

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 09.08.2000

16

OA No.558/93 and 648/93

Deepak Sardana S/o Shri Madan Mohan Sardana, Plot No.317A,
Gali No.6, Raja Park, Jaipur.

.. Applicant

V e r s u s

1. Union of India through the Secretary to the Govt. of India, Ministry of Industry, Udyog Bhawan, New Delhi.
2. The Salt Commissioner, 2-A, Lavan Marg, Jhalana Doongari, Jaipur.
3. The Assistant Salt Commissioner (Adm), Office of the Salt Commissioner, 2-A Lavan Marg, Jhalana Doongari, Jaipur.

.. Respondents

Mr. Mahendra Shah, counsel for the applicant

Mr. Hemant Gupta, Proxy counsel to Mr. M.Rafiq, counsel for the respondents

CORAM:

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

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

These Original Applications are being disposed of through this common order in view of similar facts and circumstances and the substantial questions for decision raised in these being practically the same.

2. On going through the pleadings and after hearing the learned counsel for the parties, we are of the view that the controversy raised in these OAs can be divided into two

issued. Firstly, whether the services of the applicant should be regularised on the ground of similarly situated persons having been given the benefit of regularisation by the respondents. Secondly, even in the absence of the ground based on the similarly situated persons, whether the applicant is entitled to regularisation in the post of LDC simply on the ground of having rendered continuous service on the post of LDC for as long as 23 years.

3. As far as the first issue is concerned, the applicant has contended that similarly situated persons, namely, Lal Chand Jonewal, Raj Kumar and V.K.Mathur have been regularised w.e.f. 3.11.1980 without having to face the Staff Selection Commission (for short SSC) examination, having been appointed in the same manner like that of applicant on ad-hoc basis after calling names from the Employment Exchange, organising a Selection Committee and conducting the type test and interview. In their reply the respondents have controverted this and stated that the applicant was appointed on temporary basis against leave vacancies and, therefore, regular procedure for appointment was not followed and applicant cannot consequently compare himself with the persons whom he claims to be similarly situated. It has also been stated by them that Lal Chand Jonewal and Raj Kumar Verma were appointed as far back as in 1976 and at that time the OM dated 7th May, 1977 issued by the Ministry of Industry regarding the requirement of going through the SSC was not in existence, whereas the appointment of the applicant was w.e.f. 11.5.1977 and, therefore, the requirements for recruitment through SSC was in place. We have given our anxious consideration to the rival contentions in this regard. We find that even though the general scheme of recruitment of non-technical Group-C posts

through the SSC had come into effect w.e.f. 28.3.1977, the OM of the Ministry of Industry had informed the office of the Salt Commissioner only on 7th May, 1977 (Ann.R8). Not only this, it appears from the letter dated 26.7.1979 from the SSC that the SSC had agreed as a special case to regularise all the appointments made on regular basis by the Salt Commissioner through the Employment Exchange because it was not aware of the position that the recruitment to Group-C non-technical post should be made through the SSC only. The letter goes on to say that in future, all regular vacancies in Group-C non-technical posts, as required to be filled up by the direct recruitment, should be reported to the Commission and Departments/Offices should not take the step of inviting names from the Employment Exchange or to advertise the post. It, therefore, appears to us that the Salt Commissioner was under obligation to report the vacancies to the SSC only after 26.7.1979. The applicant was given the offer of appointment on the post of LDC on 6.5.1977. Even if we accept the contention of the respondents that the appointment in respect of the referred similarly situated persons were before 7.5.1977 when the requirement of recruitment through SSC was not in existence, the offer of appointment issued to the applicant by the respondents was also prior to 7.5.1977, having been issued on 6.5.1977, a date which was also prior to the said letter of the Ministry of Industry. In any case, as mentioned above, the SSC had given a special dispensation to the Salt Commissioner and the office of the Salt Commissioner was required to notify the vacancy of LDCs to be filled up by direct recruitment only after 26.7.1979. We, therefore, conclude that if the respondents wanted, they could have regularised the services of the applicant without his having to pass the SSC examination any time between his date of appointment i.e.

