

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 25 SEP 1989

REVIEW APPLICATION NO (x) 108 / 89
IN APPLICATION NO. 1648/88(F)
W.P. NO (D)

Applicant (s)

Smt S.B. Dhanashetty

V/s The Secretary, M/s Industries, New Delhi
& 4 Ors

To

1. Smt S.B. Dhanashetty
D/o Shri Basanna Dhanashetty
No. 820, Near Tirandas Talkies
Shahabad - 585 228
Gulbarga District
2. Shri Veeresh B. Patil
Advocate
'Nandi'
No. 11, 8th Main Road
1st Cross, Vasantanagar
Bangalore - 560 052

Respondents

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/STRAY/EXCEP ORDER
Review
passed by this Tribunal in the above said application(x) on 19-9-89.


For DEPUTY REGISTRAR
(JUDICIAL)

Enccl : As above

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE.

DATED THIS THE NINETEENTH DAY OF SEPTEMBER 1989

Present: Hon'ble Shri Justice K.S.Puttaswamy .. VICE CHAIRMAN

Hon'ble Shri L.H.A.Rego .. MEMBER(A)

REVIEW APPLICATION NO.108/1989
(in A.No.1648/88)

Smt.SB Dhanashetty,
No.820, Near Tirandas Talkies,
Shahbad 585228.
Gulbarga Dist.

.. Applicant

(Shri Viresh Patil .. Advocate)
vs.

1.The Secretary, UOI,
M/o Industries,
New Delhi.1.

2.The Director,
Small Industries Service,
Institute, Industrial Estate,
Gokul Road, Hubli 30.

3. Deputy Director,
Small Industries Service Institute,
CI Industrial Estate,
Gulbarga 2.

4The Development Commissioner,
Small Scale Industries,
Nirman Bhavan,
New Delhi 1.

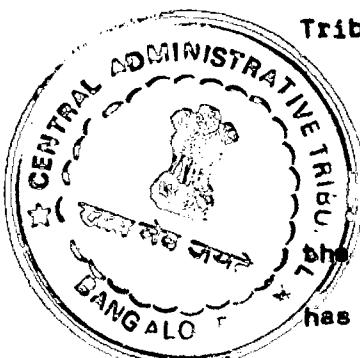
5. The Secretary,
Staff Selection Commission
D/oPersonnel and A R,
New Delhi 2.

.. Respondents

This application has come up today before this
Tribunal for Orders. Hon'ble Vice Chairman made the following:

ORDER

In this application made under section 22(3)(f) of
the Administrative Tribunals Act, 1985 (the Act), the applicant
has sought for a review of our order made on 31.1.1989 dismissing
her application No.1648/88(f).



2. In application No.1648/88 made under section of the Act, the applicant had challenged an order made by the Director, Small Industries Service Institute, Hubli (the Director) terminating her services with effect from 18.1.1988. In that application, the applicant, inter alia, claimed that she was entitled to appear thrice for the Staff Selection Commission Examination (SSC examination) instead of twice as done by the Director. On an examination of this and other contentions, we dismissed the application by our order dictated in the open court on 31.1.1989 in the presence of Dr.M.S.Nagaraja and Shri M.Vasudeva Rao, who represented the parties then.

3. But this application for review is made on 12.9.1989. In making this application, there is a delay of 178 days. In IA No.1, made under section 5 of the Limitation Act and Section 151 of the Civil Procedure Code, the applicant has sought for condoning the said delay.

4. Shri R.Virash Patil, learned counsel for the applicant, contends that the facts and circumstances stated in IA No.1 constitute a sufficient ground for condoning the delay of 178 days, and condoning that delay we should review our order on the grounds stated in the review application.

5. As noticed earlier, the application for condonation of delay is made under Section 5 of the Limitation Act and Section 151 of the CPC. The Act and the Rules under which this Tribunal performs its duties is a complete code in itself. If that is so, then Section 5 of the Limitation Act and Section 151 of the CPC has no application.

6. We find that sub-section (3) of Section 21 of the Act, which regulates limitation for making applications and for



condoning the delays, does not in express terms provide for condoning delay in making an application for review. If that is so, then even if this application is read as an application made under Section 21(3) of the Act, then also I.A.No.I seeking for condonation of delay cannot be entertained by us. If I.A.No.I cannot be entertained by us, then the main application which is made beyond the period specified by rule 9 of the CAT (Procedure) (Amendment) Rules, 1988, is liable to be rejected in-limine.

7. We will, however, assume that we have the power to condone the delay and the facts and circumstances stated in I.A.No.I constitute a sufficient ground to condone the delay and examine the review application on merits.

8. We have carefully read our order made on 31.1.1989 in Application No.1648/88(F) and the grounds urged by the applicant for review.

9. In her review application, the applicant relies on a judgement rendered by us in Application No.s 1735 and 1736/86(F) decided on 22/23.6.1987 (Ann.R-2). In the original application the learned counsel for the applicant relied on this very judgement.

10. In para 12 of our order, we have specifically noticed the judgement and ruled that that had no relevance for the various reasons given by us. If that is so, then we cannot say that there is a patent error to justify a review under Section 22(3)(f) of the Act.

