

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

Original Application No.322/2014

Dated this the 22nd day of January, 2021

CORAM :

HON'BLE SHRI JAYESH V BHAIRAVIA, MEMBER (J)
HONBLE DR A K DUBEY, MEMBER (A)

Bhagwatiben Fulchand Koshti,
A/2 Parmeshwar Apartments,
Opp.Lotus High School,
Viratnagar Isanpur,
Ahmedabad – 382 443.Applicant

(By Advocate Shri A.L.Sharma)
Vs.

1. Union of India,
(Notice to served through Secretary,
Ministry of Home Affairs, North Block,
New Delhi – 110 001.
2. Union of India
(Notice to be served through
Secretary, Department of Personnel,
Pension and Public Grievances (DOPT),
North Block, New Delhi – 110 001.
3. The Registrar General of India;
2/A Man Singh Road,
New Delhi – 110 011.
4. Directorate of Census Operations;
Census Building Sector 10/A;
Gandhinagar – 382 010. Respondents

(By Advocate Ms.R.R.Patel)

ORDER (ORAL)

Per Dr. A. K. Dubey, Member (A)

1. The applicant has approached this Tribunal seeking following reliefs:-

- “(A) *Direct the Opponents herein to consider, decide and grant/extend the benefit of regularization and seniority and other consequential benefits including the benefits of pay-fixation and other benefits for purposes of fixation of pension to the Applicant from the date of ad-hoc appointment as Lower Division Clerk.*
- (B) *Declare that the Applicant is entitled to the benefit of regularization and seniority and other consequential benefits including the benefit of pay-fixation and other benefits for purposes of fixation of pension from the date of initial appointment as Lower Division Clerk as is granted to such similarly situated employees of the same department who have been granted benefits as a result of the dismissal of Special Leave to Appeal (Civil) No.19137/2010 dated 16/4/2012 AND directions issued in Writ Petition Nos.543/2002 and 153/2003 of the Hon’ble Mumbai High Court dated 18/12/2012.*
- (C) *Pass such other and further order or direction, as may be deemed fit, just and proper in the interest of justice.”*

2. The brief facts of the case are as follows :

- 2.1 The applicant submitted that she was appointed as Lower Division Clerk w.e.f. 16.08.1979 under the respondent after calling her name from employment exchange. Thereafter, it was extended from time to time and she continued on ad-hoc basis till she appeared in the Special Qualifying Examination of 1993. She could not clear it. Eventually she was regularized w.e.f. 06.07.2004. The applicant contends that her past services (on ad-hoc basis from 1979 to 2004) were not counted.
- 2.2 The applicant submits that several similarly selected employees had approached the CAT, Guwahati Bench by filing OA No.387/2000. By order dated 04.09.2001 their case was rejected by the Tribunal. Then they approached the Hon’ble High Court of Guwahati. The High Court by the judgment dated 05.06.2009

allowed the petition and directed the respondents to regularize the services and grant consequential seniority to the petitioners from the date of ad-hoc appointment (Annex.A/V). Thereafter, the respondents' thereto filed SLP before the Hon'ble Supreme Court against Hon'ble Guwahati High Court Order which was dismissed on 16.04.2012 (Annex A/VI).

2.3 The applicant further stated that similarly situated employees had filed OA No.60/1995 before CAT, Bombay Bench and the same was disposed of with a direction that the representations had to be considered by the respondents (Annex.A/VII). Thereafter the applicants approached the Bombay High Court for regularization of their ad-hoc services and Hon'ble Bombay High Court ordered that the petitioners were entitled to regularization from the date of initial appointment (Annex.A/VIII).

2.4 The applicant stated that she had accessed the file noting of the Ministry under which the Census Department had been functioning and the noting of DoP&T and Law Ministry. It is clear from it that if, the Guwahati judgment was implemented in view of the dismissal of the SLP, the similarly placed employees had to be given similar benefits.

3. Learned counsel for the applicant submits that the working on ad-hoc basis does not debar the applicant from claiming regularization and seniority from the date of ad-hoc appointment and the reliefs prayed for in the OA deserved to be granted. He said that the applicant was duly appointed, even if on ad-hoc, against a sanctioned post and had since continued. If her appointment was authorized, how could her actually rendered service be excluded? He drew attention to the Guwahati & Bombay High Courts' observation in this regard.
4. The learned counsel for the respondents' submits that the applicant was appointed as LDC on ad-hoc/ temporary basis vide order of appointment dated 16.08.1979 (Annex.R(1)). The offer of appointment clearly stated that the appointment was against the post sanctioned for 1981 Census and if the post continued beyond 1982-83, the incumbent would be required either to pass the relevant examination of the Staff Selection Commission or an examination to be specifically organized by the Commission for that

purpose. The offer of appointment also stated that if the applicant failed to clear this examination, she would have to face retrenchment as her appointment was on purely temporary basis. The applicant failed to qualify in the Special Qualifying examination. She approached this Tribunal but withdrew the OA after furnishing to the respondent department an undertaking that she would not claim for counting of her past services for the purpose of promotion, seniority, ACP scheme benefit etc. and would not enter into further civil litigation (Annex.R(2)). After she withdrew that OA, she was regularized w.e.f 6.7.2004. Applicant had accepted the said regularization and continued to work with the department. A copy of the initial appointment order dated 16.08.1979 is marked as Annex-R(1).

