

CENTRAL ADMINISTRATIVE TRIBUNAL : ERNAKULAM BENCH

Date of decision: 12.1.90

Present

Hon'ble Shri NV Krishnan, Administrative Member
and

Hon'ble Shri N Dharmadan, Judicial Member

OA 387/89

Meenakshi Nambiar : Applicant

Vs.

- 1 The Director General, D.S.C
Army Headquarters, New Delhi.
- 2 The Deputy Director General
of DSC (DSC-2),
General Staff Branch, Army Hqs.
West Block III, RK Puram,
New Delhi-110 066.
- 3 The Commandant, DSC Centre,
Cannanore-1.
- 4 The Union of India rep. by
the Defence Secretary,
Central Secretariat, New Delhi. : Respondents

M/s MC Nambiar & KP Jagadees Chandran: Counsel of Applicant.

Mr K Karthikeya Panicker, ACGSC : Counsel of Respondents.

ORDER

Shri NV Krishnan, Administrative Member.

This application is a sequel to an earlier application No.OAK 252/87 which was disposed of by an order dated 1.2.89 (Annexure A). By that order the Respondents were directed to consider the question of a regularisation of the applicant as Lower Division Clerk.

The applicant is at present aggrieved by the manner in which the Respondents propose to consider the question of regularisation.

2. Facts leading to this application can be briefly noticed.

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2.1 In regard to her service, the applicant has stated as follows:

"The applicant was appointed as a temporary Lower Division Clerk by Headquarters, Bombay Sub Area, and she joined duty on 16.10.1962. She was merged in the regular establishment of Headquarters, Bombay, Sub Area, with effect from 23.12.1968. On converting the regular establishment she was granted Annual Increment from 23.12.1969 onwards. In the year 1976, she was posted to DSC Centre, Cannanore. Thereafter, she did not get her increment and her case was not considered for the promotion to the cadre of Upper Division Clerk".

2.2 When representations did not yield any information as to why her increments was not given and her case was not considered for promotion, she filed OAK 252/87 before this Bench in which the order at Annexure-A was passed. The reason for her non-regularisation is stated to have been mentioned by the Respondents in the application as follows:

"A reply has been filed on behalf of the respondents wherein it is stated that since the applicant was not recruited through Employment Exchange and was over-aged at the time of appointment her absorption in the regular establishment has been declared as irregular, but her case has been referred to the Army Head Quarters for regularisation of the appointment". (emphasis ours)

On this submission, the Respondents were directed by the Annexure-A order to consider the question of regularisation of the applicant as Lower Division Clerk and to dispose of the same within a period of two months from the date of receipt of the copy of that order.

2.3 For the purpose of such regularisation, the applicant was directed to attend ~~to~~ a screening test on 10.6.89. When she represented that she be excused from

the fitness test in the grade of Lower Division Clerk, the Respondents issued the impugned letter dated 20th June, 1989 enclosing a copy of letter dated 15.6.89 from the Deputy Director General of DSC (Annexure B and Annexure C respectively). In the latter letter she was asked to be informed that the direction given earlier for a screening test was based on a direction given by the Department of Personnel and Training after perusing the earlier decision of the Tribunal. Therefore, the Respondent-3 asked her to appear for the screening test and this application has been filed. It is contended on behalf of the applicant that considering the fact that she has already put in more than 25 years of service and also that she was already once regularised, as would be evident from the facts mentioned in para 2.1 above, it was unnecessary to insist on her appearing for a screening test.

3 The Respondents have denied these allegations. They ~~also~~ contend that the case of the applicant was not ~~an~~ an isolated one. The reason for holding the screening test is stated as follows in the reply.

" There are number of cases of Group 'C' employees of lower formations of the Army Headquarters who were not recruited through employment exchange and required regularisation of their irregular appointment. A general case for regularisation of such irregular appointments is already under active consideration of the Ministry of Defence in consultation with Deptt. of Personnel and Training in which names of Smt. Meenakshi Nambiar, LDC(Ty), stands included.

