

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: May 29, 2023

+ W.P.(C) 11341/2016

CYPRIAN KUJUR & ANR.

..... Petitioners

Through: Mr. Shanker Raju, Mr. Girish
Kandpal, Mr. Nilansh Gaur,
Ms. Anubha Bhardwaj and
Mr. Rajesh Sachdeva, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ravi Prakash, CGSC with
Mr. Farman Ali and
Mr. Varun, Advs. for UOI

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this writ petition is to two orders passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short), dated May 22, 2006 in Original Application No. 441/2005 and August 30, 2016 passed in Review Application No. 64/2013 in O.A. 441/2005.

2. The Tribunal has dismissed the O.A. filed by the petitioners vide the order dated May 22, 2006. Even the RA seeking review of

the order dated May 22, 2006 was rejected by the Tribunal on August 30, 2016.

3. The facts as noted from the petition are that on February 01, 1980, the petitioner No.1 was appointed as a Group-D employee in the respondent No.4 Directorate. Petitioner No.2 was appointed as a Group D employee on February 15, 1983. While working as such, on September 01, 1984, the petitioners were promoted as Lower Division Clerks ('LDC', for short) on ad hoc basis. It is the case of the petitioners that as per the Recruitment Rules, they appeared in the typing test held on February 20, 1985.

4. On March 25, 1985, they were declared to have passed. It is also stated that the petitioner No.1 was declared to have passed in the test for regularisation which was held on February 09, 1987, and as such his services were regularised on the post of LDC. Similarly, the petitioner No.2 was declared to have passed in the regularisation test held in June 1988 and his provisional seniority was fixed below one Dalvir Singh w.e.f., December 16, 1988 in the seniority list of LDCs.

5. On April 12, 1991, the Tribunal passed orders in an O.A. before it, bearing No. 668/1988 with the following directions:-

“(1)The respondents are directed, to take immediate steps to regularize the services of the applicants as LDCs in consultation with the Staff Selection Commission, while doing so, they shall, if necessary, relax the upper age limit for appointment as LDCs. Their regularization should be on the basis of the evaluation of their work and conduct based on the annual confidential reports, as was directed by the Supreme Court in Dr. A.K. Jain's case.

(2) Till the applicants are so regularized, they shall not be reverted from the post of LDCs to their substantive posts

in Group 'D' category.

(3) The applicants would be entitled to the protection of pay and allowances, including increments in the posts of LDCs and other benefits admissible to a regular employees.

(4) The respondents shall comply with the above directions within a period of three months from the date of receipt of this order."

6. It was the case of the petitioner No.1 that, even after his passing the requisite test and having been regularised on the post of LDC w.e.f., February 11, 1987 and the petitioner No.2 also having passed the requisite regularisation test held in June 1988, the respondents had asked the petitioners along with their other colleagues to appear in another exam to be conducted by Staff Selection Commission ('SSC', for short).

7. The petitioners alongwith their other colleagues challenged the decision of the respondents by filing O.A. 2150/1993 titled *Dinesh Chandra Pandey & Ors. v. Union of India and Ors.*, before the Tribunal. The Tribunal decided the said O.A. on November 10, 1999 by relying upon its earlier order dated April 12, 1991 passed in O.A. 668/1988 and directed the respondents to consider the regularisation of services of the petitioners in consultation with SSC after giving them age relaxation where necessary.

8. The respondent No.4 challenged the decision of the Tribunal before this Court by filing Writ Petition No.2961/2000. This Court upheld the decision of the Tribunal and directed the respondents to consider the case of the petitioners for substantive appointment / promotion to the post of LDC, subject to the availability of the post,

their eligibility under the rules, after relaxing the age bar if required, and also by exercising the powers to alter the 10% prescribed ratio (quota) for departmental candidates. In compliance of the order of this Court, the respondent No. 4 issued an Office Order dated October 29, 2002, amending the provisions of columns 7 and 11 of the Recruitment Rules of LDCs with regard to age and promotion quota of vacancies to be filled up by Group D employees of the Directorate, who were party to the Writ Petition No. 2961/2000.

