

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 25th day of August, 2006

ORIGINAL APPLICATION No 447/2002.

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. J.P.SHUKLA, MEMBER (ADMINISTRATIVE)

1. Bal Kishan Agarwal s/o late Shri Jamna Das Agarwal, aged about 44 years, resident of Plot No.1226, Rasta Kota Wala, Gopal Ji Ka Rasta, Jaipur.
2. Ashok Kumar s/o Shri Mohan Lal, aged about 33years, r/o Plot No.7-Cha-16, Jawahar Nagar, Jaipur.

..Applicants

(By Advocate : Mr. Manish Bhandari)

Versus

1. Union of India through
The Secretary,
Ministry of Health and Family Welfare,
Government of India,
Nirman Bhawan,
New Delhi.
2. The Director,
Central Health Scheme and
Director General, Health Services,
Nirman Bhawan,
New Delhi.
3. The Additional Director,
Central Government Health Scheme,
Hotel Radha Krishna,
Near Railway Station,
Jaipur.

.. Respondents

(By Advocate: Shri Darshan Singh, proxy counsel Mr. Bhanwar Bagri)

ORDER (ORAL)

Applicant two in number have filed this OA against separate orders dated 9.10.2002 (Ann.A1 and A2) whereby their services were terminated. In relief clause, the applicant have prayed for quashing these orders with further directions to the respondents to treat services of the applicant as regular and they may be given all consequential benefits arising out of it.

3. Briefly stated undisputed facts of the case are that the applicants were appointed as Lower Division Clerk (LDC) on ad-hoc basis sometime in 1983 and 1985. So far as applicant No.1 is concerned he was appointed as LDC in the pay scale of Rs. 260-400 vide appointment letter dated 14.3.1983 (Ann.A3) whereas applicant No.2 was appointed on ad-hoc basis vide letter dated 16.4.1985 (Ann.A6) w.e.f. 11.4.1985. It is also not disputed that name of applicant No.1 was sponsored by Employment Exchange alongwith other candidates. After facing departmental selection committee the applicant No.1 was found meritorious and was given appointment on ad-hoc basis. However, in the case of applicant No.2 though initially he was

appointed on ad-hoc basis for one months w.e.f. 11.4.85 to 10.5.1985. However, subsequently he was given extension in service from time to time after calling names of the applicant from the Employment Exchange. It is also not disputed that applicant No.1 has also qualified typing test, as can be seen from order dated 8.3.1984 (Ann.A5) and on qualifying the typing test he was further given appointment letter. Since services of the applicants were not regularized, they approached this Tribunal by filing OA~~s~~ and this Tribunal directed the respondents to consider their case for regularization keeping in view the fact that the applicant have worked with the department for the last so many years. The applicant has placed copy of the decision rendered by this Tribunal in OA No.271/98 decided on 15.12.98 in the case of applicant No.1 and in OA No.165/88 decided on 27.7.94 in respect of applicant No.~~2~~ (Ann.A9) as also copy of the order dated 3.12.2001 passed in OA No.505/95 (Ann.A10) on record whereby directions were given to the respondents to consider case of the applicants for regularization. The respondents, instead of regularizing services of the applicants, issued termination orders dated 9.10.2002 (Ann.A1 and A2) whereby stating that services of the applicants cannot be regularized. However, they will be given age relaxation of service rendered by them on ad-hoc basis so as to enable them to appear in the SCC regular

examination as one time measure. It is these orders, which are under challenge in this OA. The grievance of the applicants is that not only the respondents have regularized services of S/Shri R.K.Gupta and K.L.Sharma vide order dated 18.11.87 and 23.11.87 who are similarly situated to that of the applicant but vide order dated 11.8.87 (ann.A11) as many as 11 persons who were working as LDC on ad-hoc basis were also regularized retrospectively on different dates from 26.12.1980 to 12.2.1982. It is on this basis the applicants have filed this OA.

4. Notice of this application was given to the respondents. The respondents have filed reply. The fact that name of the applicants were sponsored by the Employment Exchange and they were appointed after holding due selection has not been disputed. However, the stand of the respondents which can be seen from para 1 of the parawise reply is that "merely because the name of the applicants were called from Employment Exchange and some procedure showing fairness in the selection as stop gap arrangement was followed by the respondents, the applicants cannot claim the regular appointment and equate the said procedure with the recruitment process liable to be held in accordance with rules." Thus, the only objection raised by the respondents in not regularizing the services of the applicant is that since they were not appointed by way

of regular selection as direct recruits, as such their services cannot be regularized. However, the respondents have admitted that services of S/Shri R.K.Gupta and K.L.Sharma were regularized though they have not faced regular selection by way of direct recruitment as they were appointed up to 1980 whereas both the applicants were appointed in the year 1983 and 1985. The respondents have also not disputed that similarly situated persons who have not been appointed by way of direct recruitment and were working as ad-hoc LDC, their services were regularized on different dates w.e.f. 26.12.80 to 12.2.82 vide order dated 11.8.87. Thus, according to the respondents the only explanation given for regularizing services of S/Shri R.K.Gupta and K.L.Sharma and 11 persons regularized vide order dated 11.8.87 on different dates w.e.f. 26.12.80 to 12.2.82 is that they were appointed prior to the applicants though they have not faced the selection board which was the only mode for making appointment on the post of LDC as per recruitment rules.

5. Thus, it is a case where similar treatment has not been given to the persons who were similarly situated and the respondents adopted different yardsticks in the case of as many as 12 employees whereas in the case of applicants in this OA their services were terminated vide impugned order when they

have put in about 17 to 19 years of service, despite the fact that this Tribunal has time and again given directions to the respondents to consider cases of the applicants for regularization as LDC. Keeping in view the facts and circumstances of this case and the discriminatory and arbitrary attitude on the part of the respondents to deny benefit to the applicants, when the matter was listed on 16.10.2002, this Tribunal kept the orders Ann.A1 and A2 in abeyance. It is not disputed that the applicants are still continuing in service by virtue of the stay granted by this Tribunal.

6. We have heard the learned counsel for the parties and gone through the material placed on record.

7. We are of the view that the present OA can be disposed of in the light of the directions issued by the Constitution Bench of the Hon'ble Apex Court in the case of Secretary, State of Karnataka Vs. Umadevi and others, 2006 (3) SLR 1. In para 44 of the aforesaid judgment, the Hon'ble Apex court has directed the Union of India, the State Government and their instrumentalities to take steps to regularize as a one time measure, the services of such irregularly appointed employees who has worked for ten years or more in duly sanctioned posts. At this stage,

it will be useful to quota para 44 of the judgment in the case of Umadevi (*supra*) which thus reads:-

“44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.Narayanappa (*supra*) and B.N.Nagarajan (*supra*) and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitment are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the Constitutional scheme.”

8. Thus, in view of the directions given by the Apex Court, as reproduced above, and in view of the fact that the respondents have regularized services of some employees who were initially appointed as LDC on ad-hoc basis without facing the selection and were also similarly situated to that of the applicants, the respondents shall reconsider the matter again and pass appropriate reasoned and speaking order, in case the respondents come to the conclusion that the applicants are not entitled to the benefit of the judgment rendered by the Apex Court in the case of Umadevi (*supra*).

9. Accordingly, the respondents are directed to reconsider the matter of the applicants afresh in the light of the observations made above. Till such order is passed, the applicants shall be allowed to continue and interim stay granted on 16.10.2002 and continued from time to time is hereby made absolute.

10. The OA is disposed of accordingly with no order as to costs.



P. SHUKLA)

Member (A)



(M.L.CHAUHAN)

Member (J)

R/