" Department of Personnel & Training have decided that some screening in their respective skill/trade would be necessary to ensure that the employees are fit to hold the post. A number of employees of lower formations, who are posted at

various units and at far off place, who are screened and uniform action in respect of such employees is to be taken on immediate basis. The modalities for conducting the screening test ensuring uniformity/standardisation in judgment are being worked out by the AG's branch Army Headquarters and likely to be finalised shortly. Therefore, all affected individuals including Smt Meenakshi Nambiar will be put through this test for assessing their suitability for regularisation of their irregular appointments".

4 We have perused the records of the case and heard the learned counsel.

5 The counsel for the applicant states that it is an unusual procedure to subject a government employee who had discharged her duties satisfactorily for the past 25 years or more, to appear now in a screening test in order to regularise ~~her~~ what is allegedly stated to be an irregular appointment. The learned counsel also pointed out that by her merger in the regular establishment (vide para 2.1 supra) with effect from 23.12.68 her services should be treated as having been regularised. He further cited the decisions of 1973 (2) SLR-499 (Banchhanidhi Das Vs. State of Orissa), 1986(2) SLR- 672 (Teja Singh Vs. State of Punjab) and 1988 (3) SLR-245 (Mohinder Singh Vs. State of Haryana), in support of his contention that such a screening test was not justified for regularisation in the circumstances mentioned above.

6 The Respondents have not specifically denied what has been stated by the applicant about her service i.e., the facts mentioned in para 2.1 above. The learned counsel for the Respondents was specifically and repeatedly asked to state the exact ~~the~~ grounds on which it was

considered that the appointment of the applicant was irregular. However, he did not indicate what these grounds were. These grounds have been indicated in the earlier judgment of this Bench at Annexure A. The two grounds are that the applicant was not recruited through the Employment Exchange and that she was over aged at the time of her absorption in the regular establishment.

7 The learned counsel for the applicant is on a strong ground when he states that a screening test is necessary only to judge the fitness of a person to hold a post. In the present case, the applicant was holding the post for more than two decades and it is ironical that she is now asked to appear in a screening test.

8 We are of the view that the screening test would have been justified if the alleged irregularity in her appointment is that she was appointed without having the necessary qualifications, ~~Inxxthaxxxasexx~~ a screening test could, nevertheless, be held to establish whether she could be continued despite not having the essential qualifications. We are of the view that the screening test cannot help in deciding whether to condone the irregularities arising from her not being recruited through the Employment Exchange and her being over aged. In fact, in the past, there are instances where as a one time measure, the failure to recruit candidates through the Employment Exchange was what was being condoned and this was not held out against the concerned serving personnel.

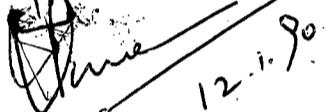
9. That apart, the fact that the respondents have not denied in specific terms the averments made by the applicant that "she was merged in the regular establishment of Headquarters Bombay sub-area with effect from 23.12.1968" indicates that, in her case, her appointment has been treated as a regular. For, without the necessary qualifications, she could not have been merged in the regular establishment of the Headquarters Bombay. We would have considered the effect of this merger in the regular establishment, but for the fact that though more or less the same facts were before the Bench which disposed of the earlier proceedings in OAK 252/87, that Bench was pleased to direct the Respondents to consider the question of regularisation of the applicant.

10. We are firmly of the view that a distinction should be made between the irregularities arising from lack of academic qualifications and irregularities of a technical nature - like recruitment otherwise than through the Employment Exchange - or an irregularity which cannot be rectified ex-post facto, like being over aged. In such cases, the question of only condemning the irregularity can be considered and that can be done without holding a screening test. Accordingly, while allowing this application we direct the Respondents to consider the record of service of the applicant as well as the fact that she was merged earlier in the regular establishment of the Headquarters Bombay sub-area with effect from 23.12.68 and then decide whether the alleged irregularities

mentioned above should be condoned and she should be allowed to continue in service. In the circumstances the impugned letters at Annexure B and Annexure C containing directions to the applicant to appear in the screening test are quashed and the respondents are directed to take a decision in the manner indicated above within a period of two months from the date of receipt of a copy of this order.

