

Central Administrative Tribunal, Principal Bench

O.A.No.1497/91

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)  
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 28<sup>th</sup>/K day of February, 1997

1. Shri Ashok Kumar  
s/o Shri Jagdish Chander Grover  
r/o S-VII/197, R.K.Puram  
New Delhi - 110 022.
2. Shri Ved Parkash  
s/o Shri Kali Ram  
r/o 46, Mangol Puri Khurd  
Delhi - 110 083.
3. Shri Mahavir Singh  
s/o Late Shri Bishai Singh  
r/o J-1/1-B, Chanakya Place  
Opp. C-1, Janakpuri  
New Delhi - 110 059.
4. Shri Mohinder Singh Malik  
s/o Late Shri Chandi Ram  
r/o C-27, Masood Pur  
(Vasant Kung)  
New Delhi - 110 037.
5. Shri Bacha Prasad  
s/o Shri Ram Chojha Parsad  
r/o 210, Janta Flats(Group I,  
Pocket "C") Hastal Village  
Uttam Nagar  
New Delhi.
6. Smt. Laxmi Devi  
w/o Shri Joshia Singh  
R/o E-95, Kidwai Nagar(East)  
New Delhi - 110 023.
7. Shri Dilbar Singh  
s/o Late Shri Madho Singh  
r/o P-617, Sewa Nagar  
New Delhi - 110 003.
8. Shri Raghu Ram  
s/o Shri Bilas Ram  
r/o P-617, Sewa Nagar  
New Delhi - 110 003.
9. Shri Shyam Dutt  
s/o Shri Ram Dutt  
r/o 56 Poorvi Marg  
'F' Block, Vasant Vihar  
New Delhi - 110 057.
10. Shri Shiv Kumar Parsad  
s/o Shri Jaggu Mahatu  
r/o 3/58, New Prem Nagar  
New Delhi - 110 003.

11. Shri Surendra Parashad-I  
s/o Shri Rameshwar Parshad  
r/o F-1870, Netaji Nagar  
New Delhi.

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12. Shri Harbansh Singh  
s/o Late Shri Charan Singh  
r/o F-1/248, Madangir  
New Delhi - 110 062.

... Applicants

(By Shri D.R.Gupta, Advocate)

. Vs.

1. The Director General  
Civil Aviation  
East Block 2 & 3  
R.K.Puram  
New Delhi - 110 066.

2. The Secretary  
Ministry of Civil Aviation  
Sardar Patel Bhavan  
Parliament Street  
New Delhi - 110 001.

3. The Secretary  
Ministry of Personnel, Public  
Grievances & Pension  
(Department of Personnel & Training)  
New Delhi.

4. Union of India  
(Service to be effected through its  
Secretary)  
Ministry of Civil Aviation  
Government of India  
New Delhi.

... Respondents

(By Shri P.H.Ramchandani, Advocate)

#### O R D E R

R.K.Ahooja, Member(A)

The applicants 12 in number were regularly appointed in Group 'D' posts under the Respondent No.1, Director General (Civil Aviation). They submit that they have been working as Lower Division Clerks(LDC) for varying periods ranging from 5 years to 12 years continuously but the respondents have passed the impugned order dated 25.6.1991 by which all the applicants have been reverted to the substantive Group 'D' posts with effect from 01.06.1991. Their grievance is that they are being sought to be reverted with retrospective effect for no valid reasons even though ad hoc appointments are being permitted and approved by the

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respondents. They therefore, pray that the impugned order passed by Respondent No.2 be quashed, and they may be allowed to continue to work as Lower Division Clerk and their services may be regularised from the date of the respective appointments. A prayer for interim relief was also made, seeking the stay of the operation of the impugned order till the pendency of the Original Application.

2. The respondents 1 to 4 in their reply statement, have pointed out that the post of LDCs are part of the Central Secretariat Clerical Service (CSCS) and the recruitment of the LDC grade in CSCS is regulated by Rule 12 of the Central Secretariat Clerical Service Rules, 1962. As per this Rule, 90% of vacancies are filled by direct recruitment by an examination to be conducted on all India basis by the Staff Selection Commission and the remaining 10% by promotion of Group 'D' employees. Half of the promotion posts are in turn to be filled on the basis of a Limited Departmental Competitive Examination conducted annually by Staff Selection Commission. Further the Proviso to Rule 12(1)(b) empowers Department of Personnel & Training to prescribe the manner in which the vacancies in the Lower Division Clerk grade remaining unfilled due to non-availability of sufficient number of qualified candidates, could be filled provisionally or on a regular basis. In exercise of these powers, Department of Personnel & Training through their Office Memorandum No.14/8/78-CS.II dated 13.2.1979 (Annexure R2) issued instructions to the cadre authorities to give preference to educationally qualified Group 'D' employees over nominees of the Employment Exchange for making ad-hoc appointment against such vacancies, which were not long term, after getting them temporarily excluded from the service with the concurrence of the Department of Personnel & Training. However, when the

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requirements of qualified candidates were made for the recruitment year 1988 or 1989, the Department of Personnel & Training reviewed the need for ad hoc appointments and withdrew the earlier instructions dated 28.2.1979 in so far as these related to the exclusion of posts from CSCS and by O.M. dated 31.5.1991 (Annexure R4) directed to discontinue forthwith all the ad-hoc appointments in the grade of LDC. Accordingly, ad hoc promotions of the applicants have not been continued beyond 31.5.1991. The respondents also state that the applicants could not be adjusted against the 5% seniority quota on the basis of their seniority as they were not covered within the quota.

