

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 529/2000

DATE OF DECISION:22/02/2001

Shri Jayashree Anil Sathaye

Applicant

Shri G.K.Masand

-----Advocate for
Applicant.

Versus

Union of India & Anr.

-----Respondents.

Shri V.S.Masurkar

-----Advocate for
Respondents.

Hon'ble Shri Justice Ashok Agarwal, Chairman.
Hon'ble Shri B.N.Bahadur, Member(A)

1. To be referred to the Reporter or not? *Yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *No*
3. Library. *No*

B.Bahadur

(B.N.BAHADUR)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:529/2000
DATED THE 22ND DAY OF FEB, 2001

CORAM:HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

Jayashree Anil Sathaye,
working as Assistant Director
(Official Language) at Currency
Note Press, Nasik Road and
residing at
'Vishram', Sathaye Bungalow,
Gole Colony, Nasik - 422 002. ... Applicant

By Advocate Shri G.K.Masand

V/s.

1. Union of India through the
Secretary, Ministry of Finance,
Department of Economic Affairs,
New Delhi - 110 001.
2. The General Manager,
Currency Note Press,
Nasik - Road 422 101. ... Respondents

By Advocate Shri V.S.Masurkar

(ORAL) (ORDER)

Per Shri B.N.Bahadur, Member(A).

The applicant in this case Smt.Jayashree Anil Sathaye comes up to the Tribunal seeking the reliefs as follows:-

VIII (a)That this Hon'ble Tribunal will be pleased to direct the Respondents to treat the Applicant as having been regularly promoted to the post of Assistant Director (Official Language) with effect from 31/3/1992 when she was promoted to the said post vide Order dated 3/4/1992 (Ex.'B').
(b) That in the alternative to prayer Clause (a) this Hon'ble Tribunal will be pleased to direct the Respondents to treat the Applicant as having been regularly promoted to the post of Assistant Director (Official Language) with effect from 20th October, 1993 when the period of two years lien held by Shri R.K.Gupta to the post of Assistant Director (Official Language) expired after Applicant's promotion to the said post with effect from 31/3/1992.
(c) That all consequential benefits including seniority in the post of Assistant Director

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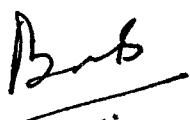
(O.L.) with effect from 31-3-1992/20.10.1993 be granted in favour of the Applicant.

(d) That costs of this Application be awarded in favour of the Applicants A N D

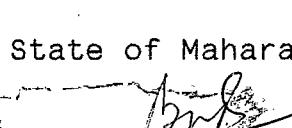
(e) That such other and further reliefs as are expedient be granted in favour of applicant.

2. The case of the applicant is that she joined in the Office of the Respondent No.2 as Junior Hindi Translator, and was promoted to the post of Assistant Director (Official Languages) (ADOL) earlier called Hindi Officer, w.e.f. 13/3/92. The earlier incumbent Shri R.K.Gupta, who went on deputation in October, 91 retained the lien of the post (ADOL) for two years, as per the rules. The contention of the applicant is that she has been working throughout from this date (13/3/92) and that she ought to be granted seniority with effect from 13/3/92 or in the alternative from 20/10/93 when the period of two years lien held by aforesaid Shri R.K.Gupta, on the post of Assistant Director Official Language, expired.

3. The Respondents have filed a written statement where the claims of the applicants has been resisted. It is stated in the reply statement that the Applicant had been appointed w.e.f. 13/2/92 only on adhoc basis for specified periods and that such periods has been renewed with breaks. This position is explained in a statement form very lucidly, at para-8 of the written statement. Hence, it is averred that the applicant has no claim to the seniority that she is seeking. It is suggested that applicant could not be regularised to the said post from the date of termination of lien of Shri R.K.Gupta, as the matter is subjudice (present OA).



4.....We have seen the papers in this case and have heard Learned Counsel on both sides, Shri G.K.Masand for the Applicant and Shri V.S.Masurkar for Respondents. The learned counsel for the applicant, Shri Masand, took us through the facts of the case and also the judgement made by this Bench of the Tribunal in OA-1254/1992 (filed by Shri Lokhande), and decided on 24/8/99 and the other OA - 1206/94 filed by the present applicant and decided on the same day 24/8/99. The Learned counsel made the point that the breaks which have been sought to be shown do not show the correct position and in actual fact applicant has been working continuously on the higher post. She has a good record and this is proved by the fact of her ultimate selection in 1999.

5. The learned Counsel Shri G.K.Masand also sought to take strong support from the ratio of the case decided by Supreme Court in the matter of Direct Recruits Class-II Engineering Association & Ors V/s. State of Maharashtra, ^{AI.R. 1990 SC 1607} para-44, ratio 'B' 

6. Learned counsel, Shri V.S.Masurkar, first took the point regarding adhoc nature of services and stressed on the grounds taken in the written statement to the effect that no claim can be made on such service, specially in a situation where Recruitment Rules require proper selection by a DPC, this being a selection post. Shri Masurkar also took the legal arguments that, infact, the claim now being sought to be made by the applicant should have been made when she first came up in the earlier aforesaid OA, and that having failed to do so, the applicant is now estopped from doing so.

7. In regard to the first point we are not convinced that the applicant is estopped from making this application. There is merit in the contention made that the grievance that was said to

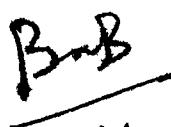
be made in that particular OA referred related to the step taken by Respondents in seeking to filling up of the post as being Reserved for Scheduled Caste. It is true, as can be seen from reading of the judgement, that this was the specific point agitated and decided by the Bench of this Tribunal. Hence we cannot hold that the applicant is estopped from coming up in the present OA.

8. We have also considered the several points raised by the Respondents, i.e. in regard to the adhoc nature of appointments right from 1992 till 1999 when a regular order was issued by the Ministry. On a perusal of the same statement at para-8 referred to above, we find that in the adhoc appointment of more than half a dozen occasions have been made with breaks of two to three days each time. These breaks are no doubt technical in nature. She has continued in the same post with breaks of two or three days each time. Learned Counsel Shri Masand's point is that she has even continued to get increments for all these years. Importantly, however, the matter has to be decided in the light of the Supreme Court judgement referred to above, (Direct Recruits Class-II Engineering Association & Ors. V/s. State of Maharashtra) A>I>R. 1990 SC 1607 para-44, in which the Hon. Apex Court has summed up the judgement in sub para A & B of para-44 reads as below:-

44(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop gap arrangement, the officiation in such post cannot be taken into account for considering seniority.

44(b) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

...5.


BnB

9. This ratio decided has clear application to the facts of the case before us and would therefore entitle the applicant to relief as sought for except with reference to the date.

It is clear to us that any relief on this account cannot come up w.e.f. 13/3/92. Infact, the alternative prayer at clause (b) of para-8 seeks the benefit from 20/10/93. In this regard, we have however considered the arguments made by Shri V.S.Masurkar, Learned Counsel for the Respondents that the post was a selection post and that the process of consideration of the applicant's case or anybody's case by a DPC is essential even if from a back date. We find substance in this contention and therefore do not directly order promotion, although the basic principles in the ratio of Supreme Court case referred to above is held to be applicable.

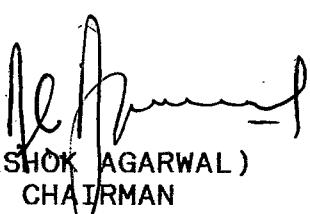
10. We therefore hold that the Respondents shall hold a DPC as per rules as if to consider the case of applicant as arising on 20/10/93. The DPC shall consider the record, etc as per rules, accordingly and should they find the applicant fit for promotion, she will be promoted w.e.f. 20/10/93 and provided all consequential benefits.

11. The OA is allowed in the terms of the orders/direction above. The process of holding the DPC shall be completed within a period of four months from the date of receipt of copy of this order. There will be no orders as to costs.

B.N.Bahadur

(B.N.BAHADUR)
MEMBER(A)

abp


(ASHOK AGARWAL)
CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Contempt Petition No. 116/2001
in O.A. No. 529 of 2000

Dated: 8.3.2002

Shri G.K. Masand, appearing for applicant, states that Respondents have filed a Writ Petition in which the judgment of this Tribunal stands stayed.

As operation of judgment has been stayed, we cannot proceed in the matter any further in view of the said order.

At this stage, as we cannot proceed in the matter, we would like to drop the proceedings and keep it open for the applicant to pursue the remedy, if any wilful dis-obedience of our order takes place, after disposal of Writ Petition by High Court.

The present proceedings are dropped and CP is disposed of accordingly.

Smt. Shanta Shastray
(Smt. Shanta Shastray)
Member (A)

B. Dikshit
(Birendra Dikshit)
Vice Chairman

8/3/2002
order/Judgement despatched
to Applicant/Respondent (s)
on 27.3.2002

B. Dikshit