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Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No. 1646 of 1988

12th day of November, 1993.

Shri J.P. Sharma, Member (Judl.)

Shri B.N. Dhoundiyal, Member(A)

Shri Lal Chand,
Lower Division Clerk,
Directorate of Field Publicity
(Ministry of I & B),
R.K. Puram, New Delhi
R/o Village & P.O. Holambi
Kalan, Delhi-110082.

Applicant

By Advocate: None

Versus

Union of India through
the Director,
Directorate of Field Publicity
(Ministry of I & B),
R.K. Puram, N. Delhi.

Respondents

By Advocate Shri P.H. Ramchandani.

O R D E R (ORAL)

Shri J.P. Sharma

The applicant joined in Group 'D' post in the Directorate of Field Publicity, Ministry of Information and Broadcasting, on June 17, 1968. He was given an ad hoc promotion as L.D.C. w.e.f. 20.1.1975 in a leave vacancy and when the incumbent joined, he was reverted. He was again promoted a number of times and also reverted whenever the vacancy occurred temporarily either by some person going on leave or otherwise and when that person joined, he was reverted to his substantive post of Group 'D'. It was last time in September, 1977 that he continued to work as L.D.C. either in leave vacancy or in a post earmarked for direct recruit quota as per the recruitment

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rules applicable at that time issued by the notification dated 22.11.1971. The case of the applicant is that though he has been working as L.D.C. to the satisfaction of the respondents, he is about to be reverted to his substantive post by the impugned notification issued by the Department of Personnel & Training dated 30.3.1987. The date appears to be wrongly mentioned as it should be 30.3.1988. This O.M. devised certain instructions of ad hoc appointees working in some ministries of the Government of India. The applicant prayed for grant of the relief that he should be regularised in his appointment as L.D.C. and be considered for further promotion. He also prayed for grant of interim relief that he should not be reverted till the decision on this application. A notice was issued to the respondents and after hearing the parties' counsel on 15.11.1988, status quo as of that day was ordered to be maintained until further orders. It is not disputed that on that relevant day, the applicant was working as L.D.C.

2. The stand of the respondents is that the applicant cannot be regularised because his appointment is not according to the rules and he at the relevant time of his promotion, as per the 1971 rules, did not come within the 10 per cent strength reserved for promotion of Class IV employees to L.D.C. The respondents have also taken the stand that the applicant was allowed to take Special ad hoc Appointees Regularisation Examination in 1982 and 1987 in view of the notification issued by the DoP&AR dated 30.8.1982, but failed in the said examination.

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Another departmental examination was conducted in 1987 but the applicant failed again in that examination and this was restricted to 5 per cent quota reserved for Group 'D' as per the 1987 recruitment rules. It may be stated here that the rules of 1987 were amended twice - once by the O.M. dated 28.2.1985 and again, by the O.M. dated 24.4.1987. The rules of 1979 restricted the recruitment of Group 'D' to L.D.C. to the extent of 10 per cent of the prescribed strength of L.D.C., but no limited departmental examination was provided. The amended rules of 1985 for the first time introduced the limited departmental examination for appointment to the post of L.D.C. by promotion and also prescribing the age upto 45 years extendable to 50 years in the case of SC/ST candidates. The 1987 rules further amended the existing rules providing 5 per cent of the vacancies to be filled up on the basis of seniority, subject to the rejection of unfit and 5 per cent by the limited departmental examination. The stand of the respondents is also that the applicant could not be regularised dehors the rules and unblemished record is not a criterion for regularisation. The applicant, therefore, has no case and the application be dismissed.

3. None appeared for the applicant and since this has been an old matter, we have perused the averments made by the applicant in the application as well as in the rejoinder and also perused the other documents on record. Shri P.H. Ramchandani, learned counsel for the respondents, brought to our notice the relevant annexures

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filed by the applicant in his pleadings as well as those annexed with the counter and also referred to the supplementary counter filed by them.

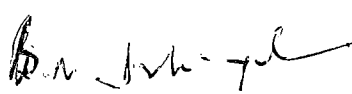
4. It is a fact that the 1971 Rules did not prescribe for any pre-appointment tests for regularisation. However, as argued by the learned counsel for the respondents, the 10 per cent quota of Group 'D' employees was saturated and there was no vacancy to give substantive appointment to the applicant on the post of L.D.C. Further, by the 1985 amendment, without passing the limited departmental examination open to Group 'D' employees, the applicant could not be regularised. Subsequently, by the amendment of O.M. of 1987, for the first time 5 per cent Group 'D' employees on the basis of seniority-cum-fitness, have been allowed to be regularised. It is stated that though the applicant is the seniormost, yet he could not gain his turn to come within the zone of 5 per cent quota of vacancies to be regularised on the basis of seniority-cum-fitness. Obviously, the applicant could not be regularised earlier, because he could not pass the Special Examination conducted in pursuance of the O.M. of DoP&AR issued in 1982 and subsequently, on the basis of the limited departmental examination held in 1987. So, he cannot have any claim on regularisation and his prayer in that regard, cannot be considered favourably.

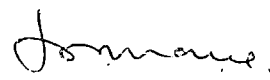
5. However, we cannot be oblivious of the fact that the respondents are taking work from him intermittantly since 1985 and uninterruptedly from September, 1987 and by virtue of the interim direction issued on 15.11.1988, the applicant is continuing as L.D.C. with all monetary benefits of that post. It is also not disputed that

he is the seniormost in the Group 'D' Cadre as projected during the course of the arguments by the learned counsel for the respondents on instructions of the departmental representative present with him. It shall be unjust at this stage if the applicant is denied the benefit of 18 years of ad hoc service in the grade of L.D.C., but at the same time, he cannot be allowed to be regularised de hors the rules.

6. In the facts and circumstances of this case, it is just and fair that the applicant be allowed to work on ad hoc basis if work is available and there exists a vacancy and should not be reverted. Thereafter, he should be considered in his turn in the 5 per cent Group 'D' posts available reserved for promotion to L.D.C. grade on the basis of seniority-cum-fitness.

6. The application is, therefore, disposed of with the following directions that the applicant should be allowed to continue as ad hoc L.D.C. in preference to any of his juniors or freshers and so long as there is work or vacancies available for him. The applicant is if not otherwise regularised, should also be regularised in his appointment on the basis of seniority-cum-fitness and in such a case, shall be entitled to all benefits of ad hoc service. In the circumstances, the parties to bear their own costs.


(B.N. Dhoundiyal)
Member(A)


(J.P. Sharma)
Member(J)

SLP