

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.434/99

Date of order: 5/9/2005

Jai Prakash Sharma, S/o Sh.Ramavtar Sharma, R/o 31,
Nanu Nagar, Murlipura, Jaipur.

...Applicant.

Vs.

1. Employees State Insurance Corp, Panchdeep Bhawan, New Delhi, through its Director General.
2. Regional Director, Employees State Insurance Corp, Panchdeep Bhawan, Bhawani Singh Road, Jaipur.

...Respondents.

Mr.S.P.Sharma : Counsel for applicant

Mr.U.D. Sharma : for respondents.

CORAM:

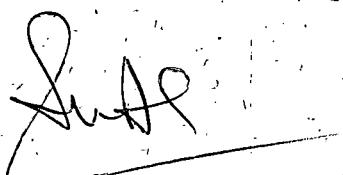
Hon'ble Mr.S.K.Agarwal, Judicial Member.

Hon'ble Mr.S.A.T.Rizvi, Administrative Member.

PER HON'BLE MR S.K.AGARWAL, JUDICIAL MEMBER.

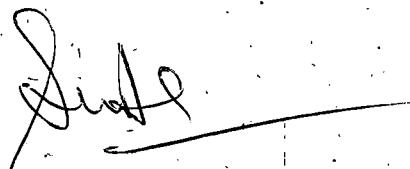
In this O.A filed under Sec.19 of the ATs Act, 1985, the applicant makes a prayer to quash and declare the termination of the services of the applicant as illegal and bad in law and direct the respondents to treat the applicant as substantially appointed on the post which he is holding since 1995.

2. Facts of the case as stated by the applicant are that the applicant appeared for selection on the post of LDC on temporary basis. He appeared before the interview board in pursuance of letter dated 17.1.95. A type test was also held thereafter 7 persons were selected including the applicant and appointed vide order dated 14.2.95 and he was directed to join by 20.2.95. It is stated that the services of the applicant were extended from time to time and was

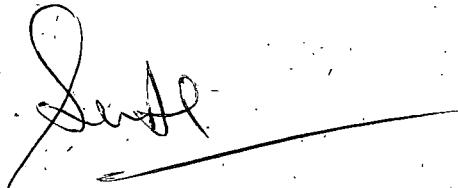


given regular scale of pay Rs.950-1500 and grade increment from 1.2.96. It is stated that vide memorandum dated 6.3.96 issued by the respondents for conducting type test, the applicant appeared and declared successful vide letter dated 14.5.96 and thereafter the applicant was not required to undergo any examination/test for treating him as substantive LDC. It is stated that the work of the applicant has been satisfactory and he was awarded Rs.100/- as award for his outstanding speed in type test. It is stated that the services of the applicant were terminated on the ground that LDC selected after passing Clerical Grade Examination, 1997 are made available whereas services of other 12 ad-hoc LDCs are continuing who were also promoted as ad-hoc LDCs from Class IV post. It is further stated that persons selected through Staff Selection Commission could not have been appointed in the Corporation which is an independent body. As the applicant was appointed after following the due process of selection and he is giving regular scale of pay and regular grade increment and facilities of leave, etc, hence the termination of the services of the applicant is not only bad in law but is contrary to the rules of the Employees State Insurance Corpn. Therefore, the applicant filed this O.A for the relief as above.

3. Reply was filed. It is stated in the reply that as per provisions contained in regulation 3 of the Employees State Insurance Corpn. (Recruitment) Regulation 1965, as amended by notification dated 28.1.88, the post of LDCs are required to be filled-up 75% by direct recruitment on the basis of written competitive examination and since no recruitment could be made in accordance with the aforesaid provisions, the vacancies would be filled up purely on ad



