

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.: 126 OF 1993.

~~Transfer Application No.~~

Date of Decision : 12.9.95

Shri S. P. Satale & 4 Others,

Petitioners

None.

Advocate for the
Petitioners

Versus

Union Of India,

Respondents

Shri R. K. Shetty,


Advocate for the
respondents

C O R A M :

The Hon'ble Shri B. S. Hegde, Member (J).

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?


(B. S. HEGDE)
MEMBER (J).

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, GULESTAN BUILDING NO. 6,
PRESCOT ROAD, FORT
BOMBAY 400 001.

ORIGINAL APPLICATION NO.: 126 OF 1993.

1st this, the day of Dec 1995.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).
HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

Shri S. P. Satale & 4 Others ... (Applicants.
(None for the applicant)

Versus

Union Of India
through
Commandant,
Bombay Engineer Group & Centre,
Kirkee,
PUNE - 411 003. ... Respondents.
(Advocate Shri R. K. Shetty).

O R D E R

I PER.: SHRI B. S. HEGDE, MEMBER (J) I

1. Heard the argument of Shri R. K. Shetty,
Counsel for the respondents.

2. The applicants have filed this O.A. praying that
their services require to be regularised with effect from the
dates they were made quasi-permanent. Initially they were

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appointed in a temporary capacity in the year 1967, in the then existing scale of Rs. 110-180. Later on, they were made quasi-permanent with effect from 01.04.1970. It is an undisputed fact that the applicants were appointed in a temporary capacity without resorting to the prescribed agency, namely; the Employment Exchange and their main contention is that, they have been putting continuous service. Further, the Employment Exchange does not compel the employer to recruit only those sponsored by Employment Exchange and they should have been considered for regularisation against the existing vacancies in the respondents department.

3. The Learned Counsel for the respondents, Shri R.K. Shetty, vehemently urged that the petition filed by the applicant is barred by time. In this connection, he draws our attention to the reply, wherein the respondents have taken a stand that the applicants were recruited not in accordance with the rules and their appointment was treated as adhoc appointment by some officers of the respondents without obtaining proper clearance and without following the prescribed procedure of the recruitment through the Employment Exchange. Further, many of the candidates recruited were over-aged and their other suitabilities were also ignored. Therefore, the question for consideration is whether the applicants who were recruited in a irregular manner can claim parity with those employees who were recruited as per the prescribed procedure. The respondents have raised the plea of limitation

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because most of the applicants were appointed on temporary service as back as 1967 and their services have been regularised from 1990, whereas, the application was filed in the year 1993. In this connection, he draws our attention to the decision of Principal Bench in V.K. Mehra's case ¶ 86 ATR 203 ¶ wherein the Tribunal has held that the Administrative Tribunals Act does not vest any power or authority to take cognizance of a grievance arising out of an order made prior to 01.11.1982. Thereby, keeping in view Section 21, one of the Administrative Tribunals Act, the application is clearly barred by time. Even on the ground of limitation, the application is liable to be dismissed.

4. During the course of hearing, the Learned Counsel for the respondents draws our attention to the decision of the Supreme Court in State of Gujarat V/s. C. G. Raiyani ¶1995 (2) SLJ 20 ¶ wherein the Supreme Court has held that the benefit of adhoc service cannot be given for seniority.

5. We have perused the records and we find, though the applicants have joined as back as 1967 and was regularised in the year 1990, the O.A. is filed in 1993, after a lapse of nearly 25 years. Admittedly, the application filed by them is a belated one and the same

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is dismissed on the ground of limitation. In Om Prakash Satija V/s. Union Of India & Others I (1995) 29 ATC 14, the Tribunal held that the application under Section 19 of the Administrative Tribunals Act will be governed by the provisions of Section 21 of the Act regarding limitation. The provision of Section 21 of the Act are complete in themselves and these provisions shall have to be taken into consideration while deciding whether the application is within limitation or not. Since the applicants have not offered any explanation much less satisfactory for the delay and laches in approaching the court, the question of violation of Article 14 in refusing him the same relief will not arise. As stated earlier, in the present case, the grievance of the applicants can be said to have arisen in the year 1967, prior to the Administrative Tribunals Act came into force. In view of Section 21 of the Act, the contention of the respondents that the application is barred by limitation has to be accepted and we hold that the application is barred by time.

