

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A.NO. 547/93
T.A.NO.

DATE OF DECISION 26.3.98

Shri Anil Yadav

Petitioner

Shri I.M.Pandya

Advocate for the Petitioner [s]

Versus

Union of India & Ors.

Respondent

Mrs.P.Safaya

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V.Radhakrishnan

: Member (A)

The Hon'ble Mr. P.C.Kannan

: Member (J)

JUDGMENT

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

: 2 :

Shri Anil Kumar Yadav,
F/15, Shahalam P & T Colony,
Ahmedabad.

: Applicant

(Advocate: I.M.Pandya)

Versus

1. Union of India,
Notice to be served on
Director General,
Department of Telecommu-
nication, Sanchar Bhavan,
Parliament Street,
New Delhi-110 001.
2. Chief General Manager,
Gujarat Telecom.Circle,
Khanpur, Ahmedabad-1.
3. General Manager,
Ahmedabad Telecom.District,
Ramnivas Building No.2,
Khanpur, Ahmedabad-1.

: Respondents.

(Advocate: Mrs.P.Safaya)

ORAL ORDER
O.A.547/93

Date: 26.3.98

Per: Hon'ble Mr.V.Radhakrishnan : Member (A)

Heard Mr.I.M.Pandya and Mrs.P.Safaya, the
learned counsels for the applicant and the
respondents respectively. The applicant has
approached this Tribunal praying for the following
reliefs:-

- "(A) That the Hon'ble Tribunal be pleased
to direct the respondent to regularise
the service of the applicant as Hindi
Translator from 14.2.1983.

: 3 :

- (B) That the Hon'ble Tribunal be pleased to hold that the action of the respondent in regularising the service of the applicant as Hindi Translator from 1.12.1989 is illegal and bad.
- (C) That the Hon'ble Tribunal be pleased to hold that the continuous holding of the post of Hindi Translator since 14.2.1983 on adhoc basis is bad and is against the service jurisprudence.
- (D) Grant such other and further relief(s) as the Hon'ble Tribunal may deem just and proper in the interest of justice.
- (E) Award the costs of the application."

2. The applicant was appointed as Hindi Translator Grade II vide order dated 8.2.1983 (Annexure A-1), on the basis of the Circular (Annexure A) issued by the Respondents. The Recruitment Rules in respect of Hindi Translator is at Annexure A-3. The initial appointment of the applicant vide Annexure A-1 was made on officiating and on purely adhoc basis against the post sanctioned by the Headquarters wherein it was mentioned that it will not count for the purpose of seniority in these grades for promotion, confirmation, etc.

3. The applicant made a representation to the authorities on 25.11.88 for regularisation of his service for the post of Hindi Translator Grade-II. The Respondents took action for regularisation of applicant and issued orders dated 29.12.89/1.1.90 Annexure A-5 appointing him on regular basis from 1.12.89. Being aggrieved

101

the order the applicant made representation dated 14.2.90 Annexure A-6 for getting his regularisation w.e.f. 14.2.1983 the date on which he took over as Hindi Translator Grade-II. He had been representing to the authorities on this aspect and he was not favoured with any reply to the representation so far.

4. The Recruitment Rules of Hindi Translator Grade-II (Annexure A-3) which reads as follows:

Name of the Post.	No. of Posts.	Classification.	Scale of Pay
1	2	3	4
Hindi Translator Grade-II	39* subject to variation depending on work load.	General Central Service, Group C, Non-Gazetted (Ministerial)	Rs.425-15-56 EB-20-640
Whether Selection post or Non-Selection	Age limit for direct recruits.	Education and other qualification for direct recruits.	
5	6	7	
Non-Selection.	18 to 20 yrs. as on 1st July of the year of recruitment relaxable for Govt. servants upto 35 yrs.in accordance with the instructions or orders issued by the Central Govt.	Master's degree of a recognised University in Hindi, English with English Hind as a main subject at swfeww level. <u>OR</u> Master's degree of a recognise University in any subject other than Hindi/English with Hindi and English as main subjects at degree xxxxxx level. <u>OR</u> Master's degree of a recognised uni. in any subject other than Hindi/English with Hindi/English medium and English/ Hindi as a main subject at degree level. <u>OR</u> Master's degree in Hindi/ English or in any	

Educational and other qualification for direct recruits.

