

(7)
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 322/87
T.A. NO: ---

199

DATE OF DECISION 8-7-92

S.Sadanandan Pillai Petitioner

Mr.S.P.Saxena Advocate for the Petitioners

Versus
Union of India and ors. Respondent

Mr.A.I.Bhatkar Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice S.K.Dhaon, Vice-Chairman

The Hon'ble Mr. Ms. Jsha Savara, Member(A)

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 ?

NO

Shy
(S.K.DHAON)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.322/87

S. Sadanandan Pillai,
D-2/5, Balamal Chawl,
Pimpri Vaghare, Pune - 17.

.. Applicant

vs.

1. Union of India
through
Secretary,
Ministry of Defence,
Govt. of India,
New Delhi.

2. The Commandant,
College of Military Engineering,
CME PO, Pune 411 031.

3. The Colonel Administration,
College of Military Engineering,
CME PO,
Pune 411 030.

.. Respondents

Coram: Hon'ble Shri Justice S.K.Dhaon,
Vice-Chairman.

Hon'ble Ms.Usha Savara, Member(A)

Appearances:

1. Mr.S.P.Saxena
Advocate for the
Applicant.

2. Mr.A.I.Bhatkar
Counsel for the
Respondents.

ORAL JUDGMENT: Date: 8-7-1992
(Per S.K.Dhaon, Vice-Chairman)

On the day, when this application
was presented before this Tribunal, the applicant had been
appointed as Upper Division Clerk on ad-hoc
basis in the College of Military Engineering
(hereinafter referred to as the CME). He came
with the grievance that his services were not
being regularised. He, therefore, prayed that the
same may be done and thereafter all the consequential
benefits may be given to him.

2. A counter affidavit has been filed.
A rejoinder affidavit too has been filed. Counsel
for the parties have been heard.

3. The material facts, which emerge after the exchange of the affidavits, are these. On 1st. February, 1965 the applicant was appointed as Laskar in the CME. In July 1965 he passed a typing test which entitled him to be considered for appointment as a Lower Division Clerk (hereinafter referred to as the LDC). On 14th February, 1966 he was appointed as LDC in the leave vacancy for 89 days. On 3rd May, 1966 he was appointed as Stores Man Technical which carried a pay scale equivalent to the one given to a LDC. He was appointed on probation for two years. On 20th September, 1966 the post which he held was reclassified as LDC(temporary). Thereafter, he passed three departmental examinations which entitled him to be qualified for being considered for an appointment as Upper Division Clerk(hereinafter referred to as UDC). On 30th February, 1970 he was appointed as UDC on ad hoc basis on the basis of the recommendation of the Departmental Promotion Committee. This committee made the recommendation by adopting the principle of seniority-cum-merit.

4. Learned counsel for the respondents has produced before us a letter dtd. 1st October, 1990. This shows that the applicant's service has been regularised as a LDC from the aforesaid date along with 89 other employees. Paragraph 2 of the said letter recites that the period from the date of irregular appointment to the date of regularisation will not count towards seniority or for promotion to the higher grade but it will be counted towards pay, leave and qualifying service for retirement benefits.

5. The applicant should now, therefore, feel aggrieved by the said communication dtd. 1st October, 1990 on two counts. Firstly, his service will be deemed to have been regularised with effect from 1st October, 1990. Secondly, even if his services are regularised from the said date, the period between the date of his appointment on irregular basis and the date of regularisation of his service will not be counted towards seniority or for promotion to higher grade. We find that way back in 1968 there is a reference to an order which passed to the following effect:

"Ref. PTO No.40/54/68

Having satisfactorily completed the probationary period, absorbed in the regular Ty. Establishment vide Comdt. CME N.I. PTO No.46/5/68."

6. We have considered the above quoted order carefully and we ~~have~~^{are} driven to the conclusion that the period of probation of the applicant came to an end on the date when the said order was passed and he was absorbed on a regular basis in the temporary establishment. It follows^{that} after the said date the applicant was entitled to be considered as a regularly appointed candidate. It also follows^{that} thereafter the question of his services being regularised ~~does~~^{did} not arise. If that be the correct position, the order mentioned above viz. the one passed on 1st October, 1990 will have no application to the case of the applicant in so far as it provides that his services will be deemed to be regularised from 1st October, 1990.

7. Learned counsel for the respondents has vehemently urged that the services of the applicant could not be regularised as he had not been initially sponsored by the Employment Exchange.

By In our opinion, this argument is not ~~valuable~~ now available for the respondents. The irregularity, if any, in the initial appointment of the applicant stood cured when he was absorbed on regular basis. The respondents are, therefore, now stopped from raising this plea.

8. Having found that the services of the applicant stood regularised in the year 1968, the first part of the direction as contained in the paragraph 2 of the communication dt. 1st. October, 1990 too cannot come in the way of the applicant. His services shall be counted from the date of regularisation towards seniority or for promotion to the higher grade. We are informed that for the purpose of promotion or for the purpose of fixing seniority certain procedural requirement has to be gone through viz. the applicant has to be recommended by a Departmental Promotion Committee. The necessary formalities shall be now gone into and if the Committee has to consider the case of the applicant it shall do so on the footing that his services stood regularised in the year 1966 namely the date on which he was initially appointed in the pay scale of LDC. It goes without saying that the applicant will be entitled to all the consequential benefits.

9. The application succeeds. The respondents shall carry out the directions given above within six months from the date of communication of this order, to the relevant competent authority. It will be open for the applicant to transmit a certified copy of this order to the competent authority under RP A/D.

U. Savara
(USHA SAVARA) 8.7.92
Member(A)

MD

S.K.D
(S.K.DHAON)
Vice-Chairman