

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

Rev. Appellate No. 465790-20

CAUSE TITLE TA-1742/1982 OF

NAME OF THE PARTIES Brijendra Kumar Applicant

Versus

C O I Bus. Respondent

Part A.

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CERTIFICATE

Certified that no further action is required to be taken and that the case is fit for consignment to the record room (decided)

pe check

Dated

Counter Signed.....

[Signature]
16/8/11

Signature of the
Dealing Assistant

[Signature]
16/8/11
Section Officer/In charge

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH

FORM OF INDEX

O.A./T.A./R.A./C.C.P./ No. 465-1990

B. Kumar vs. U. O. I. in T.A 1743
PART - I 87

1. Index Papers
2. Order Sheet
3. Any other orders
4. Judgement
5. S.L.P.

:- 0-1 ✓

:- 1-2 ✓

:- Nil ✓

:- 3-5 dated 24 Oct. 90
4.10.90

:- Nil

DY. Registrar

Supervising Officer

Dealing Clerk

(Kulbir Singh)

(N.K. Rai)

Note :- If any original document is on record - Details.

Nil

Dealing Clerk

(N.K. Rai)

V.K. Mishra

A2

ANNEXURE - A

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW .

INDEX SHEET

CAUSE TITLE Review 465 of 1990

TA 1742 of 87 (D)

Name of the parties

Sri J.B. Kumar

Applicant.

Versus.

Union of India

Respondents.

Part A.B.C.

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(3) (A2) 44

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

LUCKNOW CIRCUIT BENCH

Review Application No.465 of 1990 (L)

In

Registration T.A. No.1742 of 1987 (L)

Shri Brijendra Kumar Applicant

Versus

Union of India & Others Respondents

Hon.Mr.Justice K.Nath, V.C.

Hon.Mr. K.J. Raman, Member (A)

(By Hon.Mr.Justice K.Nath, V.C.)

1. This application is for review of our judgement dated 18.5.90 in the Transfer Application described above whereby the applicant's case for regularization on the post of Lower Division Clerk and for his permanent absorption in the existing vacancy was dismissed.

2. We have carefully gone through the review application and the judgement. Two points have been raised.

3. Firstly, he referred to the observation of this Tribunal in para 4 of the judgement that after the applicant had failed in the regularisation examination held in 1982 he not only did not avail of any opportunity of taking further tests but also there was no basis for the statement that the applicant had applied again for appearing at the Staff Selection Commission Examination. It was pointed out that the applicant had not stated in his petition that he had made any application for the purpose. It is stated in this review application that the applicant had applied for appearing at the examination held in 1983 by letter dated 23.9.83 addressed to the

Chief Medical Officer. It is further said that his another application for appearing in 1985 examination was forwarded to the Staff Selection Commission on 20.4.1985 but there was no occasion for the applicant to make specific reference of those applications in the original petition. In our opinion, the applicant should have known that it was necessary for him to prove that he had sought further opportunity for appearing at the examination. Indeed, the learned counsel for the applicant had referred to an earlier decision of this Bench to show that when opportunity was sought to appear at the further examination, the Tribunal had ordered the opportunity to be given. The point is that the applicant cannot be said to have discovered a new material in support of his claim which was not available to him at the time when the application was filed or heard. It is not possible to consider such material now.

4. The second ground is that the Tribunal did not consider the question of discrimination against the applicant inasmuch as adhoc employees junior to the applicant had been allowed to continue in the post on adhoc basis whereas the services of the applicant were terminated. The contention is not correct because the instance of Smt. Parvinder Kaur was referred to by the applicant in this connection and was considered in para 3 of the judgement. It was specifically observed by us that the applicant's grievance was that

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Smt. Parvinder Kaur was appointed as L.D.C. in adhoc capacity long after the petitioner^{and} was regularised as L.D.C. while the petitioner was not. It was observed that the case of Parvinder Kaur was clearly distinguishable because she had successfully passed the selection test held by the Staff Selection Commission. There is no question therefore of the Tribunal not examining the plea of discrimination.

5. There is no force in this Review Application. The Review Application is therefore dismissed.



Member (A)



Vice Chairman

Dated the 4th Oct., 1990.

RKM

(Au) 42

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: ALLAHABAD
CIRCUIT BENCH: LUCKNOW

REVIEW PETITION No. 465 of 1990 (12)

in

T.A. No. 1742/8(T)

(Writ Petition No. 1964/85 High Court of Judicature
at Allahabad, Lucknow Bench)

Shri Brijendera Kumar applicant/Petitioner

Vs=

Union of India & OrsRESPONDENTS

I N D E X

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	IV Letter No.3-29/85-CGHS/Lko/249 dated 20.4.85	<u>19</u>

LUCKNOW

DATED: 27.7.90

Brijendera Kumar
APPLICANT/PETITIONER

through

K.L. BHATIA
ADVOCATE

C.A.T. BAR ROOM: NEW DELHI-1

FOR USE IN THE TRIBUNAL'S OFFICE

Date of filing _____

Registration No. _____

Signature

48

(AV)

IN CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH
LUCKNOW

Revision Petition No. 465 of 1990 (2)

in

T.A.No. 1742/8(T)

(Writ Petition No. 1964/85 High Court of
Judicature at Allahabad, Lucknow Bench)

Shri Brijendera KumarAPPLICANT/PETITIONER

Vs.

