

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 26th FEBRUARY 1987

Present : Hon'ble Sri Ch. Ramakrishna Rao - Member (J)

Hon'ble Sri L.H.A. Rego - Member (A)

APPLICATION Nos.1504 to 1506 of 1986
and 1523 to 1528 of 1986

1. C.T. Sreedhar } LDCs, Regional Office
 2. Gudlappa } Directorate of Field Publicity
 3. M.N. Manjula } Ministry of I & B
 - } No.34, Dasara Mansion,
 - } J.C. Road, Bangalore
 4. G. Prakash
LDC, Field Publicity Office
Dte of Field Publicity,
Ministry of I & B, Govt of India
No. 5085/81, Ravindranagar
Hassan
 5. M.D.Krishnamurthy Rao
LDC, Field Publicity Office
Directorate of Field Publicity,
Ministry of I & B, Govt of India
Shimoga
 6. ~~Chandrama~~ Chandrama
LDC, Field Publicity Office,
Directorate of Field Publicity,
Ministry of I & B, Govt. of India
Bellary
 7. Jayaprakash Malya
LDC, Field Publicity Office
Directorate of Information & Broadcasting
Govt of India, Bellary
 8. Shivasharanappa
LDC, Field Publicity Office
Ministry of I & B, Govt of India
Gulbarga District
 9. V.H. Halyal
LDC, Field Publicity Office
Directorate of Field Publicity
Govt. of India, Dharwad District
- Applicants
- (Sri M. Narayanaswamy, Advocates)

and

1. The Secretary to Govt of India
Ministry of I & B, New Delhi

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2. The Secretary (Coord)
Staff Selection Commission
Block No.12, C.G.O. Complex
Lodi Road, New Delhi
3. The Director of Field Publicity
Ministry of Information & Broadcasting,
New Delhi
4. The Regional Officer,
Directorate of Field Publicity,
No.34, Dasara Mansion,
Bangalore 2

- Respondents

(Sri D.V. Shailendra, Advocate)

This application came up for hearing before this Tribunal and Hon'ble Sri. Ch. Ramakrishna Rao, Member (J) to-day made the following

O R D E R

These applications were initially filed as writ petitions in the High Court of Karnataka and subsequently transferred to this Tribunal. The facts giving rise to these applications are as follows.

2. The applicants have been working as Lower Division Clerks ('LDCs') in the office of the Directorate of Field Publicity ('DFP') - R4 under the Ministry of Information & Broadcasting - R1 during the period 1977 to 1981. Under the Union Public Service Commission (Exemption from Consultation) Regulations 1958, recruitment inter alia to class III & IV services and posts, save as otherwise expressly provided in the recruitment rules thereto, were taken out of the purview of the Union Public Service Commission ('UPSC'). The Department of Personnel ('DP') in and by its resolution dated 4.11.75 (Annexure F) set up the Subordinate Services Commission ('SSC') for the purpose of making recruitment for non-technical

posts in the several department of Government of India and in the subordinate offices except to the extent indicated therein. SSC held the first examination in 1982 for the purpose of filling up posts of LDCs in the several departments of Government of India. Prior to 1982, several departments of Government of India used to call for names of suitable candidates from the local Employment Exchange ('EE') and select suitable candidates out of them by holding a written or viva voce test or both, as deemed fit. Though the applicants were appointed prior to the holding of the first examination by SSC, they were asked to appear for the examination conducted by SSC in 1982 and in the subsequent years for the purpose of regularising their appointments depending on their performance in the said examinations. The legality of the order of the DP/DFP making ^{it obligatory to get} ~~qualification~~ through ~~in~~ the said examination, ~~a condition~~ for regularisation in the posts, in so far as the applicants are concerned, is questioned in these applications.

3. Sri M.Narayana Swamy, learned counsel for the applicants, contends that his clients having been appointed ~~to~~ prior to 1982 according to the procedure then in vogue for recruitment of LDCs, the DP was not justified in calling upon his clients to appear for the examination conducted by the SSC for the purpose of regularisation of their service. Shri Narayana Swamy has developed his argument as follows:

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In the offer of appointment issued to the applicants it is not stated that the posts of LDCs in the office or R4 are temporary. It is, however, made clear in the terms of appointment that the post is purely temporary and ad hoc and sanctioned upto 29.2.80 but likely to continue indefinitely. Though ^{a term} has been incorporated in the offer that the appointment may be terminated at any time by giving a months notice, it is also stated therein-

"He will be on trial for a period of two years from the date of appointment, which may be extended or curtailed at the discretion of the appointing authority."

