

Central Administrative Tribunal
Principal Bench: New Delhi

New Delhi this the 27th day of September 1996.

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)
Hon'ble Mr S.R.Adige, Member (A)
Hon'ble Mrs Lakshmi Swaminathan, Member (J)

OA No.1751 of 1988

1. Hem Raj
Lower Division Clerk
Directorate of Extension
Ministry of Agriculture
(Dept. of Agri. & Coop.)
Shastri Bhawan
New Delhi.
2. M.N. Sharma
Lower Division Clerk
Directorate of Extension
(Dept. of Agri. & Coop.)
West Block No.8
R.K.Puram, New Delhi.
3. Shiv Nandan
Lower Division Clerk
Directorate of Extension
Ministry of Agriculture
(Dept. of Agri. & Coop.)
Shastri Bhawan
New Delhi.
4. Umesh Pal Singh
Lower Division Clerk
Directorate of Extension
(Dept. of Agri. & Coop.)
West Block No.8
R.K.Puram, New Delhi.

(By Sh. Jog Singh, advocate)

Versus

Union of India through

1. Secretary
Ministry of Agriculture
(Dept. of Agriculture & Cooperation)
Krishi Bhawan
New Delhi.
2. Secretary
Ministry of Personnel & Training
Administrative Reforms & Public Grievances
Pension
New Delhi. ... Respondents.

(by Sh. B. H. Ramchandani, advocate)

(By Sh. P.H.Ramchandani, Esq. and Shri V.S.B.Krishna (Advocate) in this case).

OA No.2553 of 1989

1. Jagdish Prasad,
LDC
s/o Shri Ram Prasad,
Naval Hqs.,
Ministry of Defence.
2. Chinta Mani,LDC
s/o Shri Bal Krishan
o/o E-in-C's Branch,
Ministry of Defence.
3. Sohan Singh Rawat,
LDC
S/o Shri Laxman Singh Rawat,
DG, Quality Assurance/Ven 12,
Ministry of Defence.
4. Udai Bir Singh,LDC
o/o D.G., Quality Assurance,
Ministry of Defence.
5. Rishi Pal,LDC
s/o late Shri Chandan Singh,
o/o Adjutant General,
Ministry of Defence.
6. Dinesh Singh,
LDC
s/o Shri Hri-dam Ram,
o/o Adjutant General,
Ministry of Defence.
7. Prem Lal Baloni,LDC
s/o Shri Dwarka Prasad,
o/o Research and Development,
Ministry of Defence.
8. Manbir Singh,
LDC
s/o Jutha Singh,
o/o Adjutant General,
Ministry of Defence.
9. S.K. Ghosh ,
LDC
s/o Shri R.,Ghosh,
Chief Admn. Officer/H-4,
Ministry of Defence.

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10. Lalit Prashad, LDC,
s/o Shri Keshwa Nand,
O/O Adjutant General,
Ministry of Defence.
11. Gopi Chand, LDC,
Shri Harpat,
O/O General Staff,
Ministry of Defence.
12. Liladhar, LDC
s/o Shri Manorath,
O/O General Staff,
Ministry of Defence.
13. Naresh Chander, LDC,
s/o Sh. Ramanand,
O/O Research & Development,
Ministry of Defence.
14. Ramesh Chandra, LDC,
s/o Shri Shiv Datt,
O/O D.G., Qly Assurance,
Ministry of Defence.
15. Bishi Pal, LDC,
s/o Shri R.S. Verma,
O/O General Staff Branch,
Ministry of Defence.
16. Pritam Chand, LDC,
s/o Shri Nathu Ram,
O/O Quarter Master General,
Ministry of Defence.
17. Subhash Chand, LDC,
s/o Sh. Bishamber Dayal,
O/O D.G. Quality Assurance,
Ministry of Defence.
18. Vijay Kumar, LDC,
s/o Sh. Kedar Nath,
Air Headquarters,
Ministry of Defence.
19. Pratap Chand, LDC,
s/o Sh. Jamit Singh,
O/O D.G. Quality Assurance,
Ministry of Defence.