5. The applicant had approached this Tribunal by way of filing OA. Certain similarly situated employees had also approached CAT, Guwahati Bench by filing OA No.387/2000. The applicant herein did not take any step to get her grievances redressed in view of the order of Guwahati Bench of this Tribunal. Hence, how could the applicant place reliance on that judgment and the one passed by Hon'ble Bombay High Court? She has approached this Tribunal now only as an after thought which is anyway time barred, the counsel submitted.
6. As far as Bombay High Court Order is concerned, there was a Review Petition No.31/2014 against the common order of Bombay High Court dated 18/12/2002 in WP Nos.543/2002 and 1652/2003. The RP was filed in view of the advise of DoP&T and Ministry of Law and Justice and in view of the following position of law:-

“Ministry of Home Affairs, Government of India, vide OM No.24012/41/78-Estt(D) dated 4.11.1978 has specified that “recruitment to Group ‘C’ non-technical post is to be made only through the Staff Selection Commission in accordance with the resolution of the Department of Personnel and Administrative Reforms No.46/1(S)/74-Estt B dated 04.11.1975. One of the eligibility criteria for appearing in the Special Qualifying examination of the SSC as prescribed in the scheme of Special Qualifying Examination of SSC is that the prospective candidate should have been selected through Employment Exchange. Thus, the fact that the applicant has been selected through Employment Exchange does not make her automatically eligible for regularization without consulting the SSC.

(b)The Hon'ble Bomaby High Court has observed that the posts against which the appointment of the applicants were made were permanent posts, whereas it has been categorically mentioned in the order of appointment that the appointments,

in any case shall not extend beyond specified date, which is reflective of the fact that the posts were temporary and sanctioned for the period only for a specified period, though these were extended from time to time on functioning requirement basis.

(c)The Hon'ble High Court has granted consequential seniority to the applicants, which is contrary to the judgment of the Hon'ble Supreme Court of India in case of K.C.Joshi vs. Union of India (AIR 1001 SC 284), wherein the Hon'ble Supreme Court of India observed that the adhoc appointees cannot be put on a higher pedestal over the candidates who stood the test of merit and became successful in a competitive recruitment and secured ranking according to the merit in the approved list of candidates. Further, the Hon'ble Supreme Court of India in the case of State of Haryana vs. Piara Singh and others (1992 SC 2130) observed that direction to regularize ad-hoc appointments/work charged employees would only result in encouraging of unhealthy practice of backdoor entry. The Hon'ble Supreme Court of India in the case of Dr.ArundhatiA.Pargoankar and another vs State of Maharashtra held that a continuous service by itself does not give rise to the claim of regularization. As a matter of fact, implementation of the order would result in revision of seniority list which would adversely affect the candidates who stood the test of merit in competitive examinations, below the applicants in the Writ Petitions".

7. As per the directions of this Tribunal, qualifying examination was held once again and the applicant was allowed to appear in the examination but she could not pass. However, once again the applicant had approached this Tribunal by filing OA No.653/2002. In the meantime, the applicant submitted an undertaking that she would not enter into any further litigation for regularization of the ad- hoc service with retrospective effect (Annex-R(2)). She had also agreed to accept the regularization of her service from the date of her withdrawal of the case (OA). Accordingly on 06.07.2004, the applicant withdrew the said OA in order to make a representation to the Department. On the basis of that undertaking, her services came to be regularized w.e.f. 06.07.2004. The applicant accepted this regularization and continued to work with the department till her voluntary retirement. Now after a period of 10 years from the date of regularization, the applicant has approached this Tribunal by way of this OA interalia praying for regularization w.e.f. the date of ad-hoc appointment. The applicant had not filed any MA for condonation of delay. Learned counsel for the respondents further submits that as per the various judgments passed by the Hon'ble Supreme Court of India, the applicant was required to explain the delay in filing of the OA. Hon'ble Supreme Court has also held that in the

absence of a specific application for condonation of delay, no delay can be condoned by a court and therefore, counsel argued further that until the delay was condoned the present OA could not be proceeded with further.

8. Learned counsel for the respondents contended that the present OA was barred by doctrine of res judicata. The applicant has already approached this Hon'ble Tribunal by way of OA No.653/2002 and the same was withdrawn with a view to make a representation to the Department and no liberty was sought to reagitate the same issue once again. The counsel further argued that the applicant cannot raise the same issue again and again and since the applicant had withdrawn the OA unconditionally, the present OA was not maintainable. The applicant was appointed on ad-hoc basis which was purely temporary. She was required to pass the required examination, for the purpose of regularization which she could not. Hence her claim for regularization taking ad-hoc service also into account was not an admissible plea.
9. Learned counsel for the respondents also submitted the names of employees who (working or retired) were appointed on the date shown against the 1981 Census work. For amongst those who were appointed along with the applicant, those who passed the required examination were given the benefit of regularization from the date of passing the examination. The applicant could not pass the examination. Therefore by taking a lenient view and considering the facts and circumstances, the Department had regularized her services w.e.f. 06.07.2004. In order to make a representation before the Department, the applicant had withdrawn the pending OA. Thereafter, she continued to work for a period of five years and then retired voluntarily.
10. On the issue of delay, the counsel for the applicant submitted that after Hon'ble Bombay High Court's order dated 18.12.2012, the applicant made a detailed representation on 05.08.2013 which did not redress her grievances. Then, on 01.05.2014, she moved the present OA. Evidently, there was no delay, the counsel argued.
11. Heard the learned counsel for the parties and perused the material on record. The facts that have emerged in this case are that the applicant who was appointed on 17.8.1979 on ad-hoc basis in a temporary capacity, took the special examination from 1983 but could not clear it.

