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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

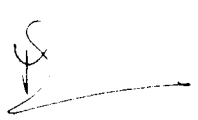
OA NO.886/2004

New Delhi, this the 2nd day of August, 2006

**HON'BLE SHRI V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)**

1. Rajinder Singh S/o Sh. Hem Raj Singh,
Vill. Nawada PO Dankaur,
Distt. Gautam Budh Nagar (UP).
2. Mohan Lal S/o late Sh. Mool Chand,
TA-222/1, Tughlkabad Extension,
New Delhi-110 019.
3. Jaswant Singh S/o late Sh. Madan Singh,
809, Ali Ganj, Lodhi Road,
New Delhi.
4. Om Parkash S/o late Sh. Chandan Singh,
Vill. Samaspur Khalsa,
PO Ujwa, New Delhi.
5. R.G. Subramaniam S/o late Sh. Ramakrishnan,
Type II/201, Income-tax Colony,
North Pitampura, Delhi.
6. Binod Prasad S/o Sh. Shiv Shankar Prasad,
B-1/48a, Bharat Vihar,
Kakrola, New Delhi-43.
7. Rajinder Prasad S/o late Sh. Makkha Lal,
D-III/341, Shiv Durga Vihar,
Lakkarpur, Faridabad. ... Applicants.

(By Advocate Shri Jagjit Singh)

1. Union of India
through Secretary
Ministry of Finance,
Govt. of India, North Block,
New Delhi.
 2. Chairman,
Central Board of Direct Taxes,
North Block, Ministry of Finance.
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3. Deputy Secretaries (Ad-VII),
North Block, New Delhi.
4. Directorate of Income Tax,
(Research, Statistics, Publications
& Public Relations),
6th Floor, Mayur Bhawan,
Connaught Circus,
New Delhi. ... Respondents.

(By Advocate Shri V.P. Uppal)

O R D E R

HON'BLE MRS. MEERA CHHIBBER, M(J)

✓ This O.A. has been filed by as many as 7 persons, who have sought quashing of order dated 1.9.2003 and have sought a direction to the respondents to regularize the applicants to the posts of Lower Division Clerk (LDC) after giving all the necessary relaxations, if necessary. They have further sought a direction to the respondents to exercise power of regularization under Rule 5 to alter 10% prescribed ratio for Group 'D' post, with all consequential benefits, including seniority from the date of their initial appointment as LDC on ad hoc basis.

✓ 2. It is submitted by the applicants that they were initially appointed as Peon with the respondents but in 1984-85, they were promoted as LDC, on ad hoc basis till further orders or for a period of three months. The applicants took the tests and two of them, namely, applicants at Serial Nos. 6 and 7 were promoted vide order dated 10.2.1993 consequent upon their passing the departmental examination held in June-July, 1992. Similarly, all other applicants also passed the departmental tests and since then they have continued to work as LDC with the respondents but on ad hoc basis.

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continued to work as LDC with the respondents but on ad hoc basis. Counsel for the applicants invited our attention to office order dated 9.2.1987 to show that the applicants had even undergone a test for regularisation as LDC, held on 25.1.1987 wherein all the applicants were declared as passed. The second paragraph shows that those candidates who had completed five years of service as Group 'D' / Ad hoc LDCs were appointed as regular LDCs separately and those who had not completed such service of five years, it was made clear that they will not be required to appear in the test again for their regularisation. On the basis of this, counsel for applicants submitted that respondents had themselves initiated the process of regularizing these ad hoc LDCs but for reasons not known to them, they have not been regularized till date.

3. It is stated by the applicants that they came to know subsequently that some of the LDCs similarly placed as applicants had approached this Tribunal vide OA 2150/93, which was decided on 10.11.1999 and this Court allowed the said OA by giving direction to the respondents to consider regularisation of applicants therein as LDCs in consultation with the Staff Selection Commission (SSC) in the same manner, as was directed in the order dated 12.4.1991, after giving them necessary age relaxation. They came to know on 31.10.2002 that pursuant to the orders given by the Tribunal, some of the LDCs have been regularized even though those persons were junior to the applicants, namely, Shri Dinesh Chander Pandey and Shri Tara Chand, which is evident from the order dated 31.10.2002 issued by respondents in compliance with the High Court's order dated 30.7.2001 whereby the provisions of



Col Nos. 7 and 11 of the Recruitment Rules for LDCs in so far as age and promotion quota for vacancies being filled up by Group 'D' employees of the Directorate were concerned, were relaxed by the President and 9 persons were regularized (page 57). It is stated by the applicants that all the persons from Serial No. 6 to 9 in the said office order are junior to applicants 1 and 2 in the present OA. Therefore, when they came to know about it in the year 2002, applicants gave a representation for regularising them also as LDC in consultation with SSC. Counsel for the applicants also invited our attention to page 83 at 87 i.e. order dated 30.7.2001 passed in Writ Petition No.2961/2000 to show that the facts of the said case were absolutely same as in the present case. He also invited our attention to page 86 wherein reasons were given by the Hon'ble High Court for giving relief to the persons who were similarly situated as that of applicants. Counsel for the applicants further submitted that being aggrieved by the orders passed by the Hon'ble High Court, respondents had filed SLP before the Hon'ble Supreme Court but that has also been dismissed on 24.11.2003. He, therefore, submitted that the same benefit should be given to the applicants also as they cannot be discriminated against.

