

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 780/93

DATE OF DECISION:10/7/2000

Shri Bhau Saheb Rao Phatale _____ Applicant.

Shri Sandeep Marne _____ Advocate for
Applicant.

Versus

Union of India & 4 Ors.

----- Respondents.

Shri R.K.Shetty _____ Advocate for
Respondents.

CORAM:

Hon'ble Shri A.V.Haridasan, Vice Chairman
✓ Hon'ble Shri Govindan.S.Thampi, Member(A)

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


(A.V.HARIDASAN)
VICE CHAIRMAN

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO.780/93
DATED THE 10TH DAY OF JULY, 2000.

CORAM: HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI GOVINDAN.S.TAMPI, MEMBER(A)

Shri Bhau Saheb Rao Phatale,
working as Chowkidar in the
Census Operation, Bombay
at Exchange Building,
Sprott Road, Ballard Estate,
Bombay - 400 034.

Residing at Asangaon
Tal.:Shahpur
Dist.Thane.

... Applicant

By Advocate Shri Sandeep Marne for
Shri D.V.Gangal.

V/s.

1. Union of India
through the
Secretary, Home Affairs,
Department of Home,
North Block,
New Delhi-110 001.
2. Director of Census
Operation, Bombay
Exchange Building
Sprott Road, Ballard
Estate,
Bombay - 400 034.
3. Shri Vasant B Kharat,
Working as LDC
Under Respondent No.2.
4. Shri Ashok Baburao Sadare,
Working as LDC
Under Respondent No.2.
5. Shri D.K.Barbate,
Working as LDC
Under Respondent No.2.
6. Shri S.N.Samant,
Working as LDC
Under Respondent No.2. ... Respondents.

By Advocate Shri R.K.Shetty for
Respondent Nos.1 and 2.

...2.

(ORDER) (ORAL)

Per Shri A.V.Haridasan, Vice Chairman.

This is an application filed under Section 19 of the Administrative Tribunals Act. Shri Bhau Saheb Rao Phatale has sought the following reliefs:-

- "a) To hold and declare that ANNEXURE-I being Order dt. 15/1/1993 is illegal and should be quashed.
- b) To hold and declare his right for promotion to the post of Lower Division Clerk and that he should be appointed to that same post from the date juniors are working.
- b1) To hold and declare that the seniority list dated 01/03/1996 is illegal and that the Applicant is senior to Respondent Nos.3 to 6, and that the Respondents be directed to prepare such fresh seniority list.
- c) To grant consequential monetary and non-monetary benefits.
- d) Grant any other further orders in the interest of justice with costs for which act of kindness the Applicant is duty bound shall ever pray."

2. The factual matrix shorn of details which are not germane for proper disposal of this application is stated as under:-

The applicant who has passed SSC Examination in the year 1978 and had registered with the Employment Exchange was called for an interview by letter dated 19/2/1981 issued by the Regional

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Deputy Director of Census Operation, Aurangabad for being considered for appointment as Tabulator at a consolidated salary. The Applicant had been successful and was appointed as Tabulator on a consolidated salary with effect from 2/3/1981. The Appointment continued till 10/2/1982 and thereafter his services were terminated. While so he was again called by the Joint Director of Census Operation, Maharashtra and was appointed again as a Tabulator on 28/1/1982. While continuing as a Tabulator from 28/1/1982, the Applicant was by order dated 14/6/83 appointed as Watchman w.e.f. 1/6/83 on purely temporary and adhoc basis. Though the appointment was adhoc, he continued without interruption and was placed in the seniority list of Chowkidary as on 1/9/1989 circulated on 23/10/89 at Sr.No.6 above Respondent Nos.3 to 6(Annexure A-1 to Rejoinder). In the next seniority list issued in August,91 (Annexure A-2 to Rejoinder) also the applicant was placed senior to Respondent Nos.3 to 6. While so ultimately the services of the Applicant was regularised by order dated 19/8/1998 (Annexure A-XIX) as Chowkidar at Ar.No.73 of the order. When the applicant was so continuing, from the seniority list at Annexure A-1 of Rejoinder, the applicant came to know that Respondent Nos.3 to 6 were promoted on adhoc basis as Lower Division Clerks. The applicant felt aggrieved that he was not considered for adhoc promotion while his juniors were considered. He therefore made representation on 6/9/90. Finding no response, the applicant went on making representations. Ultimately, the applicant was told by Impugned order dated 15/1/1993 that he was not promoted as his initial appointment was not sponsored by

Employment Exchange. Aggrieved, the applicant filed the application originally challenging the impugned order and claiming adhoc promotion to the post of Lower Division Clerk at par with his juniors, Respondents 3 to 6 and later the applicant amended the OA seeking a declaration that the seniority list of the year 1996 in which the seniority of the applicant has been lowered be declared illegal, unjustifiable and inoperative. The applicant is thus claiming adhoc promotion as Lower Division Clerk at par with Respondent Nos.3 to 6 and placement in the seniority list in the grade of Chowkidar above Respondent Nos.3 to 6. The applicant to filed MP-528/99 to bring on record certain happenings during the course of pendency of the Application which has been accepted.

