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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.48/88.

Shri Dattatraya Nivrutti Barde,

... Applicant.

V/s.

Union of India & Others.

... Respondents.

Coram: Hon'ble Member(A), Shri M.Y.Priolkar,
Hon'ble Member(J), Shri T.S.Oberoi.

Appearances:-

Applicant by Mr.S.R.Atire.
Respondents by Mr.R.C.Kotiankar
(for Mr.M.I.Sethna).

JUDGMENT:-

{Per Shri T.S.Oberoi, Member(J)}

Dated: 10.8.1990

This Original Application has been filed by the applicant on 24th December, 1987, under section 19 of the Central Administrative Tribunals Act, 1985.

2. The applicant's case briefly is that in response to a requisition dt. 12th September, 1986, by Respondent No.3 to the District Employment Officer, Ahmednagar, and his name having been sponsored by the latter, the applicant was offered a post of Lower Division Clerk (for short, LDC) on casual basis, for a period of 66 days, in VAHAN ANUSANDHAN TATHA VIKAS STHAPAN, AHMEDNAGAR (for short, VATVS) vide letter of offer dt. 18th October, 1986. The applicant's case further is that he ~~was~~ served in the office of Respondent No.3, in the said capacity, quite satisfactorily, but he was not considered for continuation on the said post, for the period beyond 31st December, 1986, and, instead, on a leave vacancy having occurred some times after March 1987, one Ms.Chhaya R.Ghodke was given appointment, even though he was at Sl. No.1 in the list of Schedule Tribe candidates, as per the selection held by the appointment committee, vide its proceedings dt. 6th October, 1986.

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He alleged reasons of nepotism etc., in by passing him as well as the candidate at Sl.No.2 of the list of ST candidates, and appointing said Ms.Chhaya R.Ghodke. He further states that in spite of having sent representation to this effect, nothing worthwhile came out. He also submitted an appeal to the Scientific Advisor, Ministry of Defence, on 16th April, 1987, and also a reminder thereafter, but the same still remained to be unattended to, and hence the present application for the redressal of his grievance.

3. In the written statement/counter filed on behalf of the respondents, the allegations regarding nepotism etc., in appointing Miss.Chhaya R.Ghodke were vehemently denied. It was also averred that applicant's appointment as LDC was purely on casual basis, for a limited period of 66 days, sanction of which expired on 31st December, 1986 itself. It was also stated that the applicant's work during the aforesaid period was not found satisfactory, inspite of advice/guidance given to him, by his immediate officers, under whom he was posted, as would be seen from an extract of the office noting, placed on record. It was also stressed that applicant's appointment being for a very short period, it was not considered proper to initiate proceedings against him, and as the term of his appointment expired on 31st December, 1986, his services were automatically terminated, due to the expiry of the period of vacancies.

4. As regards the appointment of Ms.Chhaya R.Ghodke, it was explained that initially she was offered an appointment for 55 days commencing from 5th November, 1986, against a leave vacancy of a Lady Clerk, who had proceeded on leave, and there was no point in offering appointment to the applicant or to Shri D.B.Gaikwad who is at Sl.No.2 of Schedule Tribe candidate as the tenure of their appointment was almost ~~xxxx~~ going to expire more or less by the same time i.e. upto 31st December, 1986. The respondents also stated that another leave vacancy had occurred some times in March, 1987,

