IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

OA NO.63 of 1986 Date of Decision:21.4.1986

Shri Suman Kumar Khanna & Others Petitioners

vs.

Union of India and Others Respondents

OA NO.91 of 1986

Smt. Charanjeet Kaur & another Petitioners

vs.

Union of India and another Respondents

OA NO.98 of 1986

Kum Ravinder Kaur & another Petitioners

vs.

Union of India and another Respondents

OA NO.105 of 1986

Smt. Anil Rani Malik Petitioner

vs.

Union of India Respondent

OA NO.81 of 1986

Smt. Dolly Boaz and another Petitioners

vs.

Union of India and another Respondents

For petitioners: Shri B.R. Sharma, Advocate

For respondents: Shri K.C. Mittal, Advocate

CORAM:

Hon'ble MR. S.P. MUKERJI, MEMBER

Hon'ble MR. H.P. BAGCHI, JUDICIAL MEMBER

JUDGMENT

The aforesaid five cases involve common questions of facts and law and since the reliefs

Contd... 2

sought are also similar they are disposed of by a common order.

2. In OA 63/1986, Shri Suman Kumar Khanna and eight others have come up under Section 19 of the Administrative Tribunals Act against the impugned order dated 24.1.1986 terminating their services as ad hoc Lower Division Clerks(LDCs) in the offices of Directorate of Estates, Ministry of Urban Development and Directorate General of Works of the same Ministry with effect from 31.1.1986.

3. The admitted facts of the case are as follows. The applicants were appointed as ad hoc LDCs during the period between 1981 and 1983 on purely temporary basis for a period of three months or till the qualified candidates became available whichever was earlier. Their services were being terminated regularly on completion of three months and they were reappointed for a period of three months after small breaks in service. They had passed typing tests held by the Services Selection Commission and were given increments also. In order to get them absorbed in the regular posts borne on the cadre of the Central Secretariat Clerical Service(CSCS) they were enabled to appear before the Special Qualifying Examinations held in 1982, 1983 and 1985 but the applicants failed to qualify through any of these examinations and accordingly their

Contd.....3.

services were terminated without giving them any notice or pay in lieu of notice except to the extent of the period between the date of issue of the impugned order i.e. 24.1.1986 and the date of termination i.e. 31.1.1986. The case of the applicants is that since they have been discharging their duties efficiently and had passed the typing test held by SSC and got the increments also they should have been automatically regularised and the termination of their service because of their failure in the Special Qualifying Examination is harsh and discriminatory.

4. In OA 91/1986, the applicants Smt. Charanjeet Kaur and Smt. Sunita Rani have come up under Section 19 of the Administrative Tribunals Act against the impugned order passed by the Directorate General of Supplies and Disposals dated 7.2.1986 terminating their services from the afternoon of the same date as in the case of the two applicants in OA 98/1986 discussed below. In this case also the applicants were appointed on daily wages in 1981 and were reappointed without any break as ad hoc LDCs in the regular pay scale from 27.9.1983 but having failed to qualify in the Special Qualifying Examination held in 1985 their services were terminated without any notice.

5. In the case of OA 98/1986 the two applicants Kum. Ravinder Kaur and Smt. Gurinder Oberoi

Contd... 4

have also come up under Section 19 of the Administrative Tribunals Act against the impugned order dated 7.2.1986 issued by the Directorate General of Supplies and Disposals of the Department of Supply terminating their services as LDC w.e.f. the afternoon of the same date. The facts of this case are identical with those of OA 91/1986 mentioned above but more or less similar to the facts of OA 63/1986(vide para 3 above) except that the applicants were originally appointed as LDC on daily wages w.e.f. 28.8.1982 and were appointed as ad hoc LDCs w.e.f. 27.9.1983 without any break. They qualified in the typing test held by the SSC but they having appeared in the Special Qualifying Test held in 1985 failed to qualify. They contention is that having completed 5 years of continuous service they should be treated as quasi-permanent. The contention of the respondents is that the applicants were appointed purely on an ad hoc basis and the risk of their services being terminated in the event of their not qualifying in the Special Qualifying Examination was made known to them and duly acknowledged. Passing of the departmental and other typing tests does not entitle them to regular appointment in the CSCS.

6. In OA 105 of 1986, the applicant Smt. Anil Rani Malik was originally employed by the

Contd.....5.

Ministry of Health & Family Welfare as L.D.C. on an ad hoc basis since 1981 and passed the typing test held by the SSC and earned increments till January, 1986 when her services were terminated by the impugned order dated 20th January, 1986 with effect from that very date as in cases of OA 91/86, and OA 98/1986. In this case also, the applicant appeared thrice in the special qualifying examination held in 1982, 1983 and 1985 but she failed to qualify in any of the three examinations. It is because of this that her services were terminated by the impugned order.

