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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

R.A.No.354/92

Date of decision 25.11.92

in

O.A.No. 1485/91

O.P. GALHON & OTHERS

V/s

UNION OF INDIA & OTHERS

O _ R _ D _ E _ R

In this Review Application filed in respect of the judgement delivered on 13th August, 1992 in O.A. No. 1485/91 etc. the Learned Counsel for the petitioner/Learned Counsel for the respondents in the O.A. have requested for review of the judgement on various grounds such as -

- (i) There is no provision for regularisation of ad hoc Lower Division Clerks under the provision of Central Secretariat Clerical Services (CSCS) Rules, 1962.
- (ii) The Bench did not mention the judgement of the Tribunal dated 27th February, 1992 in O.A. Nos. 1536/91 and 1537/91.

(iii) The judgement quoted in the order

was the one decided on 12th April,

1991 in O.A.No. 668/88 and that

decision had gone in favour of appli-

cant (ad hoc LDCs). However, in a

later judgement in O.A. No. 1536/91

and 1537/91 the Bench had held a

contrary view.

2. The Review petition has also been filed much after 30 days of the date of receipt of the judgement and the Learned Counsel had filed a miscellaneous petition for condonation of delay on the ground that it took time at different channels to consider the judgement and to decide upon the filing of the review application.

3. We keep the question of delay aside for a moment and proceed to examine the review application on merit.

4. The contention of the Learned Counsel that there is no provision for regularisation of ad hoc LDCs under the CSCS Rules, 1962 is not well founded.

Rule 12 of the CSCS Rules, 1962 provides that

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recruitment to the Lower Division Clerks grade of the service shall be made in the following manner :-

- "(a)(i) Five per cent 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 per cent 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 and 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.

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(b) Ninety per cent 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 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. "

5. It will be seen from the above that the proviso enables the respondents to fill vacancies provisionally or on regular basis in such manner as may be prescribed by the Central Government in case sufficient number of qualified candidates of the competitive exam. are not available. Further, the rule mentions about the methods of recruitment i.e. by qualifying examination, by promotion on the basis of seniority and by direct

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recruitment. A regularisation can take place against one quota or the other as the case may be.

6. In the judgement under review, the following orders were given :-

" 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

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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 conduc-
ted by SSC should be allowed to take
the full prescribed test for filling
the post of LDC on regular basis against
5 per cent quota to be filled by qualify-
ing 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

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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."

It will be seen from the above that the regularisation was subjected to various conditions and amongst the conditions an important one was that 'provided the nominees of the SSC are not waiting for appointments'. Further, only such of the applicants as had qualified themselves educationally and also in the typing test conducted by SSC should be considered for regularisation in consultation with the Staff Selection Commission. Therefore, the important features to be noticed are that some candidates had qualified in the typing test conducted by the SSC itself and sub-para 1 of the afore-said judgement referred to such candidates. It was further stipulated that the regularisation should be done in consultation with the Staff Selection Commission. Therefore the purview of SSC has not been excluded by the order. Still further Rule 6 of the CSCS Rules,

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1962 enable the respondents to exclude duty post from the cadre should the need arise.

Therefore it cannot be inferred that the regularisation of the applicant cannot be done under the CSCS Rules, 1962.

7. Regarding the non-citation of judgement in O.A. Nos. 1536/91 dated 27th February, 1991 it may be mentioned that our judgement had not become bad merely because the aforesaid order was not discussed. The judgement under review had relied on the decision in O.A. No. 668/88 decided on 12th April 1991 by the Principal Bench. As mentioned in the order dated 27th February, 1991 in O.A. Nos. 1536/91 and 1537/91 an SLP against the decision in O.A. No. 668/88 was rejected. Nevertheless, we have perused the judgement dated 27th February 1992 in O.A. Nos. 1536/91 and 1537/91 again. It will be noticed therefrom that the applicants in that case took the competitive exam. held by SSC three to five times but had failed. In the O.A. under review, the applicants

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referred to at sub-para ^{q para 6} ~~1~~ were those who had qualified in the typing test conducted by SSC though they might not have appeared in the full qualifying examination. They were taken from Group 'D' and had worked for 2½ years to 6½ years. Further, the applicants in O.A. Nos. 1536/91 and 1537/91 had passed the departmental typing test whereas the judgement under review refer to the typing test held by the SSC. Still further it is not clear whether ^[O.A. 1536/91 & O.A. 1537/91] those applicants [^] had continued for long but that apart the important aspect was that the candidates in those O.As. had availed the chances to appear in the Staff Selection Commission Exam. but failed.

8. Therefore to say that the applicants in the judgement under review are similarly placed as the applicants in O.A. Nos. 1536/91 and 1537/91 will not be in order.

9. The judgement under review spells out clearly that ad hoc appointments de hors the rules do not establish any right. Further, no regularisation can be done contrary to statutory rules. If the statutory rules contained a provision for relaxation, then possibly powers can be exercised for relaxation

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in favour of those employees who have rendered service for a number of years.

10. In the conspectus of the aforesaid facts, we find that the review application is bereft of merit and is dismissed.

I. P. Gupta
(I.P. Gupta) 25/11/92
Member (A)

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

I agree. Lambh
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