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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CAMP AT NAGPUR

1. Original Application No. 637/87

Ghanshyam Pralhad Lokhande. ... Applicant.

V/s.

Union of India and 3 others. ... Respondents.

2. Original Application No. 407/88

Fattesingh Punaji Dhabre. ... Applicant.

V/s.

Union of India and 3 others. ... Respondents.

3. Original Application No. 409/88

Lachhmandas Gehimal Tekchandani. ... Applicant.

V/s.

Union of India and 3 others. ... Respondents.

4. Original Application No. 410/88

Hulasi Thakur Kwril ... Applicant.

V/s.

Union of India and 3 others. ... Respondents.

5. Original Application No. 411/88

Sukhadeo Lokmanji Solanki. ... Applicant.

V/s.

Union of India and 3 others. ... Respondents.

6. Original Application No. 412/88

Shamrao Khekade. ... Applicant.

V/s.

Union of India and 3 others. ... Respondents.

7. Original Application No. 413/88

Udaram Kisanji Kadu. ... Applicant.

V/s.

Union of India and 3 others. ... Respondents.

8. Original Application No. 414/88

Abdul Aziz Khan. ... Applicant.

V/s.

Union of India and 3 others. ... Respondents.

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Coram: Hon'ble Justice Shri U.C. Srivastava, Vice Chairman.
Hon'ble Member (A) Shri P.S. Chaudhuri.

Appearance:

Mr. B.N. Dhade for Applicant.

Mr. Ramesh Darda for Respondents.

ORAL JUDGMENT

(Per Shri U.C. Srivastava, Vice Chairman) Dated:12.7.1991

In all these eight cases a common question of law substantially arises and as such all these eight cases have been heard and disposed of together.

2. The applicants were working as Lower Division Clerk (for short, LDC) on ad hoc basis from various dates till the date of filing of this application. The applicants were appointed as Grading Attendants/Lab Attendant/Gasman/Chowkidar in the Directorate of Marketing and Inspection, Sahibabad/ Nagpur on various dates between 1959 and 1973. Some educationally qualified Group D employees were appointed as ad hoc LDCs against the vacant posts of LDCs between 1978 and 1981 on ad hoc and short term basis pending the nomination of regular candidates belonging to the Central Secretariat Clerical Services (for short CSCS) by the Ministry/ Department of Rural Development. It was provided that they were appointed as LDCs on purely ad hoc and short term basis for a period of three months or till the regular candidates were made available. But the ad hoc appointments so made continued for years together i.e. till at least the reversion order in question dated 4.3.1987 was not passed. All these applicants were similarly appointed and continued to work as such for years together till the reversion order was passed in March 1987. Their appointments were continuously extended and as per their allegation they have qualified in the departmental typing test, but

increments were not granted to them on the ground that they have not passed the typing test conducted by Staff Selection Commission. The applicants made representation for their regularisation and the Union also sponsored their cause that those who were reverted should actually be regularised but the Union was given a reply that they cannot be regularised. Apprehending that the reversion order was in the offing the applicants approached this Tribunal.

3. The applicants have claimed that they may be regularised from the date of their initial appointment setting aside the office letter dated 4.3.1987 informing the Union that the ad hoc LDCs cannot be regularised and all the vacancies in the direct recruitment quota in the sub-office cadre of LDCs which are presently filled on ad hoc basis should be reported to the Staff Selection Commission immediately to nominate regular candidates. The applicants have claimed confirmation and regularisation on the plea that denial thereof is against Articles 14 and 16 of the Constitution. The respondents have pleaded that the applicants are not so entitled and increments cannot be granted as they have not passed the prescribed test conducted by the Staff Selection Commission and in the offer of promotion itself it was made clear that they should not request for regularisation in the cadre of LDC and that as per the recruitment rules a quota of 10% is earmarked in the cadre of LDC for educationally qualified Group D employees of Head Quarter Officer participating in the Central Civil Services Scheme of which 5% quota is reserved for promotion on seniority cum fitness and the other 5% is reserved for promotion by limited departmental examination conducted by the Staff Selection Commission. Similarly, the recruitment

rules for the post of LDC (sub-office) provide a 10% quota for appointment of educationally qualified Group D staff in sub office cadre only. The Group D staff including Grading Attendants in the sub-office cadre are promoted to higher post of LDC either on the basis of seniority-cum-fitness or on the basis of departmental examination periodically held by D.M.I. The applicants were working as Grading Attendants in the office of the respondents and ~~that~~ they do not belong to CSCS Cadre as such they are not entitled for regularisation and their ad hoc services stand automatically terminated.