7. In OA No.81 of 1986, Smt. Dolly Boaz and Smt. Sudesh Malhotra have come up under Section 19 of the Administrative Tribunals Act against the impugned order dated 27.1.1986 issued by the Ministry of Urban Development terminating their services in sub-rule (1) of Rule 5 of the Central Civil Services(Temporary) Rules, 1965 with effect from the date of expiry of a period of one month from the date on which the notice was served on them. In this case also, the applicants were employed by the respondents as ad hoc LDCs in December, 1977 and January, 1978 and they continued to function as ad hoc LDCs without any break till 27th April, 1979 when they were given the first technical break of one day. They continued as ad hoc LDC till January, 1982 without any break after which they were given breaks in

service after every three months. In this case, as distinct from other cases dealt with in this judgment, even though the letters of appointment did not mention anything about Central Civil Services(Temporary) Rules, 1965, the impugned orders of termination mentioned these Rules. The letters of appointment apart from saying that they were being appointed as LDC on an ad hoc basis and that the appointment was purely temporary and would not confer any right upon them for regular appointment, also mentioned that their services will be terminated with one month's notice on either side. In this case, the petitioners appeared in each of the three Special Qualifying Examinations but failed to qualify. The learned counsel for the petitioners stoutly argued that since the petitioners were considered to be temporary Government servants they should have been regularised even though they had failed in the Special Qualifying Examination is not relevant for their purpose. The learned counsel also drew our attention to the celeberated rulings of the Hon'ble Supreme Court in Roshal Lal vs. Union of India reported in AIR 1967 SC 1889 and another ruling of the Hon'ble Supreme Court in Union of India and others vs. Arun Kumar Roy reported in 1986(1)SCC 675 to urge that as soon as the petitioners were appointed even on an ad hoc basis, their conditions of service will be governed by the statutory rules and not by the contract of appointment.

Contd 7

8. We have heard the arguments of the learned counsel for both the parties in all the aforesaid five cases and gone through the relevant documents closely. In order to appreciate the issue involved in these cases the following background may be useful.

9. Lower Division Clerks form the lowest rung of ministerial functionaries in the Government of India above that of Daftaries, Peons etc. They function mostly as diarists, typists and engaged in other routine clerical jobs. The regular posts as LDCs in the permanent establishment are included in the Central Secretariat Clerical Service to which recruitment is made by 90% through open competitive examination held by the Staff Selection Commission and 10% by promotion of Group D employees in the Ministries and offices participating in the Central Secretariat Clerical Service. Apart from the hands in the permanent establishment, a Ministry and office participating in the said Service have had to engage a large number of LDCs seasonally or otherwise on a purely ad hoc and temporary basis. This happens when sufficient number of recruits are not available through the open competitive examination or the examination could not be held or when requirement of clerical staff suddenly increases. In such a situation the participating offices had to recruit such LDCs through the

Contd... 8

Employment Exchanges through prior approval of the Department of Personnel & Training. Being the lowest and the least attractive level of white collar establishment, the turn-over even in the regular establishment of LDCs had not been very high bedause of promotion, drop-outs etc. This exacerbated the paucity of clerical staff in offices and Ministries especially those who were handling large volume of routine type of correspondence like UPSC, DGS&D etc. Further, since ven temporary posts could not be normally created easily to meet the volume of work, these offices used to recruit these clerks in sizable numbers from the Employment Exchange on a daily wage basis paid from the contingencies, for which creation of posts was not called for. Over the years these LDCs continued to function without being regularised or permanently absorbed in the established cadre.

10. There are three distinct categories of these clerks as follows:

(a) Clerks on daily wage basis having no security of tenure and paid on piece-rate basis.

(b) Clerks working on an ad hoc basis and paid a running scale against posts which are excluded from the Central Secretariat Clerical Service.

(c) Regular clerks who are included in the Central Secretariat Clerical Service and paid the regular prescribed scale of pay.

The human distress involved in respect of security of tenure for the first two categories i.e. daily wagers and ad hoc employees has been a perennial problem with the Government. In respect of the daily wagers who had completed two years of service with 240 days of paid service in a year the Government has been allowing the various departments and offices to bring them over to regular establishment on a monthly basis even though their status were kept purely temporary and ad hoc. In respect of those clerks who have been stagnating as ad hoc clerks year after year without being brought over to the regular establishment and who could not appear in the open competitive examination held by the Staff Selection Commission because of over-age and other reasons, the Government has been holding what is known as Special Qualifying Examination conducted by the Staff Selection Commission. Three such examinations were held - one in 1982, another in December, 1983 and the third in July, 1985. Those who qualified in these examinations were brought over to the regular clerical service. This action could be taken by the Government under various provisions of Rule 12 of the Central Secretariat Clerical Service Rules, 1962.