11. Shri Patil lastly contends that the observations made by us in para 18 of our order had not been given effect to by



the Director and that justifies us to review and in any event issue appropriate directions to the Director.

12. What we have expressed in para 10 is only a hope. We have not issued any direction to the Director. Even if the authorities have not come to the succour of the applicant as expressed by us, then also we cannot hold that there is any justification for review under Section 22(3)(f) of the Act read with section 47 of the CPC.

13. On any view of the matter, this application for review which is devoid of merit is liable to be rejected. We, therefore, reject this review application at the admission stage without notices to the respondents.



VICE CHAIRMAN

MEMBER(A)

bk.

19/9/89

Sd.

TRUE COPY

H. Lee
FOR DEPUTY REGISTRAR (JD)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 7 FEB 1989

APPLICATION NO (S) 1648 / 88 (F)

W.P. NO (S) _____

Applicant (s)

Smt S.B. Dhana Shetty

To

V/s

The Secretary, M/o Industry, New Delhi & 4 Ors

1. Smt S.B. Dhana Shetty
D/o Shri Basanna Dhana Shetty
No. 820, Near Tirandas Talkies
Shahabad - 585 228.
Gulbarga District

5. The Deputy Director
Small Industries Service Institute
C-1, Industrial Estate
Gulbarga - 585 102

2. Dr M.S. Nagaraja
Advocate
35 (Above Hotel Swagath)
Ist Main, Gandhinagar
Bangalore - 560 009

6. The Development Commissioner
Small Scale Industries
Udyog Bhavan
New Delhi - 110 011

3. The Secretary
Ministry of Industry
Udyog Bhavan
New Delhi - 110 011

7. The Secretary
Staff Selection Commission
Department of Personnel and
Administrative Reforms
C.G.O. Complex, Lodhi Road
New Delhi - 110 003

4. The Director
Small Industries Service Institute
Industrial Estate, Gokul Road
Hubli - 30

8. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/~~STAN~~/~~EXTERIOR~~ ORDER
passed by this Tribunal in the above said application(s) on 31-1-89.

Encl : As above

R. V. Subbaiah
DEPUTY REGISTRAR
(JUDICIAL)

dc

*Issued
K. R. Iyer
1-2-89*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE THIRTY-THREE DAY OF JANUARY, 1989 (21-1-1989)

Present : Hon'ble Sri Justice K.S.Puttaswamy Vice Chairman

Hon'ble Sri L.H.A.Rego

Member (A)

APPLICATION No.1648/1988.

Smt.S.B.Dhana Shetty,
D/o Basanna Dhana Shetty,
R/a No.820,
Near Tirandas Talkies,
Shahabad - 585 228,
Gulbarga District. ...

Applicant

(Dr.M.S.Nagaraja ... Advocate)

vs.

1. Union of India by
the Secretary,
M/o Industry,
New Delhi - 1.
2. The Director,
Small Industries Service,
Institute, Industrial
Estate, Gokul Road,
Hubli - 30.
3. Deputy Director,
Small Industries Service
Institute, CI Industrial
Estate, Gulbarga - 585 102.
4. The Development Commissioner,
Small Scale Industries,
Nirman Bhavan,
New Delhi - 1.
5. The Secretary,
Staff Selection Commission,
OPAR, New Delhi - 2. ...

Respondents

(Sri M.Vasudeva Rao ... Advocate)

This application having come up before the Tribunal
today, Hon'ble Vice Chairman made the following :

O R D E R

This is an application under Section 19 of the
Administrative Tribunal Act, 1985('the Act').

2. Smt. S.B.Dhana Shetty, the applicant before us, joined service on 31.8.1983 as a Lower Division Clerk ('LDC') in the office of the Deputy Director, Small Industries Service Institute, Gulbarga ('Deputy Director') on ad hoc basis. She is academically well qualified, as ~~she~~ is a double graduate.

3. In the Staff Selection Commission Examination ('SSC Examination') held in July, 1985, she appeared and failed, on which ground, the Director, Small Industries Service Institute, Hubli ('Director')- respondent No.2-by his order dated 9.7.1986 (Annexure-A5) terminated her services. She challenged the same before this Tribunal in Application Nos.1459 and 1609 of 1986. On 30.9.1986 a Division Bench of this Tribunal consisting of one of us (Sri L.H.A.Rego, Member (A)) and Hon'ble Sri Ch.Ramakrishna Rao, Member(J) disposed of them with these directions :

"In view of this doubt, which lingers in our mind we direct the respondents to verify within 15 days of receipt of this order, the actual dates on which the applicant appeared for the SSCS and if they are satisfied that she had availed of all the three chances no further action on their part is required. If, however, on verification the position appears differently the respondents should forthwith reinstate the applicant in the post earlier held by her and her seniority restored status quo ante.

Final action taken by the respondents shall be intimated to the Registry of this Bench on or before 31.10.1986."

