

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 298 of 1999.

Dated this Friday, the 5th day of April, 2002.

Smt. Sandhya Madhusudan Kadam, Applicant.

Shri A. D. Shetty, Advocate for the
Applicant.

VERSUS

Union of India & Others, Respondents.

Shri R. R. Shetty, Advocate for
Respondents No. 1 to 4.

Shri V. S. Masurkar, Advocate for
Respondent No. 5.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

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

- (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.



(B. N. BAHADUR)
MEMBER (A)

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Smt. Sandhya Madhusudan Kadam,
2, Sagar Apartments,
St. Francis Road,
Vile Parle (W),
Mumbai - 400 056.

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Applicant

(By Advocate Shri A. D. Shetty)

VERSUS

1. Marine Engineers Research
Institute,
Haybunder Road, Sewree,
Mumbai - 400 033.
2. Shri A. K. Sehgal,
Deputy Director,
Marine Engineers Research Institute,
Haybunder Road, Sewree,
Mumbai - 400 033.
3. Shri B. K. Saha,
Director General of Shipping,
Jahaz Bhavan, Walchand Hirachand
Marg, Mumbai - 400 038.
4. Shri S. P. Choubey,
Deputy Director (Rajbasha),
Director General of Shipping,
Jahaz Bhavan, Walchand Hirachand
Marg, Mumbai - 400 038.
5. Flag Officer, Commanding-In-Chief,
Hq. Western Naval Command,
Sahid Bhagat Singh Marg,
Fort, Mumbai - 400 001.

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Respondents.

(By Advocate - Shri R. R. Shetty for
Respondent No. 1 to 4 and Shri V. S.
Masurkar for Respondent No. 5)

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O R D E R (ORAL)

PER : Shri B. N. Bahadur, Member (A).

This is an application made by Smt. S. M. Kadam, seeking the relief from this Tribunal as follows :

- "(a) That the Impugned Order bearing No. Rabha/5(29)/95 dated 5.11.98, No. Rabha/5(29)/95 dated 17.3.1999 and No. Estt-145 dated 18.3.1999 be quashed and set aside on the grounds mentioned herein above and her appointment as Junior Hindi Translator be continued on regular basis with the Respondent No. 1, M.E.R.I. in terms of the offer of appointment and office order, both dated 8.6.1998.
- (b) For such further and other Orders as the facts and circumstances of the case require.
- (c) For costs of the Application."


2. The facts of the case, as brought forth by the Applicant, are as follows :

She was working in the Indian Navy as Lower Division Clerk since 24.12.1982, and her parent office was with the Western Naval Command, Mumbai (Respondent No. 5). The Applicant was transferred to the Marine Engineering Research Institute, Mumbai, (in short M.E.R.I.) on deputation basis as Junior Hindi Translator w.e.f. 01.03.1996. Even though the deputation was for a period of one year, this continued to be extended each time for one year w.e.f. 01.03.1997 and thereafter w.e.f. 01.03.1998. It is contended by the Applicant that Respondents (M.E.R.I.) was unable to find a suitable candidate for the post of Junior Hindi Translator, and that she had applied for regularisation vide letter dated 18.12.1997. The M.E.R.I. had asked Western Naval Command for a 'No Objection Certificate' to extend her deputation and that the Western Naval Command had in

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fact issued a 'No Objection Certificate' for absorption of the applicant stating that if absorption was not possible, the Applicant should be asked to report back to Western Naval Command. Relevant documents are annexed.

3. The further development recounted is that Applicant was made an offer of appointment dated 08.06.1998 (page 34 of the Paper Book) as temporary Junior Hindi Translator and that, as a consequence, she was appointed to this post vide order dated 08.06.1998. The applicant contends that she has been working with full satisfaction of superiors since then and is now aggrieved by the impugned orders dated 05.11.1998, 17.3.1999 and 18.3.1999. It is with this grievance, and the grounds taken in the O.A. and pleaded on her behalf, that the Applicant  approaches this Tribunal.

4. The Respondent Nos. 1 to 4 have filed a Written Statement, which sets out the facts of the case in some detail. It is stated, inter alia, that there is no basis for Respondent No. 5 to presume permanent absorption of the Applicant by Respondent Nos. 1 to 4 and that, even presuming that there was intention to absorb the applicant, she would have been on probation for two years before confirmation. It is further stated that the Staff Selection Commission had asked Respondents to follow the procedure of direct recruitment, and secure eligible candidates through all other permissible channels. It is asserted that as per rules, absorption of a deputationist can only be on transfer basis and that this can come about only if in the initial notification for deputation the fact of "likely

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absorption" was indicated. The Applicant has a permanent lien in the Western Naval Command, where she rightly belongs. In the further portion of the Written Statement an attempt has been made to meet, parawise, the averments made in O.A.

