

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(11)

O.A. NO.923/1991

DATE OF DECISION 13.11.91

SHRI BHARIGU NATH MISTRY & ANR. ...APPLICANTS

VS.

UNION OF INDIA & ANR. ...RESPONDENTS

CIRAM

SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

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

FOR THE APPLICANTS ...SHRI S.D. KINRA

FOR THE RESPONDENTS ...SHRI JOG SINGH

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

JUDGEMENT

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

The applicant No.1, Packer and applicant No.2, Peon in the Government of India's Tourist Office, New Delhi are Group 'D' employees. On 13.11.1990, a post of LDC was likely to fall vacant in the Tourist Office, Delhi and was notified vide letter No. Admn-1(1)/80 to fill up that post on ad-hoc basis amongst Group 'D' employees of the Tourist Offices working in Northern region on the basis

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of a competitive examination to be held on 26.11.1990.

Applicant No.1 made a representation on 19.11.1990 requesting

respondent No.2, Regional Director, Government of India,

Tourist Office, New Delhi to cancel the proposed examination

and the post of LDC be filled up on seniority-cum-fitness

basis. He also asserted that he being seniormost amongst

Group 'D' employees in the region be appointed against the

post of LDC. On 10.4.1991, Mrs. P.Arora, who was officiating

as Jr. Stenographer for the last 7 years, was reverted as

LDC and subsequently promoted on the next day as JDC. It

is the case of the applicant that this was done in order to

cause a post of Stenographer fall vacant to accommodate

Shri Sanjiv Dev Chaudhary, LDC. For this post of LDC,

according to the applicant, the respondent No.2 before his

retirement on 30.9.1991 wanted to promote one Shri N.S.Sharma,

Peon. In this application, the applicant has prayed for

the relief to restrain the respondents Nos. 1 and 2 from

holding the proposed examination on 20.4.1991 for the post

of LDC to be filled up out of Group 'D' employees of Tourist

Offices in Northern region.

2. The respondents contested the application and stated

in the reply that the applicants have no locus standi

in the case as they have not participated in the examination

and are not entitled for consideration for promotion under

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the extent rules. It is admitted by the respondents that the examination was ordered to be conducted for filling up a post of LDC on 26.11.1990, but it was postponed till the time a vacancy arises. It is also stated by the respondents that the filling up of the post of LDC through a competitive examination from amongst Group 'D' employees is strictly in accordance with the Recruitment Rules and is not arbitrary or discriminatory. The Recruitment Rules are enclosed by the respondents as Annexure-1. These Recruitment Rules provide that 10% of the vacancies shall be filled up from Group 'D' staff, who are matriculates or possess equivalent qualifications and have rendered 5 years of service in Group 'D' posts on the basis of a competitive examination. It is stated that the action of the respondents to hold a competitive examination is to prepare a list of approved and qualified officials in accordance with the Recruitment Rules so that the appointment may be made on ad-hoc basis of such approved candidates, who had been empanelled.

3. We have heard the learned counsel of the parties at length and have gone through the record of the case. These Recruitment Rules (Annexure-1) go to show that

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LDCs are to be recruited 100% by direct recruits. However, there is a note that 10% of the vacancies shall be filled from Group 'D' staff, who are matriculate or possess equivalent qualifications and have rendered 5 years of service in Group 'D' posts on the basis of a competitive examination provided that the maximum number of persons to be recruited by this method shall be limited to 10% of the vacancies of LDC occurring in a year and unfilled vacancies shall not be carried over. Thus it has been pointed out by the learned counsel for the applicant that the competitive examination held on 20.4.1991 is not according to the Recruitment Rules because there is no post of LDC in the Tourist Office in the region. From the averment made in the counter/reply, there is only one vacancy which has fallen vacant. The one post of LDC can only go to Group 'D' employee, if there are 10 vacant posts of LDC in a year. That post has to be filled up only as per the instructions and guidelines as laid down in MHA OM No.14/9/69-Estt. (C) dt. 20.3.1970 and Each Office/Department has to closely follow the syllabus of the examination and standard set out in para-7 of the Annexure to this OM. According to the applicant, in 1990, there were two vacancies of LDC in Tourist Office of Northern Region and both were filled up from Group 'D' staff on the basis of seniority-cum-fitness basis which were later regularised through DPC.

