

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

T.A. No.207/86

Smt. Sulabha D. Narvekar
R/o 19-A, Nancy Development Complex,
Borivili (East), Bombay-400 066.

Applicant

Vs

Deputy Controller of Patents & Designs,
Patent Office Branch, Todi Estate,
3rd Floor, Sun Mill Compound,
Lower Parel (W), Bombay-400 013.

Joint Controller of Patents & Designs,
The Patent Office,
214, Acharya Jagdish Bose Road,
Calcutta-17

Respondents

Union of India

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

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

Appearance

Shri H.S.M Urthi with Shri ViswaszRao
for the applicant.

Shri S.R. Atre for the respondents.

JUDGMENT

Per Shri Srinivasan

Dated : 14.10.1987

1. This application originated as Writ Petition No.1051/79
before the High Court of Bombay.

2. The relevant facts lie within a short compass. The applicant who is a Science Graduate was initially appointed as a Junior Clerk in the office of the Textile Commissioner at Bombay on 6.6.1973 on compassionate grounds as her father who was working in the same office had died in service. The Textile Commissioner's office issued a circular dated 7.9.1973 notifying certain vacancies of Technical Assistants (TA) in the Patent Office Branch of the Trade Marks Registry to which appointments would in the first instance be made purely on ad hoc basis pending finalisation of the recruitment rules;



appointment would initially be for a period not exceeding three months. Persons with necessary qualifications working in the office of the Textile Commissioner were called upon to give their willingness in writing to be considered for posts of TA in the Patent Office. The applicant gave her willingness, was interviewed and selected. She was appointed as TA in the Patent Office at Bombay by order dated 24.9.1973 which clarified that the appointment was temporary and liable for termination at any time by notice of one month or on payment of one month's pay in lieu of notice. The order also required the applicant to give an undertaking that her employment could be terminated with one month's notice or notice pay. The applicant thereupon resigned her post in the Textile Commissioner's office and joined the Patent Office as TA on 29.9.1973. The Office of the Controller General of Patents, Designs and Trade Marks (Controller General), Patent Office, Calcutta (Group C Non-Gazetted Posts) Recruitment Rules 1978 ("the Rules" for short) framed by the Government in pursuance of Article 309 of the Constitution came into force with effect from 30.9.1978. By office order dated 8.12.1978 (Exhibit D at page 24 of the application), the Joint Controller of Patents and Designs, Respondent 2, terminated the services of the applicant "consequent to the filling up of the posts of Technical Assistants on regular basis in accordance with the Rules". It is this office order against which, as mentioned above, the present application was filed before the Bombay High Court as a writ petition as early as in April 1979.

P.J. - 87

3. After this application was received in this Tribunal on transfer from the High Court under Section 29 of the Administrative Tribunals Act, 1985, the Respondents filed their reply thereto, opposing the claim of the applicant. The applicant has filed a rejoinder to this reply and the respondents have, in turn, filed a reply to the rejoinder.

4. Shri H.S. Murthi, Advocate, with Shri Viswas Rao, Advocate, appeared for the applicant and Shri S.R. Atre for Shri P.M. Pradhan represented the Respondents.

5. Shri Murthi developed the case for the applicant somewhat as follows: In response to representations made by the applicant against the termination of her services, she was informed by Respondent 2 (Exhibit F dated 28.12.78 at page 26) and the Controller General (Exhibit I dated 27.2.79 at page 34) that (1) her appointment as TA in 1973 having been purely ad hoc, pending the framing of rules of recruitment for that post, she did not acquire any right to continue in the post; (2) on the framing of the Rules, appointments to posts of TA had been made on regular basis and she not having been so appointed had to yield place to regular appointees; (3) as her appointment as an ad hoc TA was made without her name being sponsored by the Employment Exchange and as she had not applied from the open market for regular appointment to that post, she could not be considered for regularisation; and (4) persons appointed as TAs on ad hoc basis like her and had joined after her were regularised because their names had been sponsored by the Employment Exchange at the time of their initial ad hoc appointment. Shri Rao submitted that sponsorship by the Employment Exchange for the initial ad hoc appointment was not a condition of regular appointment under

P.S. - 16

the Rules notified from 30.9.1978. She was asked to state her willingness to be considered for the post by the Office of the Textile Commissioner where she was working in 1973 and when she did so, she was selected. There was no irregularity in that appointment. Even if that appointment was irregular, it was not the applicant's fault. The respondents should have asked her after she joined either to show evidence of registration with the Employment Exchange or to obtain sponsorship from the Employment Exchange. The applicant did register her name with the Employment Exchange in 1975 and that should be sufficient to legalise her earlier ad hoc appointment, if at all it could be considered illegal without such registration or sponsorship from the Employment Exchange.

5. Shri Atre supported the action of the authorities. Government had issued instructions to all departments which were binding on the respondents before us, that all vacancies arising under the Central Government, irrespective of the nature and duration, apart from those filled through the Union Public Service Commission, should be filled only through the Employment Exchange, and there could be no departure from that procedure (Exhibit 3 to the respondents reply at page 15). Shri Atre reiterated that in 1973 the applicant's name was not sponsored by the Employment Exchange and so her initial appointment on ad hoc basis was irregular and she could not be considered for regularisation in the post after the Rules were published even though she had the requisite qualifications and was otherwise eligible. Those ad hoc TAs like her who were regularised in their posts under the Rules, including some who had joined after her, had been given ad hoc appointment on being sponsored by the Employment Exchange. Therefore, 'the last come first go' rule had no application here. This was explained to

P.D. B.

to the applicant and, in fact, the Controller General in his letter dated 27.2.1979 addressed to the applicant (Exhibit 1 to the Respondent's reply at page 34) had suggested to the applicant that she might make an application for the post of TA in response to the advertisement which had appeared in Employment News dated 17.2.1979 but the applicant did not chose to do so. She cannot now be heard to complain that she had not been appointed to that post on regular basis. Her initial appointment in 1973 was an ad hoc appointment pending finalisation of rules of recruitment and the letter of appointment issued to her at the time clearly stipulated that her services could be terminated on a month's notice or notice pay. In the circumstances of the case the Respondents terminated her services strictly in terms of the conditions of her employment by giving her one month's pay and allowances and there was nothing illegal in this action.

6. We have considered the rival contentions very carefully. We are unable to accept the contentions of the learned counsel for the respondents that the applicant's appointment on an ad hoc basis in 1973 was irregular and, therefore, she could not be considered for regularisation in the post of TA after the statutory rules were notified in 1978. No doubt, instructions of the Government to its various departments are that appointment to any post in the Government should be only through the Employment Exchange. This does not mean that any appointment made without Employment Exchange sponsorship is ab initio void. If Government scrupulously followed its instructions of making recruitment only through the Employment Exchange,

P. J. S. S.

it cannot be called into question, AIR 1987 SC 1227 UNION OF INDIA AND OTHERS V@ N. HARGOPAL AND OTHERS. However, if an appointment is made of a person like the applicant not sponsored by the Employment Exchange there is certainly no illegality about the appointment, particularly when the ^{of first} ~~initial~~ appointment as in this case was on compassionate grounds. Obviously such appointment would not depend on sponsorship from the Employment Exchange. In any case it is not the employee's fault if instructions are not followed by the appointing authorities. The applicant was working in another Government office viz., the Office of the Textile Commissioner: the office of the Controller of Patents intimated the office of the Textile Commissioner about vacancies of TA to be filled up, called for volunteers and selected persons among the volunteers including the applicant. The applicant could not in the circumstances have even suspected that her selection was irregular and against the instructions of the Government. Moreover, she had worked for five years till 1978 as TA, albeit on an ad hoc basis. It was only proper that she should have been considered for regularisation in the post after the Rules were notified alongwith others like her. We cannot uphold the action of the Respondents in not considering her for regularisation even though it is admitted that she had the necessary qualification and was in all other respects eligible. During the argument, learned counsel for the applicant, after consulting the applicant who was also present in the court, made an unequivocal statement that if the applicant is even now considered for regularisation in the post of TA under the Rules and is appointed to that post, she will not lay

P. S. K. B.

any claim for back wages from the date of termination of her services in 1978 till the date of her fresh appointment. He also conceded that the applicant will not claim the benefit of past services for any purpose like seniority, confirmation, etc. and will accept the appointment now as a fresh appointee. All that she would ask for was that her pay in the post of TA in the revised scale (adopted on the recommendations of 4th Pay Commission) on such fresh appointment should be fixed with reference to the pay actually drawn by her on the date of termination of her services. We feel that in the interests of justice, the respondents should at least now consider the applicant for appointment on a regular basis as TA under the rules framed in 1978, relaxing any requirements of maximum age laid down in the rules. It is now more than nine years since the services of the applicant were terminated and learned counsel for the applicant also informed us that in the meanwhile the applicant had acquired a B.Ed. degree and was teaching in a private school. In view of this, we also feel that the applicant should not claim any salary and allowances for the period till her fresh appointment and we appreciate the concession made by the counsel for the applicant in this regard. It cannot be disputed that, except that the applicant's name had not been initially sponsored by the Employment Exchange, she fulfilled all the requisite qualifications for regular appointment and therefore, there should be no difficulty in her selection to the post on a regular basis. Shri Atre pointed out that there was no vacancy of TA at present in which the applicant could be appointed. We feel that this should not stand in the way of selecting the applicant to that post because in our view the respondents wrongly declined to consider her for such selection in 1978. If

P. J. S. K.

there is no post, we direct the respondents to create a supernumerary post to accommodate the applicant till a regular post becomes available. As and when such a regular post becomes available, the supernumerary post could be abolished and the applicant could be absorbed in that regular post.

7. In the result we pass the following orders:-

- (1) Respondents will consider the case of the applicant for regular appointment as TA under the Rules and, if found fit, offer her an appointment straightaway;
- (2) If the applicant is regularly appointed in pursuance of our direction above, her pay will be fixed in the revised pay scale with reference to the pay drawn by her on the date her services were terminated in 1978 and thereafter she can earn annual increments in the revised scale;
- (3) The applicant will not be entitled to count her past service for seniority, confirmation, etc. and the appointment to be made in pursuance of our direction above will be treated as a fresh appointment;
- (4) The applicant will not be entitled to any back wages from the date her services were terminated till the date of her fresh appointment in pursuance of the direction above.

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


(P. SRINIVASAN)
Member (A)


(B.C.GADGIL)
Vice-Chairman