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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI

Regn.No.OA1193/86 & OA-1194/86 Dated: 2.2.1987.

Shri Ishwar Singh Tanwar Petitioners

&

Shri Harvinder Girdhar

VERSUS

Union of India

..... Respondents

For petitioners

..... Shri S. Vidyalkar,
Advocate.

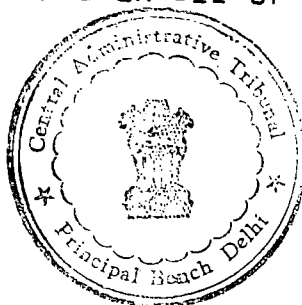
For Respondents

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CORAM: Hon'ble Shri S.P. Mukerji, Administrative Member.
Hon'ble Shri H.P. Sagchi, Judicial Member.

JUDGEMENT

By this common order, we are disposing of the two identical applications No.OA-1193/86 filed by Shri Ishwar Singh Tanwar and O.A.-1194/86 filed by Shri Harvinder Girdhar. ^{taking the former to be the leading case} They have been working as LDCs in the Ministry of Industry since 29th April, 1978 and 11th April, 1977, respectively on a purely temporary and ad hoc basis. They have been served with one month's termination notice by the impugned order, dated 17th December, 1986. They have prayed that since they have been in service for the last 9-10 years, they cannot be discharged without any fault of theirs and without any hearing and the termination is hit by Article 311(2) of the Constitution of India. They have, therefore, prayed that the termination notice should be withdrawn and they should be allowed to take the Supplementary Special Qualifying Examination. The respondents have stated that the petitioners had been allowed to take the three Special Qualifying Examinations of 1982, 1983 and 1985 but failed in all of them. In accordance with the



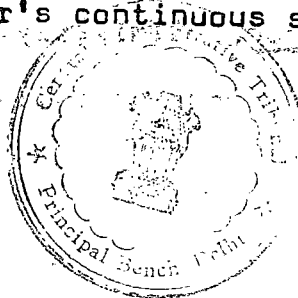
.....2.

Y instructions of the Department of Personnel and Training, the services of those who did not qualify in the examinations were terminated. It had already been clearly mentioned in the scheme of the Special Qualifying Examination, 1985 that the services of those who did not or could not qualify the examination, will be terminated from the date of declaration of the results of the examination.

2. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. They could not be regularised because these posts were not borne on the Central Secretariat Clerical Service and could be filled up on a regular basis only through recruitment by the Staff Selection Commission. However, in the exigency of service, these posts were taken out of the service temporarily to accommodate ad hoc employment till regular appointments could be made through the competitive examinations. However, in order to enable the ad hoc employees who could not get through the regular competitive examinations, Special Qualifying Examinations were held in 1982, 1983 and 1985. The applicants in both these cases appeared in the Special Qualifying Examinations and failed. In any series of applications which were brought before this court, it was revealed that a number of ad hoc employees could not take the 1985 Special Qualifying Examination because of exclusion of their service which they had put in on daily-wage basis before they were made ad hoc. Similarly, their age at the time of their recruitment as daily-wage employee was

was not taken into account for the purpose of their age
for admission in the examination. In order to enable
them to take the examination of which they were
deprived in 1985 by a narrow interpretation of the
qualifying service and age, this court directed that
a ^{Special} supplementary examination should be held by the
Government to enable such excluded candidates of 1985
examination. It was clearly laid down by us that
this examination was meant only for those who could
not or were not allowed to appear in the 1985 ^{Special} examina-
tion because of age and qualifying service and
restrictions and that it was not meant to operate as
a fresh examination in which other candidates could
also be allowed. As a result of our judgement, the
Government of India is holding a Special Qualifying
Examination. In para. 3 of the Department of
Personnel & Training's letter of 30th ^{September} May, 1986
(Annexure 'B' to the petition), it has been clearly
laid down that "rules were issued for holding of
Supplementary Special Qualifying Examination for the
regularisation of the services of such ad hoc LDCs,
Telephone Operators, Hindi Typists and Stenographers
Grade 'D' as did not or could not take the Special
Qualifying Examination, 1985 because of age and service
qualifications but would have been eligible by the
revised interpretation, i.e., those who were within
the age limit at the time of their initial appointment
as daily rated clerks through the Employment Exchanges
followed by appointment as ad hoc LDCs and had completed
one year's continuous service as on 1.1.1985 including

.....4.



(a) service as daily rated clerks (ignoring the periods of technical breaks) and (b) service as ad hoc LDC, etc." The scope of the examination was further expanded by the Government in the said O.M. by para.4 of the same O.M. as indicated below:-

"4. It has been observed that some of the ad hoc employees have been left out of the scope of the said Examination, the Government have, therefore, decided that the ad hoc employees of the categories mentioned above who have completed one year's ad hoc service during the period from 1.1.1985 to 30.9.1986 including those ad hoc appointees whose services were terminated during the period from 1st January, 1985, in the 30th September, 1986 for reasons not connected with misconduct or general unsuitability and who had rendered at least one year's ad hoc service before such termination, may also be allowed to appear at the aforesaid examination. A revised scheme to the ensuing Special Qualifying Examination is being issued separately."

3. From the aforesaid two paras it is clear that the Special Qualifying Examination even by its expanded scope, cannot comprehend the cases of applicants who have already availed of the 1985 Examinations but without success. If we allow the petitioners to take the examination, it will change the complexion of the examination as visualised by us. It is a matter of policy of the Government

whether a fourth Special Qualifying Examination as distinct from supplementary examination to the 1985 examination should or should not be held. This Tribunal cannot go into the merits of such a policy. However, so far as the Supplementary Special Qualifying Examination being held shortly is concerned, the petitioners have no right ^{whatsoever} to be admitted in the examination and their request in the application to this effect has to be rejected.

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4. As regards the impugned termination notice, it has been held in N. Saxena Vs. Union of India, AIR 1986(2), CAT 228 that an ad hoc appointee has no right to the post and can be reverted in accordance with the terms of appointment. It has further been held in Jarnail Singh & Ors. Vs. the State of Punjab & Others, 1986 (2) SLR 278, that if junior ad hoc employees are retained and services of seniors are terminated by an order of termination simpliciter, then Articles 14 and 16 of the Constitution are violated. Since we are satisfied that the impugned notices were not issued as a measure of punishment and no stigma is attached or implied in these notices, Article 311(2) of the Constitution is not attracted. As the petitioners have not contended that those who were recruited as ad hoc LDCs later than them have been retained while their services have been dispensed with, we see no force in the applications and reject the same. There will be no order as to costs. A copy of this order may be placed on both the files.

q. Case No. A.1194/86.

Sd/- (H.P. BAGCHI) JUDICIAL MEMBER
Sd/- (S.P. MUKERJI) ADMINISTRATIVE MEMBER

ATTESTED TRUE COPY

SECTION OFFICER
C.A.T. DELHI