6. In the result, we see no merit in the O.A. Apart from limitation, even otherwise on merit, the applicants have not made out any prima-facie case. Accordingly, the O.A. is dismissed. No order as to costs.



(P. P. SRIVASTAVA)
MEMBER (A).



(B. S. HEGDE)
MEMBER (J).

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

Review Petition No. 126/95 in
Original Application No. 126/93.

Tuesday the 28th day of July 1998.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S. Baweja, Member(A).

S.P. Satale and 4 others. ... Applicants.

By Advocate Shri S.P. Saxena.

V/s.

Union of India and others. ... Respondents.

By Advocate Shri R.K. Shetty.

O R D E R (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice Chairman)

This Review Petition has been filed by the original Applicants for reviewing the order dated 1.12.95. The respondents have filed the reply. We have heard the learned counsel for both the sides.

2. The O.A. came to be dismissed by order dated 1.12.95. It is seen that on the date the O.A. was heard namely 29.11.95 the applicant and the counsel were absent. Only respondent's counsel was heard and orders were reserved and the order was pronounced on 1.12.95 dismissing the O.A. mainly on the ground of limitation.

Within a week thereafter the present Review Petition is filed for reviewing the order and for restoration of the O.A.

3. An affidavit was filed by the applicants on behalf of the then advocate Shri V.B. Rairker who is of 86 years of age stating the difficulties in attending the Tribunal on 29.9.95 particularly

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in view of his illness. Therefore he has submitted in the affidavit that the O.A. may be taken up for hearing and may be heard on merits.

4. After hearing both the sides we find that the applicant's counsel had reasonable grounds and sufficient case of not attending the Tribunal on 29.11.95. This itself is ^{the} ground for ~~re-calling~~ ^{re-calling} recall of the order.

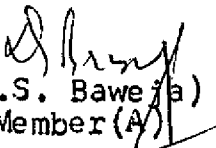
5. Even otherwise we find that in the order dated 1.12.95 the Tribunal has observed that even on merits the applicants have no case, since their services was on adhoc basis. Unfortunately the earlier decision of this Tribunal dated 8.7.92 in O.A. 322/87 and another order dated 13.8.93 in O.A. 315/93 were not placed before the Division Bench while hearing the present O.A. These two decisions are identical on the point and in both these judgements the Division Bench of this Tribunal had granted relief on same grounds. Unfortunately these two judgements were not placed before this Tribunal while passing the order dated 1.12.95. This itself, in our view, is an error apparent on the record since these decisions were not placed before the Tribunal. We also notice that in one of the cases the counsel who appeared for the respondents is the same counsel who argued the present O.A. when the order dated 1.12.95 came to be passed.


No doubt the Tribunal has also rejected the O.A. on the ground of limitation. In the O.A. itself there was a prayer for condonation of delay which ^{was} ~~has~~ lost sight of the Tribunal. Therefore this also should be a ground ^{to hold} that the order

dated 1.12.95 should be re-called and the O.A. be heard on merits.'

6. In the result, Review Petition is allowed. The order dated 1.12.95 is reviewed and re-called. The O.A. 126/93 be placed for final hearing alongwith other connected cases.

Since we have allowed the Review Petition M.P. 183/98 does not survive and the same is disposed of.


(D.S. Baweja)
Member (A)


(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 126/93, 127/93 & 221/93

Date of Decision: 21/8/98

S.P.Satale & Ors.

