

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 522/86
T.A. No.

1986.

DATE OF DECISION 13.9.90

Prem Singh & Ors. Petitioner

Dr.D.C.Vohra, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mrs.Raj Kumari Chopra, Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.C. Jain, Member(Administrative)

The Hon'ble Mr. J.P. Sharma, Member(Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

MGIPRRND-12 CAT/86-3-13-86-15,000

J.P. Sharma
(J.P. Sharma)
Member (J)

P.C. Jain
(P.C. Jain)
Member (A)

(P)
(R)

Central Administrative Tribunal
Principal Bench: New Delhi.

Regn.No.OA-522/86

Date of Decision: 13.9.1990.

Prem Singh & Ors.

... Applicants.

Vs.

Union of India & Ors.

... Respondents.

For the applicants

... Shri D.C.Vohra,
Advocate.

For the respondents

... Mrs. Raj Kumari Chopra,
Advocate.

CORAM: Hon'ble Shri P.C.Jain, Member(Admn.).

Hon'ble Shri J.P.Sharma, Member(Judl.)

JUDGEMENT

(Delivered by Hon'ble Shri J.P.Sharma)

The applicants jointly moved an application under Section 19 of the Administrative Tribunals Act, 1985 assailing the order dated 20.11.1985 passed by the Under Secretary, Ministry of External Affairs, New Delhi effecting reversion of Group 'D' employees from Group 'C' posts. The applicants started service with the respondents as casual labour and were eventually appointed as Peon by various office orders (Annexure A, B and C). Subsequently, the applicants were selected for officiating promotion to Grade VI of the General Cadre of I.F.S. (B) vide order dated 29th May, 1982 (Annexure 'F'). That the applicants were ordered to appear in a typing/written test as well as to appear for interview and on the basis of typing and written test and interview, they were appointed as L.D.C. vide order dated 17.9.1982 (Annexure-J). That the applicant had been reverted to the parent post of Group 'D' with effect from 31st March, 1983 (Annexure 'K'). The applicants were again appointed as L.D.C. with effect from 26th September, 1983 (Annexure 'O'). However, there was a stipulation attached that "the appointees avail the earliest opportunity to take the S.S.C. Examination for regularisation of their ad-hoc appointment." The applicants thereafter appeared in S.S.C.

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Examination, 1983 and passed the same but to their utter surprise, the applicants were reverted to Group 'D' post vide order dated 30th May, 1985 (Annexure 'X'). The applicants made representations but to no effect.

2. The case of the applicants is that they have been working since June, 1982 and they have also passed the S.S.C. Examination but instead of their services being regularised they have been illegally and arbitrarily reverted to Group 'D' post. The representations were never replied. However, after giving certain breaks, the respondents again appointed the applicants for a period of six months by order dated 12.9.1985 (Annexure 'CC') laying down two conditions (i) there will be no request for regularisation of their adhoc appointments and (ii) as soon as the S.S.C. nominees join duty and there is a shortage of posts in Grade VI of I.F.S.(B), the adhoc recruits will stand reverted to their original grade. However, the applicants were again reverted to Group 'D' post with effect from 28th November, 1985 even though the 6 months period was not completed. This is the order under challenge. That a similar employee Shri Karamvir Verma who was earlier in category 'D' employees but manned a category 'C' post on adhoc basis was reverted time and again despite his having qualified the S.S.C. Examination and the Hon'ble Tribunal in OA-133 of 1986 decided on 28th May, 1986, allowing the application ordered the regularisation of Shri Verma from 30.4.1984. Thus, the case of the applicants is covered by this judgement. The applicants prayed for the following reliefs:

- (1) to quash the impugned order dated 20th November, 1985 reverting the applicants from the post of L.D.Cs. to the original category Group 'D' posts.

(2) the applicants be regularised as L.D.Cs. in grade VI of the Indian Foreign Service (B) with effect from 30.4.1984, the date when the result of the examination held by the S.S.C. in December, 1983 was announced and their names recommended for regularisation by the S.S.C. against the post of L.D.Cs.

3. The respondents contested the application and stated that the application is not maintainable under law. The applicants were appointed as L.D.C. purely on temporary and adhoc basis for a period of three months only. They were never appointed on regular basis and the said appointment could be terminated at any time without prior notice as there were no posts of clerks. Their services as L.D.C. were terminated and they were reverted to their original post of Group 'D' alongwith other persons. They were not eligible to sit in the S.S.C. examination and, as such, they were reverted to their substantive posts.

4. However, the learned counsel for the applicants did not press the above mentioned reliefs, inasmuch as these reliefs stood granted to the applicants by the decision of OA 133/86 (Annexure FF). The applicants pressed that in view of the ratio laid down in the case of B.Kumar Vs. Union of India, reported in 1988 ATR (I) page 1, the adhoc service of the applicant should be counted for seniority if that service is followed by regularisation. The applicants have filed as Annexure II, the seniority list and the names of the applicants having been shown at Serial No. 193, 195 and 197 while they claim seniority against those who joined later than the applicants.

7. We have heard the learned counsel on this aspect of the matter in detail and have perused a number of

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*authorities which have been referred to by the learned counsel for the applicants.