11. In all the five cases, the applicants were working as ad hoc LDCs on purely temporary

Contd.. 10

capacity and they were all qualified by age, length of service etc. to take the Special Qualifying Examination. It was made clear to them that those who failed to qualify in the Examination will have to quit to give place to the regular appointees who come through the open market competitive examination held by the SSC. Two important aspects of the scenerio should be kept in view. Firstly, the petitioners could have appeared and might have appeared both in the open regular competition examination as also in the three Special Qualifying Examinations held in 1982, 1983 and 1985 if they were otherwise qualified. Secondly, the Special Qualifying Examination was tailor-made to absorb on humanitarian grounds the ad hoc LDCs who have been in service for more than a year or so and unlike the regular competitive examination, they were not in the Special Qualifying Examination required to compete with others to come within the zone of appointment. In the Special Qualifying Examination they were required to simply reach a minimum qualifying level of performance in the examination and if they had to come upto that level(which we were told was about 34% to 35% of total marks) they would have been absorbed as regular LDCs in the Central Secretariat Clerical Service. Since they did not measure up even to the minimum qualifying standards they had to give way to those who had attained the minimum qualifying standards in the Special Qualifying

Examination and more importantly to those meritorious candidates who came within the zone of appointment in open all-India competitive examination. Any further accommodation to the ad hoc LDCs who failed to even qualify in the Special Qualifying Examination would have been not only detrimental to the maintenance of standards of efficiency in public services but also unfair to those who had qualified in the Special Examination and/or earned well-deserved appointment through All India Competitive Examination.

12. The learned counsel for the petitioners in OA NO.81/1986 stoutly argued that since the petitioners were working against regular vacancies, they have to be included as members of the Central Secretariat Clerical Service. We have given careful considerations to the arguments of the learned counsel in this particular case where a reference has been made to the Central Civil Services(Temporary) Rules, 1965 and the number of rulings of the Hon'ble Supreme Court to which our attention was drawn. 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 in the Central Secretariat Clerical Service cannot

Contd...12

claim any right to be inducted to that Service without clearing the qualifying tests. The Special Qualifying Examinations were prescribed as a measure of offering accommodation to the ad hoc employees who did not or could not take the regular open competitive examination or face the tough competition there. The Special Qualifying Examination was a concession to the ad hoc employees and was prescribed under Rule 12 of the Central Secretariat Clerical Service Rules and it will be very unfair on the part of the petitioners to fault the Special Qualifying Examination merely because they failedin these examinations which were prescribed to give them a chance of being inducted into the regular clerical Service. 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 examination or the Special Qualifying Examination. The reference to the Central Civil Services (Temporary) Rules, 1965 does not make their position any better than being entitled to one month's notice before termination of service. The learned counsel himself indicated that the petitioners were given Earned Leave and other facilities which other Government servents enjoy.

Contd...13.

This is exactly what the rulings of the Hon'ble Supreme Court also enjoin. Having been recruited even as ad hoc LDCs, they are entitled to the facilities and conditions of service to which they are entitled under the statutory rules even though the original appointment letter is silent about them. Since statutory rules do not entitle them to be inducted into the regular clerical Service without passing the prescribed tests and prescribed examinations under the Recruitment Rules, they cannot have any right to regular appointment as LDCs. This will be unfair to those who had appeared in the regular or special examinations and got selected or qualified.

13. We are, therefore, unable to accept the contention of the applicants that they should be taken over in the Central Secretariat Clerical Service which is a regularly constituted cadre of which the Recruitment Rules are statutorily determined, even though they have failed to qualify by the most relaxed standards in the Special Qualifying Examinations. But what however strikes us to be rather harsh is the manner in which their services were terminated without giving them sufficient notice. Whereas in OA 81/1986 the applicants were given full one month's notice, in case of OA 63/1986 the impugned order gave them a notice of only 7 days and in the other three cases(OA 91/1986, OA 98/1986 and OA 105/1986) the applicants were given a

Contd....14.

notice of only a few hours. Even though according to the respondents in all these cases except OA 81/1986 the letters of appointment gave them no right to be given any notice, we feel that on humanitarian grounds and on the ground that the Government should be a reasonable and model employer, the applicants should have been given at least clear one month's notice or pay in lieu thereof before their services were terminated. In the case of those applicants in whose cases the period between the impugned order and date of actual termination falls short of one month they should be paid pay and allowances for the period of the shortfall. This according to us will meet the interest of justice and equity on one hand and public and individual interest on the other. Subject to this, the five applications are rejected. There will be no order as to costs. This order accordingly disposes of all the aforesaid five cases, i.e. OA 63, OA 81, OA 91, OA 98 and OA 105 of 1986. Copies of this order be placed on the files of each of these five cases.

(H.P. BAGCHI)

(S.P. MUKERJI)