

Removal NO.

(6)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 13 OF 1991.
~~Ex-AxxNox~~

DATE OF DECISION 9-10-1991

Maneklal Bhikhilal Chauhan & Ors Petitioners

Mr. K.K. Shah,

Advocate for the Petitioners)

Versus

Union of India & Ors.

Respondents

Mr. M.R. Bhatt,

Advocate for the Respondents(s)

CORAM :

The Hon'ble Mr. K.J. Raman, Administrative Member.

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

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1. Maneklal Bhikhilal Chauhan,
2. Kishor Parshotandas Solanki,
3. Mahesh Babubhai Solanki,
4. Kanubhai Manubhai Pithaiya, **Applicants.**

(Advocate: Mr. K.K. Shah)

Versus

1. Union of India,
Representing through
Chief Commissioner, Income Tax,
Ahmedabad.

2. Income Tax Commissioner,
Vadodara. **Respondents.**

(Advocate: Mr. M.R. Bhatt)

J U D G M E N T

O.A. No. 13 OF 1991

Date: 9-10-1991.

Per: Hon'ble Mr. K.J. Raman, Administrative Member.

The four applicants in this case have been appointed as Safaiwala and Farash by an order issued in 1986 on purely ad hoc basis; they had continued to work as such since last about two years. But their services have been terminated on 2-11-1988 orally. However, each one of them, by an intimation issued on 22-2-1989, have been informed that their names for regularisation in Group D post is under consideration of the Chief Commissioner of Income Tax, (Administration) Gujarat, Ahmedabad. They have also been asked to give consent in writing whether they are willing to have their posting at Ahmedabad and if not, whether they are willing for their posting to any other place in

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Gujarat region. The applicants had given their option accordingly. It is stated that the registration of the applicants in the Employment Exchange has also been cancelled. The immediate provocation for filing this application by these applicants is that certain candidates have been called for interview for appointments in Group D posts in the department of the respondents, and if this is done, the chances of the applicants being regularised will become nil or less. In these circumstances, they have prayed for the following reliefs :

"(1) That it be held that the action of the respondent No.2's officers to remove all the applicants by oral order dated 2-11-88 is illegal and ultravires and against the principles of natural justice.

(2) That the respondents and their servants and agents be restrained from filling of seven posts of Class D at Baroda - peon, watchmen, sleeper, etc. till the decision of this application and give mandatory injunction to respondents to fill up the above four applicants as per the respondent No.2's written promise as per order dated 22-2-89 before filling of seven posts of Class D at Baroda.

(3) That the respondent No.2, their servants and agents be restrained from calling for interview those persons whose names were coming from the Employment Exchange, Kothi Kacheri, Baroda, which were called by the respondent No.2 on dated 4.9.90 by their order No.D.C. R.T./R-90-91.

(4) It is to be declared that all the applicants have got the status of permanent employee of respondent No.2 because they have already served two years service in the

192

respondent's department. The Supreme Court Judgment regarding equal wages and regularisation of contingent paid the employee in group -D post on 4-12-87 in the Writ Petition No.1670 of 1981 in the case "U.P. Income Tax Contingent paid staff-welfare assessment Vs. Union of India and others."

(5) To pass any other order which may deem just and proper in the circumstances of the case".

2. The applicants have advanced several grounds in support of their prayer ~~for~~ the above reliefs. The respondents have filed a reply clarifying the position.

3. The case has been heard today. The application stands admitted after permitting the applicants to join in filing this present application.

4. One of the points raised in the reply of the respondents is that this Tribunal has no jurisdiction to entertain this application since the applicants were neither holding any post of Group-D, nor were they members of any Group-D Service. In this connection, the learned counsel for the respondents cited a decision of the Jabalpur Bench of this Tribunal, dated 20.3.1989, in O.A./98/86. This issue of jurisdiction in such cases has since been decided by a Full Bench of this Tribunal in Rehmat Ullah Khan vs. Union of India & Ors. 1989 (2) SLJ (CAT) 293. The matter is no more res integra. The preliminary objection is therefore rejected.

5. The respondents have in their reply have admitted that the applicants have been informed about the process

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of regularisation as contended by them. The learned counsel for the respondents reiterated the averments in the reply that the impugned recruitment/interview is only for filling up posts of peons. It is clearly averred in the reply that the qualifications and eligibility conditions for peons are not the same as those for other Group-D post like Safaiwala and Farash. It is therefore clearly stated that the recruitment of peons and the recruitment of Safaiwala/Farash are two different issues and they have been mixed up by the applicants. It is further averred that the process of regularisation as a result of which the applicants have been asked to exercise their option regarding posting, is going on according to certain decision of the Supreme Court. It is clear from a reading of the reply of the respondents that there is no reversal of the proposal to consider the regularisation of the applicants as intimated to them by the letters dated 22-2-89. The second positive inference from the reply of the respondents is that the impugned interview is only for the post of peons to which the applicants are stated to be not eligible, and that the said impugned interview is not for the purpose of filling up vacancies of posts of Safaiwala/Farash held by the applicants.