for a period of 81 days, when a Lady Clerk had proceeded on Maternity Leave, and as the work of applicant, as well as, that of Shri Gaikwad, the second Schedule Tribe incumbent, was not found satisfactory, as earlier stated, they were not offered the said appointment. On the contrary, work of Ms. Chhaya R. Ghodke was found satisfactory during her first appointment against the leave vacancy during November-December, 1986, and so, she was offered the said appointment. Further, as the two vacancies were the carried forward vacancies for ST candidates, names were called for, from the Employment Exchange again, and selections held on 27/28th May, 1987, but no suitable candidate out of the ST candidates could be found. Accordingly, some times later, i.e. on 22nd September, 1987, on the basis of the names sponsored by the Employment Exchange again, and as a result of the selection held, two ST candidates were found suitable and selected/appointed. The applicant though appeared in the selection held on 27th May, 1987, could not succeed in the same. According to the counter filed by the respondents, the applicant also applied to the respondents, for being appointed as an Apprentice in their department. He also submitted an application for being considered for appointment on a preferential basis on the ground that his father had served the same department and retired. In all these applications/representations, the applicant did mention about his services having been terminated w.e.f. 31st December, 1986, thereby showing that he ~~was~~^{had} had the knowledge about the offer of appointment to him, by the respondents, was only upto that period. Otherwise also, the letter of offer of appointment clearly mentioned as such, and therefore, there was hardly any ambiguity with regard to the period for which the applicant was given the appointment, in the first instance.

As regards the reply dt. 7.4.1987 sent by the respondents, in reply to his various requests, referred to above, the respondents stated that the same had no relevance with his merit and career, as it was only a reply in response to his letter dt. 24th March, 1987, and did not cause any stigma to his future career. Thus, the respondents' contention was that the applicant's appointment being purely for a limited period, on casual basis, the validity of which expired after 31.12.1986, it did not give any right to the applicant to lay a claim to any further continuation, against a regular vacancy.

5. During the course of the arguments, the learned counsel for the applicant while placing reliance in the case of Smt. Nirmal Kumari and another v. Delhi Administration and another ((1990) 12 ATC 125) decided by the Principal Bench on 30th October, 1989, pleaded that though the applicant's appointment was against a leave vacancy, but it was against a regular post and that an endorsement to this effect in the letter sent to the Employment Exchange does not bear proper authentication by the officer, issuing the letter, calling for the names from the Employment Exchange. The learned counsel further pleaded that in case the applicant was interviewed for appointment to a regular post his services could not have been terminated in the manner the same have been done, on 31.12.1986. The learned counsel for the applicant also pleaded that the contention of the respondents in regard to unsatisfactory performance of applicant's work is also not well-founded, as the duration was too short for any officer/authority to assess anyone's work.

6. The learned counsel for the respondents, in reply to the above arguments, broadly stressed the points,

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taken up in the written statement, as referred to above, which need not be dilated upon again.

7. We have carefully considered the rival contentions, as briefly discussed above, and have also carefully perused the pleadings of the parties, together with the documents filed in support of their respective cases. We have also carefully perused the citation referred to by the learned counsel for the applicant, ^{and} ~~but~~ feel that the same is not applicable to the facts and circumstances of the present case. While the said citation relates to the eventuality where a panel according to declared number of vacancies is prepared, a fresh panel cannot be resorted to, without first exhausting the earlier panel; the case in hand relates to entirely a different situation, as the applicant had actually been appointed on a casual basis for a fixed period. We had also called for, from the respondents, the relevant record of selections. A perusal thereof leaves us in no manner of doubt that applicant's appointment for limited period of 66 days was well within his knowledge. Not only the letter of offer of appointment, but also the various representations sent by the applicant with regard to his appointment/absorption in the department as an apprentice/Lower Division Clerk, clearly point towards ^{same position} the/ The explanation given by the respondents with regard to not initiating proceedings against the applicant for his unsatisfactory performance is also well-founded and convincing. It will, in no manner serve as a stigma on applicant's future career, as it was merely a reply to his representation, and not as a result of any disciplinary proceeding initiated against him. The applicant could not succeed in the selection held on 27th May, 1987, for which his name was also sponsored by the Employment Exchange.

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7. The net result of the above discussion is that we find no merit in the applicant's case, and, therefore, dismiss the same, with no order as to costs.

T.S. Oberoi
10-8-90

(T.S. OBEROI)
MEMBER (J)

M.Y. Priolkar
10-8-90

(M.Y. PRIOLKAR)
MEMBER (A).