

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 206/2002

Date of decision: 31.5.2004

Lokesh Chandra Soni ... .. Petitioner

Mr.R.D. Rastogi ... .. Advocate for the Petitioner

Versus

Union of India and Others ... .. Respondents.

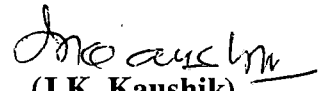
Mr. Vijay Singh for  
Mr. Bhanwar Bagri ... .. Advocate for Respondents.

CORAM:

Hon'ble Mr. J.K. Kaushik      Judicial Member.  
Hon'ble Mr. M.K. Misra,      Administrative Member.

1. Whether Reporters of local papers may be allowed to see the judgement? *M*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *x*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*

  
(M K Misra)  
Administrative Member

  
(J.K. Kaushik)  
Judicial Member.

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH JAIPUR**

**Original Application No. 206/2002**

Date of Decision: 31.5.2004

**Hon'ble Mr. J.K.Kaushik, Judicial Member**  
**Hon'ble Mr. M.K.Misra, Administrative Member**

Lokesh Chandra Soni son of Shri G.L. Soni aged approx. 39 years resident of E-19, Ram Nagar Extension, Sodala, Jaipur, at present employed as LDC with Canteen Store Department, Jaipur Depot.

[By Mr. R.D. Rastogi, Advocate, for the applicant]

...Applicant.

Vs.

1. Union of India, through Secretary, Government, of India, Ministry of Defence, Department of Canteen, New Delhi.
2. Secretariat - Board of Control, Canteen Services, L-I Block, New Delhi.
3. Chairman, Canteen Stores Department, M.K. Road, ADALPHI, Mumbai.
4. Area Manager, PIRU Lines, Behind Military Hospitals, Jaipur Cantt. - 302006.

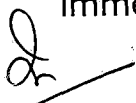
...Respondents.

[By Mr. Vijay Singh, proxy counsel for Mr. Bhanwar Bagri, for respondents]

**Order**

**[By J.K.Kaushik, Judicial Member]**

Shri Lokesh Chandra Soni has assailed the order-dated 20.4.2001 to the extent it provided his appointment with immediate effect and has inter alia sought for a direction to the



respondents to modify the same by reckoning his date of regularization on the post of LDC w.e.f. 8.5.1987 with all consequential benefits thereof.

2. The indubitable facts, necessitating the applicant to undertake second journey to this Tribunal, as culled out from the pleading of the parties are that the applicant was initially appointed to the post of Lower Division Clerk (for brevity 'LDC'), on dated 8.5.1987 in CSD Depot at Jaipur. His name was sponsored by the Employment Exchange against the vacancies notified by the respondents and being fully eligible he was given the appointment. He has been discharging his duties satisfactorily. He availed two chances for appearing in the typing test; second test held on 24.9.1993. In first he failed and in the second test he secured running speed of 30 word per minute with accuracy of 29 words per minute and secured 88 marks out of 100 in written test.

3. The further facts of the case are that apprehending termination from service and that too before declaration of his result, he invoked the jurisdiction of this Bench of the Tribunal vide OA No. **413/95 Lokesh Chandra Soni Versus Union of India and others**. The same came to be disposed of on dated 3.8.1999 in the following terms:

"To consider the applicant's case for regularization as Lower Division Clerk in the light of the facts stated above within a period of two months from the date of receipt of a copy of this order. No order as to costs."



4. Thereafter, a DBCW Petition No. 6037/99 was filed against the aforesaid order on behalf of Union of India and others before Rajasthan High Court at Jaipur Bench. The same came to be dismissed on dated 28.2.2001 with following operative order:

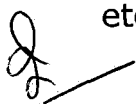
"Therefore, we are of the view that the respondent may be regularized in view of the directions issued by the learned Tribunal and also in view of the Clause 2-C of the Memorandum dated 29.9.1992. The findings recorded by the learned Tribunal do not call for any interference.

Accordingly, we find no force in this writ petition and the same is dismissed with no order as to costs."

5. The applicant came to be appointed to the post of LDC vide letter-dated 20.4.2001 (Annex. A/3) with immediate effect. He submitted a representation for counting his past services for the benefits of regularization. The same was turned down vide letter dated 7.8.2001. Subsequently a Circular has been issued on dated 18.7.1995 by which the grace of mistake 12 words out of 300 has been provided, in the typing test.

6. The salient grounds on which the applicant has staked his claim are numerous. The stress has been laid on the ground of discrimination that similarly situated persons have been granted the regularization from the date of initial appointment. The applicant has passed the typing test held on 24.9.1993 since the mistakes were within grace limits as per letter-dated 18.7.1995. He was appointed against a permanent post and therefore he is entitled for regularization from the date of his initial appointment

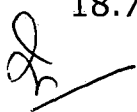
etc.



7. As regards the variances, passing of the typing test is one of the essential conditions for appointment to the post of LDC as per Recruitment Rules. But the applicant did not pass the same. After the orders from this Tribunal the matter was taken up with the competent authority as a special case but the same was not agreed to. The case of the applicant was also not covered by the Instructions issued on dated 29.9.1992 (Annex. R/1), but the respondents took a decision to implement the Tribunal's order and regularized the services of applicant from 20.4.2001.

8. We have heard the learned counsel for both the parties at a considerable length and carefully perused the pleadings and records of this case.