5. It must be mentioned at this stage that, during the course of argument, an important issue that came up for consideration and argued upon by respective sides related to eligibility of the Applicant vis-a-vis recruitment rules. In this connection, the Respondents were allowed to file a separate affidavit which is dated 19.03.2002 and placed in the Paper Book at page 82. This will be considered ahead.

6. Respondent No. 5 has also filed a reply statement, first recapitulating the base facts, which are basically admitted. The point about 'No Objection Certificate' already described has been made indicating that Respondent No. 5 has indicated no objection for regular appointment of the Applicant as Junior Hindi Translator at M.E.R.I. and that, in fact, the Director of M.E.R.I. has issued an order permanently absorbing the Applicant w.e.f. 09.06.1998 vide their letter dated 08.06.1998 (Exhibit R-3). Also that consequent upon this, the Applicant has been permanently relieved of her duties vide orders of Western Naval Command H.Q. dated 30.06.1998 (Exhibit R-4). Hence, it is concluded that as far as Respondent No. 5 is concerned, the Applicant has no right for claiming any relief against them.

7. We have heard Shri A.D. Shetty, Learned Counsel for the Applicant, Shri R.R. Shetty, Learned Counsel for Respondent Nos.

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1 to 4 and Shri V.S. Masurkar, Learned Counsel for Respondent No. 5. After taking us through various documents and facts, the Learned Counsel for the applicant stressed on the fact that Western Naval Command had relieved the Applicant and that facts like issue of new Provident Fund No. and the very letter dated 30.06.1998 at exhibit-I by Western Naval Command show that Applicant had infact become a employee of Respondent No. 1. It had been argued that an offer letter and an appointment letter had been issued to the Applicant after a conscious decision, and that this has created a right in favour of the Applicant.

8. Learned Counsel for the Applicant attempted to take support from the case of Umapati Choudhary V/s. State of Bihar & Another reported at 1999 II CLR 336 taking us over the details of the case and the ratio decided. It was his contention that the ratio of this case applies squarely to the facts of the present case. Learned Counsel also took us to the Recruitment Rules and argued that the Applicant was fully qualified as per the Recruitment Rules. He also made the point that the reasons now being brought forth in the affidavit-in-reply have not been brought forth in any of the impugned orders.

9. Learned Counsel for the Respondent Nos. 1 to 4, Shri R.R. Shetty, took us over the reply filed by the Respondents, first reiterating the point that is recorded at para 5 of the Written Statement. He then emphasised that the absorption of the Applicant would have taken place only by the process of transfer on deputation and that too, if such an intention or possibility was recorded in the original notification through which



deputation applications were invited. This was not a case in the present O.A. before us and, therefore, the Applicant has no right and in fact cannot be absorbed in this manner in the office of M.E.R.I. It is indicated by Shri R.R. Shetty that full procedure of absorption had not been followed especially as required in terms of the settled law in the case of The Excise Superintendent Malkapatnam, Krishna District, Andhra Pradesh V/s. K.B.N. Visweshwara Rao & Others reported at 1996 (6) SCALE 676 and therefore this appointment could not be taken to be a proper appointment.

10. During the course of argument, the point as to whether the Applicant is eligible as per Recruitment Rules came up and in the affidavit filed, the Applicant had enclosed the relevant documents like Degree certificate and qualification possessed by the Applicant and made arguments vis-a-vis the documents regarding the eligibility as per Recruitment Rules in terms of qualification. We had purposely asked for this, as we wanted to rely on the documents available on normal course with the Respondents, in regard to qualifications of the Applicant. Learned Counsel for the Respondents, Shri Shetty argued that the main reason why the Applicant was not eligible as per Recruitment Rules was that she had not studied Hindi in all her three years of Bachelor's Degree ~~and that she had not studied it for all the three years.~~ Bmb

11. Learned Counsel, Shri Masurkar, stated that Respondent No. 5 was not liable in any way. They have relieved the applicant after communicating No Objection to absorption, and have no vacancy for her.

