

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 317/96

Date of Decision : 17th December 2002

B.T.Kukreja

Applicant

Shri G.K.Masand

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri V.G.Rege

Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Smt.Shanta Shastry, Member (A)

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? *No*
- (iii) Library *yes*

R.S.J.
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.317/96

Dated this the 17th day of December 2002.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt.Shanta Shastri, Member (A)

B.T.Kukreja,
Safety Officer Group-B,
India Security Press,
Nasik Road, Nasik

...Applicant

By Advocate Shri G.K.Masand

vs.

1. Union of India
through Secretary,
Ministry of Finance,
Deptt. of Economic Affairs,
New Delhi.

2. General Manager,
India Security Press,
Jail Road, Nasik Road.

...Respondents

By Advocate Shri V.G.Rege

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for the declaration that the applicant is holding the post of Safety Officer on regular basis continuously from his initial appointment w.e.f. 14.9.1987, the impugned Circular dated 13.1.1996 calling for application for the post of Senior Safety Officer in India Security Press, Nasik Road is illegal and bad in law, be quashed and set aside, entitled to further promotion to the post of Senior Safety Officer in the Grade of Rs.3000-4500.

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2. The applicant has filed this OA. on 19.3.1996. Thereafter, the respondents have filed the written statement on 26.7.1996. The applicant filed the rejoinder on 23.9.1996. The respondents replied to the affidavit in rejoinder dated 18.12.1996. The applicant filed the sur-rejoinder dated 13.1.1997.

3. The post of Safety Officer is a statutory post created in view of Section 40B of the Factories Act which is extracted below :-

"40-B, SAFETY OFFICER (1) in every Factory -

(i) wherein one thousand or more workers are ordinarily employed or

(ii) wherein in the opinion of the State Government, any manufacturing process or operation is carried on, which process involves any risk of bodily injury, poisoning or disease, or any other hazard to health, to the persons employed in the factory, the occupier shall, if so required by the State Government by notification in the official Gazette, employ such number of Safety Officers as may be specified in that notification.

(2) The duties, qualifications and conditions of service of Safety Officers shall be such as may be prescribed by the State Government."

Necessary notification was issued requiring the occupiers of CNP and ISP (Currency Note Press and India Security Press) to employ Safety officers. The General Manager of CNP is the occupier of the CNP Factory and General Manager of ISP is the occupier of the ISP Factory. The Government of Maharashtra in

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2. The applicant has filed this OA on 18.3.1996. Thereafter, the respondents have filed the written statement on 26.7.1996. The applicant filed the rejoinder on 23.9.1996. The respondents replied to the affidavit in rejoinder dated 10.12.1996. The applicant filed the sur-rejoinder dated 13.1.1997.

3. The post of Safety Officer is a statutory post created in view of Section 40B of the Factories Act which is extracted below

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(2) The duties, qualifications and conditions of service of Safety Officers shall be such as may be prescribed by the State Government."

Necessary notification was issued regarding the occupiers of CNP and ISP (Currency Note Press and India Security Press) to employ safety officers. The General Manager of CNP is the occupier of the CNP Factory and General Manager of ISP is the occupier of the ISP Factory. The Government of Maharashtra in

exercise of the power conferred under Section 112 (1) read with Section 40-B(2) of the Factories Act made the Rules known as the Maharashtra Safety Officers (duties, qualifications and conditions of the Service) Rules, 1982 (hereinafter referred to as M.S.O. Rules for the sake of brevity). Rule 3 of the same prescribes qualifications for the post of Safety Officer and under Rule 4 it is incumbent on every occupier to appoint the requisite number of Safety Officers as may be mentioned in the Government Notification issued under Section 40-B(1) Rule 5(2) of M.S.O. Rules. The procedure for recruitment of Safety Officer is narrated and the selection is to be made ^{from} amongst the candidates applying to the post by a Committee of persons appointed by the occupier of the Factory. Rule 7 of M.S.O. Rules prescribes certain conditions which the occupier has to observe whenever he intends to terminate the services of the Safety Officer which is extracted below :-

"Whenever any occupier intends to dismiss or terminate the services of any Safety Officer, he shall communicate in advance his intention to do so and the reasons for such dismissal or termination of services to the Chief Inspector of Factories. The occupier shall not take any action for such dismissal or termination of service before the expiry of 30 days from the date of receipt of the communication by the Chief Inspector of Factories and without taking into consideration any advice rendered by him within the said period."

