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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO.2553/89, O.A.No.16/90 and
O.A.No.254/90

New Delhi, this the 8th day of June, 1995

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

1. Jagdish Prasad,
LDC
s/o Shri Ram Prasad,
Naval Hqs.,
Ministry of Defence.
2. Chinta Mani, LDC
s/o Shri Bal Krishan
o/o E-in-C's Branch,
Ministry of Defence.
3. Sohan Singh Rawat,
LDC
S/o Shri Laxman Singh Rawat,
DG, Quality Assurance/Ven 12,
Ministry of Defence.
4. Udai Bir Singh, LDC
o/o D.G., Quality Assurance,
Ministry of Defence.
5. Rishi Pal, LDC
s/o late Shri Chandan Singh,
o/o Adjutant General,
Ministry of Defence.
6. Dinesh Singh,
LDC
s/o Shri Hri-dam Ram,
o/o Adjutant General,
Ministry of Defence.
7. Prem Lal Baloni, LDC
s/o Shri Dwarka Prasad,
o/o Research and Development,
Ministry of Defence.
8. Manbir Singh,
LDC
s/o Jutha Singh,
o/o Adjutant General,
Ministry of Defence.
9. S.K. Ghosh,
LDC
s/o Shri R. Ghosh,
Chief Admn. Officer/A-4,
Ministry of Defence.

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10. Lalit Prashad, LDC,
s/o Shri Keshwa Nand,
O/O Adjutant General,
Ministry of Defence.
11. Gopi Chand, LDC,
Shri Harpat,
O/O General Staff,
Ministry of Defence.
12. Liladhar, LDC,
s/o Shri Manorath,
O/O General Staff,
Ministry of Defence.
13. Naresh Chander, LDC,
s/o Sh. Ramanand,
O/O Research & Development,
Ministry of Defence.
14. Ramesh Chandra, LDC,
s/o Shri Shiv Datt,
O/O D.G., Qly Assurance,
Ministry of Defence.
15. Bishi Pal, LDC,
s/o Shri R.S. Verma,
O/O General Staff Branch,
Ministry of Defence.
16. Pritam Chand, LDC,
s/o Shri Nathu Ram,
O/O Quarter Master General,
Ministry of Defence.
17. Subhash Chand, LDC,
s/o Sh. Bishamber Dayal,
O/O D.G. Quality Assurance,
Ministry of Defence.
18. Vijay Kumar, LDC,
s/o Sh. Kedar Nath,
Air Headquarters,
Ministry of Defence.
19. Pratap Chand, LDC,
s/o Sh. Jamit Singh,
O/O D.G. Quality Assurance,
Ministry of Defence.

20. Shyam Kumar, LDC,
S/o Sh. Amar Chand,
O/O Air Headquarters,
Ministry of Defence.
21. Surya Prakash, LDC,
S/o Shri Keshav Datt,
O/O Adjutant General,
Ministry of Defence.
22. Kuldeep Kumar, LDC,
S/o Sh. C.R.Sharma,
O/O Chief Admn. Officer,
Ministry of Defence.
23. Prem Singh, LDC,
S/o Late Sh. Kedar Singh,
O/O Air Headquarters,
Ministry of Defence.
24. Sarvan Kumar, LDC,
S/o Sh. Mishri Lal,
O/O Chief Admn. Officer,
Ministry of Defence.
25. Mohan Singh, LDC,
S/o Sh. Alam Singh,
O/O Naval Headquarters,
Ministry of Defence.
26. Diwan Singh, LDC,
S/o Sh. Ram Singh Bisht,
O/O Chief Admn. Officer,
Ministry of Defence.
27. Surendra Kumar Sharma, LDC,
S/o Sh. Harbans Lal,
O/O General Staff Branch,
Ministry of Defence.
28. Sukhvir Singh, LDC,
S/o Shri
O/O Eng.in-Chief Branch,
Ministry of Defence.
29. Bhaskar Notigal, LDC,
S/o Shri
O/O Naval Headquarters,
Ministry of Defence.

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30. Naresh Kumar, LDC,
S/o Shri
O/O D.G. Quality Assurance,
Ministry of Defence.
31. P.C. Barthwal, LDC,
S/o Shri Tota Ram,
O/O Chief Admn. Officer,
Ministry of Defence.
32. Rajeshwar Prashad, LDC,
S/o Shri Ram Lakhan,
O/O Research & Development,
Ministry of Defence.
33. Harak Singh, LDC,
S/o Sh. Hayat Singh,
O/O General Staff Branch,
Ministry of Defence.
34. B.S. Bisht, LDC,
S/o Shri Shiv Singh Bisht,
O/O General Staff Branch,
Ministry of Defence.
35. Kishan Pal, LDC,
S/o Shri
O/O General Staff Branch,
Ministry of Defence.
36. Soban Singh, LDC,
S/o Shri Bachan Singh,
O/O Naval Headquarters,
Ministry of Defence.
37. Mohan, LDC,
S/o Shri Deva Ram,
O/O Adjutant General,
Ministry of Defence.
38. Sate Singh, LDC,
S/o Shri Surender Singh,
O/O Quarter Master General Br.,
Ministry of Defence.
39. Jaswant Singh, LDC,
S/o Shri Hanumant Singh,
O/O Dt.G. N.C.C.,
Ministry of Defence.

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40. Smt. Urmila Badial, LDC,
W/o Sh. Ravinder Kumar Badial,
O/O Naval Headquarters,
Ministry of Defence.
41. Diwan Singh, LDC,
S/o Sh. Vishan Singh,
O/O Eng.in-Chief Branch,
Ministry of Defence.
42. Virender Singh, LDC,
S/o Sh. Puran Singh Aswal,
Air Headquarters,
Ministry of Defence.
43. Ram Phal Singh, LDC,
S/o Sh. Dharam Singh,
O/O D.G. Quality Assurance,
Ministry of Defence.
44. Gulab Singh Bora, LDC,
S/o Late. Sh. Prem Singh,
Directorate of Public Relations,
Ministry of Defence.
45. Daya Nand, LDC,
S/o Sh. Krishan Chand,
O/O Chief Admn. Officer,
Ministry of Defence.
46. Surender Pal Singh, LDC,
S/o Sh. Avtar Singh,
Naval Headquarters,
47. Meharwan Singh, LDC,
S/o Sh. Gabar Singh,
O/O Adjutant General Br.,
Ministry of Defence,
48. Sudhir Salhotra, LDC,
S/o Sh. Madan Mohan Lal,
O/O Quarter Master General Branch,
Ministry of Defence.
49. Chander Mohan, LDC.,
S/o Shri Bachi Ram,
O/O Naval Headquarters,
Ministry of Defence.

