

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 217/96

MONDAY, THIS THE FIFTH DAY OF JANUARY, 1998.

C O R A M:

HON'BLE MR. A. M. SIVADAS, JUDICIAL MEMBER

HON'BLE MR. S. K. GHOSAL, ADMINISTRATIVE MEMBER

1. C. Muraleedharan
Lower Division Clerk
Integrated Fisheries Project,
Kochi-16.
2. M.R. Mohanan Nair,
Lower Division Clerk
Integrated Fisheries Project,
Kochi-16.

..Applicants

By Advocate Mr. Vellayani Sulndararaju

Vs.

1. Union of India represented by
Secretary to the Government
Ministry of Agriculture,
Department of Agriculture & Co-operation
Krishi Bhavan,
New Delhi.
2. The Director,
Integrated Fisheries Project,
Kochi-16.
3. Valsamma John, UDC
Integrated Fisheries Project,
Kochi-16.

..Respondents

By Advocate Mr. T.R.. Ramachandran Nair, ACGSC for R 1 & 2

Advocate Mr. C.N. Radhakrishnan for R3

The application having been heard on 5.12.97, the Tribunal
on 5.1.1998 delivered the following:

O R D E R

HON'BLE MR. S. K. GHOSAL, ADMINISTRATIVE MEMBER

The applicants in this case have been
working as Lower Division Clerks (LDCs) in the Integrated
Fisheries Project, Kochi under the second respondent i.e.
the Director of Integrated Fisheries Project, Kochi. Their



main grievance is that the second respondent has illegally promoted the third respondent i.e. Smt. Valsamma John, to take the limited Departmental Examination for LDCs for promotion to Upper Division Clerk (UDC) and thereafter equally illegally has promoted her as a UDC, even though she was not eligible for taking the Examination, and in the process has illegally prevented one of them from being promoted as a UDC.

2. The applicants have alleged that in terms of the relevant Recruitment Rules at Annexure A1, which prescribe as an essential qualification the acquisition of a speed of 30 w.p.m. (words per minute) in typewriting for the purpose of appointment to the post of LDC, the third respondent not having acquired that qualification could not be deemed to have been regularised and confirmed as an LDC and therefore could not have been permitted legally to take the limited Departmental Competitive Examination for promotion to the UDC or get promoted to the cadre of UDCs based on the ranking obtained at that Examination. They have impugned the orders dated 5.5.95 at A8, passed by the second respondent declaring the rank list of the LDCs, who had appeared in the limited Departmental Competitive Examination, (Examination for short) conducted on 27.4.95, in which the name of the third respondent appears at Sl. No. 2. They have similarly challenged the other order dated 20.12.95 issued by the second respondent at Annexure A11 promoting the third respondent on a regular basis as a UDC along with another person.

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3. The official respondents i.e. the Government of India represented by the Secretary to Government, Ministry of Agriculture and the second respondent i.e. the Director of Integrated Fisheries Project, Kochi, coming under the control of the first respondent, have opposed the allegations made by the applicants. In the detailed reply statement filed on their behalf, they have taken the ground that the Recruitment Rules at Annexure A1 relating to the essential qualification of acquisition of the speed of 30 w.p.m. in typewriting is not laid down as a threshold qualification for appointment as a LDC. The only disability that an LDC, who is appointed as such, but who does not acquire that qualification i.e. acquisition of a speed of 30 w.p.m. in typewriting is that he or she will not be eligible for drawing increments or for quasi-permanency or for confirmation in the grade till he or she acquires that qualification. (Emphasis supplied)

4. We have to observe at the threshold on this score that these indeed are the specific provisions of the relevant Recruitment Rules parts of which have been extracted and annexed as Annexure A1.

5. The respondents have then pointed out that in terms of the detailed instructions of the Government of India, Department of Personnel and Training O.M. No. 14020/2/91-Estt.(D) dated 29.9.92 quoted in Swamy's Compilation of FRSR, in the context of FR 26, and dealing with grant of exemption to LDCs in the Attached

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and Subordinate Offices from passing the Typing Test (Annexure A10), those LDCs who have made two genuine attempts in passing typewriting tests prior to the issue of that O.M. may be granted exemption from passing the typewriting test after completion of 8 years of service. Those instructions also specifically prescribe that the LDCs who have been appointed either on direct recruitment through Staff Selection Commission or otherwise or by any other methods including appointment on compassionate grounds or on ad hoc basis would be eligible for this exemption. (Sub item 2(i) and 2(ii) of item 14 of those instructions incorporated in the O.M. cited above).

