

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated:- 19 APR 1994

APPLICATION NUMBER: 181 of 1994.

APPLICANTS:

RESPONDENTS:

Sri.K.Jayakumar v/s. Secretary, Deptt. of Per. & Trg., N Delhi & Ors.
To.

1. Dr.M.S.Nagaraja, Advocate, No.11, First Cross, Second Floor, Sujatha Complex, Gandhinagar, Bangalore-9.
2. The Deputy Registrar(Admn), Central Administrative Tribunal, Fifth Floor, Tamil Nadu Text Books Society Buildings, College Road, D.P.I.Compound, Nungambakkam, Madras-600006.
3. Sri.M.S.Padmarajaiah, Senior Central Government Standing Counsel, High Court Building, Bangalore-1.

Subject:- Forwarding of copies of the Orders passed by the Central administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above
mentioned application(s) on 22nd March, 1994.

Issued on
20/4/94
R.

gm*

O/C

G. Shankar
for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

ORIGINAL APPLICATION No.181/94.

TUESDAY THIS THE 22ND DAY OF MARCH, 1994

SHRI JUSTICE P.K. SHYAMSUNDAR .. VICE CHAIRMAN

SHRI T.V. RAMANAN ... MEMBER (A)

K. Jayakumar,
S/o C.P.K. Panicker,
residing at No.2, Pachaiappan Colony,
Zamin Pallavaram, Madras-43 and
employed as Gestetner Operator in the
Central Administrative Tribunal,
Additional Bench, College Road,
Madras - 600 006. ... Applicant

(By Advocate Dr. M.S. Nagaraja)

Vs.

1. Union of India, represented by
Secretary to Government,
Ministry of Personnel, Public
Grievances and Pension,
Department of Personnel & Training,
New Delhi. ...
2. The Central Administrative Tribunal,
Additional Bench, Madras, represented
by Deputy Registrar, College Road,
Madras - 600 006. ... Respondents

(By Advocate Shri M.S. Padmarajaiah)
Central Govt. Sr. Standing Counsel

ORDER

Shri Justice P.K. Shyamsundar, Vice Chairman:

We have heard Dr. M.S. Nagaraja who appears for the applicant and in his opposition, the learned Standing Counsel Shri M.S. Padmarajaiah. This is an application transferred by the Hon'ble Chairman of the Central Administrative Tribunal, from the Madras Bench of the Central Administrative Tribunal where it was pending in O.A. No.2109/93 therein. Two Hon'ble



Members after entertaining that application issued an Interim Order on 17.1.1994 in the following terms:

"Heard the counsel for the applicant. None present for the respondents. The following interim order is given. The applicant in O.A.No.2109/93 shall be allowed to appear in any selection that will be held for the post of Lower Division Clerks along with the candidates sponsored by the Employment Exchange. This however, shall not confer any right on the applicant for being appointed to the post which he does not possess. The results shall be withheld until the O.A. is heard and decided. Call on 21.2.94".

2. It would appear subsequently, the learned Members having expressed desire not to associate themselves with this application since it concerned an employee working at the C.A.T., Madras. By an order passed by the Chairman of the C.A.T., presumably at the request of the C.A.T., Madras itself, the application pending in Madras in O.A.No.2109/93 came to be transferred to this Tribunal and being numbered as 181/94.

3. Today, we have heard both sides and propose to dispose off this application. Although, the respondents who are two in number, Respondent No.1, Secretary, Dept. of Personnel & Training, New Delhi and another, the ^{Deputy Registrar} ~~Vice-Chairman~~, Central Administrative Tribunal, Madras, are yet to file their returns and the learned Standing Counsel appearing on their behalf said he would join in even without an objection statement, as some expedience is involved in the disposal of this case. Apparently, the Interim Order granted by the Madras Bench which we had extended had resulted in holding up an ongoing process of recruitment to fill up 5 posts of L.D.Cs. available at the Madras Bench although on a temporary basis, it does seem to us that this is a matter which probably can be disposed off even without a counter, since the controversy herein turns precisely on

a construction of the Rules of Recruitment to the posts and the eligibility of the applicant who seeks appointment as L.D.C. are comprised within the eligibility parameters enshrined in the Recruitment Rules.