50. Jagaish Singh, LDC
S/O Sh. Dharam Singh,
C/O Military Section
Ministry of Defence.
51. Mahesh Ch. Sharma, LDC
S/O Shri M.L. Sharma
D.G. Quality Assurance,
Ministry of Defence
52. Raj Bir Singh, LDC
S/O Shri Gurcharan,
D.G. Quality Assurance
Ministry of Defence
53. Rajinder Negi,
S/O Shri J.S. Negi
C/O Chief Admn. Officer,
Ministry of Defence
54. Kamal Kumar
S/O Shri Gupt Ram
C/O Chief Administrative Officer,
Ministry of Defence
55. Trilochan Singh,
S/O Late Shri Sajjan Singh
C/O Chief Administrative Officer
Ministry of Defence
56. Prem Lal Chauhan,
S/O Shri Surat Ram,
C/O Chief Administrative Officer,
Ministry of Defence
57. Bharam Singh,
S/O Late Shri Bhim Singh
C/O Chief Administrative Officer
Ministry of Defence
58. Dharam Bir Singh
S/O Shri Raghubir Singh
C/O Chief Administrative Officer,
Ministry of Defence
59. Dharam Pal Singh,
S/O Shri Udi Ram
Naval Headquarters,
Ministry of Defence
60. Dinesh Kumar,
S/O Shri Suraj Bhan
QMG, Ministry of Defence
61. J.N. Mishra,
C/O Late Shri R.S. Mishra
D.G.Q.A. Ministry of Defence

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62. Brijesh Singh Bisht,
S/O Shri Dhyam Singh
RCPO, Ministry of Defence
63. Kundan Chand
S/O Late Shri Kamalapati
GS Branch, Ministry of Defence
64. Shiv Raj Singh,
S/O Late Shri Jagat Singh
E-in-C Branch, Ministry of Defence
65. Gagan Singh,
S/O Shri Dilwan Singh
E-in-C Branch, Ministry of Defence
66. AK Rana
S/O Shri MS Rana,
Air HQ. RK Puram,
Ministry of Defence
67. Madan Singh
S/O Shri Shiv Singh
Air HQ, RK Puram,
Ministry of Defence
68. Sri Niwas Singh
S/O Sh. Asnarayan Singh
QMG Branch, Ministry of Defence
69. Mahendra Singh
S/O Shri Mam Chand
Air HQ. RK Puram,
Ministry of Defence
70. Raj Kumar
S/O Shri Sukhan Lal
Air HQ. Vayu Bhawan
Ministry of Defence
71. RK Jha
S/O Shri N. Jha
Air HQ. Vayu Bhawan,
Ministry of Defence
72. Mahesh Chand
S/O Shri Bhola Dutt
Air HQ. Vayu Bhawan,
Ministry of Defence
73. PS Rana
S/O Late Shri Agar Chand
Naval Headquarters,
Ministry of Defence
74. Rajbir Singh
S/O Shri Laxmi Narayan,
MS Branch, Ministry of Defence

75. Ram Chander Bhagat,
s/o Shri Jai Datt
R&D Ministry of Defence.
76. Avodesh Kumar Sahu
s/o Shri Kanhai Lal Sahu
MS Branch, Ministry of Defence ... Applicants

By Advocate: Shri Jog Singh

Vs.

1. Union of India
through its Secretary
Ministry of Defence
South Block, New Delhi.
2. Joint Secretary (Admn) &
Chief Administrative Officer,
Ministry of Defence, C-II Hutments
Dolhousie Road, New Delhi

By Advocate: Shri P.H. Ramchandani

O.A.No. 16/90

1. Jai Bhagwan s/o Shri Karen Singh
r/o 661/12, Harijan Basti,
Bindapur, P.O. Uttam Nagar, New Delhi.
2. K.S. Mehra s/o Sh. Gulab Singh
r/o 142-BG.6 Paschim Vihar, Delhi.
3. Radha Charan s/o Sh. Bhagan Lal,
r/o 417 A Block, Laxmi Garden,
Loni Road, Distt. Ghaziabad.
4. Mdhukar, s/o Sh. Viswanath
r/o 924 Srimati Sucheta Kriplani
Hospital Campus, New Delhi.
5. Nabi Hussain s/o Sh. Sabab Din
r/o E-8 Mahabir Enclave Part-III
P.O. Dabari, New Delhi.
6. Bharat Lal s/o Sh. Sohan Lal
210 Village Takhand, P.O. Takhand
Delhi.
7. J.L. Yadav s/o Sh. Khailai Rai,
r/o RZ 18-A Sitapuri Part-II
P.O. Dabari, New Delhi-45
8. Jeet Mal s/o Shri Parmarth
r/o B-1 Kondli, P.O. Kalyanpuri
Delhi-91.

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9. Kalu Ram s/o Sh. Sohan Lal
r/o H.No.130, DL Mohalla Sayedwala
Palwal City, Distt.Faridabad,
Haryana
 10. Sh. Krishan Bahadur s/o Shri Harka Singh
Delhi Escorts Exchange Building,
4/4 B Asafali Road, New Delhi.
 11. Sh. Sadhdu Singh Bist,
A-51, East Vinod Nagar, Delhi.
 12. Rajinder Parshad Chaudhar/Ramdev Prasad Choudhary
A-39, Midhapur Extension,
Badarpur, New Delhi.
- ... Applicants

By Advocate: Shri Jog Singh

Vs.

1. Union of India
through
Secretary, Min.of Defence,
Army Headquarters, New Delhi.
 2. Dy.Chief Administrative Officer,
Min. of Defence,
Army Head quarters,
New Delhi.
 3. Sr.Administrative Officer,
Ministry of Defence,
Army Headquarters,
New Delhi.
- ... Respondents

By Advocate: Shri P.H. Ramchandani

O.A. 254/90

1. Satya Naraiyan s/o Sh. Suiv Kumar
r/o MD 118, Sakarpur, Delhi.
 2. N.S. Rawat s/o Chandan Singh
r/o 11/124, Panchyuia Road,
Mandir Marg, N.Delhi.
 3. Dharam Vir Singh s/o Arjun Singh
r/o Vill. Bhonata P.C. Dadri
Distt. Ghaziabad, U.P.
 4. Roshan Lal s/o Dharam Singh
R/o A-4/474, P. Gokal Puri,
Harijan Basti, Loni Road,
Shahdraz, Delhi.
 5. Sohand Lal s/o Heram Singh,
r/o D Block, 614, Seva Nagar,
New Delhi.
- ... Applicants

By Advocate: Shri S.K. Gupta

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Versus

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1. Union of India
through
Secretary,
Ministry of Defence,
Army Headquarters,
New Delhi.
2. Deputy Chief
Administrative Officer,
Ministry of Defence,
Army Headquarters,
New Delhi.
3. Sr. Administrative Officer,
Ministry of Defence,
Army Headquarters,
New Delhi.

... Respondents

By Advocate: Shri P.H. Ramchandani

O R D E R

Hon'ble Shri J.P. Sharma, Member (J)

All these cases are taken together in view of the fact that all of the applicants were at one point of time were employed as Group 'D' employees in the Department of Armed Forces Headquarters (AF HQ) and had worked as such. But from September, 1982 on different dates by separate orders till January, 1988 the applicants in J.A.No.2553/89 were given adhoc promotion to Group 'C' post of L.D.C. as a stopgap arrangement.

