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Central Administrative Tribunal
Principal Bench, New Delhi.

D.A.No.379/1989

New Delhi, This the 23rd Day of March 1994

Hon'ble Shri C.J.Roy, Member(J)

Hon'ble Shri P.T. Thiruvengadam, Member(A)

Shri Krishan Lal Behl
S/O Shri Parsotlal
LDC Typist
Office of the Development Commissioner for
Cement Industry, Department of Industrial
Development, 7, Rajendra Palace,
Sethi Bhavan,
New Delhi - 110008.

r/o Krishan Lal Behl
House No.93/94, Vihar Village
Post Office, Tilak Nagar
New Delhi - 110008.

..Applicant

By Advocate Shri G D Bhandari

Versus

1. Union of India Through
The Secretary
Ministry of Industry
Department of Industrial Development,
Udyog Bhavan, New Delhi.
2. The Development Commissioner
for Cement Industry
Department of Industrial Development
7, Rajendra Place, Sethi Bhavan
New Delhi- 110008.
3. Secretary,
Ministry of Personnel
PG & Pension
(Department of Personnel & Training)
North Block
New Delhi - 110001.

...Respondents

By Advocate Shri P P Khurana

ORDER

Hon'ble Shri C.J. Roy, Member(A)

1. This applicant is appointed as Lower Division Clerk cum typist under the Ministry of Industry in the office of Development Commissioner for Cement Industry. The applicant claims his name was registered in the employment exchange on 30.3.78 and it was renewed from time to time. In 1982 when asked for sponsorship of list of candidates, the employment exchange sent the names along with that

of applicant to Development Commissioner Cement Industry and later on he was appointed as LDC-Typist Grade Rs.260-400. It is the case of the applicant that he fulfils all the conditions stipulated in the Recruitment Rules for Group C post. As directed by Respondent No.2 he appeared for the typing test and passed the test also. After that Respondent No.2 issued an appointment order to the applicant to join as LDC-Typist in the cadre of Central Secretariat Services Group 'C' Ministerial on 29.7.83. He was also directed to undergo a medical test and he claims that he has passed the medical test and he was directed to join in the post of LDC/Typist and accordingly and joined duty as per appointment order dated 10.8.83(Annexure A-2). The applicant claims that he has been working in the department with intermittant breaks continuously upto 1.9.85. Subsequent to 1.9.85 also he claims that he has been continuously working but he did not show any appointment order. The applicant states that the appointment order contains conditions that "appointment is purely on adhoc basis and can be terminated at any time without notice and without assigning any reasons therefor." He assailed this condition laid down in the appointment order. He further assailed that he was already expecting regularisation in the post for which he also made request.

2. He claims that the Department of Personnel & AR ordered for holding examination for regularisation of the services of the adhoc employees to be conducted by the Staff Selection Commission(SSC) in the year 1985. Subsequently a list of names was circulated accordingly

(Annexure A-5) calling for applications from the staff who were initially appointed on adhoc basis. The applicant also submitted his application to be forwarded to SSC so that he could be taken in for the examination, ~~that~~ ^{which} was to be conducted. But his application was not forwarded. He was making representation continuously and he was not replied. The applicant even claims that he has requested the respondent that his name be kindly forwarded to the Surplus Cell for being considered for an alternative post and an expeditious action may be taken. The respondents have not forwarded the application and returned the same to him without assigning any reason. The applicant claims that he has forwarded another application dated 29.1.87 for being considered in the examination that is to be conducted on 8.3.87 and his claim was not not considered. No reasons were given and that he addressed all the top officials of the Department. The applicant claims that similarly situated adhoc employees of the same office were sent to SSC examination like Smt. Bimla Rani and Km. Rama Narula. But the applicant name was not sponsored. Therefore, the applicant further made representation and raised all the allegations which more or less are on the same grounds. With this background, the applicant filed this OA claiming a relief to set aside and quash the respondents O.M. No. 381/89-Estts dated 02 Feb 1989 whereby the services of applicant have been impliedly directed to be terminated by reporting the vacancy to the SSC for filling up the post on regular basis.

3. The respondents have filed a counter more or less accepting that he was appointed now and then temporarily purely on adhoc basis and that the applicant has no right to continue in the appointment since he was appointed only on adhoc basis. When the services

of the applicant were terminated on 31 Aug 1985, the applicant did not question the same at that time. Therefore, the case is barred by limitation as the applicant has raised this issue before this Tribunal after a lapse of three years. He also stated that a proposal was also sent for regularisation the adhoc appointment of the applicant to the Ministry of Personal, Govt of India and that was not agreed to by the Ministry of Personnel since it is against the rule.

4. The counsel for the applicant also filed a rejoinder more or less accepting the same points.

5. Besides based on our direction of this Bench, the learned counsel for the applicant has also filed an affidavit stating the strength of the office and also a statement showing categoriwise staff position. The respondents have also filed through their departmental representative two orders dated 23.1.1992 and 16.3.94. The short point to be considered for us is whether the applicant is entitled for the relief claimed by him. It is pertinent to note that the applicant has obtained an interim order and continuing in the same department.

6. That apart, we have been informed that this particular branch of the department has been directed to be wound up by an order No.16(9)/85-Cem dated 23-1-1992 and some persons of various cadres are kept to carry out the winding up activities. In another letter No.16(27)/92-Cem dated 16-3-94, the respondents have also stated that six persons have been approved to work in the Residual Cell and the department will be functioning upto 30.6.94. Though the ^{decision of} winding up was taken

in Jan 1992 the process is not completed even in March 1994. To consider the claim of the applicant that his name being sent for another alternative post we had to look into the following aspects:-

- (a) The department will be wound up by end of June 1994 which is three months from now.
- (b) ~~the~~ ^{Even if} applicant is sponsored from the employment exchange ~~though~~ the recruitment rules has specified that he should undergo a SSC test. It is not the case of that applicant that he has undergone the test conducted by the SSC.

Therefore the basic recruitment rules are not satisfied by the applicant. That apart the applicant has overaged to the poste at the time of joining the office. Hence his name could not be sponsored for appearing in the special examination conducted by SSC for appointment to the post of LDC. But the applicant argued that this is not his fault. But the fault of the department. It cannot be accepted because when he is sponsored through employment exchange he is overaged and for adhoc appointment the age requirement was not strictly followed. In view of the fact that the department is being wound up, it would be an exercise in futility to given an order to consider his case to a department which is in the winding up process. However, the applicant deserves sympathy and it is fondly hoped that the respondent would consider his case sympathetically. The interim order passed already stands vacated without prejudice to the department considering the case of the applicant sympathetically. In view of these circumstances the DA is disposed of in the above lines. No costs.

P.T. Thiruvengadam
(P.T. THIRUVENGADAM)
Member (A)

C.J. Roy 23/3/94
(C.J. ROY)
Member (J)