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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

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Registration (O.A.) No. 487 of 1988.

Narayan Das ..... Applicant.

Versus

Union of India & others ..... Respondents.

Connected with

Registration (O.A.) No. 488 of 1988.

Harish Chandra Khatri ..... Applicant.

Versus

Union of India & others ..... Respondents.

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Hon'ble K.J. Raman, A.M.  
Hon'ble D.K. Agrawal, J.M.

(Delivered by Hon. K.J. Raman, A.M.)

This order is in respect of two cases, viz. O.A. No. 487 of 1988 and O.A. No. 488 of 1988, since they involve identical questions of law.

2. In O.A. No. 487 of 1988 the applicant, <sup>Sn'</sup> Narayan Das, <sup>1982</sup> a Lower Division Clerk (LDC) in the office of the Customs and Central Excise Collectorate, Meerut, has filed the application under Section 19 of the Administrative Tribunals Act, 1985 impugning the Collectorate's Establishment Order No. 60 of 1988, dated 6.4.1988 terminating the services of the applicant with immediate effect. The respondents are the Union of India through the Collector, Customs & Central Excise, Meerut and two other officers of the Collectorate.

3. In O.A. No. 488 of 1988 the applicant, <sup>Sn'</sup> Harish Chandra <sup>1982</sup> Khatri, also a LDC in the office of the said Collectorate, has preferred the application under Section 19 of the Administrative Tribunals Act, 1985 against the Collectorate's Establishment Order No. 59 of 1988, dated 6.4.1988, terminating his services with

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immediate effect. Since the submissions made by the two applicants are virtually identical, except that Sri Narayan Das is a Scheduled Caste employee, his case is being discussed below in detail and such discussion is applicable to the case of Sri Harish Chandra Khatri also.

4. The case of the applicant, Sri Narayan Das, is that after passing his B.A. examination, he had registered himself with the Employment Exchange (EE) at Rampur and was consequently directed to appear before the Assistant Collector of Central Excise, Moradabad on 14.12.1979 along with his testimonials; and after appearing in a written test comprising General English, General Knowledge, and Arithmetic, and having passed the same, was directed to appear in the Type Writing test in English at Meerut. Having passed in that test also, an appointment letter dated 22.2.1980 (Annexure 'I') was issued in favour of the <sup>Applicant.</sup> ~~petitioner.~~ The <sup>Applicant</sup> ~~petitioner~~ claims that he was appointed in a temporary vacancy of LDC by the said order. He joined the post, after submitting requisite documents, on 28.2.1980 in the Collectorate HQ office at Meerut. The applicant claims that since then he had been discharging his official duties to the entire satisfaction of his superiors, receiving regular increments and being permitted to cross the Efficiency Bar (EB) with effect from 1.2.1986 by an order dated 7.8.1986, after clearance by the relevant Departmental Promotion Committee (DPC) (Annexure 'II'). The applicant asserts that having served the Department to its entire satisfaction for about 8 years, he was entitled to be treated as a temporary Government employee and that he was eligible for being made quasi-permanent under Rule 3 of the CCS (Temporary Service) Rules, 1965, and in fact ought to have been deemed to be in quasi-permanent service. The applicant avers that the original order of appointment was not for a specific period and contained no ingredients justifying the appellation of "ad hoc" appointment.

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5. On 8.9.1982 a circular was issued by the Central Board of Excise and Customs, New Delhi notifying the extension of <sup>a</sup> concession as given to certain Secretariat employees, to the field offices under the said Board. This concession was in the shape of an opportunity to appear in an examination to be conducted by the Staff Selection Commission (SSC) and on passing such examination, an ad hoc employee would be regularised. The argument of the applicant is that no such condition of passing any such examination was stipulated in the order of appointment of 1980 and it was not stated that his appointment shall not be regularised until and unless the said examination conducted by the SSC was passed. In para 6(22) of the application, it is stated that the applicant along with other candidates protested against the said requirement and submitted a written representation requesting that the applicant be declared quasi-permanent after completion of three years and that he should not be asked to reappear in the examination, which was wholly against the terms of the appointment letter. A copy of the said representation is annexed to the application as Annexure 'III'. The applicant states that on being assured by the respondents that the said examination was merely a formality, the applicant appeared in the examination. Though the result of the examination was not communicated to the applicant, it was stated during the arguments that the applicant did not pass the 1982 SSC examination in question. A similar special examination of the SSC was again held in 1983 with similar result, as far as the applicant is concerned. The third and the last of such examination of the SSC was conducted in 1985 with no different result. On 6.4.1988 the impugned order was issued terminating the services of the applicant. The said order states that <sup>the</sup> ~~the~~ services of the applicant, "who failed to qualify in the special qualifying examinations conducted by the SSC despite special chances having been given to him, are hereby terminated with immediate effect." In the case of Sri Khatri (OA No. 488-

