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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. RA 113/87 in OA 410/87

Date of decision: 7.2.1989

Shri V.K. Saxena

Applicant

Vs.

Union of India

Respondents

PRESENT

Shri T.C. Agarwal, Counsel for the applicant.

Mrs. Raj Kumari Chopra, Counsel for the respondents.

CORAM

Shri B.C. Mathur, Hon'ble Vice-Chairman.

A review application has been filed by Shri V.K. Saxena against the orders passed by this Tribunal in OA No. 410/87 on 9.11.1987. It has been stated that there has been a patent error of law and facts on the face of the decision. It has been argued that para 4 of the judgment states that "Once an appointment of Stenographer Grade 'D' was made through the Employment Exchange, as per the statutory provisions in the recruitment rules, it has to be treated as regular appointment" and that the plea of the respondents that the post is required to be filled by Staff Selection Commission is wrong in as much as the appointments are regulated by the Recruitment Rules. The learned counsel for the applicant cited the ruling of the Supreme Court in Union of India & Others Vs. Arun Kumar Roy saying that any terms of appointment embodied in order of appointment etc. are to be regulated by statutory rules. The applicant had accepted the post of L.D.C. under the threat of losing his livelihood, but since he had applied for the post of Stenographer Grade 'D' and not for the L.D.C., he could not have been appointed as L.D.C. He accepted this under coercion, misrepresentation and illegal influence, but the appointment of the applicant as a Stenographer was never cancelled. In the judgment it has been mentioned that the application is against the impugned order of the Ministry of I &

B dated 21.3.1986 (Annexure P-4), but the grievance of the applicant was against his reversion when he had been denied regular appointment as a Stenographer. The main part of the application related to grounds and prayer and, therefore, rejecting the case on this technical ground is an error patent on the face of it. The learned counsel for the applicant, Shri T.C. Agarwal, also cited the case of Shri P. Banerjee V. Union of India ATR 1986(1) CAT 16, decided by the Principal Bench of the Tribunal, that Tribunal can adopt inquisitorial procedure to meet the ends of justice, and the case of Dr. A.K. Jain & Others V. Union of India & Others wherein the Supreme Court held that an ad hoc employee who has put in three years is to be regularised on the basis of Character Rolls. The other relief sought in the alternative was protection of pay.

2. The learned counsel for the respondents, Mrs. Raj Kumari Chopra, said that the applicant has not made out any case for a review and has not explained what error has been made. Under error of law, instead of going into the question of law, the applicant has stated the facts which have ^{been} argued fully in the main case. Retouching of the entire original application cannot be allowed in a review application.

3. The review application has been filed saying that in the original application two prayers had been made - one that the applicant should have been continued as a Stenographer Grade 'D' and second in the alternative, his pay as L.D.C. should be fixed taking into consideration completed years of service rendered as Stenographer Grade 'D'. The learned counsel for the applicant also raised the point that according to instructions, the Department should have sent the applicant to a subordinate office, but it was not done and it would be denial of justice if he is reverted to a lower post. These points had not been considered in the judgment.

4. The Ministry of I & B had taken up the question of pay protection of the applicant with the Department of Personnel and had come to the conclusion that ad hoc appointment comes to a close after a specific period and that any other appointment either on ad hoc basis or on regular basis is treated as a fresh

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appointed and as such provisions of FR 22 or FR 22-C are not applicable in such cases.

5. These points were considered while deciding the original application. The application was specifically against the impugned order at Annexure P-4 dealing with the appointment of Lower Division Clerks in the Central Secretariat Clerical Service Cadre of the Ministry of I&B on the basis of results of Special Qualifying Examination, 1985, held by the Staff Selection Commission for Group 'D' Stenographer (ad-hoc). It was open to him to represent to the Ministry that since he had been appointed as a Stenographer Grade 'D' and should have been considered regular on having continued on ad hoc basis for a number of years and that he could not be appointed as an L.D.C., but he himself accepted the appointment of an L.D.C. The fact that his name should have been suggested to a subordinate office for appointment as Stenographer Grade 'D' but as no action was taken by him at the appropriate time, it can hardly be considered by the Tribunal at this stage. Since his appointment has been made as an L.D.C., his pay has to be fixed as an L.D.C. and has no relevance to his earlier appointment as Stenographer Grade 'D'. It is a hardship to the applicant that after working for several years, he should be given a lower post, but this matter has been fully considered while dealing with the original application, and there are no circumstances justifying a review of the orders passed. In the circumstances, the review application is rejected.



(B.C. Mathur)
Vice-Chairman

7.2.89