(emphasis supplied)

6. They have also contended that the respondent No. 3 had been appointed as a LDC on compassionate ground initially on 22.3.87 and further that she made three genuine attempts with the Staff Selection Commission for passing the typewriting test on 30.10.91, 29.1.92 and 29.4.92, in para 5 of the reply statement filed by the official respondents. It has also been urged on behalf of the official respondents that the earlier conditions stipulated in the Ministry of Personnel & Training O.M. No. 14014/6/86Estt.(D) dated 30.6.87 (Annexure A2) and the guidelines contained in Controller and Auditor General letter No. 301/N-2/46-87 (Circular No. NGE/33/1987) dated 1.4.87 (Annexure A5), regarding the need for persons appointed on compassionate ground to acquire the prescribed educational qualification within a period of two years (A2) and to pass the typing test within the same period of two years (A5), though we must



observe here that the first circular (A2) speaks only of educational qualifications and not the typing qualification and the second circular evidently relates only to the Indian Audit and Accounts Department, are no longer relevant in the context of the consolidated instructions at Annexure A10 i.e. the instructions issued by the Government of India, Department of Personnel & Training in O.M. No. 14020/2/91-Estt (D) dated 29.9.92 quoted in Swamy's Compilation of FR SR Part-I General Rules, referred to by us above. The official respondents have further maintained that since 25% of the vacancies of the UDCs in the Department are earmarked for promotion based on the limited Departmental Competitive Examination from amongst the LDCs with three years service as laid down in the relevant Recruitment Rules for UDCs (A6), and as the third respondent satisfied these conditions when the said limited Departmental Competitive Examination was held on 27.4.1995 by the official respondents, the action of the Department to have permitted the 3rd respondent to take the Examination and then to promote her on the basis of the ranking at the said Examination are perfectly valid and legal. That being the case, it has been argued on behalf of the official respondents, no judicial intervention is called for.

7. The respondent No.3 has not filed a reply statement. But the learned counsel appearing for the third respondent has argued the case of the 3rd respondent based on the pleadings made on behalf of the official respondents. However, he has in particular drawn



our attention to the statements made in the Memo. No. A1/2-1/89 dated 11.1.96, issued by the second respondent to the first applicant in response to his representation against the promotion granted to the third respondent, i.e. Annexure A14, corroborating the fact that the third respondent was initially appointed on an ad hoc basis w.e.f. 23.2.87 to 4.4.87, and again on an adhoc basis w.e.f. 6.4.87 continuously, the latter status being converted into a temporary capacity w.e.f. 1.11.1988.

8. We observe that these facts have indeed been specifically mentioned there. Significantly, these statements have not been rebutted by the applicants. Even at the stage of hearing, these facts were not denied on behalf of the applicants.

9. Similarly, our attention has been drawn by the learned counsel for the 3rd respondent to the statement made in the same Memo dated 11.1.96, i.e. Annexure A14, that the 3rd respondent had also been declared to have completed successfully the probation period in the post of LDC w.e.f 1.11.90 as per the office order No. 12/93 dated 12.2.93.

10. The learned counsel for the third respondent has next argued that in the light of the Government of India instructions incorporated in Swamy's Compilation of FRSR mentioned above, even the previous ad hoc service rendered by the third respondent, including the broken periods thereof, before she was appointed on compassionate ground, evidently counts for the purpose of calculating the total qualifying period of 8 years of service. Therefore, he has contended, taking into account



her service on an adhoc basis from 23.2.87 to 4.4.87 and adding that period to her continuous service from 6.4.87, the third respondent had completed 8 years of total qualifying service as a LDC before 31.3.95 which was the last date for the eligible LDCs to communicate their willingness for the limited Departmental Competitive Examination for promotion as UDCs. Further, in terms of the same instructions at A10, having made three i.e., more than the prescribed number of two, genuine attempts for passing the typewriting test earlier, as admitted by the official respondents, the third respondent should be deemed to have been granted the exemption from passing the said typewriting test and therefore considered ^{as} fully eligible for taking the limited Departmental Competitive Examination for promotion. She had become a regular LDC by then, it has been contended on her behalf.

