

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 695/89, 735/89, 198
T.A. No. 737/89, 767/89,
804/89, 816/89

DATE OF DECISION 30.11.90

Harvinder Kaur
Ms. Karuna Kumar
Ms. Sushma Verma
Mrs. Rajni Takkar
Mrs. Sunita Dhingra
Ms. Manisha Nanda

Petitioner

Sh.G.D.Bhandari & Sh.B.S. Mainee Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri K.C. Mittal

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.C. Jain, Administrative Member.

The Hon'ble Mr. J.P. Sharma, Judicial Member.

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. Whether it needs to be circulated to other Benches of the Tribunal? *No*

MGIPRRND—12 CAT/86—3-12-86—15,000

J.P. Sharma
(J.P. SHARMA)
MEMBER (J)

P.C. Jain
(P.C. JAIN)
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Date of decision: 30.11.90.

DA 695/89

HARVINDER KAUR

... APPLICANT

COUNSEL SHRI G.D. BHANDARI

DA 735/89

MS. KARUNA KUMAR

... APPLICANT

COUNSEL SHRI B.S. MAINEE

DA 737/89

MS. SUSHMA VERMA

... APPLICANT

COUNSEL SHRI B.S. MAINEE

DA 767/89

MRS. RAJNI TAKYAR

... APPLICANT

COUNSEL SHRI B.S. MAINEE

DA 804/89

MRS. SUNITA DHINGRA

... APPLICANT

COUNSEL SHRI B.S. MAINEE

DA 816/89

MS. MANISHA NANDA

... APPLICANT

COUNSEL SHRI B.S. MAINEE

VERSUS

UNION OF INDIA & OTHERS

... RESPONDENTS

COUNSEL SHRI K.C. MITTAL

CORAM:

HON'BLE SHRI P.C. JAIN, ADMINISTRATIVE MEMBER.

HON'BLE SHRI J.P. SHARMA, JUDICIAL MEMBER.

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA)

The applicants employed as Stenographers Grade 'D', on ad hoc basis, in the Ministry of Transport, Department of Surface Transport have filed these applications under Section 19 of the Administrative Tribunals Act, 1985.

The applicants assailed the order of the cessation of their services as ad hoc Stenographers on the joining of regular duly selected stenographers Grade 'D'. Some of the above named applicants were even asked to go to the Ministry of Environment to take assignment as Stenographer Grade 'D' on fresh appointment. The applicants in the separately filed OA's prayed for quashing of the order terminating their services with a direction to the Respondents to regularise their services.

2. The applicant in OA 695/89 Smt. Harvinder Kaur was issued an appointment letter (Annexure A 2) on 15th May, 1986 as Stenographer 'D' on purely ad hoc and temporary basis from 21-4-1986 (forenoon) to 31-5-1986 or till the qualified candidates become available whichever is earlier. This initial appointment was made by a short departmental examination to test the knowledge of typing and shorthand of the applicant after her name among others, was sponsored by the Regional Employment Exchange. The applicant continued in the employment by getting the renewal after every two or three months. She received a memo dated 16th February, 1989 (Annexure A 1) informing her, that Department of Personnel and Training have nominated a number of qualified candidates in Grade 'D' of Central Secretariat Stenographers Service (CSS) with the result that the services of ad hoc stenographers would not be required as and when regular stenographers join and so her services shall stand terminated as soon as regular candidates nominated by the Department of Personnel and Training report for duty. The applicant assailed the order by filing the present OA on 3-4-1989. On 5-4-1989, a Bench of this Tribunal ordered for maintaining

contd...

status quo as on date and the same position is continuing till today. The claim of the applicant is for the relief that the memo dated 16-2-1989 (Annexure A 1) be quashed. The case of the applicant is that she was sponsored by the Employment Exchange and after her passing the examination of shorthand and typing, she was given appointment on temporary and ad hoc basis by the Office Order dated 15-5-1986. She has been working since then to the entire satisfaction of the authorities and there has been no break in the service. It is further stated that though the applicant was appointed on temporary ad hoc basis yet she holds a regular post and so her appointment for all purposes is a regular appointment. She has also been allowed regular yearly increments and she has also been beneficiary of C.G.H. Scheme. It has been further stated by the applicant that the OM of D.P. & A.R. dated 30th December, 1976 has been violated as there is no mention in the appointment letter that the appointment will not bestow upon the applicant the right to claim the regular appointment and that the ad hoc service rendered by her would not count for the purposes of seniority etc. The Department of Personnel & Administrative Reforms ordered for holding the examination for regularisation of the services of the ad hoc employees to be conducted by the Staff Selection Commission for the year 1985. The applicant submitted an application in terms and policy directive thereof to the respondents to be forwarded to the SSC but the same was returned to her and not forwarded to the SSC enabling the applicant to take the test so as to be eligible for regularisation.

