IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

DATE OF DECISION 03/9/92

FOR THE APPLICANT — Sh.G.D.Gupta
Sh. D.R.Gupta
Sh. K.L.Bhatia
with Sh.O.P.Khosla

FOR THE RESPONDENTS — Sh.M.L.Verma
Sh.P.P.Khurana
and Sh.Jog Singh

1.	O.A No. 1485/91	O.P.Gehalan & Others V/s U.O.I.& Ors.	-do-
2.	O.A No. 1745/91	S.N.Mehta & Ors. V/s U.O.I. &Ors.	-do-
3.	O.A.No. 1458/91	J.K.Vohra V/s U.O.I. & Ors.	-do-
4.	O.A.No. 1960/91	B.S.Patwal V/s U.O.I. & Ors.	-do-
5.	O.A.No. 1970/91	Narayan Singh V/s U.O.I.& Ors.	-do-
6.	O.A. No.2006/91	Chander Singh V/s U.O.I. & Ors.	-do-
7.	O.A. No. 2008/91	Parkash Singh V/s U.O.I. & Ors.	-do-
8.	O.A. No. 1896/91	Ram Singh V/s U.O.I. & Ors.	-do-
9.	O.A. No. 2108/91	Khyat Singh V/s U.O.I.	-do-
10.	O.A. No. 2400/91	Bhaskar V/s U.O.I.	-do-
11.	O.A. No. 1599/91	Ganga Ram V/s U.O.I.	-do-
12.	O.A. No. 1642/91	Ram Khilari V/s U.O.I.	-do-
13.	O.A. No. 1538/91	Attar Singh V/s U.O.I. & Ors.	-do-
14.	O.A. No. 1894/91	Bhagat Singh V/s U.O.I.	-do-

CORAM

Hon'ble Justice Ram Pal Singh, Vice Chairman(J)
Hon'ble Sh. I.P.Gupta, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? Yes.

(13)

J U D G E M E N T

(Delivered by Hon'ble Shri I.P. Gupta, Member (A))

The issues involved in the aforesaid O.As. are common and, therefore, the O.As. are being dealt with together. The applicants in O.As. were initially recruited as daily wages/Group 'D' employees through the agency of local Employment Exchange. They worked in that capacity for some time whereafter they were promoted as ad hoc LDCs., on the basis of their qualifications and experience. They have been working as ad hoc LDCs. from periods ranging between 1981 and 1989, with occasional breaks, which the applicants have termed as 'technical breaks'. Several of them have passed the typing test conducted by the Staff Selection Commission and some others have not. They possess the minimum educational qualifications prescribed for the post of LDC. They have also earned annual increments in the LDC grade. None of them have been regularised yet.

2. The contentions of the Learned Counsels for the applicants were

(i) The case of similarly situated LDCs was dealt with in O.A. Nos. 668, 914, 985, and 1010 of 1988 whose decision was given by the Principal Bench on 12th April 1991. The respondents take immediate steps to applicants with the Staff on. While doing so, necessary, relax the

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upper age limit for appointment as LDC. Their regularisation should be on the basis of the evaluation of their work and conduct based on the ACRs as was directed by the Hon'ble Supreme Court in Dr. A.K. Jain's case. Till the applicants were so regularised, they should not be reverted to their substantive posts in Group B. The applicants should be entitled to the protection of pay and allowances including increments in the posts of LDC and other benefits as are admissible to a regular employee.

(ii) The directions of Department of Personnel & Training in their O.M. dated 31.5.1991 included instructions that in cancellation of previous instructions, ad hoc arrangements in the grade of LDCs should be discontinued, except in those situations where such appointments have to be continued on orders of Courts of Law/ CAT. These instructions were issued because experience had shown that continuation of ad hoc arrangements of long periods resulted in administrative problems particularly when on the availability of regular candidates, attempts were made by the employees concerned who had continued to officiate on ad hoc basis for long periods to frustrate any move for their replacement by regular LDCs. This had often resulted ...sing situation for the Government. ...el for the applicants have termed ...uctions as arbitrary and unlawful ...lly in view of the judgement of CAT dated ... referred to above.