Similarly, the applicants in O.A. No.16/90 were employed in Group 'D' posts and they were given promotion on various dates from 1982 to 1988 on Group 'C' post on adhoc basis.

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Similarly, the applicants of O.A.No. 254/90 were appointed to Group D post and were given promotion to Group C post on adhoc basis on various dates and years commencing from 1985 to 1988.

All the applicants though they have different dates of appointment as Group 'D' and different dates of promotion as well as different years in Group 'C' on adhoc basis but the application for joining together has been allowed earlier, so cases of all these applicants are dealt with together and wherever necessary specific mention of that applicant shall be made.

O.A. 2553/89 was filed in December, 1989 and the relief prayed for by the applicants is not to revert them from the post of L.D.C. and that the respondents be directed to regularise the applicants on the post of LDC with all other consequential benefits and further they be considered for higher post of U.D.C. and Dealing Assistant. The applicants have also prayed for the grant of interim relief. The Tribunal vide its order dated 22.12.89 directed that the status-quo as of that date be maintained till 4.1.90 and that order has been made absolute.

Thus from 22.12.89 the applicants are working as L.D.C. on an interim direction by the Tribunal. The necessity of filing the O.A. was that the applicants were likely to be reverted from their adhoc promotion.

O.A. 16/90 was filed in January, 1990 claiming almost the same relief as prayed for in the O.A.No.2553/89. In this also by the order dated 5.1.90 the status-quo as of that date was directed to be maintained and that order was made absolute.

O.A.No.254/90 was filed in February, 1990 in which almost the same relief claimed by the applicants as of O.A.No.2553/89 and an order of status-quo was also passed on 13.2.90 which continues till today which was made absolute. Before dealing with the legal aspect of the matter, the facts of the above noted O.As. and the applicants who have joined in those applications are somewhat different as regards their entry in Group 'D' post in AF HQ. Some of the present applicants in the due course of their engagement and continuing under the interim orders of the Tribunal on the post of LDC have cleared the examination (not only typing test) and have since been regularised on their appointment to the post of L.D.C., so the case of such

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applicants is different. As regards the other applicants, the respondents have taken the stand that AF HQ Clerical Service Rules, 1968 laid down that the temporary vacancies in the grade of LDCs are to be filled up by 10% of the vacancies by promotion of Group 'D' employees (borne on the regular establishment of Headquarters/I.S. organisations). Out of these 10%, 5% of the vacancies are to be filled up on the basis of qualifying examination held for this purpose by the Staff Selection Commission (SSC) and 5% on the basis of seniority subject to rejection of the unfit, from amongst Group 'D' employees who have passed the Matriculation or an equivalent examination from the recognised Board or University. Remaining 90% of the vacancies or such higher percentage as determined by the Government are to be filled by direct recruitment on the basis of competitive examinations held for the purpose by the SSC. A copy of the rules has also been annexed alongwith application of O.A.No.2553/89.

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From 1979 onwards the SSC could not make sufficient number of candidates available for filling of the existing vacancies in the grade of LDC against 90% of the vacancies notified to the Commission, for being filled through examination. A decision, therefore, was taken in consultation with DOP&T to fill up certain number of vacancies on adhoc basis from amongst Group 'D' employees, who had passed the Matriculation or an equivalent examination. The adhoc appointments were made in the grade of LDC from amongst Group 'D' employees who had passed the Matriculation or an equivalent examination. These Group 'D' employees were, however, asked to appear for testing their knowledge of typewriting at that time and those who could make the grade at that time or ^{subsequently} in the typewriting which was held by the Department, they were appointed to the post subject to the following conditions:-

- (a) The adhoc appointment in LDC grade will be upto six months or till such time the qualified candidates from Clerk Grade Examination or individuals from the panel for promotion of Group 'D' employees to LD grade become available, whichever is earlier.

- (b) The appointment will be purely on adhoc basis and will not confer on them any right whatever for claiming regular appointment to LD grade of the AFHQ Clerical Service. The services rendered on adhoc basis in the LD Grade will not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher grade.
- (c) No request to regularise the adhoc appointment will be made by them.
- (d) The adhoc appointment in the LD grade will not continue beyond attaining the age of superannuation prescribed for the post of Lower Division Clerk.

The respondents promoted 119 such Group 'D' employees and the last appointment was made on 3.7.89. Out of these 119, 3 have since been regularised against the 5% quota of vacancies reserved for promotion of such Group 'D' employees based on seniority-cum-fitness. Two more have since been promoted who passed the limited departmental examination. The appointment of remaining 114 Group 'D' employees was only upto 31.12.89. Since their appointment was made for a specific period, they automatically stood reverted to Group 'D' post w.e.f. 1.1.90.

With regard to the above history of the appointment of Group 'D' employees, a

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reference should also be made to the process of recruitment to the grade 'C' i.e. LDC of AFHQ Clerical Services. Though a reference has been made above to the rules 1968 but these rules have since been superseded by AFHQ Clerical Rules, 1987. However, regarding the recruitment process to Grade of LDC there has been no change. Rule 3 of the rules deals with the composition of the service and that there shall be two grades namely Upper Division Grade and Lower Division Grade. The posts in both the grades shall be non-gazetted, Central Civil Service, Group 'C' ministerial and shall be non-selection. Rule 7 deals appointment to the service and Rule 9 to the mode of appointment in the service. The posts shall be filled as shown in the Third Schedule of the rules. Sub-rule (3) of Rule 9 lays down as follows:-

"If sufficient number of qualified candidates are not available for appointment to the Lower Division Grade on the results of competitive examinations held by the SSC, the vacancies may be filled either provisionally or on a regular basis in such manner as may be decided by the Government."

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The relevant portion of Third Schedule is quoted below:-

"Lower Division
Grade (Group 'C'
Ministerial)

Temporary vacancies

Temporary vacancies shall be filled in the following manner, namely:-

- (a) Ten per cent of vacancies shall be filled by promotion of Group 'D' employees (Borne on regular establishment of the Headquarters and Inter Service Organisations referred to in the First Schedule) in the following manners, namely:-
 - (i) 5% of the vacancies may be filled on the basis of qualifying examinations held for this purpose by the Staff Selection Commission, and
 - (ii) 5% of the vacancies shall be filled on the basis of seniority, subject to the rejection of the unfit, from amongst Group 'D' employees who have passed the Matriculation or an equivalent examination of a recognised Board or University.

Minimum
5 years'
service in a
Group 'D'
post in Armed
Forces
Headquarters
on regular
basis.

Provide that if sufficient number of persons are not available, the vacancies shall be filled in the manner prescribed in clause (b);

Provided further that if more employees than the number of vacancies available under this clause qualify at the qualifying examination, such excess employees shall be considered for filling the vacancies arising in the subsequent years so that the

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employees qualifying at an earlier examination are considered before those who qualify at a later examination.

- (b) Remaining vacancies as may be determined by the appointing authority in accordance with the proviso to (a) above and Rule 10 shall be filled by direct recruitment on the basis of competitive examinations held for the purpose by the Staff Selection Commission."