Whether age and educational qualifications prescribed for direct recruits apply in case of promotees.

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subject with Hindi/English medium with English/Hindi as main subject or as a medium of examination at degree level. OR Bachelor's degree with Hindi and English as main subjects or either of the two as medium of examination and the other as a main subject plus recognised Diploma/Certificate course in translation from Hindi to English and vice versa or two years' experience of translation work from Hindi to English and vice-versa in Central/State Govt. offices including Government of India undertakings.

No.

Period of probation if any.

Method of rectt. whether by direct recruitment or promotion, transfer and percentage of vacancies to be filled up by various methods.

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2 years

50% by direct recruitment and 50% by promotion failing which by transfer on deputation and failing both, by direct recruitment.

See

In case of rectt. by promotion, transfers, grades from which promotion is to be made.

If DPC exists what is its composition.

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Promotion

From amongst Hindi Translators Grade III with 5 yrs. service in the grade after regular appointment.

(i) An officer of the Junior Administrative Grade of Postal/ Telecom/Civil Circls/Telephone Dist. as the case may be, to be nominated by the Head of the Circle/District concerned.

Transfer on deputation : From amongst persons holding analogous posts or posts in the pay scale of Rs.330-560 or equivalent with 5 yrs regular service in the grade in the Circle or field offices of P&T Deptt. candidates for appointment on deputation should possess the qualifications as prescribed for direct recruits.

(ii) Another Group A Officer of the Circle/District concerned to be nominated by the Head of the Circle/Dist. concerned; and

(iii) Another Group A Officer of the Circle/Distt. other than the one where the selection is made, to be nominated by the Head of the Circle/District where the Group-A Officer is working.

Circumstances in which UPSC is to be consulted.

13


Not applicable

4. It will be seen from that, the recruitment of the applicant was on the basis of Circular issued by the respondents vide Annexure A would appear to be under the provision of Direct Recruitment and not transfer on deputation. There is no dispute about the fact that the applicant possessed essential educational qualification prescribed in the Recruitment Rules for Direct

Recruits. Accordingly, the applicant was selected for the post of Hindi Translator Grade-II and was continued without any break. There is no dispute that the work and conduct of the applicant was satisfactory during his adhoc services, and there is no adverse record against him. Mr. Pandya learned counsel for the applicant cites the following judgments in favour of the argument that the adhoc appointment should not be continued in longer period and the applicant should have been regularised from the date of his adhoc appointment.

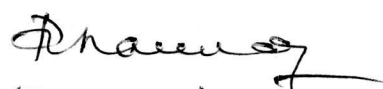
1. AIR 1986 SC 638 - Narender Chadha & Ors. vs. Union of India & Ors.
2. 1991 (2) Miss Chaula v. Tourism Corpn. of Gujarat (Spl.C.A.)
3. AIR 1992 SC 1574 - N.S.K. Nayar & Ors. v. Union of India & Ors.
4. 1994 (2) G.L.H. 504 - Anvarhusen Abdulkarim Kureshi vs. Registrar, High Court of Gujarat.

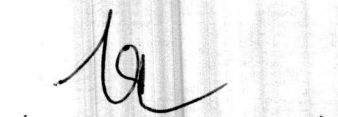
5. On a perusal of the judgment, we see that none of them will help in the present case as the context is different. However, we find no reason for the respondents not to consider the case of the applicant for regularisation after the probation period prescribed in the Recruitment Rules as two years was over. Accordingly, the case of the applicant could have been put up for consideration by the competent authority after he had completed two years of service as Hindi Translator Grade II taking into



account his performance in the post. It appears from the reply of the respondents that the case of regularisation of the applicant was being considered by the local office and then by the Headquarters Office and considerable time was taken by the respondents to finalise his case. There is no dispute about the fact that the applicant was continuous as officiating in the post of Hindi Translator Grade II on adhoc basis. Keeping in view of the facts and circumstances of the case, we direct the respondents to consider the case of the applicant for regularisation taking into account the probation period of two years after appointment by the competent authority if it is found that the applicant had completed the probation period satisfactorily and accordingly he shall be considered for regularisation from 14.2.1985. The respondents are directed to complete the above exercise within three months from the date of receipt of a copy of this order.

