

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

DATE OF DECISION 13/9/92

FOR THE APPLICANT

Sh. G.D. Gupta
Sh. D.R. Gupta
Sh. K.L. Bhatia
with Sh. O.P. Khosla

FOR THE RESPONDENTS

Sh. P.L. Verma
Sh. P.P. Khurana
and Sh. Jog Singh

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

CORAM

Hon'ble Mr. Justice Ram Pal Singh, Vice Chairman (J)
Hon'ble Member 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.

J U D G E M E N T

Delivered by Hon'ble Shri I.P. Gupta, Member (A) 7

show right to regularisation and to stand

and as such no great controversy

is involved in the matter and on basis of

specifications and 1117 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 'Q' 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 -

(1) The case of similarly situated LDCs

was dealt with in O.A. Nos. 668, 914,

985 and 1018 of 1988 whose decision

was given by the Principal Bench of

CAI on 12th April 1991. The respondents

were directed to take immediate steps to

regularise the services of the applicants

as LDC in consultation with the Staff

Selection Commission. While doing so,

they shall, if necessary, relax the

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 in an embarrassing situation for the Government. Where instructions for the applicants have termed these instructions as arbitrary and unlawful especially in view of the judgement of CAT dated 12.4.1991 referred to above.

13
(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)(1) 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 of 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 examinations either 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

which reads as below :-

Wherever 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 the basis of 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

(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 they would have to be regularised.

For promotion of a person, educational

qualification and the type of writing

the requirement for holding the

post do not confer any

right of hold the post on regular basis

(1.1.1991) (1.1.1991)

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 wages, 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 those who have rendered services for a number

of years. **Shri K. S. Kulkarni & Others v/s Delhi Development**

Authority: (1991) 1 L.J. 1000 (S.C.)

7. The judgement in the case of Jacob M. Puthuparambali & Others V/s Kerala Water Authority & 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 allowed to take the prescribed test for filling the post on regular basis against 5 per cent quota to be

Am Pal Singh
(Vice-Chairman)

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18

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 employees. 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

(PRITAM SINGH) 13/8/92
Court Officer

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रधान न्यायपीठ, फरीदकोट हाउस
Principal Bench, Faridkot House
नई दिल्ली/New Delhi

Such of the applicants as have not qualified in the typing test conducted by SSC should be allowed to take the prescribed test for filling the post on regular basis against 2 per cent quota to be