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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS. 748, 749, 750 & 751/94
Cuttack, this the 7th day of January, 2000

Nirupama Tripathy and others Applicants

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
2000.

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CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS. 748, 749, 750 & 751/94
Cuttack, this the 7th day of January 2000

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

In OA 748/94

Nirupama Tripathy, aged about 26 years, daughter of late Kalandi Tripathy, At-Khamangsasan, PO-Kakarudrapur, PS-Balipatna, District-Puri.

In OANo. 749/94

Annapurna Barik, aged about 27 years, daughter of Sri Kailash Chandra Barik, At-Nuagaon, PO-Jatni, District-Khurda.

In OA 750/94

Lalit Kumar Mallia, aged about 28 years, son of Sri Prafulla Chandra Mallia, At-Kapileswar, PO-Bhubaneswar, District-Khurda.

In OA No.751/94

Sri Laxmidhar Paikray, aged about 27 years, son of Sri Biranchinarayan Paikray, At-Shyamsundarpur, PO-Brajarajpur, Via-Rajrampur, District-Puri, at present working as Lower Division Clerk in the office of the Regional Office, E.S.I.Corporation, ESIC Bhawan, Janpath, Unit-IX, At/PO-Bhubaneswar, District-Khurda

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Applicants
Advocates for applicants - M/s
GAR Dora,
V.Narasing-
ha
J.K.Lenka

Vrs.

1. Union of India, represented through the Secretary, Ministry of Labour, Shrama Shakti Bhawan, Central Secretariat Building, New Delhi.

2. The Director General, Employees State Insurance Corporation, Panchadeep Bhawan, Kotta Road, New Delhi.

3. Regional Director, Employees State Insurance Corporation, ESIC Bhawan, Janpath, Unit-IX, At/PO-Bhubaneswar, District-Khurda.

4. Deputy Director, Regional Office (Orissa), Employees State Insurance Corporation, ESIC Bhawan, Janpath, Unit-IX, At/PO-Bhubaneswar, District-Khurda

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Respondents
Advocates for respondents-M/s R.N.Naik
A.Deo
££BS Tripath

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SOMNATH SOM, VICE-CHAIRMAN

In these four Original Applications the petitioners have made the same prayer. They are similarly situated. The facts are also similar. The respondents have filed almost similar though not identical counters opposing the prayer of the applicants. In view of this, these four Applications are being disposed of by a common order though facts of each case are being mentioned separately.

2. In OA No.748 of 1994 the applicant has prayed for regularising her service with consequential financial benefits. Her case is that for the post of Lower Division Clerk (LDC) in the office of Regional Director, Employees State Insurance Corporation, names were sponsored by the Employment Exchange. Respondent no.3 issued a letter to the applicant mentioning that she has been selected and offered the post of LDC in the scale of Rs.950-1500/-. This letter at Annexure-1 also indicated the terms and conditions on which the applicant was appointed. Accordingly, the applicant joined the post and her appointment was also approved by the Regional Director in order dated 28.10.1991 at Annexure-2. Thereafter respondent nos.3 and 4 have issued different appointment orders at different times and the applicant has been continuing. In the letter at Annexure-3 respondent no.4 reported to respondent no.2 on 22.1.1992 that the applicant along with three others was appointed as LDC after obtaining names from the Employment Exchange and after holding an interview. Thereafter in order dated 127.4.1992 (Annexure-4) her appointment was extended for a period of three months with effect from 15.4.1992

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until further orders whichever is earlier. The applicant has stated that she has passed Matriculation Examination and has been working for more than four years. She is going to be agebarred shortly. But the authorities have not taken steps to regularise her service and that is why she has come up in this petition with the prayer referred to earlier.

3. Respondents in their counter have stated that the applicant was appointed on an ad hoc basis in the post of LDC. According to the Rules, the post of LDC is to be filled up by candidates who are qualified in the examination held by the Staff Selection Commission and whose names are recommended by Staff Selection Commission. The ad hoc appointment is a stop gap arrangement and the Employees State Insurance Corporation (ESIC) are expecting candidates from the Staff Selection Commission. They have also stated that from the post of LDC promotion is given to the post of UDC and from that post to the post of Head Clerk /Assistant. As persons working in the cadre of LDC were promoted on ad hoc basis to the post of UDC and some UDCs were given ad hoc/officiating promotion to the post of Head Clerk/Assistant, vacancies arose in the post of LDC but these were not regular vacancies. As the applicant has not come through the Staff Selection Commission her services cannot be regularised. On the above grounds, the respondents have opposed the prayer of the applicant.