20. Shyam Kumar, LDC,
S/o Sh. Amar Chand,
O/O Air Headquarters,
Ministry of Defence.

21. Surya Prakash, LDC,
S/o Shri Keshav Datt,
O/O Adjutant General,
Ministry of Defence.

22. Kuldeep Kumar, LDC,
S/o Sh. C.R.Sharma,
O/O Chief Admn. Officer,
Ministry of Defence.

23. Prem Singh, LDC,
S/o Late Sh. Kedar Singh,
O/O Air Headquarters,
Ministry of Defence.

24. Sarvan Kumar, LDC,
S/o Sh. Mishri Lal,
O/O Chief Admn. Officer,
Ministry of Defence.

25. Mohan Singh, LDC,
S/o Sh. Alam Singh,
O/O Naval Headquarters,
Ministry of Defence.

26. Diwan Singh, LDC,
S/o Sh. Ram Singh Bisht,
O/O Chief Admn. Officer,
Ministry of Defence.

27. Surendra Kumar Sharma, LDC,
S/o Sh. Harbans Lal,
O/O General Staff Branch,
Ministry of Defence.

28. Sukhvir Singh, LDC,
S/o Shri
O/O Eng.in-Chief Branch,
Ministry of Defence.

29. Bhaskar Notigal, LDC,
S/o Shri
O/O Naval Headquarters,
Ministry of Defence.

30. Naresh Kumar, LDC,
S/o Shri
O/O D.G. Quality Assurance,
Ministry of Defence.

31. P.C. Barthwal, LDC,
S/o Shri Tota Ram,
O/O Chief Admn. Officer,
Ministry of Defence.

32. Rajeshwar Drashad, LDC,
S/o Shri Ram Lakhan,
O/O Research & Development,
Ministry of Defence.

33. Harak Singh, LDC,
S/o Sh. Hayat Singh,
O/O General Staff Branch,
Ministry of Defence.

34. B.S. Bisht, LDC,
S/o Shri Shiv Singh Bisht,
O/O General Staff Branch,
Ministry of Defence.

35. Kishan Pal, LDC,
S/o Shri
O/O General Staff Branch,
Ministry of Defence.

36. Soban Singh, LDC,
S/o Shri Bachan Singh,
O/O Naval Headquarters,
Ministry of Defence.

37. Mohan, LDC,
S/o Shri Deva Ram,
O/O Adjutent General,
Ministry of Defence.

38. Sate Singh, LDC,
S/o Shri Surender Singh,
O/O Quarter Master General Br.,
Ministry of Defence.

39. Jaswant Singh, LDC,
S/o Shri Hanumant Singh,
O/O Dt.G. N.C.C.,
Ministry of Defence.

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40. Smt. Urmila Badial, LDC,
W/o Sh. Ravinder Kumar Badial,
O/O Naval Headquarters,
Ministry of Defence.

41. Diwan Singh, LDC,
S/o Sh. Vishan Singh,
O/O Eng.in-Chief Branch,
Ministry of Defence.

42. Virender Singh, LDC,
S/o Sh.Puran Singh Aswal,
Air Headquarters,
Ministry of Defence.

43. Ram Phal Singh, LDC,
S/o Sh. Dharam Singh,
O/O D.G. Quality Assurance,
Ministry of Defence.

44. Gulab Singh Bora, LDC,
S/o Late. Sh.Prem Singh,
Directorate of Public Relations,
Ministry of Defence.

45. Daya Nand, LDC,
S/o Sh. Krishan Chand,
O/O Chief Admn. Officer,
Ministry of Defence.

46. Surender Pal Singh, LDC,
S/o Sh. Avtar Singh,
Naval Headquarters,

47. Meharwan Singh, LDC,
S/o Sh. Gabar Singh,
O/O Adjutant General Br.,
Ministry of Defence,

48. Sudhir Salhotra, LDC,
S/o Sh. Madan Mohan Lal,
O/O Quarter Master General Branch,
Ministry of Defence.

49. Chander Mohan, LDC.,
S/o Shri Bachi Ram,
O/O Naval Headquarters,
Ministry of Defence.

50. Jagdish Singh, LDC
S/O Sh. Dharam Singh,
C/O Military Section
Ministry of Defence.

51. Mahesh Ch. Sharma, LDC
S/O Shri M.L. Sharma
D.G. Quality Assurance,
Ministry of Defence

52. Raj Bir Singh, LDC
S/O Shri Gurcharan,
D.G. Quality Assurance
Ministry of Defence

53. Rajinder Negi,
S/O Shri J.S. Negi
C/O Chief Admin. Officer,
Ministry of Defence

54. Kamal Kumar
S/O Shri Gupt Ram
C/O Chief Administrative Officer,
Ministry of Defence

55. Trilechan Singh,
S/O Late Shri Sajjan Singh
C/O Chief Administrative Officer
Ministry of Defence

56. Prem Lal Chauhan,
S/O Shri Surat Ram,
C/O Chief Administrative Officer,
Ministry of Defence

57. Bharam Singh,
S/O Late Shri Bhim Singh
C/O Chief Administrative Officer
Ministry of Defence

58. Dharan Bir Singh
S/O Shri Raghbir Singh
C/O Chief Administrative Officer,
Ministry of Defence

59. Dharan Pal Singh,
S/O Shri Udi Ram
Naval Headquarters,
Ministry of Defence

60. Dinesh Kumar,
S/O Shri Suraj Shan
QMG, Ministry of Defence

61. J.N. Mishra,
S/O Late Shri R.S. Mishra
D.G.Q.A. Ministry of Defence

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62. Brijesh Singh Bisht,
S/O Shri Dhyan Singh
RCPO, Ministry of Defence

63. Kundan Chand
S/O Late Shri Kamalapati
GS Branch, Ministry of Defence

64. Shiv Raj Singh,
S/O Late Shri Jagat Singh
E-in-C Branch, Ministry of Defence

65. Gagan Singh,
S/O Shri Dilwan Singh
E-in-C Branch, Ministry of Defence

66. AK Rana
S/O Shri MS Rana,
Air HQ. RK Puram,
Ministry of Defence

67. Madan Singh
S/O Shri Shiv Singh
Air HQ, RK Puram,
Ministry of Defence

68. Sri Niwas Singh
S/O Sh. Asnarayan Singh
QMG Branch, Ministry of Defence

69. Mahendra Singh
S/O Shri Mam Chand
Air HQ. RK Puram,
Ministry of Defence

70. Raj Kumar
S/O Shri Sukhan Lal
Air HQ. Vayu Bhawan
Ministry of Defence

71. RK Jha
S/O Shri N. Jha
Air HQ. Vayu Bhawan,
Ministry of Defence

72. Mahesh Chand
S/O Shri Bhola Dutt
Air HQ. Vayu Bhawan,
Ministry of Defence

73. PS Rana
S/O Late Shri Agar Chand
Naval Headquarters,
Ministry of Defence

74. Rajbir Singh
S/O Shri Laxhami Narayan,
MS Branch, Ministry of Defence

75. Ram Chander Bhagat,
s/o Shri Jai Datt
R&D Ministry of Defence

76. Avodesh Kumar Sahu
s/o Shri Kanhai Lal Sahu
MS Branch, Ministry of Defence

... Applicants

By Advocate: Shri Jog Singh

Vs.

