

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.Nos.161/96, 1414/96, 1435/96, 1440/96
1035/97, 1039/97 & 228/98

Dated this the 19th day of October, 1999.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

O.A.No.161/96

1. Kunjumon M.T.
Casual Labourer,
Regional Passport Office,
Kochi, residing at Manavalan HOuse,
Karayamparambu, Karukutty P.O.
2. Mini K.V.
Casual Labourer,
Regional Passport Office, Kochi.
3. Mary Jane C.X.,
Casual Labourer,
Regional Passport Office, Kochi.
4. Lekha P.A.,
Casual Labourer,
Regional Passport Office, Kochi.
5. Shailaja K.P.,
Casual Labourer,
Regional Passport Office, Kochi.Applicants

(By Advocate Mr.M.R.Rajendran Nair)

vs.

1. Union of India, represented by Secretary to
Government, Ministry of External Affairs, New Delhi.
2. The Joint Secretary and Chief Passport Officer,
Ministry of External Affairs, New Delhi.
3. The Regional Passport Officer, Kochi.
4. The Deputy Secretary, Staff Selection Commission, New
Delhi.Respondents

(By Advocate Mr.Govindh K.Bharathan, SCGSC)

In O.A.1414/96

1. C.Sahadevan, Casual Lower Division Clerk,
Passport Office, Trivandrum.
2. Beena C.S., Casual Lower Division Clerk,
Passport Office, Trivandrum.
3. Jiji.J,
Casual Lower Division Clerk,
Passport Office, Trivandrum.

(By Advocate Mr.M.R.Rajendran Nair)

vs.

1. Union of India, represented by Secretary to Government Ministry of External Affairs, New Delhi.
2. Joint Secretary and Chief Passport Officer, Ministry of External Affairs, New Delhi.
3. The Passport Officer, Passport Office, Trivandrum.

(By Advocate Mr. S. Radhakrishnan, ACGSC)

O.A. No. 1435/96

Anitha V.R.,
Peon, Passport Office,
Trivandrum, residing at Kattil Puthen Veedu,
Kudavoor, Anayara P.O., Trivandrum. ..Applicant

(By Advocate Mr. M. R. Rajendran Nair)

vs.

1. Union of India, represented by Secretary to Government Ministry of External Affairs, New Delhi.
2. Joint Secretary and Chief Passport Officer, Ministry of External Affairs, New Delhi.
3. The Passport Officer, Passport Office, Trivandrum.

(By Advocate Mr. Govindh K. Bharathan, SCGSC)

O.A. No. 1440/96

1. Rekha K. Nair,
Casual Lower Division Clerk,
Passport Office,
Thiruvananthapuram.
2. Sheela Kurian,
Casual Lower Division Clerk,
Passport Office,
Thiruvananthapuram. ..Applicants

(By Advocate Mr. Shafik M.A.)

vs.

1. Union of India, represented by its Secretary to Ministry of External Affairs, Government of India, New Delhi.
2. Joint Secretary & Chief Passport Officer, Ministry of External Affairs, Government of India, New Delhi.
3. Administrative Officer (P.V.IV), Ministry of External Affairs, Government of India, New Delhi.

4. Passport Officer,
Passport Office,
Thiruvananthapuram.

5. Staff Selection Commission,
represented by Secretary
C.G.O.Complex,
Block No.12, Lodhi Road,
New Delhi-110003. .. Respondents

(By Advocate Mr.James Kurian,ACGSC)

O.A.No.1035/1997

1. Kunjumon M.T.
Casual Labourer,,
Regional Passport Office,
Kochi.

2. Lekha P.A.
Casual labourer,
Regional Passport Office,
Kochi.

3. Shailaja K.P.
Casual Labourer,
Regional Passport Office, Kochi.

4. Mary Jane C.X.,
Casual Labourer,
Regional Passport Office,Kochi. .. Applicants

(By Advocate Mr.M.R.Rajendran Nair)

vs.

1. Union of India, represented by Secretary to Govt.,
Ministry of External Affairs,New Delhi.

2. The Joint Secretary and Chief Passport Officer,Ministry
of External Affairs, New Delhi.

3. The Regional Passport Officer,Kochi. .. Respondents

(By Advocate Mr. P.R.R.Menon,ACGSC)

O.A.No.1039/97

1. Rekha K.Nair,
Casual Lower Division Clerk,
Passport Office,Cochin.

2. Sheela Kurian,
Casual Lower Division Clerk,
Passport Office,Cochin. .. Applicants

(By Advocate Mr. Shafik M.A.)

vs.

