

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO.1048/1996

THIS THE 27 TH DAY OF MAY, 2002

CORAM: HON'BLE SHRI S.L. JAIN. MEMBER (J)
HON'BLE SMT. SHANTA SHAstry. MEMBER (A)

Smt. Valsamma Mamachan,
Lower Division Clerk,
College of Military Engineering,
Dapodi, PUNE-411 031. Applicant

By Advocate Shri S.P. Saxena

v/s.

1. Union of India,
Through The Secretary,
Ministry of Defence,
DHQ, P.O.,
New Delhi - 110 011.
2. The Engineer-in-Chief,
Army Headquarters,
Kashmir House,
DHQ, P.O.,
New Delhi - 110 011.
3. The Commandant
College of Military Engineering,
Dapodi, Pune-411 031.
4. The Headquarters,
Southern Command ('A' Branch),
Pune - 411 001. Respondents

By Advocate Shri R.K. Shetty

(ORDER)

Per Smt. Shanta Shastry, Member(A)

The applicant was appointed as temporary LDC in the Headquarters Southern Command, Pune on 14.10.1971. She was on probation for two years. She was not appointed through employment exchange, but was appointed directly. She has been transferred to College of Military Engineering, Dapodi, Pune with effect from 07.6.1974 against regular vacancy of LDC. She was on

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probation with effect from 07.6.1974. She completed the same satisfactorily and was confirmed in the grade vide order dated 25.11.1991. She was declared quasipermanent in the LDC grade with effect from 14.10.1974 as per certificate enclosed by her.

2. Thereafter, the respondent No.4 took up the cases of those LDCs who have joined directly and not through the employment exchange with the Ministry of Defence for their regularisation vide letter dated 30.11.1987. In this letter it was also observed that the applicant's original appointment was not irregular and that she had already been declared as quasipermanent. Respondent No.1 conveyed sanction for regularisation of 98 Group-C non-technical employees, who had not been recruited through employment exchange. This was conveyed vide letter dated 01.10.1990 stating that the regularisation would be effective from the date of issue of the letter. It was further made clear that the period from the date of irregular appointment to the date of regularisation of 98 employees will not count for seniority or for promotion for higher grade but will count for pay, leave and qualifying service for retiral benefits. Applicant's name was included in the list of 98 employees who were regularised.

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3. Respondent No.3 addressed a letter on 31.12.1991 to Respondent No.2 stating categorically that the name of the applicant had been included erroneously in the list of irregularly appointed employees and hence her name needs to be deleted from the list of irregularly appointed employees.

4. The applicant also submitted a representation on 11.3.1992 to Respondent No.1 which was forwarded to Respondent No.3 with recommendations vide letter dated 26.3.1992. A further letter was forwarded by Respondent No.3 to Respondent No.2 on 09.3.1992 with the same request. Respondent No.2 vide letter dated 18.8.1992 informed that the matter was being taken up with the Ministry of Defence.

5. Thereafter, 17 employees of the College of Military Engineering, who had been aggrieved by the letter dated 01.10.1990 filed OA No.315/93 in the Tribunal. Another similarly situated employee also had filed OA No.322/87 which was decided on 08.7.1992 in favour of the applicant therein. After the pronouncement of the judgment in OA No.315/1993 Respondent No.3 regularised the applicants therein from the date of their appointment as temporary LDC. Their services were counted from the date of their appointment as temporary LDC towards seniority and promotion to the

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higher grade. The applicant being similarly placed, expected to be extended the same benefit. She represented on 05.6.1995 for the same. Respondent No.2 vide his letter dated 01.8.1995 addressed to Respondent No.3 recommended that the applicant's case should be considered at par with all other regular employees for all service matters. However, the Ministry of Defence did not agree vide letter dated 26.9.1990 to extend the benefit of the judgment in the earlier OAs in the case of the applicant. The applicant then sent a legal notice on 22.7.1996 and also submitted another letter on 16.8.1996 requesting for promotion for the post of UDC. The request was rejected both for regularisation as well as for promotion vide letter dated 20.9.1996 from Respondent No.3. Being aggrieved the applicant has approached this Tribunal with the prayer that applicant be declared to deemed to have been regularised from the date she had been first appointed and subsequently confirmed on completion of probation period, the service rendered by her since her first appointment be treated for all purposes including seniority and promotion to the post of UDC, to treat the applicant in similar and identical manner as those in OA No.315/93 to consider her for promotion to the post of UDC against the vacancies that occurred on 30.6.1996 and 31.7.1996 with all consequential benefits and to quash and set aside the impugned orders dated 20.9.1996 and the letter dated 01.8.1995 and 26.6.1996.

