

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

x O.A. No.
T. A. No. 147/86

198

DATE OF DECISION 2.3.94

D M Khandekar & 3 ors. Petitioner

Mr. P G Deshmukh Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. M I Sethana Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice M.S. Deshpande, V.C.

The Hon'ble Mr. R. Rangarajan, 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 ?

V.C.

(28)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PREScot ROAD, BOMBAY-1

TR.A. No. 147/86

Divakar Madhav Khandekar
Assistant News Editor
All India Radio
Aurangabad & 3 ors.

..Applicants

V/s.

Union of India & Another

..Respondents

Coram: Hon. Shri Justice M.S. Deshpande, V.C.
Hon. Shri R. Rangarajan, Member (A)

APPEARANCE:

Mr. P.G. Deshmukh
Counsel for the applicants

Mr. M.I. Sethana
Counsel for the respondents

ORAL JUDGMENT:

(Per: M S Deshpande, Vice Chairman)

DATED: 2.3.94

The four applicants by this petition seek regularisation of their services from the date of their initial appointment and length of service.

The four applicants were appointed on different dates from 1962 to 1967 as Publicity Organisers a post which later came to be designated as Field Publicity Officer. The orders of appointment at Exhibit A to the petition showed that the appointments were being made to a temporary post sanctioned upto 28th February 1962 and were likely to be continued for the Plan period but the appointment would not give a claim on the Central Information Service and the candidates will have to be got selected

(24)

-2-

by the Union Public Service Commission in the usual way if he has to be absorbed in the grade. The appointment could be terminated at any time by a month's notice on either side. The applicants could not have appeared for the test held by the UPSC in the years 1964, 1969 and 1970 because they did not have the eligibility which was essential viz., three years service and the age limit of 35 years. They were however regularised with effect from 4.1.1977 by the notification dated 27.1.77 in Grade IV to which they were initially appointed. The submission of the applicants is that their total length of service beginning with their initial appointment should have been counted for the purpose of seniority and since this was not done they have approached the High Court by filing Writ Petition No. 790 of 1985 which came to be transferred to this Tribunal after its establishment and was renumbered as Transferred Application No. 147/86. In view of several decisions of the Supreme Court, the last one pointed out ^{being} is A R BHATNAGAR & ORS. V. UNION OF INDIA & ORS. IN WRIT PETITION NO. 12874/85 decided on 9.11.90 where the Supreme Court had the occasion to consider the rules known as the Central Information Service Rules 1959 which have been included as Annexure E to the petition, The Supreme

Court pointed out while considering the notification dated 27th January 1977 that the regularised officers admittedly remained outside the cadre until 4.1.1977 from when their services were regularised. The Union Government was, therefore, right while regularising the services under the notification to direct that the regularised officers would be placed below regular recruits through the 1970 examination.

Shri Deshmukh, learned counsel for the applicant urged that the 2nd proviso to rule 6(A) of those rules on the subject of minimum length of service required for promotion to the various grades which are applicable to the present applicants. That rule reads:

"Provided further that persons appointed on or before 1.7.76 to discharge the duties and functions of the posts included in Grade IV of the Central Information Service to make good the short fall in the filling up of vacancies in the grade by the above mentioned method and who have discharged the duties and responsibilities of the post included in Grade IV of the service for at least five years shall be appointed to the grade after they are screened by a Selection Committee ~~prescribed~~ over by the Chairman or a Member of the Commission to determine their suitability for appointment."

The submission was that the applicants were given Gr.II with effect from 1977, shortly after their regularisation and if this was done under the proviso 'C' above, the services rendered for the five years should be deemed to be regular. It is difficult to accept this submission because in the judgment of A K BHATNAGAR's case (supra) the Supreme Court has quoted this proviso

[Handwritten signature]

in its entirety and it cannot therefore be said that this aspect of the case was not placed before the Supreme Court and had not received its consideration.

Shri Deshmukh further urged that the note at the end of notification dated 27.1.1977 by which the present applicants were also promoted on regular basis in Grade IV states that these officers will be placed en-block in the same order below the last Grade IV officers appointed on the basis of 1970 examination i.e., below Shri Sitaram Ho, was treated as part of the rule which was not so. In fact the judgment of the Supreme Court refers to the note at the end of the notification dated 27.1.1977 while dismissing the plea raised by the petitioners before the Supreme Court and found the notification dated 27.1.1977 to be in order. It is not, therefore, possible for us to hold that the applicants who are similarly placed would be entitled to a different treatment at our hands.

We are bound by the Supreme Court decision. We find that the applicant could not have been regularised except in the manner provided under the notification dated 27.1.1977.

There is no merit in the petition.

It is dismissed. No order as to costs.

One
(R Rangarajan)
Member (A)

One
(M.S. Deshpande)
Vice Chairman