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(iii) Vacancies existed to accommodate the applicants and the nominees of the SSC were not available to necessitate their reversion and the reversion of the applicants was totally unjustified.

(iv) The Learned Counsel quoted the following from the judgement of the Principal Bench in O.A. No. 668/88 etc. decided on 12.4.1991:-

" In Jacob M. Puthuparambil & Others Vs. Kerala Water Authority & Others, JT 1990(4) SC 27, the Supreme Court had considered a similar issue relating to the regularisation of persons who had been appointed on ad hoc basis for several years. The Supreme Court had directed the respondents to regularise the services of such employees who have put in continuous service of not less than one year, as a separate block in consultation with the Kerala Public Service Commission. In doing so, the Kerala Public Service Commission has been directed to take the age factor as waived. In arriving at this conclusion, the Supreme Court relied upon its earlier decision in Smt. P.K. Narayani & Others Vs State of Kerala & Others, 1984 Suppl. SCC 212 and in Dr. A.K. Jain & Others Vs. Union of India & Others, 1987 SCC 497."

(v) The recruitment rules regarding recruitment of LDCs in the Central Government offices provide, inter alia, recruitment to the LDC grade of the service shall be made in the following manner :-

"(a)(i) Five percent of the vacancies may be filled on the basis of qualifying examinations held for this purpose by the Staff Selection Commission; and

(a)(ii) Five percent of the vacancies may be filled on the basis of seniority, subject to the rejection of the unfit, from amongst those Group 'D' employees who are within the range of seniority prescribed by the Department of Personnel & Training and are educationally qualified for appointment as Lower Division Clerk, i.e., who have passed the Matriculation or an equivalent examination of a recognised Board of University.

Provided that if sufficient number of persons do not become available the vacancies shall be filled in manner prescribed in clause (b).

Provided further that if more of such employees than the number of vacancies available under this clause qualify at the said examination, such excess employees shall be considered for filling the vacancies arising in the subsequent years so that the employees qualifying at an earlier examination are considered before those who qualify at a later examination.

(b) Ninety percent of the vacancies or such higher percentage as may be determined by the Central Government in the Department of Personnel & Training in the Ministry of Personnel, Public Grievances and Pension, in accordance with the proviso to Clause (a) shall be filled by direct recruitment on the basis of Competitive Examination held for the purpose by the Staff Selection Commission.

Provided that to the extent a sufficient number of qualified candidates of the competitive examinations referred to in clauses (a) and (b) are not available for appointment on the results of such examinations, the vacancies may be filled provisionally or on regular basis. In such manner as may be prescribed by the Central Government in the Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pension.

Therefore, it would be seen that if sufficient number of qualified candidates of the competitive examinationseither against 5 per cent quota to be filled on the basis of qualifying examination conducted by SSC or against 90 per cent direct recruitment quota were not available for appointment on the result of such examination the vacancies may be filled provisionally or on regular basis in such manner as may be prescribed by the Central Government. The Learned Counsel further contended that the recruitment rules provided for a relaxation clause

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which reads as below :-

" Where the cadre authority is of opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing and in consultation with the Department of Personnel & Administrative Reforms in the Cabinet Secretariat relax any of these rules with respect to any class or category of persons or posts".

3. The applicants have continued against the posts of LDCs on ad hoc basis on the strength of interim order issued in various cases from time to time. However, the applicant(s) in O.A. No. 2006/91 (Chander Singh Nagi) was reverted with effect from 3.9.1991.

4. The applicants have sought for the relief that the respondents should be directed to extend the benefit of the judgement in O.As. No. 688/88 etc. decided on 12.4.1991 to the applicants who are similarly situated by regularising their services as LDC in terms of the directions given in the aforesaid judgement by quashing reversion of the applicants.

5. The Learned Counsel for the respondents contended that -

(i) the applicants have been/are regular employees in Group D and were promoted as LDC on purely ad hoc and short-term basis. The orders for reversion were issued but in several cases they could not be served as the applicants proceeded on leave when they got the knowledge of this. The orders were served through registered AD post.