3. When the matter came up for the first time on 5.7.1991 before the Tribunal, directions were given to the respondents not to revert the applicants till 18.7.1991. This interim order was continued on 18.7.1991 and on subsequent dates. The respondents, however, submitted that the impugned orders were not the orders of reversion because the ad hoc promotions of the applicants had come automatically to an end since as per the last orders of continuance, it was to end on 31.5.1991 and since it was not extended further, no formal orders of termination of ad hoc appointments were required. The position was sought to be contested by the applicants by adducing proof that they were still continuing to work and discharging the tasks assigned to LDCs. However, the Tribunal in its order dated 4.5.1992 while admitting the OA, observed that as the interim relief granted had become infructuous, it was being vacated. The position thus is that the applicants reverted to the Grade 'D' posts with effect from 01.06.1991.

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4. We have now heard the learned counsel on both sides. Shri D.R.Gupta, learned counsel for the applicants pointed out that the applicants had worked continuously for long term periods as LDCs, applicant No.1, Shri Ashok Kumar having been promoted as far back as 1979. The appointment of the applicants had been made after excluding the posts from the cadre of CSCS and this had been done with the approval of the competent authority, namely, Department of Personnel & Training. Even otherwise, there was no indication that regular direct recruits had become available for these posts. He agreed that in case the posts remained outside the ambit of CSCS, the applicants would not be able to obtain promotions beyond the level of Lower Division Clerks but submitted that at least they would not be reverted back to Group 'D' posts. (48)

5. The learned counsel for the respondents, Shri P.H.Ramchandani, on the other hand, submits that the position is now well settled that where rules governing recruitment to a cadre were ~~and cadre was~~ available, appointment to that cadre could not be made de hors the Rules.

6. We have carefully considered the arguments on both sides and pleadings on record. There is no dispute that the ad hoc promotion of the applicants was in excess of the quota laid down in the CSCS Rules for promotion from Group 'D'. It is also not in dispute that the ad hoc appointments were facilitated by temporarily excluding posts in question from the cadre of CSCS. However, Rule-12 provides that when such vacancies cannot be filled through qualified candidates these may be filled provisionally or on regular basis in such a manner as may be prescribed by the Central Government in the Department of Personnel & Administrative Reforms. That

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Department allowed filling up of such vacancies only on ad hoc basis. Even though such ad hoc appointments were continued from time to time, it could not, by virtue of such continuation acquire the status of regular appointments. Department of Personnel & Training was, thus, fully competent to withdraw the permission for ad hoc appointments since qualifying candidates had begun to be available through the competitive examination. We do not agree with the learned counsel for the applicant when he contends that keeping in view the length of ad hoc service put in by the applicant, the Department of Personnel & Training should have allowed the earlier instructions to continue. When a cadre is to be maintained in a certain way as per rules, then enabling provisions for meeting short term requirement cannot be allowed to over whelm the substantive provisions. As the learned counsel for the respondents has pointed out, the problem that had begun to arise was that departments carrying such ad hoc appointments were in fact not reporting the vacancies <sup>to be</sup> filled up on regular basis, which made the withdrawal of earlier instructions essential. In view of these circumstances, it was not necessary that the directly recruited candidates should have first arrived before the applicants could be reverted back to the substantive posts.

7. It is now a well settled position in law (Dr. Pramila Srivastava Vs. D.C., Health Services, ATR 1992 (2) CAT 752) that when the mode of selection and appointment to a post is required to be made by the rules in a particular manner, it cannot be filled up by resorting to a process which is contrary to the statutory mandate, even if it does not preclude stop-gap arrangements being made on temporary and ad hoc basis pending regular recruitment in accordance with the statutory rules or having regard to other exigencies

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of service. The Hon'ble Supreme Court had also held in the case of State of Orissa & Others Vs. Diptimala Patra and Others, (1996) 32 ATC 68 that the Teachers appointed for 89 days given extension for three years were to be considered inferior to regular candidates and hence bound to vacate their posts on arrival of regular candidates. In view of this position, the applicants had no right to continue as LDCs when the regular direct recruits were either available or were likely to become available and the competent authority had decided to fill up the posts as per the Rules.

8. In view of the above discussion, we find no merit in the application. The same is dismissed. No costs.

*R.K. Ahooja*  
(R.K. AHOOJA)  
MEMBER (A)

/rao/

*Lakshmi Swaminathan*  
(MRS. LAKSHMI SWAMINATHAN)  
MEMBER (J)