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1988) the impugned order was identical except that the following sentence was added :-

"A cheque for Rs.1,524/- in lieu of one month's salary is attached."

In the case of Sri Narayan Das, there is no mention of any such cheque. However, during the arguments it was stated that he too was paid a similar amount at the time of termination of the services.

6. The applicant reiterates that there was no whisper of any such condition of passing any such examination of the SSC, in the appointment letter, which was issued after a due selection and tests conducted by the respondents. The applicant was duly qualified for the post. The applicant further states that he has already attained the age of 32 years and he is debarred from entering into any Government service after his termination. In the rejoinder affidavit filed, the applicant claims that he is liable to be governed by the CCS (Temporary Services) Rules, 1965. In the supplementary rejoinder affidavit, the applicant has made further contentions in support of his application. It is claimed that the authorities had no power to keep the applicant as ad hoc appointee for such a long period, i.e. more than 8 years, particularly after the applicant's representation of 1982. It is claimed that the respondents themselves have continuously <sup>been</sup> ~~being~~ treating the applicant at par with all other employees under them, i.e. as a regular employee. In this connection it is pointed out that the payment of one month's salary to the applicant confirms the above fact that the respondents treated the applicant as a temporary employee. The applicant, Sri Narayan Das, claims that as a SC candidate, he is entitled for relaxation of standards, according to existing instructions.

7. As against the above contentions of the applicant, the respondents in their reply have stated that the termination was legal, as the applicant was merely an ad hoc employee whose services

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could be terminated at will without citing any reason, as per the appointment letter. The respondents have stated that in 1979, the Meerut Collectorate was established, necessitating the post of certain staff, for which purpose the Collector sought permission from the CBEC for ad hoc appointment of LDCs through the EE. The Collector was directed by the Board to approach the SSC in this connection. The SSC, by its letter dated 16.10.1979 (Annexure 'II' to the counter affidavit), showed its inability to sponsor candidates for the post of LDCs. It, however, stated that it had no objection for filling the post through other permissible channels on ad hoc basis, keeping in view the urgent need of the office. The <sup>SSC</sup> submission further added; "The LDCs and Stenographers' so appointed may please be made clear that their services will be dispensed with when the qualified candidates are nominated by this Commission." On receipt of the said letter, requisitions were sent to the EE, <sup>a</sup> formal test was conducted and the applicants along with others, who had passed in the said test, were appointed. It is stated that such appointments were with the clear condition that their appointments were purely provisional and on ad hoc basis and that their services were liable to be terminated at any time without assigning any reason. The CBEC, by its letter dated 8.9.1982 intimated the decision of the Ministry regarding regularisation of the ad hoc appointees, as stated earlier in this order. Another letter, dated 19.9.1983, was received from the CBEC in the same connection, stipulating the passing of special examination conducted by the SSC. By a letter dated 16.9.1981, the SSC informed the Collector that the ad hoc appointees be replaced by nominees of the Commission to the extent they are available. The third and the last examination was conducted on 28.7.1985 by the SSC in which both the present applicants could not get through. The matter was referred to the Board, which by its letter dated 18.11.1986, intimated the Collector that the Department of Personnel and Training had not agreed to the proposal of holding another special examination for regularisation of the service of Gr. 'C' employees recruited through EE. By a letter dated 24.3.88,



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the Board finally wrote to the Collector directing that the services of the two applicants be terminated immediately, in view of the policy decision taken by the Department of Personnel & Training, in accordance with a certain Office Memorandum of 1986. The respondents aver that the two applicants were merely ad hoc employees and were not temporary Government servants; and that Rule 3 of the CCS (Temporary Service) Rules, 1965 is not applicable to them. The respondents have paid special stress on the use of the word 'ad hoc' in the appointment letter. The respondents further aver that the essential condition of passing the examination held by the SSC was not fulfilled and as such the applicants' services could not be regularised. There is <sup>a</sup>vague reference to 'rules, discipline and conduct of the Department' to justify termination order, but no particular rule or law has been specified in this respect.

