

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 382/90

199

~~Tax No.~~DATE OF DECISION 10.10.91.

<u>Shri Jag Mohan &amp; Others</u>	Petitioner
<u>Shri V.P. Sharma,</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India &amp; Others</u>	Respondent
<u>Shri P.H. Ramchandani,</u>	Advocate for the Respondent(s)

**CORAM**

The Hon'ble Mr. T.S. OBEROI, MEMBER (J)

The Hon'ble Mr. I.K. RASGOTRA, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*.
2. To be referred to the Reporter or not? *yes*.
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*.
4. Whether it needs to be circulated to other Benches of the Tribunal? *no*.

*(Signature)*  
(I.K. RASGOTRA)  
MEMBER (A) *10/10/91*

10.10.1991.

*(Signature)* 10.10.91  
(T.S. OBEROI)  
MEMBER (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.382/90

DATE OF DECISION:10.10.1991.

SHRI JAG MOHAN SINGH & OTHERS

...APPLICANTS

VERSUS

UNION OF INDIA AND OTHERS

...RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANTS

SHRI V.P. SHARMA, COUNSEL

FOR THE RESPONDENTS

SHRI P.H. RAMCHANDANI, SENIOR  
COUNSEL.

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE

MR. I.K. RASGOTRA, MEMBER (A))

Shri Jag Mohan and 4 other applicants, who were initially appointed in Group 'D' and later promoted as Lower Division Clerks (LDCs) have filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 against the impending illegal action of the respondents to revert them to the lower post in Group 'D', after their having worked as LDCs for several years. The applicants are stated to be continuing as LDCs in accordance with the interim order passed by the Tribunal on 2.3.1990.

However, in view of the interim order dated 2.3.1990 the learned counsel for the applicants (respondents in OA) filed a Miscellaneous Petition No.768/90 wherein he submitted that the Tribunal had passed ex-parte interim order, restraining the respondents from reverting the applicants from the post of LDC to peon on 2.3.1990 on the basis of the statement made before the Tribunal by them that they were still working as LDCs. The said order was

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served on the respondents on 5.3.1990 at 3.30 p.m. (3rd and 4th March being Saturday and Sunday). The learned counsel submitted that the applicants infact were reverted vide order No.A-12011/2/82-Estt.I dated 2nd March, 1990. The applicants<sup>in O.A.</sup> thus stood already reverted when the order of the Tribunal was served on the respondents in O.A. The respondents, therefore, prayed that the present position may be taken on record.

Another Miscellaneous Petition No.2177/90 was filed by the respondents (in the main O.A.) on 7.9.1990, praying that the interim order passed by the Tribunal on 2.3.1990 be modified, so as to enable the respondents to revert the applicants from the posts of LDC as and when:-

- i) Staff Selection Commission (SSC) candidates nominate by the Department of Personnel and Training join the department or
- ii) regular LDCs who are presently working as UDC (adhoc)/Stenographer Grade 'D' (adhoc) or on deputation basis on some other posts revert to their substantive posts of LDC;
- iii) the vacant posts of UDCs against which three persons have been adjusted in accordance with GFR 77, are filled up.

On 25.4.1991 although the Miscellaneous Petition No.2177/90 was to be heard, at the request of the learned counsel for both the parties the arguments in the main O.A. were also heard. In the circumstances, we proceed to dispose of the OA alongwith the two MPs mentioned above.

2. The admitted facts of the case are that S/Shri Jag Mohan, Satish Prasad and Jagdish Chand, applicants Nos. 1,2 and 3 respectively are holding the posts of peon on regular basis in the Department of Civil Supplies, S/Shri Sohan Singh and Sumer Singh, applicants Nos. 4 and 5 are regular peons in the Directorate of Vanaspati, Vegetable Oils and Fats. Both the Department of Civil Supplies and Directorate





of Vanaspati, Vegetable Oils and Fats are participating in the Central Secretariat Clerical Service (CSCS) Scheme. They were promoted as LDCs on adhoc basis on the dates indicated against each:

Shri Jag Mohan Singh	16.11.1981
Shri Satish Prasad	22.10.1983
Shri Jagdish Chand	16.11.1981
Shri Sohan Singh	10.02.1988
Shri Sumer Singh	01.03.1982

According to rule 12 of the CSCS Rules, 1962 the recruitment to the lower division grade of the service is made in the following manner:-

- a)(i) 5% of the vacancies filled on the basis of qualifying examination held for Group 'D' staff by the SSC;
- (ii) 5% filled from among the educationally qualified Group 'D' employees by promotion;
- b) 90% by direct recruitment on the basis of open examination held by the SSC.

