

(10)

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.Nos. (1) OA 668/88
(2) OA 914/88
(3) OA 985/88
(4) OA 1010/88

Date of decision: 12-04-1991

(1) OA 668/1988

Shri Ved Prakash & Others

..Applicants

Vs.

U.O.I. through the
Secretary, Min. of Urban
Development & Others

...Respondents

(2) OA 914/88

Shri Ramesh Chand & Others

...Applicants

Vs.

U.O.I. through the Secretary
Min. of Urban Development &
Others

...Respondents

(3) OA 985/88

Shri Janak Prasad & Others

..Applicants

Vs.

U.O.I. through the Secretary,
Min. of Urban Development &
Others

..Respondents

(4) OA 1010/88

Shri Pradeep Kumar

..Applicant

Vs.

U.O.I. through the Secretary,
Min. of Urban Development &
Another

..Respondents

For the applicants in (1) to
(3) above

..Shri Jog Singh,
Counsel with
Shri K.C. Sharma,
Counsel

For the applicant in (4)

..Shri B. Krishnan,
Counsel

For the respondents in (1) to
(4) above

..Shri K.C. Mittal,
Counsel

GRAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment? *yes*
2. To be referred to the Reporters or not? *yes*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice Chairman(J))

The applicants in these applications have worked

as Lower Division Clerks on ad hoc basis for several years ranging from 8 years to 11 years since 1979.

They have challenged the decision of the respondents to revert them to their substantive post in Group 'D' category and have prayed for a direction to the respondents to regularise them in the post of Lower

Division Clerks with effect from their initial dates of promotion. As common questions of law arise for

consideration, it is proposed to dispose of these applications by a common judgment.

2. At the outset, it may be stated that the Tribunal while admitting these applications have passed interim

orders to the effect that the applicants shall not be reverted from the post of Lower Division Clerks. The interim orders have been continued thereafter till the case was finally heard on 9.4.1991 and orders reserved

thereon.

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3. Before we deal with the facts of these cases, it

may be appropriate to refer to the relevant Recruitment

Rules regarding recruitment of Lower Division Clerks

in the Central Government offices. Rule 12 of the

Central Secretariat Clerical Service Rules, 1962

as amended

(hereinafter referred to as the '1962 Rules') provides,

inter alia, that recruitment to the Lower Division

made

Grade of the Service shall be in the following manner:-

"(a)(i) Five percent of the vacancies may be filled on the basis of qualifying examinations held for this purpose by the Staff Selection Commission; and

(a)(ii) Five percent of the vacancies may be filled on the basis of seniority, subject to the rejection of the unfit, from amongst those Group 'D' employees who are within the range of seniority prescribed by the Department of Personnel & Training and are educationally qualified for appointment as Lower Division Clerk, i.e., who have passed the Matriculation or an equivalent examination of a recognised Board or University.

Provided that if sufficient number of persons do not become available the vacancies shall be filled in manner prescribed in clause (b).

Provided further that if more of such employees than the number of vacancies available under this clause qualify at the said examination, such excess employees shall be considered for filling the vacancies arising in the subsequent years so that the employees qualifying at an earlier examination are considered before those who qualify at a later examination.

(b) Ninety percent of the vacancies or such higher percentage as may be determined by the Central Government in the Department of Personnel & Training in the Ministry of Personnel, Public Grievances and Pension, in accordance with the proviso to Clause (a) shall be filled by direct recruitment on the basis of Competitive Examination held for the purpose by the Staff Selection Commission.

Provided that to the extent a sufficient number of qualified candidates of the competitive examinations referred to in clauses (a) and (b) are not available for appointment on the results of such examinations, the vacancies may be filled

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provisionally or on regular basis, in such manner as may be prescribed by the Central Government in the Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pension.

4. For the purpose of direct recruitment to the Lower Division Grade as envisaged by Rule 12(b) mentioned above, an open competitive examination is held annually by the Staff Selection Commission against the vacancies reported to the Commission.

5. Some of the applicants had worked as daily wagers for some years before they were appointed in Group 'D' service on ad hoc basis. They were granted annual increments and were allowed to cross the Efficiency Bar during the period of their service.