1. Union of India
through its Secretary
Ministry of Defence
South Block, New Delhi.

2. Joint Secretary(Admn) &
Chief Administrative Officer,
Ministry of Defence, C-II Hutsments
Dolhousie Road, New Delhi

By Advocate: Shri P.H. Ramchandani

O.A.No.16/90

1. Jai Bhagwan s/o Shri Karan Singh
r/o 661/12, Harijan Basti,
Bindapuri, P.O. Uttam Nagar, New Delhi.
2. K.S. Mehra s/o Sh. Gulab Singh
r/o 142-BG.6 Paschim Vihar, Delhi.
3. Radha Charan s/o Sh. Bhagan Lal,
r/o 417 A Block, Laxmi Garden,
Loni Road, Distt. Ghaziabad.
4. Mdhukar, s/o Sh. Viswanath
r/o 924 Srimati Sucheta Kriplani
Hospital Campus, New Delhi.
5. Nabi Hussain s/o Sh. Sabab Din
r/o E-8 Mahabir Enclave Part-III
P.O. Dabari, New Delhi.
6. Bharat Lal s/o Sh. Sohan Lal
210 Village Takhand, P.O. Takhand
Delhi.
7. J.L. Yadav s/o Sh. Khailai Rai,
r/o RZ 18-A Sitapuri Part-II
P.O. Dabari, New Delhi-45
8. Jeet Mal s/o Shri Parmarth
r/o B-1 Kondli, P.O. Kalyanpuri
Delhi-91.

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9. Kalu Ram s/o Sh. Sohan Lal
r/o H.No.130, DL Mohalla Sayedwala
Palwal City, Distt.Faridabad,
Haryana
10. Sh. Krishan Bahadur s/o Shri Harke Singh
Delhi Escorts Exchange Building,
4/4 B Asaf Ali Road, New Delhi.
11. Sh. Sadhu Singh Bist,
A-51, East Vinod Nagar, Delhi.
12. Rajinder Parshad Chaudhary/Ramdev Prasad Choudhary
A-39, Midhapur Extension,
Badarpur, New Delhi.

... Applicants

By Advocate: Shri Jog Singh

Vs.

1. Union of India
through
Secretary, Min. of Defence,
Army Headquarters, New Delhi.
2. Dy. Chief Administrative Officer,
Min. of Defence,
Army Headquarters,
New Delhi.
3. Sr. Administrative Officer,
Ministry of Defence,
Army Headquarters,
New Delhi.

... Respondents

By Advocate: Shri P.H. Ramchandani

O.A. 254/90

1. Satya Narayan s/o Sh. Suiv Kumar
r/o MD 118, Sakarpur, Delhi.
2. N.S. Rawat s/o Chandan Singh
r/o 11/124, Panchayia Road,
Mandir Marg, N. Delhi.
3. Dharam Vir Singh s/o Arjun Singh
r/o Vill. Bhowat P.C. Dadri
Distt. Ghaziabad, U.P.
4. Roshan Lal s/o Dharam Singh
R/o A-4/474, P. Gokal Puri,
Harjan Basti, Loni Road,
Shahdara Delhi.
5. Sohan Lal s/o Heram Singh,
r/o O Block, 614, Seva Nagar,
New Delhi.

... Applicants

By Advocate: Shri S.K. Gupta

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Union of India through

1. Secretary
Ministry of Defence
Army Headquarters
New Delhi.
2. Deputy Chief
Administrative Officer
Ministry of Defence
New Delhi.
3. Sr. Administrative Officer
Ministry of Defence
Army Headquarters
New Delhi. ... Respondents

(By Advocate: Sh. P.H.Ramchandani)

O R D E R

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

The four applicants in OA No.1751/88 are aggrieved by the order dated 13th August 1988 (Annexure A-2) by which they were informed that each of them having been declared surplus in the post of Lower Division Clerks were either to be reverted to the Central Surplus Cell before re-deployment elsewhere and calling upon them to furnish their options. The applicants 1 to 4 were regularly appointed as Group-D employees under the first respondent with effect from the year 1971, 1959, 1973 and 1975 respectively. While they were working as Group-D employees on regular basis, applicants 1, 2 & 3 were promoted on ad-hoc basis as Lower Division Clerks and were sent on deputation to the Directorate of Agriculture against short-term vacancies. On

joining of the nominees of the Staff Selection Commission, they were reverted to the Directorate, but as there were vacancies in the Directorate, they were appointed again on ad-hoc basis as Lower Division Clerks. All these appointments were made after a selection test by the Staff Selection Commission w.e.f. 1.12.1984. The applicant No.4 was appointed as LDC on ad-hoc basis w.e.f. 3.12.1984. In 1985-86, the Ministry of Defence conducted a work assessment of the Directorate and placed a complete ban on filling of posts till their recommendations were expedited and implemented. As the vacancies in the posts of LDCs could not be filled by normal channel through Staff Selection Commission, the applicants continued to work as LDCs on ad-hoc basis. As the SIU recommended reduction of 26 posts of LDC, the applicants had to be either reverted or surrendered to the Surplus Cell. Under these circumstances, an order dated 31.8.1988 was issued directing the applicants to exercise their options either for reversion to the lower post or for being re-deployed to the Surplus Cell. Apprehending their reversion, the applicants filed this application praying for restraining their reversion to lower post, for a direction to regularise as Lower Division Clerks with consequential benefits and to consider them for grant of seniority/promotion etc. The

applicants claim these reliefs on the ground that they fulfill the eligibility criteria for appointment to the post of LDCs, that they were subjected to typing tests conducted by the Staff Selection Commission, that they having been continued in the post of LDCs for a considerably long time, discharging duties of the post satisfactorily, earning increments in the grade and having been allowed to cross EB, there is no justification in not regularising their services and reverting them to lower posts.

