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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

OA-1328/93

DATE OF DECISION 17-9-93

Smt. Vidya Gulati & Anr.

Petitioner

Advocate for the Petitioner(s)

Sh. S.S. Tiwari

Versus

Respondent

U.O.I. & Ors. through
D.G.

Advocate for the Respondent(s)

Sh. G.R. Nayyar

CORAM

The Hon'ble Mr. I.K. Rasgotra, Member(A)

The Hon'ble Mr. B.S. Hegde, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement? No
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

JUDGEMENT (ORAL)

(delivered by Sh. I.K. Rasgotra, M(A))

The petitioners Smt. Vidya Gulati and Smt.

Suman Lata are working as LDCs on adhoc basis in the
office of respondent E.S.I.C. w.e.f. 3.9.90. The

appointment letter issued to the petitioners made it clear

that the appointment was made "on adhoc basis as a stop

gap arrangements" which is not expected to last for
more than three months w.e.f. 3.9.90. The period

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of appointment was extended vide order dated 13.11.90 for threee months w. e. f. 1.11.90. The order of the appointment as well as extension further stipulated that adhoc appointment does not confer on the petitioners any right for regular appointment to the post of LDCs. These facts are not disputed. The petitioners, however, contend that they were sponsored by the Employment Exchange and they were duly interviewed by a duly constituted Selection Committee and in that view they have right to be regularised. In support Sh. S. S. Tiwari, learned counsel for the petitioner referred us to Rule 21 sub rule (1) of E.S.I.C. (Recruitment) Regulation, 1965 which provide that recruitment shall be made by either or both of the following methods:-

- a- by open competitive examinations.
- b- by selection by a Departmental Committee.

The petitioners contend that they were appointed by selection by the departmental Committee and, therefore, no further formalities are required in their case for regularising their service.

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Shri G.R.Nayyar, learned counsel for the respondents contested the arguments put forth by learned counsel for the petitioners and submitted that sub rule 21(2) stipulates that "recruitment to the following categories of posts shall be made by open competitive examinations.

a)

b)

c)

d) Lower Division Clerk/Adrena Operator/Computer/Telephone Operator.

Provided that an interview by a Departmental Committee may be held Only candidates who qualify in the written test shall be called for interview. Director General issued instruction in this regard from time to time.

Respondents, therefore, submit that whereas regulation 21(1) communicates/indicates the method of recruitment, sub-Regulation 21(2) specifies method of recruitment applicable to the categories specified therein. Category of L.D.C. is specifically mentioned in sub rule(2) for recruitment through open competitive examination. The stand of the respondents is that the petitioners who were employed on adhoc basis stop in/gap arrangements till candidates recommended

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by S.S.C. become available for appointment through open competitive examination.

Learned counsel for the respondents also relied upon the judgement of Hon'ble Supreme Court in Civil appeal No. 5302-5/92(Arising out of SLP(C) Nos. 7593-96(91)

Director General, ESIC & Anr.

V/s

Sh. Trilok Chand & Ors. in identical circumstances

Supreme Court has held:-

" Since the process of selection could not be completed for some time, this appointment of the respondents was continued from time to time till candidates were available as a result of the regular selection made in accordance with the prescribed procedure. The respondents, however, claim that they should be regularised on the posts of Lower Division Clerks notwithstanding the availability of regularly selected candidates for those post and the appointment of the respondents being made on the aforesaid express condition indicated to them at the time of their appointment".

In the above facts of the case, the Supreme Court set aside the order of the Tribunal and allowed the petition.

We have heard the learned counsel for both the parties and considered the matter carefully.

Admittedly, the petitioner was appointed on purely adhoc basis in the local arrangement.

Method of Recruitment provided in the ESIC(Recruitment) Regulations 1965 is spelt out in regulation 21(1).

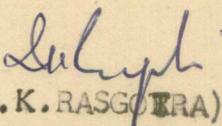
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A specific provision is made in regulation 21(2) category of L.D.C. shall be recruited through open competitive examination. Staff Selection Commission has since recommended the candidates selected through the open competitive examination. Since the candidates selected through the open competitive examination by the Staff Selection Commission are awaiting appointment, we do not find any justification for our interference in the matter. OA is accordingly dismissed. No costs. We have, however, make it clear that the respondents shall replace the petitioner only by duly selected candidates through the competitive examination and not by making adhoc appointments.


(B.S. HEGDE)

MEMBER(J)


(I.K. RASGORRA)

MEMBER(A)

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