(9)

: 4 :

11.5.1977 and 26.7.1979, after which the SSC had made direct recruitment through it mandatory. We also note from the reply of the respondents that in para 6.6 they have themselves mentioned that "prior to 1978 the recruiting agency for filling up the post of Assistant meant for direct recruitment was through Employment Exchange and thereafter the SSC". If in case of the Assistants the mode of recruitment was through Employment Exchange prior to 1978, there is no reason why it should not be so in respect of the lower post of LDC. We, therefore, find no justification in the action of the respondents in treating the applicant differently from those LDCs/Assistants who were also recruited after obtaining names from the Employment Exchange and selecting the candidates through a Selection Committee after taking type test and interviewing the candidates. Having reached this conclusion, we are of the view that it is not proper for respondents to now compel the applicant to face the SSC examination and pass it before his case could be taken up for regularisation. We will have an occasion to later on mention various judgments of the Courts wherein employees who had appeared and failed in the SSC examination were directed to be regularised without their having to pass the SSC examination. Further, in the case of a person who has worked, without any break as LDC for as long as 23 years, we reject any suggestion that the applicant was appointed on ad-hoc basis on leave vacancies and, therefore, could be placed differently than the officials mentioned by the applicant. The first issue is, therefore, answered in affirmative and thus finding goes in favour of the applicant.

4. We can now take up the second issue. It relates to the regularisation of the services of the applicant for the

: 5 :

post of LDC on the ground of having continuously worked on the said post for over 23 years. In this regard, it will be useful to mention some of the judgments of the Apex Court and various Benches of this Tribunal to which our attention has been invited by the learned counsel for the applicant.

5. The applicant has reproduced relevant portion of the order dated 28th August, 1989 by the Hyderabad Bench of this Tribunal in the case of Sanyasi Rao v. Salt Commissioner, Jaipur and ors. (the same office as that of the applicant). In that case the applicant was appointed as Salt Inspector on ad-hoc basis on 13.9.1978 i.e. even after the applicant. It was prayed therein that the applicant was appointed after due selection after notifying the Employment Exchange and was, therefore, entitled to regularisation without further test through the SSC. (It may be noted that similar procedure was adopted in the case of the applicant). In that case reliance was also placed on the judgment of Hon'ble the Supreme Court in Baleswar Das v. State of UP, AIR 1981 SC 48, wherein the practice of engaging Casual Labour on temporary basis for long years was described as not a wise policy and consequently the Apex Court had directed that scheme is drawn up for regularising the services of such Casual Labours. The Tribunal had concluded, after applying the equitable principle laid down by the Supreme court in Dr. A.K.Jain's case, that the applicant should be regularised on evaluation of his Confidential Reports for the last 3 years. The learned counsel for the applicant has also drawn our attention to certain judgements of the Tribunal/Apex Court in support of his contention that after having put in as long as 23 years' of continuous service, even if on ad-hoc basis, or the so called leave vacancies, the applicant deserves to be regularised in

2

: 6 :

the post of LDC. We have gone through these judgments/orders. In its order dated 1.1.1998, the Jodhpur Bench of this Tribunal in OA No.185/87 and OA No.177/87 had observed that "treating employees who have been working against certain posts for fairly long period like 7/8 years as ad-hoc employees is against the dictates of justice and fair play which the Government as a model employer is expected to observe qua its employees". As regards availability of posts, the said order of the Tribunal mentions that "the staff position set out in Ann.R2 would not present any insurmountable obstacle for the simple reason that the respondents can take recourse to the device of creating supernumerary posts while complying with the order we propose to make. The Hyderabad Bench of this Tribunal in its order dated 7.12.1990 in OA No.108/90 had observed that "9 years of their life was spent already on the job. If they are not regularised they may or may not be eligible for any other job and their life will become ruined". In their order dated 2.11.1992 in TA No. 730/86 and 731/86 the Jodhpur Bench of this Tribunal relying on the judgment of the Apex Court in the case of State of Haryana v. Piyara Singh, JT 1992 (5) SC 179 had directed the authorities to consider the case of the applicant for regularisation provided their record of service was satisfactory and their appointment does not run counter to the reservation policy.

