

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 142 of 2008

Reserved on 13.3.2014

Pronounced on 25 March, 2014

Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member-A

Manju Bhadri, aged about 34 years, D/o Sri J.N. Sharma, R/o A-19 Gandhi Nagar, Ring Road, Kalyanpur, Lucknow.

.....Applicant

By Advocate : Sri A. Moin

Versus.

1. Union of India through Secretary, Ministry of Labour, New Delhi.
2. Director, Ministry of Labour, Shram Shakti Bhawan, Rafi Marg, New Delhi.
3. Presiding Officer/Regional Labour Commissioner (C), Central Government Industrial Tribunal-cum-Labour Court, Aliganj, Lucknow.

.....Respondents.

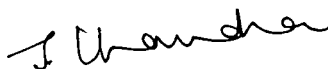
By Advocate : Sri K.K. Shukla

ORDER

Per Ms. Jayati Chandra, Member (A)

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, 1985 seeking following relief(s):-

- “(a) to quash the order dated 17.4.2008 passed on behalf of respondent no.3 as contained in Annexure A-1 to the O.A. with all consequential benefits.*
- “(b) to quash the order dated 10.4.2008 passed on behalf of respondent no.1 as contained in Annexure A-2 to the O.A. with all consequential benefits.*
- “(c) to direct the respondents to reconsider the case of the applicant for regularization strictly in accordance with the judgment and order dated 10.1.2008 passed by this Hon'ble Court.*
- “(d) to direct the respondents to pay the cost of this application.*
- “(e) any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed. .”*



2. The facts of the case are that the name of the applicant was sponsored by the Employment Exchange to Regional Labour Commissioner (In short RLC) for the post of adhoc LDC by letter dated 1.3.1999 (Annexure-3). She appeared for the written test and typing test held in terms of the procedure for recruitment for the post of LDC in the office of RLC/CGIT- LC.

3. As she was declared first in the merit list, she was given adhoc appointment for 89 days by letter dated 15.4.1999 (Annexure-5). She continued in that basis upto 17.6.2002 with artificial breaks after each period of 89 days. From 17.6.2002, she was not made to undergo any break.

4. She was given the order dated 13.9.2002 (Annexure-7) by which she was directed to continue in her post. The order reads as follows:-

"Miss Manju Sharma, D/o Sri J.N. Sharma, who is working as adhoc temporary Lower Division Clerk for more than three years with artificial breaks, is appointed and is ordered to continue as adhoc Lower Division Clerk on the same terms and conditions till further order in the scale of Rs. 3050-75-3950-80-4590 or such time a regular selected person joins duty in the office of C.G.I.T.-cum-Labour Court, Lucknow. Her continuance as adhoc Lower Division Clerk would not create right of absorption in her favour as per law."

Her services were regularized by order dated 6.2.2003 (Annexure-8) in terms of the following:-

"The services of Miss Manju Sharma, working as adhoc Lower Division Clerk for about four years against permanent vacancy of Lower Division Clerk and fully qualified for the post selected by the then Head of Office, Mr. B.S. Duggal, Regional Labour Commissioner (C), Kanpur are regularized w.e.f. 6.2.2003 in the scale of Rs. 3050-75-3950-80-4590 with terms and conditions applicable to the central government employees."

5. Suddenly by means of letter dated 26.5.2003 (Annexure-9) the same authority i.e. the Presiding Officer (respondent no.3) but not the same person, cancelled the earlier regularization order. Thereafter, she filed O.A. no. 274 of 2003 challenging the legality of the said order. The said O.A. was disposed of by order dated 10.1.2008. The operative portion of the order states as follows:-

"..... However, in the present case, though one has no indefeasible right on being selected to be appointed on regular basis, yet the equity demands that applicant who was appointed in 2003 on regular basis on deemed exercise

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of power of relaxation by the competent authority, his claim would be considered for regularization by a speaking order to be passed within a period of three months from the date of receipt of this order. Till then, interim order is made absolute. No costs."

The respondents in compliance of the above directives passed the impugned orders dated 10.4.2008 and 2nd impugned order dated 17.4.2008 terminating her services.

