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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

* * *

DATE OF DECISION:

27.2.92

O.A. NO.1536/1991

SHRI MANOHAR LAL & ORS.

...APPLICANTS

VS.

UNION OF INDIA

...RESPONDENTS

FOR THE APPLICANTS

...SHRI O.P. KHOKHA WITH
SHRI K.L. BHATIA

FOR THE RESPONDENTS

...SHRI M.L. VERMA

O.A. NO.1537/1991

SHRI DEV KARAN & ORS.

...APPLICANTS

VS.

UNION OF INDIA

...RESPONDENTS

FOR THE APPLICANTS

...SHRI O.P. KHOKHA WITH
SHRI K.L. BHATIA

FOR THE RESPONDENTS

...SHRI P.H. RAMCHANDANI

CORAM

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

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

1. Whether Reporters of local papers may be YK
allowed to see the Judgement?

2. To be referred to the Reporter or not? Yes

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

In OA 1536/91, Manohar Lal and 6 others have assailed
the OM dt.31.5.1991 issued by the Department of Personnel
praying in this application under Section 19 of the

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Administrative Tribunals Act, 1985, that the respondents may be directed to regularise the appointments of the applicants against the post of LDCs. from their initial date of appointment with all consequential benefits and their services be not terminated or dispensed with and allowed to continue in services as LDCs. on regular basis and as a consequence be also considered for promotion to the post of UDC/Assistants by virtue of their seniority.

2. In OA 1537/91, Dev Karan along with 13 others has assailed the same OM dt.31.5.91 issued by the Department of Personnel and in this application have prayed almost the same reliefs as in the earlier OA 1536/91. Since both the OAs. involve the same question of fact and law and same defence has been raised in both of them, so they are disposed of by common judgement after hearing both the counsel of the parties.

3. The applicants in both the Original Applications are working as LDCs. in the Ministry of Finance. Recruitment to the post of Lower Division Clerk in the Central Secretariat Service is regulated by Rule 12 of the Statutory Central Secretariat Clerical Service Rules, 1962. According to these Rules :-

(i) 90% of the reported vacancies in the grade of LDC are filled up by direct recruitment through All India competitive examination conducted for by the purpose annually/Staff Selection Commission.

(ii) 5% of the vacancies may be filled up on the basis of qualifying examinations conducted annually by SSC limited to departmental candidates.

(iii) 5% of the vacancies may be filled on the basis of seniority subject to the rejection of the unfit from those Group 'D' employees, who are within the range of seniority prescribed and who are educationally qualified for appointment as Lower Division Clerks.

4. Proviso to Rule 12(i)(b) of the Rules empowers the Department of Personnel to decide the manner in which the short term vacancies in the LDC's grade remaining unfilled due to non availability of regular candidates recommended by the Staff Selection Commission should be filled on provisional or regular basis. The Department of Personnel issued instructions to all CSCS cadre authority in the OM dt.13.2.79 and 28.2.79 to give preference to departmental qualified Group 'D' employees/ nominees of Employment Exchange etc. for appointment to such short term unfilled vacancies provisionally on ad hoc basis by excluding such vacancies temporarily from the purview of Central Secretariat Clerical Service assuming approval of the Department of Personnel & Training under Rule 6 of CSCS Rules, 1962. Such ad hoc appointments/ promotions were reversible on regular candidates becoming available for appointment.

5. The applicants in both the cases were holding the lower post in Group 'D' and by virtue of the aforesaid OM were appointed on ad hoc basis as LDCs., firstly for a short term, but their appointment continued.

6. In OA 1536/91, the date of appointment as LDC of the applicants is given in a chart at p-15 of the paper book (Annexure I). Similarly in OA 1537/91, the date of appointment as LDC of the applicants is given in a chart at p-15 of the paper book (Annexure-I). The case of the applicants is that they were regular holders of Group 'D' posts and have been promoted to LDC on ad hoc basis as shown in the chart (Annexure I). It is also their case that they were not only appointed against the posts which were lying vacant on non availability of candidates recommended by SSC, but also in some other vacancies of the quota of Group 'D'. It is also their case that they are all matriculates or possess Higher Secondary Certificate and have also passed the typing test conducted by the department before appointment. It is also their case that they have been continued as LDCs. for almost a decade and they have got a vested right to be posted on regular basis against the post of LDC. The case of the respondents on the other hand is that there is no provision in the Rules to make regular appointment to LDC's grade except through direct recruitment-90% and promotion of eligible Group 'D' employees-10% under Rule 12(i) of CSCS Rules, 1962. The ad hoc appointees

