

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 18 of 1985  
~~Exx No.~~

DATE OF DECISION 3-4-1987

Jagdamba Prasad Tripathi Petitioner  
and others

Shri R.R.Rai Advocate for the Petitioner(s)

Versus

The Director, Central Hindi Respondent  
Directorate, West Block-7, and others

Mrs. Raj Kumari Shepra Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. V.S.Bhir, Member (A)

The Hon'ble Mr. G.Sreedharan Nair, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

(G. SREEDHARAN NAIR)  
Member (J)

(V.S.BHIR)  
Member (A)

8

CENTRAL ADMINISTRATIVE TRIBUNAL,  
PRINCIPAL BENCH,  
NEW DELHI.

O.A.No.18 of 1985.

Date: 3-4-1987.

Jagdamba Prasad Tripathi and  
others.

... Applicants.

vs.

The Director, Central Hindi  
Directorate, West Block-7 and  
others.

... Respondents.

For applicants:

Shri R.R.Rai, counsel.

For respondents:

Mrs.Raj Kumari Chopra, counsel

Coram:

The Hon'ble Mr.V.S.Bhir, Member (A)

The Hon'ble Mr.G.Sreedharan Nair, Member (J)

(The judgment of the Tribunal was delivered by  
The Hon'ble Mr.G.Sreedharan Nair)

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The applicants while working as Group D (Class IV) employees in the Central Hindi Directorate attached to the Commission for Scientific and Technical Terminology were promoted on adhoc basis as Lower Division Clerks with effect from various dates commencing from 5-7-1977 in the case of the third applicant to 14-5-1980 in the case of the fifth applicant. It is alleged that they were assured that all of them will be regularised and hence they did not appear for the Clerk Grade Examination conducted by the Staff Selection Commission. It is stated that now that they have become over-aged all the applicants are ineligible to appear for the Examination. Since their request for regularisation as Lower Division Clerks have not been successful they have filed this application praying for regularisation. It is alleged <sup>that</sup> in the Taraqqi-e-Urdu Board which is also a subordinate office

2

under the Ministry of Human Resources and Development, Class IV employees who were working as L.D.Cs. on adhoc basis have been regularised. It is also stated that in the Hindi Directorate itself in the year 1970, five Class IV employees were regularised as L.D.Cs. and that in the year 1973, three others were also regularised. A recent instance of regularisation of another employee much junior to the applicants has also been relied upon.

2. The applicants also pray for quashing the order contained in the letter dated 24-10-1985 from the Ministry of Education to the Director, Hindi Directorate, apprehending that in view of the said order, they will be reverted to the Class IV post. According to them, since they have put in seven to eight years of satisfactory service, any attempt to revert them will be against the principles of natural justice and opposed to law as they have acquired a valuable right of which they cannot be deprived by such an administrative order.

3. A reply has been filed by respondents contending that the post of Lower Division Clerk in the Central Hindi Directorate is a direct recruitment post to be filled from the nominees of the Staff Selection Commission. Ten percent of the vacancies have however been reserved to be filled by direct recruitment from Group D employees borne on regular establishment by selecting them through a departmental examination. The eligibility for taking ~~xxx~~ the examination has also been fixed. The minimum educational qualification is Matriculation or equivalent. Five years service in Group D is essential. The age limit is 45 years. It is also prescribed that the maximum number of recruits by this method would be limited to 10 per cent of the vacancies

2

in the cadre occurring in a year and that unfilled vacancies will not be carried over. Certain posts in the cadre of L.D.Cs. in the Hindi Directorate had fallen vacant from time to time on account of the regular incumbents proceeding on deputation to other departments. On the request of Class IV employees to consider them for adhoc promotion to such vacancies the applicants were promoted. However, it was clearly stipulated in the order of appointment that it is purely adhoc and that it will <sup>not</sup> confer any right for claiming regular absorption or seniority in the Grade. No assurance was given that they will be regularised. Taraqqi-e-Urdu Board is a subordinate office of the Department of Education and is not connected with the Central Hindi Directorate. ~~That~~ The allegation that in the year 1970, five class IV employees were regularised is denied. The regularisation of the three employees in the year 1973 was by regular promotion to the post of L.D.Cs. against the 10 per cent quota after following the prescribed procedure. The recent instance referred to by the applicant deals with appointment to the newly created post of L.D.C./ Typist (Foreign Language Dictionary). The appointment to the post was after notifying the vacancy and through a regular selection. The decision conveyed though the letter dated 24-10-1985 being in conformity with the provision in the Recruitment Rules cannot be assailed.

4. The question that falls to be determined is whether the applicants can claim regularisation in the cadre of Lower Division Clerks.

5. Admittedly, the applicants are working in the cadre of Lower Division Clerks only by virtue of the adhoc promotion from the cadre of Class IV.

Recruitment to the Group C and D posts in the Central

Hindi Directorate is governed by the Recruitment Rules made in the year 1977 in exercise of the powers conferred by the proviso to Article 309 of the Constitution. According to the Rules, the method of recruitment is prescribed as direct recruitment. However, 10 per cent of the vacancies to be filled by direct recruitment, is to be reserved for being filled up by Group D employees (borne on regular establishment) subject to certain specified conditions. The selection is to be made through a departmental examination confined to such Group D employees who fulfil the minimum educational qualification, namely Matriculation or equivalent. The maximum age for taking the examination is prescribed as 45 years. Atleast five years service in Group D is essential. Further, it is also provided that the maximum number of recruits by this method would be limited to 10% of the vacancies in the cadre occurring in a year and that unfilled vacancies would not be carried over. It has been specifically stated in the reply of the respondents that while certain posts in the cadre of L.D.Cs. fell vacant on account of the regular incumbents of the post proceeding on deputation to other departments of the Government of India, the Class IV employees of the Hindi Directorate requested to consider them for adhoc promotion to the post of L.D.C. in terms of the instructions contained in the Official Memorandum dated 13-2-1979 issued by the Department of Personnel and Administrative Reforms.