2. When this application came up for hearing before a Division Bench consisting of Hon'ble Mr J.P.Sharma, Member (J)(as he then was) and Hon'ble Late Mr B.K.Singh, Member (A), learned counsel for the applicant Mr Jog Singh relied on the decision of the Principal Bench of the CAT in OA 1282/91 titled Sh. Rajendra Prasad Kukreti Vs. UOI to which one of us (Hon'ble Mr A.V.Haridasan, VC(J) was a member, and argued that as the facts and circumstances of the case are similar to the case in R.P.Kukreti's case, the same view in regard to consideration for regularisation of the applicants in this case may be directed to be taken. The Division Bench, finding that the decision in R.P.Kukreti's case was solely based on the decision in OA No. 1845/91 which in turn had placed reliance on the decision in OA No. 668/88 titled Ved Prakash & Others Vs. UOI decided on

12.4.1991 wherein a direction to regularise the services of the applicant was granted, following the ratio of the decision of the Hon'ble Supreme Court of India in Jacob Puthuparambil & Others Vs. Kerala Water Authority & Others JT 1990 (4) SC 27 and Dr. A.K.Jain & Others Vs. UOI reported in 1987 SCC 497 and Smt. P.K.Narayani Vs. State of Kerala reported in 1984 Supplementary SCC 212 which judgements have been referred to and distinguished by the Hon'ble Supreme Court in various later rulings, for example, in Jammu & Kashmir Public Service Commission Vs. Dr. Narendra Mohan 1994 27 ATC 56 wherein it was held that Dr. A.K.Jain's case was not a precedent under Article 141 of the Constitution, that the direction in that case was given by the Hon'ble Supreme Court in exercise of powers under Article 142 of the Constitution and that after discussion of the entire case law on the point, the Principal Bench of the CAT itself had rejected the claim of the ad-hoc LDC for regularisation in its order dated 27.2.1992 in OA No.1536/91, that the above judgement was not brought to the notice of the Bench when the OA 1485/91 was decided on 13.8.1992 and that the direction contained in the order in OA No.1282/91 following the decision in OA 1485/91 for considering regularisation of the ad-hoc LDCs de-hors the Recruitment Rules was against the law laid down by the Hon'ble Supreme Court in a catena / rulings though it was necessary to refer the following issue for reference to the larger Bench:

[i] Where an employee initially appointed on regular basis in Group-D service as per the Recruitment Rules has been given an ad-hoc promotion in Group-C post purely on ad-hoc basis till regular incumbent joins and replaces him, such employee can be regularised in the service against the quota fixed for them de-hors the Rules only on the basis of the continuous ad-hoc service. The Hon'ble Chairman has constituted this Bench to settle the issue.

3. On 8th June 1995 the date on which the Division Bench passed the order in OA 1751/88 referring the issue for consideration by a larger Bench, the same Bench had pronounced judgement in a batch of three cases in OA Nos. 2553/89, 16/90 & 254/90 in which the identical question arose for consideration. Those identical issues as were referred to the larger Bench were involved in that case also after a detailed discussion of the case law on the point, the Division Bench felt that the judgement in OA 1282/91 which was solely based on the judgement in OA 1485/91 could not be treated as a precedent as it has to be treated as a judgement in **per incuriam** for the reason that the various rulings of the Supreme Court and also the ratio of the decision of the Principal Bench in OA 1536/91 and OA 1537/91 decided on 27.2.1992 were totally ignored.

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Therefore, these three applications were dismissed, finding no merit. Against this decision of the Division Bench dismissing the applications Nos. 2553/89, 16/90 and 254/90, the applicants in these cases filed an SLP No. 20659-61/95 seeking special leave to appeal. When the Special Leave Petition came up for hearing before the Hon'ble Supreme Court, the learned counsel on either side submitted before the Court that the Tribunal had constituted a full Bench for deciding the issue in OA No. 1751/88 in which the same issue arose for determination in the appeal and that the petitioners may be directed to withdraw the petition with liberty to move the Full Bench of the Tribunal. Granting the liberty to the petitioners as sought, the petitioners were directed to withdraw the Special Leave Petition. Thereafter, the applicants in OA No. 2553/89, 254/90 and 16/90 filed MAs 3055, 3056 and 3057 of 1995 respectively praying for revival of the OAs finally disposed of by the Bench in the light of the permission granted to the applicants by the Hon'ble Supreme Court while allowing them to withdraw the SLPs filed by them to move the full Bench. The Division Bench allowed these MAs and directed that the relevant OAs/ alongwith OA No. 1751/88 for being placed before the Full Bench.

4. Though OA No. 2553/89, 2554/90 and 16/90 were finally disposed of by the Division Bench of the Tribunal vide its order dated 8.6.1995, in view of

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the order passed in MAs Nos. 3055 to 3057 of 1995, the OAs have been revived and the matter has been placed before the full Bench. Therefore, it is necessary to briefly state the scope of these 3 applications.

5. The applicants in these three original applications who were regularly appointed on Group-D posts in the Armed Forces HQs were given ad-hoc promotion to the Group-C post of LDCs and were continued as such with effect from the ^{various} dates have prayed that the respondents be directed to regularise them on the post of Lower Division Clerks with consequential benefits and be further considered for higher posts. Interim orders were issued in this case directing maintenance of status-quo and the same was continued. The Division Bench held that ad-hoc appointments though continued for a long time did not confer on them any right for regularisation in Group-C posts and, therefore, dismissed the application rejecting their claim.

6. We have heard the arguments of Shri Jog Singh, advocate, appearing for the applicant in OA 1751/88, Shri R. Venkataramani, counsel for the applicant in OA 2553/89 and the connected cases, Shri P.H.Ramchandani, senior counsel and Shri V.S.R.Krishna, counsel for the respondents.