who did not have any legal right to occupy the posts of LDC will, therefore, have to make way for appointment of regular candidates or as otherwise it would be violative of the legal/constitutional rights of the letter. In para-4 of the counter in both the OAs., the respondents have given the respective dates from which these applicants have been working and not on adhoc basis against the vacancies in the Lower Division Clerk's grades of CSCS which could not be filled due to non availability of qualified candidates and were, therefore, excluded from the purview of CSCS from the dates mentioned against their names. Thus appointments of the above mentioned LDCs., according to the respondents, were also subject to the condition that they would have no claim for absorption in CSCS and also that no assistance would be provided to them by the department for securing alternative appointments as LDC elsewhere in the event of their reversion.

7. It is further stated by the respondents that to make available the benefits as far as possible to its serving employees to the extent possible, such as allowing Group 'D' employees to be appointed on ad hoc basis in the LDC grade as a temporary measure till regular/qualified

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candidates are made available for appointment as per Statutory Rules. However, the Government cannot deprive thousands and lakhs of qualified unemployed youths who make sincere and strenuous efforts in qualifying the open clerks' grade examination held by the Staff Selection Commission annually to get posts meant for them in accordance with the provisions made under the Statutory Rules.

8. It is further stated that after the formation of SSC in the year 1976, the Government of India made it mandatory through notification that all regular recruitments in the grade/Group 'C' posts in the Ministries/ departments would be made through the competitive examination held by the SCC and if any ad hoc appointment exists in any grade, this regularisation could be subject to the qualifying of the said examination conducted by SSC as per Recruitment Rules. As such, the contention of the applicants that the departmental typing tests, they had passed at the time of entrance as adhoc LDC is that of equal standard is not at all relevant as it was not the test prescribed for recruitment to the post of LDC.

9. It is further stated that Department of Personnel in the OM dt.31.5.91 have directed all the Ministries/ departments participating in the CSCS that all the ad hoc

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LDCs may be reverted to their substantive Group 'D' posts as there are enough number of SSC qualified candidates made available to the cadre. Thus it is stated that the applications be dismissed.

10. We have heard the learned counsel for the parties at length and have gone through the record of the case. Proviso to Rule 12(i)(b) of the Central Secretariat Clerical Service Rules, 1962 (hereinafter referred to as 1962 Rules) as amended provides that "To the extent a sufficient number of qualified candidates in the competitive examination referred to in clauses (a) and (b) are not available for appointments on the results of such examination, the vacancies may be filled up provisionally or on regular basis in such manner as may be prescribed by the Central Government in the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension."

11. Further Rule 6 of the 1962 Rules reads as follows :-

"Exclusion of duty posts from the cadre- Any duty post in a grade may be declared by the cadre authority with the concurrence of Department of Personnel and Administrative Reforms in the Cabinet

Secretariat to be excluded from the cadre -

(i) If such post is required, for the time being, to be filled by the appointment of persons possessing special or technical qualifications or experience; or

(ii) If it is necessary, for the time being, to fill such posts by a person other than a cadre officer of the appropriate grade; and the post shall remain excluded from the cadre so long as such declaration remains in force."

12. Further Rule 24 deals with the power to relax which provides that where cadre authority is of the opinion that it is necessary or expedient to do so, it may, by order, for reasons to be recorded in writing and in consultation with the Department of Personnel and Administrative Reforms in the Cabinet Secretariat relax any of these Rules with respect to any clause or category of posts.

13. OM dt. 31.5.1991 (Annexure II) which has been assailed by the applicants in both the applications deals with ad hoc appointments of educationally qualified Group 'D' employees as LDC on short term basis continuation of. It is a policy decision where it has been decided to cancel the instructions issued by the OM dt.13.2.1979 which lays down that vacancy in the LDC grade

may be filled up preferably from Group 'D' employees working in the Ministries etc. in preference to nominees of the Employment Exchange for ad hoc appointments to such vacancies and OM dt. 28.2.1979 where the cadre authorities were informed that the concurrence of this department for such temporary exclusion of posts in terms of CSCS Rules, 1962 might be presumed. It was decided by the aforesaid OM dt. May, 1991 to discontinue forthwith all the arrangements in the grade of LDC and in some cases, such ad hoc appointments of Group 'D' employees as LDC have been continuing for a long period. It is by virtue of this OM that the applicants have apprehended their reversion and interim orders were granted not to revert them in both the OAs. As such, the applicants are continuing by virtue of the interim direction issued to the respondents by the order passed in both the OAs. as an interim measure.

