

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

Date of decision: January 21, 1993.

(1) OA No.2266/91

Mrs. Harsh Lata & anr. .. Applicants

versus

Union of India,
Ministry of Textiles & anr.... Respondents

(2) OA No.2267/91

Sh. Manwar Singh Rawat & anr ... Applicants

versus

Union of India,
Ministry of Textiles & anr. ... Respondents

CORAM:THE HON'BLE MR.JUSTICE RAM PAL SINGH, VICE-CHAIRMAN(J)
THE HON'BLE MR.P.C.JAIN, MEMBER(A)

For the Applicants .. Sh.B.S.Charya,
Counsel

For the Respondents .. Sh.K.C.Mittal,
Counsel.

JUDGEMENT

Hon'ble Shri P.C.Jain, Member(A):-

In OA No.2266/91, there are two applicants, namely, Mrs.Harsh Lata and Mrs.Davinder Kaur. Both the applicants were initially engaged in February,1986 in the office of the Development Commissioner for Handlooms,New Delhi, as Clerk/Typist on daily wage basis for a period of three months. Their names were sponsored by the Employment Exchange for such appointment and they were initially appointed after being subjected to typewriting test and interview. Both the applicants were placed in the regular pay scale of Rs.260-400 with effect from 12.5.86

for the post of Lower Division Clerk. They continued to work as such till Office Order dated 13.8.91(Annexure/P-1 to the OA) was issued by which the term of the post on which they were appointed was extended upto 30.9.91. It is against this order that both the applicants have filed this OA under Section 19 of the Administrative Tribunals Act,1985 praying for quashing of the same and directing the respondents to regularise them as Lower Division Clerk with effect from the date of their original appointment more particularly w.e.f. 12.5.86 when they were brought on regular pay scale with all attendant benefits etc. and their seniority as Lower Division Clerk should be counted in the combined seniority list of Lower Division Clerk in the office of the Development Commissioner for Handlooms from 12.5.86 and other incumbents in that cadre should be placed junior to them on the basis of their date of appointment etc. They have also prayed for a direction to the respondents not to terminate or dispense with their services in any manner till persons junior to them were allowed to work in the office of the Development Commissioner for Handlooms. By an interim order passed on 30.9.91, the respondents were directed to

follow the principle of 'last come first go' in the event of the posts sanctioned vide order dated 13.8.91 occupied by the applicants are not extended beyond 30.9.91 in the office of the Development Commissioner for a period of 14 days. This interim order has continued since then.

2. In OA No.2267/91 also, there are two applicants, namely, Shri Manwar Singh Rawat and Shri Mulayam Singh. In their case also a similar Office Order dated 13.8.91(Annexure/P-1) has been issued by which their ad hoc appointment has been extended upto 30.9.91. Both of them were initially recruited as daily wage Messengers after their names were sponsored by the Employment Exchange and they were subjected to interview by a selection committee. Both the applicants were appointed on daily wage basis with effect from 18.3.83 and both of them were appointed as ad hoc Peon with effect from 1.4.86. They have also prayed for quashing of the impugned Office Order dated 13.8.91 and for a direction to the respondents to regularise them as Peon with effect from the date of their appointment of 18.3.83 or from 1.4.86 and for counting their seniority in the combined seniority list of Peon in the office of the

Development Commissioner for Handlooms. They have also prayed for a direction to the respondents not to terminate or dispense with their services in any manner till persons junior to them are allowed to work in that office. In this case also a similar interim direction was given by the Tribunal on 30.9.91 as in the first case.

3. As common question of law and facts is involved in both these cases, these are being disposed of by a common judgement at the admission stage itself. We have perused the material on record and also heard the learned counsel for the parties.

4. The main contention of the applicants in both these cases is that they were appointed in the office of the Development Commissioner for Handlooms and they apprehend that their services would be dispensed with after 30.9.91 while retaining the services of the persons who were recruited to the same post after appointment of the applicants herein. This alleged action of the respondents is stated to be arbitrary, whimsical and in violation of Articles 14 & 16 of the Constitution of India. The case of the respondents on the other hand, is that the applicants were

appointed purely on ad hoc basis in the office of the Chief Enforcement Officer which is a temporary organisation and is a different entity with its different and separate cadre, budget and administrative set-up, and as such this is the contention of the respondents that the applicants were not the employees of Development Commissioner for Handlooms.