9. The learned counsel for the parties has reiterated their pleadings and has made us to travel through various documents. The learned counsel for the applicant has placed reliance on the judgments of Apex Court in case of **AIR 1990 SC 16 Direct Recruit-II vs. State of Maharashtra** and **JT 1993 (2) SC 598(25) State of West Bengal Vs. Aghora Nath Dey**, besides the decisions placed on records of this case. It has also been submitted that the applicant is deemed to have passed the typing test by getting the grace as provided in letter dated 18.7.1995 (Annex. A/6). He has also next contended that the

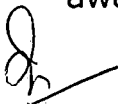


applicant was even entitled for exemption from passing the said test as per letter-dated 29.9.1992 (Annex. R/1). But the respondents have been denying his claim on one pretext or the other.

10. On the other hands the learned counsel for the respondents has emphasized that the applicant did not pass the requisite typing test and he was not entitled for any exemption from the same. For getting the benefits of regularization one must fulfill all the eligibility condition. He is therefore not entitled for any benefits and the very original application is misconceived and deserves to be dismissed.

11. We have considered the rival contentions raised on behalf of both the parties. As far as the material facts of this case are concerned, there is hardly any dispute. It is a fact that one of the conditions of regular appointment to the post of LDC is the passing of the typing test. The applicant was give two chances to pass the same and he has been declared as fail in the typing test whereas he passed in the written test. It is also true that he has been given regular appointment with effect from 20.0.4.2001 and not from the date of his initial appointment i.e. 8.5.1987.

12. The contention of the applicant that he was entitled for award of grace marks as per letter dated 18.7.1995, it looks



attractive but the same is deceptive for the simple reason that the typing test was held on 24.9.1993 under certain set of rules, how could it be ordered to be regulated by a subsequent order. This contention attracts outright rejection. We can aptly conclude that the applicant did not pass the typing test for the post of LDC in the two chances.

13. As regards the exemption from passing the typing test is concerned, the letter-dated 29.9.1992 (Annex. R/1) provides for the same applies to the case of applicant and the relevant paras are extracted as under:

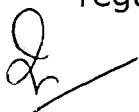
" 2. (1) To Whom applicable:

Persons appointed as LDCs to posts which do not belong to CSCS whether such appointment is by promotion from Group 'D' or by direct recruitment through SSC or otherwise or by any other method including appointment on compassionate grounds or on ad-hoc basis.

2. (2) (c) When exemption may be allowed:

If below 35 years of age on the date of appointment may be given exemption after 10 years of service as LDC provided they have made two genuine attempts to pass the typing test; otherwise they may be granted exemption after attaining the age of 45 years.

From the bare perusal of the aforesaid provisions, we find that the applicant is eligible to get the benefits of exemption from passing the typing test on completion of 10 years of service i.e. from 8.5.1997. In this view of the matter it may be safe to assert that the applicant fulfilled the eligibility conditions for regular appointment to the post of LDC on dated 8.5.1997.



14. Having ascertained the factual aspect of the matter, we would advert to the legal propositions for grant of benefits of past service rendered prior to appointment on regular basis. Reliance has been placed on the following two decision of the Apex Court on behalf of the applicant:

In **Direct Recruit Class II Engineering Officers Association versus State of Maharashtra and others** (1990)

2 SCC 715=AIR 1990 SC 1607, the Constitution Bench held that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The law was summed up in the form of eleven propositions. It is sufficient to refer to the first two propositions, which are the following terms:

"44. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.


In **'Aghore Nath Dey'** (1993) 3 SCC 371=1993 SCC

(L&S) 783, the Apex Court explained the scope of applicability

of corollary to Conclusion (A) and Conclusion (B) in **Direct Recruit Class II Engg. Officers' Association** case (supra) and reiterated that the benefit of ad hoc service is not admissible if appointment was in violation of Rules.

The applicant was initially engaged as a daily rated employee to work as LDC. He possessed all the qualification except that he did not pass the typing test. Thus he did not fulfill the requisite eligibility conditions and therefore his said engagement cannot be said to be according to rules and till he fulfilled all the requisite conditions for regular appointment he cannot get any benefits for such service. Thus the aforesaid decisions do not support the case of applicant.

15. We have held in para 13 above that it may be safe to assert that the applicant fulfilled the eligibility conditions for regular appointment to the post of LDC on dated 8.5.1997. Otherwise also the respondents have given him regular appointment without fulfilling the condition of passing the typing test; meaning thereby he has been exempted from the same may be in the garb of order of the Court or as per the Instructions issued on 29.9.1992 supra. Thus, there should not be any difficulty to accept the claim of the applicant for the benefits of regular service from 8.5.1997. We also find support of the same from a very recent decision of Apex Court in case of **Mohammed Israils & ors Vs. State of West Bengal and others 2002 (3) SLJ 80 SC** wherein their Lordships have held



that the service rendered on ad hoc basis which was subject to approval by the Commission can not count for seniority till such approval is given. In other words one can get seniority only from the date he fulfills all the eligibility conditions.

16. A feeble submission has been made, though only to be rejected, regarding discrimination and grants of similar benefits as allowed to some of the employees in similar circumstances. The law is well settled by now and equality clause does not apply to grant any benefits contrary to rules. This view is fortified by the decision of Apex Court in case of **State of Bihar Vs. Kamleshwar Prasad Singh & Anr. : 2000 (4) Supreme 197.**

17. In the premises, we find force in this Original Application and the same stands allowed in part. The respondents are directed to treat the service rendered by the applicant after 8.5.1997 towards seniority and other purposes on the post of LDC and the applicant shall be entitled for all consequential benefits but monetary effect only from the date of filing of this OA. No costs.

  
[ M.K. MISRA ]  
ADMINISTRATIVE MEMBER

  
[ J.K. KAUSHIK ]  
JUDICIAL MEMBER

jrm