With the above observations and directions,
O.A. stands disposed of. No costs.


(P.C. Kannan)
Member (J)


(V. Radhakrishnan)
Member (A)

M.A.460/98

in O.A.547/93

DATE

OFFICE REPORT.

O R D E R

15-7-98

Adjourned to 16-7-98, at the request of
Mrs. Safaya.

(Laxman Jha)

(V. Radhakrishnan)

Member (J)

Member (A)

*SSBN

16-7-98

In this M.A., the respondents asked for
expansion of time upto 20.10.98 ~~xx~~ to
file writ petition in the High Court of
Gujarat. As on today, the judgment given by
this Tribunal as effective and they have to
implement the same unless they get the ~~xx~~
stay order from the Hon'ble High Court.
Accordingly, we see no reason to entertain
this M.A. which is rejected.

M.A. stands disposed of.

(Laxman Jha)

(V. Radhakrishnan)

Member (J)

Member (A)

*SSN

15798

3/12/98

Submitted Hon'ble Vice Chairman &

Hon'ble Mr. V. Radhakrishnan, Member (A)

Hon'ble Mr. P.C. Kannan, Member (J)

~~Hon'ble Mr. Laxman Jha, Member (J)~~

Certified Copy of order dtd 14/9/98 in
CA/Spl. CA No. 6852 & — of 1998
passed by the ~~Supreme Court~~/High Court against the
judgement/order passed by this Tribunal in OA/547/93
is placed for perused please.

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3/12

Sof 50
Ch-124r

D 2/12/98

Hon'ble Vice Chairman W/mmr

Hon'ble Mr. V. Radhakrishnan, Member (A)

Hon'ble Mr. P.C. Kannan, Member (J) au

Hon'ble Mr. Laxman Jha, Member (J) 7/12

URGENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
Special Civil Application No 6852 of 98

Decree Despot
Date



1. CHIEFGENERAL MANAGER & ORS.
Vs
1. ANIL KUMAR YADAV

Respondent

To

- ✓ 1. THE CHAIRMAN
C'RAL ADMINISTRATIVE TRIBUNAL
(REF : O.A. NO. 547/93)
op. spot ch. A bad.
Sardar Patel sthlm

Upon reading the petition of the above named Petitioners presented to this High Court of Gujarat at Ahmedabad on 21/08/98 praying to grant the prayers and etc....

And Whereas Upon hearing
MR RC JANI for the Petitioner no. 1
MR IM PANDYA for the Respondent no. 1
Court passed the following order :-

CORAM : C.K. THAKKER & A.M. KAPADIA, JJ.
DATE : 14.09.1998

This petition is filed by petitioners.....
.....within three months from today.

THE HIGH COURT
OF GUJARAT
(A COPY OF ORAL ORDER ATTACHED HEREWITH)

Witness K.G. BALAKRISHNAN, Esquire Chief Justice at Ahmedabad
aforesaid this 14th day of Sep. 1998.

By the Court

For Deputy Registrar
This day of

Note : This writ should be returned
duly certified within 2 weeks
(610) 111198

Mr. Rastaban
L-1294

NATIONAL INFORMATICS CENTRE

Incl.
T
30/11
3/11

CHIEF GENERAL MANAGER
-Versus
ANIL KUMAR YADAV

Appearance:

MR RC JANI for Petitioners
MR IM PANDYA for Respondent No. 1

CORAM : MR. JUSTICE C.K. THAKKER and
MR. JUSTICE A.M. KAPADIA
Date of Order: 14/09/98

CORAL ORDER

1. This petition is filed by petitioners for quashing and setting aside the order passed by the Central Administrative Tribunal ('CAT' for short) on 26th March, 1998 in Original Application No. 547 of 1993 .