8. Firstly, the seniority list (Annexure II) filed by the applicants shows that the applicants have been regularised in service from 30.4.1984 and that was the main relief claimed in OA and in the remarks column it is written "Special Clerks Grade Examination 1983 appointees." The applicants, therefore, have been given regularisation only as a result of the examination of 1983 which admittedly accordingly to them, was held in 1983 and the prayer in the original application is also for the regularisation of the services of the applicants from 30.4.1984 when the applicants were declared successful in the written/typing examination. The entry in the remarks column shows that all those who have been kept above the applicants pertain to

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1. ATLT 1990(2)SC 187
The Direct Recruit Class II Engineering Officers Assn. & Ors. Vs. State of Maharashtra & Ors.
2. SLJ 1990(2) A.P. High Court 178
Dr. Mohd. Ishaq Vs. Osmania University.
3. JT 1988(4)SC 421
Delhi Water Supply and Sewage Disposal Committee Vs. R.K. Kashyap & Ors.
4. ATR 1989(1)CAT Delhi 211
Shyam Sunder & Ors. Vs. Union of India
5. ATR 1989(1) CAT Chandigarh 525
Som Dutt Sharma Vs. Union of India.
6. ATR 1988(1) CAT Delhi 1.
B. Kumar Vs. Union of India.
7. ATR 1988(1)CAT Delhi 196
Prem Lata Chaudhary Vs. E.S.I.C.
8. ATR 1987(1) CAT Bombay 458
Kunj Lal Laxmi Nayak Vs. Union of India.
9. ATR 1986(2)CAT Delhi 346
S.C. Jain Vs. Union of India.
10. ATR 1986(2)SC 49(AIR 1986 SC 638) Narender Chadha Vs. Union of India.
11. 1984(4)SCC 329(AIR 1985 SC 1527)
G.P. Doval & Ors. Vs. State of Uttar Pradesh.
12. SLR 1978(2) Delhi High Court 372
Kuldip Chander Sharma Vs. Delhi Administration.

Lower Division Clerks Examination of 1982 and as such, the applicants cannot march over them. Further, as already stated their earlier service was totally ad-hoc for temporary periods and there have been breaks in the services of the applicants from time to time when there were no posts on which the applicants could have been allowed to work. Initial temporary short term appointment on ad-hoc basis vide order dated the 17th September, 1982 was terminated from 31.3.83 vide order dated 22nd March, 1983 (Annexure 'K'). By order dated 26th April, 1983 (Annexure I), the applicants were allowed to appear in typing/written test. By the order dated 21.9.1983 (Annexure 'N'), it was noticed that the applicants have passed the typing test and by the order dated 3rd October, 1983 (Annexure 'O') the applicants were appointed as L.D.Cs. on adhoc and temporary basis for a period of three months with effect from 26.9.1983. Thus, from the various orders quoted above, it will appear that the applicants after having passed S.S.C.Examination, 1983 were given fresh appointment and so the period of their earlier ad-hoc service from 1st June, 1982 cannot at all be considered for the purpose of promotion. The latest pronouncement of the Supreme Court in Direct Recruits Class I Engineering Officers Association & Ors. Vs. State of Maharashtra & Ors., Judgement Today 1990(2) 264, it has been held that where the initial appointment is only ad-hoc and not according to the rules and made as a stop-gap arrangement, the officiation in such a post cannot be taken into account for considering the seniority.

9. Rule 16 of the Recruitment Rules of Grade VI of I.F.S.(B) provides that 10% of the vacancies may be filled up by promotion from Group 'D' employees working in the Ministry of External Affairs in the following manner, namely, a) 5% by promotion on the basis of seniority subject

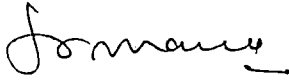
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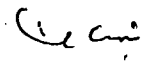
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to rejection of the unfit provided they are otherwise,
b) 5% of the vacancies may be filled on the basis of
'Qualifying Examination' held for this purpose by the S.S.C.
We have not been shown that the applicants belonged to
either of the above two categories. They were advised to
take the earliest opportunity to take the S.S.C. Examination
and they took the 'Special Clerks Grade Examination, 1983'
which appears to be different than the 'Qualifying
Examination' for 5% posts for Group 'D' staff referred to
above. This would also show that until the applicants
passed the 'Special Clerks Grade Examination in April, 1984,
they cannot be considered to be eligible to be appointed to
Group 'C' post in accordance with the Recruitment Rules.

10. In view of the foregoing, we cannot hold that the
applicants have rendered continuous officiating or ad-hoc
service since their first appointment to Group 'C' posts in
persuance of order of appointment dated 29.5.82 till their
regularisation with effect from 30.4.1984, as there was a
break in service of nearly six months which cannot be held
to be either artificial or arbitrary. Accordingly, the
relief pressed for counting the service with effect from
1.6.1982 for purposes of seniority in the cadre of Grade VI
of the I.F.S.(B) General Cadre, cannot be granted. The
application is, therefore, dismissed leaving the parties
to bear their own costs.


(J.P. Sharma)
Member (J)


(P.C. Jain) 13/5/84
Member (A)