6. The applicant filed the present O.A. seeking relief against the orders. By order dated 9.5.2008 the Tribunal disallowed her prayer for interim relief. This was set aside by the order of High Court by their order dated 16.5.2008 passed in the Writ Petition No. 622 (S/B) of 2008 The Hon'ble High Court also noted in the order that no regular candidate has been recruited by Staff Selection Commission (in short SSC), Allahabad to replace her. Further, the Hon'ble High Court observed that the case be disposed of in three months.

7. The respondents by means of Counter Reply have contested the case as represented by the applicant. The background of the case has been narrated by them as follows:-

The Central Government Industrial Tribunal -cum-Labour Court (CGIT-LC) offices under the Ministry of Labour were set up for the purpose of adjudicating labour related disputes referred to them. The Presiding Officer of CGIT-LC is the Head of Department/appointing authority for Group 'D' and Group 'C' employees who are governed by the Recruitment Rules called the Central Government Industrial Tribunal Class III and Class IV Post Recruitment Rules 1976. Under the said Rules, the post of LDC is filled up by 100% direct recruitment. The recruitment for such posts are conducted by the Staff Selection Commission (in short SSC), a specialized All India body set up for such functions. In this case, the recruitment to the office is to be done through the SSC (Central Region) at Allahabad. The various offices are required to indicate their respective vacancies alongwith the certificate to the effect that (a) the vacancies are cleared by the concerned Screening Committee and that (b) no suitable personnel is available with the Central Surplus Cell of the Department of

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Personnel & Training. This procedure was intimated to the Presiding Officer (respondent no.3) by SCC vide their letter dated 5.7.2001 (Annexure no. CA-2).

In the instant case, the Government of India, Ministry of Labour (respondent no.1) vide their letter dated 5.11.1998 intimated the respondent no.3 to initiate the process of regular recruitment and had enclosed a copy of the Recruitment Rules (Annexure CA-5). The respondent no.3 placed a requisition for two LDCs to the SSC, Allahabad vide letter dated 28.12.1999 (Annexure CA-4).

However, permission was given by Government of India vide their letter dated 15.1.1999 to fill up the post of PAs and LDCs purely on adhoc basis for 89 days at a time and not more than a year commutatively. The relevant portion is quoted below:-

"For filling up the posts of Personal Assistant and LDCs, requisition have already been sent by RLC (C), Kanpur to the Regional Director, SSC, Allahabad. Since it will take some time for SSC to send nominations, you are requested to obtain panel of names from employment exchange for filling up the post of Personal Assistant and LDCs on purely adhoc basis after observing the procedure for selection through interview etc. These appointments will be purely on short term and adhoc basis for a maximum period of one year. These appointments will initially be made for a period of 89 days and would continue with a day's break. Mention should be made in the appointment letter that incumbent's appointment is adhoc and will have no claim. The services of the incumbent would be terminated at any time without any notice and without reasons being assigned therefor"

8. This purely temporary arrangement was allowed in conformity with the DoP&T O.M. dated 30.3.1998 which specifically provided that if the adhoc arrangements were to continue beyond one year, approval of DoP&T is to be sought at least two months prior to the cessation of such period and if the approval of DoP&T is not received prior to expiry of one year, the adhoc appointment/promotion shall automatically cease. These instructions were repealed by the O.M. dated 23.7.2001 (Annexure CA-6 and 7).

9. In conformity with the rule position, the then Head of Department of CGIT-LC called for names of suitable persons from

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the Employment Exchange and gave appointment on adhoc basis to the applicant vide letter dated 16.3.1999 as earlier stated.

As the initial one year was due to expire in March, 2000, the then Presiding Officer (respondent no.3) sought instructions vide his letter dated 2.2.2000 (Annexure CA-8). The permission to continue with the arrangement was given by Ministry of Labour for further 89 days by the letter dated 16.2.2000 (Annexure CA-10). Accordingly, the Presiding Officer passed the order dated 16.3.2000 (Annexure -1) reiterating the conditions that the appointment is on adhoc basis for 89 days and that the services will stand automatically terminated on expiry of 89 days and adhoc services rendered will not entitle or make him eligible for regularization in service.

