

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 1474/2003

NEW DELHI THIS. 26th DAY OF MARCH 2004

HON'BLE SHRI KULDIP SINGH, MEMBER (J)
HON'BLE SHRI S.A. SINGH, MEMBER (A)

Jayant Kumar Vohra,
LDC, Deptt. of Fertilizers,
Ministry of Chemicals & Fertilisers,
Govt of India,
2nd Floor, Shastri Bhawan,
Dr. Rajendra Prasad Road,
New Delhi

.....Applicant

(By Shri Surinder Singh, Advocate)

Union of India through VERSUS

1. The Secy. to the Govt of India,
Dept. of Fertilizers,
Ministry of Chemicals & Fertilisers,
Govt of India,
2nd Floor, Shastri Bhawan,
Dr. Rajendra Prasad Road,
New Delhi
2. Additional Secy to the Govt of India,
Dept of Personnel & Training,
Min. of Personnel, Public Grievances & Pension,
3rd Floor Lok Nayak Bhawan,
Khan Market, New Delhi.

.....Respondents

(By Sh. B.S. Jain, Advocate)

O R D E R

BY HON'BLE SHRI KULDIP SINGH, MEMBER (J)

The applicant has filed this OA for quashing and setting aside the orders vide which the applicant had been denied the benefit of regularisation of his services as LDC from the date he has passed the typing test i.e. w.e.f. 13.8.1989. The applicant prays that he should be regularised w. e. f. 13.8.89 and his seniority as LDC with reference to his continuous appointment i.e. 19.8.87 and regularisation w.e.f. 13.9.89 and consequential benefits be considered and his pay be refixed accordingly.

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2. The applicant was initially appointed as Messenger Group 'D' post in the pay scale of Rs. 750-950/- under the respondents. With effect from 19.8.87 the applicant was given adhoc promotion in Group 'C' Post as LDC in the pay scale of Rs. 950-1500/-. thereafter the applicant appeared in a Typing Test on 13.9.89 and made application for regularisation but no response was given. However, apprehending his reversion applicant filed an OA No. 1458/1991 seeking directions for maintaining the status quo and regularisation as LDC. The said OA had been allowed by order dated 13.8.92. It is alleged that directions had been issued for regularisation of applicant's services as LDC in consultation with the Staff Selection Commission. However the applicant was reverted vide order dated 19.1.1995. Applicant preferred a CP No. 55/1996 which was disposed of by orders dated 14.3.96 granting liberty to the applicant to agitate his grievances through a fresh OA. Then the applicant filed another OA 1681/1996 which was allowed by order dated 3.5.2000 directing the respondents to consider the case of the applicant in terms of the judgement in OA 1458/1991 dated 13.8.92 within a period of three months and pass an appropriate order and in the meanwhile the respondents to promote the applicant to the post of LDC on ad hoc basis in any available vacancy. so the applicant was reinstated as LDC but he was not regularised w.e.f. 13.9.89 when he passed the typing test. Then vide OM dated 22.3.2001 the respondents have regularised the applicant's services as LDC w.e.f. 16.11.2000 instead of 13.9.89 ignoring the date of his initial date of appointment 19.8.87. Again a representation was submitted on 3.5.2001 and thereafter OA No. 958/2002 was filed which was disposed of with the direction to the respondents to pass a detailed, reasoned and

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speaking order on the aforesaid representations seeking regularisation from 13.9.89 the date on which he passed the Typing Test. Again the representation was rejected stating that it is not permissible in terms of DoPT guide-lines which stipulates that adhoc promotions are purely fortutuious and local adhoc arrangements will not confer any right on the appointee for regular appointment and adhoc service rendered cannot be counted for seniority. Thereafter the present OA has been filed that the stand taken by the respondents for not regularising his services from 13.9.89 are at variance with the law as laid down by the Apex Court in various judgements such as Jacob M. Puthuparambil & Others Vs. Kerala Water Authority & Others - JT 1990 (4) SC 27, Daily Rated Casual Labour employed under P&T Deptt. Vs. UOI & Others : 1998 (1) SCC 122, Smt. P K Narayani & Others Vs. State of Kerala & Others Vs, state of Kerala & Others , 1984 Supp. SCC 212 and Dr. A K Jain & Others Vs UOI: 1987 SCC 497 . So on the strength of the judgements , applicant seeks regularisation from the date he passed the test i.e. w.e.f. 13.9.89.