9. Thereafter, on October 31, 2002, the respondent No.4 issued an Office Memorandum regularising the services of the petitioners w.e.f. October 29, 2002. It was the case of the petitioners that the same is despite the fact that the services of the petitioner Nos.1 and 2 already stood regularised on February 11, 1987 and on January 09, 1989 respectively, which aspect has been duly recorded in the service book of the petitioners. It may be stated here, the respondents regularised the services of 10 persons including the petitioners subject to the outcome of the Special Leave Petition to appeal (SLP) proposed to be filed by the respondents against the order of this Court in Writ Petition 2961/2000.

10. The Supreme Court dismissed the SLP bearing No. 1620/2003 on November 24, 2003. The petitioners being aggrieved by the regularisation of the services w.e.f. October 29, 2002 submitted individual representations against the same.

11. A contempt petition filed by some persons including the petitioners was disposed of by granting liberty to pursue remedy separately for the grievance about the date of their regularisation or

inter se seniority and future promotion.

12. The O.A. filed by the petitioners was *inter alia* for the following reliefs:-

“a) to quash and set aside the impugned orders dated 29.10.2002 and 31.10.2002 listed in Para 1 (a) and (b) respectively to the extent that through these orders the respondent(s) have wrongly by misinterpreting the judgement of the Hon'ble High Court delivered on 30.07.2001 have refixed the date of regularization of the applicants on the post of LDCs and to grant seniority, promotion and consequential benefits etc. to the applicants.

b) to quash and set aside orders dated 3.8.2004 listed at Para 1 (c) above the same being non-speaking, unreasoned and passed arbitrarily without application of mind and. without issuing any show cause to the applicants.

c) To award Suitable cost of litigation in favour of the applicants and against the respondent(s)”

13. The case of the respondents before the Tribunal was that the departmental examination for promotion was wrongly conducted by the respondent No.4 Directorate of Income Tax (Research, Statistics, Publication and Public Relations) (‘DIT (RSP & PR)’, for short) which was not authorised to do so. On detection of the mistake, order of regularisation dated February 11, 1987 had not been given effect to. The respondents denied that the petitioner No.2 has passed the written test. In any case, no result was declared for the examination in question and the Central Board of Direct Taxes (‘CBDT’, for short) *vide* its communication dated March 05, 2001 clarified that since ad hoc promotees were allowed to appear in the departmental

examination provisionally, the said examination for 2000 was to be treated as null and void. It was also clarified that the petitioners could not have been regularised on earlier dates since as per directions of this Court *vide* order dated July 30, 2001, relaxation in Recruitment Rules, is a one-time measure, to be granted by the Competent Authority. The relaxation was granted only w.e.f. October 29, 2002. Moreover, the petitioners were given protection of pay and allowances including increments earned by them while working in ad hoc capacity. In substance, they state that the petitioners were never regularised as LDCs prior to October 29, 2002 and therefore they are not entitled to any seniority prior to the said date. Moreover, there was no direction issued by this Court to the effect that the relaxation should be made retrospective in operation.

14. Their case was that the petitioners were promoted as LDCs on ad hoc basis in violation of the Recruitment Rules. Seniority of an appointee is counted from the date of regular appointment in cadre and principle of continuous officiation is not applicable or attracted in the facts and circumstances of this case. They also contested the prayer for condonation of delay. The Tribunal in the impugned judgment dated May 22, 2006 has in paragraphs 9 to 12, stated as under:-

“9. We heard learned counsel for parties and perused pleadings carefully. Basic grievance of applicants is that they are entitled to seniority from the date of their initial appointment as LDC on ad hoc basis i.e. from 1984 or at least from 1987-88 when they were regularized. On the other hand, respondents' stand is that applicants were regularized along with others in compliance of directions

issued by the Hon'ble Delhi High Court on 30.7.2001 in Writ Petition (Civil) No.2961/2000. It is an admitted fact that applicants were granted relaxation in Recruitment Rules by respondents vide order dated 29.10.2002, which made them eligible for regularization as LDC as per Rules in vogue. It is also an admitted fact that they were regularized along with others w.e.f. said date.

