

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH.

Original Application No. 315/93

~~Transfer Application No.~~

Date of decision 13.8.1993

Smt. K. Mathew & Ors. Petitioner

Shri S.P.Saxena Advocate for the Petitioner

Versus

Union of India & Ors. Respondent

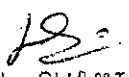
Shri R.K.Shetty Advocate for the Respondent(s)


Coram :

The Hon'ble Shri M.Y.Priolkar, Member (A)

The Hon'ble ~~Shri~~ Ms. L. Swaminathan, Member (J)

1. Whether the Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(MS.L.SWAMINATHAN)
MEMBER (J)


(M.Y.PRIOLKAR)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 315/93

Smt.K.Mathew & Ors.
V/S.

... Applicants

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (A) Shri M.Y.Priolkar
Hon'ble Member (J) Ms.L.Swaminathan

Appearance

Shri S.P.Saxena
Advocate
for the Applicants

Shri R.K.Shetty
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 13.8.1993


(PER: M.Y.Priolkar, Member (A))

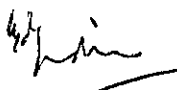
At the 17 applicants are civilian employees in the establishment of College of Military Engineering, Poona. They have the grievance that although all of them were initially recruited to the post of L.D.C. during the period 1962-1967, by impugned order dated 1.10.1990 their services have been regularised only w.e.f. 1.10.1990 on the ground that initial recruitment, not being through Employment Exchange, was irregular and cannot count for seniority or for promotion to higher grade.

2. An identical issue came up for consideration before this Tribunal in OA. 322/87, ^{(S.S.P. v UOI) 7} which was filed by one similarly placed employee of the same establishment. This Tribunal by its order dated 8.7.1992 had held that the irregularity, if any, in the initial appointment of the applicant stood cured when the employee was absorbed on regular basis and that his services shall be counted from the date of regularisation towards seniority or for promotion to the higher grade.

3. Although in the present OA, the applicants have specifically relied on this judgement of the Tribunal dated 8.7.1992, for claiming the benefit of seniority from their initial date of appointment and not from 1.10.1990, the respondents in their written reply have contended that the case of Shri Pillai was distinguishable on the ground that he had been absorbed in the regular temporary establishment on completion of probationary period whereas out of 17 applicants in the present case, 4 applicants have not completed their probationary period. It is clear therefore that as far as the remaining 13 applicants are concerned, the respondents have no reservation about the applicability of our earlier judgement in their case. As far as the remaining 4 applicants, Applicants No. 1,4,6,8 in whose case probationary period ~~has~~^{is} stated ^{to have} not been completed, learned counsel for the applicants states that all of them have completed atleast 26 years of service and all of them have already ^{been} promoted to the higher posts of UDC. In our view, therefore, these 4 applicants cannot also be treated on ^a ~~the~~ different footing than ~~on~~ the other applicants in whose cases orders ^{have} been issued regarding completion of probationary period. In the case of these four applicants, we, therefore, hold that their probationary period ~~also~~^{should be} deemed to have ^{been} completed on the expiry of two years of their initial appointment on other than casual basis as temporary LDCs. For the same reasons as given in our judgement dated 8.7.1992, we, therefore, direct that the services of all the applicants shall be counted from the date of their appointment as temporary LDC towards seniority or for promotion to the higher grade. As already directed in the earlier judgement, if for the purpose of promotion or for the purpose of fixing seniority certain procedural requirement has to be gone through, namely, the applicant has to be recommended by a Departmental Promotion Committee etc, The necessary formalities shall be now gone into

and if the Committee has to consider the case of the applicants, it shall do so on the footing that their services stood regularised from the dates of their initial appointment as temporary LOC. They shall be entitled to all consequential benefits. This shall be done within a period of six months from the date of receipt of a copy of this order. No order as to costs.