8. <sup>or</sup> The case was heard on 25.10.1989 when Km. Sadhna Srivastava, learned counsel for the applicant, and Sri K.C. Sinha, learned counsel for the respondents, reiterated their arguments, briefly, referred to above. The learned counsel for the applicants placed much reliance on the decision in Guru Prasad v. Union of India & others (1988 (6) ATC 47). In that case the applicants were employed as Clerks-cum-Typists purely on ad hoc basis. Their employment was for a period of six months at <sup>a</sup>the time, after which period the services were terminated, and they were again taken back; thus there were broken periods of service, and intermittent break in service. The orders of termination of the services of the applicants were set aside in that case and the respondents were directed to reinstate them in service ignoring the technical breaks and condoning the period of absence. They were also required to permit the applicants, who had put in about one and half years of service, to be given an opportunity of appearing at the next examination of the SSC for the recruitment and regularisation on the post of LDC. Some of the points decided in that case were that the description of the employment as 'ad hoc' cannot be always accepted at

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face value and that the real nature of the engagement can be examined; and after so examining, it was held in that case that the services of the applicants were to be considered as 'temporary' rather than 'ad hoc'. The learned counsel relied on a number of other decisions including Narender Bahadur v. Public Service Commission (1971 (2) SLR 414) of the Allahabad High Court, Narendra Chadha v. Union of India (ATR 1986 SC 49), Dr. (Mrs.) Sangita Narang & others v. Delhi Administration (1988 (6) ATC 405), State of Punjab v. Madan Singh and others (1972 SLR (SC) 446), and Dhirendra Chamoli & another v. State of U.P. (1986 SCC (L&S) 187).

9. We have very carefully examined the facts of the case and the arguments of both the sides. The main question in this case is the nature of the engagement contained in the appointment orders of the applicants, issued in February, 1980. It is very well settled that ad hoc appointees have no particular claim to continue indefinitely in the post in which they are so appointed. In the appointment letters of the applicants, the appointment was stated to be 'in a temporary (ad hoc) vacancy of LDC'. In para 11 of the Conditions of Service contained in that letter, it is mentioned 'this appointment is purely provisional and on ad hoc basis and the services of the incumbent are liable to be terminated at any time without assigning any reason'. Thus, it is seen that the appointment of the applicants was not purely and entirely ad hoc in specific terms. It was also described as 'temporary' and 'provisional'. It is well-known that there is much difference between temporary service and ad hoc service in Service jurisprudence. The description of the engagement of the applicants as also temporary, dilutes the ad hoc character of the appointment. If the respondents clearly meant the appointment to be purely stop-gap or ad hoc in the real sense of the term, they should not have used ambiguous expressions like 'provisional' and 'temporary' etc. There is no condition or stipulation at all as to the length or the duration of the appointment.

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appointee, on the appointment of any regular candidate through the SSC. As has been indicated earlier in this order, the applicants were sponsored by the EE, which appears to be one of the permissible modes of recruitment to the service. It is also admitted on all sides that the applicants appeared in a written test in General English, General Knowledge and Arithmetic and also in a typing test in English, all of which were passed before they were appointed. It is not stated by the respondents that the appointment was made ignoring any requirement for the proper selection and recruitment prescribed for such cases. No concession seems to have been given to them on the plea that their appointment was simply 'ad hoc'. As stated earlier, there was no indication in the appointment letter that the recruitment ought to have been through the SSC and that the recruitment through the EE was irregular requiring regularisation by appearing in an examination to be conducted by the SSC. The applicants have pointed out that the SSC also conducts examination only in the same subjects, but with less number of papers.

