

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED OF DECISION .. 26.2.90

PRESENT

HON'BLE SHRI S.P.MUKERJI, VICE CHAIRMAN
AND

HON'BLE SHRI A.V.HARIDASAN, JUDICIAL MEMBER

ORIGINAL APPLICATION No.37/89

K.P.Mony ... Applicant

Vs.

1. Union of India represented
by the Registrar General of
India, New Delhi.

2. Director of Census Operations
Lakshadweep, Cochin.

3. The Assistant Director of
Census Operations, Lakshadweep,
Cochin.

Respondents.

Mrs. Daya K. Panicker ... Counsel for the
Applicant

Mr. P.V.Madhavan Nambiar,
SCGSC ... Counsel for the
Respondents

O R D E R

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 16.1.89 filed under
Section 19 of the Administrative Tribunals Act, the
applicant who has been working as a Lower Division Clerk
(LDC) under the Directorate of Census Operations at
Lakshadweep, has prayed that the impugned order dated
28th December 1988 should be set aside and the respondents

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directed to regularise his services as a LDC with effect from 11.8.87 when he passed the qualifying examination held by the Staff Selection Commission.

The material facts of the case are as follows:

2. The applicant, along with other candidates, appeared in a selection test and interview in September, 1980 for selection to the post of LDC in the office of the Director of Census Operations, Lakshadweep, on an adhoc basis. He was sponsored by the Employment Exchange. In that selection, Smt. Kunjamole ranked as the first and the applicant as the second in the select list. They both joined as LDC on 3.10.80. Smt. Kunjumole was held against a permanent post of LDC and the applicant against 1981 Census post. The Staff Selection Commission held a Special Qualifying Examination in July, 1985 for regularising adhoc LDCs and Stenographers. For that examination the application of Smt. Kunjumole was forwarded as she was holding a regular post of LDC, though appointed on an adhoc basis, but the applicant was not considered to be eligible to take that examination as he was holding a Census post of ephemeral ~~in~~ nature. Smt. Kunjumole appeared but failed in the ~~in~~ Special Qualifying Examination and according to the

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scheme of Special Qualifying Examinations her services had to be terminated under Rule 5(1) of the Central Civil Services (Temporary Service) Rules. Since the regular post against which she was held was lying vacant, on her departure, the applicant, who was holding the Census post, was held against that post. When the Staff Selection Commission held another Special Qualifying Examination in 1987, for regularisation of adhoc LDCs and Stenographers, the applicant's name was forwarded as he was deemed to be holding a regular post. The applicant qualified in the examination held on 8.3.87 and regularised with effect from 11.8.87 by the order dated 21.3.88. In the meantime, Smt. Kunjumole moved the Tribunal against the order of termination of her services and the Tribunal by its judgement dated 26.8.87 (Ann. R-3) on the ground that the order for termination of her services was not issued by the authority which appointed her and on the ground that the applicant before us who was 4th Respondent in that case was retained as adhoc LDC even after Smt. Kunjumole's services were terminated, set aside the order of termination and directed that she should be reinstated as if she had continued in service without break. Based on this judgement, the Registrar General directed that Smt. Kunjumole should be re-appointed as LDC as if she

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had never been discharged and since the applicant was not eligible to take the Special Qualifying Examination of 1987 he cannot be regularised. On the basis of these directions, the impugned order dated 28th December 1988 was passed, cancelling the order dated 21.3.88 regularising his services and declaring that his continued appointment as LDC will be treated as adhoc.

3. The contention of the applicant is that he has been continuing as LDC from 3.10.80 and having qualified in the examination held by the Staff Selection Commission for regularisation of adhoc LDCs, and fully eligible for appearing in the Examination, he is entitled to be regularised and the respondents having regularised his services could not cancel the regularisation. The respondents have stated that in accordance with the letter of the Registrar General dated 22.12.86 persons appointed against 1981 Census posts were not to be allowed to appear in the examination. Since on the reinstatement of Smt. Kunjumale with retrospective effect the applicant would be deemed to be holding a Census post, he could not have appeared in the Special Qualifying Examination and therefore could not be regularised.

4. We have heard the arguments of the learned Counsel for both the parties and gone through the documents

carefully. The scheme of Special Qualifying Examination for regularisation of adhoc employees has been given at Annexure-C in the Department of Personnel & A.Rs. Office Memorandum dated 28.2.85. The first para of this O.M. reads as follows:

""As Ministry of Finance etc. are aware, the second Special Clerks' Grade Examination was held on 18.12.83 vide instructions contained in O.M.No.6/7/83-CS.II dated 17.8.1983 for the regularisation of ad-hoc employees working as Lower Division Clerks, Telephone Operators, Hindi Typists, etc. against posts of LDC excluded from the purview of the Central Secretariat Clerical Service, in the Ministries/Departments participating in the service. Ad-hoc employees working in non-participating offices were also made eligible to appear in the said examination in terms of O.O.No.6/5/82-Cs.II dated 15/16th August 1982.

2. Since a substantial number of LDCs appointed on ad-hoc basis are continuing, it has now been decided to give another final chance to all the ad-hoc employees belonging to the categories specified above, working in the Ministries/ Departments, attached and subordinate offices of the Government of India, for their regularisation in their respective offices. It may be noted carefully that persons employed on casual/daily wage basis or group 'D' employees working as LDCs on ad-hoc basis are not eligible to take the examination. The examination will be held on the 28th July 1985. The scheme of the examination is contained in the annexure." (emphasis added)

The above will show that the examination was held to give a final chance "to all ad-hoc employees" belonging to the

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categories of LDC/Telephone Operators/ Hindi Typists,

etc. There is no mention in this scheme that LDCs

working against Census posts or posts of ephemeral

nature are not eligible to appear in the examination.

Accordingly, the letter of the Registrar General dated

22.12.86 referred to in para 7 of the Counter Affidavit

disqualifying persons appointed against 1981 Census posts

from appearing in the examination is not in tune with

the scheme of the Special Qualifying Examination.

Regular temporary appointments can be made against

posts of temporary LDCs also. In that light we cannot

hold that the applicant was not eligible to take the

Special Qualifying Examination of 1985 or 1987 merely

because he was holding a Census post. When he appeared

in the 1987 examination he was holding the post vacated

by Smt. Kunjumole. Having forwarded his application for

the Special Qualifying Examination and having regularised

the applicant when he passed the Special Qualifying

Examination, the respondents are estopped from cancelling

the order of regularisation unilaterally, by the principle

of natural justice and promissory and equitable estoppel.

It is admitted that no notice was served on the applicant

before the impugned order cancelling his regularisation

was passed.

dated 26.8.87

5. So far as the judgement of the Tribunal is

concerned, even though the applicant before us was

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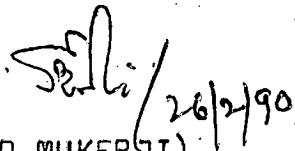
a respondent in that case, there is no direction of the Tribunal that Smt. Kunjumole should be reinstated by displacing the applicant.

6. In the facts and circumstances, we allow this application, set aside the impugned order dated 28th December, 1988 insofar as it treats the appointment of the applicant as ad-hoc and direct that the applicant should be treated as a regular LOC in accordance with the order dated 21.3.88 at Annexure-G which is hereby restored. This order will be without prejudice to the reinstatement of Smt. Kunjumole in accordance with the aforesaid judgement of the Tribunal.

7. There will be no order as to costs.



(A.V.HARIDASAN)
JUDICIAL MEMBER



(S.P.MUKERJI)
VICE CHAIRMAN