It is their further contention that the posts to which the applicants were appointed on ad hoc basis were sanctioned/continued on year to year basis as temporary posts but due to stay granted by the Supreme Court on the implementation of the Handlooms of Articles for Production) (Reservation/ Act, 1985, there is no work left in the office of the Chief Enforcement Officer.

It is also stated that keeping in view the difficult economic conditions of the country, the department decided not to extend the services of the ad hoc employees of the Chief Enforcement Officer and keeping this in view, no ad hoc employee of the organisation has been given extension beyond 30.9.91 and all the deputationists were also being repatriated on 30.9.91 Only skelton staff with one Assistant Director, one Legal Assistant and one Steno are stated to have been kept

in the office of the Chief Enforcement Officer and in view of these facts, the applicants cannot claim any regularisation. It is further contended that as per rules, the recruitment to the post of Lower Division Clerk is to be done only through the Staff Selection Commission. But as the nature of the organisation itself was temporary, the recruitment was not made through Staff Selection Commission. The applicants have contested the reply filed by the respondents by filing their rejoinder in which they have not only reiterated their contentions in the OA but have also tried to rebut the contentions in the reply of the respondents.

5. The respondents have also made available for our perusal their File No.1/4/86-DCH/Admin I(Vol I) and part File No.1/11/85-DCH/Admin. We have also perused these files.

6. From the pleadings of the parties and perusal of the departmental files, referred to above, we find that the Handlooms(Reservation of Articles for Production), Act 1985 and the rules^{made} thereunder were enforced with effect from 1.4.86. It was decided that the Development Commissioner for Handlooms will be the authority under the Central Government responsible for enforcing various provisions of the Act.

In all 49 posts, Gazetted and non-Gazetted-
17 in the Central Enforcement Office at
Delhi and 32 for Regional Enforcement Offices
at Pune and Coimbatore, were sanctioned with
effect from 1.4.86. It is also seen that
the scheme was treated as plan scheme, and
the posts sanctioned were temporary and their
sanction was renewed on yearly basis. The
applicants in both these OAs were appointed
to the two posts of Lower Division Clerk
and two posts of Peon sanctioned for the
Central Enforcement Office, Delhi. It is also
clear from the letters of appointment filed
by the applicants with their OAs. The Office
Order dated 3.6.86(Annexure/P-2) in OA No.2266/
91 clearly shows that both the applicants
in this OA who were working as daily wage
Clerks/Typists in the office of the Development
Commissioner for Handlooms were appointed
by this order as Lower Division Clerk purely
on ad hoc basis with effect from 12.5.86
in the office of the Chief Enforcement Officer,
Delhi. It is also stated in this order that
their appointment was purely on ad hoc basis
and that they will have no claim whatsoever
for regular appointment, confirmation and
seniority in the grade of Lower Division
Clerk. Similarly, the applicants in OA 2267/91

who were working as daily wage Messengers in the office of the Development Commissioner for Handlooms, were appointed by Office Order dated 28.3.86 as Peon purely on ad hoc basis in the scale of Rs.196-232 in the Central Office of the Enforcement Machinery at Delhi and both the appointments were said to be purely on ad hoc basis and/ they will have no claim whatsoever for regular appointments, confirmation and seniority in the grade of Peon. It is thus clear that though the applicants were initially appointed on daily wage basis, they were appointed in the regular scale of pay as Lower Division Clerk and Peon with effect from 12.5.86 and 1.4.86 respectively only in the office of the Chief Enforcement Officer/Enforcement Machinery at Delhi against temporary posts created for the purpose of enforcing provisions of Handlooms (Reservation of Articles of Production) Act, 1985. It is also clear that the posts were temporary and sanction for their continuation was extended on yearly basis. The contention of the respondents that the office of the Chief Enforcement Officer is an office separate from the office of the Development Commissioner for Handlooms and that there are separate