.. Applicant

Shri S.P.Saxena

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri R.K.Shetty

.. Advocate for
Respondent(s)

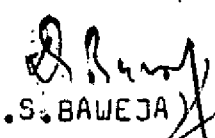
CORAM:

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


The Hon'ble Shri D.S.Baweja, Member (A)

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

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


(D.S. BAWEJA)

MEMBER (A)


(R.G. VAIDYANATHA)

VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NOs. 126/93, 127/93, 221/93

Proounced this the 21st day of August 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member (A)

OA.NO.126/93

1. S.P.Satale
2. S.B.Shelar
3. A.S.Kadam
4. B.K.Sharma
5. G.S.Shinde

OA.NO. 127/93

1. S.D.Bayanna
2. Mukhtyar Singh

OA.NO.221/93

C.M.Shingate

By Advocate Shri S.P.Saxena

... Applicants

V/S.

1. Union of India
Through Commandant
Bombay Engineer Group & Centre,
Kirkee, Pune-411 003.
2. Commandant,
Bombay Engineer Group & Centre,
Kirkee, Pune - 411 003.

By Advocate Shri R.K.Shetty
C.G.S.C.

... Respondents

O R D E R

(Per: Shri D.S.Baweja, Member (A))

OA.NO. 126/93 was decided by the order dated 1.12.1995 dismissing the claim of the applicants. The applicants then filed a review petition No. 126/95 seeking review of the order. Since the Bench which had passed the order dated 1.12.1995 was no longer available due to retirement of the Members of the Bench, a preliminary

hearing of the review application was done by this Bench. The review application has been allowed as per the order dated 28.7.1998 directing that the matter be heard on merits. Accordingly, this OA. was heard on merits along with other two OA.NOs.127/93 and 221/93. In all the three OAs. the facts of the case and the reliefs prayed for are similar and the same questions of law are involved, and therefore these three OAs. are being disposed of by a common order. We have heard Shri S.P.Saxena, learned counsel for the applicant and Shri R.K.Shetty, learned counsel for the respondents in all the three OAs.

2. The brief facts of the OAs. are detailed as under :- OA.NO. 126/93 :- This OA. is filed by 5 applicants. All the applicants were appointed as Civilian Trade Instructor in temporary capacity against the vacancies in the scale of Rs.110-180 on a probation of six months period in the Office of Commandant, Bombay Engineer Group & Centre, Kirkee, Pune (Respondent No. 2). After completion of the probation period and three years of service, all the applicants were made quasi permanent. The details are as under :-

<u>Applicant No.</u>	<u>Date of appointment</u>	<u>Date of being quasi permanent</u>
Applicant No. 1	20.3.1967	20.3.1970
" " 2	1.4.1967	1.4.1970
" " 3	2.5.1967	6.11.1970
" " 4	27.9.1967	27.9.1970
" " 5	6.11.1967	6.1.1970

The applicant were continuously working since their date of appointment. The applicants, however, were not appointed through the Employment Exchange in view exigency of service. The applicants were denied further

promotion and finally as per the impugned order dated 1.10.1990, the applicants have been regularised with effect from the date of issue of this letter for the purpose of seniority. Feeling aggrieved by this order, this OA. has been filed on 22.1.1993 seeking the following reliefs :- (d) direct respondents to regularise the services of the applicants from the dates they were made quasi permanent. (b) direct Respondent No. 2 to consider the cases of the applicants and to allow them to appear in the Trade Test to be held shortly.

3. OA.NO.221/93 :- This OA. has been filed by one applicant who was appointed as a Civilian Trade Instructor in temporary capacity from 3.5.1969 in the scale of Rs.110-180 in the Office of Respondent No.2. He was made quasi permanent w.e.f. 3.5.1971. He has been also regularised by the same order dated 1.10.1990 from the date of issue of this order and thus aggrieved in the same way as the applicants in OA.NO.126/93. He has filed the OA. on 17.2.1993 seeking the same reliefs as indicated earlier.