4. With a view to comply with notification issued by State Government for provision of Safety Officers in terms of Section 40-B and the M.S.O. Rules, the Central Government created two posts of Safety Officers in Group 'B' and one post of Senior Safety Officer in Group 'A' under ISP and one post of Group 'B' and one post of Senior Safety Officer in Group 'A' under CNP.

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5. The pleadings filed from time to time by the parties reveal the facts which are not disputed are narrated below :-

(i) The committee selected the applicant for sponsoring his name for one year course of Industrial Safety conducted at the Central Labour Institute, Bombay to enable I.S.P. to finalise the appointment of Safety Officer. (ii) The committee appointed the applicant as Safety Officer w.e.f. 14.9.1987, the posting order of the applicant is extracted below :-

" On the recommendation of the Selection Committee Shri B.T.Kukreja, Supervisor, India Security Press, has been appointed as Safety Officer in ISP Nashik Road in the Pay Scale of Rs.2375-75-3200-EB-100-3500/- on ad-hoc deputation basis for a period of one year w.e.f. 14.9.1987 (F.N.) initially in the first instance."

" The General Manager, India Security Press, Nashik Road is pleased to appoint Shri B.T.Kukreja, Supervisor, India Security Press to officiate as Safety Officer (Group 'B'Gazetted) in the same Press in the revised Pay Scale of Rs.2375-75-3200-EB-100-3500 purely on ad-hoc deputation basis for a period of one year from 14.9.1987 (F.N.) or till the post is filled on a regular basis whichever is earlier."

(ii) The applicant was granted yearly increments.

(iii) The applicant was allowed to pass Efficiency Bar w.e.f. 1.9.1993. The applicant was allowed to submit option in view of Rule 22-C of F.R.

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(iv) The respondents issued "India Security Press and Currency Note Press, Senior Safety Officer and Safety Officer (Recruitment Rules), 1988 operating w.e.f. 12.9.1988.

(v) The respondents issued "India Security Press and Currency Note Press (Senior Safety Officers and Safety Officers) Recruitment Rules, 1995 came into force w.e.f. 3.7.1995 repealing the Rules 12.9.1988.

(vi) In view of Rules issued on 3.7.1995, the post of Safety Officer is to be filled by Transfer on Deputation/Transfer failing which by direct recruitment.

(vii) The respondents during the course of training of the applicant paid the full salary to the applicant as well as all other expenses incurred during the course of training. The said training was for a period of one year.

(viii) The written statement filed on 26.7.1996 was sworn by Shripati Ram, Chief Administrative Officer, India Security Press, Nashik Road. Reply to the affidavit in reply to the rejoinder sworn by B.S.Lalchandani, Deputy General Manager, India Security Press, Nashik Road stated in para 6 that "Affidavit affirmed by Shri Shripati Ram on 25.7.1996 it has been wrongly stated that the applicant was being paid after he was appointed to the post of Safety Officer, the salary in the pay scale of Supervisor and in addition extra deputation allowance was paid to him. I express sincere regret and appology for the said mistake."

Signature

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(ix) The applicant ~~he~~ is a B.Sc Graduate with Chemistry as Principal subject and also passed one year Diploma Course in Industrial Safety with first class conducted by Central Labour Institute, Bombay, was recruited in August, 1969 as an Apprentice and after 4-1/2 years of Apprenticeship, he was put to work as Assistant Supervisor in the grade of Rs.210-380, promoted as Junior Supervisor and thereafter promoted as Supervisor w.e.f. 1983 in the scale of Rs.650-1200. The applicant is working as Safety Officer in Group 'B' Service in the scale of Rs.2375-3500 w.e.f. 14.9.1987.

6. The applicant claims that he is working as Safety Officer in Group 'B' without any interruption. After being selected by the competent authority, i.e. General Manager, the appointing authority he is drawing the salary in the scale of Rs.2375-3500 w.e.f. 14.9.1987 without any interruption.

7. The respondents issued the Circular No.49/EST-18-25 on 13.1.1996 by Chief Administrative Officer, Govt. of India, India Security Press, Nashik Road for filling up the post of Safety Officer (Group 'B' Gazetted) (Ex.'A'). Hence, this OA. for the above said relief claiming appointment on regular basis and entitled to further promotion to the post of Senior Safety Officer.