3. The applicant, therefore, took the ground that she has been continuing on ad hoc appointment eversince

(11)

21-4-1986, without any break, for almost three years, cannot be ceased, arbitrarily which shall be violative of OM dated 24-11-1979 issued by the Department of Personnel & Administrative Reforms (Annexure A-6). The above OM specifically lays down that the ad hoc appointment can be made only in unavoidable cases for a maximum period of 6 months. The OM further provided that this period of 6 months may be extended upto one year. Another ground taken is that the applicant has acquired prescriptive right on the post of Stenographer Grade 'D' and she cannot be now ceased from the service so the order dated 16-2-1989 (Annexure A 1) is arbitrary and discriminatory.

4. The respondents contested this application and pointed out that there are definite Recruitment Rules for recruitment to the Grade 'D' of the CSSS which is made after an all India Competitive Examination is conducted by Staff Selection Commission in the manner notified in the Central Secretariate Stenographers Service (Competitive Examination) Regulations, 1969, as amended from time to time by the Government of India. The written examination consist of four papers, namely,

- i) Language Test, Test for general awareness,
- ii) Shorthand and (iii) Typewriting. The applicant has not taken that examination.

5. It is further stated that the requirement of Department of Personnel and Administrative Reforms OM dated 30-12-1976 has been fully made applicable at the time of initial appointment of the applicant as the orders of appointment would clearly show that the appointment of the applicant was purely ad hoc and will not bestow upon a person a claim for regular appointment and that ad hoc service will not be counted for seniority etc. The applicant also never made any request for regularising her services.

(1D)

It is further stated that regarding the competitive examination by the Staff Selection Commission (S.S.C.) the advertisement is made in various newspapers including Employment News throughout India and the applicant had ample opportunity to avail all those chances. The S.S.C. had conducted a special qualifying examination in 1987 for Stenographers Grade 'D' (Ad hoc) who had completed one year ad hoc service in that capacity during the period from 1-1-1985 to 30-9-1986. Since the applicant Harvinder Kaur had joined this Ministry on 21-4-1986, she was not eligible to appear in the above said examination. The applicant, at her own, was at liberty to appear in the open competitive examination of Stenographers Grade 'D' which was advertised in the Newspapers throughout India. The applicant cannot have any claim for regular appointment in comparison to the regular candidates selected and recommended by the Department of Personnel and Administrative Reforms. The respondents have already given offers of appointment to 13 candidates and if the applicant does not vacate her post, the regularly selected candidates will not be able to get the post duly offered to them.

6. In view of the above, the respondents have stated that the applicant has no case and the same be dismissed.

OA 735/89 Ms. Karuna Kumar Vs. Union Of India.

7. The applicant in this case challenged the action of the respondents in terminating the services of the applicant after having granted an extension to the applicant upto 31st March, 1989. The facts of this case are similar to the one given in OA 695/89, inasmuch as the applicant was also appointed by a short departmental examination as Stenographer Grade 'D' by the appointment letter dated 11-3-1988. The initial appointment was from 14-3-1988 to

B

30-5-1988. Subsequently, the applicant was again appointed from 31-5-1988 to 31-7-1988, 1-8-1988 to 31-10-1988, 1-11-1988 to 31-12-1988, 1-1-1989 to 28-2-1989 and 1-3-1989 to 31-3-1989. In April, 1989, the present application has been filed. The various letters, extending the period of service of the applicant from time to time are alongwith the counter filed by the respondents (Annexure-2 page 22 to 27 of the paper-book). Though the applicant has not assailed any particular order yet she has assailed the decision of the respondents conveyed to her in office order dated 3rd March, 1989 that the period is extended till 31st March, 1989 or till the qualified candidates become available, whichever is earlier, on the post of Stenographer Grade 'D' (Annexure 3). The grounds taken by the applicant in the original application are that the decision of the respondents to terminate the service is violative under CCS (Temporary Service) Rules, 1965. Further, no show cause notice or opportunity was afforded to the applicant and that the applicant was working against regular post for the last more than one year. It is further contended that since the applicant had already qualified the test so she should have been regularised in her appointment as she has been continuously working against a regular post in a satisfactory manner.

