

Central Administrative Tribunal
Principal Bench, Delhi.

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REGN. NO. O.A. 410 of 1987 Date of decision 9.11.1987

Shri V.K. Saxena Applicant

Vs.

Union of India & Others Respondents

PRESENT

Shri T.C. Agarwal Advocate for the applicant.

Smt. Raj Kumari Chopra Advocate for the respondents.

CORAM

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

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This is an application under Section 19 of the Administrative Tribunals Act, 1985 against the impugned order No. 3/7/86-Admn.II dated 21.3.1986 passed by the Under Secretary in the Ministry of Information & Broadcasting (Annexure P-4 to the application) on the subject of 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' Stenographers (ad-hoc).

2. The brief facts of the case are that the applicant was appointed as a Stenographer Grade 'D' on 15.6.1977 on ad-hoc basis for three months. He had been sponsored by the Employment Exchange against ad-hoc appointments. The ad-hoc appointment was extended till 5.12.1977. His services as Stenographer Grade 'D' on ad-hoc basis were terminated on 15.12.1977. On the same day he was appointed as L.D.C. on ad-hoc basis and was again appointed as Stenographer Grade 'D' on ad hoc basis on 30.9.1978 and continued as such till 31.3.1986. The applicant has challenged his reversion from the post of Stenographer Grade 'D' to the post

B.M.

has asked

of L.D.C. and for restoration of his pay which he was last drawing as Stenographer Grade 'D'. The applicant has stated ^{that} he was put to a stenography test by the Ministry and then appointed as Stenographer Grade 'D' in June, 1977. He has put in about 9 years of service as Stenographer Grade 'D' with some breaks and cannot be reverted as L.D.C. His appointment as Stenographer Grade 'D' although not made through the Staff Selection Commission should be considered as a regular appointment and given all benefits in respect of his salary as Stenographer Grade 'D' from the date of his appointment as Stenographer Grade 'D'.

3. The respondents in their reply have stated that the applicant's case is untenable in law as he has filed his application against order dated 21.3.1986 which is only an offer of appointment as L.D.C. which the applicant duly accepted vide his written acceptance dated 1.4.1986 (Annexure R-1) whereas the relief that he is claiming is that the ^{regular} appointment as LDC is illegal and he should have been appointed as Stenographer Grade 'D' on regular basis by virtue of his putting in 9 years of service as Stenographer Grade 'D'. It has also been stated that the application is barred by jurisdiction as the applicant has never represented against the said order and the relief that he is claiming does not relate to the letter dated 21.3.1986 issued by the Ministry. In the written reply, it has been stated that the applicant was appointed ^{ed} as ad-hoc Stenographer Grade 'D' through Employment Exchange against a post included in the Central Secretariat Stenographic Service Cadre of the Ministry of Information & Broadcasting w.e.f. 15.6.77 and that the respondents had terminated his services on 5.12.1977 (Annexure R-III). He was appointed as L.D.C. on purely ad-hoc and provisional basis from the same date i.e. 5.12.77. Even at that time the applicant furnished an undertaking (Annexure R-VI) wherein he accepted that his appointment was liable to be terminated at any time without notice and that the appointment did not confer on him any right for continuance in the post or to regular appointment/absorption

in any other post under the Government of India. He was appointed as Stenographer Grade 'D' on purely ad-hoc and provisional basis with effect from 1.10.1978 with breaks in service on 2.1.81, 1.9.81, 1.1.82, 20.5.82, 31.7.82, 28.5.83, 1.2.84, 17.4.84 and 20.1.85. The applicant was informed that his continuance of ad-hoc appointment was purely provisional till qualified candidates from the Deptt. of Personnel become available. On the basis of the representations made by the staff side for regularising appointment of ad-hoc LDCs, Special Qualifying Examinations were held in 1982 and 1983 and ~~1984~~ it was also decided that persons who had been recruited as Stenographer Grade 'D' on ad-hoc basis through Employment Exchange may also be given a similar chance. The ad-hoc Stenographers were, therefore, afforded an opportunity to take Special Qualifying Examination, 1985, as a special case. They were provided an opportunity of getting their services regularised as Stenographer Grade 'D' failing which as L.D.C. subject to their passing the prescribed test. The applicant took the Special Qualifying Examination in 1985 and he failed to attain the requisite proficiency in stenography. However, he was able to qualify proficiency test prescribed for the post of L.D.Cs. He was offered the post and appointed as L.D.C. in the Central Secretariat Clerical Service cadre of the Ministry of I & B with effect from 1.4.1986. It has also been pointed out that vide Annexure R-VI the applicant had given an undertaking that he would not claim regular appointment on the basis of offer on ad-hoc basis. The plea of the rota quota system applicable in the case of Section Officers is not applicable in the case of Stenographers.