For the fear of losing the job, she approached this Tribunal by way of filing OA 99/1995 and then OA 653/2002. In its judgment dated 13.08.2001, in OA 99/1995, this Tribunal allowed another chance to the applicants therein to take the qualifying examination, while it made the following observation:-

“mere fact that the applicants have been working as LDC on adhoc basis for a long time does not confer any vested right on them to claim regularization unless they fulfil the essential qualification.....” (Annex.A/II).

The applicant however, could not qualify the examination this time too.

11.1 The OA 653/2002 filed by the applicant was disposed off as withdrawn in order to enable her to represent before authorities concerned, for regularization of services. Department in its wisdom had taken an undertaking from the applicant that she would withdraw the pending OA and then her services would be regularized. Indeed, her services were regularized vide office order dated 18.11.2004, w.e.f 6.7.2004, the date of withdrawal of OA (Annex.A/IV). Their order also said that the adhoc services of the applicant would not count for promotion, seniority; ACP scheme benefits etc. However, it is pertinent to quote from the oral order dated 6.7.2004 of the Tribunal passed in OA No.653/2002:-

“We are shown the undertaking also and we are rather amazed at the contents of the undertaking. It is in the nature of asking for a price for regularizing the adhoc services of the applicants. They are asked to undertake that in case their services are regularized as Lower Division Clerk from the date of the withdrawal of their pending court cases filed by them in Ahmedabad, they shall not enter into any further civil litigation for counting of their past adhoc services for the purpose of promotion, seniority, ACP scheme benefits etc. It is rather surprising that a Govt. Department is seeking such an undertaking for regularizing the services of the adhoc employee thereby showing utter disregard to the settled principles of law. In our opinion such an undertaking would be worthless for all purposes.”

12. The factual matrix that emerges from the documents and judgments brought to our notice, could be summarized as under:-

12.1. The order of Hon'ble Guwahati High Court in W.P. No.4997 of 2002 and of Bombay High Court in W.P.Nos.543/2002 &1652/2003 allowed the request to count the ad-hoc service period in the exercise of regularization. These judgments have

also observed that a few such officials' services were regularized who did not qualify in their prescribed examination.

- 12.2. Upon having been asked to furnish, the applicant gave an undertaking to withdraw the application before this Tribunal and on this ground, she withdrew the OA 653/2002. Thereafter, the services of the applicant were regularized w.e.f. 6.7.2004 although the office order to that effect was dated 18.11.2004.
13. From these facts, it is amply clear that services could be regularized even if, in certain cases, the official has not cleared the qualifying examination as long as they were recruited as per the procedure which was through the Employment Exchange in this case. In the case of the applicant, it was 06.07.2004, and she was sponsored by the Employment exchange for her ad-hoc appointment in 1979. We are also mindful of the fact that a person who has not qualified in the prescribed examination cannot be considered at par with those who had duly cleared the qualifying examination. Finally, we see that the applicant has approached this Tribunal after 10 years of such regularization which is five years after she retired voluntarily.
14. Records, before us clearly show that where regularization took place, its effective date was the date of qualifying in the examination. In its order, Hon'ble Guwahati High Court had ordered regularization w.e.f the date of temporary appointment (Annex.A/V) and this attained finality when the SLP against it by the respondents then was dismissed by Hon'ble Apex Court in its order date of 16.04.2012. Further, in its order Hon'ble Bombay High Court had directed to regularize w.e.f the date of initial appointment. Here in this instant case, the applicant was regularized w.e.f 06.07.2004, on the basis of an undertaking. And we have seen hereinabove this Tribunal's dismay over this "undertaking." And till the date of regularization, the applicant remained an ad-hoc appointee.
15. Taking into account the factual matrix of this case, the judgments quoted above and documents brought before us, we are of the opinion that the Hon'ble Guwahati High Court & Bombay High Court have clearly laid down the basis for further action in such matters and accordingly, we direct the respondents to consider her regularization with effect from the date of initial appointment as LDC, but we make it clear that

consequential refixation of pay, and pension etc. will only be notional and would not entitle her to any arrears except the arrears arising from refixation of pension because of refixation of last pay for the last one year only. Accordingly, OA is disposed of. No order as to Cost.

(A.K.Dubey)
Administrative Member

(Jayesh V. Bhairavia)
Judicial Member

SKV