In Review Application No13/86 filed by the Director, this order was modified on 11.12.1986 (Annexure-A7) as hereunder :

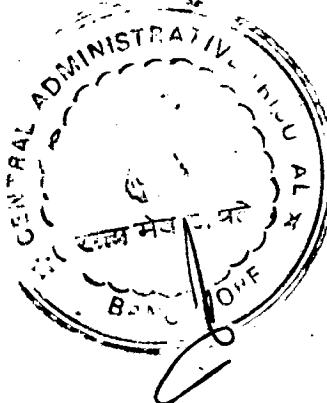
" We have considered the matter carefully. We are satisfied that there is force in the submission of Sri Prakash. We, therefore, direct the applicant to afford one more opportunity to the respondent to appear at the examination to be held by SSC. We further directed that until the aforesaid opportunity is afforded and the results of the examination are known, the respondent shall be retained in service.

The earlier order dated 30.9.1986 is modified on the lines stated above."

In pursuance of these orders, which have become final, the applicant appeared for the SSC examination held in March, 1987 in which also she failed. On this and the previous orders noticed by us, the Director by his order dated 18th January, 1988 has again terminated the services of the applicant with effect from 1.2.1988 (Annexure-A15).

4. In this application made on 6.10.1988, the applicant has challenged the order dated 18.1.1988 of the Director and the consequential order dated 29.1.1988 of the Deputy Director and has sought for a direction to continue her services on regular basis.

5. In justification of the impugned orders, the respondents have filed their reply and have produced their records.



6. Dr.M.S.Nagaraja, learned counsel for the applicant contends that the executive orders made from time to time permitted a person continuing in service on ad hoc basis, 3 chances as a maximum to appear for the SSC Exam and on the terms of these orders, and the orders of this Tribunal, he was entitled to one more opportunity to appear for that examination and till then, it was not open to the Director to terminate her services.

7. Sri M.Vasudeva Rao, learned Additional Central Government Standing counsel appearing for the respondents refuting the contention of Dr.Nagaraja, argues that the availability or otherwise of the opportunities for appearing for the SSC Examination, should be determined only in terms of the orders made by this Tribunal between the parties and so done, the impugned order of the Director was legal and valid.

8. We have earlier reproduced the two orders made by this Tribunal which must be read as one order made between the parties. Both these orders read in their context, permit the applicant only two chances for appearing for the SSC examination or one more chance after the July, 1985 examination.

9. On the terms of these orders, which are binding on both sides and this Tribunal, the applicant can only claim the benefit of one more chance only and no more.

10. We will even assume that under the executive orders of Government, the applicant was entitled for 3 chances. But the applicant bound by the orders of this Tribunal cannot avail all of them.

11. On the foregoing discussion we hold that there is no merit in this contention of Dr.Nagaraja and we reject the same.

12. Dr.Nagaraja next contends that the case of the applicant was akin to that of Sriyuths Syed Sirajuddin and Syed Moinuddin vs. Director General, Doordarshans Application Nos.1735 to 1736/89(F) decided on 22/6/1987(Annexure A13) in which we have accepted a similar plea for exception extended by the Department to one Sri Shankar Shastry and applying those principles, we should annul the impugned order and direct regularisation of the services of the applicant.

13. Sri Rao contends that the decisions rendered in the cases of Shankar Shastry, Syed Sirajuddin and Syed Moinuddin were not known to the applicant.

14. We have earlier set out the two orders made by this Tribunal on the previous termination of the applicant. In those orders this Tribunal, had declared that the applicant was entitled to one more opportunity only and that she did not succeed therein, then the Department was free to terminate her services. This is the effect of these orders that have become final.

15. The fact that in pursuance of the orders made by this Tribunal, the applicant appeared for the examination and had failed in the same is not in dis-

pute. If that is so, then the termination of the applicant which is in conformity with the previous orders of this Tribunal that are legally binding on all, cannot be taken exception to by us on any other ground. On this view, the applicant cannot invoke the decisions made in favour of Shankar Shastry, Syed Sirajuddin and Syed Moinuddin. This conclusion is in accord with principles of res judicata also.

16. Dr. Nagaraja passionately pleads that the applicant, who has been deserted by her husband was the sole bread-winner of her family and that this is a fit case in which we should direct the respondents to regularise her services either as an LDC or in the lower cadre Group 'D' at least if that becomes absolutely necessary.

17. Sri Rao contends that this plea of Dr. Nagaraja cannot be entertained and decided by us both on principle and authority.

18. The applicant is a double graduate and is proficient as a Senior typist. We have no reason to disbelieve her statement that she is the sole support for her family. We state with anguish, that we cannot come to the succour of the applicant even though she is in dire and pitiful straits on account of the legal impediment. Nevertheless we hope and trust, that the respondents will take a sympathetic view in coming to her aid, in finding a way to rehabilitate if not as LDC, at least in a Group D post where the question of

passing the SSC exam would not arise.

19. In the light of our above discussion, we reluctantly dismiss this application. But, in the circumstances of the case, we direct the parties to bear their own costs.

Sd -

VICE CHAIRMAN

21-1-1989

Sd -

MEMBER (A)

21-1-1989

np/an.

TRUE COPY

Pr. Venkatesh
DEPUTY REGISTRAR (JD)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE



