

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.No. 2/1999

Tuesday this the 10th day of December, 2002

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MRS. SHANTA SHASTRY, ADMINISTRATIVE MEMBER

Shri Mangesh Prabhakar Mhatre,
at present working as
Bio Medical Engineer in AIIPMR
Haji Ali, Mumbai
residing at 6-B, Ashirwad 89
Mughbat Street, Girgaon,
Mumbai.4.

...Applicant

(By Advocate Mr. S.P.Kulkarni)

V.

1. Union of India, through the
Director General of Health
Services, Ministry of Health &
Family Welfare, Govt. of India,
Nirman Bhavan, Moulana Azad Road,
New Delhi.11.
2. The Secretary,
Department of Personnel & Training,
Central Secretariat,
North Block,
New Delhi.11.
3. The Director,
All India Institute of Physical
Medicine and Rehabilitation,
Haji Ali Park, Mahalaxmi
Mumbai-34.
4. The Chairman,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.1.Respondents

(By Advocate Mr. P.M.Pradhan)

The application having been heard on 10.12.2002, the
Tribunal on the same day delivered the following:

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O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The undisputed facts of the case can be stated as follows.

The applicant who possess^{es} the qualification for recruitment to the post of Bio Medical Engineer pursuant to an advertisement issued by the third respondent applied and he was selected and appointed on an adhoc basis with effect from 7.11.1987. He was continued on adhoc basis with intermittent artifricial breaks. The continuance of the adhoc service for a long time without prior approval of the DOPT having been brought to the notice of the Ministry, the applicants services were to be terminated. While so the applicant filed OA 196/98. Noting that the matter of regularisation of the applicant was pending at highest level of the Government the application was disposed of with a direction to the respondents to consider the case of the applicant for regularisation as per the rules and to pass appropriate orders within two months providing further that should the order be adverse to the applicant it should not be implemented for a period of fifteen days from the date of its communication. However, by the impugned order Annexure.A dated 17.12.98 the request of the applicant for regularisation was turned down and this was communicated to the applicant by Annexure.B order. Aggrieved by that the applicant has

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filed this application seeking to set aside the impugned orders for a declaration that the applicant is regular in the post of Bio Medical Engineer with effect from 16.11.87 and for a direction to the respondents to regularise the services of the applicant with effect from the date of his initial appointment.

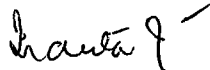
2. The respondents have filed a detailed reply statement resisting the claim of the applicant. However, when the application came up for hearing, learned counsel of the respondents submitted that as steps for filling up of the vacancy as per the primary mode of recruitment prescribed in the Recruitment Rules namely transfer on deputation failed, a proposal has been sent to the UPSC on 13.11.2002 seeking permission to adopt alternative method of recruitment namely direct recruitment the Director ^{Sent the proposal} ~~recommending the case~~ of the applicant for regularisation since the applicant satisfies the eligibility conditions under the Recruitment Rules and has been working ever since 1987. Under these circumstances, we are of the considered view that the appropriate course would be disposing of this application directing the UPSC to give an appropriate decision in the matter of regularisation of the services of the applicant and directing the respondents to consider the applicants regularisation on the post of Bio Medical Engineer on which he has been working for the last fifteen years. Counsel on either side agree that this may be done.

Corrected as per the orders dtd. 27-02-04, passed by Hon'ble C.A.T. while passing the orders on Review Application No 66/03 (एम्. ए. देशपांडे) 913/04

उप निबंधक,
केंद्रिय प्रशासनिक अधिकरण,
सुप्रीम कोर्ट, नया दिल्ली,
'मुलेकाव' विक्टोरिया, विक्टोरिया रोड,

3. In the consequence of facts and circumstances and in the light of the submission made by the learned counsel on either side, we dispose of this application directing the respondents 1 and 4 to consider the regularisation of the applicant on the post of Bio Medical Engineer in the light of the recommendations made by the third respondent since the applicant satisfies the eligibility criteria in the recruitment rules and has been working on the post for last fifteen years. Appropriate decision in the matter shall be taken and communicated by the respondents within a period of three months from the date of receipt of a copy of this order. We direct that the services of the applicant shall not be terminated till an order on his regularisation is served on him. No costs.

Dated the 10th day of December, 2002



SHANTA SHASTRI
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

(s)

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

R.P.No.66/2003 in OA.NO.2/99

Dated this the 29th day of Feb 2004.

CORAM : Hon'ble Shri A.K.Agarwal, Vice Chairman

Hon'ble Shri S.G.Deshmukh, Member (A)

1. Union of India
through the Director,
Director General of
Health Services,
Ministry of Health & Family Welfare,
Nirman Bhavan, New Delhi & Ors.

...Applicant
(Original
Respondents)

By Advocate Shri S.S.Karkera
for Shri P.M.Pradhan

vs.

Mangesh Prabhakar Mhatre,
R/at 6-B, Ashirwad,
89, Mugbhat Street,
Girgaon, Mumbai.

...Respondent
(Original
Applicant)

By Advocate Shri S.P.Kulkarni

ORDER

{Per : Shri A.K.Agarwal, Vice Chairman}

This application for reviewing the order dated 10.12.2002 passed in OA.No.2/99 has been filed by the petitioner (Original Respondents). The petitioner (Original Respondents) had filed a Writ Petition in the High Court against the said order of the Tribunal. The High Court while dismissing the Writ Petition made following remarks.

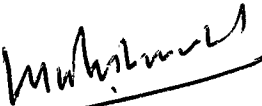
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for

"An appropriate course in such cases is to approach the same court and get the record corrected. In the instant case, as the statement was made before the Tribunal which has been reflected in the order and on that basis the order impugned in this petition was passed, it cannot be said to be illegal or contrary to law".

2. In view of the observation of the Hon'ble High Court indicated above, the petitioner (Original Respondents) has filed this Review Petition for making the necessary correction in the order dated 10.12.2002 passed in OA.NO.2/99. The words "Recommending the case" should be replaced by the words "sent the proposal". As a result, the 10th line of Para 2 reads as follows :- "Director sent the proposal of the applicant for regularisation".

3. The above corrections may be carried out. The Review Petition is disposed of accordingly.


(S.G. DESHMUKH)
MEMBER (J)


(A.K. AGARWAL)
VICE CHAIRMAN

mrj.