4. The learned advocate for the applicant emphasised that once the case has been admitted, it could not be thrown out on the ground of ^{non} admissibility and cited the case of Shri Amar Nath Vais ^h Vs. Union of India - ATR 1987(1) CAT 353. He also cited several other cases where persons after rendering satisfactory service



for long years could not be removed. He cited several cases to emphasise that ad-hoc appointments for several years were illegal and have to be treated as regular appointment and 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. He also emphasised that the applicant was selected by the Employment Exchange before registration by taking stenography test of required standards and that the appointing authority had also taken a test before appointment. As such, the applicant was fully qualified. It has been stated that the applicant did not appear at the LDCs Examination and was allowed only one chance for Special Qualifying Examination for the post of Stenographer Grade 'D'. He 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 L.D.C., he could not have been appointed as L.D.C.

5. Without going into the question of admissibility of the case, although the Administrative Tribunals Act does provide that the applicant should have exhausted all the remedies available to him under the relevant service rules as to redressal of grievances before coming to the Tribunal, apparently he has not made any application against his appointment as L.D.C., the fact remains that the present application under Section 19 of the Act is against the ~~so-called~~ ^{b2a} impugned order of the Ministry of I & B dated 21.3.1986 (Annexure P-4). It is noticed that Annexure P-4 is only an offer of a temporary appointment as Lower Division Clerk in The Ministry of Information & Broadcasting's letter dated 21.3.86 giving offer of appointment indicates the conditions under which this offer is being made and the applicant accepted this offer on 1.4.1986 (Annexure R-1) and joined as L.D.C. The offer indicated that although the post was purely provisional and temporary but was likely to continue indefinitely. Perhaps the applicant accepted this offer as he wanted to be sure of some regular appointment instead of continuing on ad-hoc basis with breaks. The applicant clearly indicates that it is against the orders dated 21.3.86 of the Ministry of I & B

(Annexure P-4); he himself having accepted it, there cannot be any relief granted to him on his appointment as Lower Division Clerk against the impugned order. If he is challenging his reversion from the post of Stenographer Grade 'D', it has nothing to do with the impugned order. As such the application cannot be allowed. The appointment or continuance as Stenographer Grade 'D' has nothing to do with the offer of appointment against which he has made an application and which he has accepted. If the applicant had rejected the offer and continued as ad-hoc Stenographer and in case he was removed from service, the question could then have been examined on merits and rules ^{also}. No relief, however, can be granted against the impugned order. The application is, therefore, rejected. There will be no order as to costs.



(B.C. Mathur)

Vice-Chairman

RA 113 of 87

OA No. 410 of 1987

(11)

8.12.87

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

He has filed a review application saying that in the original application two prayers had been made - one was that the applicant should be continued as a stenographer Grade 'D' or 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 advocate has also raised the point that according to instructions the Department should have sent the applicant to a subordinate officer, but it was not done and later it will be denial of justice if he is reverted to a lower post. *This point has not been considered in the judgment* The review application is admitted. Issue notice to the respondents. The case to come up on 19.1.1988.


(B.C. Mathur)

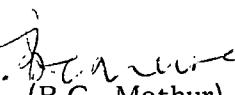
Vice-Chairman

21.1.88

Shri T.C. Aggarwal for the applicant.

Mrs. Raj Kumari Chopra for the respondents.

The case is adjourned to 17.2.88.


(B.C. Mathur)
Vice-Chairman

17.2.88

Applicant present in person.

The strike by the lawyers continues. The case is adjourned to 3.3.88.


(B.C. Mathur)
Vice-Chairman