

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1192/92
Transfer Application No.

Date of Decision : 7-6-1992

Shri S.T. Mane

Petitioner

Shri G.R. Menghani

Advocate for the
Petitioners

Versus

Union of India & Ors.

Respondents

Shri J.G. Sawant

Advocate for the
respondents

C O R A M :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri P.P.Srivastava, Member (A)

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal?


(P.P. SRIVASTAVA)
MEMBER (A)


(M.S. DESHPANDE)
VICE CHAIRMAN

(9)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 1192/92

Shri Sukhadev Tatoba Mane

... Applicant

v/s.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri G.R.Menghani
Advocate
for the Applicant

Shri J.G.Sawant
Advocate
for the Respondents

JUDGEMENT

Dated: 26.5.95

(PER: P.P.Srivastava, Member (A))

The applicant initially joined service as Lower Division Clerk in 1974 and was promoted to the post of Upper Division Clerk in 1977. The applicant was appointed to the post of Assistant Security Officer on 4.8.1983 on purely ad-hoc basis vide order dated 4.8.1983 placed at Ex.'8' to the OA. The post of the Assistant Security Officer was bifurcated in two grades, i.e. Assistant Security Officer Gr.I and Assistant Security Officer Gr.II in 1982 and the applicant was posted as Assistant Security Officer (ASO) Grade II w.e.f. 1.9.1984. The applicant was considered for the post of Assistant in his parent cadre and his posting orders as Assistant were issued on 31.7.1992. The post of Assistant carries the same pay scale as that of Assistant Security Officer Grade II. The applicant worked for about a month in the post of Assistant from 3.8.1992 to 2.9.1992 when he was



asked to look after the work of Assistant Security Officer in Security Section till a regular incumbent was posted through the Staff Selection Commission, (this is placed at Ex.'O' to the OA.). The applicant has mentioned that he has worked from 1983 continuously till date as Assistant Security Officer, he should, therefore, be treated as regular Assistant Security Officer. The applicant has mentioned that he has passed the Graduation in 1988 and he has all the qualifications which are required for the post of Assistant Security Officer. The applicant made an application to the respondents on 6.7.1992 (which is placed as Ex.'M' to the OA.) requesting the respondents to regularise his services in the post of Assistant Security Officer Gr.II. However, the respondents informed the applicant vide their letter dated 31.7.1992 (Ex.'A' to the OA.) that the recruitment rules notified by the Ministry of Commerce did not allow promotion from UDC to ASO's post, as such his request for regularisation in the post of Asstt. Security Officer could not be considered. The Recruitment Rules referred to for the post of Assistant Security Officer were finalised in 1987 wherein this post required to be filled in by direct recruitment and the qualification is Graduation with two years experience.

2. The applicant's main grievance is that since he has officiated as Assistant Security Officer from 1983 for over 9 years, he should be regularised in the same post on the ~~strength~~ of his long adhoc service. The counsel for the applicant has relied upon the judgement of Sunil Kumar Namdeo and Ors. vs. Union of India & Ors. 1991 (2) SLJ (CAT) 361 (Jabalpur) dated 19.12.1990 published in Swamynews wherein it was held that "Appointment cannot be termed as ad hoc after long years merely because rules of recruitment are not followed."



In this judgement the Tribunal has held that :-

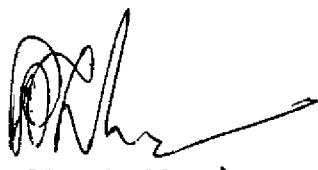
"The Government may examine and review the position as to whether it is possible to regularise the services of these petitioners by relaxing the rules requiring their recruitment through the Staff Selection Commission. If it is not considered feasible by the Government, the petitioners should be continued in service and the respondents are restrained from terminating their services but two opportunities be given to them to attain proficiency in Stenography and clear the test with the requisite standard of speed in Shorthand, etc., before their regularisation.

This judgement, however, in our opinion, does not help the applicant since in his case the recruitment is to be made through direct recruitment and there is no promotional avenue for the applicant for the post of Assistant Security Officer. The counsel for the applicant has also relied upon the Supreme Court judgement in N.S.K.Nayar & Ors. vs. Union of India & Ors. 1992 SCC (L&S) 954. This case considered the question of seniority of the temporary officers and the directly recruited officers of the Telegraph Department and is not applicable in the facts and circumstances of the present case. The counsel for the applicant has also quoted the Supreme Court case of M.B.Hiregoudar vs. State of Karnataka & Ors. This case considered the question of relative seniority between direct recruited persons and others who were promoted before the recruitment rules came into existence and as such are not directly applicable in the facts and circumstances of the present case. Our attention is drawn to the recent Supreme Court case in JT 1995 (2) S.C. 54 State of Orissa & Anr. vs. Dr. Prati Mohan Misra wherein it has been held that mere prolonged continuous ad hoc service does not ripen into a regular service to claim substantive status. Thus the ratio laid down in Namdeo vs. Union of India quoted above is no longer good law.

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3. Considering all the facts and circumstances of the case as well as the arguments of the counsel, we are of the opinion that the applicant although as officiated in the post of Assistant Security Officer Gr.II from 1983 on ad-hoc basis but he cannot be considered as regular unless he clears the process of recruitment according to the rules. The prayer of the applicant therefore to treat him as regular on the strength of his continuous adhoc officiation does not have merit and is rejected. The applicant, however, would be entitled to apply for selection according to the rules when the selection for the post of Assistant Security Officer Gr.II is held. He would be entitled to the relaxation in age according to the age relaxation rules for the Scheduled Caste candidates as he is a Scheduled Caste candidate as a departmental candidate according to the rules. We, therefore, hold that the order of the respondents denying him regularisation in the post of Assistant Security Officer at Ex.'A' cannot be faulted with. We find no merit in the OA. and the same is dismissed. There will be no order as to costs.



(P.P. SRIVASTAVA)
MEMBER (A)



(M.S. DESHPANDE)
VICE CHAIRMAN

mrj.