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Though this is in contravention of the Recruitment Rules, but the respondents have resorted to this procedure. Again it has been pointed out that there was one vacancy of LDC in Tourist Office, Jaiour which has been filled up by way of transfer whereas there is no provision to fill up the vacant post by transfer. It is further argued by the learned counsel for the respondents by pointing out to para-5.5 of the rejoinder that in the notification regarding examination issued on 11.4.1991, it is not indicated whether the post is general or reserved as per 40 point roster and as such also, the said notification is against the reservation policy of the Government of India. Annexure-1 to the rejoinder is the OM dt. 20.3.1970 which prescribes the guideline for appointment of educationally qualified Class-IV employee to the post of LDC in the attached and subordinate offices not participating in the Central Secretariat Clerical Service Scheme. The learned counsel for the applicant also pointed out to the memo dt. 12.4.1998 issued by the Regional Tourist Office (Annexure-2 to the application) for expeditious hearing wherein the applicant was informed that since a Group 'D' employee employed can be considered for promotion to the grade of LDC only when at least 10 vacancies of LDC occur in one year, his case (applicant Ng.1) will be considered as and when such opportunity arises. During this year,

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only 1 vacancy of LDC occurred which is being filled in through the Staff Selection Commission, New Delhi as per the Recruitment Rules for the post of LDC. The learned counsel for the applicant has also shown certain office letters where appointment was made of LDC on ad-hoc basis on the basis of seniority-cum-fitness of Class-IV employees. Thus we find that the examination which was conducted on 20.4.1990 is to some extent rules and administrative instructions. The Bench by the order dt. 19.4.1991 ordered that the examination may be held as scheduled, but the result of the examination shall not be declared till 2.5.1991. That interim relief continued and the result of the said examination has not yet been declared.

4. The learned counsel for the applicant has also produced the rule for ad-hoc appointment dt. 30.3.1938. Para 4 (iii) of the said memo provides that where ad-hoc appointment is by promotion from the feeder grade, it may be done on the basis of seniority-cum-fitness even where promotion is by selection method. Thus the examination which has been conducted by respondent No.2 cannot be said to be an examination for making the list of approved Class-IV employees of the region who are eligible for appointment as LDC. In fact, in no post the quota of Class-IV employees existed according to the rules. The notification dt. 11.4.1991 issued by the Assistant Director on behalf of the Regional Director goes to show

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that there is only one post of LDC which is lying vacant in the Delhi office. So it cannot be said that it belongs to the quota of the Class-IV employees coming within 10% as laid down in the Recruitment Rules. By the memo dt. 19.4.1991, the applicant was also directed to appear in the examination. As a matter of fact, the applicant could not be said to have harboured any grouse against the examination because he was equally given a chance, but the said examination held on 20.4.1991 is debarred the Recruitment Rules (Annexure-1) filed by the applicant and it has also been considered during the course of the arguments by the learned counsel for the respondents.

5. Having given a careful consideration to both the aspects of the case, we find that the holding of the examination by the respondents on 20.4.1991 is totally against the Recruitment Rules for LDC which are in force in the Regional Tourist Office. The examination, therefore, conducted on 20.4.1991 is quashed and the present application is allowed to that extent. If there is any necessity to fill up any vacancy on ad-hoc basis, that should be filled up according to the extant rules and the applicant may also be considered for that. In the circumstances, the parties shall bear their own costs.

J. P. SHARMA
MEMBER (J)

13/11/91

D. K. CHAKRABORTY
MEMBER (A) 13/11/91