Union
of India & othersRESPONDENTS

REVIEW PETITION UNDER SECTION 22(3)
OF THE ADMINISTRATIVE TRIBUNALS ACT
1985 ON BEHALF OF THE APPLICANT

The Applicant/Petitioner respectfully submits:

1. That the Judgement delivered by the Hon'ble Tribunal in case No. TA/1742/8(T) on 18.5.90 contains significant errors and omissions resulting in miscarriage of justice. It is a fit case for review and modification in the light of the following facts and grounds of the case.

2.

LIMITATION

The judgement in this case is stated to have been delivered on 18.5.90. The Applicant was not present in the Court as he had no notice about the date of announcement of the judgement. A copy of the judgement was sent by post, but it was received by a neighbour on 29.6.90 who delivered it to the Applicant on 30.6.90. As such the

the limitation for filing the Review Petition would from the date when he came to know about it.

2.2 That even otherwise it has been held by the Tribunal in case of Kandirvel & Ors vs. U.O.I. (ALJ-1989(1) CAT-34) that following the decision of the Hon'ble Supreme Court mentioned in the case, the Hon'ble Tribunal has power to condone the delay under Section 5 of the Limitation Act.

2.3 As important points of law, apart from the means of livelihood of the Applicant are involved in this case, the present Review Petition is maintainable.

3. BRIEF FACTS OF THE CASE

3.1 That the Applicant was appointed as L.D.C. under the C.G.H.S. Lucknow in a regular manner against a regular vacancy. Though the appointment was labelled as ad-hoc one, he continued to work for four years with technical breaks only.

3.2 That in the office Order Dated 8.4.85 (Annexure 4 of the Original Petition) it was inter-alia said down that his appointment was for 13 days or till the post was filled on regular basis.. It implied that he will continue to hold the post till a regular nominee becomes available or a departmental

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(16)

page : 3 :

ad-hoc L.D.C. is appointed on regular basis

3.3 That his appointment was subject to Rules and Regulations ~~of~~ applicable to the Government Servants. He acquired the ~~same~~ status of a temporary employment and he was governed by the provisions of C.C.S.(TS) Rules.

3.4 That after a long period of service of 4 years, his services were terminated without any notice or one month's pay as laid down in Rule of the C.C.S.(TS) Rules. In his place some other persons were appointed on ad-hoc basis.

3.5 That the applicant filed a Writ Petition in the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, which was transferred to the ^{Circuit} ~~Central~~ Bench at Lucknow of the central Administrative Tribunal, Allahabad under Section 27(1) of the A.T. Act, 1985.

3.6 Th at the final hearing of the said petition was held and its judgement was delivered on 18.5.90, a copy of which is enclosed. It has been held that the petitioner has no case and the petition is dismissed.

3.7 That the main reason for the dismissal of the case, as explained in para 5 of the judgement which is extracted below:-

"It is not disputed that for the purpose of regularisation, a person has to pass through the Staff Selection Commission examination conducted for the purpose by the S.S.C. Since the Petitioner failed in the examination and is not shown to have taken any action to appear in the subsequent examination for the purpose, it is not possible either to regularise him or to direct him to be absorbed in same vacancy. Shri Tewari has referred to the decision of this Bench in O.A. 77/87 V.K. Mishra and others vs. Union of India and others and two connected cases to show that opportunity for appearing at subsequent selection examination was ordered by the Tribunal, but that was the case where the petitioner had sought for an opportunity but did not have it. Under those circumstances, the Tribunal ordered that one more chance might be given to the Petitioners there".

4. GROUND FOR REVIEW PETITION

- 4.1 That the Tribunal has been misled to believe that the applicant did not take any action to appear in the subsequent examination after his failure in the 1982 examination. This is patently wrong and incorrect. The applicant submitted his application for appearing in the examinations held in 1983 vide his letter dated 23.9.83 addressed to the Chief Medical Officer, C.G.H.S. Lucknow, a copy of which is enclosed. It was forwarded to

to the Staff Selection Commission by the Chief Medical Officer but the applicant was not allowed to appear in the examination.

4.2 That the Applicant submitted an application for appearing in 1985 examination which was forwarded to the Under Secretary (Coord) Staff Selection Commission, Block 12, CGO Complex, Lodhi Road, New Delhi-3 vide C.M.O. C.G.H.S. letter No. 29/85-CGHS/LKO/249 dated 20.4.85.. But the applicant did not receive any Roll No., apparently due to the reason that his services were illegally terminated on 21.4.85. He was, therefore, deprived of the chance of appearing in the examination by an arbitrary action.

