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CENTRAL ADMINISTRATIVE TRIBUNAL

Principal Bench

New Delhi, dated this the 18th March, 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

R.A. No.192 of 1996
M.A. No. 139 of 1996
in
O.A. No..2553 of 1989

1. Shri Rishipal,
   L.D.C.
   S/o late Shri ChandanSingh,
   Air HQ., Ministry of Defence
   New Delhi.
2. Shri Chintamani,
   S/o Shri Bal Krishan,
   A.G. Branch,
   Ministry of Defence

3. Shri Gopi Chand,
   S/o Shri Harpat,
   NHQ, M/o Defence

4. Shri Lila Dhar,
   S/o Shri Manorath,
   R&D, M/o Defence

5. Shri Naresh Chander,
   S/o Shri Ramanand,
   DGQA, M/o Defence

6. Shri Ramesh Chandra,
   S/o Shri Shiv Datt,
   C.A.O., M/o Defence

7. Shri Rishi Pal,
   S/o Shri R.S.Verma,
   Air HQ., M/o Defence

8. Shri Pratap Chand,
   S/o Shri Jamir Singh,
   MGO, M/o Defence

9. Shri S.K. Dogra,
   S/o Shri Amar Chand,
   QMG, M.O.D.

10. Shri Surya Prakash,
    S/o Shri Keshav Datt,
    CAO, MOD

11. Shri S.K.Sharma,
    S/oShri Harbans Lal

12. Shri Naresh Kumar,
    S/oShri Sis Ram

13. Shri P.C. Barthwal,
    S/o Shri Tota Ram

14. Shri Rajeshwar Prasad,
    S/o Shri Ram Lakhan.

15. Shri Harak Singh,
    S/o Shri Hayat Singh

16. Shri Kishan Pal
S/o Shri

17. Shri Mohan,
S/o late Shri Deva Ram

18. Shri Sate Singh,
S/o late Shri Sunder Singh

19. Shri Jaswant Singh,
S/o Shri Hanumant Singh

20. Smt. Urmila Badial,
W/o Shri R.K. Badial

21. Shri D.S.Bora,
S/o Shri Vishan Singh

22. Shri Virender Singh,
S/o Shri Puran Singh

23. Shri Ramphal Singh,
S/o Shri Dharam Singh

24. Shri G.S. Bora,
S/o late Shri Prem Singh

25. Shri Daya Nand,
S/o Shri Krishan Chand

26. Shri Meharwan Singh,
S/o Shri Gabar Singh

27. Shri Sudhir Salhotra,
S/o Shri Madan Mohan Lal,

28. Shri R.S.Negi,
S/o Shri J.S.Negi

29. Shri K.K.Sharma,
S/o Shri Gupt Ram

30. Shri P.L. Chauhan
S/o Shri Surat Ram

31. Bharam Singh,
S/o Shri Bhim Singh

32. Shri D.B. Singh,
S/o Shri Raghubir Singh

33. Shri D.P. Singh
S/o Shri Udi Ram

34. Shri Dinesh Kumar,
S/o Shri Suraj Bhan

35. Shri Kundan Chand,
S/o late Shri Kamlapati

36. Shri S.R. Singh,
S/o late Shri Jagat Singh

37. Shri Gagan Singh,
S/o Shri Dilwan Singh

38. Shri M.S.Rawat,
S/o Shri Shiv Singh ... REVIEW APPLICANTS

(By Advocate: Shri R. Venkatramani)

VERSUS

1. U.O.I. through
the Sedcretary,
Ministry of Defence,
New Delhi.

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2. The Jt. Secretary
Administration-cum-C.A.O.,
Ministry of Defence,
New Delhi. .... RESPONDENTS

(By Advocate: Shri P.H.Ramchandani)

R.A.No. 193 of 1996
M.A. No. 142 of 1996
in
O.A. No.254 of 1990

1. Shri Dharam Vir Singh,
S/o Shri Arjun Singh,
NHQ, Ministry of Defence,
New Delhi.

2. Shri Sohan Lal,
S/o Shri Horam Singh,
MGO Branch,
Ministry of Defence,
New Delhi. .... REVIEW APPLICANTS

(By Advocate: Shri R. Venkatramani)

