

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Tr.Application No.133/86

B.I.Sadarangani,
44,Shivdham,
Opp.Gujrat Research Society,
J-2, South Avenue,
Santacruz(West),
BOMBAY - 400 054.

... Applicant
(Original Plaintiff)

v/s.

The Union of India,
New Delhi.

... Respondent
(Original Defendant)

Coram: Hon'ble Vice-Chairman B.C.Gadgil
Hon'ble Member(A)J.G.Rajadhyaksha

Appearances:

1. Mr.M.B.Mor &
Mr.V.R.Tavde,
Advocates for
the applicant.
2. Mr.P.M.Pradhan
Advocate for the
Respondent.

JUDGMENT

Date: 25-6-1987

(Per B.C.Gadgil, Vice-Chairman)

Short Cause Suit No.1144/76 of the file of
the City Civil Court, Bombay has been transferred to this
Tribunal for decision.

2. The applicant(original plaintiff)joined
the services in the Office of the Trade Marks Registry
(Controller General of Patents & Designs and Trade Marks)
as an Asstt. in 1949. In 1952, he was promoted as Asstt.
Examiner. The next promotional post is that of Examiner.
The applicant has filed 23 documents before this Tribunal,
while the respondents have filed 26 documents. Some of
these documents have been referred to by the learned
Advocates while arguing the matter. We would be mentioning
these documents as A-1 and so on for the documents

at Sr.I filed by the applicant and R-1 and so on for the documents filed by the Respondents.

3. On 6th April, 1966 an order was issued (vide A-1) promoting the applicant to officiate as Examiner with effect from 4th March, 1966 as the Examiner S.Ramalingam had proceeded on leave. After this appointment the applicant has continued to work as Examiner on officiating and ad hoc basis as and when there were short term vacancies arising from the temporary promotions of Examiners to the higher posts or from grant of leave to the Examiners and other higher officers. We would refer to this officiation in due course while considering the merits of the case. Suffice it to say that there used to be reverions of the applicant whenever the temporary promotions or the leave of the Examiners would come to an end.

4. On 29-6-1971, there was one such officiating promotion for a short term. However, the applicant was accommodated in the promotional post continuously, as another short term vacancy would arise before the earlier such vacancy would come to an end. Thus the applicant was continuously accommodated in the post of Examiner on such short term basis from 29-6-1971. On 1-3-1974 he proceeded on leave upto 15-6-1974. The main dispute is as to what would be his pay after the expiry of the said leave till he retired on 1st of July, 1974. The applicant's case is that on the expiry of his leave he was expected to join as Examiner and that he continued to hold the post of Examiner till he retired. As against that the contentions of the respondent are that the applicant's officiation on short term vacancy was upto 30th March, 1974 and that after that

period he was liable to be reverted as Asstt.Examiner. The respondents, therefore, contend that after availing of the leave the applicant could join not as Examiner but as Asstt.Examiner. The importance of this dispute is that according to the applicant it affects the quantum of Pension and Gratuity. The applicant would get higher pension and gratuity if it is found that he continued to hold the post of Examiner even on officiating **basis** at the time of his retirement. It is this claim that has been made by the applicant in this suit.

5. The respondents filed their written statement in the Civil Court. Their main contention is that the applicant held the post of Examiner on purely temporary and ad hoc basis from time-to-time whenever there used to be short term vacancies and that his substantive post all the while remained that of Asstt. Examiner. The regular appointment to the post of Examiner is required to be done on the basis of the recommendations of the Departmental Promotion Committee and that the applicant's case has been so considered by such DPC in 1969 and 1973 and he has been found not eligible for such promotion on a regular basis. He was allowed to work on officiating promotion purely on ad-hoc basis on account of his seniority as Asstt. Examiner. The respondents contend that such ad-hoc officiation for short term vacancies would not be of any help to the applicant to contend that he has been in the cadre of Examiners. As far as the position of the applicant on 16th June, 1974 is concerned, the respondents contend that the applicant was last appointed as an Examiner on ad hoc basis from 12th October, 1973 to 30th March, 1974, as Shri Someshwara Rao who was a permanent