Rule 12 (b) of CSCS Rules, 1962 also empowers the departments participating in the CSCS Scheme to fill up the vacancies on adhoc basis through Employment Exchange till the vacancies are filled up by direct recruitment. Further the educationally qualified Group 'D' employees in the department are also to be considered alongwith the persons sponsored by the Employment Exchange for such adhoc appointments in accordance with rule 12 (i) (b) of the CSCS Rules, 1962 read with Rule 6 of the Rules. The appointment of such candidates are liable to be terminated on joining of the regular candidates recommended by the SSC. The applicants were appointed as LDCs, in accordance with the instructions contained in Department of Personnel and Training's OM No.8/9/79-CSII dated 31.10.1979, as candidates duly selected by the SSC were not available.

The case of the applicants is that they were not only appointed against the posts which were lying vacant for non-availability of candidates recommended by the SSC but also against the vacancies which were in the Group 'D' quota (5% by qualifying examination and 5% by promotion). They are all matriculate or possess higher secondary certificate and have the typing speed of 30 words per minute. They passed the typing test conducted by the department before appointment. Besides they were subjected to typing test conducted by the SSC where too they were declared successful. They contend that having been continued as LDCs for almost a decade they have got a prescriptive right to be posted on regular basis against the posts of LDC. In support of their case they have cited the judgement of the Hon'ble Supreme Court in **SLP (C) No.1086 of 1989 - M. Janaiah v. Regional Officer, A.P. & Ors.** which reads as under:-

"Special leave granted.

In the facts and circumstances appearing on the record and particularly taking into consideration the fact that the appellant was a serving peon and had been appointed as a Lower Division Clerk (and this could only be a case of promotion) we accept the appellant's stand that **he was not covered by the scheme which required passing of examination;** (emphasis supplied) and as a departmental candidate coming within the reserved category (be it either 10% as claimed by appellant or 5% as contended by the respondent), the appellant was entitled to be regularised. The appeal is allowed and the respondent are directed to regularise the appellant in his post as Clerk. No costs."

They have also cited the case of **Pyara Singh v. State of Haryana & Ors.** wherein their Lordships in the Hon'ble Supreme Court have held that adhoc appointment cannot be allowed to continue for more than one year.

By way of relief they have prayed that the respondents be directed to consider the case of the applicants for regularisation in the posts of LDC and that the order reverting the applicants from the posts of LDC to Group 'D' posts be declared as illegal, unjust, arbitrary and against the principles of natural justice.

3. The respondents in their counter-affidavit have emphasized that the office of the respondents are covered by the CSCS Scheme and in accordance with the Statutory Rules vacancies are to be filled up by the candidates selected and recommended by the SSC for the appointment in the service. The need to appoint the applicants on adhoc basis to fill up the vacancies arose, as the SSC candidates were not joining on account of some lacuna in the scheme of SSC allocating the candidates for appointment to various offices. This lacuna has since been removed and the scheme of allocation of selected candidates has been rationalised by the SSC. Therefore the selected candidates are now becoming available. They contend that since the applicants were employed on purely adhoc basis for short periods, extended from time to time till a regular incumbent joins they have no right to continue to hold the post of LDCs to the detriment of the interest of selected candidates recommended by the SSC for appointment.

4. Shri A.K. Behra, the learned counsel appearing with Shri P.H. Ramchandani, Senior Counsel submitted that the applicants were aware that they are working in the Departments participating in the CSCS Scheme and that they cannot be regularised unless they qualify in the Clerks Grade Examination (CGE) for Group 'D' staff. He further

submitted that the applicants did make an attempt to qualify C.G.E. but failed. He also submitted that there were other similarly situated Group 'D' employees working on adhoc basis as LDCs who made earnest effort to pass the CGE for group 'D' employees and who have been regularised, as they qualified in the said examination, details of such cases are given in Annexure R-2 to the counter-affidavit (page 62 of the paper book). The learned counsel further brought out that the applicants are not senior enough as to come up for regular appointment as LDCs by the method of promotion on the basis of seniority-cum-suitability, as there are at least 5 persons viz. Shri Chiranjil Lal Gupta, Shri Shyam Lal Shri Satyavir Singh, Shri K.P. Singh and Shri Mahavir Singh, senior to them awaiting promotion.

5. The learned counsel for the respondents further sought to fortify his case by citing the decision of the Tribunal in the case of **Jyotirmoy Dev v. UOI & Ors. 1990 (13) ATC 410** where the petitioners were appointed LDCs from among the candidates sponsored by the Employment Exchange. They did not hold any regular post in the department and were required to pass the UPSC examination in accordance with the conditions specifically mentioned in their letter of appointment, failing which their service was liable to be terminated. As they had failed to pass the examination held by the UPSC, the Tribunal upheld the termination of their services.