They also possess the minimum educational standards prescribed for the post of Lower Division Clerk and have also passed the prescribed typing test conducted by the Staff Selection Commission. Some of them have been allotted Government accommodation as in the case of regular employees. They have called in question the continuance of their services on ad hoc basis.

According to them, they have developed a right to the posts of Lower Division Clerks held by them and, therefore, their reversion to the original post in Group 'D' category will be illegal and arbitrary.

6. The stand of the respondents is that the

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appointment of the applicants to the post of LDCs being purely on ad hoc basis, they have no right

to the post and that they could be reverted to their substantive posts if it becomes necessary

to accommodate qualified persons in accordance

with the 1962 Rules. According to them, the

applicants have only the right to 10% of the

total number of posts out of which 5% will be

filled on the basis of qualifying examination

held by the Staff Selection Commission and the

remaining 5% on the basis of seniority subject

to the rejection of unfit. The remaining 90%

of the posts is to be filled by direct

recruitment on the basis of competitive

examination held by the Staff Selection Commission;

Shri K.C. Mittal, the learned counsel for

7% / The respondents have stated that in the

absence of qualified candidates for appointment

as LDCs on regular basis, the applicants were

appointed to man these posts, over and above the

quota prescribed for them. The learned counsel

of the respondents stated at the bar that out of

59 applicants before us, 5 have already qualified

in the examination and the remaining 54 persons

can look forward to their absorption in the post

of LDC in their quota of 10%. They are presently

an

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occupying the posts, most of which are outside their prescribed quota. Their ad hoc appointment has sought to be justified on the basis of the guidelines issued by the Department of Personnel & Training, according to which, educationally qualified group 'D' employees could be appointed as LDCs on short term basis. The respondents have referred to OM No.14/8/78-CS(II) dated 13.2.1979 and 28.2.1979 issued by the Department of Personnel & Administrative Reforms on the subject. These instructions have been issued after consideration of the matter in the Departmental Council. According to these instructions, wherever vacancies in the grade of LDC of the CSCS cadre, which are not long term are filled on ad hoc basis after getting them temporarily excluded from the service with the concurrence of the Department of Personnel, educationally qualified Group 'D' employees may be preferred to the nominees of the Employment Exchange and promoted on ad hoc basis on the basis of seniority subject to the rejection of the unfit without insisting on their passing the typewriting test. If the appointment is continued beyond three months, they will have to pass the prescribed typewriting test before the expiry of the next three months. If they fail to pass the test, they will be reverted to the grade from which

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they were promoted. Such promotions will be subject to the conditions that there will be no request to regularise the ad hoc appointment. Where a Ministry/Department proposes to fill up a vacancy in the Lower Division Grade of the CSCS cadre on ad hoc basis by appointment of a Group 'D' employee, the concurrence of the Department of Personnel & Training for temporary exclusion of the post in pursuance of Rule 6 of the 1962 Rules may be presumed.

8. The respondents have stated that the action taken by them was in terms of proviso to sub-rule 1(b) of Rule 12 read with Rule 6 of 1962 Rules.

9. Rule 6 of the 1962 Rules reads as follows:-

"6. Exclusion of duty posts from the Cadre-Any duty post in a Grade may be declared by the cadre authority with the concurrence of the Department of Personnel & Administrative Reforms in the Cabinet Secretariat to be excluded from the cadre-

(i) if such post is required, for the time being, to be filled by the appointment of persons possessing special or technical qualifications or experience; or

(ii) if it is necessary, for the time being, to fill such post by a person other than a cadre officer of the appropriate Grade;

and the post shall remain excluded from the cadre so long as such declaration remains in force"

10. Rule 24 which deals with the power to relax is also relevant in the present context. It provides

as follows:-

Where the cadre authority is of opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing and in consultation with the Department of Personnel & Administrative Reforms in the Cabinet Secretariat relax any of these rules with respect to any class or category of persons or posts.