Rule 11 of the rules lays down for regulations for the competitive examination and that has been indicated in the Fifth Schedule and Sixth Schedule of the rules. Sixth Schedule is with regard to Lower Division Grade Qualifying Examination for Group 'D' employees. As per Sixth Schedule as laid down under Rule 11 regularly appointed Group 'D' employees meaning thereby that an employee appointed in any of the Headquarters and Inter Service Organisations in the Ministry of Defence to a Group 'D' post on regular basis is eligible to appear in the examination who has completed on the crucial date not less than 5 years approved and continuous service and should not^{be} more than 50 years of age.

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This examination is a qualifying examination held by SSC for appointment to Lower Division Grade of AFHQ Clerical Service.

It is not the case of the applicants in all the above aforesaid O.As that they were appointed after passing the qualifying examination conducted by the SSC as envisaged under Rule 11 of the rules read with Sixth Schedule appended to the rules. The applicants were appointed only on adhoc basis and an order issued in this respect has been enclosed by the applicants themselves as Annexure 5(d) which is reproduced below:-

"No.A/22856/CA0/P-1

RAKSHA MANTRALAYA

(Mukhya Prashasan Adhikari Ka Karyalaya)

Subject: Appointment of Educationally qualified Group 'D' employees as LDC on adhoc basis.

Competent authority has approved the appointment of 138 Group 'D' employees as shown in the attached list as adhoc LDCs with effect from 05 July, 1988 to 31 Dec. 1988 subject to the following conditions:-

- (a) The adhoc appointment in LD grade will be upto 31 Dec.1988 or till such time the qualified candidates from Clerks Grade Examination or 'Individuals from the panel for promotion of Group 'D' employees to LDC' become available, whichever is earlier.
- (b) The appointment is purely on adhoc basis and will ~~not confer~~ on them any right whatsoever for claiming regular appointment to LD grade of the AFH Clerical Service. The services rendered on adhoc basis in the LD grade will not count for the purpose of seniority in that grade and for eligibility for promotion to next higher grade.

(c) No request to regularise the adhoc appointment will be made by them.

(d) The adhoc appointment in LD grade will not continue beyond attaining the age of superannuation prescribed for the post of LDC.

2. Hindi version will follow.

sd/-
(K.S. DHINGRA)
Senior Administrative Officer
14 July 1988 "

A similar order issued in 1986 filed as Annexure_3

in O.A.No.254/90 is also reproduced below:-

" MOST IMMEDIATE
NO.A/22856/CAO/P-1

RAKSHA MANTRALAYA
(MUKHYA PRASHASAN ADHIKARI KA KARYALAYA)

Sub: Appointment of educationally qualified
Group 'D' employees as LDC on adhoc basis

117 Group 'D' employees as shown in the enclosed list are appointed as adhoc LDCs with effect from 02 January 1987 to 30th June 1987 subject to the following conditions:-

- (a) The adhoc appointment in LD grade will be upto 30.6.87 or till such time the qualified candidates from Clerks Grade Examination or "Individuals from the panel for promotion of Group 'D' employees to LDC" become available, whichever is earlier.
- (b) The appointment is purely on adhoc basis and will not confer on them any right whatsoever for claiming regular appointment to LD grade of the AFHQ Clerical Service. The service rendered on adhoc basis in the LD grade will not count for the purpose of seniority in that grade and for eligibility for promotion to next higher grade.
- (c) No request to regularise the adhoc appointment will be made by them.
- (d) The adhoc appointment in LD grade will not continue beyond attaining the age of superannuation prescribed for the post of LDC.

sd/-
(T.S. SIAL)
Deputy Chief
Administrative Officer(P)"

A similar order issued in 1988 in O.A.No.16/90 which is annexure 3 of the said O.A. also goes to show that these adhoc appointments are stopgap arrangements.

The stand taken by all the applicants in all the aforesaid O.As is the same that they were selected and appointed to the post of LDC by the respondents against the sanctioned available required post vide various letters from 1982 onwards till 1989. All these candidates possessed the minimum required educational qualification and other standards and most of them have successfully passed the typewriting test/examination conducted by the SSC and since they have been continuously and regularly working on the post of LDC without the break of ^a single day except a few artificial ones, they have to be regularised in their appointment as they have been successfully discharging their duties of the work assigned to LDCs. Some of them have also ^{been} given training on the basic training course for specialisation in the work relating to LDCs. Thus the averment made in the O.A. as well as the arguments advanced by the learned counsel is that the applicants by virtue of putting in long years of un-interrupted and continuous service

on the post of LDC have acquired right/interest/lien in the said posts to continue to work as LDCs with all ordinary/consequential benefits. The respondents are empowered to recruit candidates for the post of LDCs even otherwise than SSC under Rule 9(3) of the AFHQ Clerical Service Rules, 1987. The respondents have, however, taken the stand in the reply as well as during the course of the arguments that the appointment of the applicants has not been according to AFHQ Clerical Service Rules, 1988 as amended in 1987 and that they have never been selected for promotion to Group 'C' post of LDC as required under Rule 11 read with Sixth Schedule. They were at the time of appointment duly informed about the nature of their appointment that it is stopgap arrangement and will not confer any right for giving regular appointment to the post of LDC. The appointment of these applicants had not been on the basis of seniority nor on the basis of merit. They were appointed only in the exigencies of the service after putting to certain typing test which is not the only requirement but only to test whether a Group 'D' employee can cope with the typing work while

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posted to LDC on adhoc basis. The respondents have emphatically stated that they are participating unit with the DOP&T which has a nodde Ministry and since instructions have been issued on not making any adhoc appointment beyond 28.3.89, the appointments of the applicants on various dates issued in 1982 onwards were allowed to continue till December, 1989. The last such adhoc appointment was made on 3.7.89. Some of these appointees were also applicants in the aforesaid O.4s. have qualified the Limited Departmental Competitive Examination or have come by way of seniority in the 5% quota and have been regularised but those who could not make a grade or did not take the limited departmental competitive examination have no right or lien to retain the post but in view of the interim direction issued in O.A. No.2553/89 the appointments were continued and is because of the order of the Tribunal passed on interim relief though exparte on 22.12.89 the appointments beyond 31.12.89 are continuing. Most of these applicants were only appointed in 1988 and 1986 but they had to continue though they had put in 2 or 3 years of service. The appointment on adhoc basis was necessitated

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because from 1981 to 1988, 151 vacancies of LDCs were available, a chart of which has been given in para 5 of the counter at page 106 of the paperbook of A.No.2553/89. These 151 vacancies were filled by promotion of Group 'D' employees and during all these years from 1981 to 1988, 36 Group 'D' employees have been regularised as per rules after they qualified in the said examination.

The respondents have also filed a copy of the O.M. issued by DDPT on 30th March, 1988 where the instructions for adhoc appointment have been revised. It is because of this the respondents have to take action, for reversion of the ad-hoc appointees from group 'D' post.

The applicant's counsel has also referred to the rejoinder and to certain decisions given by the Principal Bench regarding regularisation of adhoc promotees from Group 'D' employees as LDCs.