Thus on a combined reading of the terms contained in the offer of appointment, it is manifest that the post is a temporary one but in the ^{offers of ~~appointment~~} appointment ~~of the~~ made to the applicants, it is explicitly stated that the period for which the applicants would be on trial, which is akin to the period of probation, is two years and the said period could be either extended or curtailed. It is implicit ⁱⁿ ~~from~~ this that if the performance ^{of the applicants} during this period is ~~not~~ found satisfactory and consequently not extended, the applicants must be deemed to have ~~been~~ completed the period of trial satisfactorily and thereafter they stood qualified for confirmation. In any case, no term is found in the offer of appointment to the effect that the appointment was provisional and subject to the applicants qualifying ^{themselves} at the examination

Ans.

to be conducted by SSC in due course. In the absence of such a term, the appointment made prior to 1982 by the appointing authority must be treated as regular.

4. Sri D.V. Shailendrakumar, learned counsel for the respondents, submits that the services of any government servant appointed on an ad hoc basis temporarily does not become regular as a result of his length of service; that the applicants were given adequate opportunity to qualify themselves at the examination held by SSC for being regularised; that the applicants had at no point of time been given the impression that their services would be automatically regularised; that the applicants cannot claim any vested right in the method of recruitment; that the sponsoring of names by the local EE is resorted to only in the case of ad hoc appointment; that the applicants were duly informed about the SSC examination for regularisation even when they were initially appointed and, as such, the applicants can have no legitimate grievance.

According to Sri Shailendrakumar, ~~submits that~~ ^{was} the examination ~~is~~ conducted by the SSC specially for assessing the merit and suitability of the appointees ~~in~~ ^{was end} in the several departments for the purpose of regularisation and, as such, it was in public interest.

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5. We have considered the rival contentions carefully. SSC was set up for recruitment of LDCs, among other posts, on 4-11-1975. But it took as many as seven years for conducting the first examination for recruitment of LDCs. Meanwhile, the several departments/subordinate offices had no option but to have recourse to the method of recruitment of LDCs in vogue prior to 4-11-1975 and R4 was, therefore, justified in adopting the same procedure and offering the appointments to the applicants as LDCs. This procedure seems to have continued even after 1982 with the result that DP issued a Office Memorandum dated 25.2.85 ('OM') pointing out that it was entirely irregular to make appointments to Group C posts except on the recommendation of SSC. The OM went on to say—

"Since notwithstanding the instructions, the Ministries/Departments had recruited LDCs, etc. on ad-hoc basis and such appointments were continued from time to time and demands were made for the regularisation of the service of such ad-hoc employees, two special qualification Examinations were held in putting an end to recruitment on ad-hoc basis.%

Thus it is apparent that what was objected to by DP was appointment of LDCs by Ministries/departments on ad hoc basis without reference to SSC.

6. The following observations of Das CJ in Parshotam Lal Dhinra v. Union (1958) S.C.R. 828, 857-8 are helpful in appreciating the nature and extent of the right which a government servant acquires on his appointment. "The conditions of service of a Govt. servant appointed to a post, permanent or temporary, are regulated by the terms of the contract of employment, express or implied and subject thereto, by the rules...."

~~to the applicants~~ ~~xxx~~ The posts of LDCs ~~afforded to the~~
~~were~~ ~~applicants~~
~~xxx~~/temporary posts sanctioned upto a particular date
the offer of appointment
mentioned ~~xxxxxx~~/but likely to continue indefinitely.

It is nowhere stated that the appoint^{ment} of the applicants was on ad-hoc basis. The term in the offer of appointment extracted in para 3 supra is not worded in the conventional manner i.e. period of probation: two years, so as to exclude the concept of automatic confirmation after expiry of two years but providing for extension or curtailment of the period of two years during which the applicants would be on trial. We are of the view that it is implicit in this term that it was incumbent on R4 to assess the quality of the work done by the applicants during the two years if the period is not extended they would normally be qualified for confirmation.

7. It is clear from the OM (Annexure G) that the appearance at the examination held by SSC in 1982 and in subsequent years was applicable only to ad-hoc employees in the grade of LDCs and not to employees like the applicants who cannot by any stretch of reasoning be labeled as ad-hoc employees.

8. Reference ~~may~~ may be made in this connection to a decision of the Supreme Court in D. Nagaraj v. State of Karnataka (1977) SCC(L&S) 220 in which it was laid down

"Articles 14 and 16 merely forbid improper or invidious distinctions by conferring rights or privileges upon a class of persons arbitrarily selected from out a large group who are similarly circumstanced but do not exclude the laying down of selective tests nor prevent the Government from laying down general educational qualifications for the post in question."