VERSUS

1. U.O.I. through
the Secretary,
Ministry of Defence,
New Delhi.

2. The Jt. Secretary
Administration-cum-C.A.O.,
Ministry of Defence,
New Delhi. ... RESPONDENTS

(By Advocate: Shri P.H.Ramchandani)

R.A. No. 194 of 1996
M.A. No.138 of 1996
in
O.A. No. 16 of 1990

1. Shri K.S.Mehra,
S/o Shri Gulab Singh,
A.G. Branch,
Ministry of Defence,
New Delhi.

2. Shri Radha Charan,
S/o Shri Bhagwan Lal,
QMG Branch,
Ministry of Defence,
New Delhi. ... REVIEW APPLICANTS

VERSUS

1. U.O.I. through
the Secretary,
Ministry of Defence,
New Delhi.

2. The Jt. Secretary,
Administration-cum-C.A.O.,
Ministry of Defence,
New Delhi. .... RESPONDENTS

(By Advocate: Shri P.H.Ramchandani)

ORDER

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

As these three R.As together with M.As praying for condonation of delay raise similar question of law and fact they are being disposed of by this common order.

2. O.A. No.2553/89; O.A. No.16/90 and O.A. No.254/90 were filed by Group D employees who were given ad hoc promotion to L.D.C. Grade (Group C posts) on different dates, against their reversion to Group D and for their regularisation as Group C employees from the date of their ad hoc promotion. After completion of pleadings and hearing both parties a Division bench of the C.A.T., Principal Bench dismissed the three O.As by judgment dated 8.6.95 and vacated the interim orders restraining the respondents from reverting the applicants.

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3. On the same day (8.5.95) the same Division Bench delivered judgment in O.A. No.1751/88 filed by some other Group D employees belong to another Dept. who had similarly been promoted on ad hoc basis as LDCs (Group C) seeking regularisation and against reversion. In this judgment in O.A. No.1751/88 the Bench noticed the conflict of rulings regarding regularisation of Group D employees to posts of LDC (Group C) to which they had been promoted on ad hoc basis pending receipt of names from the Staff Selection Commission and framed the following issue for reference to a larger Bench.

> "Whether an employee initially appointed on regular basis in Group D service or as per Recruitment Rules has been given ad hoc promotion to Group C post purely on ad hoc basis till regular incumbent joins and replaces such employees 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."

It needs to be mentioned that in O.A. No.2553/89 and in O.A. No. 1751/88 applicants' counsel were the same (Shri Jog Singh) while respondents' counsel in all four O.A.s was also the same (Shri Ramchandani).

4. Applicants in O.A. No. 2553/89, O.A No. 16/90 and O.A. No.254/90 being dissatisfied with the judgment dated 8.6.95, filed SLP No.2065-61/95 in the Hon'ble Supreme Court which came up for hearing on 8.9.95, on which the follwing order was passed:

> " I.A. allowed. The ld. counsel for the petitioner states that on this very issue the matter has been referred to the Full Bench of the Tribunal. He therefore states that there are two options, either to wait for the decision of the Full bench or to refer this matter back to the Tribunal so that the Full bench can dispose it of. For the present we will issue notice to determine the course of action thereafter. Issue notice returnable within six weeks."

5. Thereupon, on 20.11.95 in the presence of counsel for both sides, upon hearing the following order was passed:

> "The ld. counsel for both the sides state that since the Tribunal has constituted a Full Bench for deciding the issue in O.A. No. 175/88 (that should perhaps actually have been O.A. No.1751/88) in which the same issue is arising for determination, the petitioners may be permitted to withdraw these petitions with liberty to move the Full Bench of the Tribunal. We permit the petitioners, reserving unto the petitioners the liberty as sought".

6. Thereupon applicants filed M.A. No.3055/95; M.A.No. 3056/95 and M.A. No.3057/95 praying for revival of O.A. No.2553/89; O.A. No.16/90 and O.A. No.254/90 and their being tagged along with O.A. No.1751/88 which had been referred to Full Bench for adjudication. A prayer was also made in the three M.As to stay the reversion orders consequent to the dismissal of the above mentioned O.As by judgment dated 8.6.95. Those MAs came up on 15.12.95 and

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after hearing applicants' counsel in the light of Hon'ble Supreme Court's order dated 20.11.95 the prayer in the three M.As was allowed to the extent that the above three O.As were permitted to be tagged along with O.A. No.1751/88 and as regards the prayer for interim relief notice was ordered to be issued to respondents to appear and be heard.