We heard and given a careful consideration to the legal aspect involving the case as well as to the material points addressed before us. After conclusion of the arguments, the learned counsel for the applicant has also filed a copy of the judgement delivered by Principal Bench

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in O.A.No.1282/91 on 17.5.95 in the case of Shri Rajendra Prasad Kukreti Vs. UOI. In view of this the case which was earlier reserved for judgement was reopened to hear fresh arguments regarding the applicability of the judgement in the O.As. under consideration. This judgement by the Principal Bench consisting of Hon'ble Shri A.V. Haridasan, Vice-Chairman and Hon'ble Shri K. Muthukumar, Member is solely based on certain concession given by the counsel representing the respondents Shri M.K. Gupta during the course of hearing and the judgement is based on earlier decision of O.A.No.1485/91 decided on 13.8.92. There is no reference to any of the decisions of Hon'ble Supreme Court which have come into light after the decision of O.A.No.1485/91. There is also no reference on the other O.As. decided by the Principle Bench - O.A.No.1536/91 and O.A.No.1537/91 decided on 27.2.92. This judgement is therefore a judgement which cannot be said to be a judgement giving a ratio to be a precedent in other subsequent cases and we are fortified in our view by the Full Bench decision in the case of Sri C.R. Rangadhamaiah and ors. Vs. Chairman, Railway Board and others decided on 16.12.93 reported in Vol.3, Full Bench Judgements. The

Full Bench has considered in this case in para 15 of the reports regarding decision per incuriam where it is said that the latest decision rendered has in ignorance of earlier decision to be regarded as per incuriam and not binding on the court in a subsequent case. Para 15 of the report is reproduced below:-

"15. Assuming that there are two inconsistent decisions, we shall examine as to which decision can be regarded as a precedent binding in subsequent cases. It is obvious that the Principal Bench and the Ahmedabad Bench have rendered their decisions without noticing the earlier decision of the Ernakulam Bench. In such a situation it is well settled that the later decision rendered in ignorance of the earlier decision has to be regarded as per incuriam and not binding on the court in a subsequent case. This principle has been succinctly stated in Salmond on Jurisprudence, 12th Edition, page 151 at para (5) as follows:-

(5) Inconsistency between earlier decisions of the same rank. A court is not bound by its own previous decisions that are in conflict with one another. This rule has been laid down in the Court of Appeal (Young's case (1944) K.B. at 726, 729J, Court of Criminal Appeal (R.v Power (1919) K.B. 572 (CCA)) applies also to the House of Lords. There may at first sight seem to be a difficulty here; now can a situation of conflict occur, if the court is bound by its own decisions? At least two answers may be given. First, the conflicting decisions may come from a time before the binding force of precedent was recognised. Secondly, the more commonly, the conflict may have arisen through inadvertence, because the earlier case was not cited in the later. Owing to the vast number of precedents, and the heterogeneous ways in which they are reported - or are not reported - it is only too easy for counsel to miss a relevant authority. Whenever a relevant prior decision is not cited before the court, or mentioned in the judgements, it must be assumed that the Court acts in ignorance or forgetfulness of it. If the new decision is in conflict with the old, it is given per incuriam and is not binding on a later court."

(emphasis supplied)

In Raghubir Singh's case it has been laid down that a decision of a Bench of two Judges is binding on the Division Bench consisting of the same number of Judges and that, therefore, the principle laid down by a Bench of two judges does not get reversed or superseded by a subsequent decision of a Bench of the same number of judges. Applying this principle it has to be held that what holds the field as a binding precedent is the decision of the Ernakulam Bench and that the subsequent decision of the Principal Bench and the Ahmedabad Bench have to be regarded as per incuriam and not binding in subsequent cases. This being the legal position the decisions of the Principal Bench and the Ahmedabad Bench have to be ignored and the Ernakulam Bench decision alone should be regarded as holding the field as a precedent in regard to the validity of the impugned rule in so far as it gives retrospective effect."

In view of the above facts, since the judgement in O.A.No.1282/91 which is solely based on a judgement in O.A.No.1485/91 cannot be treated as precedent or binding nature in view of the above full Bench decision.

The learned counsel for the applicants has placed reliance on the decision of O.A.No.668/88 Ved Prakash and ors Vs. UOI & ors. decided by the Principal Bench on 12.9.89 alongwith O.A. No.914/88, O.A.No.985/88 and O.A.No.1010/88 by a common judgement. In that case the Bench has directed for regularisation of the services of adhoc LDCs on the basis of their Annual Confidential Report in consultation with the Staff Selection Commission. In those cases, the petitioners have been working as LDCs on adhoc basis from 8 years

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to 11 years since 1979 and they challenged the decision of the respondents to revert them to their substantive post in Group 'D' category. In that case the Principal Bench has considered the case of Jacob M. Puthuparambil & ors Vs. Kerala Water Authority & ors. reported in JT 1990(4) SC 27. A reference has also been made in the judgement to another case of Hon'ble Supreme Court of Smt. P.K. Narayani & ors Vs. State of Kerala and ors. reported in 1984 Suppl. SCC 212 and Dr. A.K. Jain & ors. vs. UOI & ors. reported in 1987 SCC 497. While quoting these cases, the Bench further observed that in Narayani's case, where Hon'ble Supreme Court directed that the petitioners and others similarly placed should be allowed to appear at the next examination. However, in the B.A. 668/88 case, the Bench has come to a conclusion that the regularisation can be done on the basis of service record. A reference has also been made to daily rated casual labour employed under P&T Department Vs. UOI & ors., 1990(1) SCC 122, which is an authority of equity in paying wages. We will discuss these case subsequently.

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The learned counsel for the applicants has also placed a reliance on a decision in O.A.No. 1153/91 decided on 31.7.92 in the case of Shri Amrish Kumar & ors. Vs. UOI & ors. The respondents in this case were UOI i.e. Department of Fertilizers, Ministry of Agriculture. Decision in this case has been arrived at taking the decision of the earlier case referred to above of O.A.No.668/88 as a precedent and without any further reasoning the same direction was given in this case. Similarly, the applicants have also placed reliance on a decision given on 13.8.92 in a bunch of cases O.A.No. 1485/91 - D.P. Gehalar & ors. Vs. UOI & ors. and covering O.A. Nos. 1745/91, 1485/91, 1980/91, 1970/91, 2006/91, 2008/91, 1896/91, 2100/91, 2400/91, 1599/91, 1642/91, 1538/91 and 1894/91. In these cases reliance has been placed in the decision of O.A. 668/88 referred to above decided on 12.4.91. While giving this judgement in para 6 of the judgement, the Bench observed ^{to the contrary} that it is well established that adhoc appointments de hors the rules do not establish any right. Further no regularisation in service can be allowed contrary to statutory rules. It cannot be that the contravention of the statutory rules, adhoc appointment is made and after

