

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 1093 of 1999.

Dated this Friday, the 8th day of December, 2000.

Dr. (Mrs.) S. P. Shere, Applicant.

Shri K. R. Yelwe, Advocate for the applicant.

VERSUS

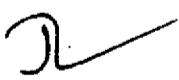
Union of India & Others, Respondents.

Shri V. S. Masurkar, Advocate for Respondents.

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

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

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library.


(B. S. JAI PARAMESHWAR)
MEMBER (J)

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Dr. (Mrs.) S. P. Shere,
M.B.B.S., M.T.P. Trained,
Asstt. Surgeon, Gr.I,
Naval Hospital, Powai,
Mumbai - 400 078.

... *Applicant.*

(By Advocate Shri K.R. Yetwe)

VERSUS

1. *Union of India through the Secretary to the Government of India, Ministry of Defence, Raksha Bhavan, New Delhi - 110 001.*
2. *Chief of Naval Staff, Naval Headquarters, New Delhi - 110 001.*
3. *The Flag Officer Commanding-In-Chief, Western Naval Command, Head Quarters, S.B. Singh Road, Bombay - 400 023.*
4. *The Admiral Superintendent, Naval Dockyard, Mumbai - 400 023.*
5. *The Chairman, Union Public Service Commission, Dholpur House, Sharjah Road, New Delhi - 110 001.*
6. *The Director General of Armed Forces Medical Service, Ministry of Defence, New Delhi - 110 001.* ... *Respondents.*

(By Advocate Shri V. S. Masurkar)

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OPEN COURT ORDER

PER : Shri B.S. Jai Parameshwar, Member (J).

Heard Mr. K. R. Yelwe, the Learned Counsel for the applicant and Shri V. S. Masurkar, the Learned Counsel for the respondents. The applicant herein was initially appointed as Assistant Surgeon Grade-I on 16.02.1982 on ad hoc basis under the Respondents. They attempted to terminate her services by order dated 12.01.1985. The applicant challenged the said order of termination upto the Hon'ble Supreme Court. The Hon'ble Supreme Court in their order dated 03.04.1989 set aside the letter of termination dated 12.01.1985 and made it clear that the appellant should not claim the status of a regular employee unless her services were regularised in accordance with the law.

2. Thereafter, the applicant approached this Tribunal in O.A. No. 605/89 which was decided on 23.03.1994. In the said O.A. the following directions were given :

"The only order that we can make in this O.A. and O.A. No. 617/89 where the facts are identical would be that the services of the applicant shall not be terminated merely on the ground that they have been working on ad hoc basis, except upon the regular appointment being made through the U.P.S.C. or if any disciplinary action is to be taken as a result of the disciplinary proceedings. The respondents shall take early steps for regularising the appointments of the applicants by making a reference to the Union Public Service Commission in accordance with the recruitment rules. We would direct the respondents to initiate such action as early as possible. With these directions, the O.As. are disposed of."

3. The applicant has filed this application in a way to direct the respondents to implement the directions given in O.A. No. 605/89.

4. The respondents have filed a written statement. In the written statement they have stated as follows :

"The applicant's service could not be regularised through regular appointment because of unification of certain posts of Demonstrators/Assistant Surgeon Grade-I and Civilian Medical Officers (CMO) under DGAFMS, MOD. There were 32 posts of Demonstrators and 55 posts of Asstt. Surgeon Grade-I in various offices under the Administrative Control of DGAFMS. All these 87 (32 + 55) posts and 17 posts of CMOs under Indian Navy, were grouped together vide Govt. of India, MOD letter No. 9(6)/93/D(Med) dated 21.12.93. From this relevant date i.e. 21-12-1993, all the recruitment action of such isolated posts of Navy was centralised with the posts under DGAFMS being made the cadre controlling authority. The Recruitment Rules of Navy Gr.A. Gazetted posts (Asstt. Surgeon SRO 71 dated 02.01.1989, were amended vide SRO 115 of 13-7-95 by the cadre controlling authority i.e. DGAFMS under the short title as CMO, SR.CMO and Asstt. Director, Medical Services Recruitment Rules 1995 came into effect from the date of notification of this SRO on 13-7-95. Applicant who is functioning as adhoc Asstt. Surgeon Gr.I, is now governed by SRO 115/95. The condition for appointment is 10% by Direct Recruitment and 90% by transfer on deputation. The total No. of 104 CMO's equivalent to Asstt. Surgeon Grade-I are sanctioned where in only 10% i.e. 10.4 i.e. 10 can be under direct recruitment. As against allocation of 10 posts for direct recruitment, the actual number of Direct Recruitment is already 39 i.e over borne by 29 Direct Recruitment CMO's. Therefore, the Direct Recruitment action could not be initiated for the applicant and she continues to be on adhoc basis. Now the action is in hand to revise the percentage of Direct Recruitment quota and only thereafter, earnestly all action will be taken in compliance to Hon'ble Tribunal's order and on finalisation of Recruitment Rules, the applicant will have opportunity to compete with others under direct recruitment.

Under the aforesaid circumstances, the respondents respectfully submit that the applicant is already being granted age relaxation and hence as and when the quota for direct recruitment is increased, she will be considered according to rules and hence the present application is devoid of merit and deserves to be rejected."

5. The respondents have explained their difficulties in not regularising the services of the applicant. However, they submit that they are moving the ~~Tribunal~~ ^{Government} to amend the Recruitment Rules to enhance the direct recruitment quota, whereupon the respondents will adhere to the directions given in O.A. No. 605/88.

6. We make it clear that the services of the applicant shall not be dispensed with only because she is working on adhoc basis.

7. The respondents shall take all steps to regularise the services of the applicant as expeditiously as possible. The services of the applicant shall be regularised as per rules then in force.

8. The O.A. is disposed of with the above directions. Interim Relief granted on 07.01.2000 shall stand vacated. No order as to costs.

Shanta J-
(Smt. SHANTA SHAstry)
MEMBER (A).

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B.S.JAI PARAMESHWAR
(B.S.JAI PARAMESHWAR)
MEMBER (J).

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