7. The point that has been referred to be resolved by the Full Bench is " where an employee initially appointed on regular basis in Group-D

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service as per Recruitment Rules has been given on ad-hoc promotion in Group-C post purely on ad-hoc basis till regular incumbent joins and replaces him, such an employee can be given regularisation in the service against the quota fixed for them de-hors the rules only on the basis of continuous ad-hoc service." The Recruitment Rules framed in accordance with the proviso to Article 309 of the Constitution is statutory in nature. The recruitment and conditions of service have to be made and regularised strictly in accordance with the Recruitment Rules. Therefore, there cannot, generally, be either a valid appointment or regularisation de-hors the Recruitment Rules. In that view of the matter, the point referred can be immediately answered probably in the negative with a one word answer. But going through the order of the Division Bench, we note that a deeper deliberation is called for, for giving a meaningful answer to the question referred in the complex nature of the issue involved.

8. In view of the pronouncements of the Hon'ble Supreme Court in a catena of rulings in the matter of regularisation of ad-hoc employees such as J&K Public Service Commission and others Vs. Narendra Mohan reported in 1994 27 ATC 56; Director, Institute of Management Development Vs. Smt. Pushpa Srivastav JT 1992 (4) SC 289; State of Haryana & Others Vs. Piara Singh & Others JT 1992 (5) SC 591 and Food Corporation of India Vs. Thaneswar Khalida & Others

1995 SC SLJ 485 and State of Orissa & Another Vs. Dr. Pyari Mohan Mishra 1995 (1) SLJ 259, and the decision of the Principal Bench of the Tribunal in OA No. 1536/91, 1537/91 decided in February 1992 and OA No. 2553/89, 16/90 & 254/90 decided on 8th June 1995, the Division Bench consisting of Hon'ble Sh. J.P.Sharma, Member (J) and Hon'ble Late Sh. B.K.Singh, Member (A) found themselves in disagreement with the view taken by the Principal Bench of the Tribunal in OA No.1282/91 which in turn had followed the earlier decision of the Tribunal in OA No. 668/88. In OA No. 668/88 Ved Prakash Vs. UOI & Others and connected cases where the applicants who were originally recruited as Group-D employees on regular basis and were working on ad-hoc basis for several years approached the Tribunal for a direction to the respondents to regularise them on Group-C posts of LDC, the Tribunal, relying on the decision of the Hon'ble Supreme Court in Jacob M Puthuparambil Vs. Kerala Water Authority & Others JT 1990 (4) SC 27; Smt. P.K.Narayani Vs. State of Kerala 1984 Supplementary ACC 212 and in Dr. A.K.Jain Vs. UOI 1987 ACC 497, directed the respondents to take steps to regularise the services of the applicants therein as LDCs in consultation with Staff Selection Commission, if necessary, relaxing the upper age limit for appointment and on the basis of the evaluation of their work and conduct based on the Annual Confidential Reports as directed by the

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Hon'ble Supreme Court in Dr. A.K.Jain's case. In decisions of the Hon'ble Supreme Court referred to by the referring Bench all the three judgements relied upon by the Division Bench in its decision in OA No. 668/88 have been considered and distinguished. In P.K.Narayani's case, there was no direction for regularisation on the basis of the record of service. The decision in Jacob Puthuparambil Vs. Kerala Water Authority was based on the rules applicable to the service. In Dr. A.K.Jain's case, the decision was not an authority on legal principle but the regularisation directed in that case was only a special dispensation in the light of the facts and circumstances of that case, not intending it to be a precedent under Article 141 of the Constitution, but only rendering complete justice under Article 142 of the Constitution. This has been clearly stated by the Supreme Court in J&K Public Service Commission & Others vs. Dr. Narendra Mohan reported in 1994 27 ATC 56. Noting this, the referring Bench felt that the ruling of the Tribunal in 668/88 is not based on sound principle of law to be followed, and for that reason, they disagreed with the decision in OA No. 1282/91 decided on 17th May 1995, as this order was based on the ruling in OA No.668/88.

9. Sri P.H.Ramchandani, senior counsel appearing for the respondents, argued that in all the decisions referred to above, the Hon'ble Supreme Court has consistently held that ad-hoc appointment made as a stop-gap arrangement, pending regular recruitment, cannot be regularised against the provision of the Recruitment Rules.

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10. Sri Jog Singh, counsel for the applicant in OA No.1751/88 and Shri R. Venkataramani, counsel for the applicants in OA No. 2553/89, 254/90 & 16/90 in general argued that the rulings of the Hon'ble Supreme Court referred to by the Division Bench in its order of reference and relied on by the counsel for the respondents to establish that ad-hoc appointments made not in accordance with the rules cannot be regularised, however are distinguishable, because in all the cases, the Supreme Court was considering appointments made not in accordance with the Recruitment Rules on posts which were required to be filled by direct recruitment through Public Service Commission and requiring professional qualifications and experience etc., while the cases on hand related to appointment to Class III posts only.

11. Referring to the facts of the cases, Shri Venkataramani, learned counsel for the applicants in OA 2553/89 and connected cases, argued that the appointment of applicants who were regular Group-D employees on the posts of LDCs was as provided for under Rule 9 (3) of the Recruitment Rules though the authorities did not choose to mention the appointment as having been done under the said rules. While there is this express provision in the Rules providing that in the absence of sufficient number of candidates nominated by the Staff Selection Commission on the basis of the results of the competitive examination, the vacancies could be either provisionally or on

regular basis by the Government, the appointment must be deemed to have been in accordance with the Sub Rule 3 of the Rule 9 of the Recruitment Rules, argued the learned counsel.

12. Sub Rule 3 of Rule 9 of Armed Forces Headquarters Clerical Service Rules reads as follows:

"[3]If sufficient number of qualified candidates are not available for appointment to the Lower Division Grade on the results of competitive examinations held by the Staff Selection Commission, the vacancies may be filled either provisionally or on a regular basis in such manner as may be decided by the Government."