11 There will be no order as to costs.


(N. Dharmadan) (2.1.90)
Judicial Member
12.1.90


(N. V. Krishnan) (2.1.90)
Administrative Member
12.1.90

(20)

NVK & ND

Mr MC Nambiar for the applicant.
Sr CGSC for the respondents.

The learned counsel for the respondents submits that in accordance with para 4 of the contempt application it is averred that the order of this Tribunal dated 12.1.90 was sent to the respondents on 17.1.90 and the respondents ought to have complied with our directions on or before 17.3.190. As this contempt application is filed beyond a period of one year, it is naturally barred by limitation. The learned counsel for the respondents also submits that this is a violation of the rules and as it does not contain particulars which is being stated in terms of the rules. The applicant seeks time.

call on 31.10.91.



31.10.91

(22)

NVK & ND

Mr MC Nambiar for the applicant.
Sr CGSC for the respondents.

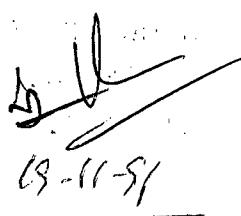
Applicant submits that the bar of limitation will not apply. Sr CGSC seeks time to argue this legal issue. Call on 19.11.91.



31.10.91

(17) Mr MC Nambiar for applicant by Proxy.
Sr CGSC for respondents by Proxy.

Applicant seeks more time. Call on 4-12-91 for final hearing.


13-11-91

NVK & ND

(19)

Mr. M. C. Nambiar by Proxy

Mr. Madhusoodhana for SCGSC

Counsel for the applicant submits

that on the M.P. has been filed in this matter. It is not before us. Call on

10.12.91

ND

4/12/91

nvk & nd

82. Signature for respondents

Name for petitioner. Call

as. 3.1.92.

ND

10.12.92

NVK & ND

(18) Mr. MC Nambiar
SCGSC by Madhu

The learned counsel for the petitioner has filed MP 1607/91. Let this MP be listed for further directions on 21.1.92.

copying
also is listed

ND

3.1.92

NVK & ND

(5) Mr. MC Nambiar for applicant
Mr. NN Sugunapalan, SCGSC for respondents.

MP 1607/91 filed by the applicant in the context of a contempt petition seeks a direction to the respondents to make available to him the name of the Defence Secretary, the Director General DSC and the name of his father to enable him to file a proper petition. The MP is not opposed. It is, therefore, allowed. The particulars required by the applicant shall be furnished to them within 3 weeks. List again on 20.2.92 on which date the question of maintainability to which a reference already made to-day will also be taken up.

Mr. BCP

21/1

ND

21.1.92

ANICWAD

(2)

on Mr. N.C. Nambiar by P.W.Y.
on P.C. Madhu P.W.Y. for cause.

Respondents have filed reply.

Applicant - Seeks time. Call on 5.3.92.

b20/2/92

Affidavit by
Resph. No.
20-2-92

PLW

SPM
NVK & ND

(18) Mr. MC Nambiar
SCGSC by Madhu

At the request of the learned counsel for the petitioner, list for further directions on 23.3.92.

PL

ND

SPM

5.3.92

SPMANICWAD

(10)

Mr. N.C. Nambiar
on P.C. Madhu Soodhawan

Though respondents have filed reply stating that the original orders have been implemented, learned counsel for the applicant seeks some time to file rejoinder.

Call on 1.4.92

b
ND
23/3

b
MC
23/3

NVK & ND

(10) Mr. MC Nambiar through Mr. R. Rair
SCGSC for respondents.

