

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

(5)

O.A. No. 1995/93

New Delhi dated the 18th January, 1994

Hon'ble Mr. N.V.Krishnan, Vice Chairman(A)

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

Shri Om Prakash Saini  
Son of Shri Brahma Nand Arya  
resident of 3765-A/2 Kanhayi Nagar,  
Tri Nagar, Delhi-110035

...Applicant

(By Advocate Shri H.L.Bajaj )

Versus

Union of India, through  
the Secretary, Railway Board,  
Ministry of Railway, Rail Bhawan,  
New Delhi-110001

...Respondent

(By Advocate Sh.P.S. Mehandru )

ORDER(ORAL)

(Hon'ble Sh.N.V. Krishnan, Vice Chairman(A))

The applicant is aggrieved by the Ann.A-1  
order of the Railway Board dated 29.6.93 by which his  
service has been terminated from the same date. It is  
stated that the applicant was first appointed on adhoc  
basis as LDC(Hindi typist) by the order dated 20.10.1989  
(Ann.A-2) for a period of 3 months. This period has been  
extended from time to time and the last extension is by the

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Memo dated 31.3.1993, by which he was again appointed for 3 months period.

2. It is contended that in view of the applicant's long adhoc service, the respondent had no right to terminate his service. Therefore, this OA is filed for a direction to the respondents to engage and regularise the applicant as L.D.C. with all consequential benefits.

3. Respondents have filed a reply stating that the full facts of the case are not mentioned in the O.A. The applicant was appointed on ad-hoc basis because of u that the fact, the Staff Selection Commission to whom requisition had been made was to select regular candidate for this post. In all the departments, adhoc persons were appointed, pending selection by the Staff Selection Commission, Ministry of Personnel issued instructions to all the concerning Ministries vide letter dated 29.7.91 (Ann.R-1) for regularisation of such adhoc persons. (Ann.R-1) Para(1) of this O.M. read as follows:-

"The undersigned is directed to say that in a number of Ministries/Departments, persons recruited through the Employment Exchange have been appointed directly as Lower Division Clerks on adhoc basis pending nomination of candidates by the Staff Selection Commission. Requests have been received for regularisation of such adhoc appointees in the posts of LDC after holding a Special Qualifying Examination. It has been decided after careful consideration that while no Special Qualifying Examination can

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be considered for this purpose, the adhoc LDCs could be allowed to compete in the Clerks Grade Examination, 1991 to be held by the Staff Selection Commission for recruitment of LDCs for which suitable relaxation in age limit could be permitted as a one time measure and they be adjudged at the same standard as per the earlier Special Qualifying Examinations. Accordingly, all those who are working as LDCs on adhoc basis in Ministries/Departments including attached and subordinate offices, pending nomination of regular candidates by the Staff Selection Commission, may be allowed to appear in the Clerks Grade Examination, 1991 as per the scheme enclosed to be conducted by the Staff Selection Commission on 27.10.1991"

4. In pursuance of this O.M. Railway Board communicated the names of 12 LDCs (Hindi typist) working purely on adhoc basis to Staff Selection Commission, which included the applicant also, for appearing in the examination (Ann.R-II). After the examination was held, the names of those who qualified were communicated to the respondent by the S.S.C. by its letter dated Feb., 1993 (Ann.R-III). The applicant did not <sup>therefore</sup> qualify. However, his name was not included. In view of the failure of the applicant to pass the examination, his services were terminated by the impugned order. In this view of the matter, learned counsel for the respondents submits that the application has no force and hence OA be dismissed.

5. The learned counsel for the applicant submits that the Department is bound to regularise the applicant. It is pointed out that in the standing instructions regarding adhoc appointment incorporated in Chapter 16 and 18 of Swamy's Manual 1992-Edition it is stated that

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if the prescribed procedure was followed, there would be few cases where adhoc appointment need to be made. It is also stated in the instructions that the total period of adhoc service be limited to one year ~~in practice~~ only. The ~~period~~ of giving break periodically and re-appointment is deprecated. In the light of these direction, applicant states that the applicant should be regularised ~~in~~ <sup>after</sup> one year.

6. He also relies on the judgements of Supreme Court in Piara Singh's case ATC 1992(21) 403 particularly paras 49 and 51. Para 49 is as follows:-

" If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State."

Para 51 relates to W.C. Staff which is not relates for this purpose.

7. We have given due consideration to the arguments of the counsel. We are of the view, that the applicant was engaged purely on an adhoc basis pending selection by the Staff Selection Commission of persons to be appointed on a regular basis. Otherwise.

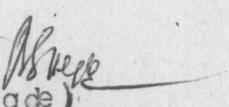
8. The Ministry of Personnel considered the claims of such persons and decided to permit them also to appear in an examination giving age relaxation for regularisation. The applicant also appeared in the

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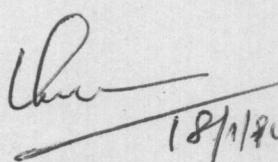
examination alongwith 11 persons. He unfortunately failed while the others were successful. Therefore, respondent had no alternative except to terminate his services.

9. The reliance on the judgement of Supreme Court in Piara Singh is entire misplaced. That judgement does not direct, in such circumstances, that the concerned employees should be regularised. It only states that such persons should also be 'considered'. This is precisely what the Ministry of Personnel, by giving direction, that such persons should be given consideration by asking them to appear in an examination. Since applicant did not pass in the examination, he has no right to continue. In the circumstances, we do not find any merit in this case. Accordingly, OA is dismissed at the admission stage.

  
(B.S. Hegde)

Member (J)

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(N.V. Krishnan)

Vice Chairman (A)