1. Regional Passport Officer,
Regional Passport Office,
Ernakulam.
2. Passport Officer,
Passport Office,
Thiruvananthapuram.
3. Union of India, represented by its
Secretary to Ministry of External Affairs,
Government of India, New Delhi. .. Respondents

(By Advocate Mr.P.R.R.Menon, ACGSC)

O.A.No.228/98

1. Hila Hentry,
Casual Lower Division Clerk,
Regional Passport Office, Kochi.
2. K.J.Benna,
Casual Lower Division Clerk,
Regional Passport Office, Kochi-36. .. Applicants

(By Advocate Mr.M.R.Rajendran Nair)

vs.

1. Union of India, represented by Secretary to Government of India, Ministry of External Affairs, New Delhi.
2. The Regional Passport Officer, Ernakulam. .. Respondents

(By Advocate Mr.S.Radhakrishnan, ACGSC)

These Applications having been heard on 6.7.99, the Tribunal on 19.10.99 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

As common issues arise for consideration in all these Applications, these Applications were linked together and heard jointly. They are being disposed of by this common order. As there are some distinguishing features in the individual cases, the facts of the cases are separately stated thus:

O.A.No.161/96

Applicants 1 to 5 in this O.A. being sponsored by the Employment Exchange and after a process of selection were engaged under the third respondent as casual employees to perform the duties of Lower Division Clerks with effect from 20.4.1992, 22.6.1992, 20.4.1992, 29.5.1992 and 24.4.1992 respectively. They continued in service with artificial breaks for a day and are performing the duties of Lower Division Clerks in Group-C. The re-engagement, regularisation etc. of the casual labourers of the three Passport Offices, viz. Calicut, Kochi and Thiruvananthapuram, had been subject matter of various Original Applications before the Tribunal, i.e., O.A.903/91, 968/91, 1037/91, 1049/91, 1160/91 and 1333/91. By an order dated 25.3.1993 the Tribunal disposed of these applications directing the respondents the regularisation of the applications if they were successful in the departmental test directed to be held in the same manner as the test held on 24.3.1985 for regularisation of 299 LDCs who were casual labourers similarly situated like the applicants therein. It was also directed that the applicants in those cases would be retained in service till the direction as stated above was complied with depending upon the existence of vacancies and the decision of the respondents to conduct departmental tests. When the services of the casual Lower Division Clerks were attempted to be terminated, they approached this Tribunal in O.A.795/93, which was disposed of by order dated 6.9.1993 directing that the applicants therein should be allowed to continue in preference to their juniors and freshers, that a seniority list of casual Lower Division Clerks should be prepared and declaring that the applicants who had put in one year's continuous service were eligible to be considered for regularisation in service through examination/test duly conducted by the competent authority, namely the Staff

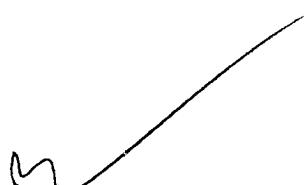
Selection Commission. Another batch of cases O.A. 2034/93, 2233/93, 11/94, 60/94, 280/94 and 447/94 were also disposed of by judgment dated 5.4.1994 with certain directions including a direction to prepare a common seniority list of casual employees of the 3 Passport Offices. When O.A. 795/93 was pending, the Ministry of Personnel, Public Grievances and Pension issued a notification announcing a scheme of Special Qualifying Examination 1993 to be conducted by the Staff Selection Commission for regularising the services of adhoc/daily rated casual Lower Division Clerks, Stenographers Grade III/D working in various Central Government Offices. The applicants submitted representations to the Secretary, Ministry of Personnel, Public Grievances and Pension requesting that they may be permitted to participate in the Special Qualifying Examination. The applicants, however, being permitted, appeared in the examination which was held on 26.12.1993, but they were not successful, according to the applicants, in the typing test. The applicants made a representation to the second respondent requesting that they may be allowed to participate in the departmental test to be held according to the directions of the Tribunal in its order in O.A. 903/91 or be given another chance to participate in a qualifying examination. The applicants other than applicant No.4 filed O.A. 983/95 alongwith 2 others seeking regularisation with effect from the initial dates of their appointment, but the application was dismissed as the applicants had not been successful in the special qualifying examination. Thereafter the applicants made Annexures A3 to A7 representations requesting for a chance to take part either in the departmental test or in a special qualifying examination again. Finding no response to this representations, the

applicants have filed this application for a declaration that they are entitled to be regularised with effect from the date of their initial engagement and for a direction to the respondents to regularise them in service accordingly within a time limit.