10. As far as respondents objections namely res judicata, limitation and non-joinder of parties are concerned, we may note that two, out of ten applicants in earlier OA No.2150/1993, have preferred present OA. Merely because others have not approached this Tribunal seeking same or similar relief as sought by applicants in present OA would not be a ground to contend that OA suffers from non-joinder of parties. Similarly, we may note that question of res judicata is not applicable "in as much as issue raised in earlier case was about regularization and not seniority. We may note that at same time, applicants have challenged respondents' memorandum dated 03.8.2004, vide which their representations were rejected. The present OA filed on 23.2.2005. As per Section 21 of Administrative Tribunals Act, 1985, limitation period is one year. In present case, order dated 03.8.2004 passed by respondents is final order and counting the period of one year from said date, it cannot be contended that OA is barred by limitation. Merely because applicants have also challenged orders dated 29.10.2002 and 31.10.2002. it cannot be said that OA is filed belatedly. We may note that applicants have made representations against the aforesaid on which were rejected vide Memo dated 3.8.2004 as noticed hereinabove. In the circumstances, we do not find any justification in objection raised and accordingly same are over-ruled.

11. On consideration of entire matter and rival contentions raised by parties as well as on perusal of material documents placed before us, we find no Justification in the contention raised by applicants that they were appointed as LDC in 1984 or 1987-88 "in

accordance with rules." No material has been produced before us to corroborate the said contention that their appointment had been in terms of Recruitment Rules in vogue, they were appointed against available vacancies and were well within zone of consideration or had passed test for said post of LDC particularly when only 5% of vacancies are to be filled based on seniority and 5% based on departmental examination. On bestowing our careful consideration to judgment of Direct Recruits judgment (supra), on which strong reliance was placed, we find that emphasis made therein is that one is entitled to seniority from date of his appointment and not according to date of his confirmation and that too when an incumbent is appointed to a post "according to rules". The term "according to rules", therefore, assumes importance and significance. If applicants' contention that they were promoted as LDC earlier in accordance with rules, is accepted at this stage then it has not been explained to us as to why they approached this Tribunal earlier vide OA No.2150/1993 seeking regularization as LDC in consultation with SSC. In any case, operative portion of judgment dated 10.11.1999 of this Tribunal as well as Hon'ble Delhi High Court's order dated 30.7.2001 in Writ Petition (Civil) No.2691/2000, extracted hereinabove, would show that their prayer to seek deemed regularization had not been accepted.

12. Conclusions (A) & (B) of Direct Recruits judgment (supra) had been explained by Hon'ble Supreme Court in State of West Bengal vs. Aghore Nath Dey (1993 (3) SCC 371) and it was held that conclusions (A) and (B) of the Constitution Bench in Direct Recruits (supra) case have to be read harmoniously, and conclusion (B) cannot cover cases which are expressly excluded by conclusion (A). It was held therein that conclusion (B) was added to cover a different kind of situation, wherein the appointments are otherwise regular, except for deficiency of certain procedural requirements laid down under the rules, the appointee being eligible and qualified in every manner for

a regular appointment on the date of initial appointment in such cases. Decision about the nature of appointment, for determining whether it falls in this category, has to be made on the basis of the terms of the initial appointment itself and the provisions in the rules. In such cases, the deficiency in the procedural requirements laid down by the rules has to be cured at the first available opportunity, without any default of the employee, and the appointee must continue in the post uninterruptedly till the regularization of his service, in accordance with the rules. Applicants have failed to point out what was deficiency in procedural requirements laid down under rules and, therefore, it cannot be allowed to contend that their case is covered by conclusion (A) of Direct Recruits case (supra). Corollary to conclusion (A) is more relevant to the present case.”