11. In the rejoinder filed by the applicants as well as at the stage of hearing the oral arguments it has been strenuously contended that the instructions of the Government of India incorporated in Swamy's Compilation and referred to above (A10), cannot modify the requirements laid down in the statutorily prescribed Recruitment Rules. The learned counsel for the applicants has further argued that the provision in the Recruitment Rules for the UDC at Annexure A11 relating to the requirement of three years service as an LDC for the said Examination should be deemed to refer only to three years of regular service, which in turn, will have to be reckoned from the time when the exemption from passing the typewriting test is deemed to have been granted to the third respondent. ^{Further,} according to the learned counsel

L. J.

for the applicants, since in para 6 of the reply statement filed by the official respondents, inter alia it has been stated that the third respondent had to be treated as a regular LDC w.e.f. 6.4.95 and since the second respondent had indicated the last date for receipt of willingness to write the limited Departmental Competitive Examination for the eligible LDCs for promotion as UDCs as having been extended upto 31.3.95 through his circular No. A1/2-1/89 dated 13.3.95 at Annexure A3, entertaining an application from the third respondent, who, as admittedly stated by the official respondents can be treated as a regular LDC only w.e.f. 6.5.95, was patently irregular. Therefore the permission granted to her to write the said Examination and thereafter based on her ranking in the said Examination the action to promote her as an UDC were clearly against the provisions of the Recruitment Rules and thus became invalid, it has been argued by him.

12. We have carefully considered the pleadings and the materials placed before us and have heard the arguments of the learned counsels appearing for the parties.

13. At the threshold the question of locus standi of the applicants, which was raised during the arguments by the learned counsel for the third respondent, may have to be addressed by us. Since there are only six eligible LDCs including the two applicants and since the rank list under the impugned order at Annexure A8 contained four names, it is clear that if the name of the third respondent is eventually found not to have been included validly in the rank list, one of the two applicants, who



are currently outside the rank list, is likely to be included in the said rank list. They may thereafter have a claim for consideration for promotion as UDC. We, therefore, hold that the applicants do have the requisite locus standi in the present proceedings.

14. In order to examine the various arguments which have been advanced on the question of eligibility of the third respondent as a LDC under the second respondent for taking up the limited Departmental Competitive Examination for promotion as UDC, it is useful in our opinion to refer to the relevant provisions of the Recruitment Rules for LDC at Annexure A1, particularly those relating to the essential qualification of a speed of 30 w.p.m. in typewriting as well as to the relevant provisions from the Recruitment Rule pertaining to the UDC, particularly those relating to the eligibility criteria prescribed for LDC who can take the limited Departmental Competitive Examination for 25% of the posts of UDC for promotion (A 12). Similarly, it will be profitable to quote the appropriate and relevant portions of the Government of India, Department of Personnel & Training O.M.No. 14020/2/91-Estt.(D) dated 29.9.92 incorporated in Swamy's Compilation of FRSR Part I General Rules (A10):

Educational & other qualifications required for direct recruits

Essential:

1. Matriculation or equivalent qualification of a recognised University or Board.
2. A speed of 30 w.p.m. in typewriting provided

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qualifications in typewriting may be appointed subject to the condition that he will not be eligible for drawing increments in the pay scale or for Q.P. or for confirmation in the grade till he acquired a speed of 30 w.p.m. in typewriting.

(Extracts from the Recruitment Rules of LDCs)

In case of recruitment by promotion/deputation/transfer, grades from which promotion/deputation to be made-

75% from among the LDCs with 5 years service on the basis of seniority subject to rejection of the unfit and 25% from among the LDCs with 3 years service on the basis of a limited departmental competitive examination.

