

**Central Administrative Tribunal
Principal Bench**

OA No.2627/2004

New Delhi this the 16th day of January, 2006.

**Hon'ble Mr. V.K. Majotra, Vice-Chairman (Admnv)
Hon'ble Mr. Shanker Raju, Member (Judl)**

1. Kiran Chawla & Others
-Applicants

(By Advocate Shri V.K. Rao)

-Versus-

1. Secretary, Ministry of Tourism,
Transport Bhawan, Parliament Street,
New Delhi-110 001 & Others
-Respondents

(By Advocate Shri N.S. Dalal and Shri Madhav Panikar)

1. To be referred to the Reporters or not? YES/NO *yes*

2. To be circulated to outlying Benches or not? YES/NO *yes*

S. Raju
(Shanker Raju)
Member (J)

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Hon'ble Mr. Shanker Raju, Member (Judl)**

1. Kiran Chawla,
D/o Shri Thakur Das,
R/o 510/12, Sikka Colony,
Sonipat, Haryana.
2. Shalini Girhotra,
D/o Shri O.P. Bhayana,
R/o Q-563-A, Rishi Nagar,
Rani Bagh, Delhi.
3. Nirmala Rauthan,
D/o Shri Surat Singh Negi,
R/o 106, Bhavishya Nidhi Enclave,
Malviya Nagar,
New Delhi-110017.
4. Hema Tewari,
D/o Shri G.C. Pathak,
R/o G-235, Nauroji Nagar,
New Delhi.
5. Sanjeev Kumar,
S/o Shri Roshan Lal,
R/o A-703, Shastri Nagar,
Delhi-110052.
6. Raj Kumar,
S/o Sohan Pal,
R/o Town Khekra,
Vill. P.O. Khekra,
Near Ghass Mandi,
District Bagpath,
New Delhi.
7. Smt. Charu Arora,
W/o Sanjay Arora,
R/o 776, Jheel Colony,
New Delhi-110051.

-Applicants

W (By Advocate Shri V.K. Rao)

-Versus-

1. Secretary, Ministry of Tourism,
Transport Bhawan, Parliament Street,
New Delhi-110 001.

(By Advocate Shri N.S. Dalal)

2. Secretary,
Department of Personnel and Training,
Ministry of Personnel, Public Grievances
and Pensions, North Block,
New Delhi-1

(By Advocate Shri Madhav Panikar)

O R D E R

Mr. Shanker Raju, Hon'ble Member (J):

By virtue of this OA, seven applicants in this OA, out of which one is working as a Data Entry Operator (DEO) and others as Junior Stenographers and Lower Division Clerks (LDCs) on ad hoc basis from 1993 to 1998, have sought continuation of their regular appointments effected vide OM dated 11.6.2004.

2. Applicants who had joined on ad hoc basis after complying with all the due selection procedure formalities as Junior Stenographers and LDCs and one of the applicants as DEO.

3. Applicants had continued from time to time and were constrained to file OA-1035/2004 for regularization of their services. During the interregnum of pendency of this OA respondents themselves passed orders on 11.6.2004 appointing applicants on temporary basis on probation for two years. However, subsequently, being apprehended with

dispensation of their services the present OA has been filed, whereby by an interim order dated 4.11.2004 status quo has been maintained, which has been continued till the final arguments have been heard.

4. As per recruitment rules of DEO there is no requirement for selection through Staff Selection Commission (SSC) and one of applicants was duly sponsored through employment exchange had continued in position as DEO grade 'A'. As far as recruitment rules for the post of Junior Stenographer are concerned, Junior Stenographer, Group 'C' posts Department of Tourism (Headquarters Establishment) Recruitment Rules, 1989, in clause 5 provides that where the Central Government is of opinion that it is necessary or expedient to do so, it may, by order for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class, category or persons. However the rules provide as a Group 'C' non-gazetted ministerial post qualification and crucial date for determining the age, as advertised by the SSC. The direct recruitment is to take place through SSC.

5. As regards Department of Tourism (Headquarters) Recruitment to class III Posts Rules, 1961, the post of LDC is defined as a group 'C' non-gazetted ministerial post and a competitive examination has been prescribed but there is no reference to the SSC but being a group 'C' post in the wake

of Government of India's instructions such recruitment is through SSC, the same is to be deemed.