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4. By way of interim relief the applicant had prayed that during the pendency of this OA her services should not be terminated without leave of

the Tribunal. On 30.12.1994 by way of interim relief it was directed that the services of the applicant should not be terminated till the disposal of the OA. This interim order was vacated in order dated 17.10.1996. Again in order dated 5.12.1996 the order of vacation of stay was recalled and it was ordered that the stay granted in order dated 30.12.1994 shall continue either till disposal of the OA or till regular candidates recruited in accordance with rules are available to join the post and no surplus post of LDC is available to accommodate the applicant. This order is continuing till date.

5. In OA No. 749 of 1994 the applicant has made the same prayer as the applicant in OA No. 748 of 1994 for regularisation of her services with consequential financial benefits. By way of interim order it has been prayed that till final disposal of the OA her services should not be terminated without leave of the Tribunal. The case of the applicant in OA No. 749 of 1994 is similar to that of applicant in OA No. 748 of 1994. Her name was sponsored by the Employment Exchange and she faced the interview and the respondents issued to her an offer of appointment on 21.10.1991 (Annexure-1). Her appointment was approved by Regional Director on 21.7.1992 (Annexure-2). At Annexure-3 is the same letter dated 22.1.1992 to respondent no.2 in which name of this applicant has been mentioned. It is further stated that in spite of working for about 4 years her services have not been regularised and that is why she has come up with the prayer referred to earlier. In this case also on 30.12.1994 interim stay was granted which was vacated on 17.10.1996 and again on 5.12.1996 stay

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was granted as in the case of OA No. 748 of 1994.

6. The respondents in their counter have taken the same stand that the applicant is working on ad hoc basis in the post of LDC which is a Class III post and under the rules it is to be filled up by candidates who have qualified in the examination held by the Staff Selection Commission. They have also stated that such ad hoc appointment would not confer any right on her to get regularised in the post. It is further stated that regular posts are going to be filled up by candidates nominated by Staff Selection Commission. Three such persons have come and joined and others will come shortly. They have also mentioned that because of ad hoc/ officiating promotion of regular LDC to UDC and regular UDC to the post of Head Clerk/Assistant, the vacancies in the rank of LDC have come up which have been filled up on ad hoc basis by the applicant. Because of such ad hoc service the applicant cannot claim regularisation.

7. In OA No. 750 of 1994 the prayer of the applicant and the interim prayer are the same. Facts are exactly similar to the facts in OANos. 748 and 749 of 1994 and it is therefore not necessary to repeat the same. In these cases also the same interim order as in the earlier two cases was passed.

8. The respondents have opposed the prayer by filing identical counters and urging the same grounds and it is not necessary to repeat the same.

9. In OA No. 751 of 1994 the applicant has made the same prayer as the applicants in the other three cases. The interim prayer is also the same. The facts urged by the applicant are exactly similar to the facts in the other three cases. The same interim order

as in the other cases was passed. The counter filed by the respondents opposing the prayer of the applicant is also identical.

10. We have heard Shri G. A.R.Dora, the learned counsel for the petitioner and Shri B.S.Tripathy, the learned counsel for the respondents and have also perused the records.

11. It has been submitted by the learned counsel for the petitioners that the names of these four applicants were sponsored along with others by the Employment Exchange. The applicants appeared at a typing test in which they were successful and thereafter appeared at an interview. They were given offer of appointment after they came through this selection. The respondents in their counter have stated that the averment of the applicants that they came through a process of selection is not correct. They were appointed purely on ad hoc basis. On perusal of the pleadings we find that none of the applicants has mentioned in the OA that she/he has appeared at a typing test. The applicants in OA Nos. 749 and 751 of 1994 have mentioned that they had appeared at an interview. The applicants in OA Nos. 748 and 750 of 1994 have not even mentioned that they had appeared at an interview. In view of absence of such averment it is not possible to hold that the applicants had appeared at a typing test in which they were successful. On the other hand, from the letter dated 22.1.1992 at Annexure-3 issued by Deputy Regional Director to Director General (Estt.I.B), ESIC, it appears that the four applicants were selected by holding an interview by a Selection Committee constituted as per Head Office letters dated 13.3.1991

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and 15.5.1991. From this it appears that these applicants did appear at an interview. It has been submitted by the learned counsel for the petitioner that in the offer of appointment it was mentioned that the appointment will be on ad hoc basis. As the applicants came through a process of selection it is urged that styling their appointment as ad hoc is wrong and they should have been given regular appointment. From the offer of appointment at Annexure-1 of the OAs it is seen that it has been mentioned that the appointment will be on ad hoc basis as a stop-gap arrangement and is not expected to last for more than three months. It was also mentioned that there is no chance of his/her appointment being made on regular basis. From this it is clear that in the very offer of appointment it was made clear that the appointment was on ad hoc basis and for a period of three months. But in fact the appointments were extended from time to time and continued for a number of years till the stay order was issued by the Tribunal. As the applicants accepted the offer of appointment knowing that the appointment is for a fixed period and their appointments cannot be regularised, they cannot now claim that by virtue of such ad hoc appointment they should have been given regular appointment.