Prior to the setting up of SSC, selection of LDCs was not done in an arbitrary manner by the several departments but in conformity with the provisions of the Employment Exchange Act, 1959 read with the rules framed thereunder in 1960. The sponsoring of candidates by the EE and the holding of tests -- written or viva voce or both, on the basis of which LDCs were recruited by the departments prior to the holding of the first competitive examination by SSC for the purpose does not suffer from any legal flaw. In other words, it is only after SSC began discharging its functions in the matter of recruitment of LDCs by holding the first examination in 1982 that it became imperative on the part of the departments to approach SSC for nomination of candidates in the matter of filling up of the vacant posts. If the departments concerned defaulted to notify SSC about their requirements and continued to follow the procedure in vogue prior thereto, the applicants are not at fault and the appointments are not in any way invalidated because of the omission on the part of the departments to follow the correct procedure expected of them.

9. Sri Shailendrakumar invites our attention to paragraph 17 of the reply wherein it is stated

"As mentioned, the examination conducted by the SSC is only an assessment examination for regularising the services of ad-hoc employees. This has been prompted purely in public interest to employ people with minimum requirement of qualification and the recruitment rules also provide for it."

We find no basis for holding a so-called assessment examination in respect of candidates recruited as LDCs during the period 1975-82 since they were already subjected to written or viva voce or both tests by the several departments/subordinate offices and only thereafter they were appointed as LDCs. In the J.P. Kulshrestha v. Chancellor, Allahabad University 1980 SCC (L&S) 436, the Supreme Court has upheld the selection of candidates by interview. The following observations in that decision are noteworthy.

"Any administrative or quasi-judicial body clothed with powers and left unfettered by procedures is free to devise its own pragmatic, flexible and functionally viable process of transacting business subject, of course, to the basics of natural justice, fair-play in action, reasonableness in collecting decisional materials, avoidance of arbitrariness and extraneous considerations and otherwise keeping within the leading strings of the law. Thus, interviews, as such, are not bad but polluting it to attain illegitimate ends is bad."

In view of the dicta of the Supreme Court extracted above, we find no necessity for any assessment examination on the part of the SSC in respect of candidates appointed as LDCs against ~~ad-hoc~~ temporary posts though the position may be, perhaps, different in the case of LDCs appointed on ad-hoc basis.

10. On the other hand, from the terms and conditions of the offers of appointment made to the applicants to which Shri Narayana Swamy referred, there is no doubt in a

10. Shri Narayanaswamy invites our attention to the letters dated 22.9.82 and 9.10.84 (Annexures H & J) wherein the approval of SSC was conveyed to the departments concerned regularising the appointments of the persons referred to therein who were appointed as LDCs prior to 1982 on being sponsored by the EE. Since the applicants are also similarly situated as the persons mentioned in the letters (Annexures H & J), we are of the view that it would amount to a hostile discrimination if exemption is granted to some but not others and would be hit by the equality clause in the Constitution (Article 14). The following observations of the Supreme Court in L. Robert D'Souza v. Executive Engineer, Southern Railway, 1982 SCC:(L&S) 124 support the view taken by us.

"After the termination of the service of the appellant, his colleague belonging to the same category and having almost equal period of service, was treated as on regular employment and ceased to belong to the category of casual labour. This is a discriminatory treatment. If his colleague was accorded the status of regular employee, the appellant could not be distinguished and treated otherwise but for a singular unfortunate event of his termination of service."

11. Shri Shailendrakumar submits that the appointments of the applicants at serial Nos. 1,3,4,6 and 9 have been regularised with effect from 11.9.85, 14.1.86, 14.1.86, 14.1.86 and 11.9.85 respectively since they qualified at the examination held on those dates. Actually, they were appointed on 15.1.77, 15.1.81, 6.7.79, 27.10.78 and 9.2.78 respectively and they should have been regularised with

Chd

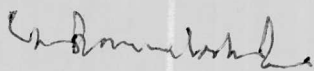
effect from those dates. In the view we have taken that the applicants are not ad-hoc appointees, irrespective of their getting through the examination held by SSC, they were entitled to be regularised. We, therefore, direct R4 to regularise the aforesaid applicants with effect from the date of their initial appointment.

12. Regarding the applicants at serial Nos. 2,5,7 and 8 the fact that they did not qualify at the examination held by SSC does not in any way hamper their confirmation with effect from the date of their initial appointment.

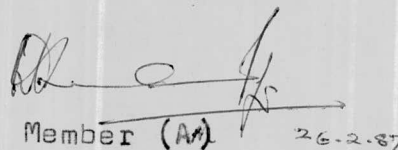
As already held by us, the applicants are similarly situated as LDCs working in other departments who have been appointed on regular basis with the approval of SSC. The approval accorded by SSC in the case of LDCs mentioned in Annexures H & J will be equally applicable in the case of these applicants. We, therefore, direct R4 to regularise the appointments of these applicants with effect from the date of their initial appointment.

13. In the result the applications are allowed.

No order as to costs.



Member (J)


26-2-87

Member (A)