6. Respondents on representation of applicants in holding special examination, as earlier done in three cases through SSC a special qualifying examination being held, the UPSC in the wake of their OM dated 23.7.2001 did not agree. However, in the Ministry of Tourism a screening committee was framed and as a one time relaxation to the recruitment rules for the posts of LDC, Junior Stenographer and DEO grade 'A' approval has been accorded from the competent authority to fill up the posts on regular basis and all the seven applicants were taken on the roll of the Ministry w.e.f. 11.6.2004. The DoPT vide letter dated 29.7.2004 stated that it is not permissible to regularize the ad hoc appointment of applicants de hors the rules and meanwhile Principal Accounts Office, Ministry of Tourism vide letter dated 17.9.2004 stopped the salary of all the seven applicants. However, the Ministry again took up the matter with the DoPT on 6.9.2004 requesting accord of ex-post fact approval for relaxation in the recruitment rules in age and source of recruitment. However, DoPT vide letter dated 20.9.2004 categorically stated that the Department is not empowered to waive of the requirement of selection through SSC. As there is a specific devise of DoPT, general power delegated by the DoPT cannot be invoked to over-ride the specific provision. Being aggrieved by the aforesaid the present OA has been filed.

7. Learned counsel of applicants Shri V.K. Rao vehemently stated that applicants had been discriminated in the matter of regularization as on 16.11.97 candidates functioning on ad hoc posts in Group 'C' have been regularized after special qualifying examination conducted by the SSC, non-accord of the same benefit is highlighted to be an invidious discrimination under Articles 14 and 16 of the Constitution of India. Learned counsel states that both in the posts of DEO and LDC, SSC is not a participating agency. It is in this backdrop stated that once the Ministry had relaxed the provisions, dispensation of services of applicants affected their civil rights and without following the principles of natural justice and without issue of the show cause notice, reasonable opportunity has been denied to applicants.

8. Learned counsel of applicants further stated that in the light of the DoPT order dated 24.10.2005 where there has been a change in the mode of recruitment in abolition of vacant posts in the grade of LDC in CSCS, mode of recruitment through SSC has been done away. As such applicants can be regularized without resort to SSC.

9. Taking resort to '*legitimate expectation*' and '*equity*' it is stated that applicants having continued for more than 10 years, now dispensation of their services would not be in the interest of the employees as well as would be arbitrary, especially when they had cleared the special qualifying examination earlier.

10. Learned counsel Shri N.S. Dalal, appearing for respondent No.1, vehemently contended that after extreme efforts the DoPT had not agreed to the regularization of applicants. As such, being the rule-making authority they are bound to follow the advice. However, it is stated that during this interregnum when applicants had continued no candidate had ever been forwarded to the Department of Tourism and the Department had also not sent any requisition to get the candidates.

11. Shri Madhav Panikar, learned counsel, appearing for respondent No.2 stated that as per the recruitment rules once the mode of recruitment for Group 'C' post is through SSC, any appointment made without resorting to the aforesaid procedure is de hors in law and do not vest applicants with any right to continue, as through SSC in a regular selection post the same has to be given a due publicity as per DoPT OM dated 18.5.1998. In the past though Central Government did conduct special qualifying examination but in relaxation to general procedure, in the wake of setting up of SSC in 1975 the aforesaid examinations have been dispensed with and now it has been decided not to conduct any more special qualifying examination for direct recruitment to LDC/Stenographer. A catena of following decisions have been relied to substantiate the plea:

i) ***A.K. Bhatnagar v. Union of India***, 1991 (1) SCC 544.

ii) **J.K. Public Service Commission v. Narender**

Mohan, 1994 (1) SLR SC 246.

(iii) **Dr. Chanchal Goyal v. State of Rajasthan**, 2003 (3) SCC 485.

In the context of the aforesaid ratio it is stated that regularisation in a direct recruitment post of Group 'C' post is not a mode of appointment. As such, the claim of applicants is beyond law and cannot be entertained.

12. We have carefully considered the rival contentions of the parties and perused the material on record.

13. Recently in **Secretary, State of Karnataka v. Umadevi & Ors.**, 2004 SCC (L&S) 935 a Division Bench of the Apex Court in the matter of regularisation of ad hoc employees with reference to conflicting decisions between the various three-Judge bench and two-Judge Benches of the Apex Court including that of **Dr. Chanchal Goyal** (supra) observed as under:

