

(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A. NO: 17/90

199

T.A. NO: ----

DATE OF DECISION 13-10-1992

Mrs. Mary Francis Poornam

Petitioner

Mr. E. K. Thomas

Advocate for the Petitioners

Versus

Union of India and ors.

Respondent

Mr. J. G. Sawant for respondents No.1 to 4

Advocate for the Respondent(s)

Mr. V. M. Bendre for respondent No.5

CORAM:

The Hon'ble Mr. Justice S. K. Dhaon, Vice-Chairman

The Hon'ble Mr. M. Y. Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

NO

8/12  
(S. K. DHAON)

MD

mbm\*

(10)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A.17/90

Mrs. Mary Francis Poornam,  
Central Board of Film,  
Certification,  
Bharat Bhavan,  
91, Walkeshwar Road,  
Bombay - 400 006. .. Applicant

-versus-

1. Union of India  
Secretary,  
Ministry of Human  
Resources and Development Dept.  
of Culture, Shastri Bhavan,  
New Delhi.
2. Chairma, Central Board of Film  
Certification,  
91, Walkeshwar Road,  
Bombay - 400 006.
3. Regional Officer, Central Board of Film,  
Certification,  
91, Walkeshwar Road,  
Bombay - 400 006.
4. Chairman,  
Staff Selection Commission,  
Ministry of Home Affairs,  
CGO Complex, Block No.12,  
New Delhi - 110 003.
5. Smt. V.R. Patkar UDC  
Central Board of Film,  
Certification,  
91, Walkeshwar Road,  
Bombay - 400 006.
6. Kum. S.H. Advirkar, UDC Nee  
(Smt. S.D. Manjrekar)  
Central Board of Film Certification,  
91, Walkeshwar Road,  
Bombay - 400 006. .. Respondents

Coram: Hon'ble Shri Justice S.K. Dhaon,  
Vice-Chairman.

Hon'ble Shri M.Y. Priolkar,  
Member(A)

Appearances:

1. Mr. E.K. Thomas  
Advocate for the  
Applicant.
2. Mr. J.G. Sawant  
Advocate for  
Respondents No.1 to 4
3. Mr. V.M. Bendre  
Advocate for  
Respondent No.5

ORAL JUDGMENT: Date: 13-10-1992  
(Per S.K.Dhaon, Vice-Chairman)

The applicant was appointed as Lower Division Clerk on 26-5-1980 in the Office of the Regional Officer, Central Board of Film Certification. On 30-4-1983 a competitive examination was held for the promotion to the post of Upper Division Clerk. The applicant desired to appear in the competitive examination but she was not permitted to do so, as according to the respondents she was not eligible on the said date. It appears that in the said examination the respondent No.5 appeared and she was promoted as Upper Division Clerk. The applicant has approached this Tribunal with the primary grievance that she had been illegally prevented from appearing in the competitive examination. She also challenges the appointment of Respondent No.5 as Upper Division Clerk.

2. A reply has been filed on behalf of respondents No.1 to 4. The respondent No.5 is also represented before us, she has also filed a reply.

3. The relevant rules framed under the purported exercise of powers under Article 309 of the Constitution have been placed before us in the form of <sup>an</sup> annexure to the reply filed on behalf of respondents No.1 to 4. To the rules there is a schedule attached. According to the schedule, the qualification etc. for recruitment by promotion/Transfer is "Lower Division Clerk with atleast 3 years' experience in the Board's office." Obviously the applicant did not have three years

experience to her credit on 30-4-1983, when the examination was held, as admittedly she had been appointed as a Lower Division Clerk on 28-5-1980. The expression "atleast" is important. It shows that the minimum experience required was of three years. It also exhibits the idea that the condition of three years' experience was not relaxable. We, therefore, come to the conclusion that no illegality or irregularity had been committed by the respondents in not permitting the applicant to appear in the competitive examination.

4. As regards respondent No.5, the case set up by the applicant is that she was initially appointed on 18-11-1979 as Lower Division Clerk but her services were terminated on 18-11-80. She was again appointed on 20-11-80 and again her services were terminated on 18-11-81. Finally she was appointed on temporary and ad-hoc basis with effect from 19-11-1981. The case set up by the respondents No.1 to 4 and respondent No.5 is that the entire period of service of respondent No.5 as <sup>an</sup> ad-hoc appointee, if taken into account, will entitle her to assert that she had three years experience as Lower Division Clerk on 30-4-1983. On the other hand, the argument of Mr.Thomas, who appears on behalf of the applicant, is that the period of three years can at best be counted from 19-11-1981 and the past broken service of the said respondent should be ignored. We have already referred to the requirement of the rule that there should be atleast three years experience.

The rule does not say that there should be a continuous experience of three years. The ~~passage~~ appears to be that the candidates should have worked in the Board's office for three years. We, therefore, hold that the entire period of service of the respondent No.5 from 18-11-79 could be taken into account for determining the experience of three years.

5. Mr. Thomas next argued that the applicant having been appointed as a regular Lower Division Clerk in 1982 and the respondent No.5 having been appointed in that capacity in the year 1983 the respondents acted arbitrarily in denying to the applicant an opportunity to appear in the competitive examination. The substance of the argument is that only a regularly appointed candidate having three years experience was and is eligible to compete for the post of an Upper Division Clerk. We have seen the rule in the light of the submission and we have the feeling that this argument can be accepted only if we import certain words in the rules which are not there. We cannot ignore the fact that the rules have been framed under Article 309 of the Constitution and, therefore, we have to go strictly by the language employed by the rule making authority, namely ~~by~~ the President. We have also not found any element of arbitrariness in the fact that a person who is working on ad-hoc basis ~~and~~ is otherwise eligible is allowed to compete with others to be promoted to a higher post namely to the post of an Upper Division Clerk.

(14)

- : 5 :-

We are, therefore, unable to accept Mr.Thomas's arguments.

6. We find no merit in this application.  
It is rejected but without any order as to costs.

  
(M.Y.PRIOLKAR)  
Member(A)

  
(S.K.DHAON)  
Vice-Chairman

MD