

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO. 2365/89

DATE OF DECISION: 15.5.90

MANOHAR BHARDWAJ

APPLICANT

SHRI B.B. RAVAL

ADVOCATE FOR THE APPLICANTS

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

SHRI P.P. KHURANA

ADVOCATE FOR THE RESPONDENTS

CORAM:

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

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

J U D G E M E N T

(Delivered by the Hon'ble Mr. I.K. Rasgotra, Member(A))

The applicant Shri Manohar Bhardwaj was appointed as a peon in the office of respondent No.2 on 1.1.1981 and promoted as Lower Division Clerk (LDC), purely on adhoc basis, w.e.f. 17.12.1984 in terms of Office Order dated 20.12.1984 Annexure VI (page 20 of the paper book). He later qualified in the typing test conducted by the Staff Selection Commission (SSC) vide memorandum dated 6th April, 1985 at Annexure IX (page 24 of the paper book). He continued to work on adhoc basis till 1989. He represented on dated 5.10.1989 seeking regularisation as LDC and he was advised that "regularisation of his adhoc service as LDC will be considered in terms of this office letter of even number

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dated 28.9.1989". The said letter envisages holding of Clerks Grade Examination for Group 'D' staff working in the respondents' office who had rendered on 31.10.1989 not less than five years service were eligible for the examination. The grievance of the applicant in the application filed under Section 19 of the Central Administrative Tribunals Act, 1985 is against the direction that he should appear in the departmental test for getting regularised as LDC.

2. The case of the applicant is that he has been working for approximately five years since February, 1984 as adhoc LDC and had passed the typing test conducted by the SSC held in February, 1985 and therefore, he is not required to appear in the examination purported to be held in terms of respondents letter dated 28.9.1989. Further the examination is meant for only the Group 'D' employees and not for Group 'C' employees which he avers he is, since February, 1985. The applicant also alleges discrimination against him vide Miscellaneous Petition No.330 filed on 24.1.1990 giving names of persons like S/Shri Shiv Dan Singh, Tak Chand and Vir Singh who had been regularised without their passing the departmental test.

3. The respondents in their written reply have submitted that the applicant was working as LDC purely on adhoc basis and he cannot claim any right to be regularised unless he passes the departmental examination. It has been submitted that for regularisation as LDC a Group 'D' employee is not only to qualify

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in the typing test (which the applicant had done) but also in the departmental examination as prescribed in the Recruitment Rules. It has further been pointed out that despite number of opportunities given to the applicant he failed to appear in the examination and as a consequence thereof there was no alternative for the respondents but to issue orders reverting him to Group 'D' post. Since substantive relief sought in the main OA and MP-330/90 filed by the applicant is the same, we are dealing with the OA and MP in this common order.

4. We have heard the learned Counsel of both the parties and considered their rival contentions. The Recruitment Rules filed by the respondents with their written reply to the OA make the following provisions:-

"For General, Central Service Class-III, Non-Gazetted Ministerial (Rs.260-400).

10% of the vacancies in the grade of Lower Division Clerks, to be filled by direct recruitment, will be reserved for being filled up by Class IV employees (borne on regular establishment), subject to the following conditions:-

- a) Selection would be made through a departmental examination confined to such Class IV employees who fulfil the requirement of minimum educational qualification, i.e. Matriculation or equivalent
- b) The maximum age for this examination would be 45 years (50 years for Scheduled Caste/Scheduled Tribes candidates).

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- c) At least 5 years' service in Class IV would be essential
 - v) The maximum number of recruits by this method would be limited to 10% of the vacancies in the cadre of LDC occurring in a year; unfilled vacancies would not be carried over."

These Recruitment Rules were notified on 6th September, 1975. Further details of the departmental examination are provided in the circular dated 28.9.1989 (page 34 of the paper book) and a subsequent circular of 22.12.1989 (page 53 of the paper book) for a subsequent examination. In their reply to the MP the respondents have affirmed that S/Shri Vir Singh, Tek Chand and Shiv Dan Singh had been promoted after they had passed the departmental examination conducted on 4.10.1979 and that the case of the applicant has no nexus with the promotion of the said persons.

5. We find that the claim of the applicant is based on his having continued as LDC for about 5 years on adhoc basis and having passed the typing test conducted by the SSC. The claim so made therefore is not in consonance with the provisions of the Recruitment Rules, which have been in existence even at the time when he was recruited as Group 'D' employee.

The cardinal principle in the regularisation of an adhoc employee is that he must qualify in the selection test conducted to adjudge the suitability for the post. Adhoc service without qualifying in the prescribed departmental test does not confer

any right for continuance on a regular basis in the post. There is a *catena of judicial pronouncements which have enunciated this

principle and has been further brought into focus ~~in the vacant~~ ^{el} ~~post~~ in the Full Bench Judgement delivered on 5.5.1989 in the case of Jethanand and others Vs. Union of India and others to dispel any lingering doubt in the matter.

6. In the facts and circumstances of the case, we do not find any justification to interfere in the matter. The original application is accordingly dismissed with the observation that the applicant should be allowed reasonable number of chances (to be determined by the respondents) to qualify in the examination, for promotion to Group 'C' post, which he was holding before his reversion.

There will be no orders as to the costs.

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

(Signature) 15.5.90
(T.S. Oberoi)
Member (J)

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- *1. ATC 1987 (3) - 435- Shyam Lal Vs. General Manager, Northern Railway and Others.
 2. SLR 1981(1) -Vol. 26 - 71 - Shri Dina Nath Pardesi Vs. State of Himachal Pradesh and Others.
 3. SLJ 1989 (3) - CAT - 447 Bindeswari Prasad & Others Vs. Union of India.