BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Tr.Application No.50/86 (W.P.No.2245 of 1985)
Tr.Application No.51/86 (W.P.No.2246 of 1985)
Tr.Application No.52/86 (W.P.No.2247 of 1985)
Tr.Application No.53/86 (W.P.No.2248 of 1985)
Tr.Application No.54/86 (W.P.No.2249 of 1985)
Tr.Application No.55/86 (W.P.No.2250 of 1985)
Tr.Application No.56/86 (W.P.No.2251 of 1985)
Tr.Application No.57/86 (W.P.No.2252 of 1985)
Tr.Application No.58/86 (W.P.No.2253 of 1985)
Tr.Application No.59/86 (W.P.No.2254 of 1985)

1. Miss Nisha Ramchandra Gavli — Tr.Appln.No.50/86
Byculla Fire Brigade,
Bapurao Jagtap Marg,
Bombay - 400 008.

2. Shri Devanand V.Sawant, — Tr.Appln.No.51/86
47/B/16, Dr.B.A.Road, Ganesh Nagar,
Lalbaug, Bombay - 400 012.

3. Shri Ramesh Shantaram Yerunkar, — Tr.Appln.No.52/86
80/5, Worli B.D.D.Chawl,
Worli, Bombay 400 018.

4. Mrs.Archana Ashok Nevarekar, — Tr.Appln.No.53/86
Navjivan Nagar,Near Chawl No.2,
6 Ganesh Marg, Vikhroli (E),
Bombay - 400 083

5. Miss.Kalpana Vishwanath Chavan, — Tr.Appln.No.54/86
41/1213, Adarsh Nagar,
Bengal Chemical,
Dr.A.B.Road, Bombay-400 025.

6. Miss.Vasanti Sakharam Sawant, — Tr.Appln.No.55/86
J.N.2A, 41 Room No.4, Sector No.10,
Juhu Nagar,Vashi, New Bombay,
Dist.Thane.

7. Shri S.Y.Parkar, — Tr.Appln.No.56/86
Sadanand Narwakar Niwas,
2/30, B.A.Road,Lal Baug,
Bombay - 400 012.

8. Shri Mahadeo H.Thakur — Tr.Appln.No.57/86
Domnic Pereira Chawl,
R.No.2, Bamanwada,
Village Vile Parle,
Bombay - 400 099.

9. Miss Kamal Bhagwan Madhav, — Tr.Appln.No.58/86
Kanchan Sheetal Society,
A-5 Chheda Nagar, Chembur,
Bombay - 400 089

10. Miss Megha Ramnath Goraksha — Tr.Appln.No.59/86
6th Dewara House No.3,
2nd Carpenter Street,
Bombay-10.

(Sl.No.1 to 10 All Applicants)

...2

V/s.

1. The Union of India
By its Secretary to the
Ministry of Labour, New Delhi.

2. The Protector of Emigrants,
Having his Office at
Buldana 'E' Khira Bhavan,
S.V.Road, Bombay 400 056.

..Respondents in all the above transfer applications.

Coram : Hon'ble Member S.P.Mukerji
Hon'ble Member(J)M.B.Mujumdar

Appearance : Shri V.H.Dixit,Advocate for the Applicants
Shri M.I.Sethna,& Shri Subodh Joshi for the respondents.

Judgement : (Per Member S.P.Mukerji) Dated : 24-9-1986.

Since in all the aforesaid ten cases a common question of the petitioners not being enabled to take the Special Qualifying Examination of 1985 has been raised these cases are being disposed of by a common order as follows.

2. The material facts of the case can be summarised as follows. Before 2-1-1984 the work of Regional Passport office and that of Protector of Emigrants was handled in the Office of the Regional Passport Officer. On 2-1-84 the work of Protector of Emigrants was separated from that of the Regional Passport office and placed under the Ministry of Labour while the Regional Passport office continued to function as a part of the Ministry of External Affairs. It is admitted that before and after the bifurcation of work, the clerical cadres in these units were participating in the Central Secretariat Clerical Service. It appears that the petitioners in cases Tr. 50/86 to 56/86 were originaly recruited through the Employment Exchange as Lower Division Clerks between 2.4.81 and 7.4.83 on daily rated basis and discharging identical duties as the LDC's who were in the cadre of Central Secretariat Clerical Service. On the separation of the work of the Protector of Emigrants these petitioners were interviewed and were taken over as ad-hoc LDCs between 11-1-84 and 7-2-85. The petitioners in case No. 57/86,

Contd...3/-

58/86 and 59/86 however were not working as daily rated LDCs but were recruited from the open market directly as ad-hoc LDCs w.e.f. 1-3-86.

3. The Govt. of India has been concerned about the human problem involved in respect of the security of tenure of the daily rated and ad-hoc employees. In respect of the daily wagers who had completed 2 years of service within 240 days of paid service in a year the Govt. has been allowing various offices and departments to bring them over to regular establishment on a monthly basis even though their status was kept purely temporary and ad-hoc. In respect of those clerks who have been stagnating as ad-hoc clerks year after year without being brought over to the regular establishment and who could not appear in the open competitive examination held by the Staff Selection Commission because of over age and other reasons, the Govt. has been holding what is known as Special Qualifying Examinations conducted by the Staff Selection Commission. Three such examination were held one in 1981, another in December, 1983 and the third in 1985. Those who qualified in the examination were brought over to the regular clerical Service. This action could be taken by the Govt. under relevant provisions of Rule 12 of the Central Secretariat Clerical Service Rules 1962. In the instant case it appears that the scheme of 1985 examination which was published by the Office Memorandum of Department of Personnel and A.R. on the 20th February 1985 allowed only those ad-hoc employees whod were recruited through the Employment Exchange and were within the age limits for competing at the clerks grade examination on the date of their appointment and had rendered atleast one year of service as on 1-1-1985 to appear in the examination. Since the petitioners in the aforesaid 10 cases, did not according to the respondents, complete one year of service as adhoc employees they were not informed by the respondents about the Special Qualifying Examination nor did they apply to be admitted to the examination. As a result, their services were proposed to be terminated as adhoc employees to accommodate the regular employees and other adhoc employees who would become qualified after passing the Special Qualifying Examination. The contention of the

...4

petitioners in all these cases is that they should have been allowed to take the examination and their services as such would not be terminated summarily on the ground that they are not qualified to continue as LDC.