2. Original Application No : 547 of 1993 was filed by the present respondent. The tribunal after hearing the parties directed the respondent authorities to consider case of the applicant for regularisation to the post of Hindi Translator Gr.II after completion of the probation period of two years from the date appointment by the competent authority and to decide whether he had completed period of probation satisfactorily and accordingly, whether he should be regularised in service with effect from 14th February, 1985. The respondents were directed to complete the above exercise within three months from the date of receipt of a copy of the order.

3. The case of the authorities was that the respondent was initially appointed as Hindi Translator Gr.II on purely officiating and adhoc basis from 14th

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February, 1983. He was allowed to continue on the said post. It was the case of the petitioners that this was done in view of the fact that there was no sanctioned post. Moreover, his appointment was not made through public advertisement and/or employment exchange. In view of his representation, however, his services came to be regularised from December 7, 1989 i.e. after sanctioned post was created.

4. On the other hand, the applicant contended that since he was appointed in February, 1983, his services ought to have been regularised from 14th February, 1983 i.e. from the day, he was appointed.

5. The tribunal considered the relevant rules and observed that initially a person ought to have been appointed on probation for two years. Since the applicant was appointed in February, 1983, he had completed probation period of two years in February, 1985. His services, therefore, could only be regularised from February, 1985 and not from February, 1983. So far as sanctioned post is concerned, it appears that no such contention was raised nor the point was argued before CAT. The tribunal held that the case of the petitioner ought to have been considered after he completed period of probation of two years and that is how direction was issued to consider the case of the petitioner from February 1985.

6. Mr. Jani, learned counsel for the petitioner contended that the post itself was temporary and not sanctioned. Relying upon the decision of Hon'ble Supreme Court in Sri

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Dhiraj Ghosh Vs. Union of India & Another, AIR 1991 SC 73, he contended that if the post is not sanctioned, a Court can not direct that an employee should be made permanent or his service should be regularised before that date. The reason being that he has to be absorbed on sanctioned post. Mr. Pandya, learned counsel for the applicant, on the other hand, submitted that apart from the fact that no such point was argued before CAT, it was not the case of the authority that there was no sanctioned post. Relying on letters dated 18th June, 1992 and December 3, 1993, which according to him, were part of the record before CAT, Mr. Pandya submitted that the Assistant General Manager (Staff), Gujarat Circle, Ahmedabad informed the Central Department of Telecom, New Delhi and sought guidance as to whether the services of the applicant should be regularised with effect from 14th February, 1983 or from the date of holding of DPE as desired by DPC i.e. from December 7, 1989. The endeavour of Mr. Pandya, therefore, is that it was never the case of the department that there was no sanctioned post but the case of the department was that though the applicant was holding the post of Hindi Translator Gr. II from February, 1983, since he was selected by DPC in the December, 1989, whether that date would be considered as relevant and material or the date on which he was appointed in February, 1983.

7. Mr. Pandya further submitted that it was a case of the department all through out in affidavit in reply that the applicant was never appointed on probation. He, therefore, submitted that if applicant was not on probation, the tribunal was not right in directing the

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department to consider the case of the applicant for regularisation only after two years of probation. His case was required to be considered for regularisation. In that case, according to Mr. Pandya, his case ought to have been considered from the date of initial appointment i.e. from February, 1983.

8. Looking to the judgment and order passed by the tribunal, it is clear that even before the Tribunal a statement was made on behalf of the learned counsel for the applicant that his case for regularisation ought to have been considered after two years when the applicant completed a period of probation..

9. In light of the facts and circumstances of the case, in our opinion, it cannot be said that the tribunal has committed an error of law which requires interference by this Court. There was no satisfactory documentary evidence to show that the post was sanctioned, only with effect from December, 1989. The tribunal has issued a direction to consider the case of the applicant for regularisation and in view of the statement made on behalf of the applicant, such direction was with effect from February, 1985, it cannot be said that the said order suffers from legal infirmity. We, therefore see no reasons to interfere with the order. SCA deserves to be dismissed and is accordingly dismissed with no order as

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7.
SCA/6852/1998

Order dated 14/09/98

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to cost. The direction of the tribunal will now be
carried out within three months from today.

TRUE COPY
[Signature]
16/11/98

DEPUTY REGISTRAR
THIS DAY OF