✓ A copy of the representation has also been produced by the respondents. Since the instructions in the O.M. were not strictly applicable to the employees of the Hindi Directorate, a reference was made to the Department of Personnel and Administrative Reforms and it is after getting their clearance that these

13

applicants were appointed as L.D.Cs. on their qualifying the typewriting test. The copies of the order of appointment clearly indicate that the appointment was purely on adhoc basis without conferring any right for regular absorption. In the circumstances, the applicants cannot as of right claim regularisation as prayed for.

6. Counsel of the applicants attempted to rest the claim on the plea of discrimination. It was submitted that Class IV employees who were working as L.D.Cs. on adhoc basis in the Taraqqi-e-Urdu Board have been regularised. The Office Order at Annexure H has been produced in support of this plea. The order clearly shows that the appointment of the persons mentioned therein was on the recommendation of the Departmental Promotion Committee, from which it can safely be inferred that it was the result of a regular selection. Counsel also relied upon the regularisation of three Class IV employees working on adhoc basis as L.D.Cs. in the Hindi Directorate, in the year 1973. By way of answer, it was pointed out by the counsel of the respondents that those three employees were actually promoted to the post of L.D.Cs. against the 10% quota after following the prescribed procedure. The minutes of the DPC Meeting held on 20-12-1972 for drawing up a panel of candidates against the 10% of the vacancies for the post of L.D.Cs. earmarked for being filled up by the appointment of Class IV employees in the order of merit has been made available by counsel for our perusal, which shows that the DPC recommended the three persons referred to by the applicants. Hence, the appointment of those three persons does not afford any assistance to the applicants in support of their plea of discrimination. Though there is an aver-

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ment in the application that in the year 1970, five Class IV employees were regularised as L.D.Cs. this has been denied by the respondents and the averment has not been attempted to be substantiated. The instance of one Jagdish Chander referred to in the application is also of no avail to the applicants as it is clear from the reply that the appointment of Jagdish Chander was against a newly created post of L.D.Cs./Typist (Foreign Language Dictionary) on the basis of a selection conducted by issuing a notification.

7. Counsel of the applicants relied upon the statement in the reply by way of answer to the averments in clause (j) of paragraph 6 of the application that during the continued employment of the applicants as many as sixteen appointments during the period 1977 to 1985 through the Staff Selection Commission or on compassionate grounds have been made. On the strength of this statement it was submitted that vacancies had actually arisen during this period when the applicants should have been regularised. There is no merit in this submission. When the Recruitment Rules prescribe that 90% of the vacancies occurring in a year have to be filled up by direct recruitment, the filling up of the vacancies by appointment through the Staff Selection Commission cannot be assailed by the applicants. Compassionate appointment of the dependants, in relaxation of the Recruitment Rules is recognised, subject of course to the restriction that the number of posts to be earmarked for such appointment does not exceed substantially and significantly 50% of the vacancies in any calendar year.

8. Lastly it was submitted that in any event on account of the continuous officiation in the post of Lower Division Clerk, the applicants have a right to be regularised. In this context, the decision of this Tribunal

15

in K.N.Mishra vs. Union of India (A.T.R. 1986 (2) C.A.T.270) was pressed into service. We are afraid that the principle laid down in the said decision is really of no assistance to the applicants. The question that was considered in that case was the determination of seniority in a cadre, grade or service, for which purpose it was held that the benefit of long period of service, ~~for which purpose it was held that the benefit of long period of service~~ would accrue to all promotees who continuously officiated against long term vacancies. Equally unsustainable is the reliance placed on the decision of the Supreme Court in Narender Chadha's case (A.T.R.1986 S.C. 49). No doubt, in that decision it was held that where persons have been allowed to function in higher posts for 15 to 20 years with due deliberation it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not belonging to the service at all, particularly where the Government is endowed with the power to relax the Rules to avoid unjust results. It is to be noted that the Supreme Court has also added that "We, however, make it clear that it is not our view that whenever a person is appointed in a post without following the Rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post."

9. There is a challenge against the orders contained in the communication dated 24-10-1985 from the Ministry of Education to the Director of the Hindi Directorate. The communication is strictly in accordance with the Recruitment Rules and actually counsel of the applicants was attempting to take shelter under the same in support of the claim of the applicants for regularisation. It


2




16  
is stated therein that by following the procedure and depending upon the number of vacancies available some of the employees who were working as L.D.Cs. on adhoc basis can be regularised, but it may not be possible to absorb all the concerned persons due to dearth of regular vacancies. As regards such employees who cannot be accommodated it is clarified that they will have to be reverted or continued against short-term vacancies till regular candidates are available through Staff Selection Commission. On an anxious consideration of the communication, we are not able to find any vice therein; actually it is in their <sup>of the applicants,</sup> interest to the extent that is possible in accordance with the Rules.

10. It follows that the applicants are not entitled to any relief in this application. However, in dismissing the same we would make it clear that the dismissal of the application will not stand in the way of the applicants being considered for regularisation in accordance with the Rules and the instructions contained in the communication dated 24-10-1985 from the Ministry of Education to the Director, Central Hindi Directorate.

11. This application is disposed of as above.

  
(G. SREEDHARAN NAIR)  
MEMBER (J)  
3-4-1987

  
(V. S. BHIR)  
MEMBER (A)  
3-4-1987