Learned counsel for the applicant seeks some more time to file ^{rejoinder} ~~Reply~~. Granted. Call on 8.4.92.

bb

ND

NVK

1.4.92

rejoinder on
1.4.92PLW

NVK & ND

(14) Mr MC Nambiar
Mr NN Sugunapalan, SCGSC

At the request of the learned counsel
for the petitioner call on 25.5.92.

ND

NVK

8.4.92

NVK & ND

Mr. M. C. Nambiar
Mr. N.N. Sugunapalan, SCGSC

We have heard the parties. We notice that in our order dated 1.2.89 referred to in para 3 of the respondents' reply, there was a direction to consider the applicant for promotion to the grade of UDC and allow her consequential benefits. Though there is an admission in para 6 of the reply that the applicant is eligible for promotion as UDC from 27.2.81, apparently no action ~~is~~ was taken and hence to this extent our orders have not yet been complied with. The learned ^{Pub} counsel for respondents, ~~three weeks~~ time. As sufficient time has already elapsed, three week's ^{is} addl. time has been granted to the respondents to comply with the orders of the Tribunal, ~~Report~~ [%] compliance of the order on 15.6.92. Call on 15.6.92.

(N. Dharmadan) (N.V.Krishnan)
Judicial Member Administrative Member

25.5.92

PSHM & ND

(13) Mr MC Nambiar
Mr NN Sugunapalan, SCGSC

The learned counsel for the respondents submitted that a part of the direction given in the original order has already been complied with. The remaining portion to be implemented is only in regard to payment of arrears and steps are being taken for calculating the arrears and making payment. He prays that 2 months' time be given for the same. This is ~~not~~ opposed by the learned counsel for the applicant. Accordingly, we grant ^{only 2} 1 month's time to implement the direction in full. Call on 15.7.92.

Mr Nambiar

ND

PSHM

15.6.92

PSHM & ND

(11) Mr MC Nambiar for petitioner
SCGSC by Madhu for respondents.

The learned counsel for the respondents submitted that the arrears due to the applicant as per the judgement has since been sanctioned and accordingly, he has produced the order also for our perusal. However, the applicant's counsel seeks some more time to verify the same. Granted. Call on 5.8.92.

ND

PSHM

15.7.92

SPM & AVH

(24) Mr MC Nambiar
Mr NN Sugunapalan, SCGSC

Learned counsel for the petitioner states that according to his information, the payment of arrears of pay and allowances has not yet ^{been} materialised. Learned counsel for the respondents seeks some more time to get the payment made, if not already made.

List for further clarifications on the CCP on 21.8.92.

AVH

SPM

5.8.92

PSHM & ND

(11) Mr MC Nambiar for petitioner
Mr George CP Tharakan, SCGSC.

Learned counsel for the applicant has filed an affidavit stating that the amount pertaining to arrears of salary was not paid to the applicant as directed in the judgment. Learned counsel for the respondents submitted that the department requires some time for completing the process of passing orders pursuant to the judgment and to comply with the procedural formalities.

After hearing the parties, as a last chance, we are inclined to grant a month's time from to-day. If the direction is not complied with within the period stipulated, the respondents will have to pay the cost which we ordered on 24.8.92. List the CCP on 21/9/92.

Copy by hand.



(N Dharmadan)
Judicial Member



(PS Habeeb Mohamed)
Administrative Member

21.8.92

7/8
A/24/89
m BC

ordered
on 25/8/92.

Q2

PSHM & ND

(19) Mr MC Nambiar
SCGSC for respondents by proxy.

Learned counsel for the respondents submitted that the order of the Tribunal has since been complied with. However, learned counsel for the applicant prays for some more time to verify the same. Post on 28.9.92.


ND


PSHM

21.9.92

7/8
21/9

PSHM & ND

(14) Mr MC Nambiar
SCGSC by proxy.

Learned counsel for the respondents submitted that the respondents have complied with the directions. However, the learned counsel for the applicant prays for a week's time to verify the same. Post on 7.10.92.