4.3 That there was no point or occasion for giving specific reference of the applications submitted in the Original Petition as the relief was sought on the grounds of discrimination, right to hold the post on a regular basis by virtue of 4 years continuous officiating services, the posts have not been filled by regular appointees. The order of termination ~~was~~ and refusal to consider the claim for regular appointment was also said to be illegal, implicitly being against the principles of natural justice and Govt. Rules (including CCS(TS) Rules).

- 4.4 That a glaring omission and grave error has been crept in the judgement due to the judicial fallability in as much as the point regarding the so-called in-action said to be on the part of the applicant for not applying for examination held after 1982 has been assumed as correct without verification. If the Hon'ble Tribunal had considered this point to be of great importance it should have verified from the Applicant as well as from the Respondents. Even during the oral hearings, this point was ~~not~~ not brought out ~~for~~ by the Respondents otherwise it should have been rebutted by the Applicant as factually incorrect.
- 4.5 That the Applicant has clearly stated in para 4 of the Rejoinder that in accordance with rules there are 3 chances to be given to the Applicant to qualify in the examination, whereas the Petitioner has been given only one chance. As stated earlier the Applicant duly submitted his application for appearing in the examination held in 1983 and 1985 but as the luck would have it, he was not allowed to appear. In this way the case of K.N. Misra and others vs. U.O.I. (OA No. 77/87) is squarely applicable in this case. The distinction brought out in the judgement is without substance.

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POINTS TOTALLY IGNORED IN THE JUDGEMENT

5.1

Tht the Applicant raised certain vital points in his Original Application and in the Rejoinder which have a direct bearing upon the issue involved in the prayer made in the Original Application, a few instances are given below:-

- (i) It has been brought out in para 6 of the Original Application and para 11 of the Rejoinder that while his juniors employed later than the Applicant have been allowed to continue in the post on ad-hoc basis, services of the Applicant have been terminated. This results in discrimination which is violative of Arts. 14 and 16 of the Constitution. The Hon'ble Tribunal has ^{not} considered this point nor any reason has been given for ignoring it.
- (ii) The Applicant was appointed initially against a regular vacancy in a regular manner. It was also stated in letter dated 8.4.85 (Annexure 4 of the O.A.) that the Applicant was appointed as L.D.C. for a period of 13 days or till the post was filled in on regular basis. It was also implicitly stated that it was subject to appointment

of a departmental ad-hoc L.D.C. on a regular basis. No candidate selected by the S.S.C. was appointed on regular basis in the post held by the applicant. On the other hand another ad-hoc person was appointed which is totally illegal. Unfortunately the Hon'ble Tribunal lost sight of this important legal requirement.

- (iii) The main prayer in the application related to the question of regularisation of ad-hoc service as has been allowed by the Hon'ble Supreme Court and Hon'ble Tribunals in various judgements in view of the reason that the ad-hoc appointment ~~xxxx~~ is for a short term arrangement by stopgap. The continuance of the applicant for a period of 4 years with a technical break gives right to the applicant to hold this post on regular basis. The Hon'ble Tribunal is aware of the policy decision taken by the Hon'ble Supreme Court and the Tribunals in the following cases:-
- (a) Narender Chadha vs. U.O.I.
1986(1) ATR

- (b) S.S. Grover vs. U.O.I. & Ors
ATR 1986(2) 365
- (c) Dr. Chaman Lal Malhotra vs.
State of Himachal Pradesh
1975 (2) SLR 806-HP
- (d) Mrs. Sangeeta Narang vs. Delhi Admn
ATR 1988(1) 556
- (e) Mrs. Sujata Oberoi vs. U.O.I. & Or
ATR 1987(1) 181

(iv) That while the applicant has stated the facts of the case in the application as well as in the rejoinder it is for the Hon'ble Court to adjudicate the matter before it in the light of the law and statutory rules applicable to the case. The Applicant holds the civil post and is entitled to the benefit of the provisions of C.C.S. (Temporary Service) Rules. His service could not have been terminated without a notice or one month's pay in lieu of notice. In this connection attention is invited to the judgement by the Hon'ble Tribunal in case Miss ~~xxxx~~ Anita Kumari Seed vs. U.O.I. & Ors. 1989(1) CAT 369. It has been laid down there that even~~x~~ if the person is appointed on ad-hoc basis, he is entitled to benefit of C.C.S.(TS) Rules.

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- (v) That the Hon'ble Tribunal has gravely erred in assuming that the applicant had been employed during the years 1981-1985 for a periods of 89 days only. In fact the Applicant was employed on ~~xxx~~ continuous basis but he was given technical break of one or two days. Notwithstanding which the entire period of employment is considered as continuous service without any break for the purpose of regular employment and seniority. But for this grave misunderstanding it becomes apparent that the applicant has been serving for a long period of 4 years and has a strong case for appointment on regular basis.
- (vi) That as admitted by the REspondents some of the persons appointed on adhoc basis later than the applicant are still continuing in the post. A particular name to be mentioned in this regard is that of Shri Anoop Saxena
- (vii) That it was brought out in para 9 of the Rejoinder filed by the Applicant that a number of persons who were appointed on adhoc basis were regularised by the order dated 11.8.87 a copy of which was enclosed with the

with the Rejoinder, apparently without appearing in any examination. In this way the applicant has been subjected to a discriminatory treatment.

