

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

~~NEW DELHI~~

O.A. No. 223/1990

~~Ex. No.~~

1990

DATE OF DECISION 25.4.1991

Shri D.B.Rathod

Petitioner

Mr.M.N.Popat

Advocate for the Petitioner(s)

Versus

The Director General of Works,  
C.P.W.D. & Ors.

Respondent s

Mr.P.M.Raval

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr.M.M.Singh

: Administrative Member

The Hon'ble Mr.R.C.Bhatt

: Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

Shri D.B.Rathod,  
Lower Division Clerk  
C/o. the Assistant Engineer,  
C.P.W.D. Sub-Section No.1,  
Civil Aerodrome,  
Ahmedabad-380 012.  
(Adv.: M.N.Popat)



: Applicant

Versus

1. Director General of Works,  
C.P.W.D.,  
'Nirman Bhavan'  
Parliament Street,  
New Delhi-110001.
2. The Chief Engineer,  
West Zone, C.P.W.D.  
Near C.G.O., Building,  
Marine Lines,  
Bombay-400 020.
3. The Superintending Engineer  
Cordination Circle,  
West Zone, C.P.W.D.  
C.B.O., CGO Complex,  
New Bombay-400614.
4. Superintending Engineer(Ele.)  
Central Electrical Circle,  
C.P.W.D., Civil Lines,  
Nagpur-400001.
5. The Executive Engineer(Ele.)  
Central Electrical Division,  
C.P.W.D., Dawahar Saw Mills  
Compound, O/s. Shahpur Gate,  
Ahmedabad-380004.

: Respondents

(Adv.: Mr.P.M.Raval not present)

J U D G M E N T

O.A.No.223/1990

Date: 25.4.1991

Per: Hon'ble Mr. R.C.Bhatt

: Judicial Member

1. In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed that the order dated 5th May, 1990, passed by the respondent No.4 reverting the applicant working as LDC to the post of a Peon, be quashed and set aside and to promote the applicant to the post of LDC by treating the said impugned order as illegal and unconstitutional. It is the case of the applicant that he was appointed as a peon on temporary basis in the department of the respondents, that thereafter he was made permanent in that post, that thereafter on account of his satisfactory service, he was

appointed to the post of LDC on adhoc basis by the Superintending Engineer (Coord.), Bombay, i.e. respondent No.3 as per the terms and condition mentioned in the said order and a office order was passed by the Superintending Engineer accordingly on 17th May, 1980, a copy of which is ~~was~~ produced at Annexure A/1, that the applicant resumed duty on 20th June, 1980, at Ahmedabad and since then he is working as an LDC. It is alleged by the applicant that he has made applications to the respondents for the purpose of making him permanent and regular, to the post of LDC but nothing has been done so far by the respondents. It is the case of the applicant that he has cleared the Departmental typing test and has passed the qualifying departmental examination, that he has been enrolled as a member of Central Government Employees Group Insurance Scheme, 1980, that he is also been given periodical increments and is also enrolled to GPF account.

2. The applicant's main grievance is that the respondents No.4 passed the arbitrary order dated 5th May, 1990 (Annexure A/8) by which the applicant is ordered to be reverted to the post of a peon. The applicant alleges that this order Annexure A/8 is illegal, unconstitutional, unreasonable and violative of Article 14, 16 and 19 of the Constitution of India. It is alleged that it was not open to the respondents to revert him to the post of peon, that no opportunity was given to him of being heard before he was reverted to the post of a peon, and hence this application

3. The respondents have filed written statement contending that the applicant was an adhoc appointee, and, therefore, the applicant did not have any right to retain the post, that the adhoc appointment order dated 17.5.1980 clearly states in para 4 that the applicant should not

represent for regularisation for his adhoc appointment, that the representation made by the applicant was considered and it was replied as per rules of the Department. It is further contended that according to the Recruitment Rules for the post of LDC applicable ever since the applicant was appointed as adhoc LDC, only 10 % of the vacancies available in the grade of LDC were earmarked for promotion of group 'D' staff, that the applicant was offered an adhoc appointment to the post of LDC against vacancies within 90% quota reserved for direct recruitment as selected candidates through Staff Selection Commission <sup>to be</sup> regularly appointed against this quota were not available. The condition No.3 of this order Annexure A/1 dated 17th May, 1980 reads as under:-

" 3. Their appointments are purely on adhoc basis and they will be replaced by the qualified candidates of Staff Selection Commission."

It is contended by the respondents that sufficient number of vacancies to fill the vacancies under Direct Recruitment at Ahmedabad have not been provided by the Staff Selection Commission inspite of repeated requisition and therefore the applicant could continue as adhoc but when the Staff Selection Commission provide sufficient number of candidates who reported for duty the applicant was reverted to the post of peon as per offer of appointment. It is, therefore, contended that as per Recruitment Rules for the post of LDC applicable after 1st November, 1981 5% of the vacancies were to be filled from amongst the educational qualified group 'D' staff who passed the qualified examination and among these candidates who passed the examination the applicant was placed at No.22 according to seniority as appears from Annexure A/3 dated 21.6.1982 produced by the applicant. Therefore, the applicant could have got promotion through this mode only reserved for this mode became available. However, these 22 when 22 vacancies/being only 5% of the total vacancies, the total number of additional vacancies required was 440, but such large number of vacancies have not cropped up till now.

