

②

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Reg.Nos.(1) OA 1068/86 with Date of decision: 24.07.1992
CCP 13/87

(2) OA 1166/86 with
CCP 12/87

(1) OA 1068 with
CCP 13/87

Shri Sohan Lal

...Applicant

(2) OA 1166/86 with
CCP 12/87

Shri Bhoja Ram

Versus

Union of India through the
Secretary, Ministry of Home
Affairs

...Respondents

For the Applicants

...Shri R.L. Sethi,
Counsel

For the Respondents

...Mrs. Raj Kumari
Chopra, Counsel

CORAM:

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

THE HON'BLE MR. B.N. DHOUNDIYAL, 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 Shri P.K.
Karttha, Vice Chairman(J))

The applicants in these two applications have worked as Lower Division Clerks on ad hoc basis in the office of the respondents for about six years from 1980 to 1986 and thereafter they have continued as such by virtue of the interim orders passed by the Tribunal for another six years. They are still continuing in service by virtue of the interim orders passed by the Tribunal.

2. As common questions of law have been raised in these applications, it is proposed to deal with them in a

a

common judgment.

3. The facts of the case are not disputed. The applicants have worked as Lower Division Clerks on purely temporary and ad hoc basis. Their appointment had been extended from time to time till their services were finally terminated by the impugned order dated 27.11.1986. The impugned order has been passed by invoking the provisions of Rule 5 of the CCS(Temporary Service) Rules, 1965.

4. We have gone through the records of the case and have heard the learned counsel of both parties. The case of the applicants is that having worked for such a long period, the termination of their services by invoking Rule 5 of the CCS(Temporary Service) Rules, 1965, is not legally sustainable. The said rules would not apply to them as the respondents were under an obligation to declare them quasi permanent, in which event the said rules would not apply to them. They have also relied upon a catena of judicial pronouncements, according to which, by virtue of long officiation in a post, a person is entitled to regularisation in the post of LDC. The

* The case law relied upon by the learned counsel for the applicants:-

(1) 1192(1) SLJ 215 (SC); and (2) 1992(19)ATC
292 (SC)

a

learned counsel for the applicants also submitted that the applicants belong to the Scheduled Caste community.

5. As against the above, the contention of the respondents is that the appointment of the applicants was purely by way of stop-gap arrangement and pending the joining of a regular incumbent sponsored by the Staff Selection Commission.

6. Admittedly, the applicants were appointed as Lower Division Clerks from the names sponsored by the Employment Exchange. The letters of appointment issued to the applicants indicated that the appointments were purely temporary and ad hoc and that they have no claim for absorption in regular establishment. They were also forewarned that their appointment could be terminated at any time without any show cause notice. It was further stipulated that other conditions of service would be as per the Government rules and orders in force from time to time.

7. It is well known that in Central Government offices/departments, regular appointment of Lower Division Clerks is made on the basis of the examinations held by the Staff Selection Commission which is the recruiting agency for the said post. The respondents have stated in their counter-affidavit that the applicants appeared in the special qualifying examination conducted by the

e

Staff Selection Commission but did not qualify the said examination. Accordingly, it has been argued that the applicants have no legal right to continue in the post. The learned counsel for the respondents also submitted that the period of service rendered by the applicants during the subsistence of the stay order passed by the Tribunal should not ~~xxx~~ be taken into account for the purpose of regularisation of the applicants. The learned counsel for the respondents also relied upon the judgment of this Tribunal dated 5.3.1992 in TA 226/86 (Suit No. 955/84 - Brij Bala Chopra Vs. U.O.I. & Another), in which the Tribunal did not give any relief to an applicant who was similarly situated.

8. We have given careful consideration to the aforesaid contentions. The respondents have not adversely commented upon the work and conduct of the applicants. In our opinion, the applicants are not entitled to automatic regularisation in the post of LDCs as the said post is filled on regular basis by successful candidates at the examination held by the Staff Selection Commission. For the departmental candidates who have been continuing on ad hoc basis, the Staff Selection Commission has in the past conducted special test. In fact, the applicants before us had appeared in a special qualifying examination conducted by the Staff Selection Commission but they could not qualify the said examination. In our opinion, having

x

regard to the long period of ad hoc service put in by the applicants, the applicants should be given at least two more chances to appear in such special tests. We, therefore, dispose of the application with a direction to the respondents to arrange the holding of special tests for the applicants and persons similarly situated, if any, through the Staff Selection Commission, as a special case. They shall do so as expeditiously as possible, but preferably within a period of three months from the date of communication of this order. In case the applicants qualify the special test to be conducted by the Staff Selection Commission, they should be appointed as Lower Division Clerks on a regular basis. The application is disposed of on the above lines.

There will be no order as to costs.

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

CCP 13/87 and CCP 12/87

The learned counsel for the petitioner did not press these CCPs. Accordingly, the CCPs are dismissed and the notice of contempt is discharged.

B. N. Dhoondiyal 24/7/92
(B.N., DHOUNDIYAL)
MEMBER (A)
24.07.1992

arrat 24/7/92
(P.K. KARTHA)
VICECHAIRMAN (J)
24.07.1992

RKS
240792