

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.899/89

New Delhi this the 20th Day of May, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Smt. Lakshmi Swaminathan, Member (J)

1. Som Dutt, S/o Late Sh. Devi Dutt,
Vill. & P.O. Bhangrala,
Distt. Gurgaon, Haryana.
2. Shashi Shekhar Mahto,
S/o Sh. Ram Parsad,
RZ 2/231, West Sagarpur,
New Delhi.
3. Sh. J.S. Negi,
S/o Sh. Guman Singh Negi,
WZ-1, Puran Nagar,
Palam Colony, New Delhi.
4. Vinod L. Singh,
S/o Sh. L.A. Singh,
A-116, Minto Road,
New Delhi.
5. Mangal Ram,
S/o Sh. Sube Singh,
144, Mohammad Pur,
R.K. Puram,
New Delhi.

...Applicants

(By Advocate Sh. Jog Singh, though none appeared)

Versus

Union of India through:

1. Secretary,
Ministry of Industry,
(Dept. of Industrial Developments),
Udyog Bhawan,
New Delhi.
2. The Secretary,
Dept. of Personnel & Training,
Govt. of India,
New Delhi.

...Respondents

(By Advocate Sh. M.K. Gupta, though none appeared)

ORDER(ORAL)

Mr. N.V. Krishnan:-

This case is listed at serial No.1 in today's cause list under regular matters with a note to the counsel that the first 10 cases are posted peremptorily for final hearing. As none has appeared for either party, though called twice, we have perused the record to pass final order and we proceed to do so.

2. The applicants are Group 'D' employees who have been appointed on ad hoc basis on the posts of L.D.Cs. They have been sought to be reverted by the Annexure-I order dated 4.4.89. They are aggrieved by this reversion and hence they have filed this O.A.

3. It is seen from the pleadings that the applicants were appointed as LDCs in 1983-84 vide Annexure-3 order. They were reverted for short periods in June, 1985. They were again promoted as LDCs on ad hoc basis w.e.f. 18.11.85 (Annexure-5). This appointment was being continued from time to time.

4. The applicants state that they have been appointed against the posts of LDC which were sanctioned and were vacant and that all the applicants possess the minimum required educational qualification for holding the post.

5. The applicants contend that they have thus been working for a very long period and instead of considering them for further promotion to the rank of UDCs the respondents have arbitrarily reverted them to their parent Group 'D' post by the impugned Annexure-I order dated 24.4.89.

6. In the circumstances, the applicants have prayed that the impugned Annexure A-1 order dated 24.4.89 be quashed and the respondents be directed to regularise the applicants on the posts of LDC on which they have been working for about 3-6 years and also to consider the eligible applicants to the next higher post.

7. The respondents have filed a reply opposing the prayers made. It is stated that the applicants who were group 'D' officials were initially appointed on an ad hoc basis as L.D.C. to fill up the vacancies in that grade against the posts temporarily excluded from the purview of the Central Secretariat Clerical Service. Due to paucity of regular candidates these appointments were made even though the applicants who were appointed as peon in 1981 and 1982 had not even rendered 5 years' service to qualify for such ad hoc appointment. In the first instance, they were granted extension from time to time. Thereafter, they were again appointed in November, 1985 and they were continuing as such.

8. It is further stated that in accordance with the Central Secretariat Clerical Service Rules, 1982, 90% of the vacancies are to be filled up by direct recruitment on the basis of a competitive examination conducted by the Staff Selection Commission (SSC). Of the balance 10%, 5% is to be filled up on the basis of qualifying examination held by the SSC exclusively limited to Group 'D' employees like the applicants; the remaining 5% is to be filled up on the basis of the seniority subject to rejection of the unfit from Group 'D' employees of the Ministry and its participating/attached department/offices who have completed 5 years' of regular service in a Group 'D' post and possess educational qualification for appointment as L.D.C.

9. The reply states that the applicants did not qualify in any of the Clerks Grade Examinations held for the Group 'D' staff by the S.S.C., even though they were eligible. Further, in the combined seniority list of Group 'D' staff of the various Departments of the

Ministry of Industry the applicants were not senior enough to be considered for promotion against the seniority quota, as there are at least 25 Group 'D' employees.

10. The Department of Personnel and Training issued an O.M. dated 10.5.88, directing that such ad hoc arrangement should not be continued beyond the period of one year and in case continuance is necessary in exceptional cases beyond one year, the prior approval of that Department was to be taken. It is in pursuance of these guidelines that the applicants were reverted by the Annexure-1 order, as they had not qualified themselves for regular appointment. Further, persons selected by the SSC on the basis of the 1986 and 1987 examinations are joining the Department. It is stated that 148 candidates have been nominated for appointment.

11. The applicants have filed a copy of a judgement rendered by this Tribunal (PB) in OA-688/88 - Ved Prakash & Others v. Union of India and a batch of three other cases which was disposed of on 12.4.91. In that case a direction was given to the respondents to take immediate steps to regularise the services of the applicants as LDCs in consultation with the SSC. The applicants seek the benefit of that judgement.

