

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

1168/93; 1175/93;
141/94; 174/94; 177/94 & 492/94

ORIGINAL APPLICATION NO. 199

Date of Decision: 2 MAR, 98

Ms. Maria D'Silva & 5 ors.

Petitioner/s

Mr. P.A. Prabhakaran

Advocate for the
Petitioner/s

V/s.

U.O.I. & ORS.

Respondent/s

Mr. V.S. Masurkar

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman

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

- (1) To be referred to the Reporter or not? u
- (2) Whether it needs to be circulated to other Benches of the Tribunal? u

Revdas

V.C.

trk

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:1
PRESCOT ROAD, MUMBAI:1

Original Application Nos. 1168/93, 1175/93, 141/94,
177/94, 492/94.

the 2nd day of March 1998.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri M.R. Kolhatkar, Member (A)

Miss Maria D'silva ... Applicant in
(OA 1168/93)

Smt. I. Prasanna Kumari. ... Applicant in
(OA 1175/93)

Smt. P.B. Deshpande. ... Applicant in
(OA 141/94)

Miss Reji Narayanan. ... Applicant in
(O.A. 174/94)

Smt. Swagatha Sasidharan. ... Applicant in
(O.A. 177/94)

Shri Sandeep Srirang Bhosle. ... Applicant in
(O.A. 492/94)

By Advocate Shri P.A. Prabhakaran.

V/s.

The Chief of the Naval Staff
(for Directorate of Civilian
Personnel) Naval Headquarters
New Delhi.

Union of India, through
the Secretary,
Ministry of Defence,
South Block, New Delhi.

The Commanding Officer,
INS Shivaji, Lonavla.

The Flag Officer Commanding-
in-Chief, Western Naval Command,
Shahid Bhagat Singh Road,
Bombay.

By Advocate Shri V.S. Masurkar.

ORDER

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman

All these six cases have been filed
under Section 19 of the Administrative Tribunals Act
1985. The respondents have filed reply opposing the
applications. We have heard counsel appeared on both
sides.



2. All the six applicants came to be appointed temporarily and on adhoc basis on leave vacancies as L.D.C. in Western Naval Command, Bombay. The applicants worked for quite long time, but intermittently. The particulars of the service rendered by the applicants are as follows:

Sl. No.	Case No.	Date of first appointment.	No of days actually worked.	Date of terminatio
1.	1168/93	May '86.	924	31.8.90.
2.	1175/93	11.6.87	809	31.8.90.
3.	141/94	4.5.87	783	30.9.90
4.	174/94	9.2.89	618	31.8.90
5.	177/94	3.4.89	580	31.8.90
6.	492/94	3.4.89	490	31.8.90.

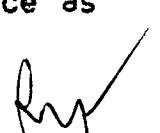
It is alleged by the applicants that their services have been illegally terminated and they were entitled to continue in service and their services are to be regularised. Their termination were done in order to accommodate Schedule Caste Candidate which affected their Fundamental Rights. Hence all these applicants have filed these applications praying for regularisation of their services from the date of first appointment and to grant arrears of salary with interest and for counting seniority from the date of their appointment.

3. The respondents have pleaded in their reply that the applicants were appointed on casual basis for specific period and on expiry of that period their services came to be terminated. The applicants were not sponsored through Employment Exchange as per the Recruitment Rules. Candidates to be appointed on regular basis should be sponsored by the Employment

Exchange. As per the directions of the Government, Special drive was taken for appointment of Schedule Caste/Schedule Tribe candidates and those candidates are regularly appointed and therefore the services of the applicants came to be terminated after the appointment of regular candidates. The post said to be filled up by Schedule Caste/Schedule Tribe candidates as per 40 point roster. The applicants were appointed on temporary basis for short periods in the exigencies of the service and they have no right to continue in the post or to get their services regularised unless they are regularly appointed as per Rules. The applicants have no right since all the posts in question were reserved posts for Schedule Caste/Schedule Tribe candidates, the applicant are not entitled to any relief.

4. The learned counsel for the applicant contended that the applicants were appointed in regular vacancy and therefore they are entitled for regularisation against those vacancies and their termination is bad in law. On the other hand the learned counsel for the respondents supported the stand taken by the department namely that the applicants had been appointed purely on temporary basis for short periods and the post in question was reserved for Schedule Castes/Schedule Tribe and therefore the applicants cannot claim any right to those posts.

5. The points for consideration are whether the order of termination of the applicants is bad in law and whether the applicants are entitled to reinstatement by regularisation of their service as prayed for in the applications.



6. At the outset we must point out that all these applications are bad on the ground of limitation, delay and latches.

Though the applicants were working as Clerks on temporary basis, admittedly their services came to be terminated with effect from 31.8.1990. The first two applications were filed in November, 1993 and the remaining four applications were filed in February, 1994. No clarification is forthcoming from the applicants as to why they did not approach this Tribunal for three years after their services were terminated in August 1990. The question of regularisation of their services strictly does not arise when they are no longer in service since about three years and they were not in service at the time of filing of these applications. There is delay and latches on the part of the applicants in approaching this Tribunal apart from the question of limitation. The applicants got cause of action on 31.8.1990 when their services came to be terminated and they should have approached this Tribunal within one year from that date as provided in Section 21 of the Administrative Tribunals Act 1985. No reasons were given for the delay and further no application is filed for condonation of delay.