2. The respondents in their reply statement have raised a preliminary objection that as the 3rd prayer in the O.A.No.983/1995 was "to declare that the applicants are entitled to be regularised as LDCs and to direct the Respondents to regularise the applicants as LDCs with effect from their initial date of appointment" is virtually the same as the prayer at sub-para (i) in paragraph 8 of this Original Application which is the main prayer, this application is barred by res judicata as O.A.983/95 was dismissed, with costs of the Respondents. On merits, the respondents contend that as the applicants have been allowed to participate in the Special Qualifying Examination which was held on 26.12.1993 and they had failed to qualify, they are not entitled to get regularisation, nor are they entitled to participate in the test to be held in terms of the directions of the Tribunal in O.A. 3/1994. The applicants, therefore, are not entitled to any reliefs, contend the respondents.

O.A.No.1414/96

3. The applicants being sponsored by the Employment Exchange was selected by the third respondent for engagement as Casual Lower Division Clerks on daily wages on various dates from 20.7.92 and they were engaged continuously with artificial breaks. As they were not given the due wages of Group-C employees, they along with others failed O.A.No.781/1993 for a declaration that the applicants therein who had put in one year's continuous



service were eligible to be considered for regularisation in service through examination/test duly conducted by the Staff Selection Commission. The applicants appeared in the examination held on 26.12.1993, but they were not successful. Coming to know that the Tribunal had in O.A. 903/91 directed that a departmental test in the same manner as was held in the year 1985 should be held for regularisation of Casual Lower Division Clerks and that an examination is proposed to be held on 15.1.97 the applicants submitted representations requesting that they also may be permitted to take the examination. Finding no response and apprehending that they would not be permitted to take the examination, nor would they be given any further chance to be regularised, the applicants have filed this application for a declaration that they are entitled to be regularised in service as Lower Division Clerks with effect from the date of their initial engagement and for a direction to the respondents to regularise them subjecting them to the departmental test to be held on 15.1.97.

4. The respondents in their reply statement contend that the applicants having failed in the examination conducted by the Staff Selection Commission on 26.12.1993 for regularising their services, they are not entitled to be reliefs claimed. It is also contended that in view of the specific directions in the judgment dated 8.8.1995 in O.A.3/94 that the examination should be held only for the applicants in O.A. Nos. 903/91, 968/91, 1037/91, 1049/91, 1160/91, 1333/91 and 3/94, the claim of the applicants that they should be also allowed to participate in the examination is not sustainable. The respondents contend that the applicants are not entitled to any reliefs.

O.A.No.1435/96

5. The applicant being sponsored by the Employment Exchange and selected by the third respondent for engagement as a Casual Lower Division Clerk, he joined as such in 1992 and was continuously engaged but with intermittent breaks. She was one of the applicants in O.A.No.781/1993 which was disposed of with a declaration that the applicants therein who had put in one year of continuous service were eligible to be considered for regularisation in service through examination/test duly conducted by the Staff Selection Commission. Though the applicant appeared in the Special Qualifying Examination held on 26.12.1993, she was not successful. The applicant also made a representation that she may be allowed to participate in the test to be held as directed by the Tribunal in O.A.No.903/91, but finding no response, the applicant has filed this application for a declaration that she is entitled to be regularised in service as Lower Division Clerk with effect from the date of her initial engagement as casual Lower Division Clerk and to direct the respondents to regularise her service accordingly, if necessary by subjecting her to the departmental test to be held on 15.1.97.

6. The respondents contend that as the applicant has failed in the test held on 26.12.93 and as the examination conducted on 15.1.97 was only for the applicants in O.A.Nos.903/91, 968/91, 1037/91, 1049/91, 1160/91 and 3/1994 the applicant is not entitled to the reliefs claimed.