(ii) Ad hoc promotion of a person does not create any vested right to continue in the post and he may be reverted. It was indicated in the promotion orders that he would have no right for regularisation. Possession of the requisite educational qualification and passing of the typewriting test are the requirement for eligibility for holding the post of LDC. This does not confer any right of holding the post on regular basis

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as regular promotion can only be made as per the provisions of CSCS Rules, 1962.

(iii) The judgement in question of the Tribunal dated 12.4.1991 are not of general nature and are applicable to the Ministry of Urban Development who were the respondents. The cases of the applicants who are in the Ministry of Agriculture, Department of Fertilisers and Department of Chemicals & Petrochemicals, Planning Commission and Department of Company Affairs are on a different footing and cannot be equated with the cases in the aforesaid O.As. whose judgement was given on 12.4.1991.

(iv) The applicants had to be reverted in keeping with the instructions of the Department of Personnel dated 31st May 1991 where it was clearly directed that ad hoc arrangements in the grade of LDC should be discontinued except in those situations where such appointments had to be continued on orders of Courts of Law/ CAT.

6. Let us analyse the facts and issues involved in the aforesaid cases. It is well established that ad hoc appointments dehors the rules do not establish any right. Further, no regularisation in service can be allowed contrary to statutory rules. It cannot be that in contravention of the statutory rules, ad hoc appointment is made and after some time that appointment is regularised. The statutory rules for recruitment cannot be allowed to be circumvented in this manner. It is only when there are no statutory rules for recruitment and the vacancies exist that ad hoc employees or daily wagers employed for sufficient length of time, may be entitled to be regularised. If the statutory rules contain a provision for relaxation, then possibly powers can be exercised for relaxation of the rules in favour of these employees who have rendered services for a number of years [illegible] Vipin Kumar & Others v/s Delhi Development

7. The judgements in the case of Jacob M. Puthuparambil & Others V/s Kerala Water Authority & Others, in Smt. P.K. Narayani & Others v/s State of Kerala & Others and in Dr. A.K. Jain & Others v/s Union of India and Others (Supra) have also to be kept in view.

8. Keeping in view the judicial pronouncement and the decision taken by the Tribunal in O.A. No.668/88 etc. decided on 12.4.1991, the applications are disposed of with the following orders and directions -

Subject to the conditions that nominees of SSC are not waiting for regular appointments either under 5 per cent quota to be filled by qualifying examinations conducted by SSC or under 90 per cent quota for direct recruitment by the SSC -

(i) such of the applicants as have put in continuous service of not less than one year and are qualified educationally and also in the typing test conducted by the SSC should be considered for regularisation as LDCs in consultation with the Staff Selection Commission. While doing so, the respondents shall, if necessary, relax the upper age limit for appointment as LDCs. Their regularisation should be on the basis of the evaluation of their work and conduct based on the ACRs, as was directed by the Hon'ble Supreme Court in Dr. A.K. Jain's case.

(ii) Such of the applicants as have not qualified in the typing test conducted by SSC should be given full opportunity to take the prescribed typing test for regularisation as LDC before filling the post on regular basis against 5 per cent quota.

filled by qualifying examination or against 90 per cent quota for direct recruitment, according to rules by relaxation of age bar to the extent of ad hoc service.

(iii) The applicant(s) as have been reverted should be taken back on ad hoc basis, subject to available vacancy and subject to any ad hoc employee (not passed in typing test) still serving with lesser experience with no back wages.

(iv) None of the applicants who are on ad hoc basis should be reverted by replacement by other ad hoc employee. They can be reverted only when regular nominees of SSC are available. It may be reiterated that against regular nominees none of the applicants will have any claim to continue unless they have been regularised meanwhile in the manner indicated above.

9. The interlocutory orders including the interim directions would merge into this order.

10. With the above directions, the aforesaid O.As. are disposed of with no orders as to costs.

I.P. Gupta
Member (A)
13/8/92

Ram Pal Singh
Vice-Chairman(J)

True copy
Attested

(प्रीतम सिंह)
PRITAM SINGH
13/8/92