

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 950/92.

Date of Decision : 15.12.1998.

Benjamin J. Kurnsu & 4 Others, Petitioners.

Shri D. V. Gangal, Advocate for the Petitioner.

VERSUS

Union Of India & Another, Respondents.

Shri V. S. Masurkar, Advocate for the Respondents.

CORAM :

HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,

VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

(i) To be referred to the Reporter or not ? Yes

(ii) Whether it needs to be circulated to other ~~no~~ Benches of the Tribunal ?

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

os*

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 950/92.

Dated the 15-12 day of December, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

1. Benjamin Jayaraj Kurnsu.
2. Vincent P.S.
3. Ratnakar Alva.
4. Sachidanandan P.S.
5. Mikraman V.

... Applicants.

(All the applicants are
Senior Chargeman (Mech.)
working under 2nd Respondent)

C/o. Benjamin Jayaraj Kurnsu,
P.E. 24/A, S.P.D.C. Colony,
Mankhurd, Bombay - 400 088.

(By Advocate Shri D.V. Gangal)

VERSUS

1. Union Of India through
The Flag Officer Commanding-
In-Chief,
Western Naval Command,
Shahid Bhagat Singh Marg,
Gungate, Bombay - 400 023.

... Respondents.

2. The Chief Inspector Of
Naval Armament,
Shahid Bhagat Singh Marg,
Gungate, Bombay - 400 023.

(By Advocate Shri V.S. Masurkar)

ORDER :

{ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN }

This is an application filed under Section 19
of the Administrative Tribunals Act, 1985. The respondents

...2

have also filed reply opposing the application. We have heard the Learned Counsels appearing on both sides.

2. The applicants have approached this Tribunal for a declaration that they are entitled to be regularised from the date of their initial date of appointment and for consequential reliefs.

A Division Bench of this Tribunal, to which one of us was a party (Shri Justice R. G. Vaidyanatha) after hearing arguments, came to the conclusion that there are divergent views of Tribunals on the question of regularisation. The conflict of opinion was that, some Tribunals took the ^{view} ~~decision~~ that regularisation should be done from the date of initial casual or adhoc appointment and some Tribunals took the decision that it is only from the date of regularisation ~~an~~ official gets permanent status and seniority. Therefore, the Division Bench formulated the points for determination and referred the question to a Full Bench. The Hon'ble Chairman constituted a Division Bench consisting of three members, including himself and one of us (Shri Justice R. G. Vaidyanatha, Vice-Chairman). The Full Bench, after hearing both sides, gave its opinion as per order dated 30.04.1998. After the pronouncement of the opinion of the Full Bench, the ^{trip} matter was again placed before a Division Bench for disposal of the O.A. according to law. Then we have heard the Learned Counsels appearing on both sides and on the basis of the opinion of the Full Bench on the question of law and on the basis of facts, we are disposing of the present O.A.

3. The facts of the case are mentioned in detail, both in the Division Bench referring order dated 06.10.1997 and also in the Full Bench Order dated 30.04.1998. However, we are only mentioning few facts which are necessary for proper appreciation of the points in dispute.

All the applicants were appointed as Senior Chargeman (Mechanical) on casual basis for a short period of time. Then the casual appointment was being extended from time to time. Then ultimately, an order dated 25.05.1985 was passed regularising the services of all the applicants with effect from 01.06.1985. The applicants are given seniority as Senior Chargeman (Mechanical) only from 01.06.1985. The applicants' grievance is that, they are entitled to be regularised and they should get seniority from the date of their initial appointment on casual basis.

The respondents have taken the position that the applicants were appointed on casual basis against temporary vacancies or due to exigencies of work and not against regular vacancies and, therefore, the applicants cannot get regularisation from the date of their initial appointment but they get the benefit only from the date of order of regularisation.

4. The Learned Counsel for the applicants submitted that in view of the facts of the case that the applicants were appointed as per recruitment rules and the appointments are continued from time to time without any break and subsequently formally regularised, the applicants are entitled to the benefits of

seniority and regularisation from the date of their initial appointment on casual basis. On the other hand, the Learned Counsel for the respondents contended that the application is barred by limitation. That the joint application filed by the applicants is not maintainable. That the application is bad for non-joinder of necessary parties. Then on merits, he contended that since the earlier appointments were on casual basis against temporarily sanctioned posts, the applicants cannot get seniority from the date of initial appointment but they will get the benefit only after they were appointed against regular vacancies as per the order of regularisation dated 25.05.1995.