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O.A.No.1440/96

7. The first applicant was engaged as Lower Division Clerks on a casual basis through the Employment Exchange in the Regional Passport Office, Cochin on 14.5.1992. She was transferred to the Passport Office, Trivandrum by order dated 1.8.1996, Her position in the combined seniority list of casual labourer Lower Division Clerks as on 6.12.1993 was Sl.No.87. The second applicant engaged as casual L.D.C. at Regional Passport Office, Cochin with effect from 14.7.1992 was also transferred to the Regional Passport Office, Trivandrum by Annexure Al order. In the combined seniority list of casual labourers as on 6.12.1993 , the applicant No.2 is placed at Sl.No.99. The applicants were permitted to appear in the Special Qualifying Examination conducted on 26.12.1993 for the purpose of regularisation of Lower Division Clerks . But they were not declared successful. When the respondents threatened to terminate the services of the applicants and similarly situated others, they filed O.A. No.795/1993 challenging the attempted termination. O.A.No.795/93 was heard and disposed of alongwith O.A.Nos.922/92, 52/93 and 781/93 by order dated 6.9.1993 declaring that the applicants were eligible to be considered for regularisation in service through examination/test conducted by the competent authority. O.A.Nos.903, 968, 1037, 1049, 1160 and 1333 of 1991 filed by the persons similar to the applicants were also disposed of with similar declarations. However, after the judgement dated 6.9.1993, the applicants participated in the Special Qualifying Examination held on 26.12.1993. When a

Special Qualifying Examination as directed by the Tribunal's judgment in O.A.No.903/91 and connected cases was not held, one Ms. Jayalekha and 14 others filed O.A. No.3/1994 which was disposed of by the Tribunal by order dated 8.8.1995 finding that the examination on 26.12.1993 vide the employment notice dated 21 and 27th August, 1993 was not held in conformity with the directions contained in the order of the Tribunal and directing that an examination should be held specially only in respect of those who were applicants in O.A.904/91 and connected cases as also to the applicants in O.A.3/1994. The respondents decided to hold an examination as directed in O.A.No.3/94 on 15.1.1997. When the applicants approached the 4th respondent seeking permission to participate in that examination, they were told that they would not be permitted to take part in the examination. Therefore the applicants have filed this application for a declaration that they are entitled to appear in the examination for regularisation of their services and for a direction to the respondents to subject the applicants also to examination for regularisation and to regularise the services of the applicants with effect from the date of their entitlement with all consequential benefits.

8. The respondents in their reply statement contend that the Special Qualifying Examination was being held only for the applicants in O.A.Nos.3/94, 903/91, 968/91, 1037/91, 1049/91, 1160/91 and 1333/91 as in terms of the directions contained in the order of the Tribunal in O.A.3/94, the examination is to be restricted to those applicants only. As the applicants had been given a chance to appear in the special qualifying examination conducted by the Staff Selection Commission on 26.12.1993 and were not successful in the examination, the respondents contend that the applicants are not entitled to any reliefs as

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prayed for in this application.

9. In the rejoinder filed, the applicants have contended that the respondents have granted relaxation in the case of 16 candidates who failed to pass the typewriting test in the examination held on 15.1.1997 by the order dated 10.4.1997(Annexure A8) and that the applicants are entitled to the same benefit of relaxation.

O.A.No.1035/97

10. The applicants commenced their service as casual Lower Division Clerks in the Regional Passport Office, Kochi on 20.4.1992, 29.5.1992, 24.4.1992 and 20.4.1992 respectively. They alongwith similar others filed O.A. No. 1309/92 for a declaration that they were entitled to get 1/30th of the wages of a monthly rated Group C employee L.D.C. for every days of work and two paid weekly holidays after 5 days continuous work and for a direction to the respondents to pay them wages at that rate including the arrears from the date of initial engagement. They also prayed that it may be declared that they should be allowed to continue in service subject to availability of work and in preference to juniors and freshers and should be considered for regularisation in their turn. The Original Application was disposed of declaring that the applicants therein were entitled to be paid 1/30th of the monthly wages of a Group-C L.D.C. for a day's work and to continue in service so long as work is available and directing the respondents to pay to the applicants wages at the said rate. In a later judgment in O.A.No.2034/93 the Tribunal directed that a common seniority list of casual employees working at Calicut, Kochi and Trivandrum Passport Offices would be prepared

