

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 276/88  
T.A. No.

198

DATE OF DECISION 25/2/94Smt. M. V. Joy PetitionerAdvocate for the Petitioner(s)

Versus

Ministry of Defence RespondentMr. R. K. Shetty Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. M. R. Kolhatkar, Member (A)

The Hon'ble Mr. Smt. Lakshmi Swaminathan, Member (J)

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 ?

*M. R. Kolhatkar**Member (A)*

(9)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

ORIGINAL APPLICATION No. 276/88

Smt. M.V. Joy

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Applicant

vs.

Union of India through  
the Director Armament  
Research & Development  
Establishment,  
Government of India,  
Ministry of Defence,  
Armament Post,  
PUNE - 411 021.

Secretary, Government  
of India, Ministry of  
Defence, Research and  
Development Establishment,  
New Delhi.

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Respondents.

Coram : Hon'ble Shri M.R. Kolhatkar, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Appearance :

None for the  
Applicant.

Shri R.K. Shetty counsel  
for the Respondents.

JUDGEMENT :

DATED : 25/6/94

I Per : Hon'ble Shri M.R. Kolhatkar, Member (A) I

1. This case was dismissed in default of appearance of Applicant on 9th June 1993, However, it was restored on 01.10.1993 on the basis of Applicant's M.P.No. 531/93. On 23.12.1993, the date fixed for final hearing, Applicant was absent; however, Respondent's counsel requested that the application may be decided on merits. We have, therefore, heard the matter expdrte against the Applicant in terms of Rule 15(1) of Administrative Tribunal (Procedure) Rules 1987 and decided it on merit.

2. The Applicant was recruited as 'junior Computer' on 02.09.1969. She does not possess a degree in Science but had obtained a certificate of completing punching course. She was promoted as a 'Senior Computer' on 15.03.1973. She was promoted a Junior Scientific Assistant Grade I on 15.03.1976 but reverted with effect from 01.12.1977 because her promotion was discovered to have been made by mistake

in ignorance of SRO 256 of 29th July 1974 (Exhibit-B) requiring degree in Science with Physics, Chemistry and Mathematics and the Applicant admittedly lacked these qualifications. The communication dated 02.11.1981 entitled "Appeal" from the Applicant was treated as a resignation (Exhibit-D1) which was accepted by the Department from 04.11.1981 (Exhibit-D2). It appears that the rules were further amended vide SRO 219 of 1982 effective since 26.08.1982 deleting the requirement of the degree in science. Applicant filed a Civil Suit on 03.02.1983 for a declaration that she continued in service as Junior Scientific Assistant. The Civil Court noted that the resignation was accepted when disciplinary proceedings were pending and there was no application of mind by competent authority to these facts and a decision either to drop the proceedings or to the effect that acceptance of resignation was in public interest. It therefore, held acceptance the resignation bad in law and gave a declaration that the Applicant continued in service as 'Senior Computer' (not Junior Scientific Assistant) as on 04.11.1981. The decree was passed on 16.01.85. Applicant joined back from 27.08.1985 after the first and second appeals of Union of India were dismissed. Initially, the period from 05.11.1981 to 26.08.1985 was treated by the department as "dies-non" but the period was subsequently treated as leave without pay by the order dated 17.04.1986 (Exhibit-G) in view of decision of Bombay High Court in writ petition No.4181/85 decided on 31.10.1985 (Exhibit-F). Subsequently, Applicant had approached the High Court in its contempt jurisdiction for various reliefs vide CP. 128/85 and 37/86 but the High Court observed that her remedy is to approach proper forum to get that issue settled vide order dated 10.02.1987 (Exhibit-R6).

3. The Applicant has prayed for following reliefs:

- That the applicant may be declared to be continued on the post of JSA-1 in the Armament

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Research and Development Establishment with effect from 15th March, 1976 when she was actually promoted on the said post and she be allowed all further benefits of service on that post including her seniority, increments and promotions therefrom.

b. In the alternative revert all those persons who were appointed/promoted on the basis of similaraly conditions as was applied only against the applicant and place them below the applicant in the seniority list of JSA-1.

c. That this Hon<sup>ble</sup> Tribunal may be pleased to direct that in view of the fact that her termination was found to be illegal and void by the competent court, the necessary consequences flowing therefrom be allowed to her by way of backwages and/or arrears of salaries.

4. During the course of arguments, counsel for respondent pointed out that applicant has voluntarily retired from service from 30.04.1990 and has been sanctioned pensionary benefits on 07.06.1991. Secondly, all the reliefs claimed by the Applicant are time barred. Thirdly, Applicant had earlier approached the High Court which has granted whatever reliefs were requested and feasible and any adjudication by this Tribunal is barred by principles of resjudicata.

5. We have considered the matter carefully. Relief No.7(a) is clearly time-barred and in any case cannot be granted. It is open to the department to correct mistake and the suit of the Applicant in the matter (Civil Suit No. 2140/78) has been dismissed as stated vide para 8 of the written statement.

6. Relief on 7(b) cannot also be granted. Applicant has not made persons allegedly promoted in a discriminatory fashion as parties and para (9) of written statement states that two persons viz. Vijaya Partheepan and M.Y. Nene possessed requisite qualifications which statement has not

been refuted by Applicant by way of rejoinder.

7. So far as relief in 7(c) is concerned, it cannot be contended that it is hit by principles of resjudicata. The High Court had given liberty to raise the issues re:grant of increment and seniority before appropriate authority. The decision of the High Court was given on 10.02.1987 and the Applicant approached this Tribunal on 28.12.1987. It is therefore also not barred by limitation. However we note that disciplinary proceedings were pending against the Applicant, when her resignation was accepted.

8. The relevant rules were amended on 27.08.1982, when applicant became eligible but at that time, Disciplinary proceedings against applicant were still there. The DPC held her eligible for promotion in October, 1985. The claim of the Applicant for increments and seniority is based on the supposition that she could have been considered for promotion earlier. However, any such consideration would be impossible because there would be no CR's as well as because of disciplinary proceedings. Any direction by us to have a review DPC would, therefore be incapable of implementation. We also note that the Applicant got herself reinstated on the ground of existence of Disciplinary proceedings. She cannot be heard to claim promotion from an earlier date as if her record is clean. In other words, We hold that Applicant has not approached us with clean hands and the department appears to have accommodated her to the maximum extent by promoting her from October, 1985 and also allowing her to retire voluntarily as a special case in relaxation of Rule 48 of CCS (Pension) Rules. We therefore hold that any relief in terms of prayer in 7(c) is also not warranted.

We, therefore dispose of this case by the following order.

ORDER

Application dismissed. No order as to costs.

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan)  
Member (J)

*M.R. Kolhatkar*  
(M.R. Kolhatkar)  
Member (A)