3. The Official Respondent Nos.1 and 2 filed a reply statement and a Sub-rejoinder after the applicant had filed a Rejoinder. Though Respondent Nos.3 to 6 were served with notice and Shri Ramamurthy, learned counsel had filed Vakalatnama for them, they have not filed any reply statement. The Official Respondent Nos.1 and 2 seek to justify the Impugned action in altering with the seniority of the applicant on the ground that the applicant was not sponsored by Employment Exchange for his initial appointment and that he was appointed only on adhoc basis while respondent Nos.3 to 6 were nominees of Employment Exchange and regularly appointed. It is also contended that there is a gap in the service of the applicant as Tabulator. They further contend that in the first two seniority list of Chowkidars, the applicant was placed senior to Respondent Nos.3 to 6 inadvertant

of the fact that the Applicant's name was not sponsored by Employment Exchange, while those of Respondent Nos.3 to 6 were sponsored by Employment Exchange. Regarding the adhoc promotions given to Respondent Nos.3 to 6 ignoring the claim of the applicant, the respondents contend that this was done because the applicant could not be treated at par with Respondent Nos.3 to 6. The respondents have further contended that as the Respondent Nos. 3 to 6 were promoted on adhoc basis in 1984 and the applicant filed this application only in 1993 after a lapse of more than 5 1/2 years, the OA has to be dismissed for delay and and laches. The Respondents therefore plead that at this instance of time, the Tribunal may not interfere in the matter.

4. The applicant in his rejoinder has contended that the case of the respondent that the applicants name was not sponsored by Employment Exchange is not true, that there was no difference in the appointment of Applicant as also of those of Respondent Nos.3 to 6, because all of them were appointed purely on temporary basis and that since the applicant's services have been regularised by order dated 19/8/1998 in terms of the ruling of the Full Bench of the Tribunal in OA-950/92, the regularisation should confer seniority from the date of initial appointment, even if the appointment is made on casual basis against existing regular vacancies, contend the applicant.

5. We have with meticulous care gone through the pleadings and all the documents placed on record and have heard Shri Sandeep Marne for Shri D.V.Gangal, Counsel for applicant and Shri R.K.Shetty, learned Counsel for Respondent Nos.1 and 2. However,

we did not have the privilege of hearing Shri Ramamurthy as he was not present when the case was taken up for hearing although he was seen in the court twice during the midst of hearing and did not remain to argue the case.

6. We may first deal with the claim of the applicant regarding the placement of applicant above Respondent Nos.3 to 6. It is not disputed that in the seniority list of 1989 and 1991, Respondent Nos.3 to 6 were placed immediately below the applicant. It is also not disputed that the applicant was appointed as Watchman on 1/6/1983 while Respondents Nos.3 to 6 were appointed only on 1/8/1983. Though the Applicant was appointed earlier as Watchman, the Respondents 1 and 2 seek to justify their action in changing the seniority of the applicant in the seniority list of 1996, allegedly on the basis of representations received from somebody and discovering the fact that the applicant was not initially sponsored by Employment Exchange and not appointed on regular basis. We find little justification in the action of the respondents altering the seniority list by placing the applicant below Respondent Nos.3 to 6 after a lapse of more than seven year without even giving him an opportunity to show cause. This action amounts to negation of principles of natural justice. The contention of Respondents 1 and 2 that the applicant's appointment as Watchman w.e.f. 1.6.83 being ^{being} treating ad-hoc, he should be treated as junior to Respondents 3 to 6 though they were appointed only on 1.8.83 because their appointment was regular, has no legal or factual foundation. ^{at the App. court} While in the appointment order it was stated to be ad hoc , in