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ranking them in the order of their length of service as on 6.12.1993 and that the casual employees would be engaged from the list on the basis of priority of their ranking. In the seniority list prepared pursuant to the said direction, the applicants were placed at Sl.Nos. 64, 131, 83 and 116 respectively(Annexure-A3). As the applicants did not pass the typewriting test in the examination held on 26.12.93 for regularisation, they were not regularised. O.A.161/96 filed by the applicants for their regularisation is pending. While so, the applicants were transferred to the Passport Office, Trivandrum. Their request for retention at Kochi was not acceded to. O.A. 878/1996 filed by the applicants for the same reliefs was dismissed. While so, an order dated 31.7.1997(Annexure-A4) was issued relieving the applicants from the Passport Office,Trivandrum with effect from the afternoon of 31.3.1997 and directing them to report for duty to the Passport Office, Kochi with immediate effect. When the applicants reported for duty at Kochi pursuant to Annexure-A4 order on 1.8.97 and submitted their joining report, they were not allowed to join duty. When they reported again on 4.8.97, they were told that as there was no requirement of Group-C casual worker they might indicate their willingness to work as Group-D casual workers. Aggrieved by that, the applicants have filed this application for a declaration that they are entitled to work as Group-C casual employees and to get wages accordingly and for a direction to the respondents to engage them on the basis of their ranking and seniority as Group-C casual employees..

11. The respondents in their reply statement contend that as there is no requirement of Group-C casual labourer, the request of the applicants to engage them as Group-C casual labourer and to make payment to them cannot be acceded to. They contend that as there was requirement of

Group-D casual labour, the applicants have been given engagement on their expressed willingness. The respondents contend that the application is without any merit and the same is liable to be dismissed.

O.A.No.1039/97

12. The applicants in the case are Rekha K.Nair and Sheela Kurian, who were applicants in O.A. 1440/96. While they were working in the Regional Passport Office, Trivandrum on 31.7.97 the second respondent issued an order relieving them of their duties with effect from the afternoon of 31.7.97 with a direction to report for duty at the Passport Office, Kochi with immediate effect(Annexure-A4). When they reported for duty and submitted their joining report on 1st August,1997, they were not assigned any work. On 4.8.97 when the applicants again reported for duty they were served with the impugned letter dated 4.8.97 stating that there was no requirement of Group-C casual worker in Cochin Passport Office and offering them casual work of Group-D nature subject to their willingness. It is aggrieved by this that the applicants have filed this application alleging that though there was sufficient work to engage the applicants as Group-C casual L.D.Cs, they are being denied work and wages and praying that the impugned order at Annexure A6 may be set aside and for direction to the respondents to continue to engage them as Group-C casual L.D.Cs and to make payment to them as Group-C L.D.Cs as long as they are engaged.

13. The respondents in their reply statement contend that as there was no requirement of Group-C casual labourers, the impugned order was issued only to assist the applicants by giving them work available and that there is no merit in the contention of the applicants that work of

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casual L.D.Cs is being denied to them, though the same is available. According to the respondents the application is without any merit and the same is liable to be dismissed.

O.A.No.228/1998

14. The applicants were engaged as casual Lower Division Clerks under the second respondent with effect from 21.4.92 and 24.4.92 respectively. They were allowed to participate in the special qualifying examination held in the year 1993 for regularisation as Lower Division Clerks but they were not successful as they did not qualify in the typewriting test. While so a common seniority list of casual labourers was prepared by the respondents but the applicants and 4 others were disengaged with effect from the afternoon of 9.1.95 as they were juniormost casual labourers as per the list. The applicants made representations to the 1st respondent on 28.12.94 and 27.10.94 respectively requesting that they should be given another chance to appear in a typewriting test for regularisation. O.A.56/95 filed by the applicants challenging the termination of their services was disposed of permitting the applicants to make representation to the 1st respondent (copy of judgment -Annexure -A4). However the applicants did not make any representation pursuant thereto. Alleging that there is scope for reengagement of casual Lower Division Clerks like the applicants, the applicants have filed this application for a declaration that they are entitled to be reengaged as casual Lower Division Clerks and to get regularisation in service and further direction to the respondents to reengage the applicants as casual Lower Division Clerks and to consider their case for

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regularisation after giving them an opportunity to participate in the typewriting test.

15. The second respondent has filed a reply statement on behalf of both the respondents. The respondents contend that as there is no requirement of casual Lower Division Clerks the prayer of the applicants for reengagement cannot be granted. It is further contended that as there is no proposal to hold any further typewriting test for regularisation of casual Lower Division Clerks, the applicants are not entitled to the relief for a direction to the respondents to regularise the services of the applicants by holding one more typewriting test. As the casual labourers who were senior to the applicants are out of service and as there is no requirement of Group-C casual labourer, the respondents contend that the application is liable to be dismissed.

