

(2)

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA-2075/2003

New Delhi this the 7th day of July, 2006.

**HON'BLE MR.SHANKER RAJU, MEMBER(J)
HON'BLE MRS.CHITRA CHOPRA, MEMBER(A)**

Mrs. Poonam,
R/o 2/325, Janta Flats,
Paschimpuri, Delhi.

....

Applicant

(By Advocate: Shri V.S.R. Krishna)

Versus

1. Union of India through
Ministry of Tourism and Culture,
Department of Tourism,
Transport Bhawan,
Parliament Street,
New Delhi-110 001
2. The Under Secretary (Admn.),
Department of Tourism,
Transport Bhawan,
Parliament Street,
New Delhi-110 001

....

Respondents

(By Advocate: Shri Sanjeev Kumar)

ORDER(ORAL)

Hon'ble Mrs. Chitra Chopra, Member(A)

This application has been filed against the impugned action of the respondents in not initiating action for recruiting the applicant in the post of Lower Division Clerk (LDC) in terms of the Tribunal's orders dated 30.04.2001 even though vacancies had arisen in the post of LDC.

2. It has been contended by the learned counsel for the applicant that she is eligible in all respects in terms of Recruitment Rules for the post of LDC but she is not being regularised in that post though earlier she was appointed in the post of LDC on ad hoc basis and has worked on that post for more than four years.

ce



3. The applicant had earlier filed OA Nos.2046 and 2050 of 2000 before this Tribunal. These OAs were disposed off vide order dated 30.04.2001 (Annexure A-2). In these OAs a number of applicants who were working as LDCs on ad hoc basis in the Department of Tourism, had sought their regularisation in the post of LDC. These OAs were heard together and disposed off with the following directions:

"The respondents shall consider the candidature of the applicants at the time of future recruitment for the post of LDC by according them age relaxation of the period of service they have rendered with them and in the meantime the respondents are further directed to give preference to the applicants over outsiders and freshers in case it is proposed to make appointments on ad hoc basis."

4. It has been further contended by the applicant that although there are vacancies of LDCs available in the Department of Tourism, she has not been given regular appointment. Further, she is eligible in all respects in terms of the Recruitment Rules for the post of LDC. She has, therefore, sought appointment by granting suitable relaxation in the Recruitment Rules as regards the mode of recruitment.

5. In the counter affidavit, learned counsel for the respondents has made the following submissions:

i) The applicant was appointed purely on ad hoc basis in the Department of Tourism on 12.09.1996 against the regular vacancy in the grade of LDC. The appointment order issued in her favour is Annexure R-1 on record. It has been mentioned therein that applicant's appointment was for a period of 89 days and was purely on ad hoc basis and do not confer on her any title or claim for regular appointment and further that her services are liable to be terminated without notice and without reasons being assigned at any time before that date, if circumstances so warranted.



ii) As per the Recruitment Rules for the post of LDC of the department, this post is filled up through a common examination conducted by Staff Selection Commission (SSC) on all India basis. The respondent Department had reported the vacancies to SSC as per the rules. Since there was a delay in joining of regularly selected candidates on account of non-receipt of recommendations of SSC and there was an urgent need of LDCs at that time, ad hoc appointments were made through SSC.

iii) Learned counsel for the respondents made another important submission stating that the DOP&T had issued detailed instructions vide OM dated 23.07.2001 (Annexure R-III) banning ad hoc appointments in the Govt. of India and, therefore, it was not open to any department to make appointment on ad hoc basis through Employment Exchange any longer. As regards the three ad hoc appointments made by the Department of Tourism vide order dated 26.6.1996 which included the applicant, this has been rescinded by the Department of Tourism in accordance with the DOPT instructions dated 29th July, 2004. On the issue of vacancies in the grade of LDC arising after issuance of DOPT's OM dated 23.07.2001 (Annexure R-III), the respondents have not made any appointment on ad hoc basis through Employment Exchange. All the vacancies in the grade of LDC arising thereafter have been filled up by way of ad hoc promotion to Class IV regular employees of the Department. Recently, three vacancies which arose in

CL



the grade of LDC have been filled up by way of giving ad hoc promotion to the regular Class IV employees of the Department as provided for under the rules.

The contention of the applicant for regular appointment as LDC was thus vehemently denied by the learned counsel for the respondents. It was also submitted that there is no ambiguity with regard to the position of the Recruitment Rules. The promotion is always available to Group 'D' employees, whereas the post of LDCs are to be filled by regular recruitment through SSC. The applicant is seeking relaxation in the matter of recruitment.

6. We have heard the rival contentions of both the parties and have perused the material placed on record.

7. It is abundantly clear that the post of LDC in the Department of Tourism is to be filled only through regular appointment by the SSC. Any relaxation which the applicant seeks can be available only in terms of the Recruitment Rules for which any applicant has to approach the appropriate forum or the competent authority.

8. In view of the fact that the Govt. has imposed a complete ban on ad hoc appointment, it is not possible for the respondents to allow the applicant in ad hoc capacity. Further, in view of clear position of the Recruitment Rules, no regularisation can be envisaged outside the Recruitment Rules. The applicant has no right to continue on ad hoc basis in the wake of latest decision of the Apex Court in **Secretary, State of Karnataka & others Vs. Uma Devi & others(2006(4) SCALE 197)**.

9. However, if the respondents have notified as State vacancies of LDC to the SSC, and in the event, applicant applies for the post on necessary relaxation of age,

CL

36

her candidature shall be considered and in the matter of appointment, law shall take its own course.

Chitra Chopra
(CHITRA CHOPRA)
MEMBER (A)

S. Raju
(SHANKER RAJU)
MEMBER (J)

/usha/