8. The respondents have contested the application and almost took the same stand as has been taken in the counter filed in OA 695/89 referred to above. It is further stated that the applicant's ad hoc appointment does not attract the provisions of CCS (Temporary Service) Rules, 1965 and the applicant is no more in

contd...

were in service from 30-3-1989 as stated at page 4 of the counter. The applicant cannot be taken back on the post which has already been filled up by a regular incumbent duly selected by the Staff Selection Commission.

OA 737/89, Sushma Verma Vs. U.O.I.

The case of the applicant is also similar to that of the above applicant in OA 735/89 except that the applicant joined on 21st April, 1986 after passing a short departmental Stenographers' test. She having been sponsored by the Employment Exchange. Initially, the applicant was appointed till 31st May, 1986 but subsequently her appointment was extended from 1-6-1986, 1-9-1986, 1-12-1986, 1-3-1987, 1-4-1987, 1-5-1987, 1-6-1987, 1-7-1987, 1-9-1987, 1-11-1987, 1-2-1988, 1-5-1988, 1-7-1988 and 1-9-1988 to 31-10-1988 or till the qualified candidates become available, whichever is earlier. It is averred in the application in para 4-6 that the applicant was required to apply to the Staff Selection Commission and get her-self selected before she could be regularised on the regular post. The applicant appeared in the examination which took place in February, 1989 (the respondents have denied this fact). The appointment of the applicant has been extended also beyond October, 1988 by orders passed on different dates and ultimately by the order dated 3rd March, 1989 her appointment was extended up to 31st March, 1989 (Annexure A-3). This order clearly indicates that the services of the applicant shall continue as Grade 'D' Stenographer till the regular incumbents join on the post or till 31-3-1989 whichever is earlier. The applicant was also informed vide letter dated 29-3-1989 that she can report to the Ministry of Environment and Forests for fresh appointment as there were vacancies in that Ministry (Annexure A 4). The applicant

(JS)

apprehending her termination of service like others has come to the Tribunal in April, 1989 and assailed the impugned order dated 3-4-1989 (Annexure A-1). The applicant was also informed that her services are placed at the disposal of Ministry of Environment and Forests from 3rd April, 1989. The applicant also stated that she has not been served with any notice as provided under CCS (Temporary Service) Rules, 1965. The impugned order is not a transfer order but a termination order.

The respondents have contested the application and took almost the same grounds as taken in the Reply filed in the other Applications. It is contended that the willingness of the applicant was sought whether she was ^{an} desirous of having/alternative employment in the Ministry of Environment and Forests. She has exercised her willingness on her sweet will. The respondents were making sincere efforts to keep the applicant to get an alternative job. It is further stated that CCS (Temporary Service) Rules, 1965 are not applicable to the ad hoc employment. The applicant was initially offered the post with the clear understanding that her appointment will be on purely ad hoc basis and up to the time when qualified candidates become available. The respondents have also been informing the applicant that the services are purely on ad hoc basis and will not bestow upon her any claim for regular appointment and the services shall be liable to be terminated as soon as the qualified candidates become available. The respondents have filed various orders of extending the term of service of the Applicant mentioning this condition (Annexure 2, pages 25 to 44 of the paper book.)

OA 767/89 Mrs. Rajni Takyar Vs. U.O.I.

The applicant in this case, like the other applicants, has challenged the decision of the respondents by which the respondents had decided to terminate the services of the applicant. No notice of termination was served but the applicant apprehending the termination, has filed this application under Section 19 of the Administrative Tribunals Act, 1985. The applicant was appointed as Stenographer Grade 'D' after taking a short departmental examination of typing and shorthand and was given appointment from 21-4-1986 laying down the terms and conditions of the appointment. The initial appointment of the applicant was from 21-4-1986 to 31-5-1986 and the same was extended from time to time as of Sushma Verma in OA 737/89. The applicant has filed the order dated 3-3-1989 (Annexure A-2) whereby the services of the applicant were extended from 1-3-1989 to 31-3-1989 or when regular qualified incumbent joined on the post of Stenographer Grade 'D'. The applicant almost took the same grounds as taken by the applicant in OA 737/89.