Examiner was temporarily promoted in the higher grade of Administrative Officer from 8th October, 1973 to 31st January, 1974 and thereafter proceeded on leave upto 30th of March, 1974. The respondents therefore contend that from 30th March, 1974 the applicant was automatically reverted to the post of Asstt. Examiner and that on the expiry of the leave upto 15th June, 1974 the applicant will have to be treated as Asstt. Examiner till his retirement. They add that in fact applicant had resumed duties as Asstt. Examiner on 17-6-1974 (16-6-1974 being a Sunday).

6. At the time of the argument of this matter Mr. M. B. Mor the learned Advocate for the applicant contended that the applicant was not holding the post of Examiner on officiating basis and that from 1968 he was occupying the said post on regular and substantive basis. Though this point has not been taken in the plaint we permitted Mr. Mor to argue it and also allowed the respondents to make their own submissions. It is for this reason that the documents as mentioned above have been filed before us.

7. It would be in the fitness of things if we decide the controversy raised before us for the first time viz. whether the applicant has been appointed as an Examiner on regular and substantive basis in 1968 onwards. Mr. Mor relied upon the letter dtd. 28th November, 1968 (vide document Ex.A-4). It is a Govt. of India communication to the Controller General of Patents & Designs and Trade Marks at Bombay. It would be better to reproduce the contents of the letter.

"Subject: Officiating appointments in the Trade Marks Registry.

Sir,

I am directed to refer to your letter No.C.159/1968 dated the 19th July, 1968 and D.O.letter No.C.159/1968 dated 11th September, 1968 on the above subject and to convey the approval of the Joint Secretary in this Department to the appointment of Shri B.I.Sadarangani, Asstt. Examiner of Trade Marks, as Examiner of Trade Marks with effect from the date he assumes charge of the post".

Yours faithfully,

Sd/-

(S.K.RAO)
Deputy Secretary to the
Govt. of India.

It was contended by Mr.Mor that this letter is the proof to show that the Govt. has conveyed the approval of the Joint Secretary to the appointment of the applicant as Examiner with effect from the date he assumes charge and that such approval would be nothing less than the appointment of the applicant as Examiner on regular basis. The wording of the letter does not clarify as to whether the approval is for the regular appointment. However, the subject of the communication gives us the indication that it pertains to "officiating appointments". Mr.Pradhan for the respondents, therefore, contended that this letter is nothing more than the approval of the Jt.Secretary to the officiating ad hoc and temporary appointment of the applicant as Examiner. We wanted to go through the letters dtd. 19th July, 1968 and 11th September, 1968 i.e. the letters mentioned in the above mentioned communication. Mr.Pradhan, however, submitted that the concerned file of the correspondence of the year 1968 is not available. The question arises as to whether non-production of the said file would have any beneficial advantage to the applicant. It is true that the

said letter does not mention the nature of the appointment for which the approval has been granted, however, it is material to note that the promotion to the post of Examiner is to be decided upon by the concerned DPC. The document at Sr.R-25 gives the relevant extract of recruitment rules for the Examiner. The above position is revealed from that document. Not only that but the applicant himself/^{has} filed at Ex.A-9 the copies of the minutes of the meeting of the Departmental Promotion Committee held on 11th June, 1973 wherein the case of the applicant along with other Asstt. Examiners has been considered for promotion to the post of Examiner and the DPC found other 'very good' candidates fit for promotion and that the applicant was not fit enough to be so promoted. It is not disputed that even in 1969, the DPC has considered the name of the applicant for such promotion and at that time the applicant has not been found suitable. Mr. Pradhan therefore contended that the Jt. Secretary of the concerned Ministry has no powers to effect a promotion unless the procedure as contemplated by the recruitment rules is followed. He further contended that the communication dtd. 28th November, 1968(vide Ex.A-4) could be there only when the department has to make an officiating and ad hoc appointment till the regular appointment on the basis of the results of DPC are made. He further submitted that the course of subsequent events would conclusively prove that the communication dtd. 28th November, 1968 was only for such local departmental and ad hoc appointment. The office order dt. 11th December, 1968 which followed the above mentioned communication dtd. 28th November, 1968 is at Ex.R-1. It says that pursuant to the said communication the applicant has taken charge as Examiner from 30th November, 1968. However, the office order