5. In the light of the arguments addressed before us, the points that fall for determination are -

- (i) Whether the application is barred by limitation or whether the applicants have made out sufficient cause for condonation of delay ?
- (ii) Whether the joint application by all the five applicants is not maintainable?
- (iii) Whether the application is bad for non-joinder of necessary parties?
- (iv) Whether the applicants are entitled to regularisation and seniority from the date of their initial appointment on seniority basis ?
- (v) What Order ?



6. POINT NO. 1 :

The Learned Counsel for the respondents argued that the applicants got a cause of action in 1985 when the order of regularisation was issued or atleast when the first seniority list was issued in 1988. The Learned Counsel for the applicant submitted that applicants' got cause of action only when the first seniority list was published in 1988 and not before. Then he submitted that applicants were making representations from time to time and were hoping that the administration would consider their request. After waiting for some time and since there was no reply by the respondents, they had to file the present application in 1992. He also submitted that the applicants have also filed M.P. No. 782/92 for condonation of delay.

Though the regularisation order was issued in 1985, the applicants' rights were affected only when the first seniority list was issued in 1988. Though the regularisation order was issued in 1985, it had not affected the service conditions of the applicants like - benefit of leave, regular pay, increments and all other service benefits on the basis of their previous service. It is only when the 1988 seniority list was issued, the applicants came to know that they have not been given seniority from the date of their initial appointment but they were given seniority only from the date of regularisation. After 1988, the first applicant has made number of representations claiming seniority on the basis of initial appointment. It may be, the other four applicants have not joined in the representation

(Signature)

but in the facts and circumstances of the case and for considering the question of condonation of delay, we hold that the representation made by the first applicant is sufficient. Admittedly, the respondents did not give any reply to number of representations made by the first applicant. Then in 1992 the applicants have filed the present application. Taking into consideration the facts and circumstances of the case, particularly, having regard to repeated representations by the first applicant and want of reply on behalf of the respondents and having regard to the facts and circumstances of the case, we are inclined to hold that sufficient explanation has been given by the applicants for condoning the delay and it is a fit case to condone the delay. Accordingly, we allow M.P. No. 782/92 and condone the delay in filing the O.A. and consequently the plea of limitation raised by the respondents is rejected.

Point No. 1 is answered accordingly.

7. POINT NO. 2 :

We are also not impressed by the arguments of the Learned Counsel for the respondents that joint application is not maintainable. Here, all the applicants have one common grievance, namely - that they should get seniority and confirmation from the date of their initial casual appointment and not from the date of actual regularisation. When number of people have such a common grievance or a common dispute, they can certainly approach this Tribunal by filing a joint application. No

R
...7

prejudice has been caused to the administration by all the five applicants joining in one application. Suppose, instead of one application, all the five applicants had filed separate applications, that would not have helped the administration in any way. Whether it is a single joint application or all the five applicants filed separate applications, it is wholly irrelevant to the main point of controversy, namely - whether the applicants are entitled to seniority and regularisation from the date of initial casual appointment. Hence, we find no merit in the respondents' contention that joint application is not maintainable.

Point No. 2 is answered accordingly.

8. POINT NO. 3 :

We are also not impressed by the argument of the Learned Counsel for the respondents that the persons who are likely to be affected if the seniority list is changed, should be made parties. It is true, normally if an official claims seniority over another person or on the basis of the order of the Tribunal some third persons are likely to be affected, then it is necessary that such third persons are to be made parties. Here the applicants have no grievance against any individual official working under the respondents. Here the applicants are claiming relief on a question of legal principles. The question is, whether all the applicants are entitled to seniority on the basis of initial casual appointment or from the date of order of regularisation ? To decide this principle of law, the presence of third parties is not necessary. Therefore, when seniority is claimed on the basis of a principle

frw

of law and not on the basis of individual cases, then the other officials need not be made parties. Our considered view is, that whenever relief is claimed on a question of law or a principle of law, then other officials need not be made parties. After the declaration of law by the Court or Tribunal, the administration should comply with the same and may be in some cases, the seniority list will have to be changed not because of any individual grievance against particular officials but because of declaration of a principle of law by a Court or Tribunal. In such a case, the plea of non-joinder of parties is not sustainable. Accordingly, we reject that argument.

Point No. 3 is answered accordingly.

9. POINT NO. 4 :

As far as merits are concerned, there is not much dispute so far as the appointment of the applicants as per the recruitment rules.

It is clearly mentioned in the application that the names of the applicants were called from the Employment Exchange. Then a written test was held. Then interview was held and then selection was made. Therefore, for all practical purpose, recruitment has been done as per rules.

