

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

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Regn. No. OA 647 of 1988

Date of decision: 8.8.1990

Smt. Kiran Chadha

Applicant

Vs.

Union of India & Others

Respondents

PRESENT

Shri K.N.R. Pillai, counsel for the applicant.

Shri P.H. Ramchandani, Sr. Counsel for the respondents.

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

Hon'ble Shri S.R. Sagar, Member (Judicial).

(Judgment of the Bench pronounced by Hon'ble
Shri B.C. Mathur, Vice-Chairman.)

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Smt. Kiran Chadha, Lower Division Clerk in the R&AI Unit of the Department of Administrative Reforms & Public Grievances, against impugned orders No. A-20017/4/77-Admn dated 30.6.1986 (Annexure A-VI to the application) passed by the Department of Administrative Reforms & Public Grievances withdrawing annual increments sanctioned from year to year from 1978 and ordering recovery of Rs. 5047.90 wrongly described as overpayment.

2. Brief facts of the case, as stated by the applicant, are that the applicant was sponsored by the Employment Exchange to the Ministry of Home Affairs, who after a typing test selected her and appointed as a Lower Division Clerk on 16.12.1977 purely temporarily on ad hoc basis. A copy of the appointment order is at Annexure A-I to the application. Her temporary appointment was extended from time to time and was granted annual increment on completion of each year of service. According to the applicant, neither the appointment order nor the orders issued from time to time for extension of the period of appointment mentioned that she had to pass any further typing test for earning increments. A copy of the Office Order dated 21.5.79 extending the term of

appointment is at Annexure A-II. According to the order dated 26.7.84 of the Department of Personnel & A.R. (Annexure A-III) she was declared to have crossed the Efficiency Bar from 1.3.1983 in the clerical scale. On qualifying the Special Qualifying Clerk's Grade Examinat, 1985, conducted by the Staff Selection Commission, she was regularly appointed in the Central Secretariat Clerical Service Cadre from 14.1.1986. A copy of the order dated 21.2.86 is at Annexure A-IV. There was no break between her temporary ad-hoc service and the regular appointment. Her pay which had progressed to Rs. 308.00 was fixed at the initial of the scale i.e. Rs. 260 relying on some old orders of the Ministry of Home Affairs that LDCs are to get increments only after passing a typing test. According to the applicant, neither the appointment order nor any of the extension orders mentioned that she had to pass any typing test. She was appointed as a Typist Clerk after passing the typing test and she had never been asked to take a typing test. Without examining how the applicant was recruited and without giving her a hearing, the respondents took a decision to bring down her pay from Rs. 308 to Rs. 260, the minimum of the scale, and to recover Rs. 5047.00 as overpayment on account of annual increments granted to her earlier. A copy of the order is at Annexure A-VI. She made a representation against this order on 16.7.86 which was rejected by the respondents on 5.8.86. In addition, the respondents have not treated her 8 years of temporary service on ad hoc basis as service for any benefits such as carry forward of leave. Even maternity leave was not granted to her and instead treated as earned ^{leave} and the subsequent spells of leave she had to take was without pay. She represented to the respondents on 20.3.84 and again on 2.7.84 which was not acceded to but instead the respondents started treating her as not entitled even to earned leave from 13.6.83. She again represented to the Secretary, Ministry of Home Affairs, referring to the judgment of the CAT in OA No. 105/86 - Smt. Anil Rani Malik Vs. UOI - which had been circulated to all Minsitries/Deptts. by the respondents themselves with their O.M. dated 25.7.86 according to which ad hoc

LDCs are entitled to the facilities and conditions of service laid down in the statutory rules even though the appointment letters might have been silent about them. This judgment relies on the Supreme Court decision that ad hoc employees are entitled not only to the same pay and allowances as regular employees in the same posts but to all other conditions of service such as increments, leave etc. But the respondents arbitrarily refused to comply the decision in the applicant's case. Her representation was rejected on 17.11.87 (Annexure A-XIV to the application) which is a cryptic, non-speaking order simply saying that her request could not be acceded to. The applicant has prayed for the following reliefs:-

- (a) to quash the impugned order dated 30.6.86 withdrawing increments and ordering recovery of overpayments;
- (b) to quash the order dated 17.11.87 denying leave entitlements; and
- (c) to direct the respondents that the applicant's temporary service on ad-hoc basis from 16.12.79 to 13.1.86 which was followed by regular service shall count for increments, leave, pension and all other service benefits like seniority.