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6. The contention of the applicant is that when she was taken directly as temporary LDC there was a National emergency and Respondent No.4 had all the powers to recruit LDCs directly. She had passed the typing test and also completed her probation satisfactorily. Similarly placed employees, who had approached this Tribunal were granted regularisation with effect from the date they had been temporarily appointed. They also had not come through employment exchange. This was so done mainly to meet the situation and emergency requirement of staff on account of National Emergency then prevailing in India. ,Further, similarly placed persons like the applicant had been granted relief.

7. The applicant also submits that the appointment one Shri C.Thomas was also irregularly appointed as he too did not come through the employment exchange at the time of his new appointment. He was not regularised by any court order, but he has been given two promotions. This amounts to discrimination. Similarly one Shri R.R. Nair working as UDC had been promoted to the post of UDC without being regularised by Ministry or by any court order.

8. The respondents submit that there were no such powers given to Respondent No.4 to recruit persons directly without being sponsored through employment

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exchange. Respondents have produced the relevant letter showing that no such powers had been delegated. Therefore, the applicant's appointment being irregular was regularised by the respondents on 01.10.1990 along with similarly placed persons. The respondents did admit that regularisation was given from the date of initial temporary appointment to those who were applicants in OA Nos. 315/93 and 322/87 but the same cannot be extended to the applicant as she was not a party to the aforesaid OAs.

9. The learned counsel for the respondents is also relying on a recent judgment of this Tribunal in OA No.670/2000 decided on 28th May, 2001. In this case also the applicant had sought his regularisation from the date of his appointment as LDC i.e. 30.12.1966 and to reckon his seniority accordingly for next promotion to the post of UDC. The OA was dismissed on the ground of delay and laches. Though the regularisation orders were issued on 01.10.1990 the applicant approached this Tribunal only in the year 2000. The Tribunal also was constrained about unsettling the settled seniority while granting benefit after a long lapse of time. In the present case also according to the respondents, the applicant has approached only in 1996 whereas the cause of action arose in 1990 and therefore, on the same ground of limitation, delay and laches, the applicant's case deserves to be dismissed.



10. We have heard the learned counsel for both the parties and have also perused different judgments. There is no doubt that the applicant's case is identical to the case of the applicants in OA No.315/93 and 322/87. Normally in such a situation, the benefit of the judgment in the aforesaid OA ought to have been extended to the applicant, but we find that the applicant did not bother to agitate well in time when her colleagues similarly placed had already got the benefit. One judgment was pronounced in 1992 and another in 1993. The applicant represented on 05.6.1995 after the judgment in OA No.315/93 and 322/87. She has not explained as to why she was keeping quiet from 13.8.1993 till 05.6.1995 or from 08.7.92 till 05.6.95. She has only made the letter dated 20.9.96 rejecting her promotion to UDC as the cause of action but that is not correct. The date of rejection of her representation cannot be taken to waive the limitation as also the delay and laches. It has been clearly laid down in Bhoop Singh Vs. Union of India & Ors JT 1993 SC 322 that judgments and orders of the courts in other cases do not give cause of action. The cause of action has to be reckoned from the actual date. JT 1994 (3) SC 126 the Supreme Court observed that the party should pursue their rights and remedies promptly and not sleep over their rights. If they choose to sleep over their rights for a long time, the court may decline to interfere in



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their discretionary jurisdiction under Article 226 of the Constitution of India. The applicant has also not chosen to make those persons who would be aggrieved if the applicant is provided with the relief sought for, as parties. Non joinder of parties is also a legal flaw in the case of the applicant. Therefore, on the ground of limitation, delay and laches, the OA fails. We agree with the judgment of this Tribunal in OA No.670/00 in this respect. In the result, the OA is dismissed. No costs.

Shanta S

(SMT. SHANTA SHSTRY)
MEMBER (A)

S.L. Jain

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

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- *Judgement despatched*
to Applicant, Respondent(s)
on 21/4/68