4. OA.NO. 127/93 :- This OA. has been filed by two applicants. Here also the applicants were engaged as Civilian Trade Instructor in the Office of Respondent No. 2. Applicant No. 1 was appointed on 17.4.1968 and was made quasi permanent on 17.4.1971 while the Applicant No. 2 was appointed on 30.4.1968 and was made quasi permanent on 30.4.1971. These applicants are also aggrieved by the same order dated 1.10.1990 and have filed the OA. on 22.1.1993 seeking the same reliefs as mentioned in respect of OA.NO.126/93.

5. In all the 3 OAs. the applicants have pleaded that they were appointed against the regular vacancies and have been working continuously since then and have been also made quasi permanent and therefore entitled to be regularised from the date they were declared quasi permanent. Further, the Employment Exchange Act, 1959 does not prohibit employment to be made through direct recruitment.

6. The respondents have filed written reply in all the 3 OAs. and the contents of written reply are more or less the same. The respondents have submitted that the appointment of the applicants in all the 3 OAs. was irregular as they were recruited directly without going through Employment Exchange which was necessary as per the statutory provisions. Their appointment was therefore on adhoc basis. There were several such cases of appointment in the different units and the matter was therefore considered for their regularisation at the Ministry's level. The Ministry of Defence as per order dated 1.10.1990 allowed the regularisation of all the incumbents which included all the applicants who were irregularly appointed laying down that their previous service till the date of issue of this order shall not count towards seniority for promotion to higher grade but which will count for all other purposes towards pay, leave and qualifying service for retirement benefits. The applicants are therefore not entitled for the seniority as claimed over the others who have been regularly appointed during the period. The respondents have also strongly opposed all the three applications on the plea of limitation and also the matter being beyond the jurisdiction

of the Tribunal. Respondents have stated that the applicants were regularised as per the order dated 1.10.1990 and have filed the present OAs. only in 1993. Further, the applicants claim benefit of seniority from the date they were declared quasi permanent, i.e. the period which is beyond ^{the period of} three years of setting up of the Tribunal and therefore the matter is beyond the jurisdiction of the Tribunal to adjudicate in terms of the provisions in the Administrative Tribunals Act, 1985. The respondents, therefore, pray that all the three OAs. deserve to be dismissed on this count alone.

7. The applicants have not filed any rejoinder to the written statement in any of the OAs. In the OA.No. 126/93 in the review application, it has been brought out that the issue involved in the OA. is the same which has already been decided in the earlier two OAs. by this Bench, the details of which are as under :- OA.NO.322/87 S.Sadanandan Pillai vs. Union of India & Ors. decided on 8.7.1992. OA.NO.315/93 Smt.K.Mathew & Ors. vs. Union of India & Ors. decided on 13.8.1993. The applicants have contended that in both the OAs. the claim of the applicants had been allowed and the principle involved in the present OAs. is the same, and therefore the applicants are entitled for the same relief. During the hearing, the learned counsel ^{based} for the applicant mainly argued on the decisions in the above referred two OAs. in support of his contentions.

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8. Heard the arguments of Shri S.P.Saxena and Shri R.K.Shetty, learned counsel for the applicant and respondents respectively in all the 3 OAs.

9. In all the 3 OAs. the services of all the applicants have been regularised as per the impugned order dated 1.10.1990. The claim of the applicants is that they are entitled for regularisation from the dates they have been made quasi permanent. The respondents, on the other hand, have contested the claim of the applicant stating that the appointment of the applicants ~~was~~ irregular as the proper procedure as laid down as per the Recruitment Rules was not followed in their case. The respondents contend that the services of the applicants were treated as adhoc and as a one time measure, the services of the applicants along with the similarly placed employees in the other units have been regularised as per the impugned order from the date of issue of the order. The respondents ^{have} strongly opposed the claim of the applicants on the plea that no advantage can be given for the irregular appointment. The applicants during the arguments ^{also} brought to our notice the ~~rules~~ rules governing the service of quasi permanent employees as laid down in Chapter 30 of Swamy's book on "Administration and Establishment". The counsel for applicants also argued ^{as stated earlier} that the controversy has been since settled by this ~~Bench in~~ the earlier judgements in OA.NOs.322/87 and 315/93.