The respondents contested the application by filing counter and almost took the same objections to the application which have been taken in OA 737/89 referred to above. It is contended by the respondents that the appointment of the Applicant is only till the time a qualified selected candidate by S.S.C. joined the post.

OA 804/89 Smt. Sunita Dhingra Vs. U.O.I.

The applicant like the other applicants in the above noted cases challenged the decision of the respondents to terminate the services of the applicant. The applicant was initially appointed on 27-12-1985 till

(P)

31-3-1986 on a purely ad hoc basis through the appointment letter at Annexure 1. It appears that her appointment continued from time to time by extending the same. By order dated 3rd April 1989, the services of the applicant along with those of four others were placed at the disposal of Ministry of Environment and Forest (Annexure A 2). By another letter dated 4th April, 1989 (Annexure A 3), their services were terminated and they were asked to report for duty in the Ministry of Environment and Forests. By another order dated 4th April, 1989 (Annexure A-4), Office order dated 74/89 (Annexure A-2) and the order of termination dated 4th April, 1989, (Annexure A-3) were cancelled. The applicant claimed the relief on the grounds taken in other aforementioned applications that a direction be issued to the respondents to absorb the applicant in the department against the vacancy/and to regularise her services on the said post.

The respondents have filed their counter taking almost the same pleas as taken in the other aforementioned cases. The applicant was sponsored to the Ministry of Environment and Forests only when she opted to join that office on her sweet will. The orders dated 3/4th April, 1989 had to be cancelled as the Ministry of Environment and Forests showed reluctance to take the applicants. The applicant has no right to hold the post and is not governed by ECS (Temporary Service) Rules, 1965 as she had been only appointed as an ad hoc employee for a fixed term. The applicant has not made any attempt to appear in the competitive examination. The applicant was appointed only on ad hoc basis after taking a shorthand and typing test in the Department itself. The respondents have filed Annexure-2 from page 26 to 42 showing the various extensions of the appointment of the applicant from time to time and subsequently informing the applicant that the services

of the applicant shall cease the moment the selected candidates by the S.S.C. join.

OA 816/89, Ms. Manisha Nanda Vs. U.C.I.

The applicant like the other applicants of the above referred OAs filed the application against the order dated 12-4-1989 (Annexure 1) informing her that her services were no longer required with effect from 12-4-1989. The case of the applicant is that she was sponsored by the Employment Exchange and took a departmental examination of shorthand and typing and was appointed as an ad hoc employee by the respondents by the letter dated 12-8-1986 (Annexure A-2). The initial appointment was till 31-8-1986 after which it was extended from time to time. The appointment was finally extended upto 31st March, 1989 by the letter dated 3rd March, 1989 (Annexure A-3). However, the services of the applicant were terminated on 12-4-1989 without giving one month's notice. It is said that the applicant should have been served with a notice as she was a temporary stenographer to be governed by CCS (Temporary Service) Rules, 1965. The applicant prayed for the relief of regularisation and absorption on the post on which she had been working for the last more than 3 years. It is prayed by the applicant that she should be regularised on the same post.

The respondents contested the application almost on the same grounds as taken in the other OA's. It is said that the applicant has not come through an All India test which is conducted by the S.S.C. has four papers, (1) General Knowledge Test, (2) Test of General Awareness (3) Shorthand, and (4) Typing test. As the appointment of the applicant was purely on ad hoc basis, a test only in Shorthand and Typing was taken by the Department itself

and in the offer of appointment also it was made clear to the applicant that the appointment is of a purely ad hoc nature. She accepted the terms and conditions contained in the offer of appointment. As an ad hoc employee, the applicant is not governed by the CCS (Temporary Service) Rules, 1965. The respondents have also filed Annexure-1 running from pages 24 to 50 showing the various extensions allowed to the applicant from time to time regarding her ad hoc employment to end on the joining of a regular incumbent after selection by the S.S.C.

