

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW~~ BOMBAY BENCH

O.A. No. 988/92  
T.A. No. --

198

DATE OF DECISION

16-2-94

Bhaskar Digamber Gangawane

Petitioner

Mr. B. Ranganathan for Mr. S. R. Atre

Advocate for the Petitioner(s)

Versus

U.O.I. & Ors.

Respondent

Mr. R. K. Shetty

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. M. R. Kolhatkar, Member(A)

The Hon'ble Smt. Lakshmi Swaminathan, Member(J)

1. ~~Whether Reporters of local papers may be allowed to see the Judgement?~~

2. To be referred to the Reporter or not?

yes

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

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan)  
Member(J)

(1)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A.988/92

Bhaskar Digamber Gangawane  
Residing at:  
Ramnagar Kranti Chowk,  
Aurangabad.

.. Applicant

-versus-

1. Union of India  
through  
Secretary,  
Ministry of Defence,  
South Block,  
New Delhi.
2. The Chief Engineer,  
Southern Command,  
Pune Zone, Pune 411 001.
3. The Garrison Engineer,  
Inside Fort,  
Ahmednagar 414 002.

.. Respondents

Coram: Hon'ble Shri M.R.Kolhatkar  
Member(A)

Hon'ble Smt.Lakshmi Swaminathan  
Member(J)

Appearances:

1. Mr.B.Ranganathan  
for Mr. S.R.Atre  
Advocate for the  
Applicant.
2. Mr.R.K.Shetty  
Counsel for the  
Respondents.

JUDGMENT:

(Per Lakshmi Swaminathan, Member(J))

Date: 16.2.94

The applicant has sought the Tribunal's intervention to direct the respondents to grant him the appointment to the post of Mazdoor for which he had been interviewed on 24-9-84 by the Board of Officers appointed by the respondent No.3. The applicant has been sponsored by the Employment Exchange, Ahmednagar. The applicant states that after the interview he was sent an attestation form for furnishing his particulars and medical report by the Garrison Engineer's office, Ahmednagar. According to the respondents, he was only placed in the panel

(8)

of provisionally selected candidates by the Board and was not included in the list of selected candidates. Thereafter, it appears that two of the candidates in the panel viz. S/Shri Dhadge DK and Pawar MR obtained a decision of this Tribunal in O.A.Nos. 376/87 and 436/87 dt. 7-11-90 and in compliance with these judgements they were appointed as Mazdoors.

The applicant, however, states that he was told that he was not eligible for appointment as he was overaged.

2. Applicant's counsel has relied upon the aforesaid judgment of this Tribunal. He has also referred to the Govt. of India Ministry of Defence OM/circular dt. 4-4-83 which, inter alia, provides that once a person is declared successful according to the merit list of <sup>selected</sup> ~~the~~ candidates, which is based on the declared number of vacancies, the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change. Further, where selected candidates are awaiting appointment, recruitment should either be postponed till all the selected candidates are accommodated or alternatively intake for the next recruitment reduced by the number of candidates already awaiting appointment and the candidates awaiting appointment should be given appointment first, before starting appointments from a fresh list from subsequent recruitment. The applicant has also referred ~~referred~~ to the judgment in Makhan Singh vs. U.O.I. (1992) 21 ATC 54. Accordingly his contention is that the panel of selected candidates shall continue to be valid till all candidates, including himself, are appointed.

3. The learned counsel for the respondents has submitted that since the alleged cause of action of the applicant arose in 1984, the application is grossly barred by time u/s. 21 of the Administrative Tribunals Act, 1985. On the merits, the learned counsel has referred to certain relevant facts which it is necessary to set out in detail here. It is stated that though the candidates for employment under the respondents are required to be duly sponsored by the Employment Exchange at Ahmednagar, <sup>13/4</sup> the applicant was not duly sponsored by the Employment Exchange as such. In 1984, his name had been sent to respondent No. 3 by one Mr. K. I. Dolare, District Employment Officer, Ahmednagar by his letter dt. 21-9-1984. Later the District Employment Exchange, vide their letter dt. 16-10-87 informed that the so called list of 17 candidates which was earlier sent by Mr. Dolare was not valid as it was not sent by the office. The respondents have stated that when they realised that Mr. Dolare had not been empowered to depute the applicant, they took up the case with the District Employment Exchange about the malpractice resorted <sup>by</sup> to the said officer of the Employment Exchange for investigation. After investigation, the District Employment Exchange vide their letter dt. 13-7-93 confirmed that Mr. Dolare had been found guilty of malpractices and was dismissed from service w.e.f. 11-1-90. The respondents, therefore, alleged that since none of these facts has been brought out anywhere by the applicant, the applicant has not approached the Tribunal with clean hands as the fraud committed by Mr. Dolare was directly connected with the ~~same~~ applicant's name being sponsored to the respondents for

consideration of appointment as Mazdoor. To this the reply of the applicant is that the applicant should not be punished for the fraud committed by the officer of the Employment Exchange, although the latter had sponsored his name albeit in his personal capacity. It is also the contention of the respondents that the applicant has no case as he has not been finally selected by the competent authority.

4. In the facts and circumstance we agree with the submissions made by the learned counsel for the respondents that the fact that the applicant has been sponsored fraudulently by Mr. Dolare for consideration of employment with the respondents cannot be ignored in this case. It is difficult to conceive that the fraudulent action of Mr. Dolare has been done without the knowledge of the applicant. Therefore, the applicant himself cannot derive any benefit whatsoever from such fraudulent action of the former employment exchange officer. In this view of the matter we need not consider further whether the applicant was in the select panel or whether the panel is still valid or not. Since it is clear that he has not been sponsored by the Employment Exchange, his selection, if any, cannot be considered as valid. The application, therefore, fails and is dismissed, but with no order as to costs.

*Lakshmi Swaminathan*  
(Lakshmi Swaminathan)  
Member (J)

*M.R. Kolhatkar*  
(M.R. Kolhatkar)  
Member (A)