clarifies that the said officiating arrangement has been made purely on ad hoc basis and will not confer any right on the officer concerned either to continue in the post indefinitely or to claim seniority on the basis of this ad hoc appointment. The appointment to the post of Examiner can be made by promotion as mentioned above and also by direct recruitment. The document at Sr.No.R-2 filed by the Respondents shows that on 2nd of July, 1970 Shri K.V.Ram was appointed as Examiner on the recommendation of the UPSC. In view of this appointment it was necessary to revert some of the officiating Examiners. The department, therefore, passed an order dtd. 14th August, 1970 reverting the applicant to his substantive post as Asstt.Examiner. The said order mentions that the reversion was on account of appointment of Mr.Ram as Examiner. There would not have been any occasion for such reversion of the applicant if applicant Sadarangani was already appointed regularly on the basis of the communication dtd. 28th November, 1968. Then there arose a short term vacancy as Examiner vice R.M.Dabhole temporarily promoted or transferred to the post of Administrative Officer by an order dtd. 17th November, 1970. The applicant who was then Asstt.Examiner took charge as Examiner from 12-10-1970 vice R.M.Dabhole as mentioned above. In due course there was a reversion of the applicant with effect from 31st December, 1970 as Dabhole himself was reverted to the post of Examiner as Dabhole's senior E.A.Dalal took charge as Administrative Officer. This order is dtd. 6th January, 1971 vide Ex.R-4. On 29th March, 1971 the department wrote to the Ministry a letter (Ex.R-5) making a proposal that there was temporary vacancy of the post of Examiner and that the applicant was recommended for being promoted

to that vacancy on ad hoc basis. The Ministry on 19th May, 1971 vide (Ex.R-6) conveyed the approval for such temporary promotion, as proposed, in Ex.R-5. Ex.R-7 is a formal order showing the promotion of the applicant on this basis. The applicant could not be continued in that post as the incumbent thereof had to take charge and on 10th June, 1971 the department passed an order (vide R-8) reverting the applicant to the post of Asstt. Examiner with effect from 31st May, 1971. Thereafter, there arose another temporary vacancy of Examiner. The department wrote to the Ministry proposing the applicant's promotion in such temporary vacancy. The Govt. accepted the proposal on 23rd July, 1971 vide Ex.R-9. Thus the applicant was promoted as Examiner in the short term vacancy caused by the promotion of Dabhole, who was Examiner, to the post of Administrative Officer. The order in that respect is at Ex-R-10. A similar procedure was followed in August, 1971 onwards when the post of Examiner fell vacant for a short period. The documents in connection with the promotions of the applicant in short vacancies are at Ex.R-12 to R-22. The last of such communications from the Ministry is dtd. 28th February, 1974 vide Ex.R-21. To some extent it is an ex post-facto order whereunder the Government conveyed its approval for such temporary appointment of the applicant and also of certain other persons. As far as the applicant is concerned, the approval is for the promotion upto 15-12-1973 as Shri Someswara Rao was promoted as Administrative Officer. The said arrangement was continued further with effect from 17-12-1973 as the promotion of Someswara Rao was also continued. Thereafter for the period from 1-2-74 to 30-3-74 the Government approved the promotion of the applicant as Someswara Rao proceeded on leave, during this period. Consequent order on the basis of this approval has been passed ...9/-

by the department on 7th March, 1974 vide Ex.R-22.