4. Counsel for the respondents, on the other hand, submitted that if such an order is passed, it will open flood gate. Moreover, under the RRs Group 'D' staff can be promoted as LDC only to the extent of 10% whereas the said quota would increase in case the orders are passed in favour of applicants. Since counsel for the respondents had strenuously argued that if the O.A. is allowed, it will open flood gate and all other similarly situated persons will start

filing the cases, we had directed the respondents on 20.1.2006 to file an additional affidavit to inform the court as to how many persons are working as ad hoc LDCs with the respondents, who are senior to the applicants in the present O.A. and whether they have given any requisition to the SSC for getting the LDCs on regular basis in direct quota and whether any names have been recommended by the SSC for appointment as LDC in direct quota.

5. Respondents have filed additional affidavit wherein they have stated that no LDC against direct recruitment quota has been appointed on the recommendation of the SSC since last 20 years i.e. after 1985. The last batch consisting of 13 candidates was recruited in the year 1985 through SSC against the quota meant for direct recruitment. As on date, 12 persons are working as ad hoc LDCs, including 7 applicants in the present O.A. They have thus stated that apart from applicants, there are four more ad hoc LDCs who are senior to the present applicants and who are not party to the present O.A. Therefore, these persons will also come up with the similar claims for regularizing their appointment.

6. After hearing both the counsel, we find that it is not disputed by the respondents that applicants have been working with them as ad hoc LDCs right from 1984-85. They have been continued by the Department on ad hoc basis without any stay order from any court of law, their appointment cannot be termed as fortuitous appointment, specially when they were made to pass the departmental tests also for regularization and they have been continued as such for about two decades indefinitely, means that Department does need their services, that is why even though there

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was no stay order from any court of law, they had not reverted these applicants and have continued them as ad hoc LDCs. It is also most relevant to note that for the last 20 years, neither any requisition has been given by the Department to the SSC nor any direct recruitment of LDCs has been made through SSC since 1985 i.e. for more than 20 years. We had put a specific question to the counsel for respondents as to whether any requisition has been given to the SSC or SSC is likely to give any recommendation, on which we were informed by counsel for respondents that till date no such requisition has been given to the SSC, meaning thereby that there is no likelihood of any direct recruit candidates being sponsored by the SSC in near future. It is also relevant to note that respondents had on their own started the process of regularizing the applicants and had, in fact, taken the examination of ad hoc LDCs for regularisation and it was made clear that those persons who have already qualified need not undergo the test again. It is also not disputed that all the applicants had qualified in the departmental test. It is also relevant to note that when the matter was pending before the Hon'ble High Court in the case of Directorate of Income-Tax (Research Statistics Publication & Public Relations) Vs. Dinesh Chander Pandey & Ors., Hon'ble High Court had taken into consideration all the facts which are present in the present O.A. as well. In that case also, the respondents therein were appointed as Group 'D' employees and they were regularized from 1981-1986. They were later promoted to the posts of LDC on ad hoc basis from 1.9.1984 to 7.4.1986 by various orders on ad hoc basis wherein it was made clear that their services would not be counted for

seniority on the promoted post and that they would be liable to be reverted to Group 'D' posts and their claim for regularisation would not be considered yet it was observed that since they were so promoted after being subjected to a typing and written test and continued to hold the post of LDC for as long as 15 to 16 years during which time all of them had passed their regularisation departmental tests, therefore, they were entitled for regularisation. The contention of the respondents herein that under the RRs only 10% posts could be filled from Group 'D' employees was also taken into consideration by the Hon'ble High Court but it was held by Hon'ble High Court that though recruitment rules provided for appointment to the posts of LDC 90% by direct recruitment and 10% by promotion from Group 'D' employees yet respondents therein were appointed on ad hoc basis in administrative exigency after due screening and tests, etc. and were allowed to hold the post for good 16 years. Their case for regularisation was also processed at one stage as could be evident from petitioners letter dated 18.11.1998. They had also qualified the requisite test/examination under the rules and their only surviving requirement was that they were to be considered by the DPC against 10% promotion quota in which other contenders have become eligible meanwhile, therefore, Hon'ble High Court gave a solution by observing that RRs provided for power of relaxation under Rule 5, therefore, looking at the concern of the Department, the said writ petition was disposed of by directing the petitioners therein to consider the respondents for substantive appointment/promotion to the posts of LDC, subject to their eligibility under rules and after relaxing age bar, if required, on

the post of LDC against the available vacancies from Group 'D' posts for which they shall enjoy first right of absorption in view of their long ad hoc terms and pass appropriate orders. In case of any administrative hurdle, petitioners shall be free to exercise power of relaxation under Rule 5 to alter 10% prescribed ratio for Group 'D' posts as one time exception. The Department was also directed to maintain status quo as on that date in respect of respondents' service status till requisite orders to the above effect were passed.

