

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

(5)

O.A. No. 2487/1990  
T.A. No.

199

DATE OF DECISION 31.5.1991.Smt. Rita Tiwari PetitionerShri S.L. Hans & Sangeeta Chaudhary Advocate for the Petitioner(s)

Versus

U.O.I. through the Min. of Home Respondent  
Affairs and AnotherShri M.L. Verma Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. P.K. Kartha, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice Chairman(J))

The applicant, who has worked as Statistical Assistant in the Bureau of Police Research and Development (Respondent No.2) under the Ministry of Home Affairs (Respondent No.1), filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- (i) To declare the applicant regularly appointed as Statistical Assistant with effect from the date of appointment i.e. 24.11.1983;
- (ii) to order the respondent to give the benefits of entire

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services rendered by the applicant for the purpose of promotion to the next higher post and for all other purposes;

(iii) to restrain the respondents from filling up post held by the applicant by any other appointee; and

(iv) to pass such other or further orders as facts and circumstances of the case so warrant.

2. On 30.11.1990, while admitting the application, the Tribunal passed an interim order directing the respondents to maintain status quo as regards the continuance of the applicant in the post of Statistical Assistant. The interim order has thereafter been continued till the case was finally heard on 3.4.1991.

3. The facts of the case in brief are as follows. The applicant, along with two others, were sponsored by the Employment Exchange and on the basis of the interview conducted by the Deputy Director and Assistant Director, she was offered the post of Statistical Assistant by order dated 21.11.1983. The aforesaid order stipulated that the post is purely temporary and subject to being medically examined by a Civil Surgeon and character and antecedents verified by the competent authority. There

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for further examination <sup>u</sup>  
was no stipulation and interview by Service Selection  
Commission. This offer was followed by appointment  
letter dated 3rd December, 1983 appointing her as  
Statistical Assistant (ad-hoc) in the Bureau of  
Police Research and Development with effect from  
24.11.1983 (F.N.). She has been granted annual  
increments from year to year on the basis of satisfactory  
performance of her duties. She was sent on various  
and <sup>u</sup> projects at Delhi <sup>u</sup> Lucknow from 15th June to 30th July,  
1989 and Bombay June 20 to July 3, 1990 to study the  
Socio-economic background of offenders in jails and  
Police Stations and submitted her reports to the  
authorities which are in the power and possession of  
respondent No.2. She has been granted various types  
of leave viz, earned leave, maternity leave, medical  
leave and extra ordinary leave during the tenure of her  
employment. She has also been made reimbursement of  
the educational fees of her wards from time to time  
and was also reimbursed L.T.C. expenses in the years  
due as per rules.

4. On 20.6.1990, the respondents have informed  
her to apply for the post of Statistical Assistant in  
relaxation of age limit in response to the advertisement  
of the S.S.C. whenever inserted by them.

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5. The representations made by her to regularise her services and not to notify the vacancy to the Staff Selection Commission has not been acceded to by the respondents.

6. The respondents have stated in their counter-affidavit by way of preliminary objections that the application is not maintainable as it is barred by limitation, that she has not exhausted the departmental remedies and that the application is bad for non-joinder of parties. They have relied upon the relevant case law on the subject\* and we have duly considered them.

7. In our view, the State should not raise the plea of limitation to defeat the just claims of its employees. There are no effective departmental remedies available to the applicant in the instant case as the decision to notify the vacancy to the Staff Selection Commission has been taken on the advice of the Department of Personnel & Training. We are also not impressed by the plea that the application is barred by non-joinder of parties as the relief sought by the applicant is not against any other employee in Govt. service. We,

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\* Cases relied upon by the respondents:-

1990(3) SLJ 528; 1989(2) SLJ(SC) 49; 1989(9) ATC 61;  
1970(1) SCC 84; 1976(3) SCC 579; and AIR 1974 SC 2271.

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therefore, overrule the preliminary objections raised by the applicant.

6. The respondents have stated that the matter regarding "regularisation" of the services of the applicant as Statistical Assistant was taken up by the Bureau of Police Research & Development with the Government (Department of Personnel & Training etc.) since 1987, in as much the appointment suffered from the inherent defect of having been made through the Employment Exchange, and not through the Staff Selection Commission. The Government did not agree to such mode of "regularisation" because the recruitment was not done in accordance with the prescribed procedure. According to them, any such recruitment would mean and imply back-door entry into Government service. However, in the interest of justice and fairplay, the Government has allowed relaxation in respect of age requirement to the extent of ad-hoc service rendered and has also allowed the applicant to appear in the examination after notifying the vacancy to the Staff Selection Commission. There can be no bypassing of the constitutional requirement that in general recruitment, all other eligible candidates should also be considered by the prescribed selection authority.

9. The respondents have not disputed the fact that the applicant is fully qualified for appointment as Statistical Assistant. In our opinion, the mere fact that she was not recruited through the Staff Selection Commission should not stand in the way of her regularisation after she has continuously officiated in the said post since 1983, on ad hoc basis.

10. In Jacob M. Puthuparambil & Others Vs. Kerala Water Authority & Others, JT 1990(4) SC 27, the Supreme Court had considered a similar issue relating to the regularisation of persons who had been appointed on ad hoc basis for several years. The Supreme Court has directed the respondents to regularise the services of such employees who have put in continuous service of not less than one year, as a separate block in consultation with the Kerala Public Service Commission. In doing so, the Kerala Public Service Commission has been directed to take the age factor as waived. In arriving at this conclusion, the Supreme Court relied upon its earlier decision in Smt. P.K. Narayani & Others Vs. State of Kerala & Others, 1984 Suppl. SCC 212 and in Dr. A.K. Jain & Others Vs. Union of India & Others, 1987 Suppl. SCC 497. In Narayani's case, the Supreme Court directed that the petitioners and all others similarly placed should be allowed to appear at the next examination that the Public Service Commission may hold without raising the

question of age bar; till then they may be continued in service provided there are vacancies. The Court, however, clarified that this will not confer any right on the employees to continue in service or of being selected by the Commission otherwise than in accordance with the extant rules and regulations. The Court gave the above directions describing the case as "a human problem which has more than one facet". In Dr. A.K. Jain's case, the services of ad hoc Assistant Medical Officers who were initially appointed for six months but were continued for periods ranging upto 4 years, were sought to be terminated to accommodate the candidates selected by the UPSC. The petitioners claimed that their services should be regularised. The Supreme Court directed the regularisation of the services of all members appointed upto October 1, 1984 in consultation with the UPSC on the evaluation of their work and conduct based on the confidential reports in respect of the period subsequent to October 1, 1982.

3. The Supreme Court also relied upon its earlier decision in Daily-rated casual labour employed under P.T. Department Vs. Union of India & Others, 1985(1) SCC 122.

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12. Keeping the above trend of judicial decisions, we are of the opinion that the respondents should take steps to regularise the services of the applicant in consultation with the Staff Selection Commission. While doing so, they should relax the upper age limit for appointment as Statistical Assistant. The regularisation should be on the basis of evaluation of work and conduct of the applicant as reflected in the confidential reports of the applicant during the entire period of her ad hoc service. Till she is so regularised, her services shall not be dispensed with. The respondents shall comply with the above directions within a period of three months from the date of receipt of this order. The interim order passed on 30.11.1990 and continued thereafter is hereby made absolute.

There will be no order as to costs.

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Deekshay  
31/5/1991  
(D.K. CHAKRABORTY)  
MEMBER (..)

Annex-9  
31/5/91  
(P.K. KARMAKAR)  
Vice Chairman (J)