10. The applicants have been allowed to earn increments in the scale. In 1986, inspite of all that has been said about the appointment being only ad hoc, the applicants were considered by the appropriate DPC and they were found fit to cross the EB (Annexure 'II').

11. Taking all the above facts together, we have no doubt that even though the word 'ad hoc' was used in the appointment letters, the respondents actually treated the appointment as a regular one, even if temporary. It was certainly not a stop-gap or purely conditional appointment.

12. It is seen from the counter affidavit of the respondents that the condition of passing a special examination of the SSC seems to have been imposed only in 1982 (Annexure 'IV' to the counter affidavit). There is nothing on the record to show that, before that date, there was any rule or requirement <sup>presenting</sup> ~~presenting~~ that the

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applicants had to pass any examination conducted by the SSC in order to continue in service. It does not appear to be quite fair and proper that such decisions should be given retrospective effect to the detriment of the applicants. If the respondents felt that such a testing was necessary and that the testing, as was done in the case of the present applicants, was inadequate, they should have included such a stipulation in the appointment order itself.

13. The respondents have not given any proper reply as to what action had been taken on the representations submitted by the applicants against the requirement of passing another examination to be conducted by the SSC. The applicants had, no-doubt, no other option but to appear in the examination, willy-nilly.

14. The applicants were allowed to continue in service for more than 8 years and they have rightly pointed out that they have become over-aged for Government service by the time their services were terminated. This aspect also deserves to be given some consideration. It would have been a different matter if the question of their suitability was considered shortly after their appointment. Another strange feature is that the termination orders do not cite any rule or provision of law under which they were issued. In the case of Sri H.C. Khatri, the termination order includes a reference to payment of Rs.1,524/- in lieu of one month's salary. In the case of Sri Narayan Das, such an amount was paid, though the order does not contain any reference to such payment. Such a payment would seem to indicate that the applicants were treated as temporary Government servants covered by the CCS (Temporary Services) Rules, 1965, in spirit, if not in actual terms.

15. Considering all the above facts, we are of the opinion that the appointments of the two applicants have to be considered as regular and temporary appointments, and not as ad hoc employment. We also further hold that the impugned orders of termination, not having been issued in terms of and in accordance with the CCS

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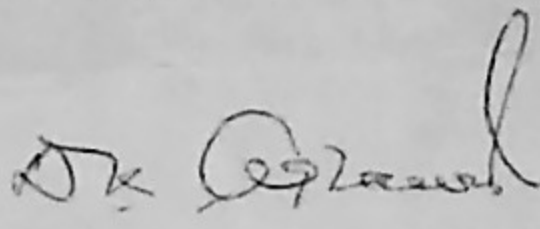
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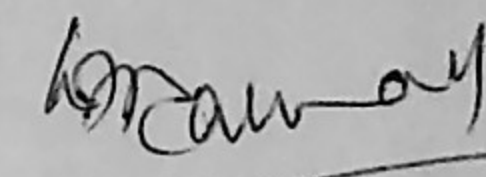
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(Temporary Services) Rules, 1965, are bad in law. It is also felt that the imposition of a condition of passing the examination in question, two years after the appointment, cannot be upheld. The respondents were no-doubt entitled to terminate the services of the applicants, if they had been found unsuitable, or ~~otherwise~~ <sup>otherwise</sup> they were found unfit to continue in service, in accordance with the provisions of the CCS (Temporary Services) Rules, 1965. In this case, it is admitted that the DPC had considered the suitability of the applicants for crossing the EB in 1986 and they were allowed to cross the EB accordingly. There is no whisper of any misconduct or other factor against the applicants, standing in the way of their regularisation.

16. In the result, both the applications are allowed as follows. The two impugned orders of termination, both dated 6.4.1988, are hereby quashed. The two applicants, viz. S/Sri Narayan Das and Harish Chandra Khatri, shall be reinstated within a period of one month from the date of receipt of this order. Both the applicants shall be treated as having continued in service from the date of the termination of their services till the date of reinstatement for all purposes, except that this period shall be treated as any kind of leave admissible to them including, if necessary, extra-ordinary leave without pay. There will be no order as to costs.

  
MEMBER (J).

  
MEMBER (A).

Dated: November 17, 1989.

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