

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO. 900/93

Friday, THIS THE 4th TH DAY OF AUGUST, 2000.

CORAM: HON'BLE SHRI B.N. BAHADUR, MEMBER (A)  
HON'BLE SHRI S.L. JAIN, MEMBER (J)

1. U.G. Pathan, S/o G.N. Pathan  
resident of Nasik, working as  
L.D.C. in India Security Press  
Central Stamp Depot, Nasik Road,  
Nasik.
2. J.V. Deshpande, s/o V.D. Deshpande  
resident of Nasik, working as  
L.D.C. Central Stamp Depot,  
Nasik Road,  
Nasik.
3. A.B. Sayyad, s/o B.S. Sayyad  
resident of Nasik,  
working as L.D.C.  
Central Stamp Depot,  
Nasik Road,  
Nasik.
4. V.N. Ghaiwate, s/o N.H. Ghaiwate  
resident of Nasik, working as  
LDC, Central Stamp Depot,  
Nasik Road,  
Nasik.
5. P.K. Ghogadmal s/o. K.R. Ghogadmal  
resident of Nasik, working as  
LDC Central Stamp Depot, Nasik Road  
Nasik.
6. S.M. Unhwane, s/o. M.M. Unhwane,  
resident of Nasik, working as  
LDC Central Stamp Depot, Nasik Road,  
Nasik.
7. V.G. Dhanwate, s/o G.R. Dhanwate  
resident of Nasik, working as L.D.C.  
Central Stamp Depot, Nasik Road,  
Nasik.

..... Applicants  
(Applicants represented by Smt. N.H. Doshi, Advocate.)

vs.

1. Mr. V.G. Sane, Deputy Controller of  
Stamps, Central Stamp Depot, Nasik  
Road, Nasik.
2. General Manager, India Security Press  
Nasik Road, Nasik-422101
3. F.Y. Guruswamy, L.D.C. Central Stamp Depot  
Nasik Road, Nasik.

..2/-

B.N.B.

4. P.B. Wasnik, L.D.C. Central Stamp Depot,  
Nasik Road, Nasik.
5. S.G. Kamble L.D.C. Central Stamp  
Depot, Nasik Road, Nasik.
6. G. Thiyagarajan, L.D.C. Central Stamp  
Depot, Nasik Road, Nasik.
7. J. Bhaskaran, L.D.C. Central Stamp  
Depot, Nasik Road, Nasik.
8. T.V. Koteswarrao, L.D.C. Central  
Stamp Depot, Nasik Road, Nasik.
9. M. Venkata Ramana, L.D.C. Central  
Stamp Depot, Nasik Road, Nasik.
10. Chinni Venkatesh, L.D.C. Central  
Stamp Depot, Nasik Road, Nasik.
11. G. Santhanam, L.D.C. Central Stamp Depot  
Nasik Road, Nasik.
12. Ganesh Rapeti, L.D.C. Central Stamp Depot,  
Nasik Road, Nasik.
13. K. Rama Mohan, L.D.C. Central Stamp Depot  
Nasik Road, Nasik
14. Y.A. Shaikha, L.D.C. Central Stamp Depot,  
Nasik Road, Nasik.
15. R.S. Vadnere, L.D.C. Central Stamp Depot  
Nasik Road, Nasik. ... Respondents

(Respondents 1 & 2 by Shri V.S. Masurkar, Advocate  
Respondents No.3-7, 9, 11- 13 by G.K. Masand, Advocate)

(ORDER)

[Per B.N.Bahadur,Member (A)]

This is an Application made by seven Applicants who are all working as LDCs. with the Respondents in the Central Stamp Depot at Nashik. They are aggrieved by the impugned order dated 24.1.1993 (Exh.M), and seek the relief from this Tribunal that it be held that the Applicants are Senior to Respondents Nos. 3 to 15.



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2. The facts of the case, as stated by applicants, are that the Applicants contend that the Administrative Officer of Second Respondent had sounded to the General Secretary of the India Security Press, Mazdoor Sangh, a recognised Union, regarding a proposal of Second Respondent, regarding appointment of LDCs appointing, on purely adhoc basis, from Industrial Cadre/ Group D employees, in view of the large number of vacancies of LDCs in the India Security Press/Central Stamp Depot. The Union was requested to agree to the proposal. It is stated that the aforesaid Union replied to say that it conditionally agreed to such appointments, if such appointees were not reverted once the need of the management was over. After such exchange of correspondence, the applicants says that they were called for written test and interviews, and were appointed as LDCs. on ad hoc basis, vide order dated 14.7.1986.