12. We have carefully considered the rival pleadings. Admittedly, recruitment rules exist which provide for holding of a competitive examination for the Group 'D' employees in respect of 5% vacancies earmarked for appointment by this method. The applicants though qualified to appear in the examination and though opportunities were available, did not either appear or pass in that examination. In so far as promotion on the basis of seniority is concerned, it is contended by the respondents

that they are far junior to others and, therefore, they cannot also get the benefit of the seniority quota meant for this group of people.

13. The only question, therefore, is whether the ad hoc service of about 4 to 5 years (from 1985 to 1989) gives a right to the applicants to be regularised as L.D.C. de hors the recruitment rules and whether the applicants can be given the benefit of the judgement of the Tribunal referred to above.

14. We shall first consider the judgement in OA-688/88. No doubt, the cases decided by that judgement are also similar to the present OA. But there is one basic difference. In the present OA, the respondents have contended in para 10 of their reply as follows:-

"The applicants, unfortunately, did not qualify any of the Clerks' Grade Examinations limited to Group 'D' staff, conducted every year by the Staff Selection Commission even when they were eligible. In the combined Seniority List of Group 'D' staff of the various Departments of the Ministry of Industry, they are not senior enough to be covered in regular promotion as LDCs against the prescribed seniority Quota as per rules."

This has not been denied by the applicants in their rejoinder except to say that they are matters of record and need no reply, but the respondents should be put to stick proof about the factual averments. In our view, unless the applicants had denied the above averments the question of compelling the respondents to produce any further proof does not arise. Thus, the applicants have failed to qualify in the examination held in accordance with the recruitment rules for 5% quota and they are not the senior most eligible group 'D' employees to be appointed to the other 5% quota. This is a basic difference which disentitles them to the application of the above judgement.

15. We are of the view that when the recruitment rules specify a method for regular appointment it is not open to make regular appointment by any other method. This rule has been laid down in J & K Public Service Commission v. Dr. Narinder Mohan & Ors. (JT 1993 (6) SC 593). It held as follows:-

"It is settled law that once statutory rules have been made, the appointment shall be only in accordance with the rules. The executive power could be exercised only to fill in the gaps but the instructions cannot and should not supplant the law, but would only supplement the law. The Governor exercising the power under proviso to S.125 (Article 309 of the Constitution of India) made the rules which do not expressly give the power to the State Government to make ad hoc appointments. No such rule has been brought to our notice. No express power was conferred and in fact cannot be conferred to relax the rules of recruitment. Having made the rules the executive cannot fall back upon its general power under Article 162 to regularise the ad hoc appointments under the Rules."

16. No doubt, in the present case, it appears that the recruitment rules do provide for a relaxation. The respondents have rightly not chosen to relax the rules. For, they have followed the guidelines laid down in the OM dated 10.5.88 referred to in para 10 supra and the applicants were given opportunities to appear in the examination held for regularisation, which they failed to clear.

17. We also notice that the trend of judicial decisions, on the basis of which orders were passed in OA-688/88, appears to have changed and these have not been considered in the above judgement. We refer, particularly to the judgement in State of Haryana vs. Piara Singh (AIR 1992 SC 2130). In this judgement the Supreme Court has taken into account two important earlier decisions on employment and regularisation of casual labourer,

including the cases of Kerala Water Authority (JT 1990 (4) SC 27), relied upon by the Tribunal in the earlier decision in OA-688/88, on which the applicants place great emphasis. The Apex Court held as follows:-

"25. Before parting with this case, we think it appropriate to say a few words concerning the issue of regularisation of ad hoc/temporary employees in Government service.

The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employees by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee."

It is thus clear that the ad hoc employee should be considered along with others for regularisation in accordance with the rules. This is their only entitlement. In the present case, this has been done and as the applicants did not clear the examination they have lost their right for regularisation and are being reverted.

18. An interim order has been issued that the applicants may not be relieved and reverted to class IV posts till 11.5.89. That order was continuing from time to time, the last extension being till 26.7.89. We see from the proceedings that the interim order has not been extended thereafter beyond 26.7.89. It also appears that the respondents had issued an order on 8.4.91 reverting the applicants to the posts of Group 'D' from 8.4.91. This order has been filed alongwith MP-1264/91 by the applicants. In the circumstances, it would appear that the applicants are not continuing as LDCs as on date.

19. When we were about to dismiss the OA, Sh. Jog Singh, learned counsel for the applicants appears and requests that he be heard before the final orders are passed. We have heard his request. We have also given the reasons why we proceeded to dispose of this ex parte case. In view of that observation we regret that we are unable to hear the learned counsel for the applicants at this last stage.

20. For the aforesaid reasons the O.A. is dismissed, with no order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)

Member (J)

N.V. Krishnan
20.5.94
(N.V. Krishnan)
Vice-Chairman (A)

'Sanju'