3. Respondents contested the OA and pleaded that applicant filed an OA No. 1458/91 and the same was disposed of by the Tribunal by order dated 13.8.92 that the services of the applicant may be regularised in terms of directions given in OA No. 688/88 . It is further stated that there is no direction for regularisation of the applicant w.e.f. 13.9.89 i.e. the date on which he qualified the typing test. The only directions were that applicant should be considered for regularisation as LDC in consultation with Staff Selection Commission . So in view of the directions the applicant now has been regularised w.e.f. 16.11.2000. It is also stated that ad hoc appointments are stop gap



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arrangements and the persons appointed on ad hoc basis draw all the benefits admissible to a Govt servant except regular promotions to the grade which they are holding on adhoc basis. Regular appointment is only in accordance with the modes of recruitment prescribed in the Rules. The passing of typing test is for drawl of annual increment but not for granting the regularisation.

4. It is further stated that the applicant could have become regular as LDC in CSCS had he been selected on the basis of Direct Recruitment Examination/ Limited Departmental Competitive Examination in case had applied for the same and if he fulfil the eligibility conditions for the examination or through promotion on the basis of seniority. The respondents further stated that as per rules the posts of LDCs are to be filled by 90% through Direct Recruitment through SCC , 5% by Limited Departmental Examination and 5% by promotion on the basis of their seniority. Since the applicant had not been recruited either under Direct Recruitment Quota of 90% nor under 5% of Limited Departmental Examination Quota, so he should be only regularised in the 5% quota based on length of service/seniority. Counsel for respondents further stated that judgements given in the earlier OA never directed the respondents to regularise the applicant with effect from the date he had passed the typing test.

5. We have considered the rival contentions of the parties and perused the documents brought on record. It will not be out of place to mention here that after his first OA was decided the applicant had also failed a CP No. 55/96 but the said CP was withdrawn with liberty to the applicant to agitate his grievance through an OA. Thereafter he filed

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another OA No. 1681/1996 wherein again the directions were given to respondents to consider the case of the applicants in terms of the judgement in OA 1418/91 dated 13.8.92. Again a CP No. 369/2000 was filed but since the case of the applicant was sent by the respondents to the Evaluation Committee which was set up for regularisation of the applicants, the contempt proceedings were closed. It appears meanwhile that the applicant was regularised w.e.f. 16.11.2000 but aggrieved by this he again filed the present OA.

6. The judgement referred to by Applicant in the OA are not relevant since the applicant was given promotion de hors the rules. Since the Recruitment Rules provides that only 5% group 'D' can be promoted on the basis of seniority. It is an admitted case of the applicant that he had never appeared for direct recruitment quota, nor he had appeared in LDCE quota, then his appointment on the basis of passing of typing test is only de hors the rule which does not give any right for regularisation.

7. Since the applicant had failed to establish that he had right to be considered from the date of his passing his typing test for regularisation and no rule has been pressed to establish for such right for regularisation from the date he had passed the typing test. On the contrary it is admitted case that there are three source of appointment of LDCs i.e. first by Direct Recruitment, second by Limited Departmental Test and third by promotion quota. Since the applicant could be regularised from the 3rd source of

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recruitment, he had correctly and rightly been regularised from the date his case has been considered by the respondents for promotion and therefore he cannot claim that he should be regularised from 13.9.89 when he passed the typing test. Thus O.A. having no merit is dismissed. No costs.



(S.A. Singh)
Member (A)



(Kuldip Singh)
Member (J)

Patwal/