6. In the case of H.C.Puttaswamy and others v. The Hon'ble Chief Justice of Karnataka High Court, Bangalore and ors., JT 1990 (4) 474 the appointments to the post of Typist were in contravention of the provisions of the recruitment rules under which power for selection had been vested in the State Public Service Commission but the Apex Court found that

22

: 7 :

the candidates had been working for over 10 years and observed "one would only imagine their untold miseries and of their family if they are left at the mid-stream. Indeed, it would be an act of cruelty at this stage to ask them to appear for written test and viva voce to be conducted by the Public Service Commission for fresh selection." The Court also referred to certain precedents where on equitable consideration the Court did not set aside the appointments even though the selection of the candidates was held to be illegal and unsupportable. The Apex Court also observed "The precedents apart, the circumstances of this case justify a humanitarian approach and indeed, the appellants seem to deserve justice ruled by mercy". The Apex Court therefore directed that the candidates should be treated to be regularly appointed with all the benefits of the past service.

7. In view of the catena of orders/judgments as discussed in the preceding paragraphs, the applicant who has served the respondents for as long as 23 years by now on the same post of LDC deserves to be regularised on the said post. It is not the case of respondents that he was not eligible at the time of his initial appointment or that he was not possessing necessary educational qualification or he had not passed the prescribed type test. The service life of an employee can be taken as 30 years and the applicant has almost completed most of his service life at the same post on the so called ad-hoc leave vacancy basis. This appears to be completely unjustifiable to us and, in fact, appear to be unjust exploitation of an unemployed person. In this peculiar background of this case, regularisation of the applicant on the post of LDC is the least that can be done. If the services of the applicant are not regularised, the consequences for him and his family will be disastrous. He will neither be able to

A h. -

get any other Government job, having become badly over-aged nor will he be in a position to start with any new avocation in the remainder of his life. As Hon'ble the Supreme Court has observed in the case of Puttaswamy (supra) that the applicant and his family will face untold miseries. It has also been observed by the Apex Court in the same case that it would be an act of cruelty at this stage to ask them to appear in the written test and viva-voce to be conducted by the Public Service Commission for fresh selection. The applicant before us is also placed in a situation worst than employees in that case. He also cannot be forced to appear in the SSC examination because, first of all, his chances of success will be very dim at this stage of life and if he does not succeed the consequence will be his being thrown out on the road alongwith his family any financial security in the shape of retiral benefits for old age also gone. It is worth noting that the respondents kept on taking work from the applicant in the post of LDC since 11.5.1977 and it was only in 1982 that he was asked to appear in the SSC examination whereas services of certain other employees in the same office were regularised without facing the SSC examination. Thereafter on his failure to pass the said examination on three occasions, the applicant continued to work for the respondents. However, but for the order dated 15.6.1997 of this Tribunal, the services of the applicant would have been terminated. In any case, the fact is that the applicant has continued to serve the respondents and is even now so serving. In the totality of the circumstances discussed above as also a catena of judgments/orders mentioned in the preceding paragraphs, we come to a considered view that a humanitarian approach needs to be adopted against the peculiar background of this particular case and in the result respondents should regularise the services of the applicant.

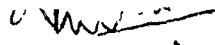
1 The second issue is accordingly answered in affirmative.

24


: 9 :

8. In the circumstances, the Original Applications are allowed and the respondents are directed to consider regularisation of the applicant on the post of LDC w.e.f. his initial appointment on the basis of evaluation of his Confidential Reports for the past five years with consequential benefits. These directions may be complied with within a period of 6 months from the date of receipt of a copy of this order.

Parties to bear their own costs.


(N.P. NAWANI)

Adm. Member


(S.K. AGARWAL)

Judl. Member

I
copy has been supplied to the
govt party's receipt dated 24/8/83

osh
18/8/82