We have carefully gone through the rules governing the quasi permanent staff as well as the earlier orders of this Bench in the OAs. referred to above. It is noted that in both the OAs.315/93 and 322/87 the same order dated 1.10.1990 was under challenge and the applicants in these OAs. were similarly placed to the applicants in the present OAs. under reference. It is further noted that OA.NO.315/93 decision in the has been decided referring to the earlier OA.NO. 322/87 allowing the same benefit of seniority from the date of appointment. On going through the order dated 8.7.1992 in OA.NO.322/87, it is noted that the same contentions were raised by the respondents stating that the appointments of the applicants were irregular and therefore the seniority can only be counted from the date their services have been regularised relaxing the Recruitment Rules. However, this contention had been rejected in this order in view of the fact that the applicants had been engaged on probation and subsequently, on completion of probation and three years of service, they were made quasi permanent. The Bench has held that the illegality if any committed by not calling the applications from Employment Exchange stood cured when the applicants were made quasi permanent. Keeping in view the rules laid down governing the quasi permanent staff as referred to earlier, we are in respectful agreement with what is held by the Bench in the OA.NO.322/87. In the present case, in all the 3 OAs. the applicants were declared quasi permanent on the various dates which have already been detailed in Para 2 above. It is,

therefore, our considered opinion that applicants in all the 3 OAs. are entitled to seniority from the date they have been made quasi permanent as prayed for.

10. The respondents have opposed all the 3 applications on the plea of being beyond the jurisdiction of the Tribunal and also being barred by limitation. As regards the OAs. being not maintainable before the Tribunal in view of the provisions in the Administrative Tribunals Act, 1985, we are not inclined to accept the plea of the respondents. The applicants have challenged the impugned order dated 1.10.1990 as per which the final decision has been taken by the respondents with regard to the seniority issue of the applicants and therefore any matter for which the cause of action arose on 1.10.1990 is not beyond the jurisdiction of the Tribunal even though the seniority has been claimed from ^{the} earlier period. We are also not inclined to dismiss the OAs. on the ground of limitation as raised by the respondents and brought out in Para 6 earlier. It is noted that the applicants have filed the present OA. in 1993 challenging the order dated 1.10.1990, i.e. beyond the period of one year provided in Section 21 ¹⁹⁸⁵ of the Administrative Tribunals Act and therefore the respondents have contended that the application is barred by limitation. However, since similarly placed applicants have been earlier allowed relief when the same impugned order was challenged ^{in 1993,} it will be unfair and unjust to dismiss the claim of the applicants on the ground of limitation when the applicants are similarly placed and have been agitating the matter for the grant of same relief.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

C.P.No.58/2000 in OA.NO.126/93

Dated this the 11th day of April 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt.Shanta Shastry, Member (A)

1. S.P.Satale
2. A.S.Kadam

Instructor Foreman,
B.E.G. & Centre,
Kirkee, Pune.

...Applicants

By Advocate Shri S.P.Saxena

V/S.

Brig.Vijay Aga,
Commandant,
Bombay Engineers Group & Centre,
Kirkee, Pune.

...Respondent

By Advocate Shri R.K.Shetty

O R D E R

[Per : Shri S.L.Jain, Member (J)]

This Contempt Petition follows from a decision dated 21.8.1998, through which three OAs. consisting of eight applicants were decided with a direction that they be allowed seniority from the date they were declared Quasi Permanent. After allowing the seniority as directed, the applicants shall be considered for further promotion as due as per extant rules. The

S. G. M. -

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