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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 77 of 1987

Virendra Kumar Misra & others ... Applicants

Versus

Union of India & others ... Respondents.

Connected with

Registration (O.A.) No. 78 of 1987

Shriharsh Awasthi Applicant

Versus

Union of India & others Respondents.

Connected with

Registration (O.A.) No. 79 of 1987

Bachani Yadav Applicant.

Versus

Union of India & others Respondents.

Hon'ble S. Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

3/ The matter, facts and relief claimed in these applications being of a similar nature and involving common points of law, these are being disposed of by a common order. The orders being given in this case will be applicable to the other two cases as well.

2. The facts which are not under dispute are that the applicants (V.K. Misra & G.D. Shukla (in O.A.No.77 of 1987, S. Awasthi in O.A. No.78 of 1987 and Bachani Yadav in O.A. No.79 of 1987) were appointed as Lower Division Clerks in the office of the Director of Census Operations,

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Lucknow on ad hoc temporary basis by the Director of Census Operation, U.P. and continued to work upto 26.12.1986 when an order terminating their services was issued by the Deputy Director of Census Operation, who was designated as Head of Office on the abolition of the post of Director who was the earlier Head of Office. During this period they had also been promoted for some period to work as Upper Division Clerks and were directed to appear in Special Qualifying Test conducted by the Staff Selection Commission in 1985 for regularisation of their ad hoc service as regular appointments could only be made through the agency of Staff Selection Commission. The termination was ordered after their failure in the examination. They were given only one chance to appear in Special Qualifying Examination.

3. The applicants have challenged the termination on the following grounds :

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- i) That the order of termination has been issued by an incompetent authority.
 - ii) That they should have been given three chances to appear in the Qualifying Examination. On the other hand termination has been ordered after the first failure.
 - iii) That juniors have been retained in temporary post though they were not subjected to the Qualifying Examination.
 - iv) That since they were allowed to cross Efficiency Bar and had been continuously working valuable rights had accrued to them for regularisation.
 - v) That they have now become overage, hence they should not be terminated.

4. On the legality of the termination order the learned counsel for the respondents had submitted that in accordance with the directions issued vide O.M. No.

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19/28/87-Ad-1 of 22.9.1987 (Annexure 'III' to the Supplementary Counter Affidavit) the 'Head of Office' is the appointing authority and since the Deputy Director Census has been declared as the 'Head of Office' he is to be deemed to be the appointing authority of the applicants and was, therefore, fully competent to terminate their services. We have perused this letter issued by the Ministry of Home Affairs. This does give powers to the official who is declared as 'Head of Office' for making appointments but these powers have been clarified at the end of the first para. The relevant portion reads as follows :-

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"While sub-rule (2) of Rule 9 of CCS (CC&A) Rules, 1965, specifies in general terms the Appointing Authority to Groups B, C and D posts included in the General Central Service, the definition of Appointing Authority, as given in sub-rule (a) of Rule 2 of these Rules, makes it more specific, viz., the Appointing Authority, in relation to a Government servant, is the highest of the authorities mentioned in clauses (i) to (iv) of the aforesaid sub-rule. In other words, insofar as the Census Directorates in States/UTs are concerned, for the purposes of the CCS (CC&A) Rules, 1965, if a particular Government servant was appointed by the Director of Census Operations, while functioning as "Head of Office", it is only the Director of Census Operations and not the officer of a lower rank declared as "Head of Office" subsequently (invariably when the Director is not in position) who will be considered to be the appointing authority in relation to that particular Government Servant. Similar is the case with reference to a Joint Director of Census Operations in relation to a Deputy Director of Census Operations/Assistant Director of Census Operations, and a Deputy

Director of Census Operations in relation to an Assistant Director of Census Operations, respectively."

5. Thus on the short point that the termination order was issued by the Deputy Director, who could not issue the same, the petitions have to be allowed.

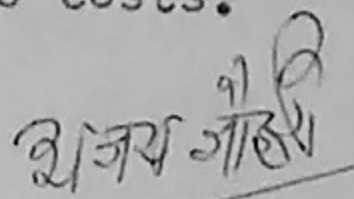
6. In regard to the other grounds it is obvious that the ad hoc services does not give the applicants a right for regularisation and they have to get through the qualifying examination. In Registration (O.A.) No. 105 of 1986, Smt. Anil Rani Malik v. Union of India, decided by the Principal Bench of this Tribunal it has been said in para 11 :-

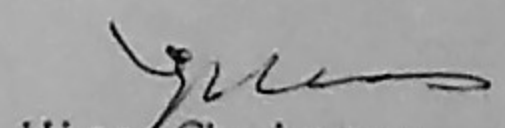
"11. In all the five cases, the applicants were working as ad hoc LDCs on purely temporary capacity and they were all qualified by age, length of service etc. to take the Special Qualifying Examination. It was made clear to them that those who failed to qualify in the Examination will have to quit to give place to the regular appointees who come through the open market competitive examination held by the SSC. Two important aspects of the scenerio should be kept in view. Firstly, the petitioners could have appeared and might have appeared both in the open regular competitive examination as also in the three Special Qualifying Examinations held in 1982, 1983 and 1985 if they were otherwise qualified. Secondly, the Special Qualifying Examination was tailor-made to absorb on humanitarian grounds the ad-hoc LDCs who have been in service for more than a year or so and unlike the regular competitive examination, they were not in the Special Qualifying Examination required to compete with others to come within the zone of appointment. In the Special Qualifying Examination they were required to simply reach

a minimum qualifying level of performance in the examination and if they had to come upto that level (which we were told was about 34% to 35% of total marks) they would have been absorbed as regular LDCs in the Central Secretariat Clerical Service. Since they did not measure up even to the minimum qualifying standards they had to give way to those who had attained the minimum qualifying standards in the Special Qualifying Examination and more importantly to those meritorious candidates who come within the zone of appointment in open all-India competitive examination. Any further accommodation to the ad hoc LDCs who failed to even qualify in the Special Qualifying Examination would have been not only detrimental to the maintenance of standards of efficiency in public services but also unfair to those who had qualified in the Special Examination and/or earned well-deserved appointment through All India Competitive Examination."

Obviously the applicants in these Original Applications were supposed to have been given more than one chance. So the applicants in these applications under disposal should also be given more opportunity, according to rules, to get themselves qualified. They were terminated on their first failure.

7. On the above considerations the order of termination dated 26.12.1986 is set aside. The applicants will be entitled to consequential benefits. We make no order as to costs.


Member (A).


Vice-Chairman.

Dated: January 21st, 1988.

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