The second case relied upon by the learned counsel for the respondents is **Harvinder Kaur & Ors. v. UOI & Ors. 1991 (1) SLJ CAT 167**.

The petitioners in the said case were appointed as Stenographers Grade 'D' on adhoc basis during the year 1985-86 in the Ministry of Surface Transport and their services were sought to be terminated in March, 1989 consequent to the availability of candidates selected by the Staff Selection Commission for appointment as Grade 'D'

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Stenographers. They had the opportunity to appear in the open competitive examination conducted by the SSC or to appear in the special qualifying examination held in 1987 for Stenographer Grade 'D'(adhoc) who had put in one year's service on adhoc basis from 1.1.1985 to 30.9.1986. Here again the Tribunal held that the petitioners did not have any prescriptive right for regular appointment to the post held by them.

6. The applicants have filed a rejoinder wherein they have reasserted their claims made in the application.

7. The learned counsel for the applicant, however, placed his reliance on the decision of the Hon'ble Supreme Court in **Jacob M. Puthuparambil & Ors. v. Kerala Water Authority & Ors.** JT 1990 (4) SC 27 where their Lordships in the Hon'ble Supreme Court observed:-

"But once the appointments continued for long, the services had to be regularised if the incumbent possessed the requisite qualifications as was done by sub-rule (e). Such an approach alone would be consistent with the constitutional philosophy adverted to earlier.....

If the rule is so interpreted it seems clear to us that employees who have been working on the establishment since long, and who possess the requisite qualifications for the job as obtaining on the date of their employment, must be allowed to continue on their jobs and their services should be regularised. It is unfair and unreasonable to remove people who have been rendering service since sometime as such removal has serious consequences."

These observations, however, have to be read in the context that rule 9 (e) of the Kerala State and subordinate Service Rules itself provided for regularisation of service of any person appointed under clause-I of sub-rule (a) if he had completed continuous service of two years on the appointed

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date. The facts and circumstances of the case, therefore, are not germane to the issue before us.

We also find that the decision in the case of **M. Janaiah v. Regional Officer, A.P. & Ors.** (supra) is distinguishable, as the applicant therein was not covered by any scheme, nor was there any Statutory Rule governing the promotion/appointment.

8. We have heard the learned counsel for both the parties and given our deep consideration to the submissions made by them. We have also carefully perused the record of the case. We are of the view that the cases where adhoc appointments are made either in accordance with the Rules or in non-conformity with the Rules should be viewed, keeping in view the law laid down by the Hon'ble Supreme Court in the **Direct Recruit Class II Eng. Officers' Ass. v. State of Maharashtra JT 1990 (2) 264**. Clauses A and B of the summary of the judgement are of special relevance here and are reproduced below:-

"(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stopgap arrangement, the officiation in such post cannot be taken into account for considering the seniority.


(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

According to the rules the applicants herein should have been appointed either through open competitive

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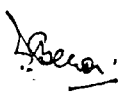
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examination conducted by the SSC or by qualifying in the CGE for Group 'D' employees or by promotion on the basis of seniority-cum-suitability (5%) from among Group 'D' staff. It is nobody's case that the applicants have been appointed in accordance with the Rules. The corollary to Clause A also is not applicable as although their initial appointment was not in accordance with the Rules and made only as a stop-gap arrangement, they have not been regularised, as they failed to qualify in C.G.E. According to Clause B of the summary, if the initial appointment is not made by following the procedure and yet the appointee continues in the post uninterruptedly, the appointee gets the benefit of adhoc service after he is appointed in accordance with the Rules. It is evident that in order to be regularised against the clear vacancies an adhoc appointee has to pass the C.G.E. The validity of the Rule is not in question. In fact the applicants have acquiesced in the Rule, as all of them appeared in the C.G.E conducted for the purpose of regularisation but failed to qualify. Some of their contemporaries in similar situation appeared in C.G.E and qualified and have been regularised. An adhoc appointee who has not qualified in the examination prescribed under the Rules cannot be treated as an equal of an adhoc appointee who qualified in the said examination and got regularised. The claim of the applicants for regularisation as LDCs therefore, lacks merit. We order accordingly and the O.A. is dismissed, with no order as to costs.

  
(I.K. RASGOTRA)  
MEMBER(A) 10/10/91

'SKK'

10.10.1991.

  
(T.S. OBEROI)  
MEMBER(J) 10.10.91