3. The Applicants state that they were continuously working in the said posts without any break and also aver that they were required to provide an undertaking, at the time of appointment, that they would be reverted back once incumbents from the Staff Selection Commission were made available. Applicants further allege that S/Shri J.A.Somvanshi and V.P. Papal were also appointed as LDCs, and posted to India Security Press, and the said Shri Papal was provided appointment on regular basis with effect from 10th June, 1986 i.e. from date of initial appointment. The applicants had moved for own their regularisation, through the Union. It is further stated that through Office Order dated 21.9.1988, the applicants were treated as regular employees with effect from the dates mentioned against their names in the said order, and allege discrimination vis-a-vis Shri Papal.

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4. The Official Respondents in the case (Resp. 1 & 2) have filed a Written Statement in reply. There is separate reply filed by Res 3 to 7 and 9 to 13. The Official Respondents have explained the factual position to state that in 1986, there were about 20 vacancies of Lower Division Clerks (LDCs), for which requisition was placed on the Staff Selection Commission as per Recruitment Rules. They further state that 10% of the vacancies of LDCs are to be filled in from Industrial Workmen and Group D personnel, and some candidates from the category were appointed on adhoc basis purely as a stop gap arrangement, with the understanding that they would be required to revert as soon as candidates from the Staff Selection Commission became available. The details of the facts of appointment of applicants are thereafter described through reference to the Annexures filed. It is stated that a decision was taken to regularise these persons, subject to suitability and adjustment against 10% quota fixed for the purpose. If the candidates exceeded this 10% quota, the quota of vacancies anticipated against the next few years was to be considered for adjustment. Thus regularisation was done on this principle, as per Order dated 21.9.1988. These persons are 9 in number. Respondents further state that candidates recommended by the Commission were appointed on regular basis earlier to the regular appointment of applicants and that their seniority cannot be the basis of a similar claim by the applicants, who were adhoc appointees.

5. The Respondents have also taken a plea that the Application is barred by limitation.

6. The Respondents further state that a clear understanding having been given to the Union, and the condition proposed by the Union that the candidates should not be reverted cannot be taken

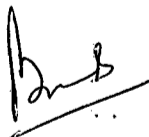
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as binding on the Respondents, and the Applicants were made well aware of this as regards the Seniority accorded to Shri V.P. Papal.

7. In the other written statement, filed by the private Respondents, the point regarding 10% of vacancies only being required to be filled up by Industrial Workers/Group D employees has been stressed and the contention taken that correct seniority positions have been made available to the Applicants by the Official Respondents. It is averred that applicants were aware of all conditionalities regarding the appointment and that while the order of regularisation was dated 21.9.1988, it was only in 1992 that the claim for an earlier date of appointment has been raised, and hence the application is barred by Limitation. In the remaining part of their written statement, these Respondents have taken, by and large, the same stands as taken by the Official Respondents, and have expounded on some of the issues.

8. We have heard Learned Counsels on both sides and have perused all papers in the case. (At the start, learned Counsel for Official Respondents, Shri Masurkar, made it clear that he did not want to file an additional statement of replies to the amendment made.) The learned Counsel for the applicant, took us over the facts of the case. It was argued that the stand that the Union had made it clear that it would not agree to reversion of the employees appointed on stop gap basis. The letter at page 26 (Exh. B) was depended upon for support and it was argued that



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while they agreed to the conditions of appointment the condition made by the Union was important. It was further argued that it was undisputed that appointments were made after due selection process and that appointments were on vacant posts with no breaks.

