

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 355/86 198
T.A. No.

DATE OF DECISION 29.7.87

Smt. Nirmal Arora and others Petitioner

Mrs. C.M. Chopra Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Mr. M.L. Verma Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice J.D. Jain, Vice-Chairman

The Hon'ble Mr. Birbal Nath, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *See*
2. To be referred to the Reporter or not ? —
3. Whether their Lordships wish to see the fair copy of the Judgement ? —

29/7/87
(Birbal Nath)
Administrative Member

J.D. Jain
(J.D. Jain)
Vice-Chairman

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Regn.No. OA 355/86

Date of Decision: 29.7.87

Smt. Nirmal Arora and others

...Petitioners

Versus

Union of India and others

...Respondents.

For Petitioners: Mrs. C.M. Chopra, Advocate

For Respondents: Mr. M.L. Verma, Advocate

CORAM: HON'BLE MR. JUSTICE J.D.JAIN, VICE-CHAIRMAN
HON'BLE MR. BIRBAL NATH, ADMINISTRATIVE MEMBER

Judgment: (Judgment of the Bench delivered by
Hon'ble Mr. Justice J.D. Jain, Vice-Chairman)

The controversy in this case lies in a narrow compass, crucial the only question for determination being whether the petitioners have become overaged for appointment to the post of Lower Division Clerk in the Department of Industrial Development, Ministry of Industry, Government of India, on regular basis.

2. Shortly, the facts of the case are that pursuant to the requisition sent by the Under Secretary, Department of Industrial Development, vide letter dated 29th March, 1978 for sponsoring the names of eligible candidates for the post of some vacancies of L.D.Cs. on ad hoc basis, the Employment Exchange sponsored, inter alia, the name of Smt. Nirmal Arora under their covering letter dated 10th April, 1978. Subsequently, pursuant to another requisition of the Department of Industrial Development dated 18.5.78 the concerned Employment Exchange sponsored the names of Miss Suman Bala, petitioner No.2 and Miss Neena Kumari (now Mrs. Meena Sharma), petitioner No.3, under their covering letter dated 29th May, 1978. A common examination

was held on 6th June, 1978 in which all the three petitioners, besides of course, some other candidates were declared successful and they were appointed as Lower Division Clerks on purely ad hoc basis. However, their services were extended from time to time, having been given the last extension for 6th months from January, 1986 to June, 1986 vide letter dated 27.2.86 (Copy Annexure P-5).

3. In the meanwhile, the Government of India chalked out a scheme for absorption of ad hoc employees in the grade of L.D.C. etc. in various participating offices of the Central Secretariate Clerical Service on regular basis. The scheme dated 7th August, 1982 ^{incomplete} (Copy Annexure P-6) envisaged that a Special Qualifying Examination limited to ad hoc employees working as L.D.C.s etc. would be held in December, 1982 and the services of those who qualified ^{the} in ~~same~~ were to be regularised. One of the requirements was that all ad hoc employees who were recruited through Employment Exchange should be within the age limit for competing at the Clerks Grade Examination of the Commission on the date of their appointment. The second condition was that they should have rendered atleast one year's service as on 1.8.82. Petitioner No.1 qualified in the Special Qualifying Examination which was held on 12.12.82 while the other two petitioners qualified in the subsequent Special Clerk Grade Examination held on 18th December, 1983. However, according to the respondents, the petitioners could not cross the second hurdle of the age bar. The respondents held the view that the petitioners ought

to have been within the prescribed age limit at the time of their appointment as ad hoc lower division Clerk in the Ministry of Industry as envisaged in the Scheme of absorption dated 7th August, 1982.

4. The respondents have contested the claim of the applicant on ^{the} short ground that ad hoc appointments to the posts of Lower Division Clerks which fall in the cadre Central Secretariate Clerical Service and are to be filled by recruitment in accordance with Rule 12 of the C.S.C.S. Rules, 1962 by a competitive examination to the extent of 90% of such higher percentage as may be determined by the Central Government in the Department of Personnel, and Training, Ministry of Personnel and Training and Administrative Reforms and Public Grievances and Pension, are made pending recommendations of the candidates on the result of competitive examination by the Staff Selection Commission. In other words, the ministries/ departments were permitted to fill the vacancies by making recruitment on an ad hoc basis through the Employment Exchanges with the stipulation that their services would be terminated when the candidates recommended by the Commission on the results of the Competitive Examinations, join duty. Hence, the regularisation of their service on permanent basis would be governed under the aforesaid Scheme dated 7th August, 1982 and as such, they had to satisfy both the conditions, viz., passing in the Special Qualifying Examination and age limit as on the date of their ad hoc appointment before they could be considered for permanent absorption. However, in the

instant case all the three petitioners were overaged on the date when they were appointed as Lower Division viz. 29th January, 1979. Clerks on ad hoc basis. So pursuant to the Scheme referred to above, their services could not be regularised. The respondents do not controvert the remaining facts as alleged.

5. We have bestowed our careful thought and consideration to the matter which involves the critical question as to on which of the dates, namely, the date of sponsoring their applications for appointment on ad hoc basis by the Employment Exchanges, the date of eligibility mentioned in the requisition letter or the date of their appointment on ad hoc basis, would be the relevant date for reckoning their age for satisfying the prescribed age limit. It may be pertinent to state here that according to the requisition letter of 29th March, 1978 and 18th May, 1978, the candidates were required to be between the 18 and 25 years of age as on 1.1.78 with usual relaxation for SC/ST candidates. However, according to O.M. dated 4th December, 1979 issued by the Ministry of Home Affairs, Department of Personnel & Administrative Reforms, Government of India (copy Annexure P-9) which specifically deals with the subject "Crucial date for determining age limits etc. for competitive examination held by the UPSC/SSC", the crucial date for determining the age limits for appointment to posts filled otherwise than through competitive examinations is the closing date for receipt of applications from candidates in India. However, in respect of posts, the appointments to which are made through the Employment Exchanges, the crucial date for determining the age limit will in each case be the last date upto which the Employment Exchanges are asked to submit the names.

