis of seniority, subject to the rejection of the unfit, from amongst those Group 'D' employees who are within the range of

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seniority prescribed by the Department of Personnel and Administrative Reforms and are educationally qualified for appointment as Lower Division Clerks i.e. who have passed the Matriculation or an equivalent examination of a recognised Board or University.

Provided that if sufficient number of persons do not become available, the vacancies shall be filled in the manner prescribed in clause (b).

Provided further that if more of such employees than the number of vacancies available under this clause qualify at the said examination, such excess employees shall be considered for filling the vacancies arising in the subsequent years so that the employees qualifying at an earlier examination are considered before those who qualify at a later examination.

(b) Ninety per cent of the vacancies or such higher percentage as may be determined by the Central Government in the Department of Personnel and Administrative Reforms in the Ministry of Home Affairs in accordance with the proviso to clause (a) shall be filled by direct recruitment on the basis of competitive examination held for the purpose by the Staff Selection Commission..."

It would be observed from the above that half of the 10% vacancies earmarked for promotion quota are filled on the basis of qualifying examination held for the purpose by the Staff Selection Commission while the remaining half are filled on the basis of the seniority, subject to rejection of the unfit but all the 10 per cent vacancies according to the Rules fall in the quota of

promotion; remaining 90 per cent vacancies are filled by direct recruitment on the basis of competitive examination. Besides the typewriting test was not part of the examination for the open competitive examination for the year 1964 to 1973 while in the case of promotion for Group 'D' staff typewriting test was not part of the examination for the period 1969 to 1973. It would, therefore, appear that there is merit in the argument that the matter raised by the Staff Side in the 33rd Ordinary Meeting of the departmental council referred only to the LDCs recruited on the basis of open competitive examination for the LDCs and did not relate to the promotees. This however, should not detract us from the fact that order issued by Department of Personnel did not make any distinction between the LDCs recruited through open competitive examinations and those recruited through qualifying examinations from among the departmental candidates.

However, the more significant aspect to be noted is that once the LDCs recruited from both the sources have been integrated in the LDCs cadre they have to be treated equally. There can be no discrimination on the basis of source of recruitment if they are similarly situated. The typewriting test was not part of the examination syllabus for the direct recruits from 1964 to 1973, while in the case of Group 'D' employees who qualified in the Clerks Grade Examination meant for departmental candidates, the typewriting test was not part of the syllabus from 1969 to 1973.

In these circumstances, the exemption granted by the Department of Personnel and Administrative Reforms vide OM dated 30.12.1983 should ordinarily covers all LDCs inducted between 1984 to 1973 through Clerks Grade Examinations. The hardship that provoked the issuance of

instructions on 30.12.1983 was the same for all LDCs, irrespective of the source of recruitment. There is no rational justification as to why the benefit of OM of 30.12.1983 should have been restricted only to direct recruits who come through Open Competitive Examination. Admittedly, the Constitution permits reasonable classification but it forbids arbitrary artificial or evasive classification.

"The classification must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test two conditions must be fulfilled viz. i) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and ii) that differentia must have a rational/- relation to the object sought to be achieved by the Act."*

The rationale of giving exemption from passing typewriting test to the LDCs recruited on the basis of the Clerks Grade Examinations held was that these employees have suffered loss of increments for a long period as they have not been able to pass the typewriting test for a variety of reasons. Thus amelioration of the hardship caused to the employees was the object sought to be achieved by the legislation. Since the LDCs coming from both the sources broadly suffered the same hardship, the classification made by the respondents is considered to be arbitrary and irrational, and offends Articles 14

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and 16 of the Constitution. The withdrawal of the benefit from the LDCs who qualified in the Clerks Grade Examination for the departmental candidates is, therefore, held to be arbitrary and violative of the provisions made in Article 14 of the Constitution. Accordingly, we hold that the impugned order Nos. EST/-EPN(4)80 dated 17.4.1989, No. EST/ECS(93)/83 dated 20.1.1988 and No. EST/ECS(93)/83 dated 21.1.1988 are violative of the provisions of equality enshrined in the Constitution. Further the order dated 21.1.1988 rescinding unilaterally order dated 16.2.1987 which conferred confirmation on the applicant as LDC w.e.f. 30.12.1983 and releasing his annual increment without giving him show cause notice was arbitrary and against the principles of natural justice. Accordingly we set aside the said orders dated 17.4.1989 and 20/21.1.1988. We further order and direct that the applicant shall be restored his position in accordance with the order No. EST/ECS(93)/83 dated 16.2.1987 immediately on communication of this order, but in no case not later than 8 weeks from the date of communication of this order.

We further observe that the applicant had worked as UDC upto 27.7.1987 when he was reverted retrospectively w.e.f. 31.12.1986. As the applicant had worked as UDC we further direct that he shall be paid accordingly for the period in question. If in consequence to his restoration as confirmed LDC w.e.f. 30.12.1983 in accordance with order dated 16.2.1987 he would have continued as UDC after 27.8.1987, he shall be so restored to his rank as UDC and progressed notionally in the relevant scales of pay to avoid any loss in the pay which he would have drawn but for his reversion. He shall, however, be not entitled to any back wages on this account.

There will be no order as to costs.

[Signature]
(I.K. RASGOTRA)

MEMBER(A) 15/1/92

[Signature]
(T.S. OBEROI)

MEMBER(J)