13. Even though in the appointment order it was mentioned that these appointments were purely on ad-hoc and temporary basis, as the applicants have continued for a long time and still there is a deficit of nominees of the SSC to be appointed on the posts of LDCs on regular basis, the respondents are bound in law and in equity to consider their regularisation on the posts, argued the learned counsel.

14. Shri Jog Singh, learned counsel for the applicants in OA No.1751/88 argued that though according to the Recruitment Rules, the vacancies in the grade of LDCs are to be filled by direct recruitment while 10% of the vacancies to be filled by direct recruitment is to be reserved for being filled by Class IV employees borne on regular establishment subject to the condition that selection shall be made on the basis of departmental examination from amongst Class IV employees who

fulfill educational qualification of matriculation, subject to being within the prescribed age limit, as nominees of the Staff Selection Commission were not available and since thereafter there was a ban on recruitment, the applicants were appointed as LDCs on ad-hoc basis in the year 1976 and 1984 and were continued uninterruptedly as such for a long period and, therefore, ^{and} under these circumstances, there is no justification in reverting them to the lower posts of Group-D, ^{and} the respondents are required to consider regularisation of the applicants on posts of LDCs on which they have been working for a very long time, taking into account the fact that they were appointed after passing the selection test conducted by the Staff Selection Commission and are possessed of essential qualifications prescribed in the Recruitment Rules, ~~and~~ ^{and} should be cl.

15. Having considered the arguments of the counsel and having carefully gone through the rulings of the Hon'ble Supreme Court relied on by the learned counsel for the respondents, we find that it is not possible to reach a conclusion that the Hon'ble Supreme Court has laid down the law that in any category of services, an ad-hoc appointee appointed not in accordance with the Recruitment Rules even

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after having continued as such for a long period cannot be regularised in service at all. In Jammu & Kashmir Public Service Commission Vs. Dr. Narendra Mohan reported in 1994 27 ATC 56, the respondents 1 - 6 before the Hon'ble Supreme Court were appointed as Lecturers in different disciplines of medical education by the Govt. of Jammu & Kashmir on various dates in 1986-87 on ad-hoc basis and they were regularised by the Government on 19.9.1988 and 16.5.1989, relaxing the Recruitment Rules which provided for recruitment through Public Service Commission. The appointment of the respondents was challenged in several writ petitions by Dr. Vinay Pal and others. The respondents also filed writ petitions for directions to regularise their services. The single judge of the J&K High Court, holding that in accordance with the J&K Medical Education (Gazetted Service) Recruitment Rules 1979, the Government had neither power to relax the rules of recruitment nor power to regularise the appointment of the respondents on regular basis.

16. On appeal, the Division Bench held that the Rules provided for appointment of ad-hoc lecturers, therefore, their appointments were according to the rules, as the respondents possessed requisite qualifications to hold the posts. Since the Government didn't have the power under Section 133 of the J&K Constitution (Article 320 of the Constitution of India) to relax the rules for recruitment, the following directions were given:

"We direct the respondents in terms of decision in A.K.Jain V.UOI to regularise the services of all the appellants in consultation with the Public Service Commission on evaluation of their work and conduct based on their annual confidential reports within 3 months. Such an evaluation shall be done by the Public Service Commission. The doctors so regularised shall be appointed as Lecturers with effect from the dates from which they have been continuously working as Lecturers. The respondents shall be at liberty to terminate the services of those who are not so regularised."

17. This decision of the Division Bench was challenged by the Public Service Commission and also by Dr. Vinay Pal. The Hon'ble Supreme Court held as follows:

"The next question is whether the direction given by the High Court to regularise the services of the respondents is valid in law. It is true that the ad-hoc appointees have been continuing from 1986 onwards but their appointments are de-hors the Rules. Rules prescribe only two modes of recruitment, namely direct recruitment or promotion by selection. As regards the lecturers are concerned, it is only by direct recruitment. The mode of recruitment suggested by the High Court, namely, regularisation by placing the service record of the respondents before the PSC and consideration thereof and PSC's recommendation in that behalf is only a bybrid procedure not contemplated by the Rules. Moreover, when the Rules prescribe direct recruitment, every eligible candidate is entitled to be considered and recruitment by open advertisement which is one of the well accepted modes of recruitment. Inviting applications for recruitment to fill in

notified vacancies is consistent with the right to apply for, by qualified and eligible persons and consideration of their claim to an office or post under the State is a guaranteed right given under Article 14 & 16 of the Constitution. The direction, therefore, issued by the Division Bench, is in negation of Articles 14 & 16 and in violation to the statutory rules. The PSC cannot be directed to devise a third mode of selection, as directed by the High Court, nor be mandated to disobey the Constitution and the law".

18. The Hon'ble Supreme Court observed that the direction given in Dr. A.K.Jain Vs. UOI 1992 (1) ACC 331 (1987 Suppl. SCC 497) and the ratio in Dr. P.P.C.Rawani Vs. UOI (1992) 1 SCC 331 cannot be treated as a precedent because the directions in those cases were given under Article 142 of the Constitution to do complete justice under the peculiar facts and circumstances of the cases.