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12. It is next urged by the learned counsel for the petitioners that ad hoc appointment by its very nature is for a limited period to attend to urgent nature of work. The fact that in these cases ad hoc appointments have continued for a number of years would show that there were regular vacancies and therefore the applicants should have been given regular

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appointment. The fact that the applicants have continued on ad hoc basis for long periods would not confer on them any right to get regularised when it was made clear in the original offer of appointment that there is no chance of their getting regularised in the post. This contention is therefore held to be without any merit and is rejected.

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13. In support of his contention the learned counsel for the petitioners has relied on the case of Smt. Vijay Goel v. Union of India, AIR 1998 SC 101. The learned counsel for the respondents has relied on the following decisions:

- (i) State of Himachal Pradesh v. S.K.Verma,
AIR 1996 SC 1565;
- (ii) Dr. Surinder Singh Jamla v. State of Jammu & Kashmir, AIR 1996 SC 2775;
and
- (iii) Dr. A. Argenakar v. State of Maharashtra,
AIR 1995 SC 962.

We have gone through these decisions. The law has been well settled by several decisions of the Hon'ble Supreme Court that regularisation cannot be done dehors the Recruitment Rules. In these cases Rules provide for filling up of the post of LDC in ESIC by way of selection through Staff Selection Commission. Only such persons who are nominated by Staff Selection Commission after being successful in the examination, can be appointed as LDC. Besides, the present controversy has been settled by the decision of the Hon'ble Supreme Court in a similar case of Employees State Insurance Corporation in Civil Appeal Nos. 5302-5/92 (Director General, ESIC and another v. Shri Trilok Chand and others), decided on 10.12.1992. In that case a decision

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of the Principal Bench of the Tribunal directing the Corporation to take steps to regularise the services of the respondents in consultation with the Staff Selection Commission was challenged. The facts of that case were that the respondents before the Hon'ble Supreme Court were appointed on casual or ad hoc basis as LDC on the express condition that their appointment was of casual nature, to continue only till candidates were available as a result of the regular selection held for the purpose. But as the process of selection could not be completed for some time, the appointments of the respondents were continued from time to time. In that case the Hon'ble Supreme Court set aside the order of the Tribunal directing regularisation of the respondents before them in consultation with the Staff Selection Commission. It has been submitted by the learned counsel for the petitioners that this case is distinguishable because there the respondents were daily rated employees and at the time of their selection, others were not considered. We have gone through the decision of the Hon'ble Supreme Court which has been filed in this case, carefully. From the order of their Lordships it does not appear that the respondents in that case were daily rated employees. On the contrary it has been mentioned specifically that they were appointed on casual or ad hoc basis as Lower Division Clerks. In the present case before us the applicants were also appointed on ad hoc basis and therefore their case is squarely covered by the decision of the Hon'ble Supreme Court in **Shri Trilok Chand's case 9supra**). Besides, as we have already mentioned, the law is well settled that regularisation cannot be made dehors the Recruitment Rules. Otherwise

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such ad hoc appointment of persons and subsequent regularisation would be a second channel of appointment to civil posts. The fact that the applicants have continued for a number of years on ad hoc basis cannot also be a ground to overreach the requirement of the Recruitment Rules. This has been laid down in the case of Dr.A.Argenakar's case (supra).

14. In view of the above discussion, we hold that the applicants are not entitled to the relief claimed by them. The petitions are held to be without any merit and are rejected but without any order as to costs. As regards the interim relief the Tribunal in their order dated 5.12.1996 ordered that stay granted by order dated 30.12.1994 shall continue either till disposal of the OA or till regular candidates recruited in accordance with the rules are available to join the posts and no surplus posts of LDCs are available to accommodate the applicants whichever is earlier. With the disposal of the OAs, the above orders automatically stand vacated.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som.
(SOMNATH SOM)
7.1.2000
VICE-CHAIRMAN