10. Thereafter the then Presiding Officer, who was the same person who had passed the earlier order dated 16.3.2000 neither sought approval for extension of the adhoc arrangement as per DoP&T instructions quoted earlier, nor made any efforts for expediting regular recruitment through SSC, Allahabad and in utter disregard of his own order, kept on expending the adhoc appointment of the applicant vide orders dated 19.6.2000, 18.9.2000, 13.12.2000, 18.6.2001, 18.12.2001, 18.3.2002, 14.6.2002, 13.9.2002 and finally passed the order dated 6.2.2003 which has been used as the basis for claiming regularization in the present O.A. By this order, the services of the applicant were regularized by order dated 6.2.2003. As soon as the illegal order of respondent no.3 came to the notice to the respondent no.1, the matter was examined her services were terminated by the impugned order.

11. The applicant has filed the Rejoinder Reply reiterating the earlier points and stressing on the following:

- (a) By order dated 26.5.2003 her services were never terminated only her regularization was terminated and she continued on adhoc temporary basis till a regularly selected candidate come from the SSC.
- (b) The prescribed procedure for recruitment was followed
 - (i) DoP&T O.M. dated 23.7.2001 no cannot have a

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retrospective effect as her appointment made on 15.4.1999 and;

- (c) The recruitment rules incorporate or relaxation clause which was invoking the respondent no.3 in passing the order dated 6.2.2003.

12. During the course of hearing, the learned counsel for the applicant has cited the following case laws:-

- (i) J.C. Yadav & Others Vs. State of Haryana & Ors reported in 1990 AIR 857.
- (ii) Keshav Narayan Gupta & Ors. Vs. Jila Parishad, Shivpuri & Others reported in JT 1998 (7) SC 273.

In the case of J.C. Yadav & Others Vs. State of Haryana (supra), the Hon'ble Supreme Court has observed as under:-

"The sole question for consideration is whether the relaxation granted by the State Government in favour of the appellants is valid. Rule 22 which confers power on the Government to relax requirement of Rules, is as under: "Rule 22. Power to relax Where Government is satisfied that the operation of any of these Rules causes undue hardship to any particular case, it may by order dispense with or relax the requirements of that Rule to such extent and subject to such conditions, as it may consider necessary for dealing with the case in a just and equitable manner."

In the case of J.C. Yadav & Others (supra), it was held that the appellants in the SLP were appointed to class I service of Haryana Service of Engineer Class II after relaxing the minimum period of service of 08 years in Class II service by the State Government on the recommendations of the DPC as approved by State Public Service Commission.

This action of the State Government was challenged by respondents who had the requisite minimum service qualification, but were not held to be suitable by the DPC. A Single Bench of Hon'ble High Court had held the action of the State Government as valid as the Government had the powers to relax the Rule 6 (b) by which a minimum period of service was the prerequisite for promotion. On Appeal the disciplinary proceedings quashed the said order on the ground that the State Government had no authority in law relaxation under Rule 22 on the same could be invoked only individual cases to mitigate the hardships.

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The question then that was considered by the Hon'ble Supreme Court was, therefore, "whether the relaxation granted by the State Government in favour of the appellants is valid". After discussing the issue at length, the Hon'ble Supreme Court held the following: -

"The Rule confers power on the Government to dispense with or to relax the requirement of any of the Rules to the extent and with such conditions as it may consider necessary for dealing with the case in a just and equitable manner. The object and purpose of conferring this power on the Government is to mitigate undue hardship in any particular case, and to deal with a case in a just and equitable manner. If the Rules cause undue hardship or Rules operate in an inequitable manner in that event the State Government has power to dispense with or to relax the requirement of Rules. The Rule does not restrict the exercise of power to individual cases. The Government may in certain circumstances relax the requirement of Rules to meet a particular situation. The expression "in any particular case" does not mean that the relaxation should be confined only to an individual case. One of the meanings of the expression "particular" means "peculiar or pertaining to a specified person--thing--time or place--not common or general".