15. The impugned judgment of the Tribunal was challenged by the petitioners in W.P.(C) 328/2007 which was disposed of on September 12, 2011 granting liberty to the petitioners to approach the Tribunal by way of a review or any other appropriate proceedings in view of the disclosures made in response to their query under the Right to Information Act, 2005 ('RTI Act', hereinafter). It is pursuant thereto that the Review Application was filed by the petitioners wherein the impugned order dated August 30, 2016 has been passed.

16. The Review Application was dismissed by the Tribunal by stating in paragraphs 5 to 7 as under:-

“5. In State of West Bengal and Ors. Vs. Kamal Sengupta and Anr., 2008 (9) SCALE 504, the Hon'ble Supreme Court laid down the following principles on the scope of review by this Tribunal:

“(i) The power of the Tribunal to review its order/decision under Section 22(3)(1) of the Act is

akin/analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 of CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds. (iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger bench of the Tribunal or of a superior Court.

(vii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(vi) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier."

6. As regards the aforesaid RRs, we see substance in the aforesaid submission of the learned counsel for the respondents With respect to the two applicants' aforesaid Service Book entries, it cannot be said that the same were not within the knowledge of the applicants or could not be produced before the Tribunal even after the exercise of

due diligence. Therefore, as the Hon'ble Supreme Court has held, they cannot be taken as sufficient ground for review.

7. Accordingly, we are of the view that none of the grounds for review as given in Order XLVII Rule 1, CPC has been successfully put up."

17. Mr. Shanker Raju, learned counsel for the petitioners, would submit that the Tribunal has erred in dismissing the Original Application as well as the Review Application. According to him, taking into consideration the factual position that the department had held the typing test as per the Recruitment Rules of 1975 and the same being the only mode and manner in which Group D employees can be considered for promotion to the post of LDC under 10% quota of the vacancies, the Tribunal could not have dismissed the O.A. In fact, the petitioners having appeared in the recruitment process should have been granted regular promotion.

18. According to him, the plea of the respondents that the examination in the form of typing test was cancelled is misconceived. He stated that, since no particular authority has been prescribed under the Rules or by way of any departmental instructions, the Rules cannot be supplanted. That apart, since the examination was conducted by an equivalent authority in the Income Tax Department, the same cannot be brushed aside. He also stated that between the years 1975 and 1988, as many as 136 appointments were made to the post of LDCs wherein only 11 vacancies were filled by 10% quota and other 3 vacancies of promotion to the post of LDC from Group D quota still remained unfilled, to which the petitioners could have

been promoted.

19. According to him, the Tribunal was required to decide the matter in view of the disclosures that came to the fore under the RTI Act, which clearly reveal that the petitioners have passed the requisite regularisation test way back in 1987 and 1988. Such orders were never revoked.

20. In fact, he had referred to the case of one Laxman Singh Bisht from another cadre controlling authority of the Income Tax Department, who was allowed to appear in the departmental test for promotion to the post of Upper Division Clerk in the year 2000 and was declared to have passed but was not promoted. Laxman Singh Bisht had approached the Tribunal for his promotion by filing an O.A. wherein the respondents were directed to promote him. As such the petitioners No.1 and 2 are entitled to be promoted as LDCs w.e.f. 1987 and 1988 respectively, when according to him the vacancies were available. Alternatively, he submitted that the petitioners are required to be regularised at least from December 10, 1990, if not from February 11, 1987 or January 09, 1989 when they passed the test for regularisation.

21. On the other hand, Mr. Ravi Prakash, learned standing counsel for the Union of India would submit that the petitioners were employed in Group D with the respondent No. 4-DIT (RSP & PR) on February 01, 1980 and 1983 and were regularised to the post of LDC in accordance with the Recruitment Rules of 1975.

22. In 1990, the Recruitment Rules were amended whereby the petitioners were required to appear in an examination for the post of

LDC. Under the 1975 Recruitment Rules, 10% of the vacancies under direct reserve quota were to be filled up by the Class I employees. Between the period 1984 and 1986, Group D employees of CBDT were appointed on ad hoc basis as LDCs in violation of the Recruitment Rules and further direct recruit candidates were appointed.