the appointment orders of Respondents 3 to 6 (Annexure R), it was stated to be purely temporary until further orders. Therefore there was no difference between the nature of appointment of the applicant and respondents 3 to 6. Further the contention of the respondents that the applicant's name was not sponsored by Employment Exchange for his initial appointment as Tabulator at Aurangabad is also not supported by any material. Though the applicant has sought a direction to the Respondents to produce the service book of the Applicant and the Respondents have stated that the Service Book of the Applicant could not be traced. If the respondents wanted to establish that the applicant's appointment as Tabulator was without being sponsored by Employment Exchange, the relevant records should have been traced and produced. Further, the applicant was not picked up from the street, but he was served with a notice calling upon him to appear on 19/2/1981 for interview. Unless the applicant's name was sponsored by Employment Exchange, we fail to understand how the Regional Deputy Director of Census Operations, Aurangabad could have come to know that there was such a person as Phatale. In the appointment order of the applicant dated 19.2.81(A3) there is no reference to any application made by the applicant for such appointment. Therefore, the argument that the applicant's name was not sponsored by the Employment Exchange has not been substantiated. If only the respondents 1 and 2 had produced the file relating to the initial appointment of the applicant by Annexure A3, the source through which the applicant's candidature came ^{could} have been known. For the failure of the respondents to do so

~~that~~ cannot prejudice the applicant. Without any document and without any basis alleging that it was on some representation, the author of which is also not disclosed the respondents could not have justifiably altered the seniority position of the applicant to his detriment and to the advantage of respondents 3 to 6 . The argument of the learned counsel of the applicant that the respondents 1 and 2 have changed the seniority of the applicant long after filing this Original Application, without notice to the applicant and without informing the Tribunal, was calculated to frustrate the litigation, cannot be brushed aside, as meritless. Therefore, ~~the~~ the action of the respondents in reversing the seniority position of the applicant placing him below respondent Nos. 3 to 6 is wholly unjustified. It has been held in a catena of rulings of the Apex Court, that once the appointment of adhoc appointee is regularised as per rules, the appointee would count his seniority from the date of initial appointment. See Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra reported at 1990 SCC (L&S)339(para 47).

7. A Full Bench of the Tribunal sitting in Bombay in O.A 950/92 relying this ruling of the Apex Court held:

"The chargeman appointed against regular vacancies on casual basis who continued to work for a number of years without break are entitled to get seniority from the date of their initial appointment and not from the date of regularisation".

Here the applicant was appointed as Watchman on ad hoc basis on an existing vacancy had continued without interruption and was confirmed on the post of Chowkidar by order dated 19th August, 1998 (Annexure A XIX).

8. Next we will consider the claim of the applicant for ad hoc promotion with effect from the date on which the respondents 3 to 6 were promoted on ad hoc basis to officiate as L.D.Cs. The respondents 3 to 6 were initially appointed as L.D.Cs on ad hoc basis in the year 1984. The applicant for the first time raised his grievance on this score only by his representation dated 6.9.90 by which time his cause of action, if any, regarding that had been barred. That he came to know of the adhoc promotion only from the seniority list on 23.10.89 cannot be accepted . Even after seeing the seniority list, he did not make any representation for about 11 months. Though he did not get any reply to his representation, he did not file any application within one year after the expiry of 6 months from the date of his representation. Therefore the relief claimed by him in his application filed in August,1993 is hopelessly barred by limitation.

9. The learned counsel of the applicant argued that as the representation of the applicant was rejected on merits by order dated 15.1.83, the application challenging that order is within time. In support of this position, the learned counsel referred us to the rulings of the Supreme Court in AIR 1977 SC 2050. We find that the above ruling was given in the peculiar facts situation and does not apply to the case onhand where the facts

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are totally different. In S.S.Rathore vs. State of M.P, AIR 1990 SC 10, the Apex Court has clearly held that the period of limitation to approach the Tribunal starts on the expiry of a period of six months from the date on which the appeal or representation is made and if no order is received and that if the application is not filed within one year, then the application will become barred. It has also been held that repeated unsuccessful representations would not enlarge the period of limitation.

10. In the conspectus of facts and circumstances, the application is disposed of with the following declarations and directions:-

- (a) The seniority list of Chowkidars dated 1.3.96 to the extent to which the applicant is placed below respondents 3 to 6 is declared illegal, unsustainable and inoperative and the respondents 1 and 2 are directed to amend the same and place the applicant in seniority as Chowkidar above respondents No.3.
- (b) The prayer of the applicant for ad hoc promotion w.e.f. the date of promotion of Respondents 3 to 6 is disallowed, but the respondents 1 and 2 are directed to consider the applicant for regular promotion in the promotion quota to the post of L.D.C. on the basis of his seniority position above the third respondent and also to consider him for ad-hoc promotion, if and when a vacancy becomes available.
- (c) The above directions regarding amendment of the seniority list dated 1.3.96 shall be carried out within one month.
- (d) There is no order as to costs.

(GOVINDAN S.TAMPI)
MEMBER (A)

(A.V.HARIDASAN)
VICE CHAIRMAN

