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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. No. RA 36/87

Date of Decision:- 3.7.87.

Shri Jagdamba Prasad Tripathi &
others

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Petitioners

Vs.

Union of India and others

Respondents.

CORAM:- Hon'ble Mr. Birbal Nath, Member (A)
Hon'ble Mr. G. Sreedharan Nair, Member (J)

For the Petitioners

Shri K.K. Rai, Advocate

For the Respondents

Smt. Raj Kumar
Chopra, Advocate.

Order

(Judgement of the Bench delivered by Hon'ble
Mr. G. Sreedharan, Member (J)).

JUDGEMENT

Heard Shri K.K. Rai on behalf of the petitioners,
and Smt. Raj Kumari Chopra, counsel on behalf of the
respondents, who has appeared and opposed the petition.

2. This is a petition wherein the petitioners who
are applicants in the main application have prayed for review
of the final order passed on 3.4.1987.

3. The sole relief that was claimed in the main application
was to quash the order refusing the regularisation of
the service of the applicants in the cadre of Lower Division
Clerk. The applicants had claimed that in view of their
having been promoted on Ad hoc basis to the grade of L.D.C.s
and having worked in the post from the various dates
commencing from 5.7.1977 in the case of third applicant

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to 14.5.80 in the case of 5th applicant, and having been assured that their services would be regularised the rejection of the representation on that behalf principal is illegal.

3. When the main application was disposed of heard the counsel on either side were heard and it was after considering the various grounds of attack that it was held that the applicants are not entitled to the relief prayed for. At the same time it was made clear in the order that the dismissal of the application will not stand in the way of the applicants being considered for regulatisation in accordance with the Rules and the conditions contained in communication dated 24.10.85 from the Ministry of Hindi Education to the Directorate wherein the applicants are employed.

4. In this review petition four grounds are urged:-

- (i) A re-appreciation is to be made of the decision of the Supreme Court in Narendra Chandra's case and the principle laid down has to be applied in this case;
- (ii) though the applicants have been "dubbed" as ad hoc, they have actually been working in regular capacity;
- (iii) when the sister organisations are allowed to relax the rules and non relaxation of rules by the Central Hindi Directorate has violated the Articles 14 and 16 of the Constitution.
- (iv) The petitioners have crossed the age limit so as to get the departmental promotion as per the Rules, and that all the applicants will not be entitled to such absorption as the quota available to them is only 10 per cent.

5. We are afraid that none of these four grounds emphasised

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in the petition. As their valid ground for review of the final order passed in this case after hearing the counsel on either side and after detailed and elaborated consideration of the issues involved. They may perhaps afford some grounds for appeal.

6. Counsel for the petitioners submitted in the course of his arguments on this petition that passage in the judgement of Supreme Court in Narender Chadha's case has been relied upon by this Tribunal out of context, which has resulted in miscarriage of justice. Since as the arguments was advanced we patiently allowed the counsel to elaborate on all these points. However, we are not impressed that there is any substance in these submissions.

7. In the context, it has also to be pointed out while arguing the review petition the counsel for the petitioners even went to the extent of submitting that the appointments of these applicants is not really ad hoc. We would like to refer the to clause (a) of paragraph 6 of the main application wherein it has been categorically stated that "these Group 'D' employees were promoted on ad hoc basis to the grade of Lower Division Clerk". The counsel of petitioners invited our attention to the orders of appointment. But not only orders of appointment, but even the circumstances under which these petitioners happened to be appointed as Lower Division Clerk even if it will adverse to in the official order wherein Tribunal has referred to the fact that it was merely on the request of these petitioners that they were considered for ad hoc promotion to the post of Lower Division Clerk, which are fallen vacant with the department make the appointment. The Office Memorandum dated 13.2.79 by which the department of Personnel and Administrative Reforms permitted the Central Hindi Directorate to allow the request of these petitioners, though they were not strictly eligible as per their

their instructions dated 25.6.75, clearly states that "such permission will be subject to the conditions that they will not request to regularise the ad hoc appointment". It was in this background that while considering the claim of the petitioners the scope of the decision of the Supreme Court in Narender Chanda's case was discussed and considered. That was the case where the persons were allowed to function in the Higher post about 15 to 20 years, and that too with due deliberation. It was held that it will be unjust to hold that they have no sort of claim to the post, taking note of the fact that Government is endowed with the power to relax the rules. It was in this background that the passage in the judgement of the Supreme Court that it is not the view of the Supreme Court 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, was made in the official order. We have least hesitation to say that such passage was not quoted out of context, and we have also to place on record we are not at all impressed by the submissions of the counsel for the petitioners that it has led to "miscarriage of justice".

8. The three other grounds urged as has been stated at the outset, Not being valid grounds for review, we do not find that we should enter into discussion as to those grounds in this order. Suffice to say that the matter comprised of all these three grounds has also been duly considered in the final order.

9. We dismiss the review petition.

9/3/87
(Birbal Nath)

Member

3.2.1987
(G. Sreedharan Nair)

Member

Dated:- 3.7.87.