7. Thereafter the matter came up on 19.1.96 on which date applicants' counsel pressed for interim orders restraining respondents from reverting the applicants from Group C to Group D. This prayer was resisted by Respondents' counsel who argued that as the three O.As had been finally disposed of by judgment dated 8.6.95 on merits and as a result of which applicants already had been reverted, the question of staying their reversion did not arise. By order dated 19.1.96 the Bench noted that in view of Hon'ble Supreme Court's order dated 20.11.95, it was only fit and proper that applicants made their prayer for interim relief before the Full Bench.

8. Thereupon applicants filed M.A. No.139/96; M.A. No.138/96 and M.A.No.142/96 again seeking urgent interim direction restraining respondents from reverting them in view of the delay in constituting the Full Bench. Those MAs were heard i n the presence of both sides during which respondents' counsel reiterated that as the judgment dated 8.6.95 dismissing the three O.As was final and conclusive and had not been stayed,

modified or set aside, those three O.As could not in law be revived and hence the question of issuing any interim directions thereon did not arise. By order dated 16.2.96 the Division Bench observed that as the Tribunal's judgment dated 8.6.95 in the above mentioned O.As , unless stayed, modified or set aside, it did not consider it fit and proper to issue any direction, leaving it open to applicants to move Hon'ble Act ing Chairman for early constitution of the Full bench and thereafter makes their prayer for interim direction before the Full Bench.

9. Soon thereafter a Full Bench was constituted to adjudicate on the reference made to it, in O.A. No.1751/88. Applicants in the three above mentioned OAs again pressed for interim directions, restraining respondents from reverting them, but the Full Bench in its order dated 13.3.96 observed that since the Division Bench had only referred a limited issue for consideration of the Full Bench and as Hon'ble Chairman had not referred the whole case for adjudication, the Full Bench did not consider it necessary or proper to issue any interim order leaving it open to the applicants to make their prayer before the competent authority.

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10. Thereupon on 15.3.96 some of the applicants in the three OAs represented to the competent authority for appointment as LDCs on ad hoc basis. Receiving no reply they filed O.A. No.702/96 on 8.4.96 for a direction to consider their case against ad hoc vacancies which was disposed of by order dated 27.5.96 with the agreement of both sides that applicants' representation dated 15.3.96 should be disposed of by means of a detailed, speaking and reasoned order in the light of the vacancy position of LDCs, the work load, the public interest and existing rules and instructions within four weeks, and before disposing of that representation, applicants should be given a reaonable opportunity of being heard.

11. Accordingly respondents disposed of the representation by order dated 20.6.96 pointing out that applicants' prayer could be granted only by relaxing rules, which would discriminate against those senior to the applicants and would therefore be violation of Artciles 14 and #6 of the Constitution and it was therefore neither feasible nor desirable in public interest to appoint applicants on ad hoc basis before pronouncement of the judgment by Full Bench of C.A.T., Principal Bench.

12. The Full Bench delivered judgment in O.A. No. 1751/88 along with OAs No.2553/89, 16/90 and 254/90 which were tagged along with it, after hearing all the parties on 27.9.96. It answered the reference made to it as follows:

"Normally when 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 posts 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 negatory. But in such cases where appointees continued for a long time and when 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 Govt. or the appropriate authority as the case may be can regularise his services by making suitable exception or provision without offending the reservation policies of the State. In approrpirate cases the Tribunal also can direct the competent authority to consider such regularisation."

13. While doing so, in para 4 of the judgment it was recorded as follows:

"Through O.As No.2553/89, 254/90 and 16/90 were finally disposed of by the Division bench of the Tribunal vide its order dated 8.6.93 in view of the order passed in M.A. 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 their three applications".