(Extracts from the Recruitment Rules for UDCs)

(14) Grant of exemption to Lower Division Clerks in the Attached and Subordinate Offices from passing Typing Test:

Instructions have been issued by the Department of Personnel and Training from time to time laying down the criteria for grant of exemption from passing the typing test in respect of LDCs who do not belong to Central Secretariat Clerical Service. In the light of the provisions contained in this Department's OM No. 14/10/78-CS.II dated 7.6.90 and 24.9.90 and OM No. 12/5/91CS II dated 22/23.8.91 which; have been issued after discussion with the Staff Side, the existing instructions on the subject have been simplified and consolidated as in this Office Memorandum.

2(1) To whom applicable

Persons appointed as LDCs to posts which do not belong to Central Secretariat Clerical Service whether such appointment is by promotion from Group 'D' or by direct recruitment through Staff Selection Commission or otherwise or by any other methods including appointment on compassionate grounds or on ad hoc basis.

(2) When exemption may be allowed:

.....

(d) Those LDCs who have made two genuine attempts

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for passing the typing test prior to the issue of this O.M. but have not completed 8 years' service as LDC may be granted exemption from passing the typing test after completion of 8 years of service or on attaining the age of 45 years whichever is earlier.

(3) Typing Test:

(a) The Typing test for the purpose of these orders will be the typing test conducted by the Staff Selection Commission

(4) Genuine Attempt:

The 'genuine attempt' referred to above would be determined by the Head of the Department in consultation with the Staff Selection Commission keeping in view that mere appearance in the test or a perfunctory attempt would not constitute a genuine attempt....

(5) Service as LDC:

For the purpose of computing service as LDC

(a) Broken periods of service, if any, as LDC on a regular scale of pay may also be taken into account.

(7) Eligibility for regularisation/confirmation:

They would also be eligible for regularisation/confirmation in LDC Grade from a date not earlier than the date of exemption or the date of the test at which they passed the typing test, as the case may be."

(Deptt. of Per. & Trg. O.M. No. 14020/2/91-Estt -D dated 29.9.92)

15. A careful reading of the relevant provisions of the Recruitment Rules for the LDCs and those of UDCs, in conjunction with the instructions of the Government of India, Department of Personnel and Training as extracted above, will clearly establish that the implication of the relevant provisions of the Recruitment Rules of the LDCs is that though acquisition of a speed of 30 w.p.m. in

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typewriting has been included as one of the essential qualifications it is not specifically recognised⁴⁹ as a threshold qualification at the time of appointment. That qualification, even according to the Recruitment Rules, is relevant only for the purpose of drawing increments in the pay scale, for grant of quasi-permanency or for confirmation in the grade as LDC. It is very significant that no time limit is prescribed in the said Recruitment Rules for LDCs for acquisition of the typing qualification, after one is appointed as a LDC.

16. Further, it is also not correct to maintain that the Government of India, Department of Personnel & Training, which is the Department entrusted with the task of ultimately laying down the policy guidelines in personnel matters in the Central Government, is prevented from making exemptions to the Recruitment Rules in respect of a class or category of persons. To the contrary, such a power is specifically vested in the Government under the Recruitment Rules themselves. Through its instructions in O.M. No. 14020/2/91-Estt.(D) dated 29.9.92, the Department of Personnel & Training, Govt. of India have done precisely that, namely, it has granted exemption to certain categories and classes of persons from the operation of certain provisions of the Recruitment Rules relating to the LDCs. This power to provide exemption is well recognised and does not merit any further and detailed discussion.

17. Therefore, on the point of competence of the Department of Personnel & Training to issue the instructions mentioned above providing exemption from the strict operation of the Recruitment Rules pertaining to the LDCs in respect of acquisition of the essential

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qualification of 30 w.p.m. in typewriting, we are unable to agree with the contention of the learned counsel for the applicants that the Department of Personnel & Training has acted beyond its competence or without legitimate jurisdiction.