14. The learned counsel for the applicants argued that their appointment is not ad hoc as though they were initially appointed on a short term basis. But since they continued for a number of years without any break, they have acquired a vested right to continue in their appointment and their claim for regularisation is justified.

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These applicants have been working on ex-cadre posts which are excluded from the purview of CSCS Rules, 1962. As such, according to the learned counsel for the applicants, Rule 12 is not applicable to the case of the applicants. Further it is said that there is ample power of relaxation under Rule 24. It is not disputed by the applicants that their appointment was short term, but it continued. During the continuation as LDC, the applicants also tried through competitive examination held by SSC and in OA 1536/91, all the applicants took from 3 to 5 chances, but they failed. This position, however, is not clear regarding the applicants of OA 1537/91. But they had equal chances available to them during continuation of their service on ad hoc basis as LDC and it is not denied in the application that they did not avail of or were not allowed to take the examination through SSC for all these years. When once their appointment was only for a temporary period, though in exigency of service they continued for years together, then only by virtue of this continuance in service, they cannot claim regularisation despite the Recruitment Rules. After the formation of SSC in the year 1976, the Government of India made it mandatory through notification that all regular recruitments in the grade/Group 'C' posts in the Ministries/Departments would be made through the competitive examination held by SSC and,

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therefore, if any ad hoc appointment exists in any grade, the regularisation would be subject to the qualifying the said examination conducted by the SSC as per Recruitment Rules. This has been specifically stated by the respondents in their counter in reply to para-4.5 of the application. In the rejoinder filed by the applicants in both the OAs., is stated that the averments are a matter of record. By virtue of OM of February, 1979 which opened the door for ad hoc appointments for the unfilled vacancies on provisional basis, it cannot be disputed that it was a policy matter falling within the jurisdiction of the Government. It was at a time when sufficient number of candidates were not available and Rule 6 of the CSCS Rules excluded these posts from the cadre posts. Now when the regularly selected candidates are available through SSC, then the issue of OM dt. 31.5.91 cannot in any way said to be arbitrary and unjustified. The Government cannot deprive thousands and lakhs of qualified unemployed youths who make necessary and strenuous efforts in qualifying the open Clerk's Grade Examination and after clearing the said examination are waiting for their due appointment as a matter of right. Obviously the applicants are working in those unfilled vacancies which at one time were excluded from the cadre. In order to get entry in the cadre of LDC, they have to be governed by Statutory Rules and cannot claim

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regularisation de hors the rules.

15. The learned counsel for the applicants has also relied on the decision of the OA 668/88 decided on 12.4.91 by the Principal Bench. In this case as well as in other connected Original Applications, similarly situated Group 'D' employees who were appointed on ad hoc basis as LDCs. claimed their regularisation. In that case, the Bench has ordered for regularisation of the services of those applicants in consultation with the SSC on the basis of evaluation of their work and conduct based on Annual Confidential Reports. It is also argued that SLP against the judgement has since been rejected. However, in a similar case-OA 382/90 decided subsequently on 10.10.91 by the Principal Bench in the case of Jag Mohan Singh & Ors. Vs. UOI, the Principal Bench rejected the similar claim and the SLP No.18273/91 against the judgement filed before the Hon'ble Supreme Court was dismissed on 17.12.91. Since it is a subsequent judgement and both being of the Division Bench, has been taken into account. In the case-OA 668/88 decided on 12.4.91 by the Principal Bench, the case of Jacob M. Puthuparambil & Ors. Vs. Kerala Water Authorities & Ors., JT 1990 (4) SC 27 has been referred to. In that case, the Hon'ble Supreme Court directed the respondents to regularise the services of such employees, who have put in continuous