19. It was held that while statutory recruitment rules exist, it is not lawful to make or regularise appointment provisions of the against the Recruitment Rules. But dealing with the issue, the Hon'ble Supreme Court observed further as follows:

"In State of Haryana V. Piara Singh, this Court noted that the normal rule is recruitment through the prescribed agency but due to administrative exigencies, an ad hoc or temporary appointment may be made. In such a situation, this Court held that efforts should always be made to replace such ad-hoc or temporary employees by regularly selected employees, as early as possible. The temporary employees also would get liberty to compete alongwith others for regular selection but if he is not selected, he must give way to the regularly selected candidates. Appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad-hoc or temporary employee. Ad-hoc or temporary employee should not be replaced by another ad-hoc or temporary employee. He must be replaced only by regularly selected employee. The ad-hoc appointment should not be a device to circumvent the rule of reservation. If a temporary or adhoc employee continued for a fairly long spell, the authorities must consider his case for

regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. It is to be remembered that in that case, the appointments are only Class III or Class IV posts and the selection made was by subordinate selection committee. Therefore, this Court did not appear to have intended to lay down as a general rule that in every category of ad-hoc appointment, if the ad-hoc appointee continued for a long period, the rules of recruitment should be relaxed and the appointment by regularisation be made."

20. The above observation of their Lordship clearly shows that there is a difference in regard to appointment to Class I & II posts which are required to be made through Public Service Commission, and posts of lower rungs like Class III & IV posts.

21. In the case of Mukesh Bai Chotta Bai Patel Vs. Agricultural Marketing Advisor, Govt. of India & others reported in 1994 (28) ATC 226 also, the appointment related to a higher post and what was held by the Hon'ble Supreme Court was that there cannot be an automatic regularisation of an ad-hoc appointment. In Pushpa Srivastava's case JT 1992 (4) SC 489, the appointment was made on a higher post and it was a contract appointment for a limited period. In

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Surinder Kumar Gyani Vs. State of Rajasthan & Others JT 1992 (5) SC 293, the petitioner was appointed on temporary post as a stop-gap arrangement and, therefore, his services were terminated when nominee of the State Public Service Commission reported for the joining the post. The Rajasthan High Court rejected their claim of the petitioners for treating them as regular and that finding was upheld by the Hon'ble Supreme Court. In that case also, the recruitments were required to be made through State Public Service Commission and the appointments were made as a stop-gap arrangement pending recruitment process in the regular manner.

22. In the case of Food Corporation of India Vs. Taneshwar, 1995 SC SLJ 485, what was held by the Hon'ble Supreme Court was that if ad-hoc promotions were given not in accordance with the rules, though incumbents continued as such for a long time, they cannot count ad-hoc service for the purpose of seniority on regularisation to that post as per rules. That case is not an authority, for, the issue involved in that case relates to the question of counting of ad-hoc service, for, seniority on regularisation wherein is not at all the issue. here.

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23. A survey of the legal principles enunciated in the above quoted rulings of the Hon'ble Supreme Court leads us to the irresistible conclusion that by-passing of the statutory Recruitment Rules and making appointments contrary to the provisions of the Recruitment Rules with a view to give a benefit to a favoured few or as a matter of convenience cannot be allowed to be perpetrated. But if recruitments on ad-hoc basis are made under exigencies of service either in accordance with the provisions of the Recruitment Rules or in exercise of executive powers of State, if such appointments continued for a long time, especially in the cases of appointments to lower rungs of service like Class-III and Class-IV and if the Government considers it necessary to regularise such appointments considering the hardships of those who have rendered service for a long period and without affecting the reservation policy of the State, the Supreme Court has held that such action of the Government cannot be faulted. In appropriate cases of the said nature, the Hon'ble Supreme Court has given directions to the authorities to regularise such appointments if the appointees are eligible and suitable to hold the posts in accordance with their seniority and also without offending the reservation policy of the State.

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24. In State of Haryana & Others Vs. Piara Singh & Others (1992) 4 Supreme Court Cases 118, the Hon'ble Supreme Court gave the following guidelines concerning the issue of regularisation of ad-hoc employees in Government Service:

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad-hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad-hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad-hoc/temporary employee.

Secondly, an ad-hoc or temporary employee should not be replaced by another ad-hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

Thirdly, even where an ad-hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

An unqualified person ought to be appointed only when qualified persons are not available through the above processes.

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If for any reason, an ad-hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

The proper course would be that each State prepares a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy and if a scheme is already framed, the same may be made consistent with our observations herein so as to reduce avoidable litigation in this behalf. If and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be.

So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell - say two or three years - a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job. In this behalf, we do commend the orders of the Government of Haryana (contained in its letter dated April 6, 1990 referred to hereinbefore) both in relation to work-charged employees as well as casual labourers.

We must also say that the orders issued by the Governments of Punjab and Haryana providing for regularisation of ad-hoc/temporary employees who have put in two years/one year of service are quite generous and leave no room for any legitimate grievance by any one.

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These are but a few observations which we thought it necessary to make, impelled by the facts of this case, and the spate of litigation by such employees. They are not exhaustive nor can they be understood as immutable. Each Government or authority has to devise its own criteria or principles for regularisation having regard to all the relevant circumstances, but while doing so, it should bear in mind the observations made herein."

25. It is evident from the above quoted that these observations of the Apex Court are meant for general application and not made in the peculiar facts and circumstances of the case under Article 142 of the Constitution. This was noted by the Hon'ble Supreme Court in its ruling in Jammu & Kashmir Public Service Commission & Others Vs. Dr. Narendra Mohan (1994) 27 ATC 56, and referring to the same, it was observed as follows:

"It is to be remembered that in that case, the appointments are only to Class-III or Class-IV posts and the selection made was by subordinate selection committee. Therefore, this Court did not appear to have intended to lay down as a general rule that in every category of appointment, if the ad-hoc appointee continued for a long period, the rules of recruitment and appointment by regularisation be made."

26. The observations of their Lordships in Piara Singh's case as also in Dr. Narendra Mohan's case makes it clear that if appointments are made on ad-hoc basis to Class-III or Class-IV posts and the appointees continued for a fairly long period, equitable directions could be given for regularisation of their services, if the appointees satisfy the eligibility conditions for appointment.