"1. This bunch of appeals is against the judgments of the High Court of Karnataka, in some of which the Court has directed regularization of the ad hoc employees or their consideration for regularization while in some other appeals the request for regularization has been refused. It is indicated by the learned counsel for both sides that the number of employees involved would be in thousands, may be 30,000 to 40,000, in different departments of the State Government. So far as the position of law relating to the regularization of the ad hoc employees is concerned, it is submitted that there are conflicting views

of this Court between the decisions of Benches consisting of two Judges and three Judges. In this connection reference has been made to two decisions of this Court rendered by three-Judge Benches, namely, *Ashwani Kumar v. State of Bihar* and *State of Haryana v. Piara Singh*. It is submitted that in both these decisions it has been held that regularization is possible only against sanctioned or permanent vacancies. If such vacancies are not available or the candidates lack in eligibility or qualifications in any manner, then too it would not be possible to order for regularization of such employees, besides the requirement of compliance with selection procedure. Thus, long duration of service would not be a relevant consideration to regularize the services. On this point our attention has been drawn to a recent two-Judge Bench decision of this Court in *Chanchal Goyal (Dr.) v. State of Rajasthan*.

2. In *Gujarat Agricultural University v. Rathod Labhu Bechar* (a two-Judge Bench decision) this Court has approved the view of the Single Judge of the High Court inferring permanent nature of the work on the basis of long continuance of service and the vastness of the establishment of the employer. It has also been observed: -(SCC p. 585, para 17)

"If the work is of such a nature, which has to be taken continuously and in any case when this pattern becomes apparent, while they continue to work for year after year, the only option to the employer is to regularize them."

On coming to the above conclusion, reliance was placed upon a decision of this Court in *Bhagwati Prasad v. Delhi State Mineral Development Corpn.* which is a three-Judge Bench decision. In this case also, in view of the long duration of work by means of which the employees had gathered practical experience, it was held that the minimum educational

qualification prescribed for the post would not come in the way of regularization of the employees. There are some decisions taking different views, on the question of cut-off date as proved under the scheme for regularization, in connection whereof a reference has been made to a decision of this Court in A.K. Jain (Dr.) v. Union of India.

3. Looking to the position as it stands under the law regarding regularization, namely, different views expressed in different decisions of this Court, we feel that it would be appropriate that the matter may be heard by a three-Judge Bench, so as to appropriately appreciate the legal position and decide the matter accordingly.

4. Let the papers be placed before Hon'ble the Chief Justice of India for constituting a three-Judge Bench for the purpose."

14. In the light of the above as the matter has now been referred to a three-Judge Bench, the legal position would be crystallized only after the outcome of the same. Yet, the Apex Court in **Pankaj Gupta & Ors. v. State of Jammu & Kashmir**, 2004 (2) SCLJ 384, in the matter of illegal appointment de hors the rules without following the due procedure observed as under:

"No person illegally appointed or appointed without following the procedure prescribed under the law, is entitled to claim that he should be continued in service. In this situation, we see no reason to interfere with the impugned order. The appointees have no right for regularization in the service because of the erroneous procedure adopted by the concerned authority in appointing such persons. Hence the reliefs are required to be moulded especially in

view of the fact that the appellants were appointed as early as in the year 1997 and ever since they have been working as Orderlies, Process Servers, Guards, etc. Moreover, the appointments of the appellants were made on the basis of the recommendations of the members of the Legislative Assembly and Legislative Council and on the basis of the decision made by the State of Jammu & Kashmir pursuant to a detailed discussion on the floor of the Legislative Assembly regarding lack of proper representation of rural masses as compared to urban candidates in government jobs. Hence, we issue the following directions: -

1. All the vacant posts shall be notified for appointment and applications called for in accordance with the Rules within six months from the date of the receipt of the judgment.
2. All the appellants herein may be permitted to submit application for appointment against such notification.
3. As regards the upper age limit, these appellants shall be given relaxation but there shall not be any relaxation in the matter of the basic qualifications for appointment to Class IV posts.
4. The appellants may be allowed to continue in service till such regular recruitment are made and these posts are filled up by a regular process of appointment."

15. A Constitution Bench decision of the Apex Court consisting of five Judges in ***Delhi Transport Corporation v. D.T.C. Mazdoor Congress & Others***, 1991 SCC (L&S) 1213 while commenting upon the Fundamental Right of Employment Justice Sharma while concurring observed as under:

"230. There is need to minimize the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however high they may be. There is only a complacent presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law.

231. The employment under the public undertakings is a public employment and a public property. It is not only the undertakings but also the society which has a stake in their proper and efficient working. Both discipline and devotion are necessary for efficiency. To ensure both, the service conditions of those who work for them must be encouraging, certain and secured, and not vague and whimsical. With capricious service conditions, both discipline and devotion are endangered, and efficiency is impaired.