\*vacancies

and therefore the applicant could not be promoted under this mode. It is further contended by the respondents that the position of the applicant in the other mode of promotion which is by the method of seniority cum fitness from among ~~necessity of passing~~ the qualified group 'D' staff, without necessity of passing the qualifying examination was further lower as in addition to 21 persons who were senior to the applicant among those qualified in the examination, there were others who were senior to him but who had not passed the <sup>pay</sup> qualifying examination. It is contended that any/and increments given to the applicant cannot give the claim to the applicant to remain on the post of LDC. It is contended that the claim of the applicant for regularisation as LDC and the request for cancellation of reversion order cannot be accepted by ignoring the rightful claim of direct recruits for appointment and those of other senior group 'D' staff for promotion. It is also contended that there was no provision in the offer of appointment accepted by the applicant, that a notice would be issued to the applicant before his reversion. Since the order of reversion is not/<sup>a</sup>result of any disciplinary action taken against the applicant there was no need also to call for any explanation from the applicant. It is also contended by the respondents that the order of reversion will/<sup>not</sup>adversely affect the future promotion prospect of the applicant nor it will lead to premature retirement of the applicant from the Government service and such apprehension of the applicant are absolutely unfounded.

5. The learned advocate for the applicant submitted that though the applicant was appointed to the post of LDC on adhoc short term vide order Annexure A/1, he has been on that post for nearly more than 10 years and there was no departmental inquiry against him nor was any complaint about his work during this period and there was no reason to revert the applicant. He submitted that the applicant having passed



typing test and qualifying departmental test, he ought to have been promoted as LDC on regular basis. It is submitted by the learned advocate for the applicant that it was not open to the respondent authorities to revert the applicant to the post of peon without giving him any notice or without seeking any explanation from him and therefore also the order was bad in law.

6. The learned advocate for the applicant in support of his submissions has relied on the decisions Miss Anita Bose v. Union of India & Ors. 1986 (2) SLJ page 258 in which case the reversion order do not show any reason for the applicant's reversion and therefore it was held that the reversion order was arbitrary and bad and liable to be quashed. It was also held that if the Department has given quasi-permanent status to the employee and allowed employee to appear <sup>in</sup> the departmental examination and allowing the employee to be promoted on that basis, then the plea of the department that there were inadvertent acts on the part of the department cannot be accepted.

7. In the instant case, the applicant was given adhoc appointment on a temporary basis and the condition No.3 of the order is clear in terms which shows that the appointee will be replaced by the qualified candidate and Staff Selection Commission and the impugned order Annexure A/8, dated 5.5.1990 also in clear terms shows that the applicant was reverted <sup>as</sup> Shri A.Bhanumurthy was posted as LDC and he joined duty on 14.2.1990 and by joining of Shri Banumurthy the strength was fully completed. Therefore, this is a very clear speaking order, which cannot be said to be arbitrary ~~and~~ <sup>not attracted</sup> the principle of natural justice/and hence the above decision does not help the applicant. The next decision relied was Upendra Nath Ojha v. Union of India & Ors. 1986 Vol.3 S.L.J. p.358 in which it was held that reversion

of a temporary adhoc promotee after satisfactory service in higher post for a number of years was bad. This decision will not help the applicant, in view of the adhoc appointment of the applicant to the post of LDC against vacancies within 90% quota reserved for direct recruitment as selected candidates through Staff Selection Commission to be regularly appointed against this quota when made available. The department ultimately got the qualified candidate through Staff Selection Commission who reported for duty<sup>and</sup> there was no vacancy then available in the grade of LDC. The applicant was not even eligible from the educationally qualified group 'D' as he was placed at 22 according to seniority nor was he eligible in the other mode of promotion but method of seniority-cum-fitness and therefore, the order reverting him to the original post of peon cannot be said to be arbitrary or illegal. The next decision relied on was Baldev Singh Gill and others vs. State of Punjab and others 1987 vol.1 SLJ page 134 in which it is held that once induction of deputationists is held not justified, the promotees need not be reverted. This decision has no bearing to the facts of the present case. The next case relied on was Shankarlal Gangaram, Girdharilal Gopiram Vs. Union of India & Ors. 1987 Vol.3 SLJ page 290 in which it is held that a person who had been working on adhoc for 9 years without any lapse cannot be reverted as he was not found fit 8 years back while reviewing his services. This decision will not help the applicant because the facts were quite different in that case. The next decision is Ghan Shyam vs. Union of India 1987 Vol.3 SLJ page 673 in which it was held that one who is sent to another department without his consent can only be treated as on deputation there. The facts were that the case of the department was that the applicant was only an adhoc promotee but the Tribunal found that he was duly selected and post was vacant and therefore the mere mention of word adhoc or purely temporary in the promotion