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6. According to Scheme/^{of which}Annexure P-6 is an incomplete copy, the relevant date for reckoning the prescribed age limit was the date on which they were appointed as Lower Division Clerks/on ad hoc basis. The said Scheme specifically refers to ad hoc employees who were recruited through Employment Exchange and were within the age limit for competing the Clerks Grade Examination of the Commission on the date of their appointment.

7. It is beyond the pale of controversy that all the petitioners were within the prescribed age limit on 1.1.78 as also on the date when their names were sponsored by the Employment Exchanges. In other words, if the criteria given in the requisition letters/issued to the Employment Exchange as well as O.M. Annexure P-9 are accepted as correct, then the petitioners fully satisfy the condition of age limit. However, if the date of their appointment on ad hoc basis is held to be the relevant date they are certainly out of court. The critical question, therefore, for consideration is whether the last mentioned date can override the earlier two dates for the purposes of determining their eligibility regarding age limit. On a careful consideration of the whole matter, our answer is that the requisition letter should in all fairness and justness operate on its own force so far as the relevant date for reckoning the age of the petitioners is concerned. The said requisition letter prescribed all the necessary qualifications of eligibility of candidates who may be sponsored for ad hoc appointment to the posts of Lower Division Clerk and there is no reason why the dated 1.1.78 mentioned therein as the relevant date should not hold the field even for the regularisation of their service on permanent basis. It is on the principle that the special overrides the general.

Both O.M.(Annexure P-9) as well as the Scheme (Annexure P-6) can be said to be general in nature whereas the requisition letter spelt out the conditions of service in explicit terms for the post to which the petitioners were appointed. It may be argued that in any way, even the Scheme (Annexure P-6) can be said to be special to the occasion, but we are of the view that the Government once having given a specific date could not thereafter alter the same to the prejudice and detriment of the petitioners. It is common knowledge that the appointments to the posts made on ad hoc basis initially are extended from time to time. Indeed, in the instant case, the services of the petitioners were extended on ad hoc basis which according to us would be a misnomer right upto 30th June, 1986, pertinently are of the reasons which weighed with the Government to devise Scheme (Annexure P-6) was that the ad hoc employees had rendered a number of years of service and they had become overage to appear in any open competitive examination. Having regard to their total length of service on these posts, it would be most unjust and unfair that despite their continuous officiation on the said posts they should be shunted out on the specious plea that they were overaged on the date of their adhoc appointment, especially, when all the three petitioners had even qualified in the Special Clerical Grade Examination which was obviously a substitute for the competitive examination envisaged in Rule 12 of the Central Secretariate Clerical Service Rules. The action of the respondents in altering the date of eligibility for reckoning the age limit is therefore totally arbitrary and violative of Article 14 of the Constitution of India. It is well settled that arbitrariness is antithetic to the concept of equality enshrined in Article 14 of the Constitution. The respondents have not come out with any justification or valid reason for changing the date of eligibility for the purposes of age limit vide Scheme (Annexure-P6). We, therefore, hold that the petitioners were required

to satisfy the condition of age limit for eligibility of the post of Lower Division Clerk only on 1.1.78 as spelt out in the requisition letters themselves. It bears repetition that all the petitioners were within the age limit on the said date.

8. Our attention has been invited to the decision of this Tribunal in Satish Kumar & others Vs. U.P.S.C. and Others : ATR 1986(2) CAT 47, wherein too Special Qualifying Examinations were held to enable the ad hoc employees for being considered for appointment on permanent basis. The prescribed age limit was to be reckoned on the date of their appointment on ad hoc basis. Since no question like the one before us regarding the relevant date for reckoning the age limit cropped up in the said case, the Court held that the date of appointment on ad hoc basis was the relevant date. However, the Court observed that the Scheme for holding Special Qualifying Examination was formulated for the sole purpose of giving some relief to the ad hoc clerks who for years could not be inducted into regular clerical cadre and the Government cannot be expected to take away by left hand what it is gracious enough to give by its right hand. These observations aptly apply to the situation in the instant case. Evidently, the petitioners were faced with Hobson's choice and they could either accept the ad hoc appointment for which their names were sponsored by the Employment Exchange or continued to remain unemployed for an indefinite period. Perhaps prospects of employment were very bleak and they rushed ⁱⁿ for ad hoc employment. It ^{was} perhaps in the hope that their services may be regularised eventu-^{ally} ally. Therefore fixing of another date for determining their eligibility regarding

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age limit must be struck down as wholly arbitrary and violative of Article 14 of the Constitution.

9. To sum up therefore, we hold that the petitioners being well within the age limit on 1.1.78 which was the prescribed date in the requisition letters of March and May, 1978 and they having also qualified in the Special Clerk's Grade Qualifying Examination became entitled to regularisation of their services on permanent basis. Hence, we direct the respondents to appoint all the three petitioners to the posts they are holding at present substantively on permanent basis. Under the circumstances, no order is made as to costs.

29/7/87
(Birbal Nath)
Administrative Member

J. D. Jain
29.7.87.
(J.D. Jain)
Vice-Chairman