232. The right to life includes right to livelihood. The right to livelihood, therefore, cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the limbo of undefined

premises and uncertain applications. That will be a mockery of them."

16. If one has regard to the above, though employment under State is not a bounty, arbitrary action of Government cannot be allowed to be perpetuated, if one is employed after conforming to all the procedural requirements and is made to continue, a legitimate expectation raises the issue of *promissory estoppel* to ensure a regular status in the public employment. To put an employee at ransom and to hang a sword of democle on his head though there is no complaint in his work and without any prescription of right of regularisation would not only be injustice to one but also ruthlessness of Government being a model employer. However, law of land declared by the Apex Court has a binding precedent under Article 141 of the Constitution of India is the rule of law and it has to be supreme, occupying the field with a binding effect.

17. In the case of **Dr. Chanchal Goel** (supra) though in the matter of ad hoc appointment after due process de hors the procedural requirement of PSC the question of legitimate expectation has been rejected. In nut shell, what has been held is that even if an ad hoc appointment had been continued for a longer period the same will not accord an indefeasible right to one to continue or to seek regularization, as legitimate expectation cannot over-ride rule of law or be contrary to it. However, in the wake of the fact that

applicants had been continued for long and qualified the requisite eligibility criteria and had been regularized and also the fact that during this interregnum no candidate from SSC had ever been requisitioned or sponsored, applicants have been deprived of an opportunity of equal participation in the selection conducted by the SSC to stake the claim for regular appointment in their department.

18. It is also not disputed that in the past a special qualifying examination conducted by the SSC resulted in regular appointment of similarly circumstanced persons. Denying the aforesaid treatment to applicants only on the ground that the Government have now decided not to hold such an examination which was in departure of the recruitment rules and it is not possible to conduct such an examination which would lead to an invidious discrimination in violation of Article 14 of the Constitution of India. However, one may not lose sight of the fact that a wrong perpetuated would not create any legal right. Any departure from the rules in the past would not confer upon applicants a right to have the same treatment meted out to them. Though it is admitted that the Ministry has not reported the vacancies to SSC and SSC could not make nomination is not the fault of applicants. Had the vacancies been reported applicants would have certainly participated in the selection. Now that the upper age limit is crossed even this opportunity cannot be availed by them.

19. Though in the appointment of DEO, Grade 'A' we have not been shown any rule as to participation of SSC in the process of selection, in that event one of applicant working as DEO would have to be considered for appointment on regular basis and her appointment has already been done on 11.6.2004 would not have to be disturbed being not covered by the rules of participation of SSC.

20. As regards Junior Stenographers and LDCs, it is no gain in saying that both these posts require selection through SSC, which would also permit the other persons to participate. However, the experience of applicants continuing for such a long period and their age would have to be relaxed. Though the Government have refused to relax the requirement of rules, i.e., dispensation of SSC and exemption from conducting selection through SSC, yet nothing precludes the DoPT to accord relaxation in the matter of upper age limit and participation in the event SSC reports the vacancies. Till vacancies are reported to SSC, taking a compassionate and equity-based stand applicants till replaced by the regularly appointed SSC candidates or are themselves appointed on these posts would have to be continued in the same terms as continuing and would be entitled for the pay and allowances for the work they rendered during this interregnum.

21. In the light of the fact that the issue of regularisation of continued ad hoc officiation has been referred to a larger

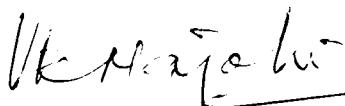
Bench, the decision of the Apex Court in **Pankaj Gupta's** case (supra) would have to be followed, the OA is disposed of with the following directions:

- i) All the vacant posts, excluding the post of DEO 'A', which does not require nomination through SSC, shall be notified to the SSC by the Ministry of Tourism for appointment and the applications would be called for as per the procedure laid down;
- ii) All the applicants would be permitted to file their applications for participation in the examination.
- iii) As regards relaxation, applicants would be allowed relaxation in age, but basic qualifications would not be relaxed.
- iv) Till the regular recruitment is made to the aforesaid posts by a regular process of appointment as per rules, Applicants would be continued on the same terms and conditions with payment of wages for the work done.
- v) In the event applicants are selected, their appointments would be continued on regular basis.

No costs.


(Shanker Raju)
Member (J)

'San.'


(V.K. Majotra) 16.1.06.
Vice-Chairman(A)