11. We have carefully gone through the records of these cases and have considered the rival contentions.

Admittedly, there had been shortfall in the number of candidates nominated by the Staff Selection Commission for appointment to the post of LDCs during the years

1981 to 1986. A good number of even those nominated by the Commission did not join, as will be seen from the following table:-

Year	No. of candidates nominated by DP&T	No. of candidates reported for duty
1981	195	131
1982	266	166
1983	273	154
1984	184	116
1985	70	44
1986	151	111

(vide page 13 of the counter-affidavit in OA 985 of 1988, page 45 of the paper book)

12. It would be noticed that regular candidates could not be appointed against the vacancies meant for them as the response of these candidates was very poor and, therefore, the applicants were allowed to continue to work as LDCs on ad hoc basis.

13. Shri K.C. Sharma, the learned counsel for the

applicants submitted that Rule 6 of the 1962 Rules

was the result of an agreement with the J.C.M. and that

Rule 6 coupled with Rule 24-A provides the legal basis

for regularising the services of the applicants who

have worked for 7 to 11 years as LDCs on ad hoc basis.

In that case, the result will be that the applicants

would stagnate in excluded posts of LDCs till their

retirement on their superannuation, with hardly any

chances of promotion. Another aspect of the matter

is that it is for the cadre authority to exercise the

power to relax and it is not for the Tribunal to

issue any directions to the said authority in this

regard.

14. In Jacob M. Puthuparambil & Others Vs. Kerala

Water Authority & Others, JT 1990(4) SC 27, the

Supreme Court had considered a similar issue relating

to the regularisation of persons who had been appointed

on ad hoc basis for several years. The Supreme Court

had directed the respondents to regularise the services

of such employees who have put in continuous service of

not less than one year, as a separate block in

consultation with the Kerala Public Service Commission

In doing so, the Kerala Public Service Commission had been directed to take the age factor as waived.

In arriving at this conclusion, the Supreme Court relied upon its earlier decision in Smt. P.K.

Narayani & Others Vs. State of Kerala & Others, 1984

Suppl. SCC 212 and in Dr. A.K. Jain & Others Vs. Union

of India & Others, 1987 SCC 497. In Narayani's case,

the Supreme Court directed that the petitioners and

all others similarly placed should be allowed to

appear at the next examination that the Public Service

Commission may hold without raising the question of

age bar; till then they may be continued in service

provided there are vacancies. The Court, however,

clarified that this will not confer any right on the

employees to continue in service or of being selected

by the Commission otherwise than in accordance with

the extant rules and regulations. The Court gave the

above directions describing the case as "a human

problem which has more than one facet". In Dr. A.K.

Jain's case, the services of ad hoc Assistant Medical

Officers who were initially appointed for six months

but were continued for periods ranging upto 4 years,

were sought to be terminated to accommodate the candidates

selected by the UPSC. The petitioners claimed that their

services should be regularised. The Supreme Court

directed the regularisation of the services of all

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members appointed upto October 1, 1984 in consultation with the U.P.S.C. on the evaluation of their work and conduct based on the confidential reports in respect of the period subsequent to October 1, 1982.

15. The Supreme Court also relied upon its earlier decision in Daily-rated casual labour employed under P&T Department Vs. Union of India & Others, 1988(1) SCC 122.

16. Keeping the above trend of the judicial decisions of the apex court, the applications are disposed of with the following orders and directions:-

(1) The respondents are directed to take immediate steps to regularise the services of the applicants as LDCs in consultation with the Staff Selection Commission. While doing so, they shall, if necessary, relax the upper age limit for appointment as LDCs. Their regularisation should be on the basis of the evaluation of their work and conduct based on the annual confidential reports, as was directed by the Supreme Court in Dr. A.K. Jain's case.

(2) Till the applicants are so regularised, they shall not be reverted from the post of LDCs to their substantive posts in Group 'D' category.

(3) The applicants would be entitled to the protection

(2)

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of pay and allowances, including increments in the post of LDC and other benefits admissible to a regular employee.

(4) The respondents shall comply with the above directions within a period of three months from the date of receipt of this order.

There will be no order as to costs.

Let a copy of this order be placed in all the four case files.

(D.K. CHAKRAVORTY)
MEMBER (A)

12/4/89

(P.K. KARTHA)
VICE CHAIRMAN (J)