16. We have carefully gone through the pleadings in all these cases and have heard the learned counsel for all the parties.

17. The applicants in all these applications were engaged as casual labourer Lower Division Clerks in the offices of the Regional Passport Officers, Trivandrum or Kochi. When the services of the applicants were threatened to be terminated, they have approached the Tribunal seeking regularisation. The Original Applications filed by them O.A.796/93, 922/92, 52/93 and 781/93 were disposed of by this Tribunal by an order dated 6.9.1993 declaring that the applicants were eligible to be considered for regularisation in service through examination/test

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conducted by the competent authority. All these applicants were, pursuant to the above judgment, allowed to participate in a Special Qualifying Examination conducted by the Staff Selection Commission on 26.12.1993 pursuant to a notification issued by the Ministry of Personnel, Public Grievances and Pensions, containing a scheme for Special Qualifying Examination to be held for regularisation of the services of ad-hoc/daily rated casual labourer Lower Division Clerks/Stenographer Gr.III/D working in the various Central Govt. offices. Though the applicants were successful in the written examination, they were not regularised in service as they did not qualify in the typewriting test. The Original Application Nos.903/91,968/91,1037/91, 1049/91, 1160/91 and 1333/91 of the Ernakulam Bench of the Tribunal filed by the casual labourer Lower Division Clerks working in the Regional Passport Offices, Calicut, Kochi and Trivandrum were disposed of by an order dated 25.3.93 directing the respondents the regularisation of the said applicants if they were successful in a departmental test which was directed to be held in the same manner as was held on 24.3.1985 for regularisation of 299 Lower Division Clerks. As the test/examination directed to be held by the Tribunal in its order dated 25.3.1993 was not held, some of the applicants in those Original Applications filed O.A. 3/94 before this Tribunal, praying that the respondents be directed to regularise their services conducting appropriate departmental test as directed by the Tribunal in its order in the aforesaid cases. Though the respondents contended that the examination held on 26.12.1993 by the Staff

Selection Commission was in terms of the directions contained in the order in the aforesaid cases and that the applicants therein having failed to appear in the test, were not entitled to any relief, the Tribunal rejected the contentions holding that the examination which was held on 26.12.1993 did not satisfy the directions of the Tribunal in its order in O.A.903/91, 968/91, 1037/91, 1049/91, 1160/91 and 1333/91 and directed them to hold a special qualifying examination on the same lines as the examination which was held in the year 1985 in respect of those who were applicants in O.A. 3/94 and in O.A.903/91 and connected cases. Pursuant to the above direction, the respondents notified an examination to be held on 15.1.97. The applicants in all these cases who were not regularised on account of their failure to qualify in the typing test which was part of the examination held on 26.12.93 for regularisation requested that they should also be allowed to participate in the examination scheduled to be held on 15.1.97 or that they be regularised in service with effect from the dates of their initial engagement. This request of the applicants having been not acceded to, they have filed this application praying that they may be regularised in service with effect from the date of their initial engagement as casual labourer Lower Division Clerks if necessary allowing them to appear in the examination on 15.1.97 or subjecting them to a fresh typewriting test.

18. In O.A.161/97, 1414/96, 1435/96, 1440/96 and 228/98, the applicants have prayed for regularisation. The applicants in O.A. 228/98 claimed reengagement and consideration for regularisation additionally. The claim of the applicants in O.A.1035/97 and 1039/97 is for direction

to engage them as casual labourer in Group-C.

19. It is admitted by the applicants in all these cases that they had been permitted to appear in the Special Qualifying Examination held by the Staff Selection Commission on 26.12.93 for regularisation as Lower Division Clerks on the basis of their casual service and that they failed to qualify because of their failure to pass in the typewriting test. It is also admitted by the applicants in O.A.161/96 in the application itself that excepting the 4th applicant, all others filed O.A. 983/95 praying for regularisation with effect from the dates of their initial engagement and the application was dismissed since the applicants were unsuccessful in the special qualifying examination and a Bench of the Tribunal had in its order dated 6.9.1993 in O.A. 795/93 and connected cases, to which the applicants were parties, held that they are eligible to be considered for regularisation in service through examination/test conducted by the competent authority. Admittedly all these applicants were though allowed to participate in the special qualifying examination held on 26.12.93, did not qualify in the examination. As the special qualifying examination was held as a one time dispensation with a view to afford an opportunity to the casual labourer Lower Division Clerks and Stenographers to qualify for regularisation in service, as a deviation from the statutory recruitment rules, unless they qualify in the examination they would not be eligible for regularisation. Annexure-R4A in O.A.161/96 is a copy of the notification of the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) dated 2nd August, 1993 regarding regularisation of adhoc/daily rated/casual LDCs/Stenographers Grade III/D in various