The Full Bench has given opinion in this case in para 6 stating that if the appointments were against regular vacancies and the applicants' appointments were made as per recruitment rules and there was no break in service, then seniority of such employees are

to be counted from the date of initial appointment and not from the date of regularisation.

We have already seen that the appointment of the applicants were as per the recruitment rules. Now the only point of dispute between the parties is, whether it was against regular vacancies or it was by way of stop-gap arrangement. The Learned Counsel for the respondents pointed out that in all the appointment orders, the appointments are issued for a limited period against a post which was sanctioned for a limited period and, therefore, it is not a case of appointment against a regular vacancy.

In the appointment order dated 18.10.1983, which is produced by the respondents' counsel at the time of arguments, we find that the second applicant, Vincent P.S., is shown at Sl. No. 4. Then in the remarks column it is shown that he is appointed against a vacancy sanctioned by the Headquarter's letter dated 05.07.1983. The terms of appointment shows that the appointment was for a period from 18.10.1983 to 31.12.1983. If the letter dated 05.07.1983 had given permission for casual appointment only for a period of two-and-a-half months or till 31.12.1983, then there will be some force in the contention of the Learned Counsel for the respondents. But in our view, the document shows otherwise. For instance, in the ^{next} ~~first~~ appointment letter dated 02.01.1984, the name of the second applicant, Vincent P.S., is shown at Sl. No. 15 and again the remarks column shows that the appointment order is as per Headquarter's letter dated 05.07.1983.



: 10 :

Then we come to the third letter which appears to be dated 28.02.1984 and it says that appointment is only for a period of one month from 01.03.1984 to 31.03.1984. So far as Vincent P.S. is concerned, he is shown at Sl. No. 15 and again there is a reference to Headquarter's letter dated 05.07.1983. Hence, it cannot be said that the sanction was only for the period mentioned in the appointment letter. The same letter dated 05.07.1983 is being quoted in all the three appointment orders.

Admittedly, it is a case where the appointments are extended from time to time and there was no break in service followed by the last appointment order dated 25.05.1995 which regularised the applicants with effect from 01.06.1985. The fact that the applicants are being engaged continuously from 1983 to 1985 shows that the work was available and appointment orders are issued from time to time.

Infact, we called upon the Learned Counsel for the respondents to produce the letter dated 05.07.1983 or any other letter under which the posts were sanctioned from time to time. After taking instructions, the Learned Counsel for the respondents submitted that such letters are not now available and they are not traced. He even filed a written reply from the concerned officer to that effect.

In the absence of the order sanctioning the post from time to time and for the reasons

: 11 :

already mentioned showing how the same letter dated 05.07.1983 is quoted in number of appointment letters and it indicates that it is not a case of post being sanctioned for a short time. Since work was existing and available and appointments are made without any break and the original order of sanction of posts being not produced, in the circumstances of the case, we are constrained to hold that this is a case of applicants being appointed against regular vacancies, though styled as casual in the beginning. When once the confirmation or regularisation takes place, it relates back to the date of initial appointment as per the opinion given by the Full Bench.

For the above reasons we hold that applicants' appointment should be deemed to have been made on regular basis from the date of initial appointment, namely - 18.10.1983 so far as applicants 1. to 4 are concerned (Benjamin J. Kurnsu, Vincent P.S., Ratnakar Alva and Sachidanandan P.S.) and 10.11.1983 so far as Applicant No. 5, Vikram V., is concerned. These applicants are, therefore, entitled to claim seniority right from the date of their initial appointment namely - 18.10.1983 and 10.11.1983 respectively.

Point No. 4 is answered accordingly.

10. POINT NO. 5 :

We have only declared the principle on which the seniority of the applicants should be determined.

frp

...12

We have not examined the claim of the applicants about seniority regarding any particular official. We may also notice that in some of the representation, the first applicant has claimed seniority over Somnath Mondal, M.P. Sharma and N.V. Alias (Vide exhibit A-4 at page 16 of the paper book). According to respondents, these three officials mentioned therein came on transfer from different units. On this point we do not want to express any opinion. Those three officials are not parties before us. Hence, we cannot decide the seniority of the applicants vis-a-vis those three officials. There is no such prayer in the original application. We have only decided the principles, namely—that the applicants should get seniority from the date of their initial appointment. The inter se at dispute about seniority between the applicants and those three officials or any other officials, will have to be determined by the competent authority whenever such dispute arises, according to law.

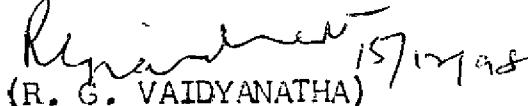
In view of the above discussions, the applicants are entitled to deemed regularisation and seniority from the date of their initial appointments but the question of inter-se seniority between the applicants and other officials cannot be decided in this O.A. for want of proper parties and, therefore, the question is left open.