(viii) That it has been brought out in para 7 of the Rejoinder that if the post was to be filed in by only candidates sponsored by the S.S.C. then how the ad-hoc appointment/promotion and subsequent regularisation of Devinder Kumar was done on the post of L.D.C. The Hon'ble Court has not considered this point as this does not find any mention in the Judgement dated 18.5.90

(ix) That as laid down in the judgement delivered by the Madras Bench of the Central Administrative Tribunal in case M. Ramachandran vs. Director of Audit, Southern Railway Madras and others 1990(1) SLJ CAT 673. The review of the judgement is permissible (i) on the ground of discovery of new and important matter or ~~negligence~~ evidence which after the excess and due negligence was not within the knowledge of the party or could not be produced by him at the time when degree was passed or order made and (ii) on account of some mistake or

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any error apparent on the face of record
In this case the matter regarding the
so-called inaction on the part of the
applicant regarding his applying for
the examination held after 1982 was
not raised in the pleadings or in the
oral arguments by the REspondents.
Although there is a clear evidence
to show that the applicant had
submitted applications for the said
examinations but was not allowed to
appear. In this of this, the said
judgement calls for review and
modification.

It was also held in the case of
George Haris vs. U.O.I and ors.
1981 (1) ALJ 291 Madras

"I see no reason to exclude from
review palpable errors in
judgement. Nor can I accept
suggestion that when there is
patent occasion to look into
the relevant records of basic
decision on them the Court should

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PRAYER

In view of the foregoing, it is respectfully prayed that the judgement dated 18.5.90 regarding this case may kindly be reviewed and the ~~xxxxxx~~ applicant may be reinstated in service as his services were not terminated w.e.f. 21.4.85 and he may be granted pay and allowances along with arrears from 21.4.85 till the date of reinstatement as the order of termination was arbitrary, illegal and ~~nonest~~ in the ~~xx~~ eyes of law

LUCKNOW

Bkumar
(BIJENDRA KUMAR)
APPLICANT/PETITIONER

DATED: 27.7.90

VERIFICATION

I, Brijendra Kumar, son of Shri Badloo, aged 34 years, ex-L.D.C. C.G.H.S. Dispensary, Lucknow and resident of Nai Basti Dhaneva, Post Office Mahhood Nagar, (Maliabad) Distt. Lucknow (UP) do hereby verify that the contents of the above Review Petition are true to my personal knowledge and legal submissions believed to be true on advice and that I have not suppressed any material fact.

Bkumar
APPLICANT/PETITIONER

through

K.L. BHATIA:
ADVOCATE
C.A.T. BAR ROOM: NEW DELHI-1

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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH

LUCKNOW

T.A. No. 1742/87(T)

(Writ Petition No. 1964/85 of High Court of Judicature
at Allahabad, Lucknow Bench, Lucknow)

Brijendra Kumar

...Applicant/Petitioner

versus

Union of India & others

...Respondents.

Hon. Mr. Justice K. Nath, V.C.
Hon. Mr. K.J. Raman, A.M.

(Mr. Justice K. Nath, V.C.)

The Writ Petition described above is before us under section 29(1) of the Administrative Tribunals Act, 1985 for issue of mandamus to respondents to regularise the petitioner on the post of Lower Division Clerk(LDC) and to absorb him permanently in the existing vacancy. Counter and rejoinder have been exchanged. We have heard Shri T.N. Tewari, the learned counsel for the petitioner and Shri K.C. Sinha, the learned counsel for the respondents.



2. Various broken periods during which the petitioner worked as L.D.C. on adhoc basis are set out in para 3 of the Writ Petition. Only the first period in 1981 was of 231 days and the remaining periods were of 89 days each; third period being of 13 days from 8.4.85 to 20.4.85. This writ petition was filed on 1.5.85.

3. It is admitted that the petitioner had appeared at the Staff Selection Commission selection test some time in 1982 where he failed. His grievance is that one Smt. Parvinder Kaur who was appointed L.D.C. in adhoc capacity

long after the petitioner was regularised as L.D.C. while the petitioner was ^{not} but the distinction admittedly is that Smt. Parvinder Kaur had successfully passed the selection test held by the S.S.C.

4. The learned counsel for the petitioner says that after the petitioner had failed in the examination held in 1982, he should have been given an opportunity of taking further tests ^{which} were held later on but the petitioner's application for the purpose was not forwarded to the Commission. There is no basis for the statement that after the petitioner had failed in the 1982 examination, he had applied again for appearing at the Staff Selection Commission Examination. It is not said in the petition that the applicant had made any application for the purpose which was not forwarded.