3. The respondents in their counter have stated that the applicant was appointed as an L.D.C. on ad hoc basis in the pay scale of Rs. 260-400 w.e.f. 16th December, 1977 against the post temporarily excluded from the purview of the Central Secretariat Clerical service Cadre of the Ministry of Home Affairs vide order dated 24th December 1977 which clearly indicated that the appointment was purely temporary and on ad hoc basis and would be for a period upto 31st March, 1978 or till such time as qualified candidates from the Staff Selection Commission's Clerks Grade Examination 1977 become available, whichever was earlier. It was also made clear in the appointment letter that the applicant and others who were appointed along with the applicant will have no claim whatsoever for regular appointment in the Central Secretariat Clerical Service cadre of the Ministry of Home Affairs. According to the respondents, the ad hoc employees are not entitled to earn any increments and also are not entitled to get leave, as regular

employees. However, on completion of one year service in December, 78 the applicant was granted her first annual increment on 1.12.78. Her ad hoc appointment was extended from time to time vide Ministry of Home Affairs O.M. dated 6.4.78, 29.4.78, 1.6.78, 30.6.78, 29.7.78, 31.8.78, 2.11.78, 6.1.79 and 15.3.79. In all these Memoranda there was no indication that increments should not be released till the passing of the typing test of the Staff Selection Commission. However, in the O.M. dated 15.5.79, while extending the ad hoc appointment for a further period from 1.5.79 to 30.6.79, a stipulation was included that the ad hoc LDCs may be granted annual increment on the date of completion of one year on qualifying the typing test conducted by the Staff Selection Commission. This stipulation was repeated in the subsequent orders of extension of ad hoc appointment of the applicant. Every time the services of the applicant were extended, a copy of the Ministry of Home Affairs orders that the annual increment on the date of completion of one year service would be admissible only on qualifying the type test conducted by the S.S.C. was endorsed to the applicant. She cannot, therefore, say that she did not have knowledge of the fact that the increments would be due only on qualifying the type test.

4. The applicant was cleared for crossing the Efficiency Bar at the stage of Rs. 290 with effect from 1.12.1983, but this was an administrative error. The mistake was discovered in June, 1985. In the meantime, the applicant had drawn increments to which she was not entitled and the total overpayment amounted to Rs. 5,047.00. The Department has powers to write off overpayments made to Government servants subject to certain conditions, but according to decision under Rule 17 of the Delegation of Financial Powers Rules, such write-off can only be done where such recovery might cause in the opinion of the competent authority a genuine hardship or distress. The matter was carefully examined and Government decided that as the overpayment had been made wrongly, the same should be recovered as passing of the type test conducted by the Staff Selection Commission was necessary.

In the meanwhile, in order to regularise a number of LDCs who were appointed on ad hoc basis, two Special Qualifying Examinations were conducted by the Staff Selection Commission so that those who were successful could be included in the Central Secretariat Clerical Service. For reasons best known to herself, the applicant did not choose to take the examinations. A third and final chance was given in March 1985 and the applicant was specifically asked to ^{take} this qualifying examination and was intimated in writing on 8.4.85 that if she did not take the examination, her services would be terminated after the declaration of the results. The applicant took the examination in July 1985 and qualified the same, which included the typing test as part of the syllabus. She was thereafter appointed as L.D.C. on regular basis with effect from 14.1.86 and was to be on two years' probation. Her initial pay on regular appointment was fixed at the minimum of the pay scale i.e. at Rs. 260.00. According to the orders contained in O.M. dated 24.7.86 (Annexure R-IV) ad hoc employees who were hitherto not entitled to any kind of leave were to be granted earned leave at the rate of two and a half days for each completed month of service. Those ad hoc employees who were continued for more than three years without break from the date of their initial employment were to be granted all kinds of leave as admissible to temporary employees under the CCS (Leave) Rules. These orders were to take effect from 1.7.1986, but past cases were not to be reopened. Thus, it is clear that before July 1986, ad hoc employees were not entitled to the kinds of leave admissible to regular employees.