Bmb

12. The facts, in the first instance, leading to the appointment (by deputation) of the Applicant in M.E.R.I. are not controverted. Her deputation came to be extended year to year until 1998-99. In between, she had applied for absorption on 18.12.1997. Now the important point that comes up here is that the Respondents themselves offered her an appointment on 08.06.1998 (page 19 of the Paper Book). In this offer, it is stated, inter alia, that the Applicant who is recognized as working on deputation as Junior Hindi Translator is offered a temporary appointment to the same post. No where it is indicated that this is an ad hoc arrangement; there is no whisper of her having to leave the post when regular selection is made. On the same date, orders of appointment are made, where there is a clear mention that this order is made on the terms and conditions as stipulated in the Memorandum of the same date (which is the earlier letter of appointment referred to above). It is also to be noted here that the order stated that the Applicant will be under probation for a period of two years. The Office Order of 08.06.1998 providing appointment is reproduced below :

"The Director, Marine Engineering and Research Institute, Calcutta is pleased to appoint Smt. S. M. Kadam to the post of Jr. Hindi Translator in Marine Engineering and Research Institute, Mumbai on a purely temporary basis with the initial pay of Rs. 4,750/- in the scale of Rs. 4500-125-7000 plus usual allowances until further order with effect from 09.06.1998 (F.N) on the terms and conditions as stipulated in this Office Memo No. Est/145 dated 08.06.1998 and accepted by her in her letter dated 08.06.1998.

Smt. Kadam will be under probation for a period of 2 (Two) years."

It is to be seen that the order has all the ingredients of a conscious decision for regular appointment and is not in the nature of ad hoc appointment. We are not going merely by the

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absence of the use of word "ad hoc" but as stated, the order includes all ingredients like provision of regular scale of pay, liability to serve anywhere in India, other conditions governing the appointment and importantly, the stipulation of a two years probation.

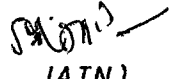
13. While we are not drawing conclusions, in exclusion, from Western Naval Command having relieved her as being the basis of her right, that background cannot be altogether put out of sight, as it was in the knowledge of Respondent No. 1 to 4 before appointment of the applicant. It must be stated that it is settled law that deputation to an office or organisation does not create right for absorption. It is also settled that the period of that deputation, however long, does not help; but this is not a case where the deputation had continued. Had that been the case, the Applicant would have had no right. However, in the background of the appointment as made, and discussed above, the right gets created. We are also not impressed by the argument made by Learned Counsel for M.E.R.I. to the effect that absorption is not possible since the original notification did not indicate such a possibility. Suffice to say that the Recruitment Rules allows this.

14. In the light of the above, we therefore proceed to examine the eligibility of the applicant vis-a-vis recruitment rules because this would be an important point. (We even adjourned the case and the background of the additional affidavit filed, etc. have been reproduced above). The short point that emerged on controversy regarding the qualification, as made by the Learned Counsel for Respondent Nos. 1 to 4 was that while the applicant possess a M.A. degree in Hindi, the requirement of

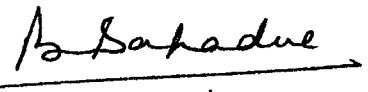


English Language at the level of Bachelor's degree was not complied. Even the marks were not taken into consideration for award of the Class at degree level. His main objection was that although the Applicant had English as a subject at Bachelor's level and had admittedly passed the same, she did not study English for all three years. This is an extraneous matter being brought into play. This point we have examined carefully and find it to have no basis. It is not stipulated in this manner in the Recruitment Rules and it is an extraneous and unsustainable argument. Another point was also taken by the Learned Counsel that the requirement of English was stipulated in the Recruitment Rules as being one of "compulsory and elective subject". This phrase is not at all clear. If a person takes both English and Hindi for elective and compulsory, this would probably amount to a Honor's Degree in English. What was obviously intended here was the word "and/or". This kind of interpretation would be a wrong interpretation with reference to para 15 of the Recruitment Rules when read as a whole.

15. In view of the above discussions, the O.A. deserves to be allowed and is hereby allowed. The O.M. dated 05.11.1998 and letter dated 17.3.1999 from Directorate General of Shipping and also the O.M. dated 18.03.1999 from the Marine Engineering & Research Institute are hereby quashed ^{and set aside} We note that the Applicant is continuing on the post in accordance with the interim order dated 28.04.1999. There will be no order as to costs.


(S.L. JAIN)
MEMBER (J)

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(B.N. BAHADUR)
MEMBER (A).