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sometimes that appointment is regularised. The statutory rules for recruitment cannot be allowed to be circumvented in this manner. It is only when there are no statutory rules for recruitment and the vacancies exist that adhoc employees or daily wager employed for sufficient length of time may be entitled to be regularised. After the statutory rules contain a provision for relaxation then possibly powers can be exercised for relaxation of the rules in favour of these employees who have rendered service for a number of years." After observing this, the Bench has again reverted to the ratio of O.A. No.668/88 and almost gave the same direction given in that case, referring to the cases of Smt. P.K. Narayani and ors. Vs. State of Kerala and ors., the case of Dr. A.K. Jain and ors. Vs. UOI & ors., and the case of Jacob M. Puthuparambil and ors. Vs. Kerala Water Authority and ors.(supra). The learned counsel for the applicant has also filed copy of the judgement of the Principal Bench in O.A.Nos. 1536/91 and 1537/91, disposed of by a common judgement by the order dated 27.2.92. But in this case the petitioners' case was dismissed for regularisation. In this case,

the judgement in O.A.No.668/88 on the basis of which the earlier judgement referred to by the learned counsel for the applicant is based has been referred to. After the decision of O.A. No.668/88 on 12.4.91, O.A.No.382/90 was decided by the Principal Bench by the order dated 10.10.91 in the case of Jagmohan Singh Vs. UOI & ors. where the claim for regularisation was rejected of Adhoc Group 'D' employee who continued to work as LDC for a number of years on the ground that he cannot earn any lien on the post of LDC without going through the process of recruitment or promotion under the relevant Recruitment Rules. The SLP filed by the aggrieved party was rejected by the Hon'ble Supreme Court. In the aforesaid judgement of Shri Manohar Lal & ors. Vs. UOI & ors. in O.A.No.1536/91, the case of Jacob M. Puthuparambil and ors. Vs. Kerala Water Authority and ors reported in JT 1990(4) SC 27 has also been considered and it was found that the Kerala Water Authority adopted the rule without previous approval of the State Government and those cannot be said to be statutory rules and were only administrative instructions, so those

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who had put in one year adhoc service were ordered to be regularised. In that case there was no rule like the rules in the present case AFHQ Clerical Service Rules, 1968/1987. Similarly, the case referred to in O.A.No.668/88(supra) directing regularisation on the basis of service record. The case of Smt. P.K. Narayani and ors. decided by Hon'ble Supreme Court has also been referred to and in that case only the petitioners i.e. Smt. P.K. Narayani and ors. were allowed to take examination through Public Service Commission and after relaxation of age, their regularisation was therefore effected through open competitive examination and not on the basis of length of service. O.A. 668/88 do not lay down the precedent as per F.B. decision (Supra).

The contention of the learned counsel for the applicant that since there are decisions of the Tribunal on other side i.e. long period on adhoc service was considered sufficient for issue of directions to the respondents to regularise the services of Group 'D' employees and other decision that any length of continuous adhoc service will not give a claim or right to such an incumbent for regularisation, so the matter may be referred to a larger Bench. However,

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we find that there are catena of decisions of Hon'ble Supreme Court which has crystallised the law and have binding nature .

Firstly we have to find out if the Hon'ble Supreme Court has directed regularisation of the service either of a casual worker or in particular circumstances of an incumbent holding for a number of years promotional post/then that decision of Hon'ble Supreme Court in those specific circumstances of those cases can not be treated as a precedent because that decision has not decided a question of law. The Hon'ble Supreme Court in the case of State of Punjab and others vs. Surinder Kumar and others reported in 1992(19) ATC 500 on the question of regularisation of part-timer work on the post of lecturers. The Punjab and Haryana High Court decision directing regularisation was reversed. The Hon'ble Supreme Court observed at page 503 of the reports which is as follows:-

"6. A decision is available as a precedent only if it decides a question of law . The respondents are, therefore, not entitled to rely upon an order of this Court which directs a temporary employee to be regularised in his service without assigning reasons. It has to be presumed that for special grounds which must have been available to the temporary employees in those cases, they were entitled to the relief granted. Merely because grounds

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are not mentioned in a judgement of this Court, it cannot be understood to have been passed without an adequate legal basis therefor. On the question of the requirement to assign reasons for an order, a distinction has to be kept in mind between a court whose judgement is not subject to further appeal and other courts. One of the main reasons for disclosing and discussing the grounds in support of a judgement is to enable a higher court to examine the same in case of a challenge. It is, of course, desirable to assign reasons for every order or judgement, but the requirement is not imperative in the case of this Court. It is, therefore, futile to suggest that if this court has issued an order which apparently seems to be similar to the impugned order, the High Court can also do so. There is still another reason why the High Court cannot be equated with this Court. The Constitution has, by Article 142, empowered the Supreme Court to make such orders as may be necessary "for doing complete justice in any case or matter pending before it", which authority the High Court does not enjoy. The jurisdiction of the High Court, while dealing with a writ petition, is circumscribed by the limitations discussed and declared by the judicial decisions, and it cannot transgress the limits on the basis of whims or subjective sense of justice varying from Judge to Judge."

In the case of Dr. Arundhati Ajit Pargaonkar

Vs. State of Maharashtra and another reported in 1994 (28) ATC 415, the Hon'ble Supreme Court has considered the legal position whether a temporary employee merely on account of ^{such} long period of service i.e 9 years should be deemed to have been regularised in service. The Hon'ble Supreme Court observed while deciding the case of the petitioner who has been working as ~~Lecturer~~ without break for 9 years that eligibility and continuous working for ~~however~~ long period

should not be permitted to overreach the law. Requirement of rules of selection through Commission cannot be substituted by humane considerations. Law must take its course. Consequently, the appellant i.e. the petitioner of the reported case was not entitled to claim that she should deem to have been regularised as she had been working without break for 9 years. Thus, this question of law has been decided by the Hon'ble Supreme Court whether the person who was appointed temporarily against a permanent post was entitled to be regularised under Temporary Government Servants Extension of Permanency Resolution issued by the State Govt. in 1975 or under any other equitable principles as she had been working continuously since then and had worked for 9 years without break and the simple answer was negative. The claim of the petitioner was rejected by Maharashtra Administrative Tribunal. In that case one of the foremost conditions for regularisation was that the original appointment of the Govt. servant must have been made in conformity with the Recruitment Rules and the prescribed method of recruitment. The present case in hand is fully

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covered by this question of law decided by the Hon'ble Supreme Court. In the present case, a Group 'D' employee who is working on regular basis after attaining 5 years of regular service can be promoted to Group 'C' post of LDC only after he qualifies in the Limited Departmental Competitive Examination as envisaged under Rule 11 and Sixth Schedule of the MFHQ Clerical Service Rules, 1968 as amended in 1987. The appointment of the applicants initially was specifically as a stopgap arrangement. Their appointment was continued from time to time with certain breaks at occasions and everytime the same service condition which has been accepted by the petitioners was laid down. The applicants have accepted those conditions of service and worked on the promotional post getting the emoluments of that post while so working. During these years they had ample opportunity to qualify for the Limited Departmental Competitive or regular recruitment Examination/for the post of LDC and those who qualified have been regularised and those who did not take the said examination or failed cannot claim their regularisation on the strength

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of continuous service they have put upto December, 1989 and thereafter they are working on the basis of an interim direction issued to the respondents to maintain status-quo and that interim direction is subject to the outcome of this O.A. The learned counsel for the applicants could not show any law that appointment dehors the rules will confer certain benefits like that of regularisation.