cadres and separate seniority lists, has been strongly contested by the applicants. The respondents have not been able to show by placing any material on record that there are separate cadres and separate seniority lists or that the applicants are governed by recruitment rules which are different or separate from ~~from~~ the recruitment rules for appointment in the office of the Development Commissioner for Handlooms. The relevant departmental files made available to us also do not show that there are separate cadres and separate seniority lists. However, the fact remains that the appointment of the applicants in both these cases is without any doubt against temporary posts created for the Enforcement Machinery for the enforcement of the provisions of Handlooms (Reservation of Articles for Production) Act, 1985. Before such appointment, the applicants were not holding any regular posts, they having been appointed only on daily wage basis. Accordingly, if the work of enforcement is reduced to almost nil for reasons beyond the control/ e.g. due to stay order passed by the Supreme Court against the enforcement of the Act, the applicants have no legal right either to claim appointment

to the posts or seniority in the office of the Development Commissioner for Handlooms, or for being continued on the posts against which they were appointed which either do not exist or have been kept in abeyance. Similarly, regularisation against temporary posts cannot be directed.

7. The respondents have relied on the judgement of the Principal Bench of the Central Administrative Tribunal in OA No.1386/90 decided on 23.8.91. In that case, the applicant Smt.Neeru Sharma was appointed to the/ of Stenographer Grade III purely on ad hoc basis in the office of the Development Commissioner for Handlooms vide order dated 19.6.86 with effect from 18.6.86. She worked in that office continuously till her termination vide order dated 20.6.90. She was also appointed against one of the posts created in the Central Office for enforcement of the above Act. The stand of the respondents in that case was that the services of the applicant were terminated as there was no work of Stenographer Grade III in that office and that the post of Stenographer Grade III has been held in abeyance. The Tribunal held that the applicant will be entitled to succeed only if she is

able to establish that the respondents still need the services of Stenographer Grade III but there is nothing on record to substantiate this. It was further held that as there is no vacancy or post in ^{which} the applicant could be accommodated or regularised, it will not be appropriate to issue any directions to the respondents in this regard. However, it was directed that in the event of any vacancy being available now or arising in future in the post of Stenographer Grade III in the office of the respondents, the applicant will have prior claim for appointment in preference to persons with lesser length of service and fresh recruits.

8. In another judgement dated 9.1.92 delivered by the Bombay Bench of the Tribunal in OA Nos.647/91,693,694,695,696,697 & 698/91 wherein the applicants were appointed in the Regional Enforcement Office in Pune on various posts viz. Stenographer, Peon, Watchman etc. in the year 1986, judgement in OA No.1386/90(supra) is referred to, it was directed that whenever sanction is accorded and any work is available the applicants not only will be appointed and will be deemed

(26)

to be in continuous service as usual though for the period for which sanction was not given or the sanction is accorded they will not be entitled to claim any salary or continuity.

9. From the aforesaid two judgements, it is clear that the applicants therein were also recruited against the newly sanctioned posts for the enforcement of the provisions of the statute, already referred to above, and as there was no vacancy/no work/no sanction, the applicants were not directed to be reinstated or continued in job with the benefit of pay and allowances.

10. It may also be mentioned that the respondents have clearly stated that no LDC or Peon appointed to the post created for the enforcement ~~xxxxxx~~ machinery in the Central Office at Delhi after the appointment of the applicants has been continued. The applicants have failed to rebut this contention. As such the plea of discrimination is not tenable. There is also no substance in the contention of the applicants that the action of the respondents is arbitrary because the action of the respondents is in pursuance of the significant reduction in the workload

(16)

(27)

of enforcement in view of the stay orders passed by the Supreme Court.

11. In the light of the foregoing discussion, the reliefs prayed for by the applicants in both the OAs cannot be granted to them. However, if in pursuance of any further orders by the Supreme Court in the implementation of the Handlooms(Reservation of Articles of Production) Act, 1985, the posts of LDC and Peon created on temporary basis in the Central Office of the Enforcement Machinery at Delhi are continued, the applicants shall have preferential claim to be taken back on these posts in preference to persons with lesser length of service and fresh recruits. Both these OAs are disposed of accordingly, leaving the parties to bear their own costs. A copy of this order be placed on the files of both these OAs.

Car 2/1193
(P.C.JAIN)
MEMBER(A)

21.1.93.
(RAM PAL SINGH)
VICE-CHAIRMAN(J)

SNS