We have heard the learned counsel for the parties at length and have gone through the records of the cases. The applicants in all the OAs were appointed as Stenographer Grade 'D' on purely ad hoc temporary basis for a period of two months and subsequently this period was extended sometime by a month and sometime by 2-3 months. The ad hoc nature of appointment continued in these cases till 31st March, 1989. At that stage, regular incumbents for the posts of Stenographer Grade 'D', who were duly selected after examination by S.S.C. reported for joining with the respondents, and in view of the terms and conditions of appointment of the applicants, the applicants were asked by the respondents to make way for the joining of the new duly selected incumbents on the posts on which the applicants were working. The applicants, therefore, have come to the Tribunal and in some of the cases orders have been passed as a measure of interim relief that the status quo on the date be maintained by the respondents and in some cases, the services ceased the moment the duly selected incumbents joined at the posts. However, those who have since been working by virtue of the orders issued by this Tribunal would not

get any advantage as their continuation in service was under the orders of the Tribunal. It is not denied by the applicants' counsel that the posts of Stenographer Grade 'D' of the CSSS are to be filled through All India Examination conducted by the Staff Selection Commission according to the Central Secretariat Stenographers Service (Competitive Examination) Regulations, 1969 as amended from time to time and the examination consists of four papers. (1) General Knowledge test, (2) Test of general awareness, (3) Shorthand and (4) Typing test. Advertisement is published in the newspapers and Employment News. After the examination, the successfully candidates are appointed. However, this selection procedure takes some time and Ministry of Surface and Transport being in dire necessity of Stenographers asked the Regional Employment Exchange to send some names for ad hoc appointment and on having received the names of these applicants along with the others, a shorthand and typing test was held departmentally and on the basis of the same, the appointment letters were issued. The appointment letter issued to one of the applicants Ms. Sunita Dhingra in OA 804/69 (Annexure A-1) shows that: " This appointment is purely provisional and temporary upto 31.3.86 or till the qualified candidates becomes available whichever is earlier. This appointment will not confer any right on the appointee for claiming regular absorption in the Government service."

Similar appointment letter exists in OA 735/69 of Ms. Karuna Kumar also. However, in the cases of other applicants, these appointment letters have not been filed but the various extensions in service which have been allowed to the applicants from time to time and filed as Annexure-2 to the counter by the respondents, go to show that these applicants were fully informed that the extensions were for definite periods and the service may even cease earlier from the such extended date in case the selected candidates join on the post. It, therefore,

cannot be disputed that the appointments of the applicants were purely for a definite period as/stop-gap arrangement. The term 'ad hoc' in its true sense means 'Stop-gap'. The ad hoc employees means an employee appointed as a stop-gap arrangement for a particular purpose and as soon as the purpose is over the person holding the appointment/post can be reverted or his services can be terminated. In the present case, the applicants were duly informed at the time of offering ad hoc appointment that their services are purely temporary and till such time regularly selected candidates are available. During all this period there have also been examinations conducted by the S.S.C. and the applicants were within their right to qualify and Miss Sushma Verma has mentioned in her OA that she took the examination and the result is still awaited but it is not made out whether any of the applicants took the examination and passed with merits the same. The main question, therefore, that arises is whether such ad hoc appointments have to be regularised which are dehors the rules. There are no rules which govern the ad hoc appointments, as initially with the knowledge of such appointees they are given stop-gap postings till such time the regularly qualified selected candidates join their places.

Regarding these appointment letters, the learned counsel for the applicant in OA 695/89, Mr. Bhandari pointed out that according to terms in the appointment letter, the appointment letter itself is illegal and against the principles of natural/justice and the same cannot be enforced under Section 23 of the Indian Contract Act. The learned counsel has referred to Delhi Transport Corporation Vs. D.T.C. Mazdoor Corporation, reported in 1990 Current Service Journal SC page 185. It is held that exercise of the uncanalised discretionary power impinges on the

rights of the person. In fact, the authority relied upon by the learned counsel for the applicants has totally different facts. In the present cases, the applicants were clearly told at the time of initial appointment that they were being appointed on purely ad hoc and temporary basis till the regular qualified candidates become available. Thus, the appointment letters issued to the applicants are very clear and unambiguous. The appointment letters are the very basis which brought the applicants in service of the respondents and now they are estopped to go back and interpret the same in their own way.

