

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW ~~DEKHB~~ BOMBAY

O.A. No. 503 of 1987
~~XXXXXX~~

DATE OF DECISION 13.10.1987

Smt. Chitra Parthasarathy Petitioner

Shri G.S. Walia Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Shri S.R. Atre & Smt. P.R. Shetty Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice B.C. Gadgil, Vice-Chairman

The Hon'ble Mr. P. Srinivasan

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

O.A. No.503/87

Chitra Parthasarathy,
C/o Mr. N. Mohanan,
219, Veena Vihar,
17A, Flank Road,
Sion, Bombay-400 022.

Applicant

V/s

Union of India through
the Secretary,
Ministry of Textiles,
Udyog Bhavan, New Delhi.

The Textile Commissioner, of Bombay
New C.G.O. Building,
New Marine Lines, Bombay-20.

Staff Selection Commission,
Army Navy House,
Opposite Jahangir Art Gallery,
Bombay.

Respondents

Coram : Hon'ble Shri Justice B.C. Gadgil, Vice-Chairman

Hon'ble Shri P. Srinivasan, Member (A)

Appearances

Shri G.S. Walia for the
applicant

Shri S.R. Atre and
Smt. P.R. Shetty for
Respondents.

JUDGMENT

Dated : 13.10.1987

This application came up before us for extension of interim relief already granted on 18.9.1987. However, since the pleadings are complete and counsel for all the parties were present before us we decided to hear the application on merits with the consent of all the parties. Shri Walia, learned counsel appeared for the applicant, Shri S.R. Atre for Shri P.M. Pradhan for Respondents 1 and 2 and Smt. P.R. Shetty for Shri R.K. Shetty for Respondent 3. They have all been heard.

2. The applicant was selected for appointment as Economic Investigator (EI) in the office of the Textile Commissioner, Bombay (Respondent 2) by order dated 30.7.1981 (Exhibit B page 20 of the application). The appointment was purely on a temporary basis. The applicant assumed charge of the post on 7.8.1981 and continued in that post till the

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date of the present application and thereafter till today as a result of interim stay granted by this Tribunal. In the meanwhile the Office of the Textile Commissioner issued an Office Order dated 7.11.1981 to the effect that the appointment of 12 persons including the applicant made on purely temporary basis would be terminated as and when regular candidates were nominated by the Staff Selection Commission (SSC). It would appear that during 1984 and 1985 there was a ban on fresh recruitment and so the applicant's services were continued throughout 1984 and 1985. Just before this ban was imposed two posts of EI were advertised during 1983-84 but since they were reserved for Scheduled Tribe candidates the applicant could not apply. As time went on and she was continued as a temporary employee, the applicant apprehended that she might eventually become overaged for appointment if regular recruitment was delayed indefinitely. She, therefore, submitted a representation on 19th March 1986 (Exhibit F page 24) pointing out that she had the qualification and experience for the post and that she might be regularised, if necessary after a process of selection by SSC. But she received no reply to this representation. Eventually, as she feared, respondents decided to make regular recruitment at the end of 1986 and by that time the applicant had become overaged, the maximum age limit being 30 years. No relaxation of age limit could be given to her because she was not a regularly appointed Government servant. The SSC issued advertisement for posts of EI, selected persons for the posts and sent names to Respondent 2. When this application was filed the applicant apprehended that her services might be terminated when names of regular candidates were received

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from the SSC. Therefore, the prayer in this application is that Respondents should be directed to consider her as a departmental candidate for appointment as EI by extending the relaxation of age limit to 35 years available to departmental candidates to her. By way of interim relief she sought a direction to the respondents to restrain them from terminating her services as EI. As already mentioned ^{an} interim order restraining the respondents from terminating her services was passed by this Tribunal and that is how she is still holding the post.

3. Shri Walia learned counsel appearing for the applicant contended that after six years of service, albeit in a temporary capacity, it was not fair for the respondents to dispense with the services of the applicant without even considering her fitness for the post. If she was overaged when regular recruitment was taken up by the end of 1986, it was no fault of hers, as there was a ban on recruitment in 1984 and 1985 and she would have been well within the maximum age limit in 1984 and 1985. The Respondents were satisfied with her work and in fact the departmental authorities had recommended to the SSC that her case be considered for regular appointment by relaxing the upper age limit. The SSC (Respondent 3) had not agreed to this. The fact that she had put in five years of service already should have been considered in this context and these five years should have been deducted from her present age for the purpose of determination of ^{her} eligibility, but by not doing so all the services rendered by her had been ignored. This was unfair, illegal and discriminatory.

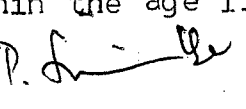
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4. Shri S.R.Atre, learned counsel for Respondents 1 and 2 supported the action of his clients. It was true that the office of the Textile Commissioner (Respondent 2) had actually recommended the case of the applicant for relaxation of the upper age limit to the SSC but the latter had not agreed. Therefore, respondents 1 and 2 had no choice but to accept the candidates selected by the SSL and to terminate the services of the applicant because she had not been so selected.

5. Smt. Shetty appearing for the SSC (Respondent 3) submitted that her client could not relax the upper age limit in the case of the applicant. Extension of upper age limit to 35 years ^{if was} ~~will be~~ available only to persons in regular service of the Government and not to persons like the applicant who ^{if were} ~~was~~ only appointed temporarily. Respondent 3, therefore, rightly declined to consider the applicant for the post of EI.

6. After considering the matter very carefully and the arguments advanced by counsel for all the parties, we are of the view that this application should succeed. ^{if} It is indeed unfair to ignore the services of five years and more rendered by the applicant and holding that she was over aged for appointment. ^{or the} ~~the~~ upper age limit for appointment is 30 years. The applicant was initially appointed as EI when she was about 26 years old in 1981. She became overaged while still serving in that post. She worked in that post continuously from 1981 and we feel that it is unfair not to have extended the upper age limit to 35 years in her case merely because she was not a regular appointee. although she has been continuously working in that post. In any case if regular recruitment had been made in 1983, 84 or 85, the applicant would have been well within the age limit of 30 years. It was no


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fault of hers that regular recruitment was not made in these years even though the applicant was working in the post and had all the necessary qualifications for the post. In view of all ^{of this} these we are clearly of the view that the case of the applicant for appointment as EI should be considered on merits, relaxing the age limit and if selected, she should be regularised in the post. Till the selection process is completed she should be allowed to continue in the same post.

7. We, therefore, pass the following orders:-

- (a) the case of the applicant for regular appointment as EI will now be considered by Respondents 2 and 3 relaxing the upper age limit;
- (b) if on such consideration the applicant is found fit she should be regularised in the post;
- (c) If on such consideration the applicant is not found fit she will of course be not eligible for regular appointment; and
- (d) the applicant will be allowed to continued in her present post till the process of selection set out at (a) to (c) above is completed.

8. In the result the application is allowed. Parties to bear their own costs.


(P. SRINIVASAN)
Member (A)


(B.C. GADGIL)
Vice - Chairman

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