

Before the Central Administrative Tribunal
Mumbai Bench, Mumbai

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

Recorded 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. ^{being} ~~are~~ 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 :- (a) 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 applicant 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 to 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 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 also limitation and 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 for the applicant mainly argued ^{based} on the decisions in the above referred two OAs. in support of his contentions.

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 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 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 dates 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 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 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.

11. In the result of the above, all the three OAs. are allowed with the direction that the applicants shall be allowed seniority from the dates they were declared quasi permanent. After allowing the seniority as directed, the applicants shall be considered for further promotions as due as per the extant rules. However, they will not be entitled for any payment of arrears. The compliance of the order shall be done within a period of three months from the date of receipt of the order. No order as to costs.

(D.S.BAWEJA)
MEMBER (A)

(R.G.VAIDYANATHA)
VICE CHAIRMAN

mrj.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

CONTEMPT PETITION NO. 8 OF 1999

IN

O.A. NO. 221 of 1993

C.H.Shingate

... Applicant

v/s.

Union of India & Ors.

... Respondents

REPLY TO THE CONTEMPT PETITION ON BEHALF OF
THE RESPONDENTS.

MAY IT PLEASE THIS HON'BLE TRIBUNAL :

1. At the outset the Respondents submit that the applicant in this application had approached this Hon'ble Tribunal for regularization of his services w.e.f. 3.5.71 as he had been appointed as a Civilian Trade Instructor in a temporary capacity w.e.f. 3.5.69 in the scale of pay of Rs. 110-180 and was made quasi-permanent w.e.f. 3.5.71. However he was regularised only from 1.10.90. This Hon'ble Tribunal vide its judgement and order dated 21.8.98 was pleased to allow the O.A. and directed that the applicant should be allowed seniority from the date when he was granted quasi permanency i.e. 3.5.71 and after allowing such seniority he was to be considered for further promotion as per Rules. The Respondents now submit that they were deeply aggrieved by the said judgement and that they had received the said judgement on 10.9.98. The judgement could not be implemented as they were aggrieved by it and hence this case was projected to the Army Headquarters, being the competent authority for implementation of the

order. The Army Headquarters subsequently put up the case before the Branch Secretariate, Ministry of Law & Justice, Department of Legal Affairs, Mumbai for legal opinion which was received vide the Ministry of Law letter dated 12.5.99. A copy whereof is enclosed herewith and marked as Exh.CPR-1. As per the said opinion the Department decided to challenge the judgement of this Hon'ble Tribunal before the Hon'ble High Court. The Respondents thereafter immediately approached the litigation section of the Branch Secretariate to detail a Government Counsel to file a W.P. and the W.P. has now been filed being W.P. Stamp No. 34123/99 of 1999. The Respondents therefore submit that the matter is now resting with the High Court.

The Respondents offer the following parawise comments.

2. With reference to Para 1 and 2 of the C.P. the Respondents have no comments to offer.
3. With reference to Para 3 and 4 of the C.P. the Respondents submit that the judgement dated 21.8.98 was received on 10.9.98. The judgement of the Hon'ble Court could not be implemented by Respondent No. 2 as it was against the Rule, hence the case was projected to Army HQ, the competent authority for implementation of the Court Order, who had subsequently directed the Respondent to approach the Branch Secretariate, Ministry of Law, Justice & CA, Deptt, of Legal Affairs, Mumbai for legal opinion which have been received vide their letter dated 12.5.99 for challenging the judgement before the Hon'ble High Court of Mumbai. Thereafter, immediately on receipt of the above direction the Respondents had approached the litigation section of the Branch Sectt.

Mumbai to detail a Govt. Counsel to file the Writ Petition on behalf of the Respondents vide letter dated 15.7.99, copy whereof is enclosed herewith and marked as Exh.CPR-2.

CPR-2

4. With reference to Para 5 of the C.P. the Respondents submit that it is not true that the Respondent has not complied the directions of the Hon'ble Tribunal. Appropriate procedural actions were taken to get the legal opinion/clearance for implementation of the judgement. As per the directions of Asstt. Legal Adviser to the Govt. of India, Ministry of Law, Justice & CA a Writ Petition challenging the judgement dated 21.8.98 is being filed in the High Court of Mumbai, which may be corroborated from HQ Bombay Engineer Group and Centre, Kirkee letter dated 15.7.99.

5. With reference to Para 6 of the C.P. the Respondents most respectfully submit that this Hon'ble Tribunal be pleased to appreciate that since on account of their being aggrieved by the said judgement they have already approached the Hon'ble High Court against the said judgement. The Respondents further contend that they have no desire to commit any wilful contempt of the orders of this Hon'ble Tribunal and hence the C.P. may not be pursued against them.

Reply to C.P. drawn by :

R.K.Shetty
Sr.CGSC

(S.R.Mazagaonkar)
Colonel
Dy Comdt
Bombay Engr Group and Centre

VERIFICATION

I, Colonel SR Mazagaonkar, Deputy Commandant, Bombay Engineer Group & Centre, Kirkee, Pune-411003, do hereby verify and declare that what is stated in Para 1 and 5 above is true to my knowledge and that I have not suppressed any material facts.

Verified at

this 31 day of Dec 1999.


R.K. Shetty,
Sr. CGSC
(SR Mazagaonkar)
Colonel
Dy Comdt
Bombay Engr Group and Centre