9. The Learned Counsel dealt at length on the facts in the case of Shri Papal, and reiterated the plea on discrimination as already taken in detail in the pleadings, vis-a-vis this case. Reference was also made to the case of one Shri Kambli to allege that he too was not eligible for appointment. Referring to page 34 of the Paper Book i.e. Order dated 21st September, 1988, it was argued that two years service had been discounted, and that the dates of seniority secured by others, vide order dated 22.10.1990 was bad in law and discriminatory. The document at page 36 was also referred to, at some length, with reference to the dates of appointments of various persons and it was alleged that only in respect of serial No. 1 and 2 in that list, could there be no challenge from the Applicants, but the seniority accorded to others was open to serious challenge. The note at Sr. No A on page 37 of the same order was specifically mentioned for challenge by Learned Counsel for the Applicant. Learned Counsel further stated that there was no basis for deciding which quota was used in making decisions and that there was no reply to the representations at page 40. The learned counsel for Applicant sought draw support from following case law:

1. (1990) 2 (SCCS ) 715 para 47 -- Direct Recruit Class I Engg. Officers Assn. vs. State of Maharashtra and Drs.
2. AIR 1989 (SC) 377 UOI vs. Ansusekhar Guin & Drs.
3. 1995 (1) GLR 373 (N.S. Saxena & Drs vs. ONGC)



10. It was further argued by learned Counsel for Applicant that applicants were not aware as to what was decided in the DPC of 11th June and that Respondent was duty bound to explain the change in seniority vis-a-vis the earlier order, where the Applicant was shown senior.

11. Learned Counsel for the Official Respondents (R.1& R.2) Shri Masurkar, first made the point that it was clearly made known at that time only that the appointments were being made as a stop gap arrangement and that the letter of the Union relating to their point that reversion shall not be made cannot give any right to the Applicants in this case. The requirements of the Recruitments Rules regarding selection were not followed as these were adhoc appointments. The Applicants had failed at a later typing test but were continued on adhoc basis. This also goes against the applicants' case.

12. The learned counsel went on to explain the case of Shri Papal with reference to the written statements of reply, and made the point that no protection can be provided as against a senior. He referred to para 15 and 18 of written statement of replies and also argued that Shri Papal had not been made the party. Referring to the arguments taken by the Learned Counsel for the Applicants, regarding para (A) on page 37, he stated that this was merely a proposal, and cannot create a right.

13. Shri Masurkar raised the point regarding delay and He made available a file relating to the case for our perusal, as also a gradation list of the Central Staff Depot, Nashik Road, as on 1.1.1988. These papers have been seen by us.

14. Arguing the case on behalf of the private Respondents, their Learned Counsel, Shri G.K. Masand first referred to the letter dated 22.5.1986 at page 26 (from the General Secretary of the Union to the Respondents) and made the point that this showed



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that they were aware regarding future quotas being taken into account. And this was all what had been done, factually. It was argued that the order dated 14.7.1986 at page 28 clearly showed that the appointments were adhoc and also that the appointees were to be reverted to their posts in the Industrial Cadre, as soon as the candidates from Staff Selection Commission became available. He argued that there was no pleadings regarding past vacancies, as alleged at the stage of arguments.

15. Learned Counsel further argued that Applicants were given the correct seniority and had acquiesced in the seniority position in the year 1988 when relevant orders were issued, whereas the representation came as late as on 16.4.1992 and that too by the Union. Thus the Applicants' case were badly hit by limitation, and delay and latches. The condition of the Union regarding non reversion cannot be binding on the Respondents, whereas the applicants cannot possibly go back on their own undertaking in this regard. The learned Counsel also discussed the case of Shri Papal, regarding whom <sup>B.S.B.</sup> ~~which~~ discrimination was raised, and sought support from the reply of official respondents on this issue. Learned Counsel also referred to para (A) on page 37, and said that this point had been met by him in his written statement. He argued that this was a mistake, which was corrected. He concluded by saying that even if absorption is made, seniority could not be claimed with effect from the date of appointment. He argued that the judgements cited in support by learned Counsel for applicants all talked on appointments as per Rules, which was not the case here.

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16. We have perused all the papers in the case as also the original papers/file produced by the respondents at the time of arguments, and have carefully considered the arguments made on both sides.

17. In the first place, we come to the point made about the Union having written to these Respondent, vide page 26, making the point that reversion of LDCs promoted as a temporary measure was not acceptable to them. This point cannot provide any right to the Applicants, in the light of the fact that all the Applicants had clearly given an undertaking agreeing for reversion in the circumstances in question. Hence, no right can accrue to the Applicants on this count. Another point which has been pleaded, in writing, relates to the claim of the Applicant protecting them vis a vis one Shri Papal. The stand of the Respondents is that Papal's case cannot be linked since Applicants were appointed in Central Stamp Depot where seniorities are maintained separately. In fact, Learned Counsel Shri Masand had made the point that Shri Papal was appointed against 10% quota for rankers, since there was a vacancy for rankers from the date he was appointed on adhoc basis. As such, he was given seniority from that date. We have considered this point, elucidated in para 14 of the reply of private Respondents, and find that this relates basically to the adjustment of quotas and cannot provide a basis for the relief being sought to the effect that the regularisation of Applicants should be made with effect from the initial date of appointment.