5. It is not disputed that for the purpose of regularisation a person has to pass through the Staff Selection Commission examination conducted for the purpose by the S.S.C. Since the petitioner failed in the examination and is not shown to have taken any action to appear in the subsequent examination for the purpose, it is not possible either to regularise him or to direct him to be absorbed in ~~the~~ same vacancy. Shri Tewari has referred to the decision of this Bench in O.A. 77/87 V.K. Mishra and others. vs. Union of India and others and two connected cases to show that opportunity for appearing at subsequent selection examination was ordered by the Tribunal but that was the case where the petitioner had sought for an opportunity but did not have it. Under those circumstances, the Tribunal ordered that one more chance might be given to the petitioners there. The

APR



decision is distinguished from the facts of the present case. We are afraid the petitioner has no case and the petition is dismissed.

[Signature]
A.N.

v.c.

Lucknow dated the 18th May, 1990.

C.T.C

Attested
True copy

Deputy Registrar
Central Administrative Tribunal
Lucknow Branch
Lucknow

श्रीवाजे

भारतीय चिकित्सा अधिकारी
केन्द्रीय सरकार स्वास्थ्य योजना
ए. २० राजधानी गांधी
(लखनऊ)

होम

प्रभाषी चिकित्सा अधिकारी
केन्द्रीय सरकार स्वास्थ्य योजना
उत्तर प्रदेश राज्य ४
लखनऊ, राजधानी,

विषय

उचित माध्यम द्वारा आवेदन पत्र भेजने हेतु प्रार्थना

महोदय,

श्रीमान निवेदन यह कि प्राचीन आपने
आवेदन द्वारा विषय-संख्या ४ में भर्ती रहे हैं, यह वह
उपलब्ध आवेदन पत्र आपने द्वारा भेजे एक Spel. Exam
nation के लिए उचित माध्यम द्वारा भेजना चाहते हैं।

अतः आपसे आग्रह है कि मेरा आवेदन
पत्र शीघ्र ही कभी चाहे यथा आवश्यक हो सके
तो भेजने की कृपा करें।

हार्दिक

Date
23/9/83

आपका भक्त
Bhuvan
23/9/83
लि. ३०८, ३ गली (२. डी.)
नं. २०, २० गली, २० गली
नं. ४

264

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NOT INSURED

Amount of Stamp affixed Rs. 4/10

4194

Date 3/10/22

Signature of Receiver Official

108

(422)

3-25/85. C.G. 15/10/249
20/4/85

To: Under Secretary, (Coord.)

Staff selection commission.

Block No 12 - C.G. C/O Complet-

20th Road, New Delhi

P.N. 110003

(2)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: ALLAHABAD
CIRCUIT BENCH: LUCKNOW

REVIEW PETITION No. 465 of 1990 (2)

in

T.A. No. 1742/8(T)

(Writ Petition No. 1964/85 High Court of Judicature
at Allahabad, Lucknow Bench)

Shri Brijendra Kumar applicant/Petitioner

Vs=

Union of India & OrsRESPONDENTS

I N D E X

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LUCKNOW

DATED: 27.7.90

B Kumar
APPLICANT/PETITIONER

through

X
K.L. BHATIA
ADVOCATE

C.A.T. BAR ROOM: NEW DELHI-1

FOR USE IN THE TRIBUNAL'S OFFICE

Date of filing _____

Registration No. _____

Signature

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IN CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH
LUCKNOW

Revision Petition No. _____ of 1990

in

T.A.No. 1742/8(T)

(Writ Petition No. 1964/85 High Court of
Judicature at Allahabad, Lucknow Bench)

Shri Brijendera KumarAPPLICANT/PETITIONER

Vs.

Union
of India & othersRESPONDENTS

REVIEW PETITION UNDER SECTION 22(3)
OF THE ADMINISTRATIVE TRIBUNALS ACT
1985 ON BEHALF OF THE APPLICANT

The Applicant/Petitioner respectfully submits:

1. That the Judgement delivered by the Hon^{ble} Tribunal in case No. TA/1742/8(T) on 18.5.90 contains significant errors and omissions resulting in miscarriage of justice. It is a fit case for review and modification in the light of the following facts and grounds of the case.

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The judgement in this case is stated to have been delivered on 18.5.90. The Applicant was not present in the Court as he had no notice about the date of announcement of the judgement. A copy of the judgement was sent by post, but it was received by a neighbour on 29.6.90 who delivered it to the Applicant on 30.6.90. As such the

page : 2 :

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2.3 As important points of law, apart from the means of livelihood of the Applicant are involved in this case, the present Review Petition is maintainable.

3. BRIEF FACTS OF THE CASE

3.1 That the Applicant was appointed as L.D.C. under the C.G.H.S. Lucknow in a regular manner against a regular vacancy. Though the appointment was labelled as ad-hoc one, he continued to work for four years with technical breaks only.