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8. The claim of the applicant is resisted by the respondents on the allegation that the application is not tenable in law, barred by time and even on merits liable to be dismissed. It is being stated by the respondents that the applicant was sponsored by the respondents for the said training after due selection and his appointment being adhoc only for one year, the applicant is not entitled to claim regularisation. After the lapse of every one year, the services of the applicant was terminated and thereafter again he was appointed on adhoc basis for the next year. The committee which appointed the applicant on adhoc basis was not competent to appoint the applicant on adhoc basis as the post of Safety Officer is a Group 'B' post. Chief Accounts and Administrative Officer who has passed the orders which are enumerated above in para 5 (i) of this order is nothing but only the Office Note. Hence, prayed for dismissal of the OA. along with costs.

9. The applicant has replied to the pleas raised by the respondents and stated that the cause of action arises only after issue of Circular dated 13.1.1996, as such, the OA. cannot be said to be barred by time when he filed this OA. on 9.3.1996. It is further being stated that he was paid the salary of the post of Safety Officer and it is wrong to say that when adhoc appointment terminated during intervention, he was paid the salary of Supervisor.

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10. During the pendency of the OA., Government of India, Ministry of Finance, Department of Economic Affairs, India Security Press, Nashik Road passed the order No.29/EST-18-1 dated 6.8.1996 and 4.8.1998 which are enumerated below :- reverting the applicant to the post of Supervisor and thereafter appointing him on adhoc deputation basis.

11. The learned counsel for the applicant relied on 1997 (9) Supreme 329 - Smt.Vijay Goel & Ors. vs. Union of India & Anr. for the proposition that if appointments were made in accordance with the Rules which have continued for a number of years, appointments cannot be treated as ad hoc or fortuitous.

12. In the present case, the appointment of the applicant as Safety Officer was made w.e.f.14.9.1987, when neither Rules "India Security Press and Currency Note Press, Sr.Safety Officer and Safety Officer (Recruitment) Rules,1988" nor "India Security Press and Currency Note Press (Senior Safety Officers and Safety Officers) Recruitment Rules, 1995" were in force. As no rules were in force for recruitment to the post of Safety Officer, in absence of the Recruitment Rules, the respondents were within their rights to act on the administrative instructions issued from time to time.

13. The respondents are within their rights under Article 309 of the Constitution of India to frame Rules for recruitment of Senior Safety Officer and Safety Officer in their organisation. We are not convinced with the submission made by the learned

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counsel for the applicant that M.S.O. Rules were applicable and hence the respondents are not entitled to frame the rules or the rules which are in force in Bank Note Press, Dewas, Security Printing Press, Hyderabad, Security Paper Mills, Hoshangabad, India Government Mint, Bombay in governing the organisation of the respondents as they are under the same Ministry, the Rules which the said organisations are having the similar, same rules can be framed by the respondents.

14. We have reproduced the order of the appointment of the applicant w.e.f.14.9.1987 in para 5 of this order which clearly indicates that the appointment is by General Manager, I.S.P. Nasik Road. Order Ex.G (OA. page 85) which is signed by Chief Accounts and Administrative Officer states "on recommendation of the Selection Committee", on perusal of the file produced by the respondents, we find that a Selection Committee was constituted vide order dated 21.7.1987 which after due selection recommended the name of the applicant for the post of "Safety Officer" and the applicant was appointed on adhoc deputation basis for a period of one year, thereafter continued to be appointed from time to time till filing of OA. and even after filing of the OA. on 6.8.1998 for 3 years. As stated in para 12 of this order that in absence of Recruitment Rules, the respondents were within their rights to act on the administrative instructions issued from time to time, the appointment of the applicant, though mentioned adhoc, was as per the decision as to procedure

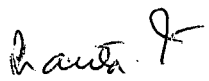
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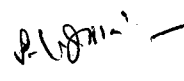
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prescribed by the respondents after due selection, against a vacant post and the applicant is fulfilling the eligibility criteria then prevalent, the applicant was allowed increments/crossing Efficiency Bar, worked for a period of about 9 years before filing of the OA., continues to work as such, his appointment is held to be on regular basis.

15. The respondents are within their rights to frame recruitment rules as discussed in 12 of the order. If the applicant fulfills the conditions laid down in the said Rules, he may be considered for the post of Senior Safety Officer.

16. In the result, OA. is partly allowed. It is declared that the applicant is holding the post on regular basis of Safety Officer since 14.9.1987 continuously. No order as to costs.


(SMT. SHANTA SHASTRY)
MEMBER (A)


(S.L. JAIN)
MEMBER (J)

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