13. The respondents have relied upon the following case laws:-

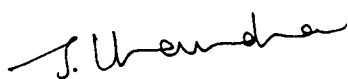
- (i) Secretary, State of Karnataka & Others Vs. Uma Devi & Others reported in 2006 (4) SCC 1.
- (ii) Mira Roy & others Vs. State of Tripura & Others reported in 2007 (113) FLR 906.
- (iii) Dr. Chanchal Goyal (Mrs.) Vs. State of Rajasthan reported 2003 SCC (L&S) 322.
- (iv) Santosh Kumar Porwal Vs. Director Bal Vikas Sewa Evam Postahar Yujana, Lucknow reported in 2007 (115) FLR 109.
- (v) Dharmvir Singh Vs. Management of Sri Aurbindo College reported in 2010 (124) FLR 758.
- (vi) Gobinda Chandra Mondal & Others Vs. Principal Rabindra Mahavidyalaya & Others reported in 2013 (138) FLR 657.
- (vii) State of M.P. & Others Vs. Lalit Kumar Verma reported in 2007 (112) FLR 345.
- (viii) State of Karnataka & Others Vs. G.V. Chandrashekhar reported 2009 1 SCC (L&S) 834.

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14. We have heard the learned counsel for the parties and have perused the pleadings on record.

15. The agreed upon facts are that the respondent no.3 was given permission to appoint a person on adhoc basis for a period of 89 days by Ministry of Labour, Government of India by their letter dated 1.11.1998. The letter is very clear that it was purely a stopgap arrangement. Such arrangements derived its validity from DoP&T O.M. no. 280 36/8/87 Estt. (D) dated 30.3.1988 which provides for both an extension clause and a suo-muto termination clause. It is also a matter of record that the respondent no.3 had sent requisition for LDCs to SSC, Allahabad vide letter dated 20.12.1999. But, there is nothing to show that subsequently efforts were made to obtain a regular person from SSC. No reminders were sent to SSC or to respondent no.1 and their failure despite efforts was not cited as a reason to continue with the adhoc arrangement. The conduct of the respondents in so far as the selection and subsequent appointments on adhoc basis for limited periods upto March, 2000 was completely in accordance with the procedure governing this case. The respondent no.3 sought approval for an extension in the case of the applicant alongwith others to the Ministry of Labour vide letter dated 2.2.2000. The Ministry of Labour gave the extension for 89 days. The Ministry's enabling letter also provided for an automatic cessation clause.

16. The then Head of Department one Sri Rudresh Kumar passed a fresh appointment order quoting the said enabling letter of Ministry of Labour dated 16.2.2000. This O.M. too provided for the case of automatic termination on expiry of 89 days. The respondent no.3 thereafter passed various appt. rules incorporating the clause "the service of Km. Manju Sharma, automatically shall stand terminated on expiry of 89 days without any notice in this regard" and further "the adhoc service rendered by her could not entitle or makes her eligible for regularization in service". Thereafter atleast 09 orders appointing her on adhoc basis was passed.



17. There was no need of any formal termination and thus, there is no termination order. The applicant was very well aware of the condition under which she was serving. The same was acceptable to her otherwise she would not have continued.

18. Suddenly for reason not known the same officer in the capacity of Head of Department changed the form of the order governing the case of the applicant in her order dated 13.9.2002.

19. This order was passed after the DoP&T O.M. dated 23.7.2001 which were a reiteration of the earlier O.M. of even no. dated 30.3.1988. Even if these orders are taken as new, the case of the applicant, as fresh order were passed in 2003 comes within the ambit of DoP&T order dated 23.7.2001.

20. It is ironical that the Presiding Officer of a Labour Court should take cognizance of the adhoc situation for 3 years and made no efforts to get the situation remedied through a regular mechanism i.e. selection through SCC in which process the applicant could have had the liberty to participate. The respondent no.3 does not quote any provision in the Recruitment Rules or a judicial pronouncement in passing the regularisation order. He passed the order dated 6.2.2003 regularising the services of the applicant with effect from the date of passing the order.

21. Much has, thereafter, been argued by the learned counsel for the applicant in O.A. no. 274 of 2008 regarding the deemed relaxation power of respondent no.3/Presiding Officer of Labour Court. This Bench of the Tribunal in its order dated 10.1.2008 observed the following:

"Learned counsel for the applicant would contend that the applicant's regularization is as per the recruitment rules on deemed exercise of relaxation and for which the learned counsel has relied upon the decision of the Apex Court in J.C. Yadav (supra) wherein it is held that Government has power to relax the requirement of the rules which does not restrict exercise in individual case also.

