

(11)

Central Administrative Tribunal
Principal Bench
New Delhi

...

O.A. No. 1412/1991

New Delhi, this the 28th day of August, 1995

Hon'ble Shri J.P. Sharma, Member (Judicial)
Hon'ble Shri B.K. Singh, Member (Administrative)

1. Hawa Singh
2. Subhash Chander
3. Pritam Ram
4. Narinder Kumar
5. Manvir Singh

(All are employees of the Deptt. of Mines,
Ministry of Steel & Mines, Shastri Bhawan,
New Delhi).

...Applicant

(By None)

Versus

Union of India through the Secretary,
Department of Mines, Ministry of
Steel & Mines, Shastri Bhawan,
New Delhi- 110 001.

..Respondents

(By Shri S.K.Sinha proxy for Sh. Jog Singh, Advocate)

ORDER (ORAL)

The learned counsel for the respondents pointed
out that there is an interim order in this case passed
at the time when the O.A. was taken for admission on

Contd...2p/-

10.6.1991 with the direction that^{if}/the applicants have not already been ordered to be reverted from the post of L.D.C. On which they are stated to be working on an ad-hoc basis, status-quo as of today in regard to their appointment as L.D.C. on the existing terms and conditions may be maintained. This interim order has been extended from time to time and the interim order was continued till further orders by the order dated 8.1.1992. The applicant was initially engaged as daily wager and by passage of time they were regularised in group 'D' post of Peon and on short-term vacancies they were promoted to the post of L.D.C. The applicant Hawa Singh is said to be continued as L.D.C. since July, 1981 on ad-hoc basis ; Subhash chander since June, 1985; Sh. Pritam Ram since July, 1981; Narinder Kumar since July, 1987 and Shri Manvir Singh also since July, 1987. The respondents, however, in the reply stated that the applicants are continued on short-term vacancies with certain directions. The applicants apprehending reversion on the basis of O.M. dated 31st May, 1991^{continuation of} regarding /ad-hoc appointments of educationally qualified Group 'D' employees as L.D.C. on short term basis, filed this application praying for the grant of relief jointly by the applicants that respondents may be directed to regularise the services of the applicants as L.D.C. on the basis of the decision given in the bunch of cases in O.A. No. 668/88 decided on 12.04.1991 by the Principal

Bench, New Delhi a copy of which is also annexed with the original application.

The respondents have contested this application and stated that the recruitment to L.D.C. grade in CSCS Rules, 1962. According to this Rules, 90% of reported vacancies in the grade are filled by direct recruitment through an competitive examination conducted for the purpose annually by Staff Selection Commission (S.S.C.); and the remaining 10% by promotion of group 'D' employees of the cadres possessing minimum educational qualification prescribed - 5% through qualifying examination conducted annually by S.S.C. limited to Departmental candidates and 5% on the basis of seniority subject to rejection of unfit. Proviso to Rule 12(1)(b) of the Rules empowers this department to decide the manner in which the short term vacancies in L.D.Cs grade remaining un-filled due to non-availability of regular candidates recommended by SSC, should be filled on a provisional or regular basis. Ad-hoc appointments against vacancies for a short term are unavoidable in the interest of maintaining efficiency in work. Such appointments also confer temporary benefits even when the persons so benefited may not be entitled to such appointments under the Rules. The applicants were

b

14

- 4 -

not appointed against any fixed vacancies against which they allege to have continued for years, but they were appointed against vacancies as they arose from time to time and regular candidates filled up the old vacancies and new vacancies arose in place of the old ones.

In view of this, it is said that there is no provision under the Rules to regularise the services of all these applicants. The respondents have also referred to a decision in the case of MALIKARJUNA RAO & ORS V/S. STATE OF A.P. & ORS. reported in 1990(3) JT P.34) decided by Hon'ble Supreme Court holding that the ^{appellate} court is not an authority while exercising power of judicial review of administrative action. Since the regular candidates are available for appointment and there is O.M. dated 31.5.1991 issued by the DOP&T so there was not more requirement to continue the applicants on ad-hoc basis but because of the interim order dated 10th June, 1991, the applicants have been continuously working on the post of L.D.C. The respondents' counsel states that the replacement have been continuing still on ad-hoc basis by virtue of the interim order which was made absolute subsequently.

Ja

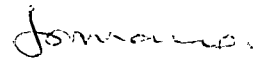
(15)

None appears for the applicants but we have considered the matter which has been considered in a number of decisions in the Hon'ble Supreme Court of India, in a recent decision by this this Bench itself in bunch of cases. We have referred to a number of catena of decisions where the Hon'ble Supreme Court of India held that direction issued by the apex court under Article 142 of the Constitution of India is not a precedence. In the judgement which concerns the similarly situated employees, the decision delivered in bunch of cases by the Principal Bench on 8th June, 1995 in the case of Jagdish Prasad & Ors. in O.A. No. 2553/89, O.A. 16/90, D.A. No. 254/90 has also been relied by the respondents. A copy of the judgement has been placed on record. In that case the case relied by the applicants O.A. No. 668/88 decided on 12.4.1991 has been distinguished. The cases decided by the Hon'ble Supreme Court in case of Dr. A.K. Jain Vs. U.O.I., 1992(1) SCC P. 331; Mukesh Bhai Chota Bhai Patel Vs. Joint Agricultural Marketing Advisor 1994(2) ATC P. 226. Director, Institute of Management Development UP Vs. Smt. Pushpa Srivastava - JT 1992 (4) SC P. 439, State of Pb. Vs. Surender Kaur & Ors. 1992(19) ATC Page 500. Jacob M. Puthuperaambil & Ors. Vs. Kerala Water Authority & Ors. JT 1990(4) SC P. 27 were considered. The sole averment of the applicants has been that since some benefit has been given to some of the employees in a bunch of Original applications by the order dated 8th June, 1995 by the Principal Bench, so, the applicants be also granted the same benefit of regularisation. No regularisation can be granted dehors the rules. The applicants entered the service as daily wagers and they were appointed to group 'D' Post as and when fitment by a vacancy arose. Their present seniors in group 'D' post cannot be ignored as they cannot give regularisation beyond 10% of the vacancies reserved

as per statutory rules of CSCS, 1962. Thus, the applicants have no case for regularisation. Regarding the fact that the applicants have worked for a number of years ^{already} have/been benefitted by appointment on higher pay scales on the post they have worked. Merely because they were ad-hoc appointees cannot earn a vested right even by a longer continuation on ad-hoc appointment for regularisation on a group 'C' post of L.D.C. which can only be filled by virtue of competitive examination on recommendations of S.S.C. The applicants shall have to wait for the promotion on their turn in the 10% of the quota either 5% for the departmental examination and 5% of seniority-cum-merit. They cannot claim regularisation dehors the rules.

The application is, therefore, dismissed as devoid of merits and the interim order dated 10/6/1991 as confirmed by the ^{interim} order dated 8.1.1992 is vacated. Cost on parties.


(B.K.SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

/nka/