ND


PSHM

28.9.92

7/8
28/9

(PSHM & ND)

(27)

Mr M Cherian by proxy

Mr George CP Tharakan by proxy

At the request on behalf of the learned Counsel for the petitioner, P.M. on 19-10-92

ND

PSHM

19/10/92

19-10-92

(26)

Mr MC Nambiar

Mr George CP Tharakan

The learned counsel for the respondents states that in implementation of the judgement of this Tribunal dated 12.1.90 in OA-387/89, an amount of 22,000/- only has been paid to the original applicant so far. The learned counsel for the respondents is directed to file a statement on computation of this amount within 4 weeks with a copy to the petitioner.

List for further direction on 23.11.92

SPM

(AVH)

19-10-92

(11)

23.11.92

Mr. Nambiar th.proxy

Mr. Ajith Prakash & George CP Tharakan

At the request of the learned counsel for the respondents, list for further directions on 10.12.92.

1
23/11

AVH

23.11.92

SPM

5PM JWD

30.

arrive for petition
SCSC by Pmg.

Learned Counsel for respondents

States that the ~~unexecuted~~ orders of the
Tribunal have been ~~not~~ complied with
He is directed to file a statement with
a copy to learned Counsel for petitioner.
List for further direction on 12.1.93

Mr


(ND)
10/12


(SJ)
10/12

5PM JWD

28.

Mr. M. C. Naubian
SCSC by Pmg.

At the request of learned
Counsel for respondents list for further
direction/ hearing on 2.2.93

Mr


(ND)
10/12


(SJ)
12/12

28

5PM JWD

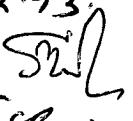
Mr. M. C. Naubian
SCSC by Pmg.

Learned Counsel for both-

parties - learned Counsel for respondents indicated
that order of payment has been issued but
the position about the actual payment has to
be ascertained. Accordingly, list for further
direction on the C.P.C. on 18.2.93.

Mr


(ND)
2/2


(SJ)
2/2

(27) Mr MC Nambiar
SCGSC by Polly Mathai

List the CPC on 22.3.93.

RR

AVH

18.2.93

UD TRR

Mr M.C. Nambiar by P.M.
SCGSC by P.M.

Learned Counsel for original respondents
seeks some time to verify whether the judgment
has been implemented or not. Post on 27.4.93.

(RR)
22/3

(UD)
22/3

(18) Mr MC Nambiar
Mr CP Tharakan, SCGSC

Respondents have filed a statement indicating
that in implementation of the directions contained in
the judgment, the applicant has been promoted as UD Clerk
and that though the arrears have been worked out and
sanction of the competent has been obtained by the
department, it will take some more time to make final
payment. List the CPC for further directions on 7.6.93
on which date the respondents should report full compliance
of the directions contained in the judgment.

RR

AVH

27.4.93

7.6.93 Mr. MC Nambiar
(35) Mr. George CP Tharakan through Mr. Poly Mathai

Post after one month for Standing Counsel to ascertain the position and submit. Call on 8.7.93.

h


R. Rangarajan
AM


C. Sankaran Nair (J)
VC

12/7/83
(13)

Postponement

(13.7.93)

By order
C.P
12/7

13.7.93 Mr. MC Nambiar
(16) Mr. George CP Tharakan

For alleged non-compliance of the orders of this Tribunal in O.A.387/89 this application was filed. Respondents by reply dated 5.1.93 states that the applicant has been paid what is due to her on refixation and Exbt. R.3 was addressed to the competent authority for making payments. It is submitted at the Bar that on 14.6.93 certain amounts have been paid and that the balance being the arrears of annual increment between 1973 and 1976 will also be paid within six months from today.

We record the above submission. We see no ground to pass any other orders. CP(C) disposed of. No costs.


R. Rangarajan
A.M.


C. Sankaran Nair (J)
VC

Dated 13th July, 1993.

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A
14/7
m 30