4. We have heard the arguments of the learned Counsel for both the parties and gone through the documents carefully. The problem of regularisation of adhoc employees through the Special Qualifying Examination has been dealt with in detail in the judgement of Principal Bench of the Central Administrative Tribunal in which one of the Members of this Bench was also a Member in Satiskumar and Others V/s UPSC and Others ATR 1986(2) CAT-47. This judgement of the Tribunal dt.21st March,1986 was implemented by the Govt.of India who have decided to hold a Supplementary Special Qualifying Examination to accommodate those adhoc LDCs who were adhoc LDCs as on 1-1-85 but could not or were not allowed to take the examination a in 1985 because they had not completed one year of qualifying service on 1-1-85 or were over age on the crucial day. The Principal Bench of the Tribunal ruled that for the purpose of the completing one year of qualifying service, the service as daily rated LDC excluding 'technical breaks' should be taken into account for the purpose of admission to the examination. The age to be taken into account would be the age at which the employees were appointed as daily rated LDCs. It was, however, made abundantly clear that this concession was given only to those whose status as on 1-1-85 was that of adhoc LDCs as otherwise the very character of the examination would change. The Principal Bench indicated as follows:-

" This examination would be open to only those who did not or could not take the Special Qualifying Examination in 1985 because of age and service qualifications but would have been eligible by the revised interpretation of eligibility as given in para 8 and 12 above."

5. Applying the aforesaid judgement of the Principal Bench to this case also, it appears that the following petitioners who were originally appointed through Employment Exchange on daily rated basis and later taken over as adhoc LDCs in the Office of the Protector of Emigrants could be eligible to take the Special Qualifying Examination subject to their being within the age limits on the date of their first appointment as daily rated clerks.

...5

Case No.	Name of the petitioner	Date of appointment as Daily rated clerk	Date of appointment as adhoc clerk
50/86	Miss.Nisha Ramchandra Gavli	2-1-81	11-1-84
54/86	Miss.Kalpana V.Chavan	1-4-81	11-4-84
55/86	Miss.Vasanti S.Sawant	29-10-81	11-1-84
56/86	Shri S.Y.Parker	12-10-81	11-1-84

6. Subject to the proper verification of their age and qualifying service etc., they should be allowed provisionally to appear in the Supplementary & Special Qualifying Examination

7. In respect of Petitioners in cases No.51/86, 52/86, 53/86 on one hand and 57/86, 58/86 and 59/86 on the other, it is admitted that they were taken over or appointed direct as adhoc LDCs on 7-2-85 in the first three cases (51,52 and 53 of 1986) and on 1-3-85 in the latter three cases (57,58 and 59 of 1986). As such their status as on 1-1-85, was either that of a daily rated LDC (in first three) or they were not in service at all (in the last three). Accordingly, they were not eligible to take the 1985 Special Qualifying Examination even by the relaxed standards of age and qualifying services which were laid down by the PrincipalBench.

8. In the instant 10 cases, we have not made any distinction between the service in the Regional Passport office and that in the Office of the Protector for Emigrants for the purpose of computing length of service as LDC and taken the service under the Regional Passport Office as qualifying for the Special Qualifying Examination even though the petitioners were in the office of the Protector of Emigrants. We did x it advisedly because both the offices were part and parcel of the Regional Passport office upto 2-1-84 and both the offices even after bifurcation on that day have been participating in Central Secretariat Clerical Service. We feel that any distinction between the two offices and ignoring the previous service of the petitioners prior to their appointment in the office of the Protector of Emigrants will be harsh and inequitable.

9. In the facts and circumstances stated above, we allow the petition Nos 50/86, 54/86, 55/86 and 56/86 with the direction that the petitioners may be provisionally permitted to take the Supplementary Special Qualifying Examination being held in accordance with of Deptt.of Personnel & Training etc. O.M.of 1.8.1986 and subject to the verification of their age and length of service

...6

(excluding the technical breaks) etc. The breaks in daily rated service which are less than one month in duration can be ignored for the purpose of reckoning continuity of service and can be treated as technical breaks. In regard to the petitions No.51/86, 52/86, and 53/86 as also petitions No. 57/86, 58/86, 59/86, since the petitioners were inducted as adhoc LDCs after 1-1-85 and their status as on 1-1-85 could not be considered to be that of adhoc LDCs, they have to be considered to be ineligible to take the Supplementary Special Qualifying Examination and hence these six petitions will have to be rejected. There are ruling of the Supreme Court and High Courts which clearly lay down that 'adhocists' have no right to the posts (S.P.Vasudeva V/s State of Haryana AIR 1975 SC 2292; N.K.Chauhan vs State of Gujarat AIR 1977 SC 251).

10. The judgement was pronounced in the open court today in presence of the learned Counsel for both the parties.

sd/-24/9/86

(S.P.MUKERJI)
Member

sd/-24/9/86

(M.B.MUJUMDAR)
Member(J)