23. According to him, it is true that on January 20, 1987 a memorandum was issued whereby it was decided to hold a competitive examination for regularisation of ad hoc LDCs, to be held on January 25, 1987. The test was conducted by DIT (RSP & PR) and not by DIT (IT & Audit). As a result of the aforesaid test, Group D employees, who were appointed ad hoc were declared to have passed on October 09, 1987. Out of 69 ad hoc LDCs who had passed the test, the petitioner, along with one Megh Raj and one Jagdish Kumar were declared as regularised vide order dated February 09, 1987. However, since the test was conducted in violation of the Rules, the same was treated as void and all the three employees were treated as ad hoc LDCs.

24. Many of the Group D employees had served 5 to 6 years as ad hoc LDCs and many of them did not have lien on the post of peon. It was suggested that as a onetime measure, CBDT may allow regularisation of ad-hoc LDCs, waiving off the restriction of the promotion quota vacancies limited to officials fulfilling all other qualifications prescribed in the Recruitment Rules.

25. According to him, the petitioner No.1, Megh Raj and Jagdish Kumar whose regularisation order was treated as *non-est*, were aware

that they were being treated as ad-hoc LDCs. In fact, Megh Raj has filed O.A. 2153/1993 wherein he admitted that he had been equated with ad hoc LDCs employees by the Directorate and prayed for regularisation of his services to the post of LDC. The Tribunal dismissed the said O.A..

26. In any case, the 10 ad hoc LDCs viz. the petitioner No.2 and others filed O.A. No. 2150/1993 seeking regularisation. The Tribunal vide its judgment dated November 10, 1999, directed to consider regularising the applicants in consultation with the SSC after giving them age relaxation and evaluating their work. Accordingly the matter was taken up with the SSC. On the advice of the SSC, the Department of Personnel and Training opined that regularisation of ad hoc LDCs without defending the case properly should not be resorted to as it perpetuates 'ad-hocism' and inefficiency and directed to file an appeal. Accordingly, Writ Petition No.2961/2000 was filed. The same was decided on July 30, 2001 directing the respondents to consider the ad hoc LDCs for substantive appointment/promotion.

27. In fact, petitioner No.2 D.C. Pandey and others had filed contempt petition No. 417/2002 for regularisation of their services from the initial date of appointment which was dismissed by this Court, as according to Mr. Prakash, the Court was satisfied that there was substantial compliance of its order and no action for contempt of court was required.

28. Accordingly, in terms of the relaxation given, the petitioners were regularised w.e.f., October 29, 2002. It is his submission that even in law, the petitioners cannot be granted retrospective

promotion. They could be considered for promotion on regular basis only after regularisation was granted under the Recruitment Rules, which was granted in the year 2002. He submitted that any order by this Court in terms of the prayer made by the petitioners would not only have a repercussion whereby settled seniority would be disturbed, but even the promotions which have been made over a period of time would need to be looked into. He stated that this Court ought to reject the petition.

29. Having heard the learned counsel for the parties, the issue which arises for consideration is whether the petitioner Nos.1 and 2 are entitled to regularisation as LDCs from 1987 and 1988, respectively.

30. Mr. Raju has relied upon the process of examination carried out by the respondents in the year 1987-1988 to contend that the petitioners have cleared the test for regularisation and as such they should be given regular appointment from that date.

31. Such a plea, though looks appealing on a first blush, it is the case of the respondents that, such orders of regularisation were never given effect. It is noted that, though the petitioners had filed the OA in the year 2005, they had approached the Tribunal seeking their regularisation in the year 1993 itself (O.A.2150/1993). If the petitioners were regularly appointed in 1987-1988, there was no occasion for them to approach the Tribunal in 1993. It is on their asking that the Tribunal has decided the O.A. filed in 1993. It is pursuant thereto, in terms of the direction given by this Court that the respondents decided to amend the Recruitment Rules to give

relaxation to the petitioners and considered their case for regularisation.