hoc/stop gap arrangement basis and a requisition was sent to the Employment Exchange, Jaipur for sponsoring suitable candidates and it was made clear in the requisition that such appointment would be terminable when regularly selected candidates were made available and even otherwise, their services are liable to be terminated at any time without assigning any reason. In response to this requisition, name of the applicant alongwith others was sponsored by Employment Exchange, Jaipur. Applicant appeared in the interview and was found suitable for appointment on ad hoc / stop gap arrangement basis. Thereafter, the applicant was asked to submit his consent for acceptance of the terms and conditions mentioned in the offer of appointment and applicant accepted the offer of appointment dated 14.2.95 and the appointment was approved by the competent authority thereafter. It is admitted that the terms of appointment was extended from time to time and last order was issued on 28.7.98 by which the term was extended for 90 days w.e.f. 28.7.98. It is stated that the applicant was appointed in the scale Rs.950-1500 and he was allowed increments after passing type test, as per rules. It is stated that the applicant was appointed on ad hoc/stop gap arrangement basis till regularly recruited persons as per statutory rules are made available. It is stated that to fill up 75% post of direct recruitment, a notification was issued in March 1997 to fill up 550 vacancies in which 43 vacancies were pertaining to respondent No.2 and the applicant also availed the said benefit by appearing in the competitive examination but failed to clear the same, therefore, the applicant has no case. Merely that the applicant was given the benefit of grade increment like other regular employees and he was



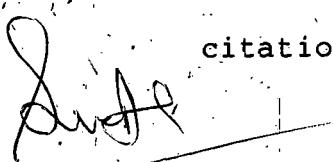
given cash award does not change the status of the applicant as ad-hoc LDC. After completing the selection process, regularly selected candidates were appointed against the post applicant was holding and he was relieved vide order dated 26.10.98. Therefore, the applicant has no case for interference by this Tribunal.

4. Rejoinder has also been filed reiterating the facts as stated in the O.A which is on record.

5. Heard the learned counsel for the parties and also perused the whole record.

The learned counsel for the applicant during the course of arguments has vehemently urged that after following due process of selection ^{he} worked continuously on the post of LDC, therefore, he should be retained/regularised in the service as LDC. He has also argued that still there are vacancies and the applicant can be appointed on the vacant post as LDC till regularly selected candidate joins. In support of his contentions he has referred (i) 1992 LAB I.C. 2569, Surendra Kumar Gyani Vs. State of Rajasthan & Ors, (ii) WLC (Raj.) 1992(2) 32, Nalin Kumar Vs. State of Rajasthan & Anr and (iii) 2000(8) SCC 25, Rudra Kumar Sain & Ors. Vs. Union of India & Ors. On the other hand, the learned counsel for the respondents has argued that the applicant was appointed on ad hoc/stop gap arrangement basis therefore, according to the terms & conditions of appointment he has been relieved to enable the regularly selected candidate join. In support of his contention, he has referred to Director General, ESIC & Anr. Vs. Shri Trilok Chand & Ors, Civil Appeal No.5302-5/92 decided on 10.12.92 by ^{the} Supreme Court of India.

7. We have given thoughtful consideration to the rival contentions of both the parties and also perused the legal citations as referred by the counsel for the parties.



8. Undisputedly, the applicant was appointed on the post of LDC on ad hoc/stopgap arrangement basis till regularly recruited persons as per the statutory rules are made available. It is also abundantly clear that in pursuance of notification issued in March 1997 to fill-up 75% posts of LDCs by direct recruitment, a process of selection was initiated and the applicant also appeared in the said competitive examination but failed to clear the same. It is also clear that the services of the applicant was terminated and he is no more in service.

9. As the applicant was appointed purely on ad-hoc basis as stop gap arrangement only and the terms of appointment clearly provides that the services will be terminable at any time without any notice or whenever regularly selected candidate joins, therefore, termination of service of the applicant by the impugned order dated 23.10.98 when regularly selected candidate was available as a result of regular selection made in accordance with the prescribed procedure, is in no way can be termed as illegal or bad in law and the applicant has no case for interference by this Tribunal.

10. The learned counsel for the applicant during the course of argument has also submitted that vacancies of LDCs are still with the respondents' department (Employees State Insurance Corporation, Jaipur) and the applicant can be retained in service till regularly selected candidate joins. In this connection, we can only say that this order does not come in the way of the respondents if they appoint the applicant as LDC on temporary/ad hoc basis till regularly selected candidate is made available.

11. We, therefore, dismiss this O.A having no merit.

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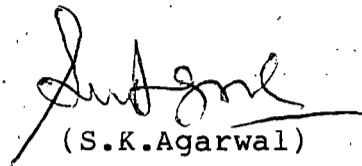
12. This order shall not preclude the respondents to appoint the applicant on the post of LDC on ad hoc/stop gap arrangement, if there are vacancies exist.

13. No order as to costs.



(S.A.T.Rizvi)

Member (A).



(S.K.Agarwal)

Member (J).