(MS.L.SWAMINATHAN)
MEMBER (J)


(M.Y.PRIOLKAR)
MEMBER (A)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

C.P. No. 107/94 in
Original Application No. 315/93
~~Transfer Application No.~~

Date of Decision : 28.4.95

Smt. K. Mathew & 16 Others

Petitioner

Shri S.P. Saxena

Advocate for the
Petitioners

Versus

Union of India & Others

Respondents

Shri R.K. Shetty

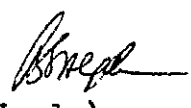
Advocate for the
respondents

C O R A M :

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

The Hon'ble Shri 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? —


(B.S. Hegde)
Member (J)

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

C.P. 107/94

in

O.A. 315/93

Smt. K. Mathew & 16 Others , ... Applicants

v/s

Union of India & Others ... Respondents

CORAM: 1) Hon'ble Shri B.S. Hegde, Member (J)
2) Hon'ble Shri M.R. Kolhatkar, Member (A)

APPEARANCE: 1) Shri S.P. Saxena, counsel for the Applicants
2) Shri R.K. Shetty, counsel for the Respondents

JUDGEMENT

DATED: 28.4.95

(Per: Hon'ble Shri B.S. Hegde, M(J)).

1. This Contempt Petition 107/94 arises from O.A. 315/93 decided on 13-8-1993. In the O.A. the Applicants have prayed for the following reliefs :-

- a) to quash and set aside the impugned Memorandum dated 1-10-1990 so far it concerns the applicants and the letter dated 29-4-91;
- b) to declare that the applicants were appointed and absorbed regularly as LDC with effect from the date of their initial appointment or from the date of their completion of the probation period, and no further or subsequent regularisation is required in their cases.
- c) to direct the Respondents that the applicants are entitled for all service benefits including seniority and promotion etc. on the basis of their date of appointment or completion of probation period.

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- d) to direct the Respondents to consider the case of applicants for promotion to the post of UDC and higher posts of Office Supdt. from the date their immediate juniors are promoted.
- e) to pass any other orders as the Hon'ble Tribunal may deem fit in the facts and circumstances of the instant case and in the interest of justice.
- f) to draw this application to be made jointly by all applicants.
- g) to award the cost of the application.

The applicants were initially recruited to the post of L.D.C. during the period 1962 - 1967 and their services have been regularised w.e.f. 1-10-1990 on the ground that their initial recruitment not being through Employment Exchange was irregular and will not count for seniority or promotion to higher grade. The Tribunal disposed of the O.A. on the basis of the earlier cases decided by Tribunal in O.A. 322/87 which was identical to the present one wherein it was held that the irregularity, if any, in the initial appointment stood cured when the employee was absorbed on regular basis and that his service shall be counted from the date of regularisation for seniority or promotion to the higher grade. Keeping in view the ratio laid down in that judgement, the Tribunal in this O.A. directed the Respondents that the services of all the applicants shall be counted from the date of their appointment as temporary LDC towards seniority or promotion to the higher grade. As already directed in the earlier judgement, if for the purpose of promotion or for the purpose of fixing seniority certain procedural requirement has to be gone through, namely, DPC recommendation etc., the necessary formalities shall be now gone into and if the Committee has to consider the case of the applicant

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it shall do so on the footing that their services stood regularised from the date of their initial appointment as temporary LDC. They shall be entitled to all consequential benefits etc. and this shall be done within a period of six months from the date of receipt of this order.

2. Accordingly, their services have been regularised from the date of their initial appointment in terms of the judgement vide their order dated 11-10-1993. The only contention raised by the Applicants in this C.P. is that pursuant to the directions given by the Tribunal, the Respondents have not acted upon the directions given to them. In addition, the consequential benefits arising out of implementing the judgement and ante dating their promotion dates to U.D.C. grade are still not paid to any of the applicants etc. As per directions of the Tribunal, the decision of Tribunal has to be implemented within a period of six months which expired on 27-2-1994. According to the Applicants, the other benefits have been granted to them vide order 11-10-1993. Nevertheless, consequential benefits arising out of implementing the judgement have not been given. The Applicants have filed this C.P. on 5-8-1994. Before that, the Respondents have filed R.P. No. 38/94 filed on 23-2-1994. The same has been disposed of by the Tribunal on 30-9-1994. The Respondents have taken a preliminary objection that since the R.P. has not been disposed of when the C.P. was filed by the Applicants, the question of Contempt Petition does not arise. We see considerable force in the contention of the Respondents. Besides that, the Respondents have

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He also relied upon another decision of Jodhpur Bench in Laxminarayan v/s A.S.P. Sinha & Anr. (1994) 28 ATC 610 wherein the Tribunal while granting reliefs in the O.A. has said that all consequential benefits payable within a period of three months. Nevertheless, the Tribunal held that while disposing of the O.A. they had not said anything regarding actual monetary benefits. Consequential benefits has therefore to be paid as admissible under the rules. Therefore, we find no contempt has been made out and the contempt petition is dismissed.