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27. In Surendra Kumar Gyani Vs. State of Rajasthan JT 1992 (5) SC 293, while the Hon'ble Supreme Court upheld the decision of the Rajasthan High Court which rejected the claim of the ad-hoc appointees for regularisation, the following observations/directions were made:

It, however, appears from the Report submitted before us by the learned counsel for State that at the present moment total number of vacancies is 191 as shown in List D and 59 employees on daily wage basis are working in terms of the interim orders passed by the Rajasthan High Court or by this Court. It, therefore, appears to us that against the available vacancies, the appellant and the petitioners in the Special Leave Petition (Civil) Nos. 6597-6607 of 1986 deserve a sympathetic consideration for appointment since it is nobody's case that even at this time, services of more Lower Division Clerks are not required or the appellant and these petitioners are not capable of discharging their functions as Lower Division Clerks. It has been submitted before us that persons who had been continuing in service in terms of the interim order of the Rajasthan High Court have become eligible to be considered for regularisation in terms of the Government Order passed subsequently but since the cases of the appellant and the petitioners in the Special Leave Petitions had been decided by the Appeal Bench of Rajasthan High Court against the concerned employees they have been deprived of such consideration for regularisation. In our view it is only just and proper if a pragmatic and sympathetic consideration is made in respect of the appellant and the other petitioners in the Special Leave Petitions so that if they have got the requisite qualifications like similarly circumstances persons being eligible for appointment and/or regularisation they should also be considered for appointment and for regularisation against the available vacancies so that useful service rendered by them in past may get a proper recognition. It is reasonably expected that State Government should give an anxious and sympathetic consideration to

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the appellant and the petitioners in the Special Leave Petitions in the matter of appointment in the available vacancies according to the seniority and the length of service rendered by such persons as Daily Rated Lower Division Clerks in the said State Insurance and Provident Fund Department by making appropriate provision. With the aforesaid observations, Civil Appeal No. 833 of 1986 and the Special Leave Petition Nos. 6597-6607 of 1986 and 12528 of 1986 are disposed of without any order as to costs."

28. That was also a case of appointment on ad-hoc basis of Clerks. The ruling of the Hon'ble Supreme Court in Piara Singh's case as also in Surendra Kumar Gyani's case makes it abundantly clear that where appointments are made to Class-III clerical posts or Class-IV posts on ad-hoc basis, and if appointees continued for a long period, in appropriate cases, it is open for the Government to regularise their services by making appropriate provisions consistent with the reservation policy of the State and that if the Government themselves do not do so, it is for the Courts to give proper directions in that regard in equity.

29. Coming to the facts of the case under reference in OA 2553/89 and the connected cases, it is evident that, even at present there are vacancies in the grade of Lower Division Clerks, that the applicants are continuing on those posts on ad-hoc basis and that the Staff Selection Commission has not been able to supply sufficient number of hands to man those posts. This fact is evident from the averments in paragraph 4 of the counter affidavit filed by the respondents in OA 2553 of 1989.

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29. However, in these cases, it cannot be said that the appointments were made not in accordance with the rules. Rule 9 (3) provides for making appointments to the posts of Lower Division Clerks either on regular basis or provisionally from amongst the Group-D employees who possess the requisite qualifications in accordance with the Recruitment Rules, if sufficient number of candidates are not made available by the Staff Selection Commission, on the basis of the results in the competitive examination. All the appointments were made, admittedly, in the absence of sufficient number of candidates nominated by the Staff Selection Commission. The mere fact that the Government did not quote the provisions of the Rule in the appointment order or that it chose to make appointment purely on ad-hoc basis as a stop-gap arrangement does not mean that the Government cannot later regularise their services, either invoking the provisions of Rule 9 (3) or making appropriate provisions. Similarly, in the case of applicants in OA No.1751/88, the ad-hoc appointments were made during the period 1976-1984 and the appointees have continued for fairly long time, firstly, at the instance of the Department and later under interim orders of the Tribunal. In such cases, as observed by their Lordships in Piara Singh's case and in the case of Surendra Kumar Gyani, it would be only appropriate if the Government decides to regularise their services as none nominated by the Staff Selection Commission is presently waiting for

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appointment and in that view of the matter, it would also be proper for the Tribunal to give directions to the respondents to consider regularisation of the services of the applicants. There may be similar cases, the circumstances of which would be so compelling that the Tribunal will be justified in giving such directions. Therefore, it cannot be said that in all cases and in all categories of ad-hoc appointment, even though the appointee continued for a long period and even if vacancies are available, a direction cannot be given to consider regularisation of the services consistent with the reservation policy of the State, though such a direction shall not be given in cases of posts requiring special professional qualifications and for which recruitment should be made through the Public Service Commission.

30. In the light of foregoing discussion, the point referred to the Full Bench is answered as follows:

Normally, where an employee initially appointed on regular basis in Group-D Service as per the Recruitment Rules has been given ad-hoc promotion/appointment to Group-C post purely on ad-hoc basis till a regular selection and appointment is made he cannot be regularised against the provisions of the Recruitment Rules, for, if that is done, the Recruitment Rules would be rendered nugatory. But in such cases where

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ad-hoc appointees continued for a long time and where no regularly selected candidate is awaiting posting and if the circumstances are such that his reversion to a group-D post after such a long officiation in a Group-C post would cause undue hardship or is inequitous the Government or the appropriate authority as the case may be can regularise his services by making suitable exception or provision without offending the reservation policy of the State. In appropriate cases the Tribunal also can direct the Competent Authority to consider such regularisations.

31. The files in these cases are re-transmitted to the Division Bench for disposal of the cases in the light of the answer given by us to the present question referred.

[Smt. Lakshmi Swaminathan] [S.R. Adige] [A.V.Haridasan]
Member (J) Member (A) Vice Chairman (J)

Ashraf

Attest
Ashraf

30/8/86