4. The learned Standing Counsel at the outset mentions to us that the recruitment drive to appoint 5 L.D.Cs by the Madras Bench was based on the imperative need to fill them up on an adhoc basis because they fell vacant on the promotion of regularly appointed L.D.Cs as U.D.Cs on adhoc basis pending filling up of the higher posts of U.D.Cs in the regular course. He told us that the present move of filling up the L.D.Cs posts being purely of a transitory nature that whoever is appointed as L.D.Cs will be mere birds of passage having to vacate the moment the adhoc promotees to the posts of U.D.Cs revert back to their old perch following the filling up of the posts of U.D.Cs in the regular manner. He, therefore, impressed on us the need to be a little less circumspect in taking into consideration the move to fill up the ^{posts of} L.D.Cs on an adhoc basis even if it were to be ^{ad hoc} ~~under dictation~~ of and outside the line of regular recruitment as enjoined under the Rules.

5. We shall consider this submission, but, we must refer to a few facts that have led to this controversy. The applicant who appears to be a highly qualified official already holding a B.Com degree and has presently joined the B.L. course of which he is said to have completed two years and in one more year, he will be a full fledged Law graduate after passing the final year examination. He appears to have asked for and obtained appointment as a Peon in a regular vacancy at the C.A.T., Madras, in the year 1986 on a meagre salary of Rs.196/- in the pre revised scale which was subsequently increased.



Thereafter, he sought for a further rise by claiming the post of Gestetner Operator which falls in the Group 'C' cadre and he got it actually by direct recruitment and was appointed as a Gestetner Operator by an order dated 3.9.90 with effect from 31.8.90 on the date on which he assumed charge, ~~whichever is later~~. The post of Gestetner Operator carries a pay scale of Rs.950-20-1150-EB-25-1400/-. He has been working as Gestetner Operator from the date of his appointment, i.e., 31.8.90. He also, we are told, was working as an L.D.C. whenever there was pressure in the administration of the C.A.T. as qualificationwise, he was fully qualified to discharge the duties of an L.D.C. That his services were also utilised as L.D.C. apart from his regular work as Gestetner Operator is not admitted and that is what the learned standing counsel tells us and that he mentions ~~it~~ on instructions.

6. Be that as it may, the Tribunal desires to fill up the 5 vacancies of L.D.Cs consequent on 5 of the L.D.Cs being temporarily promoted on adhoc basis to officiate as U.D.Cs which vacancies are to be filled up regularly in due course. Therefore, 5 of the L.D.Cs ^{having been} ~~being~~ promoted to the higher appointment as U.D.Cs although on an adhoc basis, the Tribunal felt the need for filling up the posts of L.D.Cs vacated by the regular L.D.Cs on their promotion ~~and therefore~~ on temporary basis as U.D.Cs. With that end in view, they, we are told, notified the existing five vacancies to the Local Employment Exchange for sponsoring appropriate candidates to fill up the vacancies temporarily. We are told by the learned standing counsel that the Madras Tribunal intended to fill up 4 vacancies from amongst the candidates from the Employment Exchange reserving one post to be filled up by promotion from seniormost Group 'D' officials.

7. Now, it is not denied the applicant on his appointment as a Gestetner Operator graduated from Group 'D' to the higher category of Group 'C'. It would appear he had foregone his lien in the post of Peon in the Group 'D' category with the result he has no roots in the Group 'D' category at all and cannot claim any lien over it. Dr. Nagaraja says that his client still has a lien and he has not lost it. We are not concerned with this aspect of the matter.

