

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**(THIS THE 15th DAY OF JULY, 2009)PRESENT :**HON'BLE MR. A. K. GAUR, MEMBER-J****HON'BLE MR. D.C. LAKHA, MEMBER-A****ORIGINAL APPLICATION NO. 758 OF 2002**

(U/s, 19 Administrative Tribunal Act.1985)

Jagdish Prasad Pandey, Son of Sri D.P. Pandey posted in the
Office of Joint Director General of Foreign Trade, Kanpur.

.....Applicant

By Advocate : Shri Satish Dwivedi

Versus

1. Union of India, through the Secretary, Ministry of
Commerce, Government of India, New Delhi.
2. The Director General of Foreign Trade, Udyog Bhawan,
New Delhi.
3. The Joint Director General of Foreign Trade, 117/L-444
Kaka Deo, Kanpur.

..... Respondents

By Advocate : Shri R.K. Srivastava

ORDER(DELIVERED BY: A. K. GAUR- MEMBER-JUDICIAL)

1. We have heard Shri Satish Dwivedi, learned counsel for the applicant and Shri R.K. Srivastava, learned counsel for the respondents.

2. By means of this OA the applicant has challenged the order whereby his representation dated 24.12.1999 regarding regularization of his services from 11.12.1980 instead of 20.6.1996

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has been rejected. The applicant has also prayed for re-fixation of pay and seniority.

3. Brief facts of the case are that the name of the applicant was sponsored initially by Employment Exchange for the post of Lower Division Clerk (LDC) in the office of respondents. After being qualified in selection test and interview, the applicant was appointed as LDC on ad-hoc basis on a permanent post against substantive vacancy vide order dated 11.12.1980. It is alleged that the maximum period of probation is 3 years and there is no provision for extension of period of probation after expiry of 3 years from the date of appointment. The applicant has been working continuously on the post of Lower Division Clerk with full satisfaction of his superior officers. The applicant was asked to appear in Selection Test to be held by Staff Selection Commission for the post of Lower Division Clerk. According to the applicant he had already appeared in the prescribed selection test and had been appointed after being selected and as such there was no justification to direct him to appear again in the selection test. The applicant under compelling circumstances appeared in the selection test and he was declared failed. It is also alleged that since the work, post and vacancy was existing, the applicant had been re-employed/appointed on the said post of L.D.C, even after passing the aforesaid termination order with an artificial break. The relevant dates of re-employment/appointment and termination have been indicated in paragraph 13 of the Original Application. The applicant has also filed OA No.15/1989 seeking regularization before the Tribunal. On 9.2.1993 this Tribunal finally disposed of

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the said OA with a direction to the respondents to hold Supplementary Examination for him and to allow him to appear in the said examination and in case the applicant succeeds, he may be given an appointment. After judgment of the Tribunal, vide order dated 10.08.1993 the applicant was appointed on the post of Lower Division Clerk and the respondents instead of taking supplementary examination of the applicant, decided to regularize the services of the applicant on the basis of Annual Confidential Reports. The whole grievance of the applicant in the present case is that the service of the applicant has to be regularized from the date of his initial appointment i.e. 11.12.1980. It is also urged that order dated 14/15.6.2001 may be quashed and the respondents be directed to regularize the services of the applicant w.e.f. the date of his initial appointment i.e. 11.12.1980 instead of 20.6.1996.

4. In the counter reply filed by the respondents it is submitted that service of the applicant has been regularized in pursuance of the order of the Tribunal and, therefore, it is wrong on the part of the applicant to compare his case with others who have been appointed and regularized before the applicant. It is also submitted by the respondents that on receipt of representation of the applicant in the Office of Joint Director General of Foreign Trade, Kanpur it was forwarded to the Joint Director General of Foreign Trade, (CLA) New Delhi on 29.12.1999 for consideration as the Joint Director General of Foreign Trade (CLA) is the appointing authority in the matter. The Director General of Foreign Trade (HQ) has referred the matter to Department of Personnel and

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Training for their clarification and vide letter dated 8.5.2001 respondents has intimated office of the Joint Director General of Foreign Trade Kanpur that the appointment of the applicant is to be treated as fresh appointment and pay is to be fixed at minimum of the time scale of Lower Division Clerk. No benefits of past service rendered by the applicant on ad-hoc basis shall be given to him.

5. We have carefully perused the rejoinder affidavit filed by the applicant. Nothing new has been added and indicated therein. Respondents have also filed a supplementary counter affidavit wherein it is submitted that the representation of the applicant was considered in consultation with the Department of Personnel and Training and his request was rejected. It is also submitted that consequent of his failure to qualify the Staff Selection Commission Special Examination, the applicant's services were terminated on 18.1.1988. He was again appointed as Lower Division Clerk on ad-hoc basis for a specific period from time to time which is not in continuity and consequent upon the decision of the Tribunal he was appointed as Lower Division Clerk on regular basis with effect from 20.6.1996. The said appointment has been treated as fresh appointment and pay is to be fixed at the minimum of the Time Scale of Lower Division Clerk.

6. It is seen from the records that the applicant was appointed as Lower Division Clerk on Ad-hoc basis from time to time. The competent authority while deciding the representation of the applicant has clearly observed that the applicant was appointed as

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fresh candidate in pursuance of the order and direction of the Tribunal. Since the applicant was appointed on ad-hoc basis for specific period of time, he is not entitled to be given any continuity of service. By no stretch of imagination, the applicant is entitled to get continuity of service w.e.f. 11.12.1980 as claimed by him. The appointment of the applicant has rightly been treated as fresh appointment and pay is to be fixed at the minimum of the Time Scale of Lower Division Clerk.

7. Having given our thoughtful consideration to the pleas advanced by the parties counsel, we are satisfied that the applicant has failed to make out any case warranting interference.

8. OA is accordingly dismissed. There shall be no order as to costs.


Member-A


Member-J

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