.....However, in the present case, though one has no indefensible right on being selected to be appointed on regular basis, yet equity demands that applicant, who was appointed in 1999 on regular basis on deemed exercise of powers of

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relaxation by the competent authority, his claim would be considered for regularization.”

22. It is seen that the order was only for reconsideration not an absolute quashing of the termination orders. The Hon'ble High Court too in its order dated 16.5.2008 observed the following:

“.....By the judgment and order dated 10.1.2008, the Central Administrative Tribunal, Lucknow Bench, Lucknow, directed the opposite parties to consider the case of the petitioner for regularization as per the Recruitment Rules and in the light of the decision of the Hon'ble Supreme Court in the case of J.C. Yadav (supra). Whether the regularization of the petitioner has been considered by the authorities in accordance with the law declared by Hon'ble Supreme Court in the case of J.C. Yadav (supra) or not is to be decided by the Central Administrative Tribunal on merits.....

The Central Administrative Tribunal, Lucknow Bench, Lucknow shall dispose of the Original Application No. 142 of 2008 within three months from the date a certified copy of this order is produced and till the original application is disposed of, the impugned order dated 17.4.2008 shall remain in abeyance. The petitioner shall not seek any adjournment before the Central Administrative Tribunal.”

In this case, as stated by the applicant herself, her initial selection was not on regular basis, but for an adhoc time bound manner by seeking limited number of names from the Employment Exchange, she was first amongst limited numbers of equals in the selection process. It was made very clear in her in the initial appointment letter dated 16.3.1999 that her appointment could cease no receipt of candidate from SSC or 89 days which ever is earlier.

In the case of J.C. Yadav (supra) the power to relax in any requirement of a condition of service rule was examined in the context of whether the relaxation may be exercised in the case of an individual or to a number of individual who may be suitably placed. The question of who may grant the relaxation was not an issue before the Hon'ble Supreme Court as in the case of J.C. Yadav (supra) the relaxation in both cases was the State Government.

In the present case the Recruitment Rules of Class III & IV employees of CGIT-cum-Labour Court dated 19.7.1984 have been filed by the applicant as Annexure no.10 and by the respondents

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as Annexure no. CA-1. Under the caption Power to Relax the following provisions is made:-

“Where the Central Government is of the opinion that it is necessary or expedient so to do, it may by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons.”

23. It is, therefore, clear that under the recruitment rules the power of relaxation vests only with the Government and not to the respondent no.3 who is Head of Department for a substantive officer and is not the government.

24. This position of rule was very well known to the respondent no.3 who passed the regularization order dated 6.2.2003 for he has very carefully omitted to mention any rule which gave him the authority to pass such an order or a relaxation of Recruitment Rules. The applicant may have considered that such an order is in exercising a “deemed power”, but can the order stand a legal scrutiny? In fact the order is a highly personalized one ever recording the name of his predecessor and is at total variances with all his earlier orders wherein it was made clear that adhoc service will not render the applicant’s eligible for regularisation.

It is precisely such conduct of various functionaries of the Government and its subordinate offices which gave rise to a situation of by passing of the regular channel of recruitment by a large body of carnal temporary and adhoc employees, which was strongly condemned by the Hon’ble Supreme Court in Uma Devi’s case (supra). This also gave rise to what is called the body of litigation employee. The Hon’ble Supreme Court in para 13 of the judgment referring to the observations of the constitutional Bench in State of Punjab Vs. Jagdip Singh had observed the following:

“In our opinion where a government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give he will not in law be deemed to have been validity appointed to the post or given the particular status.”

Further, in para 46 of the same judgment, the Apex Court has held as under:-

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"Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularized since the decisions in Dharwad (supra), Piara Singh (supra), Jacob, and Gujarat Agricultural University and the like, have given rise to an expectation in them that their services would also be regularized. The doctrine can be invoked if the decisions of the Administrative Authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.

25. In view of the discussions made hereinabove and also in view of the decision of Hon'ble Supreme Court, we do not find any merit in the claim of the applicant. The O.A. is liable to be dismissed and is dismissed accordingly. No costs.

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(Ms. Jayati Chandra)
Member-A
Girish/-

V.R. Agarwal
(Naveent Kumar)
Member-J