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Central Government offices and the complete scheme thereunder. According to paragraph 4 of the scheme the examination would consist of 3 parts, namely, written examination, typewriting test and stenography test for stenographers. The written examination and typewriting test are essential for Lower Division Clerks. Under the caption "Typewriting Test" it is stated that "all the candidates will have to appear in the typewriting test which will consist of one paper on running matter of 10 minutes duration". In the note thereunder, it is stated as follows:-

"Typewriting test will be at a minimum prescribed speed of 30 w.p.m. in English or 25 w.p.m. in Hindi. The typewriting test will be only a qualifying test. Only such candidates who qualify at the typewriting test at a speed of not less than 30 w.p.m. in English or not less than 25 w.p.m. in Hindi or are exempted from qualifying the typewriting test will be eligible for being recommended for appointment on regular basis."

It is evident from the above that to be eligible for regularisation as a Lower Division Clerk under the scheme, one must qualify not only in the written examination, but also in the typewriting test. As the applicants admittedly have failed to qualify in the typewriting test, their claim for regularisation with effect from the dates of their initial engagement as Lower Division Clerks on casual basis cannot be sustained. In a rejoinder filed in O.A.1440/96 the applicants have stated that by the order dated 19th April, 1997 (Annexure A8), the Government of India, Ministry of External Affairs (CPV Division) has given exemption in the cases of 16 candidates who appeared in the special qualifying examination held on 15.1.997 for regularisation

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as Lower Division Clerks from passing the typewriting test and that there is hostile discrimination in not extending the benefit to the applicants. Relaxation of qualification prescribed in the rules or in a scheme is the prerogative of the Government which does not confer any person with a right to claim such a relaxation. Under what circumstances and consideration, relaxation was extended to 16 persons by Annexure A8 order is not clear from the materials on record. However as stated earlier relaxation cannot be claimed as of right and therefore the applicants do not get any right for relaxation on the basis of Annexure-A8 order. Further Annexure A8 order relates to persons who had participated in the examination held on 15.1.97 and not in the examination which was held on 26.12.93 under the scheme.

20. The claim of the applicants that they are entitled to appear in the examination which was held on 15.1.97 is not sustainable because the Tribunal has in its order in O.A.3/94 specifically directed that an examination directed to be held in that case was to be held in respect of the applicants in O.A.3/94, 903/91, 968/91, 1037/91, 1049/91, 1160/91 and 1333/91 only. Therefore the applicants have no right to claim that they should be permitted to appear in the examination.

21. In the light of what is stated above, the claim of the applicants for regularisation as Lower Division Clerks with effect from the date of their initial engagement is not sustainable as they failed in the special qualifying examination which was held on 26.12.93.

22. In O.A.1035/97 and 1039/97 the grievance of the applicants is that they are being denied work and wages as

casual Group-C L.D.Cs. In O.A.228/98 the applicants have prayed that it must be declared that the applicants are entitled for reengagement as Group-C casual labour Lower Division Clerks. The respondents have in their reply statement contend that there is no requirement of casual L.D.Cs and therefore the action on the part of the respondents in not engaging the applicants as casual L.D.Cs cannot be faulted. The respondents have offered the applicants employment as casual labour Group-D as there was requirement of casual labour Group-D as also to favour the applicants with employment to the extent possible. Since the applicants have not succeeded in establishing that there is requirement of engagement of casual labourer L.D.Cs as against the contention raised by the respondents, we are of the considered view that the applicants are not entitled to the reliefs claimed in these applications.

23. In the light of what is stated above finding no merit in these applications, we dismiss them leaving the parties to bear their costs.

B.N.Bahadur

B.N.BAHADUR . .
MEMBER(A)



A.V.HARIDASAN
VICE CHAIRMAN

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