5. The contention of the respondents is that the applicant was appointed on ad hoc basis which was extended from time to time and she was erroneously granted annual increments upto June 1985 to which she was not entitled. The Ministry of Home Affairs were quite clear that she could be granted annual increment on the date of completion of one year service on qualifying the type test conducted by the Staff Selection Commission. All these conditions were repeated. Allowing annual increments and allowing

the applicant to cross the Efficiency Bar at the stage of Rs. 290.00 were mistakes which had to be corrected. It is true that in the original appointment order no specific mention was made about passing of the type test, but these are part of service rules. In any case, as early in December 1979 and subsequently, the applicant was handed over a copy of the orders of the Ministry of Affairs clearly specifying that the annual increment would only be granted after completion of one year service on qualifying the type test conducted by the S.S.C. The claim of the applicant that 'she was not an ordinary LDC' and that 'she was recruited as Typist Clerk' is not tenable as there is no Typist-Clerk in the Government of India. The applicant was one among many LDCs who were appointed on ad hoc basis, who were required to pass the typing test and later the Special Qualifying Examination with relaxed standards was held for regularisation and absorption in a duly constituted Central Secretariat service. The respondents have quoted the judgment of this Tribunal in OA No. 105/86 (Smt. Anil Rani Malik Vs. Union of India) where it has been held that

"We feel that the petitioners in this case who were appointed purely on an ad hoc basis and failed in all the three Special Qualifying Examinations to get themselves regularised cannot claim any right to be inducted to that Service without clearing the qualifying tests.....The learned counsel for the petitioners could not produce any ruling which would entitle the petitioners to be placed at par with the regular members of the Central Secretariat Clerical Service without passing either the open competitive examinations or the Special Qualifying Examination."

It is claimed that any concession granted to the applicant will open the floodgate for similar concessions from other similarly placed ad hoc employees who were recruited in substantial numbers in 1977.

6. In her rejoinder, the applicant has brought out that although according to the respondents, ad hoc employees are ^{not} entitled to increments or leave, the applicant was all along being granted annual increments and also was being given leave and even maternity leave on two occasions till they discovered in June 1985 that an ad hoc employee was not entitled to increments or leave.

It has been stated that such long continued appointment though initially described as ad hoc has to be treated as regular appointment against substantive vacancies and the holder would be entitled to all benefits, including seniority.

7. The learned counsel for the applicant cited F.R. 25 to justify increments to ad hoc employees and a number of cases on the same ground. In the case of **Dr. (Mrs) Sangeeta Narang and others Vs. Delhi Administration and Others - A.T.R. 1988(1) CAT 556** - it has been held that all ad hoc employees are entitled to leave, salary, increments etc. just as regular employees. Shri Pillai also cited two cases of this Tribunal on the question of seniority where it has been held that ad hoc employees regularised without break should count for seniority in that grade from the date they were appointed as such. The cases referred to are: **S.S. Grover & another Vs. Union of India & others - A.T.R. 1986 (2) C.A.T. 365** and **S.C. Jain Vs. Union of India & Others - A.T.R. 1986 (2) C.A.T. 346**. He also cited the case of **Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and Others - 1990 (13) A.T.C. S.C. 348** where the Supreme Court has held 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."

