

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

OA NO. 2933/2003  
OA NO. 2946/2003

This the 17th day of December, 2003

HON'BLE SH. KULDIP SINGH, MEMBER (J)  
HON'BLE SH. S.K. NAIK, MEMBER (A)

OA NO. 2933/2003

Pradeep Kumar  
aged about 45 years  
son of Sh. Gorakh Chand,  
working as Senior Houseman,  
P6 Section, MEA, Akbar Bhawan,  
New Delhi-1  
resident of M-390, Shakurpur,  
Anand Vas Colony, Delhi-34.

OA NO. 2946/2003

Chandra Pal-II  
aged about 45 years  
son of Sh. Chhotey Lal  
working as Houseman, Coordination  
Section, MEA, New Delhi  
resident of -  
35/36, DDA Flats, Trilok Puri,  
Delhi-91.

(By Advocate: Sh. M.L.Sharma proxy for  
Sh. H.P.Chakravarty)

Versus

1. The Union of India through  
The Foreign Secretary,  
Govt. of India,  
Ministry of External Affairs,  
South Block,  
New Delhi-110001.
2. The Staff Selection Commission,  
through its Secretary,  
DOPT, Ministry of Personnel  
Public Grievances & Pensions,  
Block No.12, CGO Complex,  
Lodhi Road, New Delhi-1.

(By Advocate: Sh. Rajinder Nischal)

O R D E R (ORAL)

By Sh. Kuldip Singh, Member (J)

By this common order we are disposing two OAs as the  
facts in both the cases are common.

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2. Applicants are the Ex ITDC employee who were working at Akbar Bhawan and their services have been taken over by Ministry of External Affairs under Resp. No.1. Applicants were absorbed as Group 'D' employee, who according to the applicant is eligible to appear in Clerks Grade Departmental Competitive Examination, (for Group 'D' staff only) 2003. In response to that applicant in OA-2933/2003 sent his application on 27.10.2003 and applicant in OA-2946/2003 sent his application on 17.10.2003 whereas the last date for receipt of application is 14.11.2003 and the examination was scheduled to be held on 28.12.2003. Applicants were informed vide impugned order dated 19.11.2003 that their requests have been examined and keeping in view DOPT OM dated 26.4.2000 and it has not been found possible to forward their applications for examination to SSC.

3. Aggrieved of this applicants have challenged the same that Administrative Officer or any other authority of Resp. No.1 has no power to withhold, return the application form of the employees or to decline to forwarding the same to Resp. No.2. Applicants further submit that since they fulfil all the conditions and qualifications department had no option but to forward their names, So it is prayed that respondents be directed to quash the impugned order Annexure A-1 and respondents be directed to forward the applications of the applicants for ensuing examination which is to be held on 28.12.2003.

4. Respondents are contesting the OA. Respondents had pleaded in their reply that the applicants being an Ex-ITDC employees were appointed against an ex cadre post (group 'D')

in the Ministry of External Affairs in 1986. Consequent to taking over of the Akbar Bhawan by the Ministry of External Affairs erstwhile employees of ITDC were taken on the strength of the Ministry by accommodating them on specially created ex-cadre posts outside the regular cadres in the Ministry. Thus, the respondents plead that the examination which is to be held for Indian Foreign Service for Group 'C' and as per Recruitment Rules only a member of Group 'D' service of IFS is eligible and ex-ITDC employees are not eligible.

5. In reply to this Sh. Sharma appearing for the applicants referred to a judgment given in OA-3344/2001 where a similarly situated employee Kishore Kumar Roy had filed an OA against a similar type of order where his application was also rejected on the basis of the OM od DOPI and the OA was allowed and respondents were directed to consider the claim of the applicant for appointment as LDC on the basis of the result issued by the SSC on 30.5.2000.

6. Sh. Nischal appearing for the respondents tried to distinguish this judgment on the plea that since in that case application form of the applicant in the said OA had already been forwarded to SSC and the said applicant had topped the list of successful candidates. So based on that Court had allowed the OA.

7. Sh. Sharma appearing for the applicant invited our attention to para 11 of the judgment and we find that in the said para Hon'ble Tribunal had exhaustively dealt with the plea of the respondents to the effect that the applicant therein also being an EX-ITDC employee was not eligible to compete for the Limited Departmental Competitive Examination

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for the post of Group C. This contention was repelled by the Tribunal. As the Tribunal observed that all ex-ITDC employees have been absorbed under the direction of the Tribunal, Tribunal has nowhere indicated or directed that such absorption would be against ex cadre post to be created for the purpose. The Tribunal further observed that decision to absorb the Ex-ITDC employees including the applicant by creating ex cadre posts in various pay grades vide respondents order dated 22.2.1993 is entirely their own (respondents) and has been taken in the discretion of the respondents.

8. It is further observed that in the service jurisprudence, the term absorption/regularisation is used to denote appointment in the regular cadre. It would, therefore, have been in order, just as well as proper if the respondents had created regular posts in the relevant cadre itself for absorbing the ex-ITDC employees. By not doing so, the respondents have succeeded in creating a strange situation, largely uncommon in service jurisprudence, in which a large number of ex cadre posts have been created in various pay grades for doing regular work and further in para 14 of the same judgment the Tribunal also found that no room is left for arguing that these employees were to be treated other than as regular Group D' employees.

9. So we find that this issue has been exhaustively dealt with in the previous judgment and is no more res integra and we do not find any reason to differ the same. As such, we allow the OA and quash the impugned order dated 19.11.2003 and direct the respondents to entertain the application forms of



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the applicants enabling them to appear in the ensuing examination to be held on 28.12.2003, if he is otherwise eligible. Resp. No.2 shall also entertain the applications of applicants

No Cest "

Naik  
( S.K. NAIK )

Member (A)

Kuldeep  
( KULDIP SINGH )

Member (J)

'sd'