8. Suffice it to note the case of the applicant is that he had foregone his lien in the Group 'D' post after he had joined the Group 'C' post as Gestetner Operator. When the applicant got wind of this move by the respondents to recruit some five L.D.Cs, 4 of them from the Employment Exchange, ^{and} ~~one~~ ^{by} ~~from~~ promotion, he made a representation to the Vice Chairman of the C.A.T., Madras, ~~expressing his~~ bringing to his notice that as a person holding the Group 'C' post, he had no avenues of promotion under the Recruitment Rules ~~for~~ ⁱⁿ aspiring to occupy the higher post, in particular the post of an L.D.C., and therefore he asked for being transferred to the cadre of L.D.C. Apparently, his prayer for transfer to the cadre of L.D.C. was not feasible as under the Recruitment Rules, there is no provision for transfer of Gestetner Operator to the post of an L.D.C. However, that request remained without any heed being paid. Since, he did not hear from the Vice Chairman about his request for transfer to the L.D.C. cadre, he appears to have made a further representation to the Chairman of the C.A.T., reiterating his request for transfer to the cadre of L.D.C., that was on 7.12.1993. But, even as that representation was pending consideration of the Hon'ble Chairman, he filed an O.A. before the Madras Bench of the Tribunal in O.A. No.2109/93 seeking therein the following reliefs:



- i) to declare the Central Administrative Tribunal (Group 'B' and 'C' Miscellaneous posts) Recruitment Rules, 1989, in so far as it relates to the posts of Lower Division Clerk as illegal and unconstitutional and to consequently direct the respondents to include the post of Gestetner Operator as feeder category for the post of Lower Division Clerk;
- ii) to consider the applicant for appointment to the post of Lower Division Clerk; and
- iii) pass such further or other orders as may be deemed fit and proper.

While the matter was pending before the Tribunal two of the Hon'ble Members of the Tribunal made an order on 28.12.1993 directing notice of the Interim Prayer. The matter was then brought up before the Bench on 17.1.1994. On that day, after admitting the application, the learned Members made an interim order to which we have already adverted herein before.

9. After this development, the application before the Tribunal in Madras was transferred to our Bench. After hearing the learned Standing Counsel, it becomes very obvious and very clear that at present the intention of the Tribunal is not to fill up the 5 posts of L.D.Cs on a regular basis because that can be done only in accordance with the Recruitment Rules which provide that 90% of the L.D.Cs posts be filled by direct recruitment by open advertisement, 5% from amongst the Group 'D' officials who possess matriculation or equivalent qualifications and have rendered 5 years regular service in Group 'D' on the basis of a Departmental Qualifying Examination. and the other 5% being reserved for promotion on seniority cum fitness basis from amongst the Group 'D' employees who possess matriculation or equivalent qualification and proficiency in typewriting.

10. Now that it is made clear that because of exigencies involved and the fact that the vacancies in the posts of L.D.C. right now are purely temporary in character because the regular incumbents have been temporarily promoted as U.D.Cs ^{and} are liable to reversion [^] soon after the U.D.C. posts are filled up regularly, the question of filling up these L.D.Cs in a regular manner as per the procedure laid down in the Recruitment Rules could not be followed and, therefore, a decision was taken to fill up these posts on a temporary basis by inviting sponsorship from the Local Employment Exchange and filling one of the 5 posts temporarily from amongst the seniormost Group 'D' officials. Now what the applicant wants is that he should not be denied his piece of cake even if the appointment as L.D.C. is not going to last for ever and is purely adhoc in character, being an insider and the man being qualified and eligible in every way, he should have been given an option to fill up that post even if it is a matter of a few months instead of inviting talent from the Employment Exchange.

11. while, there is some force in that argument, what we cannot accept or appreciate is the tenability of this argument since the question of eligibility criteria is involved.

12. As the learned Members who passed the interim order ~~thereunder~~, ordered while allowing the applicant in any selection so held for the post of L.D.C., the applicant has not right for appointment as LDC on transfer since the Recruitment Rules do not provide for transferring a Group 'C' official holding the post of Gestetner Operator as an L.D.C.