18. Irrespective of the averment made in the reply statement filed before us by the official respondents that the third respondent has to be considered as a regular LDC only w.e.f. 6.4.95, which is evidently after the extended and notified last date for receiving the applications indicating willingness from the eligible LDCs for taking the limited Departmental Competitive Examination for promotion as UDC, which was mentioned as 31.3.95 at Annexure A3, it is obvious that if the ad hoc service rendered by the third respondent from the period 23.2.87, including the broken periods, is taken into account, as indeed it is required to be taken into account in terms of the instructions of the Department of Personnel & Training's O.M. stated above, the third respondent will have to be considered as having completed slightly more than 8 years of service as a LDC by that relevant date i.e. 31.3.95. Further, it is not denied that she had earlier made three genuine attempts at passing the required typing test before the Staff Selection Commission.

19. Besides, from a consideration of the provisions of the Recruitment Rules for UDC, particularly those relating to LDCs who are eligible for appearing in the limited Departmental Examination for promotion as UDC, it is clear that only 3 years service as LDC has been prescribed. Those rules do not specifically prescribe 3

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years of regular service, i.e. three years of service as a LDC after regularisation. When there is no specific provision imposing a certain restriction like post-regularisation service, the general rule of construction is that such a restriction cannot be presumed to exist and the provisions of the Statute (here the Recruitment Rules) should be read with their plain and ordinary meaning. Therefore, when the condition of three years of regular service as distinct from continuous service as LDC has not been specifically mentioned in the Recruitment Rules for UDC, it will not be proper, in our opinion, to interpret those provisions presuming that it is the regular service of three years which has actually been meant by these provisions of the Recruitment Rules.

20. Even if the statement made by the official respondents that the third respondent can be deemed to have become a regular LDC only on 6.4.95 i.e. after the last date for receiving applications from willing and eligible LDCs 31.3.95 was over, is taken as valid, it cannot be denied that it is the same Respondent Department, who nevertheless accepted the application from the third respondent for the same limited departmental competitive Examination for promotion to the post of UDC for which the notified and extended last date was 31.3.95. Further, they did not merely accept her application, but also allowed her to appear at the said examination. They subsequently ranked her on the basis of the results of the said Examination and eventually promoted her as UDC. From these circumstances, the only inference that can be drawn is that irrespective of when her application was received and though on 31.3.95 she

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was still short of the requisite period of qualifying service⁴⁹ for the purpose of treating her as a regular LDC for the Examination by a few days, the official respondents went by the other criterion for eligibility namely that the said Examination was also notified to be held only after 6.4.95 on which date the third respondent had to be deemed to have become a regular LDC and therefore competent and eligible for taking that Examination.

21. We find ourselves unable to consider any such action on the part of the official respondents as having suffered from any illegality or from any serious irregularity that can be cited as a ground for invalidating the participation of the third respondent in the said Examination or consideration of her case for promotion based on her merits in the wake of such an examination for promotion as UDC.

22. Our attention has been drawn to the rule laid down by the Hon'ble Supreme Court that appointments which are not regularised do not confer rights that accrue to a regular appointee. In the instant⁴⁹ case, which we have examined and discussed in detail as recorded above, we are convinced that when the third respondent was permitted to take limited Departmental Competitive Examination against 25% quota for promotion as a UDC held on 27.4.95, her status as a LDC had already transformed itself as that of a regular LDC.

23. In the result, we hold that the actions of the official respondents in permitting the third respondent to take the limited Departmental Competitive Examination for promotion to UDC against the 25% quota as well as in

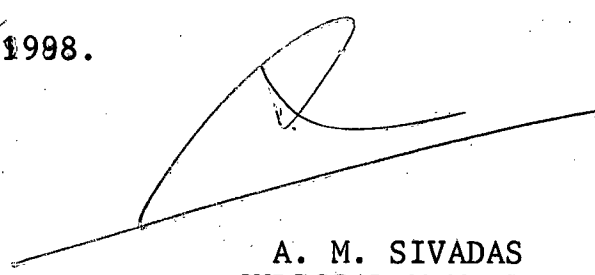
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ordering her appointment on promotion as a UDC based on the result of the same Examination, have not suffered from any irregularity or illegality.

24. In the event, the application is dismissed. There will be no order as to costs.

Dated the 5th January, ²⁹ 1998.


S. K. GHOSAL
ADMINISTRATIVE MEMBER


A. M. SIVADAS
JUDICIAL MEMBER

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