7. Now coming to the merits of the case, all the applicants had been appointed admittedly temporarily and on casual basis during the leave period of regular employees. It may be that the applicants have worked during two or three or four calendar years for certain limited period with breaks in between. The posts in question are Group C posts. Recruitment has to be done as per Recruitment Rules for Group C posts. The learned

counsel for the respondents placed before us the Recruitment Rules which shows that the candidates for clerical posts should be recruited through Employment Exchange. In this case admittedly the applicants are not sponsored by the Employment Exchange. The applicants might have registered their names in the Employment Exchange, but they are not sponsored by the Employment Exchange. Further as per recruitment rules they must have qualification of matriculation and minimum speed of 30 w.p.m. in english typewriting. The applicants were taken on short term basis [✓] through leave vacancies and may be after some break continued in such temporary vacancy for some time and there are also intermittent breaks in the service. When admittedly applicants appointments are ad-hoc, casual and temporary and not regular appointments under the recruitment rules, the applicants will have no legal right for the posts in question. It is further so when the department has already appointed S.C./S.T. candidates to fillup these posts on regular basis as per recruitment rules. Now there is no vacancy at all. Hence the question of regularising the applicants in those posts which are now occupied by regular candidates does not arise at all particularly when the services of the applicants were terminated three years or more prior to the date of filling of these applications.

8. Learned counsel for the applicants relied on some authorities, which are 1986 SCC (L&S) 187 (DHIRENDRA CHAMOLI AND ANOTHER Vs. STATE OF U.P.); (1996) 33 ATC 815 (SURENDRA PRASAD AND OTHERS Vs. UNION OF INDIA AND OTHERS) and 1991(2) AISLJ 159 (V.K. DAMODARAN Vs. THE DEFENCE PENSION DISBURSING OFFICER, KOTTAYAM & 2 OTHERS) in support of his

contention that ~~is~~ some officials are working for long period then they should be regularised. All these three cases pertain to appointment of casual labourers which are Group D posts. As far as Group D posts are concerned there are no recruitment rules with qualifications etc. and appointment to Group D posts is on a different footing. We are concerned with Class III posts. Therefore, we cannot apply the above decisions regarding regularisation of casual labourers to Group C posts.

9. Then the learned counsel for the applicants has placed reliance on two more decisions in 1993(2) SLJ 476 (ARAVINDAKSHAN & ORS. Vs. THE REGIONAL ~~PASSPORT~~ OFFICER, KOCHI & ANOR.). It was found that the applicants in that case were Members of Scheduled Tribe and they were still in service and working in Group C posts, but they had not yet been confirmed. In para 4 there is a clear observation that the applicants were sponsored by the local Employment Exchange on the request made by the Department and were appointed as L.D.Cs and further they had all the required qualifications for appointment as L.D.C. It is further seen that there ^{are} existing vacancies in the Department and the applicants had continued in service in those vacancies. In these circumstances the Ernakulam Bench of this Tribunal gave a direction to the respondents to regularise the services of the applicant provided they appear in the departmental examination as provided in the rules and pass the same. Therefore, it is a case where the appointment was through Employment Exchange and the applicants had requested for regularisation and they were directed to appear in a departmental examination and pass the

same before being regularised and further all of them were in service as of the date of the application and when as on the date ~~12~~ the final order came to be passed. But in the present case the applicants were not appointed through Employment Exchange and there is no material before us to show that they have all the qualifications required for the post in question and further they are not in service either as on to-day or as on the date of filing of these applications.

10. In 1991(15) ATC 697 (JACOB M. PUTHUPARAMBIL & OTHERS Vs. KERALA WATER AUTHORITY AND OTHERS) - it was again the question of regularisation of services for certain employees who were in service in 1984 and continued in service even during the pendency of the case. We have gone through the facts of that case and find that they are distinguishable and not applicable to the facts of the present case.

11. Since in the present cases the applicant's services have been terminated more than three years prior to the date of application the question of their regularisation as such does not arise at all. It would be a case of quashing the order of their termination from services and directing the respondents to reinstate the applicants and then consider the question of their regularisation. We have already pointed out about the delay, latches and limitation involved in these applications. Further, the posts are no longer vacant and are filled by S.C./S.T. candidates who have been appointed as per Recruitment Rules on a regular basis. When there are no vacancies we cannot direct reinstatement of the applicants. The learned counsel for the respondents has produced before us 40 point roster for L.D.C. and explained

that S.C. candidates have been appointed to fill the vacancies reserved for those candidates as per the roster. Hence, under these circumstances the question of directing reinstatement of the applicants does not arise at all.

12. It is seen that the applicants had worked for different periods during the calendar years 1986 to 1989. We can only say that the applicants may apply whenever next vacancy arises in the department and when the department takes out the recruitment of L.D.C. if such an application is made by the applicants then the respondents should consider their case sympathetically in view of their past service, provided they have the required qualifications as per rules. The department should consider this on the basis of their experience along with other candidates sponsored through the employment exchange. Then if the applicants are found suitable they should be selected by relaxing the age limit for the number of calendar years they had worked (irrespective of the number of days actually worked by them in a calendar year).

13. In the result all the six applications are dismissed. However, in case whenever the respondents make recruitment to the posts of L.D.C. and ~~clerk~~ the applicants may send their applications and their cases be considered along with other candidates sponsored through the Employment Exchange and if the applicants have required qualifications and if they are found suitable they may be appointed on regular basis subject to relaxation of their age limit as mentioned in para 12 above. In the circumstances of the case there would be no order as to costs.

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

R.G.Vaidyanatha
(R.G.Vaidyanatha)
Vice Chairman