4. In some of these cases an amendment application was moved which was rejected, but the learned counsel contended that the documents which have been filed and are the own documents of the respondents may be looked into as part of his argument. The documents to which our attention was drawn was one letter dated 7.2.1977 issued by the Administrative Officer replying to applicant G.P. Lokhande's representation and stating that the post of LDC is 100% direct recruitment post out of which 10% is reserved for departmental limited competitive examination being held from time to time for eligible class IV personnel in the Directorate who have passed the matriculation examination and further stating that the case of applicant G.P. Lokhande could also be considered along with the outside candidates sponsored by the Employment Exchange as and when the vacancy occurs in the Directorate, provided he fulfils the age and educational qualifications prescribed for the post of LDC. The other document to which a reference has been made is letter dated 27.3.1977 to the effect that the office will have no objection in allowing applicant G.P. Lokhande to appear for the interview and test with

the nominees of the Employment Exchange and that since he is temporary as Class IV staff, he does not have a lien. The other letter is dated 15.4.1983. That Office Memorandum is regarding continuance of ad hoc LDCs beyond the date of announcement of results of the Special Clerk's Grade Examination held in 1982 and it states that it has been finally decided to give those ad hoc employees a second and final chance to get themselves regularised by holding another examination sometime in September or December 1983. Another letter is of April 1983 which states that eligible ad hoc candidates may be informed of the Government's decision to hold another examination. The letter dated 11.10.1983 informs that G.P. Lokande and two others did not qualify in the Clerks Grade examination for ad hoc employees/LDCs held in 1982. This makes it clear that the applicant G.P. Lokhande atleast did appear in the examination held in 1982 but he could not qualify. But in the cases of the others it cannot be said that they appeared earlier but could not qualify. The letter dated 13.12.1990 which has been issued by the Deputy Director (Administration) during the pendency of the application provides that 18 posts of Grading Attendants at Headquarter Office are redesignated as Messengers with effect from 22.7.1988. Accordingly the Joint Agricultural Marketing Adviser has approved the change of designation of Grading Attendants as Messengers which includes four of the applicants viz., L.G. Tekchandani, F.P. Dhabre, S.N. Khekde and G.P. Lokhande. Obviously this was done during the pendency of this application.

5. Suffice it to say that Messengers cannot claim the position of Clerks. The position in these cases before us is that generally most of the candidates have not qualified in any examination so far and they are claiming regularisation on the basis of their

having worked for the last so many years and the respondents rely on the terms of appointment and continuation letters for ad hoc appointments. A reference has been made to a decision of the Central Administrative Tribunal, New Bombay Bench in National Association, Directorate of Marketing & Inspection v. Union of India & another, OA No. 335/87 & 368/87, in which the same question was involved and in the said case it was noticed that some of the employees participating in the qualifying examination for the 10% quota conducted by the Staff Selection Commission could not secure places in the merit list. Staff Selection Commission held exmainations in 1982 and 1985 for covering these employee's regularisation but none of the applicants had passed in the said examination. A reference was made by the Applicant's counsel to the case of Narender Chadha & Ors. v. Union of India, AIR 1986 SC 836. The facts in that case are quite distinct from the facts before us in as much as the officiation of the employees in that case was a continuous one and they continued to hold the post and had never been reverted. The same is not so in the cases before as they were given short term appointments including some made in unforeseen circumstances. The Bench came to the conclusion that the claim of the applicant sponsored by the Association is not sustainable, and the application was dismissed.

6. We do not find any ground to differ from the same and accordingly we are of the view that the applicants have no claim but at the same time we will not hesitate to observe that atleast one opportunity

should be given to these employees as early as possible for qualifying in the test and in case they qualify they may be considered for promotion or regularisation as the case may be. This opportunity should be given in view of the fact that they have gained sufficient experience by working for several years and they may prove better than those who may be recruited afresh here after. We direct the respondents to give the applicants in these applications one opportunity to appear at the very next qualifying test that they hold. In the circumstances of the case there will be no order as to costs.