The learned counsel for the applicants argued that since the applicants have worked for more than 240 days in a year and some of them might have become over age, so the applicants should be regularised in their appointments. The learned counsel for the applicants have placed reliance on the unreported judgement of the Punjab & Haryana High Court in C.W.P. 72 of 1988, Pyare Singh, Government Senior Sec. Schook Sirsa Vs. State of Haryana. The Hon'ble High Court of Punjab & Haryana allowed the writ petition. In the aforesaid case, Shri Pyare Singh, a teacher in Government Senior Secondary School, Sirsa filed a writ petition against the State of Haryana before the Hon'ble High Court of Punjab & Haryana, Chandigarh. The petitioner in the writ petition prayed for regularisation after framing a rational policy in view of the law laid down by the Hon'ble Supreme Court. A catena of decisions have been relied upon by the learned counsel for applicants Shri Mainee. The first such case referred to is of Ratan Lal Vs. State of Haryana, 1985(3) SLR 548. This was a case of teachers of the State of Haryana, who were working on ad hoc basis. Direction in this case was issued by the Hon'ble Supreme Court to allow the ad hoc teachers to continue to work and a further direction was

OB

given to the Government to frame a policy in regard to their regularisation. The authority cited by the learned counsel was about the regularisation of teachers working in the State of Punjab. In the present case, there are definite recruitment rules for recruitment of the Stenographers Grade 'D' and the examination is conducted yearly by the S.S.C. on the basis of those rules. The applicants herein could avail every chance available to them to appear in the said examination but it is not evident from the record whether any of the abovenamed applicants took that examination and passed the same. Moreover, in the appointment letters initially issued to the applicants, it was clearly specified that their services are purely on ad hoc and temporary and that the services shall cease the moment the duly selected candidates join those posts. The applicants have not undergone the regular process of selection except that their names were sponsored by the Employment Exchange and only Shorthand and typing test was taken departmentally. Alongwith the applicants all those persons who were eligible to take the examination on all India basis were not considered. The authority, therefore, cannot be relied upon in the context of the present case. The other authority relied upon by the learned counsel for the applicants are Mr. Inder Pal Yadav Vs. Union of India, 1985(2) SLR 248, Dakshin Railway Employees Union Trivandrum Division Vs. General Manager, Southern Railway, AIR 1987 SC 1153. Both these authorities relied upon related to casual labourers in the employment of the Railways, where there are specific rules for regularisation of the services of casual labourers. Thus, these two authorities also are not relevant in the context of the present case. The learned counsel has further placed reliance on Surinder Singh Vs. The Engineer-in-Chief, C.P.W.D., AIR 1986 SC 584 and Daily Rated Casual Labour Employed under P & T Department through Bhartiya

24

Dak Tar Mazdoor Manch Vs. Union of India, AIR 1987 SC 2342. In both these authorities, the matter relates to temporary and daily wage workers designated as casual labour who have been continuously working. There were no rules for engaging these casual employees in these Departments. Since they continued to work from a longer period, and as there was work available for them in the department concerned, so instead of engaging fresh labour from the market it was directed that as and when the vacancies occur in the cadre these daily rated casual labourers be regularised. Similarly, the other authorities cited by the learned counsel, Income Tax Department Contingent Paid Staff Welfare Association Vs. Union of India AIR 1988 SC 317, Delhi Municipal Karamchari Ekta Union (Regd.) Vs. P.L. Singh, AIR 1988 (SC 519, Gainda Ram Vs. M.C.D. 1986(1) S.L.R. 327 and The General Secretary Bihar State Road Transport Corporation, Patna Vs. The Presiding Officer, Industrial Tribunal Patna, 1988 (1) S.R. 349, also do not have application to the facts of the present case. In all these cases the matter relates to those departments where no rules or administrative instructions existed according to which the labourers were to be employed and they were taken as and when necessity arose in order to cope with the work. In none of the above cases there was any pre-appointment test on All India basis before getting a regular appointment. In most of these reported cases, the salaries and other allowances of the employed persons were to be paid from the contingent funds and there were no regular vacancies of substantive nature. Even, in these cases it has been directed by the Hon'ble Supreme Court that on the basis of length of service and seniority the persons should be absorbed as and when there are regular vacancies in the cadre because those who had been engaged came under the understanding that they would get a permanent employment in due course of time.

contd...

55

However, in the present case, at the initial appointment of the applicants, it was clearly indicated that their appointment was only till the specified time or even earlier to that, when the regular duly selected candidates join in their places.

In Narendra Bahadur Srivastava Vs. Public Service Commission, U.P. 1971 SLR page 414, the nature of the ad hoc appointment has been defined:

"an appointment can be said to be on ad hoc basis only when it is known at the time of the appointment that it is for a specified period, on a temporary basis being created for a specified period, or made in a leave vacancy or in a vacancy caused by an officer going on deputation."