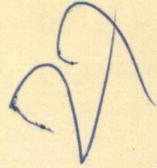
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service of not less than one year. However, in this case, it was observed that Kerala Water Authority adopted the rule without previous approval of the State Government, so the rules in their application to the staff or the authority are like the administrative rules and do not have statutory force. In the present case, CSCS Rules, 1962 have statutory force. Not only this, but after the formation of the Staff Selection Commission, it issued a statutory notification that all regular recruitments in Group 'C'/Grade posts in the Ministries/Departments would be made through the competitive examination held by the SSC. This leaves no scope for further consideration that where there are statutory rules for appointment to a service, then those rules have to be followed in letter and spirit. The applicants herein were already the Group 'B' employees in the employment of the respondents and firstly knew that appointment to the Grade 'C'/Group 'C' posts can only be through a competitive examination or though limited quota of 10% on the basis of limited examination or seniority-cum-suitability. In this OA 668/91 (supra), there is also reference to the case of Smt. P. K. Narayana & Ors. Vs. State of Kerala & Ors., 1984 Supplement p-212 in which the Hon'ble Supreme Court directed petitioners of that case along with other similarly placed to appear at the next

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examination of the Public Service Commission relaxing the question of age and as such, their regularisation was only through an open competitive examination and not on the basis of length of service. There is also a reference in this judgement of OA 668/91 to Dr.A.K.Jain's case where the services of the Assistant Medical Officers were also considered for regularisation, but in that case also, the Hon'ble Supreme Court only allowed this concession to limited Doctors and others were to be screened and selected through UPSC. Thus that case cannot be applied on all force to the LDCs. holding Group 'C'/Grade posts under GSCS Rules, 1962 because these ad hoc appointees were not holding cadre posts and were excluded from the cadre by virtue of Rule 6 of 1962 Rules. In the case of Direct Recruits Class-II Engineers' Association vs. State of Maharashtra, JT 1990 (2) 264, it has been held that "once an incumbent is appointed to a post according to the rules, 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 the rules and made as a stop-gap-arrangement, the officiation in such posts cannot be taken into account for considering the seniority.

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Though this is related to the matter of seniority, but it goes to show that appointment according to the rules only can give a credit for length of service otherwise only. It has been further held that 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 is his service in accordance with the rules, the period of officiating service will be counted. It clearly shows that the person has to be regularised according to the rules in order to have any benefit of the length of service, he has put in on the basis of initial ad hoc appointment. In the present case, the applicants have availed chances and also had occasion to avail, if they have not availed chances through SSC for regularisation of their services either in the limited departmental examination of 5% quota or in the direct recruitment quota of 90%. Most of them did appear and failed not once, but repeatedly. It shall be too much generosity and magnanimity to give them regularisation and discard the claim of those who have a matter of right having been successfully qualified for appointment in an All India competitive examination conducted by SSC. This will be most un equitable and arbitrary and also be violative of Articles-14 and 16 of the Constitution.

16. An attempt has also been made by the learned counsel to show that the vacancies are still existing and equal number of duly selected candidates were not selected by the SSC. But ^{it} will not give a right to the persons to continue when they are not eligible according to Extant Rules either in the quota reserved for Group 'D' employees or in the quota of direct recruits which can only be filled up by resorting to a selection by SSC.

17. The learned counsel for the respondents has referred to the appointment letters issued in accordance with the OM dt.13.2.1979 wherein the specific condition was laid down, "Such promotions will be subject to the condition that there will be no request to regularise the ad hoc appointments." It clearly shows that the applicants when they were appointed firstly knew that their request for regularisation of the ad hoc appointment would not be acceptable. Knowing well about this, all the candidates of the OA 1936/91 unsuccessfully availed three to five chances. So now they cannot claim that they should be regularised on the basis of length of their service. The position in OA 1937/91 is not clear. However, their case cannot be distinguished from those who are similarly situated in the other OA because when others in OA 1936/91 have



availed the chances, they would have in normal course occasion to avail, if not availed of the chances to appear in the Staff Selection Commission Examination conducted early for the Group 'C'/LDC cadre post.

18. Taking all these facts into account, the applicants have not made out any case that they can be regularised de hors the Recruitment Rules to the cadre of LDC/Group 'C' post. The applications are, therefore, devoid of merits and dismissed leaving the parties to bear their own costs.

J. P. Sharma

27.2.92.

(J.P. SHARMA)
MEMBER (J)

AKS

I.K. Rasgotra

(I.K. RASGOTRA)
MEMBER (A)

27/1/92