order did not change in the nature of promotion or appointment and therefore it was held that the applicant in that case could not have been reduced in rank in terms of Article 311 (2) of the Constitution. This decision also will not help the applicant. The last decision relied on by the learned advocate for the applicant was Suresh Kumar Sharma V. State of Haryana and Ors. 1988 (1) SLR page 636. It was held in this decision that after the Government intimates the Chief Administrator that appointment of the petitioner was in violation of orders issued by Government from time to time and the post was to be filled up by promotion and as such appointment was not in order and on the basis of that instructions of Government the Chief Administrator withdrew the service benefits upto certain period without affording any opportunity then the rules of Natural justice are violated. This decision also will not help the applicant.

8. In the instant case, the main feature is that the appointment order Annexure A/1 dated 17.5.1980 condition No.3 is so clear that the appointment of the applicant was purely on adhoc basis and he was <sup>to</sup> be replaced by the qualified candidates of Staff Selection Commission. The order of reversion A/8 is clear that as one Shri Bhanumurthy was a qualified candidate of Staff Selection Commission and he having joined duty, the applicant who was only adhoc promotee in that division was reverted and by joining Shri Bhanumurthy the strength was fully completed. Therefore the speaking order Annexure A/8 is clear that the said order is neither arbitrary nor unconstitutional. Even according to the Recruitment Rules for the post of LDC applicable, only 10% of the vacancies available in the grade of LDC were earmarked of promotion of group 'D' staff and the applicant was offered an adhoc appointment to the post of LDC against vacancies within 90% quota reserved for Direct recruitment as selected candidates through Staff Selection Commission to be regularly appointed against this quota were not available but when the



Staff Selection Commission provided sufficient number of candidates who reported for duty, the applicant was reverted to the post of Peon and therefore the applicant has no right to claim for regular appointment as LDC more particularly for the quota reserved for direct recruitment. It cannot be disputed that the appointment purely on adhoc basis did not confer upon the applicant any claim for appointment to his post. If such adhoc appointments are made, it would mean that technically the post in question is still vacant for the person who is found eligible to occupy the quota post and adhocist has got no right either of seniority or otherwise on the post on which his adhoc appointment is made and his right to that post begin or comes into existence only from the date from which his services are regularised. Under the circumstances, it is not open to the applicant to claim benefit of the services on the post on which he has served merely as an adhocist. Moreover, when persons qualified to be appointed to a post in accordance with the rules are available, it would not be just or proper to continue adhoc appointee to that post. In the instant case, having regard to the facts of the case, we do not agree with the submission of the learned advocate for the applicant that the applicant should have been regularised on the post of LDC or that he ought to have been heard before the order reverting him to the post of peon was made by the respondents. The written statement also makes it clear that the order issued by the respondents namely Annexure A/8 will not adversely affect the future promotional prospects of the applicant, nor it will lead to premature retirement of the applicant from the Government service.

9. The Head-clerk of Respondent No.5 present before this Tribunal at the time of hearing submitted that there is no vacancy of LDC at Ahmedabad in their office. Learned advocate for the applicant submitted that the applicant is prepared to go anywhere in India in the post of LDC but

that is not a matter which we can give any direction. However, looking to the facts of the applicant's case involving filling up of a regular vacancy by ad hoc appointments lasting for a decade or so, the duration the applicant has worked as LDC, it will not be out of place for us to suggest to the respondents to consider the applicant's case for such appointment against such future vacancies any where in India as the applicant appears to be willing to work anywhere in India. But with regard to the facts of the case, we find no substance in the submission of the learned advocate for the applicant that the order Annexure A/8 passed by the respondent No.4 is either arbitrary, capricious, unreasonable and violative of Articles 14,16 & 19 of the Constitution of India.

10. The result is that the application shall have to be dismissed. The application is dismissed with no orders as to costs.



.C.Bhatt)  
Official Member



(M.M.Singh)  
Administrative Member

M. A. 185/90  
with  
O. A. 223/90

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CORAM : HON'BLE MR. S. K. JAIN .. JUDICIAL MEMBER

HON'BLE MR. M. M. SINGH.. ADMINISTRATIVE MEMBER

25/6/1990

Mr. M.N. Popat and Mr. J.S. Yadav for Mr. J.D. Ajmera,  
learned counsel for the applicant and respondent present.  
Respondents counsel has not filed reply, He may file  
reply within four weeks with <sup>the</sup> advance copy to the  
counsel of the applicant. Rejoinder may <sup>be</sup> <sup>filed</sup> by the  
counsel for the applicant within one week thereafter. <sup>to</sup>  
come for arguments on interim relief/ <sup>on completion of pleadings</sup> In the meantime  
the applicant <sup>be</sup> allowed leave in the rank of L.D.C.

H. M. Singh  
( M. M. Singh )  
Administrative Member

( S. K. Jain )  
Judicial Member

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