18. Now, basically, the central point is that there was a situation obtaining of a large number of vacancies of LDCs existing, and a certain scheme was devised to meet that the contingency that had arisen. Full knowledge was given about the aspect of reversion once the direct recruits came to be recruited

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to all concerned. It is clear that only 10% of the posts of LDCs can be filled in from the Industrial Workmen and a process of tests has been prescribed. The Recruitment Rules which envisages filling up of 90% vacancies of LDCs by direct recruitment through Staff Selection Commission were followed and the direct recruits came to be appointed as per Rules during the period from 12.7.1987 to 4.4.1988. In all fairness the Applicants were adjusted against vacancies and they cannot claim any right of seniority from their date of allotment. In fact, provision of such seniority/regularisation would be arbitrary in so far as the rightful interests of the direct recruits concerned, and would, in fact, violate the Rules of Recruitment vis-a-vis the direct recruits. This point cannot be lost sight of while considering the claim of the Applicants.

19. Learned Counsel for the Applicant had repeatedly drawn our attention to para A at page 37 which is part of the documents at pages 36/ 37. The document is titled as "Agenda for termination of probationary period and subsequent confirmation of eligible lower division <sup>SI M</sup> clerks of Central Stamp Depot". In fact, these are agenda papers no doubt put up by a Officer of the Respondents. They have best constitute proposals or facts for consideration of proposals. It is not something on which the Applicants would claim right vis-a-vis the reliefs soughts.

20. The Respondents and Private Respondents have both taken the point regarding limitation, delay and latches and the point is sought to be made that in 1988, when the decision was known to the Applicants they did not raise any objection in the matter. It is true that the relevant order is dated 28th September, 1988 and it has taken the Applicants five years in coming up to this

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Tribunal. It needs no detailed reasoning, in the face of the facts cited in this regard that the case of the Applicants has badly worsened in view of limitation delay and latches. The learned Counsel had feebly attempted to take the plea of continuous cause and action, which obviously is not a valid plea in the facts of the case.

21. Learned Counsel for the Applicant had taken support from the case of *N.S. Saxena vs. D.N.G.C* [1995 (1) GLR 373]. That was a case where appointment was to be treated as on probation for a period of one year from date of appointment and hence the ratio in that case cannot help the cause of the Applicants. Similarly, in the second case cited [AIR 1989 (SC) 377] it is concluded that when service Rules does not prescribe a mode of fixation of seniority then continuous length of service can be counted for fixing seniority. In the case before us, there are clear Rules which envisage 90% Recruitment directly, and in the background of the position discussed in the above paragraphs, this judgement does not help the Applicants, either. The third case cited is the well known case of *Direct Recruit Class II Engineers Association vs. State of Maharashtra* [1990 (2) SCC 715]. In fact the judgement in this case, when read in its totality, goes against the Applicants, because it also lays down, *inter alia*, that where initial appointment is only adhoc, made as a stop gap arrangement and not according to rules, the officiation in such posts cannot be taken into account for considering the seniority. As against the situations discussed in all these cases, we have in the present case a clear situation, where adhoc appointments were made to meet a special



contingency as a stop gap arrangement, and all concerned were informed that reversions will take place as and when regular recruits are appointed. Everything has been done in an open manner and not behind the back of the Applicants. Consultation with Unions was only a part of this open manner of doing things. Hence, when examined fully on merits, no case is made out, whereby we can come to any conclusion that the Applicants have not been dealt with justly. Hence no case has been made out for our intervention. We have also seen the original record produced by Respondents and find nothing which will support the case of the Applicants.

22. The Applicants are further affected adversely by limitation, delay and latches as explained above.

23. In view of the discussions above, the Application deserves to be dismissed and is hereby dismissed.

24. There is no orders as to costs.

*S.L. Jain*  
(S.L. Jain)  
Member (J)

sj\*

*B.N. Bahadur*  
(B.N. Bahadur)  
Member (A)

04/08/2000