32. The regularisation was granted to the petitioners w.e.f. October 29, 2002. It is the said date from which it can be said that the petitioners have been substantially appointed to post of LDC and not before that. It is settled that regularisation of employees appointed on ad hoc basis cannot be given retrospective effect. The Supreme Court as far back in 1998 in the case titled ***Registrar General of India & Ors. v. V. Thippa Setty & Ors., (1998) 8 SCC 690*** has held as under:-

“2. We have heard counsel for both sides and perused the orders of the Tribunal dated 16-12-1991 and 19-2-1993. By the previous order, the Tribunal's direction was to regularise the respondents with effect from the date of promulgation of the recruitment rules or from the date of their appointment, depending on the seniority list. That was a direction which was a flexible one leaving it to the management to consider from what date regularisation should take effect. In pursuance of the said direction, on the new recruitment rules being promulgated on 11-5-1985, the regularisation was given effect from that date. However, in the subsequent order passed by the Tribunal on 19-2-1993, the Tribunal has directed that they should be treated as having been conferred regular status with effect from 5-2-1981, that is, the date of their entry into service as Investigators. It must be remembered that they had entered as ad hoc appointees and the question was whether they should be regularised in service since they had worked as ad hoc employees for a sufficiently long time. If the ad hoc service is regularised from the back date in this manner, it will disturb the seniority of regularly appointed employees in the cadre and, therefore, ordinarily the regularisation must take effect prospectively and not retrospectively. It

must also be borne in mind that ad hoc appointees, casual labour and daily-rated persons are not subject to strict discipline of service and it is a matter of common experience that their attendance is very often not regular and at times they do not even meet the qualification for appointment since they are taken on ad hoc basis. These deficiencies are overlooked by way of granting of relaxation and, therefore, care must be taken to see that they do not upset the seniorities of regular appointees. Whether they qualify in a given case or not is not relevant but what is relevant is that regularisation should be prospective and not retrospective as the chances of their upsetting the seniorities cannot be overlooked. The Tribunal must take care to see that when they pass orders of regularisation from retrospective dates, those who are likely to be affected on account of that order are not before that court and unwittingly their careers are not adversely affected. Ordinarily, therefore, the regularisation must be prospective.

(emphasis supplied)

33. The judgment of the Supreme Court clearly covers the issue which falls for consideration in this writ petition. The Supreme Court has also highlighted the fact that, if regularisation is given effect to from a back date, it would disturb the seniority of regularly appointed employees in the cadre and, therefore, ordinarily regularisation must take effect prospectively and not retrospectively.

34. The judgment in ***P. P. Relhan v. UOI, 2012(194) DLT 530*** relied upon by Mr. Raju is not applicable to the facts of this case. This we say so, as the ad hoc promotion on which much stress has been placed by the counsel for the petitioner, remained ad hoc promotion and cannot be treated as regular promotion under the Recruitment Rules.

35. Even the cases of *P.Sumnyan & Ors. Vs. Liminidi & Ors.*, 2001(6) SCC 719 and *Direct Recruit Class II Engineering Officers Association v. State of Maharashtra & Ors.*, 1990 (2) SCC 715, relied upon by Mr. Raju to contend that the initial appointment being as per rules, the promotion must relate back to the said date have also no applicability to this case, in view of the judgment of the Supreme Court in the case of *Registrar General of India (supra)*. In any case, in *Direct Recruit Class II Engineering Officers Association (supra)*, the Constitution Bench was concerned with an issue relating to seniority between direct recruits and promotes, and not regularisation of services from a back date and to this extent, the judgment would not be applicable to the facts of this case.

36. In view of our discussion above, we are of the view that the Tribunal has rightly dismissed O.A. 441/2005 and RA 64/2013. This present petition shall also meet the same fate. The petition being without merit, is dismissed.

37. No costs.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J.

MAY 29, 2023/ds/jg