The Hon'ble Supreme Court has also considered the regularisation of adhoc appointees in the case of J & K Public Service Commission and others Vs. Dr. Narinder Mohan and others reported in (1994) 27 ATC 56 decided on 7.12.93. It was an appeal of judgement delivered by J&K High Court in favour of the respondents Dr. Narinder Mohan and others. Dr. Narinder Mohan and others (respondents) were appointed on adhoc basis in different disciplines of medical education. The Government relaxed the rules of recruitment and appointed on regular basis respondents Dr. Narinder Mohan and Dr. Tariq Parvez. Their appointment was challenged on regular basis one by Dr. Vinay Rampal. The learned Single Judge declared that the appointments of respondents should be in accordance with the J&K Medical Education (Gazetted) Service Recruitment

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Rules, 1979. The Government neither have power to relax the rules of recruitment nor have power to regularise the appointment of respondents Dr. Narinder Mohan as well as Dr. Tariq Parvez on regular basis. The appointments were, therefore, quashed. The appointments of other respondents were also quashed as being ultra vires of the Rules. However, on appeal the Division Bench of J & K High Court held that as the rules provide for appointment of adhoc Lecturers, their appointments were according to rules and the Division Bench gave certain directions upholding the judgement of the Single Judge upto the extent that the Government has no power to relax the rules of recruitment and the respondents are not members of the service. Since they were not recruited according to rules, that in terms of decision of Dr. A.K. Jain Vs. UOI to regularise the services of all the appellants i.e. Dr. Narinder Mohan and that of Dr. Tariq Parvez and others who were respondents before the Single Judge in consultation with PSC on revaluation of their record and conduct based on the confidential reports within three months. Against the above directions, the Public Service Commission, J&K

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filed an appeal before Hon'ble Supreme Court.

The Hon'ble Supreme Court in para 11 of the reports observed that in the case of Dr. A.K. Jain Vs. Union of India ((1992) 1 SCC 331)) gave directions under Article 142 to regularise the services of the adhoc doctors appointed on or before 1.10.1984. It was further observed that the High Court of J & K is not right in placing reliance on the judgement as a ratio to give the direction to the PSC to consider the cases of the respondents i.e. Dr. Narinder Mohan and others. Article 142 - power is confided only to the Apex Court, Further the ratio in Dr. P.P.C. Rawani Vs. UOI was also held not an authority under Article 141. It was further held that it is more in the nature of an execution and not a ratio under Article 141. Thus, the observation of the Hon'ble Supreme Court as observed in para 11 is reproduced below:-

"11. This Court in Dr. A.K. Jain v. Union of India gave directions under Article 142 to regularise the services of the adhoc doctors appointed on or before 1.10.84. It is a direction under Article 142 on the peculiar facts and circumstances therein. Therefore, The High Court is not right in placing reliance on the judgement as a ratio to give the direction to the PSC to consider the cases of the respondents. Article 142 - power is confided only to this Court. The ratio in Dr. P.P.C. Rawani V. UOI is also not an authority under Article 141. Therein the orders issued by this Court under Article 32 of the Constitution to regularise the adhoc appointments had become final. When contempt petition was

filed for non-implementation, the Union had come forward with an application expressing its difficulty to give effect to the orders of this Court. In that behalf, while appreciating the difficulties expressed by the Union in implementation, this Court gave further direction to implement the order issued under Article 32 of the Constitution. Therefore, it is more in the nature of an execution and not a ratio under Article 141. In Union of India v. Dr. Gyan Prakash Singh this Court by a Bench of three Judges considered the effect of the order in A.K. Jain case and held that the doctors appointed on adhoc basis and taken charge after 1.10.1984 have no automatic right for confirmation and they have to take their chance by appearing before the PSC for recruitment. In H.C. Puttaswamy v. Hon'ble Chief Justice of Karnataka this Court while holding that the appointment to the posts of clerk etc. in the subordinate courts in Karnataka State without consultation of the PSC are not valid appointments, exercising the power under Article 142, directed that their appointments as a regular, on humanitarian grounds, since they have put in more than 10 years's service. It is to be noted that the recruitment was only for clerical grade (Class III post) and it is not a ratio under Article 141. In State of Haryana Vs. Piara Singh this Court noted that the normal rule is recruitment through the prescribed agency but due to administrative exigencies, an adhoc or temporary appointment may be made. In such a situation, this Court held that efforts should always be made to replace such adhoc or temporary employees by regularly selected employees, as early as possible. The temporary employees also would get liberty to compete along with others for regular selection but if he is not selected, he must give way to the regularly selected candidates. Appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc or temporary employee. Adhoc or temporary employee should not be replaced by another adhoc or temporary employee. He must be replaced only by regularly selected employee. The adhoc appointment should not be a device to circumvent the rule of reservation. If a temporary or adhoc employee continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. It is to be remembered that in that case, the appointments are only to Class-III or Class-IV posts and the selection made was by subordinate selection committee. Therefore, this Court did not appear to have intended to lay down as a general rule that in every category of adhoc appointment, if the adhoc appointee continued for long period, the rules of recruitment should be

relaxed and the appointment by regularisation be made. Thus considered, we have no hesitation to hold that the direction of the Division Bench is clearly illegal and the learned Single Judge is right in directing the State Government to notify the vacancies to the PSC and the PSC should advertise and make recruitment of the candidates in accordance with the rules."

The directions issued by the Division Bench of the High Court were set aside and the findings of the Single Judge were confirmed that the vacancies be notified to the PSC which will process and complete the selection as early as possible. Here it may be recalled that the decision in O.A.No.668/88 is totally based on the ratio of Dr.A.K. Jain case(supra) and that case was taken as precedent in the judgements of C.A.T. relied upon by the applicants' counsel.

The Hon'ble Supreme Court has also considered a similar point in the case of Mukeshbhai Chotabhai Patel Vs. Joint Agriculture and Marketing Advisor, Govt. of India and others reported in 1994(28)ATC 226. In that case the petitioner was appointed in 1977 and was removed on 13.4.87.

The petitioner approached the Central Administrative Tribunal, New Bombay and the Tribunal dismissed the application of the petitioner by the order dated 19.4.90. Before the Hon'ble Supreme Court from the side of the petitioner, reliance was placed on the decided case of Bhagwani Prasad Vs. Delhi State Mineral Development Corporation reported in 1990(1)SC 361 and the Ministry of Irrigation has issued a circular that all those

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candidates temporarily appointed on or prior to 4.11.76 should be regularised. The Department for such regularisation held a test of the temporary appointees. The condition which was not accepted by the Tribunal was that there should be automatic regularisation and this view was upheld by the Hon'ble Supreme Court in the aforesaid case.