~~These are the Group 'C' and 'D' (Miscellaneous Posts) Rules,~~

~~1989.~~ Shri Nagaraja, learned counsel for the applicant,

raises at this stage and draws our attention to Rule 7 of the Central Administrative Tribunal (Group 'B' and 'C' Miscellaneous Posts) Recruitment Rules, 1989 and further

tells us that the relevant provisions of the Rules can be relaxed by the Hon'ble Chairman of the Tribunal so that

the applicant who, as a Gestetner Operator, has no avenue of promotion could be accommodated in the cadre of L.D.C.

It may be in the power of the Hon'ble Chairman to relax the Rules, but that is a matter for him. We are not free to suggest that and what is more that question does not arise within the conspectus of this application.

13. The position is that applicant has no right to be transferred or absorbed as an L.D.C. under the Rules. Of course, if it was open recruitment, he might have contended amongst many others and might have stood a chance of being appointed as an L.D.C. That stage has not been reached presently. The appointments to the cadre of L.D.C. as at present are to be purely made on an adhoc basis. But what we cannot appreciate is the argument that even if it is on an adhoc basis the applicant, who has no right at all for appointment as an L.D.C. under the Recruitment Rules as they now stand, should still be jacked up and given the chance of officiating as L.D.C. We see no substance in this contention. The applicant asks us to quash the Rules of Recruitment. If the Recruitment Rules are quashed, there will be a vacuum and that will operate to his detriment.

14. But, our attention is invited to the prayer made in the application to direct the respondents to include the post of Gestetner Operator as feeder cadre for promotion to the post of L.D.C. That is a matter which is purely within the purview of the administrative authorities and for the Rule making authorities. We cannot communicate our views in the matter nor can we impose our choice on the authorities asking them to make a Rule or not to make a rule, etc. etc. We must, therefore, decline to accept any such argument asking us to direct the placement of the Gestetner Operator's post in the clutch of Rule 5 of the Rules. Ofcourse, emphatically put to us is the argument that ^{if} a man is ^{not} not given a chance of promotion to a higher post, he will be stagnating in the same post and will finally retire in the same post. It is, ofcourse, a situation which needs to be treated with compassion. We may pass on a suggestion to the Rule making authority to consider inclusion of the cadre of Gestetner Operator as a feeder cadre for promotion to the cadre of L.D.C. But, of course, that is a matter for that authority to consider. All that we can do is to commend the same for their kind consideration.

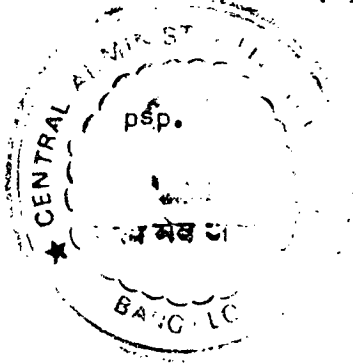
15. Right now, we find the applicant is not entitled to be considered for appointment as an L.D.C. along side the persons sponsored by the Local Employment Exchange and the other person who is likely to be promoted from the Group 'D' category because ^{the} applicant is no longer in the Group 'D' category.

16. For the reasons mentioned above, this application fails and is dismissed. Even at this stage, Dr. Nagaraja insists that his client should be allowed to appear along with the Employment Exchange candidates for selection to the post of L.D.C. We do not think, we can give any such direction.

17. Let a copy of this order be communicated to the Respondent no.2 for speedy implementation. The learned Standing Counsel seeks leave to place on record the draft statement of objections, a copy of the same is said to have been furnished to the applicant's counsel. Although filing of a draft statement is not warranted, we simply place on record the same. No costs.

Sd/-
(T.V. RAMANAN)
MEMBER (A)

Sd/-
(P.K. SHYAMSUNDER)
VICE CHAIRMAN



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