

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 150/92

Transfer Application No:

DATE OF DECISION: 9.2.1995

Shri S.A.Kulkarni Petitioner

Shri S.R.Phansalkar Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Sh.S.S.Karkera for Sh.P.M.Pradhan Advocate for the Respondent(s)

CORAM :

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

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

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A)

M.S.Deshpande
(M.S.DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

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OA.NO. 150/92

Shri Shrikrishna Atmaram Kulkarni ... Applicant

V/S.

Union of India & Ors. ... Respondents

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

Appearance

Shri S.R.Phansalkar
Advocate
for the Applicant

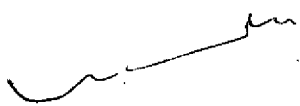
Shri S.S.Karkera
for Shri P.M.Pradhan
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 9.2.1995

(PER: M.S.Deshpande, Vice Chairman)

The only question which arises in this case is about regularisation of the present applicant who was appointed as Lower Division Clerk on 30.10.1971 but had not been recruited through Employment Exchange. By the letter dated 12.12.1990 the services of the applicant came to be regularised subject to certain conditions pursuant to the sanction to regularise the services of 98 employees accorded by the Government of India, Ministry of Defence vide their letter No. 16(3)/87/O (Lag)/1/90 dated 1.10.1990. The period from the date of irregular appointment to the date of regularisation of these civilian employees was not to count towards seniority or for promotion to the higher grade but it was to be counted towards pay, leave and qualifying service for retirement benefits.



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2. The contention of the applicant is that the regularisation which was granted by the Government should also have been extended for the purpose of seniority and it should have been counted for promotion. It must be noted that the appointment of the applicant, though it was dated from October, 1971, was irregular until the Government exercised their power to regularise by the letter dated 12.12.1990. It was open to the Government to wholly or partly relax the conditions and if the Government relaxed the conditions only partly, no exception can be taken to the exercise of power in that manner.

3. In the result, we see no merit in the application. It is dismissed.

M.R. Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

M.S. Deshpande

(M.S.DESHPANDE)
VICE CHAIRMAN

mrj.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

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R.P.No. 38/95

in

OA.NO. 150/92

Shri S.A.Kulkarni

... Applicant

V/S.

Union of India & Ors.

... Respondents

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

Appearance

Shri D.V.Gangal
Advocate
for the Applicant

Shri S.S.Karkera
for Shri P.M.Pradhan
Advocate
for the Respondents

Tribunal's Order

Dated: 9.8.1995

(PER: M.S.Deshpande, Vice Chairman)

Heard the learned counsel for the applicant.
The reliance is placed on two decisions of this Tribunal which have been annexed to the review application. In Shri S.A.Kulkarni vs. Union of India, OA.NO. 150/92 decided on 9.2.1995, the decision rested entirely on an earlier decision of this Tribunal in OA.NO. 322/87 S.Sadanandan Pillai vs. Union of India & Ors. decided on 8.7.1992. There the question for consideration was whether the applicant's services could be regularised from 1.10.1990. The decision ^{turned} ~~borne~~ on the PTO No. 40/54/66 which stated that having satisfactorily completed the probationary period, the applicant was absorbed in the regular Ty.Establishment vide Comdt.CME N.I. PTO No. 46/5/68. It was on the basis of successful completion of the probationary period that the further reliefs came to be granted by the Tribunal. We enquired from the

learned counsel for the applicant whether a similar order has been passed in respect of the applicant, ^{and} he fairly stated that there was no such order. We do not find any ^{such} averment also in OA.No. 150/92, The case on which the applicant relies is therefore clearly distinguishable on facts.

2. Our attention was drawn also to the decision of Keshav Chandra Joshi & Ors. vs. Union of India & Ors., AIR 1991 SC 284 and particularly the observations in Para 25 of the judgement. But there the principle laid down in the light of Narendra Chadha's case and the direct recruits' case was that if there was a power of relaxation in the Government, continuance of service for 15 to 20 years could ^{give rise to} ~~rise to~~ an assumption that that power was exercised and the service rendered for 15 to 20 years before regularisation could be counted for the purpose of seniority. The question whether the Government has powers to regularise partly ^{was not raised} or wholly in K.C.Joshi's case. We have referred in Para 2 of our judgement that the Government has exercised the power by the letter dated 12.12.1990 only to ^a limited purpose and no ~~exception~~ can be taken to the exercise of power in that manner. A mere assumption that a power has been exercised for all purposes can not be ^{raised} ~~rest~~ in the face of the letter dated 12.12.1990. There is no merit in the review application. It is dismissed.

M.R. Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

M.S. Deshpande

(M.S.DESHPANDE)
VICE CHAIRMAN

mrj.