In the present case also, if the adhoc appointment was given and the applicants in all the O.As. were temporary employees they had to pass through pre-appointment test in order to be regularised in their appointment. What the applicants crave the indulgence of this court is that they should be automatically regularised in their appointment on the post by continuous length of adhocism. Thus, the contention of the learned counsel cannot be accepted de hors the rules.

The Hon'ble Supreme Court has also considered as to when adhoc appointee will come to an end. In the case of Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava reported in JT 1992(4) SC 489 where it was held that appointment purely and adhoc and contractual for a limited period - right to remain in the post

comes to an end after the expiry of the period. Now in this reported case, the High Court of Allahabad, Lucknow Bench directed the regularisation of Smt. Pushpa Srivastava relying on the authority of Jacob M. Puthuparambil and others Vs. Kerala Water Authority and ors. The appellant Smt. Pushpa Srivastava was appointed in the Institute as a Research Executive on contract basis for the period of three months. Here appointment was extended from time to time on the same terms and conditions. After three extensions of three months each, she was appointed a fresh on 28.1.1989 on a post of Executive carrying a pay scale of Rs.770-1600 and this appointment was for a period of six months. On 5.1.90 another adhoc appointment was made for a period of three months. The appointment came to an end on 21.3.90 yet she was continued beyond the prescribed period. In the meantime she has submitted her resignation but on her request she was again appointed on adhoc basis on 25.8.90. This post was directed to be abolished and her appointment was coming to an end in February, 1991. She filed the writ petition before the Lucknow Bench where it was prayed that she should be given regular and permanent appointment. Lucknow Bench of the High Court has accepted the contention of Smt. Pushpa Srivastava directing that she should

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be put back to the duty on the post held by her.

The Hon'ble Supreme Court considered the authority

of Jacob M. Puthuparambil and observed that it

turned on the interpretation of Rule 9(a)(i) of

Kerala State and Subordinate Service Rules 1958

and after extracting the relevant portion of the

rules quoted the observation in the judgement

at page 575 of that report (1990(1) Suppl.SCR 562)

The Hon'ble Supreme Court observed that there is

in the case of aforesaid Smt. Pushpa Srivastava
no such rule/and the appointment was purely adhoc

and on contractual basis for a limited period.

Therefore, after the expiry of the period of six

months the right to remain in the post comes to an

end. In the present case it may be observed

that the judgement cited by the learned counsel

for the applicants in O.A.668/88 is also based on

the authority of Jacob M. Puthuparambil and ors(supra).

Thus, the case of Dr.A.K. Jain relied in favour of

some of the Group 'D' promoted on adhoc. basis

as LDC was squarely considered on the two authorities

of Hon'ble Supreme Court^{i.e.}/one of Dr. A.K. Jain and

the other of Jacob M. Puthuparambil and others.

Both these authorities have been distinguished by

the Hon'ble Supreme Court in the decisions referred

to above. Thus the direction given in O.A.No.668/88

and in a bunch of cases and the further direction

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given in other O.A.s. on the basis of the judgement of O.A.No.658/88 cannot be said to be a good law at this point of time. Though these authorities of S.C. had already been referred to where ^{in other judgements of CAT, Principal Bench} adhoc employees working as LDC on promotion from Group 'D' post were not directed to be regularised (the case of O.A.No.1936/90 and O.A.No.1937/90.) The same law has now been laid down in the above cited cases by the Hon'ble Supreme Court.

In the case of State of Haryana and others etc. etc. Vs. Piara Singh and others reported in JT 1992(5) SC 179 the Hon'ble Supreme Court allowed the appeal of State of Haryana with certain observation with regard to the regularisation of adhoc employees. In para 44 of the reports at page 208 the Hon'ble Supreme Court observed that an adhoc or temporary employee should not be replaced by another adhoc or temporary employee; he must be replaced only by a regularly selected employee. Thus, the case of the respondents is in the present case that regularly selected candidates are waiting but because of the interim direction by the Tribunal those who have been duly selected could not be appointed. It may be recalled that

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hundreds of Group 'D' employees have been given adhoc promotion as LDC in the exigencies of the service. It may also be recalled that these Group 'D' employees are not the seniormost and as per Recruitment Rules the Group 'D' employee should come through the process of selection after qualifying preappointment test. The juniors to the applicants in Group 'D' cadre will stand totally excluded from consideration though they have put longer years of service in Group 'D' post and if all these applicants are regularised in the quota of Group 'D' employees as LDCs then there will be no room left for the seniors to occupy the post for years together and they will retire from the post they joined as Group 'D' employees without availing of an opportunity for promotion to LDC.

The Hon'ble Supreme Court has also considered the power of regularisation of the Government or the competent authority in the case of Surinder Kumar Gyani Vs. State of Rajasthan and another reported in JT 1992(5) SC 293. In that case the petitioners who were appointed as clerks on temporary posts as a stopgap measure and the terms of service can be terminated without notice

or on making proper recruitments. The State Service Commission made regular appointments. The High Court of Rajasthan dismissed their claim for regularisation and the same was upheld by the Hon'ble Supreme Court. The Hon'ble Supreme Court has also referred to a number of decisions of the Apex Court while rejecting the appeal filed by the petitioners.


In view of the above position of law the applicants cannot claim as a right regularisation to the promotional post of LDC. As regards the passing of the typing test that was only to test their suitability to work on the adhoc post of LDC.


The learned counsel for the respondents has also referred to the case of Food Corporation of India Vs. Thaneswar Kalita and ors. reported in 1995 S.C. SLJ 485 where the Hon'ble Supreme Court has taken the view that if adhoc promotions are given not in accordance with rules and incumbent continued as such for a long time he cannot count the adhoc service for the purpose of seniority on regularisation to service as per rules. Though the matter primarily concern the seniority but it washes out the whole of the

adhoc service as not relevant to the purpose of seniority and no weight is attached to the service. The learned counsel for the respondents has also referred to a case of State of Orissa and another Vs. Dr. Pyari Mohan Misra reported in 1995(1)SC SLJ 259. Here the Hon'ble Supreme Court held that mere prolonged continuance of adhoc service does not ripen into a regular service to claim permanent or substantive status.. This was an appeal by the State of Orissa against the decision of Orissa Administrative Tribunal. The petitioner before the Tribunal Dr. Pyari Mohan Misra was appointed as Director of Fisheries on 12.8.1971 on adhoc basis. He was directed to continue temporarily until further orders. He was directed to be reverted by the notification dated March 18, 1977 from the post of Director to the post of Joint Director. The Hon'ble Supreme Court has to consider whether the reversion of Dr. Misra was valid or not. The Hon'ble Supreme Court upheld the reversion of Dr. Misra to the post of Joint Director and quashed the direction of the Tribunal though certain benefit was given under the power exercised by the Hon'ble Supreme Court under Article 142.

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In view of the above facts and circumstances we find that the applications are totally without merit and are therefore dismissed leaving the parties to bear their own costs. The interim direction issued is vacated.


(B.K. SINGH)
MEMBER(A)


(J.P. SHARMA)
MEMBER(J)

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