11. In the result, the application is allowed as follows :

- (i) Applicants 1 to 4 (namely - Benjamin J. Kurnsu, Vincent P.S., Ratnakar Alva, Sachidanand P.S.) shall be deemed to have been regularised from 18.10.1983 and Applicant No. 5, Vikraman V. is deemed to have been regularised from 10.11.1983 and all the applicants are entitled to get seniority in the post of Senior Chargeman (Mechanical) from the respective dates i.e. 18.10.1983 and 10.11.1983.
- (ii) The question of inter-se seniority between the applicants and other officials is left open and it is for the department to decide the inter-se seniority according to law, if and when occasion arises.
- (iii) In the circumstances of the case, there will be no order as to costs.


(D. S. BAWEJA)

MEMBER (A).


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

os*

C.P. No. 39/2000
for order on
4.8.2000
L
27/8

41) 4.8.2000.

heard Shri S.V. Mane, the
Ld. counsel for applicant.
Issue notice to respondents on
C.P. No. 39/2000.

List for orders on 25/9/2000.

Jain/
(S.L. Jain)
m(j)

B.B. Bawej/
(D.S. Bawej)
m(j)

OS

(F)

Notice is issued
to respondents
20/9/2000

AP
20/9

OA 950/92 (37) Dated: 25.9.2000
Shri D.V. Gangal counsel
for the applicant. Shri V.S.
Masurkar counsel for the
respondents.

On the request of counsel
for the respondents time granted
to file reply to C.P. Adjourned
to 13.11.2000.

Jain/
(S.L.Jain)
Member (J)

B.N. Bahadur/
(B.N. Bahadur)
Member (A)

NS

OA.NO.950/92 (34) 13.11.2000

Both counsel present.

2. Respondents' counsel seeks time for filing reply. Allowed.

3. List the case for orders on 18.12.2000.

2-9-

(Smt.S.Shastry)

M (A)

mrj.

S.L.JAIN

(S.L.JAIN)

M (J)

Dated: 18.12.2000 (23)

Applicant by Sh. D. V. Gangal
Respondent by Sh. V. S. Mazarkear.

The learned Counsel for the respondents states that the matter is pending in the High Court. The same was listed today, but the matter stood out. Hence he seeks adjournment. Allowed.

List the case for orders on

(2.1.2001)

Shanta

(Ms. Shanta Shastri)

M (A)

S.V.S.

(S.L.Jain)

M (J)

all

12/11/2001-1

Heard Shri D.V. Raajal, Counsel
for Applicant and Shri U.S.
Masurkar for Respondents.

On the request of Counsel
for Respondents as a merit
petition is pending before
the Hon. High Court, adjourned.

Counsel for Respondents also
states that in. Writ Petition

as dismissed, the order of
the Court will be
implemented.

Adjourned to 26/2/2001.

4/11 2-9

(Shanta Shastri)
M(A)

Kir
(Keel Dip Singh)
M(T)

26.2.2001 (3)

Both Counsel Present.

We have heard the 1st. Counsel on both sides on the C.P. We find very unsatisfactory explanation on the part of the 1st. Counsel for the respondents who ultimately seeks to state that whatever orders Tribunal wants to pass may be passed. This provides no help to the Tribunal. We, therefore, feel it necessary that we must get the full facts in the matter. We, therefore, direct the respondents to present an officer under him ^{cause to be} conversant with the subject not below the rank of Director/Dy Secy to Govt. of India (or an equivalent rank) ~~and his~~ to be present to explain the position on the next date.

PPR List the case on 29.3.2001.

PPR —

(S.L.Jain)

m/s

m(J)

B.N.B —

(B.N.Bhadaur)

m(A)

dt. 26/2/01

order/bulletin despatched
to the respondent(s)
on 7/3/01
PPR

Recd. Reply to C.P. No. 39/2000
from Respondents on
20/3/2001.

PPR
21/3.

29/3/2001-5

Shri S. V. Manne for
Applicant. Shri V.S. Masurkar for
Respondents.

The order passed in the
OA has been complied
with, by order dated
27/2/2001 though it is
a belated compliance,
but there is no wilful
disobedience.

Notices issued to respondents
stands discharged.
No orders as to costs.

S. V. Manne
(Shanta Shastri) (S. V. Manne)
M.A. (T)

1/2/01
1/2/01

1/2/01

dt 19/3/01
Order/Judgment despatched
to Applicant/Respondent(s)
on 12/4/01

1/2/01