Orig. in OA 810/96

Duplicate for I&C

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG.NO.6,PRESCOT RD, 4TH FLOOR.,

MUMBAI - 400 001.

ORIGINAL APPLICATION NOS:810/96, 811/96, 812/96,

813/96, 814/96 & 815/96.

DATED THIS 30th DAY OF OCTOBER, 1996.

CORAM : Hon'ble Shri B.S.Hegde, Member (J).

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

O.A.810/96.

1. Miss. M.D.Songurkar,
In the Office of the Income-Tax
Appellate Tribunal.,
Old C.G.O. Building, 4th Floor,
M.K.Road,
Mumbai - 400 020. ...

O.A.811/96.

2. Smt. Swachhanda V. Kocharekar
In the Office of the Income-Tax
Appellate Tribunal.,
Old C.G.O. Building, 4th Floor,
M.K.Road,
Mumbai - 400 020.

O.A.812/96.

3. Miss Ratnaprabha Lahu Rane
In the Office of the Income-Tax
Appellate Tribunal.,
Old C.G.O. Building, 4th Floor,
M.K.Road,
Mumbai - 400 020.

O.A.813/96.

4. Shri Uday Ramchandra Rane,
In the Office of the Income-Tax
Appellate Tribunal.,
Old C.G.O. Building, 4th Floor.,
M.K.Road,
Mumbai - 400 020.

O.A.814/96.

5. Shri Anil Manchar Gujar,
In the Office of the Income-Tax
Appellate Tribunal,
Old C.G.O. Building, 4th Floor.,
M.K.Road,
Mumbai - 400 020.

O.A.815/96.

6. Shri Waigankar Indira R.,
In the Office of the Income-Tax
Appellate Tribunal.,
Old C.G.O. Building, 4th Floor.,
M.K.Road, Mumbai - 400 020. ... Applicants.

By Advocate Shri P.A.Prabhakaran.

...2/-

v/s.

1. Union of India through
The President,
Income Tax Appellate Tribunal, (Mumbai)
Old C.G.O. Building,
4th Floor,
M.K.Road,
Mumbai - 400 020.

2. The Registrar,
Income-Tax Appellate Tribunal, (Mumbai),
Old C.G.O. Building,
4th Floor, M.K.Road,
Mumbai - 400 020.

3. Deputy Registrar,
Income-Tax Appellate Tribunal, (Mumbai),
Old C.G.O. Building,
4th Floor, M.K.Road,
Mumbai - 400 020. ... Respondents.

By Advocate Shri P.M.Pradhan.

I ORDER I

I Per Shri B. S. Hegde, Member(J) I

Heard Shri P.A.Prabhakaran for Applicant and Shri P.M.Pradhan for Respondents.

The Tribunal had granted ad interim order dated 19/8/96 directing the respondents not to terminate the services of the applicant unless candidates sponsored by the Staff Selection Commission joins the Respondent Department. Ad Interim Order passed by Tribunal was extended from time to time. Respondents have filed their reply on 4/10/96 and the matter is heard today.

In this OA, the applicants are seeking regularisation of their service with the respondent department and grant all other benefits and facilities available to LDCs and not to terminate the services of the applicant till the disposal of the OA.

The main grievance of the applicant is ... they are apprehensive that after having put in continuous

employment with respondents for varying periods starting from 1991, onwards except with certain small breaks and they are given adhoc appointment from time to time by respondents and they are appointed to officiate as LDCs @ Rs.950/-p.m. in I.T.A.T.

The respondents in their affidavit reply have repeated the contention of the applicant and have stated that that ad interim order passed by Tribunal is not justified and requires to be vacated since the applicants have no right whatsoever to continue in the post in which the said applicants came to be appointed purely on temporary/ad-hoc basis and cannot by any stretch of imagination claim any right of regularisation as mere continuation in the post for some period, would not give them any right to get themselves regularised in violation of law.

However, the applicants were appointed in the I.T.A.T., Mumbai on adhoc basis as regular persons were not sponsored by the Staff Selection Commission for appointment. Therefore, whenever vacancies arise in the department, the Head of the Department is required to send requisition to Staff Selection Commission, which is a body constituted for the purposes of recruiting various persons and recommending them to various departments of Union of India., As per the requirements of each of such departments.

In the year 1993, requisition was sent in the prescribed proforma signed by the Registrar indicating the number of vacancies to be filled in. Thereafter, further requisition was sent in May,93 to the Staff Selection Commission. On the basis of the requisition made by the Registrar, the Staff Selection Commission vide their letter dated 12/3/96

sent a list of candidates nominating for the appointment of LDC as per the result of the examination conducted by the said Commission in 1994. They recommended six candidates initially and later on in April,96., sent one more candidate belonging to backward community. Altogether 7 candidates have been recommended. As per the recommendation of the Commission, the Tribunal issued orders appointing three of the candidates from the list namesly Ms.Madhuri S.Kosare was given appointment on 20/7/96, Shri Subhash Chauhan was given an appointment, he sought extension of time, he was granted time upto 13/8/96 and one Shri Pradeep K.Shrivastava was appointed on 20/8/96 and later on one Ms.Asha Jacob was also given letter of appointment. Out of which Ms.Madhuri S.Kosare, reported for duty on 24/6/96., Shri Pradeep Srivastava reported for duty on 8/8/96 and Ms.Asha Jacob reported for duty on 30/8/96. and other people are awaiting their appointment letter for joining the duty.

However, because of the Interim Order of the Tribunal vide dated 2/9/96, restricting the respondents from terminating the services of the applicant., the department is unable to issue appointment letters to the above three candidates who have been nominated by the Staff Selection Commission.

Therefore, in the interest of justice, Interim Order passed on 19/8/96 and 2/9/96 requires to be vacated to enable the respondents to issue appointment letter to the persons who are awaiting and who have been nominated by the Staff Selection Commission.

Having heard the arguments of both the parties and after perusal of the application, we are of the view that the applicants as it is have no locus-standi to continue in the post since they have not been deputed through the Staff

selection Commission and have been appointed on adhoc basis and ex-parte ad interim order staying the termination of the applicants, the applicants may be allowed to continue.

Since out of the seven names nominated by the Staff Selection Commission, three have already joined and the rest of the people are waiting for appointment, in the circumstances, we see no justification in extending the Interim Order. Accordingly, the Interim Order stands vacated, it is open to the respondents to fill up the remaining vacancies from the candidates of Staff Selection Commission at an early date. In case, the Staff Selection Commission nominees are not available, in that event, the existing applicants according to their seniority be allowed to continue in the said post till the nominees of Staff Selection joins the post.

Both the Interim orders dated 19/8/96 and 2/9/96 stands vacated.

In the result and in the light of the aforesaid direction, the OA stands disposed of with no orders as to costs.

Issue raised in all the OAs are similar and combined order is passed.

(B. S. HEGDE)
MEMBER(J)

(P.P.SRIVASTAVA)
MEMBER(A)

abp.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

1. Review Petition No.119/96 in
   Original Application No.810/96.
2. Review Petition No.120/96 in
   Original Application No.811/96.
3. Review Petition No. 121/96 in
   Original Application No.812/96.
4. Review Petition No.122/96 in
   Original Application No.813/96.
5. Review Petition No.123/96 in
   Original Application No.814/96.
6. Review Petition No.124/96 in
   Original Application No.815/96.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri P.P.Srivastava, Member(A).

1. Miss.M.D.Sonsurkar,
2. Smt.Swachhanda V.Kocharekar,
3. Miss Ratnaprabha Lahu Rane,
4. Shri Uday Ramchandra Rane,
5. Shri Anil Manchar Gujar, and
6. Smt. Waigankar Indira R.,
   In the Office of the I.T.A.T.,
   Old C.G.O. Building, 4th floor,
   M.K.Road, Mumbai - 400 020. ... Applicants.

V/s.

1. Union of India through the
   President, I.T.A.T. (Mumbai),
   Old C.G.O. Building, 4th floor,
   M.K.Road, Mumbai - 400 020.
2. The Registrar, I.T.A.T. (Mumbai),
   Old C.G.O. Building, 4th Floor,
   M.K.Road, Mumbai - 400 020.
3. The Deputy Registrar, I.T.A.T. (Mumbai),
   Old C.G.O. Building, 4th Floor, M.K.Rd,
   Mumbai - 400 020. ... Respondents.

...2.

ORDER ON REVIEW PETITION BY CIRCULATION

(Per Shri B.S.Hegde, Member(J)) Dated: 19.12.1996.

The applicants in the above Original Applications have filed Review Petitions seeking review of the Order of the Tribunal dt. 30.10.1996. On a perusal of the Review Petition, we do not find that the applicants have brought out any new facts which they could not agitate during the course of the hearing. The Tribunal, initially on 19.8.1996 directed the Respondents not to terminate the services of the applicants unless candidates sponsored by the Staff Selection Commission joins the Respondent Department. The above relief was extended from time to time. After the Respondents had filed their reply, the matter came up for hearing on 25.10.1996 it was stated by the Respondents that the applicants were appointed on ad-hoc basis as regular persons were not sponsored by the Staff Selection Commission for appointment. Therefore, whenever vacancies arise in the department, the Head of the Department is required to send requisition to Staff Selection Commission which is a body constituted for the purposes of recruiting various persons and recommending them to various departments of Union of India as per the requirements of each of such departments. The Staff Selection Commission initially recommended six candidates and later on in April, 1996 sent one more candidate belonging to backward community. Altogether 7 candidates were sponsored. However, in view of the interim order of the Tribunal the respondents were not able to appoint the new incumbents recruited in accordance with the Rules.

...3.

Accordingly, the interim order passed by the Tribunal was vacated and the O.A. was disposed of.

2. In these Review Petitions, the applicants have not made out any new ground for reconsidering the same. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time of hearing of the case. As no ground is made out in the above Review Petitions, we do not find any merit in the same and the same are dismissed by circulation.

(P.P.SRIVASTAVA)
MEMBER(A)

(B.S.HEGDE)
MEMBER(J).

B.

Per Tribunal Date: 30.12.96

As there will be no Division Bench, the matter is fixed on 30.12.96 before the Tribunal is adjourned for Admission hearing / directions orders / final hearing on 10.1.97

Inform the advocates / Parties accordingly.

Dy. Registrar

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P. 89/96 in O.A. 810/96, C.P. 90/96 in O.A. 811/96,
C.P. 91/96 in O.A. 812/96, C.P. 92/96 in O.A. 813/96,
C.P. 93/96 in O.A. 814/96 and C.P.94/96 in O.A.815/96.

Tribunal's order Dated: 21.11.97.

Shri P.A. Prabhakaran, counsel for the applicant. Shri S.S. Karkera for Shri P.M. Pradhan counsel for the respondents.

2. These contempt petitions are filed by the applicants for taking action of contempt against the respondents for violating the order passed by the Tribunal on 30.10.96 in O.A.810/96 and connected cases. The respondents have filed reply opposing the applications.

After hearing both the sides and perusing the records, we are not satisfied that the applicants have made out any case for contempt. The respondents in their reply stated that they have filled up the five posts held by petitioners No.1 to 5 by Staff Selection Commission, since one candidate did not come the 6th Petitioner have been continued in the post. Therefore we are not satisfied that there is any wilful dis-obedience on the part of the respondents in compliance of the order dated 30.10.96.

However it is brought to our notice that some 18 additional posts have been created for the new Bench of I.T.A.T. Since the petitioners have put

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in number of years of service, The applicants can make their representations to the Administration seeking appointment in those new posts. If such representations are made, we expect the respondents to consider the petitioners as per Rules alongwith other candidates. The applicants should be given age relaxation, if required, in view of the fact that the applicants were working in the department for number of years.

M.P. 630/97 in O.A. 814/96 is disposed of. The earlier interim relief dated 4.11.97 in this case is hereby vacated.

With the above observations the Contempt Petitions are disposed of.

(P.P. Srivastava)
Member(A)

(R.G. Vaidyanatha)
Vice Chairman

NO.CAT/BOM/JUDL/O.A.810 to 815/96/ DATED /12/97

Copy to:

1. Shri P.A. Prabhakaran, Counsel for the applicant.
2. Shri S.S. Karkera, Counsel for Shri P.M. Pradhan, for the respondents.

S.O.