8. Mr. Pradhan, therefore, submitted that the exact meaning of the letter dtd. 28th November, 1968 has to be understood on the basis of these subsequent events which show that the applicant has never been appointed as an Examiner regularly. On the contrary each of the promotional orders and the connected correspondence clearly show that the applicant was granted ad hoc promotions on certain occasions and it has been specifically stated that such promotions would not enable the applicant to claim seniority or any other rights. In the background of these circumstances, it would be very difficult for Mr. Mor to contend that the communication dtd. 28th November, 1968 should be considered as meaning that the Govt. conveyed its approval for the promotion of the applicant on a regular and substantive basis. This is more so when even thereafter the applicant's name has been considered by the DPC and it was found that he was not suitable. There would not have been any such exercise of making ad-hoc appointments from time-to-time and also of considering the case of the applicant by the DPC in 1969 and 1973 if the applicant was regularly appointed as Examiner since 1968. Thus there is no merit in the contentions of the applicant that he is entitled to a declaration that he is holding the post of Examiner on regular and substantive basis:

9. The next contention that has to be decided is as to which post the applicant was holding at the expiry of his leave on 15th June, 1974. We have already observed that as mentioned in the office order dtd. 7th March, 1974 vide (R-22) the applicant was appointed as officiating Examiner for two spells; i.e. from 8th October, 1973 to

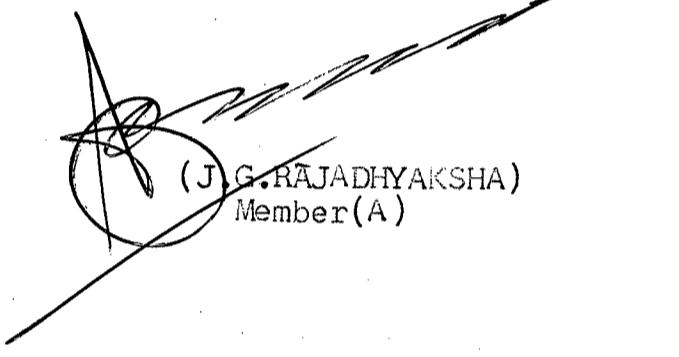
31st January, 1974 and from 1st February, 1974 to 30th March, 1974. The second spell covers the period of the leave granted to Someswara Rao. Before the expiry of the second spell (i.e. before 30th March, 1974) the applicant himself proceeded on leave from 1st March, 1974 to 15th June, 1974. It is necessary to find the post which the applicant could hold on 16-6-1974 or 17-6-1974. His ad-hoc or officiating promotion was to continue only upto 30th March, 1974. Consequently, on 31st March, 1974 he stood reverted to his substantive post as Asstt. Examiner, and it is this post in which he could join on the expiry of his leave. It will be very difficult to accept the contention of Mr. Mor that even if the short term vacancy of an Examiner came to an end on 30th March, 1974, still the applicant could join the post of Examiner on expiry of the leave. Though a number of contentions have been raised in the application, only the above mentioned two points have been urged by Mr. Mor. He has also stated before us that the applicant would be claiming two reliefs viz. his pension should be fixed on the basis that he continued to hold the post of Examiner from 16-6-74 till 30-6-74 and that the reversion to the substantive post on the expiry of the short term vacancy should not be taken into account while calculating the pensionable pay. The second prayer is that the Gratuity should be fixed on the basis that he continued to be an Examiner till his retirement. As stated above the applicant cannot claim any such reliefs. Thus while calculating the retirement benefits such as pension and gratuity the applicant cannot claim that his pay from 16th June, 1974 to 30th June, 1974 would be that of Examiner and that such

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pay should also be calculated even when he was reverted from time-to-time after the expiry of the short term vacancy. The application is, therefore, dismissed. Parties to bear their own cost.



(B.C.GADGIL)
Vice-Chairman



(J.G.RAJADHYAKSHA)
Member(A)