6. Though the reliefs in the application refer to the alleged removal of the applicants from service earlier, this point has not pressed during the hearing.

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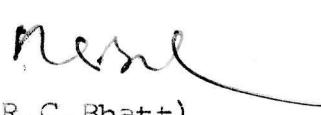
In any case, there is no specific prayer for reinstatement etc. It is clear that the issue of termination is barred by limitation also. In fairness, the learned counsel for the applicant did not press this matter.

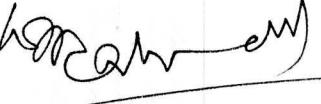
7. Accordingly, we allow the application in following extent, and pass the following orders:

(i) The respondents shall consider the regularisation of the applicants in eligible posts in Group-D in accordance with their letter dated 22-2-89 to each of the applicants.

(ii) The department is entitled to go ahead with the recruitment, but only of peons, and not for the posts of Safaiwala/Farash. Vacancies of Safaiwala/Farash shall not be filled without considering the regularisation of the applicants, as discussed above.

(iii) There is no order as to costs.


(R.C. Bhatt)
Member (J)


(K.J. Raman)
Member (A)

M.A. St. 226/92

M.A. St. 247/92
in

O.A. 13/89

(12)

Date	Office Report	Order
9-9-92		<p>M.A. St. 247 of 1992, As the applicant seeks review of the original order passed on 1991 by a Bench consist- ing of the Hon'ble Shri K.J.Raman Administrative Member and the recent Hon'ble Shri R.C. Bhatt Judicial Member. In this view of the matter the application for review cannot be heard by this Bench. The registry is to take action in this regard in the light of the standing instructions issued by the Hon'ble Chairman of the Central Tribunal. The review applicant have also filed M.A. 226/92 for condonation of delay in respect of which also the direction made above will apply.</p>
15	<p>Both of whom are still Members of the Tribunal</p>	<p>The Deputy Registrar is directed to meet the Hon'ble Judicial Member in the Chamber with this matter for further directions.</p> <p><i>new</i> <i>new</i> (R.C.Bhatt) (N.V.Krishnan) Member (J). Vice Chairman.</p>

*AS.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

St
M.A. No. 226/92 in R.P. No. 42/92
in O.A. No. 13/91

Date of Decision 28-12-92

1. Union of India
representing through
Chief Commissioner of Income
Tax
Ahmedabad.
2. Commissioner of Income Tax
Baroda. : Applicants/respondents.

vs.

1. Maneklal Bhikhilal Chauhan
Piti Township.
IPCL Room No. 365
A/3 Baroda.
2. Kishore Purshottamdas Solanki
Harijan Vas,
Sama Road,
Baroda.
3. Mahesh Babubhai Solanki
Railway G.L. Yard,
Harijan 10 quarters,
Godhra.
4. Kanubhai Manubhai Pithiya
Harijanwas, Jhaled,
Dist. Panchmahal. : Opponents/applicants.

M.R. Bhatt : Counsel for petitioners.

K.K. Shah : Counsel for opponents.

CORAM:

The Hon'ble Mr. K.J. Raman, Administrative Member.

The Hon'ble Mr. R.C. Bhatt Judicial Member.

(W)

JUDGEMENT

Per: Hon'ble Mr. KJ. Raman, Administrative Member.

The M.A. and the Review Petition have been filed by the respondents in O.A. No. 13/91 seeking condonation of delay of 30 days in filing the review petition and for a review of the order dated 9.10.1991 passed in O.A. No. 13/91 (hereinafter referred to as the original order). In the original order, the respondents were directed to consider the regularisation of the applicants in that application in eligible posts in Group 'D' in accordance with their letter dated 22.2.1989 to each of the applicants. There was also another direction regarding the recruitment to vacancies of peons.

2. In the M.A. for condonation of delay of 30 days in filing the Review Petition, no clear reason is given for the delay. It is simply stated that [redacted] a meeting of a Committee for considering the applicants' case was convened on 29.5.1991, and this was not brought to the notice of the Tribunal, and the Commissioner of Income tax, Baroda conveyed this fact to his subordinates. [redacted] This hardly explains the reasons for the delay in filing the review petition. In such circumstances delay does not deserve to be condoned.

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3. On merits also, it is found that no justification has been made out for a review of the original order. No error apparent on the face of the order has been pointed out in the review petition. No new material is stated to have been discovered so as to justify a review of the original order. All that is stated is that a Committee had considered the question of the applicants of regularisation to Group 'D' posts and the meeting was convened on 29.5.1991, and that the Committee did not recommend the names of the applicants for regularisation. It is stated that this fact was not brought to the notice of the Tribunal before the original order was passed. We fail to see how this fact justifies a review of the original order.

4. In these circumstances, even on merits, the petitioners have not made out a case for review. Accordingly the M.A. as well as the review petition are both dismissed. There will be no order as to costs.

rsml
(R. L. Bhatt)

Member (J)

KJ Raman
(K.J. Raman)
Member (A)

jsv.