7. From the above judgment, it is absolutely clear that the present state of facts are absolutely the same as in the above said writ petition. In that case, the persons had worked only for 15 to 16 years whereas in the present case, applicants have now worked for more than 20 years, that too without any stay order from any court of law. It is also relevant to note that the judgment given by Hon'ble High Court, as mentioned above, was challenged by the Department by filing SLP No. 1620/03 before the Hon'ble Supreme Court but the said SLP was also dismissed on 24.11.2003. Therefore, the judgment given by Hon'ble High Court of Delhi has attained finality.

8. Once Hon'ble High Court of Delhi had given liberty to the Department to exercise power of relaxation in order to regularize the ad hoc LDCs who had earlier filed the O.A., it was incumbent on the part of the respondents herein to have considered the cases of applicants also at that time because admittedly some of the applicants herein are senior to the persons who have been regularized by the respondents pursuant to the orders of the



Hon'ble High Court. In fact, respondents have specifically stated in reply to para 4.23 that some of the persons who were party to CWP No.2961/2000 were junior to the applicants. From the perusal of judgment, we find respondents herein did not apprise the Hon'ble High Court at that time that there were other similarly situated persons also working on ad hoc basis for the last so many years which they ought to have done in all fairness to the applicants in this O.A. In fact, as a model employer, respondents ought to have extended the benefit of the said judgment to the applicants herein also on their own, without dragging them to the court of law. However, that was not done and the applicants were also forced to file the present O.A.

9. As we have noted above, the only concern shown by counsel for the respondents in this case was that if this O.A. is allowed, it would open flood gate and quota of 10% as prescribed in the recruitment rules would be violated but after taking instructions, counsel for the respondents informed us, there are only four persons, who are senior to the applicants herein who are also working as ad hoc LDCs since long and one person has been promoted against 10% quota in the year 2004 from Group 'D' employees, however, that is subject to the outcome of the pending disputes in the courts of law. In normal course, we would not have given direction to the respondents to consider regularization of the applicants but in the peculiar facts of this case and keeping in view the directions already given by Hon'ble High Court of Delhi, we feel applicants cannot be discriminated against. It is not as if there are hundred and hundred such type of persons but in total there are



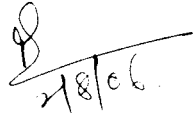


only 11 ad hoc LDCs working with the respondents, out of which 7 applicants are in the present O.A. and there are 4 other persons, who have not filed the O.A. It is not disputed by the respondents that they need the services of the applicants and have continued them for long 20 years on their own and that all the applicants have already passed the Departmental tests for regularisation, also the fact that till date neither any requisition is made to the SSC nor there is any likelihood of persons being sponsored by the SSC, therefore, we are satisfied that if directions are given to the respondents to regularize the applicants, it would not affect the quota meant for direct recruits because there are no direct recruits recruited by the respondents for the last over 20 years. Therefore, in these circumstances, we are of the considered view that applicants cannot be treated in a different manner, specially when their juniors have already been regularized, therefore, respondents are directed to consider regularizing the applicants as well as LDCs, in terms of the directions already given by the Hon'ble High Court in Writ Petition No. 2961/2000 after relaxing the age bar, if required, against the available vacancies, keeping in view the long service of 20 years rendered by the applicants as ad hoc LDCs. In case of administrative hurdle, the petitioners shall be free to exercise power of relaxation under Rule 5 to alter 10% quota for Group 'D' posts as one time measure. In order to avoid further litigation, respondents are directed to consider other 4 persons also and in future to make appointment by following RRs in a regular method. It is made clear that their regularisation will be given effect to prospectively only as this issue has already been decided in the case of Cyprian Kujur

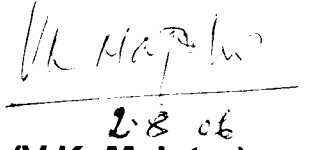


and Anr. Vs. Union of India & Ors. by this Tribunal in OA 441/2005,
decided on 22.5.2006.

10. With the above direction, this O.A. stands disposed of. No
order as to costs.



(Mrs. Meera Chhibber)
Member (J)



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

'SRD'