In the Central Administrative Tribunal
Principal Bench: New Delhi

1. OA No. 920/87 Date of decision: 09.11.1992.

Shri Vyas Rai ...Petitioner

Versus

Union of India through Secretary, Labour and Rehabiliation Ministry, Govt. of India, New Delhi & Others ...Respondents

2. OA No.917/87

Shri Nanak Ram S. Kalyani ...Petitioner

Versus

Union of India & Others ...Respondents

3. OA No.918/87

Shri R.L. Mehta ...Petitioner

Versus

Union of India & Others ...Respondents

4. OA No. 919/87

Shri D.C. Sarkar ...Petitioner

Versus

Union of India & Others ...Respondents

5. OA No.921/87

Shri S.N. Ojha ...Petitioner

Versus

Union of India & Others ...Respondents

Coram:-

The Hon'ble Mr. Justice V.S. Malimath, Chairman
The Hon'ble Mr. I.K. Rasgotra, Member(A)

For the petitioners Shri P.T.S. Murthy, Counsel.

For the respondents Shri V.S.R. Krishna, proxy counsel for Shri M.L. Verma, Counsel.

Judgement(Oral)
(Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioners in these cases started their career as Lower Division Clerks in the Regional Labour Commissioner (Central) offices.

In due course, they earned promotion as Upper Division Clerks. They were promoted as Labour Enforcement Officers (Central) on ad hoc basis. On the date of such ad hoc promotion what held the field in this behalf were the Labour Enforcement Officer Recruitment Rules, 1958. The petitioners case is that they were subjected to regular Departmental Promotion Committee (DPC for short) and on the basis of such selection they were duly promoted in accordance with the 1958 rules. Though the orders of promotion described them as ad hoc, it is their case that they are really regular promotees. The stand of the respondents is that the DPC considered their cases not for regular promotion but for ad hoc promotion. What the petitioners have prayed in these cases is a direction to the respondents to declare the petitioners services in the posts of Labour Enforcement Officer (Central) as regular and permanent from the dates of the respective appointment on ad hoc basis. They have further prayed that they should not be subjected to the departmental competitive examination for the purpose of regular promotion which is contemplated by Labour Enforcement Officer Central Recruitment Rules, 1984 which have come into force in 1984 on the date of their publication in the gazette.

(11)

2. They have also prayed for a declaration that they are entitled to continue as Labour Enforcement Officers (Central) without appearing for the contemplated departmental competitive examination under the 1984 rules.

3. The 1958 rules did not contemplate any competitive examination of the type prescribed by the 1984 rules. The petitioners have held the posts of Labour Enforcement Officer (Central) for almost a decade by now. There cannot be any doubt that the vacancies that existed before the 1984 rules came into force, ought to have been filled up in accordance with the 1958 rules. Merely because the petitioners were appointed on ad hoc basis which continued for long time, the vacancies that existed before the 1984 rules came into force cannot now be filled up by filling up those vacancies in accordance with the 1984 rules. There cannot be any doubt that the vacancies that existed before the 1984 rules came into force should be filled up in accordance with the old 1958 rules and the vacancies that occurred after the 1984 rules came into force should be filled up in accordance with the 1984 rules. The continuance of the petitioners on ad hoc basis for long number of years without filling up the vacancies

in accordance with the rules in force at the relevant point of time should not have the effect of depriving the petitioners of their legitimate rights. The rights of the petitioners in this behalf should be adequately protected. It is not possible on the material placed before us to say as to what were the yearly vacancies that occurred from time to time until the 1984 rules came into force. It is also not possible to record satisfactory finding that the appointments of the petitioners on ad hoc basis were made by subjecting them to the process of promotion contemplated by the 1958 rules. However, what is staring in the eyes is that the petitioners have continued for long number of years. This may lead to the inference that possibly there were vacancies before the 1984 rules came into force, which were required to be filled up in accordance with the 1958 rules. We are also informed that the remaining tenure of the petitioners before attaining the age of superannuation is only a couple of years. Shri Murthy, the learned counsel for the petitioners submitted that this is a dying class of officers and, therefore, there is no likelihood of new set of persons like these persons coming into office.

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4. Having heard the learned counsel appearing for both partes, we consider it appropriate to dispose of these cases with the following directions:-

i) The respondents shall ascertain the vacancies on year-wise basis upto the date of coming into force of the 1984 rules.

ii) After ascertaining the vacancies in that manner occurring upto the date of coming into force of the 1984 rules the said vacancies shall be filled up in accordance with the 1958 rules.

iii) The cases of the petitioners who are within the zone of consideration should be considered for that purpose. If on consideration of their cases in accordance with the 1958 rules they are entitled to be promoted on a regular basis in vacancies occurring before the coming into force of the 1984 rules, they shall be given deemed dates of promotion and all consequential benefits flowing from such action.

iv) So far as the vacancies occurring after the 1984 rules are concerned, the respondents shall take steps to fill up the vacancies

in accordance with the 1984 rules. Such of the petitioners who do not get regular promotion in accordance with the 1958 rules and have continued in service, their cases shall be considered, if they come within the zone of consideration in accordance with the 1984 rules and if they are found fit and suitable, they shall be given deemed date(s) of promotion and consequential benefits flowing therefrom.

v) Having regard to the circumstances and the fact that the petitioners have continued to remain on ad hoc basis all these years we consider it appropriate to direct that none of the petitioners shall be reverted until action is taken as aforesaid.

5. With these directions all these Applications stand disposed of. No costs.

6. Let a copy of this judgement be placed in the case file of all the Applications, listed together.

(I.K. RASGOTRA)
MEMBER(A)

(V.S. MALIMATH)
CHAIRMAN

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