8. The learned counsel for the respondents, Shri P.H. Ramchandani, strongly urged that the case of the applicant was quite different as she was appointed to a post excluded from the cadre of the Central Secretariat Clerical Service. He said that the applicant has concealed the fact that she had been given copies of the Ministry of Home Affairs orders clearly laying down that annual increments would be admissible only if she passed the type test conducted by the Staff Selection Commission. She was required to pass the type test conducted by the Staff Selection Commission to earn the annual increments. Mere omission on the part of the Department does not entitle granting of increments

to the applicant as she took no action to pass the examination. In any case, the applicant held the post outside the cadre and, therefore, cannot get seniority over the people regularly appointed in that cadre. He said that the case of Narendra Chadha Vs. Union of India and Others (ATR 1986 Vol. 1 SC 49) which was also quoted by the counsel for the applicant was in relation to inter se seniority between the direct recruits and the promotees, but no court has ever ruled that rules are not to be followed. He said that if the court allowed seniority from 1977 although she passed the examination in 1985, it would create a lot of administrative problems, specially as she was appointed initially outside the cadre. He said that allowing of increments and allowing the applicant to cross the Efficiency Bar were bonafide mistakes and there are several rulings of the courts that a bonafide mistake can always be corrected. ^{He} conceded that it may cause some hardship to the applicant if the recovery of the excess payment made is ordered, but in no case she can be given seniority over people appointed regularly.

9. Shri Pillai also made the point that the pay of the applicant could not be reduced without giving a show cause notice.


10. We have gone through the pleadings and given careful consideration to the arguments by the learned counsel. The short points in this case are that the applicant was appointed on ad hoc basis as L.D.C. outside the regular cadre and was given extensions from time to time. She did not pass the typing test as prescribed under the rules. Neither she took any action to pass such a test nor did the Department care to ensure that she passed the typing test and never asked her to take the test and continued to grant the annual increments from time to time and also allowed her to cross the Efficiency Bar at the stage of Rs. 290.00. After she was regularised, her pay was fixed at the beginning of the scale and orders were passed to recover the excess amount paid to her on account of allowing the increments by mistake. We feel that the question of regularisation and seniority of ad hoc

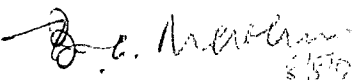
employees has been fully discussed in the case of **Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and Others** (supra) and the law laid down that where initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted, but where initial appointment is only ad hoc, made as a stop gap arrangement and not according to the rules, the officiation in such post cannot be taken into account for considering the seniority.

11. It is quite clear that her appointment was not made according to the rules prescribed for regular appointment of L.D.Cs in the Central Secretariat Clerical Service. She was appointed purely temporarily on ad hoc basis which was extended from time to time by a few months at a time and can be considered only a stop gap arrangement. It has been laid down by the Supreme Court in many cases that where initial appointment is not made according to the rules and the appointee continues in the post uninterruptedly till regularisation of his service, the entire service will count for the purposes of pay and other benefits, but seniority will count when a person is appointed on regular basis. In view of the clear directions of the Supreme Court in the case of **Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and Others**, we have no hesitation in quashing the orders of the respondents withdrawing the increments and ordering recovery of overpayments and to deny leave entitlements to the applicant. We direct that the applicant's temporary service on ad hoc basis from 16.12.1979 which was followed by regular service shall count for increments, leave, pensions and other service benefits, but not for seniority. We will, however, not like to reopen the question of her past leave, but if she has already been given the benefit of any leave, including maternity leave, no recovery would be made by not treating such leave already granted as not due. We, however, make it clear that the applicant would

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not be entitled to seniority over others LDCs who were either recruited on regular basis prior to the applicant's regularisation or those ad hoc L.D.Cs who were regularised prior to her regularisation on the basis of the Special Qualifying Examinations conducted by the Staff Selection Commission. She would be entitled to count her seniority from the date she was regularised as an L.D.C. In the circumstances, the application is allowed partly as indicated above. There will be no orders as to cost.


(S.R. SAGAR) 0.0.90
Member (J)


(B.C. MATHUR)
Vice-Chairman