3.2 That in the office Order Dated 8.4.85 (Annexure 4 of the Original Petition) it was inter-alia laid down that his appointment was for 13 days or till the post was filled on regular basis.. It implied that he will continue to hold the post till a regular nominee becomes available or a departmental

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ad-hoc L.D.C. is appointed on regular basis

- 3.3 That his appointment was subject to Rules and Regulations ~~of~~ applicable to the Government Servants. He acquired the ~~same~~ status of a temporary employment and he was governed by the provisions of C.C.S.(TS) Rules.
- 3.4 That after a long period of service of 4 years, his services were terminated without any notice or one month's pay as laid down in Rule of the C.C.S.(TS) Rules. In his place some other persons were appointed on ad-hoc basis.
- 3.5 That the applicant filed a Writ Petition in the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, which was transferred to the ^{Circuit} ~~General~~ Bench at Lucknow of the central Administrative Tribunal, Allahabad under Section 27(1) of the A.T. Act, 1985.
- 3.6 That at the final hearing of the said petition was held and its judgement was delivered on 18.5.90, a copy of which is enclosed. It has been held that the petitioner has no case and the petition is dismissed.
- 3.7 That the main reason for the dismissal of the case, as explained in para 5 of the judgement which is extracted below:-

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"It is not disputed that for the purpose of regularisation, a person has to pass through the Staff Selection Commission examination conducted for the purpose by the S.S.C. Since the Petitioner failed in the examination and is not shown to have taken any action to appear in the subsequent examination for the purpose, it is not possible either to regularise him or to direct him to be absorbed in same vacancy. Shri Tewari has referred to the decision of this Bench in O.A. 77/87 V.K. Mishra and others vs. Union of India and others and two connected cases to show that opportunity for appearing at subsequent selection examination was ordered by the Tribunal, but that was the case where the petitioner had sought for an opportunity but did not have it. Under those circumstances, the Tribunal ordered that one more chance might be given to the Petitioners there".

4. GROUND FOR REVIEW PETITION

- 4.1 That the Tribunal has been misled to believed that the applicant did not take any action to appear in the subsequent examination after his failure in the 1982 examination. This is patently wrong and incorrect. The applicant submitted his application for appearing in the examinations held in 1983 vide his letter dated 23.9.83 addressed to the Chief Medical Officer, C.G.H.S. Lucknow, a copy of which is enclosed. It was forwarded to

ANNEXURE I

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to the Staff Selection Commission by the Chief Medical Officer but the applicant was not allowed to appear in the examination.

4.2 That the Applicant submitted an application for appearing in 1985 examination which was forwarded to the Under Secretary (Coord) Staff Selection Commission, Block 12, CGO Complex, Lodhi Road, New Delhi-3 vide C.M.O. C.G.H.S. letter No. 29/85-CGHS/LKO/249 dated 20.4.85.. But the applicant did not receive any Roll No., apparently due to the reason that his services were illegally terminated on 21.4.85. He was, therefore, deprived of the chance of appearing in the examination by an arbitrary action.

4.3 That there was no point or occasion for giving specific reference of the applications submitted in the Original Petition as the relief was sought on the grounds of discrimination, right to hold the post on a regular basis by virtue of 4 years continuous officiating services, the posts have not been filled by regular appointees. The order of termination ~~was~~ and refusal to consider the claim for regular appointment was also said to be illegal, implicitly being against the principles of natural justice and Govt. Rules (including CCS(TS) Rules).

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- 4.4 That a glaring omission and grave error has been crept in the judgement due to the judicial fallability in as much as the point regarding the so-called in-action said to be on the part of the applicant for not applying for examination held after 1982 has been assumed as correct without verification. If the Hon'ble Tribunal had considered this point to be of great importance it should have verified from the Applicant as well as from the Respondents. Even during the oral hearings, this point was ~~not~~ not brought out ~~for~~ by the Respondents otherwise it should have been rebutted by the Applicant as factually incorrect.
- 4.5 That the Applicant has clearly stated in para 4 of the Rejoinder that in accordance with rules there are 3 chances to be given to the Applicant to qualify in the examination, whereas the Petitioner has been given only one chance. As stated earlier the Applicant duly submitted his application for appearing in the examination held in 1983 and 1985 but as the luck would have it, he was not allowed to appear. In this way the case of K.N. Misra and others vs. U.O.I. (OA No. 77/87) is squarely applicable in this case. The distinction brought out in the judgement is without substance.

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POINTS TOTALLY IGNORED IN THE JUDGEMENT

5.1

That the Applicant raised certain vital points in his Original Application and in the Rejoinder which have a direct bearing upon the issue involved in the prayer made in the Original Application, a few instances are given below:-

- (i) It has been brought out in para 6 of the Original Application and para 11 of the Rejoinder that while his juniors employed later than the Applicant have been allowed to continue in the post on ad-hoc basis, services of the Applicant have been terminated. This results in discrimination which is violative of Arts. 14 and 16 of the Constitution. The Hon'ble Tribunal has^{not} considered this point nor any reason has been given for ignoring it.
- (ii) The Applicant was appointed initially against a regular vacancy in a regular manner. It was also stated in letter dated 8.4.85 (Annexure 4 of the O.A.) that the Applicant was appointed as L.D.C. for a period of 13 days or till the post was filled in an regular basis. It was also implicitly stated that it was subject to appointment

(29)

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of a departmental ad-hoc L.D.C. on a regular basis. No candidate selected by the S.S.C. was appointed on regular basis in the post held by the applicant. On the other hand another ad-hoc person was appointed which is totally illegal. Unfortunately the Hon'ble Tribunal lost sight of this important legal requirement.