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14. In the R.As thwe grounds taken are

(i) that there are mistakes apparent on the face of the record in as much as O.A. No.2553/89; 16/90 and 254/90 were dismissed by judgment dated 8.6.95 and not referred to the Full Bench as O.A. No.1751/88 was

(ii) the impugned judgment dated 8.6.95 was passed in total ignorance of the statutory provisions contained in Rule 9(3) and 20 A.F.H.Q Clerical Services Rules, 1987.

15. Respondents in their reply apart from taking the ground of limitation have stated that due to non-availability of sufficient number of LDCs against D.R. quota through SSC and due to administrative exigencies as a purely stop gap arrangement the Dept. had appointed educationally qualified Group D employees as ad hoc LDCs during 1982-89 subject to their ad hoc appointments being upto 6 months or till such time as qualified candidates from Clerks Grade Exam. or individuals from the panel for promotion of Group D employees to LDC Grades were available whichever was earlier. It was also made clear that these ad hoc appointments would not give them any right for claiming regular appointments, and the services rendered on ad hoc basis as LDCs would not count towards seniority or promotion. Most of their appointments were made during 1986-88 and was thereafter extended from time to time with certain breaks and every time the same service conditions were laid down

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which applicants accepted and continued to work as LDCs. It is further stated that Govt. issued instructions for not making any ad hoc appointments beyond 28.3.89, but in view of deficiency in LDC grade, they agreed as a special case for appointment of 190 Group D employees as ad hoc LDCs till 31.12.89. The applicants filed the above three OAs against their impending reversion which had been stayed by interim orders till the disposal of the O.A. which was finally dismissed by judgment dated 8.6.95.

16. Respondents contend that applicants in O.A. No.1751/88 are governed by a different set of Rules than applicants in O.As No. 2553/89, 16/90 and 254/90 and error was committed in not referring those O.As to a larger bench.

17. It is also denied that Rule 9(3) A.F.H.Q. Clerical Service Rules, 1987 is applicable to the applicants.

18. Applicants have filed rejoinder in which they have broadly reiterated the grounds taken in the R.A.

19. We have heard both sides and given the matter our careful consideration.

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20. Admittedly the applicants in O.A. No.2553/89; O.A. No.16/90 and O.A. No.254/90 have been heard at considerable length by the Full Bench which recorded its judgment dated 27.9.96 after giving careful consideration to the arguments put forward by applicants' cousnel. A perusal of the Full Bench judgment also makes it abundantly clear that the provisions of the A.F.H.Q. Clerical Service Rules have specifically been noticed, and in fact Rule 9(3) of those Rules has been quoted in the body of the judgment. Under the circumstances it cannot be said that either of the grounds on which review of the impugned judgment dated 8.6.95 has been sought, and which has been referred in paragraph 14 above, has merits. In this connection it also needs to be mentioned that no material has been shown to us to indicate that the said Full Bench judgment 27.9.96 or indeed the judgment dated 27.5.96 in O.A. No.702/96 has been stayed, modified or set aside.

21. Manifestly therefore no case for review of judgment dated 8.6.95 in O.A. No.2553/89 and other connected O.As is made out, within the meaning of Section 22(3)(f) read with Order 47 Rule 1 C.P.C. Instead, having regard to the Respondents' own order dated 20.6.96 on the need to await the

judgment of the CAT, Full Bench in the first instance, now that the judgment has been received, what appears appropriate and in order, is that in the event the applicants make a fresh, self-contained and up-to-date representation to the respondents within six weeks from the date of receipt of a copy of this order, Respondents should apply the ratios contained in (i) the Full Bench judgment dated 27.9.96 and (ii) the judgment dated 27.5.96 in O.A. No.702/96 to the case of the applicants and pass a detailed, speaking and reasoned order in accordance with law within two months from the date of receipt of that representation.

22. These R.As together with M.As for condonation of delay are disposed of i n terms of paragraph 21 above.

(DR. A. VEDAVALLI)
Member (J)

(S.R. ADIGE)
Member (A)

/GK/

Attested true copy
Sanjeev Kumar
19-3-97
(संजीव कुमार)
(SANJEEV KUMAR)
वरिष्ठ निजी सहायक/Sr. P.A.
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रधान न्यायपीठ, फरीदकोट हाऊस
Principal Bench, Faridkot House
नई दिल्ली/New Delhi-110001