4. On the other hand, the learned counsel for the Applicant relied upon decision of this Tribunal in Ajit S. Bhatia v/s Union of India & Anr. (1993) 25 ATC 439. In that case, the Applicant sought for a specific direction to the Respondents to pay his pay and allowances as Assistant Commissioner, Income Tax from retrospective date from which he was deemed to have been promoted from the post of Income Tax Officer etc. In that connection, the Tribunal referred to the decision of Supreme Court in Paluru Ramkrishnaiah v/s Union of India AIR 1990 SC 166 wherein the Tribunal has observed that in that decision FR 17 has not come up for consideration but the Indian Ordnance Factories Service conditions R-3 came up for consideration in that case and the position had to be considered in the light of the decision of the two judge Bench of the Supreme Court in Virendrakumar v/s Union of India. The Tribunal also referred to Union of India v/s K.V. Jankiraman (1993) 23 ATC 322 wherein FR 17 came in for consideration. In that case, the contention of the Respondents, that 'no work no pay' the Supreme Court observed : "The normal rule of 'no work no pay' is not applicable to the cases such as the present one where

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the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that FR 17 (1) will also be inapplicable to such cases." Considering the background of this case, the Tribunal allowed the petition with interest and directed the Respondents to make the payment.

5. Before going into the merits of the contempt petition, it is necessary to see whether the C.P. lies in this case because the Review Petition filed by the Respondents has not yet been disposed of by the Tribunal till the filing of the C.P. The Review Petition was disposed of only on 13-9-1994 whereas the C.P. was filed on 5-8-1994. Besides that, on perusal of the O.A., we find that there is no specific prayer made by the Applicants regarding payment of monetary benefits. In this connection, the Principal Bench of CAT, Delhi has held in Mohan Singh v/s J.P. Singh, Secretary, Ministry of Urban Development & Anr., 1995 (1) CAT 339 (PB) wherein the Tribunal after considering rival contentions of the parties has observed that "under section 2 (b) of the Contempt of Courts Act every disobedience is not contempt. Only wilful disobedience is contempt. For the delayed payment, the applicant has merely indicated his entitlement to interest @ 24%. The applicant has merely alleged this entitlement but he has not claimed a direction to the respondents to pay interest for the delayed payment and rightly so. The position of a Court dealing with a case of civil contempt is that of an Executing Court. Just as an Executing Court cannot go beyond the decree, the Contempt Court also cannot grant a relief which had not

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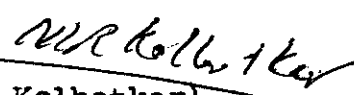
been granted in the original proceedings. It was open to the Bench deciding the applicant's original application to award interest on delayed payment. The Bench has not awarded any such interest to the applicant."


6. In the light of the above, and having considered the rival contention of the parties, the question to be seen herein is whether the Respondents have committed any contempt in this case. Admittedly, the applicants have not made any prayer regarding payment of service benefits i.e. monetary benefits except stating that they are entitled to all service benefits including seniority and promotion. As stated earlier, the Respondents have already granted service benefits of seniority and promotion pursuant to to Tribunal's orders and in the absence of any specific direction by the Tribunal to the Respondents to make payment of monetary benefits, the Respondents are not obliged to make any such payment. Further, the contempt petition is filed prior to the disposal of the Review Petition 38/94 and thus the Applicants have not made out any contempt of the Court. It is not the case of the Applicants that their services have been regularised in accordance with the rules and they have been prevented to work otherwise. Admittedly, considering the past service, the Tribunal took a decision to regularise their services from the date of their initial appointment to the post. Therefore, it is apparent that their appointment to the post de hors the rules and is in accordance with the rules.

7. In the circumstances, we are of the view, that the ratio laid down in Janakiraman's case referred to in Tribunal's decision in Ajit Bhatia case does not apply to the facts of this case. Accordingly, it is not open to the Applicants to contend that such relief i.e. monetary

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reliefs should be given to them from the date of regularisation by way of filing a contempt petition. Since the Review Petition was disposed of subsequent to the filing of contempt petition, and the same was filed, though belated as per CAT provisions; however, they have filed before the expiry of the period mentioned in the judgement i.e. 27-2-1994; therefore, we see no merit in the C.P. and the same is liable to be dismissed. Accordingly, the contempt petition is dismissed.


(M.R. Kolhatkar)
Member (A)


(B.S. Hegde)
Member (J)

ssp.