

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 2699 of 1993

New Delhi, this the 20th day of July, 1999

(9)

Hon'ble Mr. Justice K.M. Agarwal, Chairman
Hon'ble Mr. N. Sahu, Member(Admnv)

1. Ved Parkash, S/o Shri Shiv Prasad,
4/98, Rouse Avenue, New Delhi-110002
2. P.S. Rawat, S/o Shri B.S. Rawat,
F-2933, Netaji Nagar, New Delhi.
3. Shri Raj Mal, S/o Shri Ram Swrup,
Sector-IV, 180, R.K. Puram, New Delhi.
4. Som Dutt, S/o Shri Dalip Singh,
24/288, Panchkuian Road, New Delhi.
5. Ashok Kumar, S/o Shri Bansi Lal,
1352, Laxmi Bai Nagar, New Delhi.
6. Shri Raj Kumar, S/o Shri Jaishi Ram,
Sector III, 1379, M.B. Road, New Delhi.
7. Man Mohan, S/o Shri Trilok Singh,
A-250, Kidwai Nagar, New Delhi.
8. Banshi Dhar, R/o B-99, Kidwai Nagar,
New Delhi.

- APPLICANTS

(By Advocate None)

Versus

1. The Secretary, Ministry of Urban Development, Government of India, Nirman Bhawan, New Delhi.
2. Under Secretary, Ministry of Urban Development, Government of India, Nirman Bhawan, New Delhi.

- RESPONDENTS

(By Advocate None)

ORDER

By Mr. N. Sahu, Member(Admnv)

The applicants seek to set aside the order no. 0-18014/1/91-Admn.IV passed in December, 1992 (Annexure-A-1) and the order dated 22.6.1992 (Annexure-A-5). The first order disposes of the representation of applicant Ved Prakash and the second order is the order of appointment of the applicants

working as adhoc Lower Division Clerks (in short "LDCs") to the post of LDC on regular basis in the CSCS cadre of the Ministry of Urban Development with effect from 9.4.1992, in consultation with the Staff Selection Commission.

(10)

2. Initially the applicants joined the Ministry of Urban Development in Group "D" category. Since there were large number of vacancies, all of these were promoted on adhoc basis to the post of LDC, in the year 1981 and 1982. They continued there for more than 7 years. They filed OA No.668/88, 914/88, 985/88 and 1010/88. They think that para 16 of the judgment protects their interest.

3. None appeared at the time of hearing on behalf of either side. We, therefore, dispose of this OA after considering the pleadings on record.

4. We shall do no better than reproduce the directions of this Tribunal as under -

"16. Keeping the above trend of the judicial decisions of the apex court, the applications are disposed of with the following orders and directions :-

(1) The respondents are directed to take immediate steps to regularize the services of the applicants as LDCs in consultation with the Staff Selection Commission. While doing so, they shall, if necessary, relax the upper age limit for appointment as LDCs. Their regularization should be on the basis of the evaluation of their work and conduct based on the annual confidential reports, as was directed by the Supreme Court in Dr. A.K.Jain's case.

(2) Till the applicants are so regularized, they shall not be reverted from the post of LDCs to their substantive posts in Group "D" category.

(3) The applicants would be entitled to the protection of pay and allowances, including increments in the post of LDC and other benefits admissible to a regular employee.

(4) The respondents shall comply with the above directions within a period of three months from the date of receipt of this order."

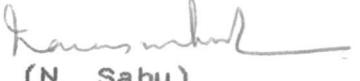
There is no direction in the above order to regularize the applicants as LDCs with effect from the date of adhoc appointment but to take steps to regularize their services in consultation with the SSC after evaluation of their record. The applicants' claim cannot be granted. A large number of other LDCs were appointed during the adhoc service of the applicants as per the provisions of recruitment under the CSCS Rules, 1962. Those regular appointees have acquired a legal right. The recruitment to the LDC grade of CSCS is governed by well defined rules. 90% of the vacancies are to be filled by direct recruitment; 5% on the basis of seniority subject to rejection of unfit; and 5% from amongst educationally qualified Group 'D' employees who have rendered five years continuous service in the grade. The adhoc appointments can be terminated at any time and the appointees can be reverted to the Group 'D' post on the availability of the qualified candidates for appointment on the basis of the recruitment rules. The authorities in support of the respondents' claim are galore. An adhoc appointee has no subsisting right to continue in service and the question of his seniority would arise only after regularization (Committee of Management Vasanta College for Women vs. Tribhuwan Nath Tripathi, 1997 SCC (L&S) 678). It is also settled law that merely working on a post for

number of years on adhoc basis will not vest the applicant with the right for regularization (State of Himachal Pradesh Vs. Suresh Kumar Verma, JT 1996 (2) SC 455. Finally the second proposition of law laid down by the Apex Court in the Direct Recruit Class-II Engineering Officers Association Vs. State of Maharashtra, (1990) 13 ATC 348 = (1990) 2 SCC 715 regarding counting of the period of officiating service is not attracted when the employee is not eligible under the rules for appointment. In this case the applicants were made adhoc dehors the rules. The decision of the Hon'ble Supreme Court in the case of Rajbir Singh & others Vs. Union of India & others, (1992) 19 ATC 315 cited by Shri V.S.R.Krishna, learned counsel for the applicants subsequently in his written notes of arguments is clearly distinguishable. The applicants in that case were promoted to Class-III posts in 1975 on adhoc basis after holding selection tests and finding them suitable for the promoted posts. In this case the applicants were appointed on adhoc basis against posts excluded from the CSCS. In the impugned order Annexure-A-1 it is stated that "[T]hey could not, therefore, be regularized in CSCS from a date earlier than the date on which they were actually appointed to a CSCS Post. Their regularization as LDC with retrospective effect would be contrary to general policy, provisions of the Statutory CSCS Rules, 1962 and not permissible in law because the seniority of LDCs already appointed on regular basis in accordance with the Rules cannot be adversely affected in that matter".

5. In the circumstances we are unable to grant the relief prayed for. We are also of the view that the impugned orders were in accordance with the directions of the Tribunal. All regularization can only have a prospective effect. A retrospective regularization according to law laid down is not valid.

6. In the result, the O.A. is dismissed. No order as to costs.


(K.M. Agarwal)
Chairman


(N. Sahu)
Member(Admnv)

rkv.