(iii) The main prayer in the application related to the question of regularisation of ad-hoc service as has been allowed by the Hon'ble Supreme Court and Hon'ble Tribunals in various judgements in view of the reason that the ad-hoc appointment ~~form~~ is for a short term arrangement by stopgap. The continuance of the applicant for a period of 4 years with a technical break gives right to the applicant to hold this post on regular basis. The Hon'ble Tribunal is aware of the policy decision taken by the Hon'ble Supreme Court and the Tribunals in the following cases:-

- (a) Narender Chadha vs. U.O.I.
1986(1) ATR

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- (b) S.S. Grover vs. U.O.I. & Ors
ATR 1986(2) 365
- (c) Dr. Chaman Lal Malhotra vs.
State of Himachal Pradesh
1975 (2) SLR 306-HP
- (d) Mrs. Sangeeta Narang vs. Delhi Admn
ATR 1988(1) 556
- (e) Mrs. Sujata Oberoi vs. U.O.I. & Or
ATR 1987(1) 181

(iv) That while the applicant has stated the facts of the case in the application as well as in the rejoinder it is for the Hon^{ble} Court to adjudicate the matter before it in the light of the law and statutory rules applicabl to the case. The Applicant holds the civil post and is entitled to the benefit of the provisions of C.C.S. (Temporary Service) Rules. His service could not have been terminated without a notice or one month's pay in lieu of notice. In this connection attention is invited to the judgement by the Hon^{ble} Tribunal in case Miss ~~xxxx~~ Anita Kumari Socd vs. U.O.I. & Ors. 1989(1) CAT 369. It has been laid down there that even if the person is appointed on ad-hoc basis, he is entitled to benefit of C.C.S.(TS) Rules.

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- (v) That the Hon'ble Tribunal has gravely erred in assuming that the applicant had been employed during the years 1981-1985 for a periods of 89 days only. In fact the Applicant was employed on ~~xxx~~ continuous basis but he was given technical break of one or two days. Notwithstanding which the entire period of employment is considered as continuous service without any break for the purpose of regular employment and seniority. But for this grave misunderstanding it becomes apparent that the applicant has been serving for a long period of 4 years and has a strong case for appointment on regular basis.
- (vi) That as admitted by the REspondents some of the persons appointed on adhoc basis later than the applicant are still continuing in the post. A particular name to be mentioned in this regard is that of Shri Anoop Saxena
- (vii) That it was brought out in para 9 of the Rejoinder filed by the Applicant that a number of persons who were appointed on adhoc basis were regularised by the order dated 11.8.87 a copy of which was enclosed with the

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with the Rejoinder, apparently without appearing in any examination. In this way the applicant has been subjected to a discriminatory treatment.

(viii) That it has been brought out in para 7 of the Rejoinder that if the post was to be filled in by only candidates sponsored by the S.S.C. then how the ad-hoc appointment/promotion and subsequent regularisation of Devinder Kumar was done on the post of L.D.C. The Hon'ble Court has not considered this point as this does not find any mention in the Judgement dated 18.5.90

(ix) That as laid down in the judgement delivered by the Madras Bench of the Central Administrative Tribunal in case M. Ramachandran vs. Director of Audit, Southern Railway Madras and others 1990(1) SLJ CAT 673. The review of the judgement is permissible (i) on the ground of discovery of new and important matter or ~~negligence~~ evidence which after the excess and due negligence was not within the knowledge of the party or could not be produced by him at the time when degree was passed or order made and (ii) on account of some mistake or

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any error apparent on the face of record
In this case the matter regarding the
so-called inaction on the part of the
applicant regarding his applying for
the examination held after 1982 was
not raised in the pleadings or in the
oral arguments by the REspondents.
Although there is a clear evidence
to show that the applicant had
submitted applications for the said
examinations but was not allowed to
appear. In this of this, the said
judgement calls for review and
modification.

It was also held in the case of
George Haris vs. U.O.I and ors.
1981 (1) ALJ 291 Madras

"I see no reason to exclude from
review palpable errors in
judgement. Nor can I accept
suggestion that when there is
patent occasion to look into
the relevant records of basic
decision on them the Court should

.....
.....

B.M.