In the present case, the appointment was clearly made only for a duration till the duly selected candidates could join and replace the applicants.

In the case of Dr. A.K. Jain Vs. Union of India, 1987 Supplement SCC page 497, relied by the learned counsel for the applicants, the Hon'ble Supreme Court had held that the U.P.S.C. selected candidate are to be accommodated in any case and the ad hoc appointees should be regularised as far as practicable by consulting the U.P.S.C. if they are fit for the post and if there are vacancies and they applied for direct selection. Thus, on the authority of Jain's case also there is no ambiguity and the S.S.C. selected candidates must be accommodated and will have a first priority. However, in the Jain's case the ad hoc appointees were allowed to continue in the extra vacancies available but till the time they were selected by the U.P.S.C. In the present case, the applicants had chances available to them to appear in the Stenographers' Grade Examination yearly conducted by the S.S.C. on all India basis but it appears the applicants did not like to avail of the chances.

26

In view of the above, the learned counsel for the applicants has not been able to show that merely working on a post for a number of years will vest the applicants with the right to get regularised on a post which is meant to be filled by a regular recruitment under the statutory rules. A similar matter came before the Principal Bench in the case of Devender Kumar Vs. Union of India and Ors. (1990) 12 ATC p.625 wherein a Lecturer of Political Science was appointed on ad hoc temporary basis in 1982 and he continued to serve for four years. In the meantime, the respondents, Union of India advertised the post and the applicant came to the Tribunal apprehending that he will be removed from the job because he has no scope even to apply against the advertised post on account of the fact that he does not possess the M. Phil degree. The Principal Bench dismissed the application as devoid of merits and discarded the plea taken by the applicant in that case, that the applicant stood regularised because he continued for a long time in the service.

In the latest judgement of Direct Recruits Class II Engineering Officers Association Vs. State of Maharashtra and others reported in JT 1990 page 264, the Hon'ble Supreme Court summarised the finding regarding seniority between Direct Recruit and promotee Engineers giving the benefit to promotee engineers only of the ad hoc service from the date of their continuous officiation if their appointment has been in accordance with the relevant rules. In para 44 (A) it has been observed:

"The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such a post cannot be taken into account for considering the seniority."

contd...

23

It had been further observed in Clause B of para 44 that:

"If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

It is further evident that in order to be regularised against a clear vacancy an ad hoc appointee has to pass the test prescribed for the same according to the rules for being a member of the service. In the present case, none of the applicants have cleared the examination which is conducted by the S.S.C. on an annual basis in accordance with the Central Secretariat Stenographers Service (Competitive Examination) Regulations, 1969. All these applicants knew very well that their appointment was till such time the regular duly selected incumbents from S.S.C. join in their places.

In OA 1103 of 1986 Sushil Kumar Chandel & Ors., Vs. Union of India decided on 24-9-1990 by the Principal Bench, a similar question of regularisation of L.D.Cs. on daily wages in Central Hindi Directorate was under consideration. The applicants in that case were working since 1981 and their services were dispensed with vide order dated 4-9-1986. The applicants came before the Principal Bench for a direction to the respondents for treating the applicants as permanent staff of the respondents entitled to wages etc. as permanent staff w.e.f. the respective dates of their appointments. The Division Bench rejected the prayer for treating the applicants as permanent staff but only directed that the applicants should be called for fresh engagement against such posts if sanctioned and they will be considered by the respondents in preference to those who have put in lesser days of

28

service. In the above referred case there were relevant recruitment rules for the post of L.D.C. who were to be selected through Staff Selection Commission. The applicants of the referred cases did not plead that they ever appeared in any of the examination held by the S.S.C. for selection to the post of L.D.C. In view of this the Bench held that the applicants therein never acquired the right for regular appointment to the post of L.D.C. and in the absence of any such appointment they could not claim that the service conditions applicable to permanent or regularly appointed L.D.Cs. should be extended to them. The present case is almost analogous to the above referred case decided by the Principal Bench.

Having given a careful consideration to the contentions raised by the applicants and in view of the above discussion, we are of the opinion that the present applications are devoid of any merit and are dismissed with no order as to costs. The stay orders granted in some of these cases are vacated. A copy of this order shall be placed in each of the files.



(J.P. SHARMA)
MEMBER (J) 30.11.90

(*Recd 30/11/90*)
(P.C. JAIN)
MEMBER (A)