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PRAYER

In view of the foregoing, it is respectfully prayed that the judgement dated 18.5.90 regarding this case may kindly be reviewed and the ~~applicant~~ applicant may be reinstated in service as his services were not terminated w.e.f. 21.4.85 and he may be granted pay and allowances along with arrears from 21.4.85 till the date of reinstatement as the order of termination was arbitrary, illegal and ~~not~~ in the eyes of law

LUCKNOW

B. Kumar
(BIJENDRA KUMAR)
APPLICANT/PETITIONER

DATED: 27.7.90

VERIFICATION

I, Brijendra Kumar, son of Shri Badloo, aged 34 years, ex-L.D.C. C.G.H.S. Dispensary, Lucknow and resident of Nai Basti Dhaneva, Post Office Mahmed Nagar, (Maliabad) Distt. Lucknow (UP) do hereby verify that the contents of the above Review Petition are true to my personal knowledge and legal submissions believed to be true on advice and that I have not suppressed any material fact.

B. Kumar
APPLICANT/PETITIONER

through

K.L. BHATIA:
ADVOCATE
C.A.T. BAR ROOM: NEW DELHI-1

4726.
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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH

LUCKNOW

T.A. No. 1742/87(T)

(Writ Petition No. 1964/85 of High Court of Judicature at Allahabad, Lucknow Bench, Lucknow)

Brijendra Kumar

...Applicant/Petitioner

versus

Union of India & others

...Respondents.

Hon. Mr. Justice K. Nath, V.C.
Hon. Mr. K.J.Raman, A.M.

(Mr. Justice K. Nath, V.C.)

The Writ Petition described above is before us under section 29(1) of the Administrative Tribunals Act, 1985 for issue of mandamus to respondents to regularise the petitioner on the post of Lower Division Clerk(LDC) and to absorb him permanently in the existing vacancy. Counter and rejoinder have been exchanged. We have heard Shri T.N. Tewari, the learned counsel for the petitioner and Shri K.C. Sinha, the learned counsel for the respondents.

2. Various broken periods during which the petitioner worked as L.D.C. on adhoc basis are set out in para 3 of the Writ Petition. Only the first period in 1981 was of 231 days and the remaining periods were of 89 days each; third period being of 13 days from 8.4.85 to 20.4.85. This writ petition was filed on 1.5.85.

3. It is admitted that the petitioner had appeared at the Staff Selection Commission selection test some time in 1982 where he failed. His grievance is that one Smt. Parvinder Kaur who was appointed L.D.C. in adhoc capacity



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long after the petitioner was regularised as L.D.C. while the petitioner was ^{not} but the distinction admittedly is that Smt. Parvinder Kaur had successfully passed the selection test held by the S.S.C.

4. The learned counsel for the petitioner says that after the petitioner had failed in the examination held in 1982, he should have been given an opportunity of taking further test which were held later on but the petitioner's application for the purpose was not forwarded to the Commission. There is no basis for the statement that after the petitioner had failed in the 1982 examination, he had applied again for appearing at the Staff Selection Commission Examination. It is not said in the petition that the applicant had made any application for the purpose which was not forwarded.

5. It is not disputed that for the purpose of regularisation a person has to pass through the Staff Selection Commission examination conducted for the purpose by the S.S.C. Since the petitioner failed in the examination and is not shown to have taken any action to appear in the subsequent examination for the purpose, it is not possible either to regularise him or to direct him to be absorbed in the same vacancy. Shri Tewari has referred to the decision of this Bench in O.A. 77/87 V.K.Mishra and others. vs. Union of India and others and two connected cases to show that opportunity for appearing at subsequent selection examination was ordered by the Tribunal but that was the case where the petitioner had sought for an opportunity but did not have it. Under those circumstances, the Tribunal ordered that one more chance might be given to the petitioners there. The



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decision is distinguished from the facts of the present case. We are afraid the petitioner has no case and the petition is dismissed.

V. C.
A.M.

Lucknow dated the 18th May, 1990.

C.T.C

Attested
True copy
18/5/90
Deputy Registrar
Central Administrative Tribunal
Lucknow Branch
Lucknow

मुंबई

मुख्य निदेशिका अधिकारी
केन्द्रीय सरकार स्वास्थ्य योजना
ई-२ राजपुत्रा भाग
(नियंत्रण)

हस्ता

प्रभारी निदेशिका अधिकारी
केन्द्रीय सरकार स्वास्थ्य योजना
ई-२ राजपुत्रा भाग ४
नियंत्रण, राजपुत्रा,

लिखित

उचित माध्यम द्वारा आवेदनपत्र भेजते हैं।

महोदय,

सविनय निवेदन यह कि प्राचीन आपने
आवेदनपत्र द्वारा निवेदन ४ में आपसे है कि वह
आवेदनपत्र आपसे द्वारा कि एक Spel. Exam
nation के लिए उचित माध्यम द्वारा भेजना चाहते हैं।

अतः आपसे अनुरोध है कि गैरा आवेदन
पत्र शीघ्र ही केंद्र वरी चयन आयोग के द्वारा
भेजने की कृपा करें।

धन्यवाद

Date

23/9/83

आपका नाम

Signature
लिखित आयोग (20)
के. म. र. व. के. के. के.
ग. ४

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आमा नही NOT INSURED		का. नं.
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20/4/85

To: Under Secretary (Coord.)

Staff selection commission.

Block No 12-C600 Complet

20dhi Road, New delhi

P.N. 110003