

OA 40/99

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

- 1) Original Application No. 1024/1992.
2) Original Application No. 40/1994.

Presented, this the 5th day of December 1997.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri P.P.Srivastava, Member(A).

1. Original Application No.1024/92.

Ms.Suchita Solanki,
61, Opp.Post Office,
S.P.Road, Jogeshwari (W),
Bombay - 400 102.

...Applicant in
(O.A. 1024/92)

(By Advocate Shri A.I.Bhatkar)

2. Original Application No.40/94.

Balkrishan Pal,
C/o.G.S.Walia,
Advocate, High Court,
16, Maharashtra Bhavan,
Bora Masjid Street, Fort,
Mumbai - 400 001.

... Applicant in
(O.A.40/94)

(By Advocate Shri G.S.Walia)

V/s.

1. Union of India through
Secretary, Ministry of Health and
Family Welfare, Government of
India, Nirman Bhavan,
New Delhi.
2. The Director, All India Institute
of Physical Medicine & Rehabilita-
tion, Haji Ali Park, K.Khadye Marg,
Mahalaxmi,
Bombay - 400 034.
3. Shri Balkrishan Pal,
4. Ms.Geeta D.Toley,
both working at All India
Institute of Physical Medicine &
Rehabilitation, Haji Ali Park,
K.Khadye Marg, Mahalaxmi,
Mumbai - 34.

... Respondents in
(O.A.1024/92)

1. Union of India through
Director, All India Institute
of Physical Medicine & Rehabilitation,
Haji Ali Park, K.Khadye Marg, Mahalaxmi,
Bombay - 400 034.
2. Ms.Geeta G.Toley,
Additional Lecturer (V.G.),
All India Inst. of Physical
Medicine & Rehabilitation,
Haji Ali Part, K.Khadye Marg,
Mahalaxmi,
Bombay - 400 034.

3. Ms. Suchita Solanki,
C/o. A.I. Bhatkar,
Advocate.

... Respondents in
(O.A. 40/94)

ORDER

(Per: R.G. Vaidyanatha, Vice Chairman)

These are two applications filed by the respective applicants under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard both the sides. Since identical questions arise for consideration in these two cases and common arguments were addressed by all the counsel, we are disposing of both the applications by this common order.

2. OA No. 1024/92 is filed by the applicant Suchita Solanki. Respondent No. 3 in this case is Mr. Balkrishna Pal^{phw}, has filed O.A. No. 40/94. All the parties are common to both the applications. The pleadings are almost common in both the cases. To avoid repetition of pleadings in both the cases we would like to refer to the pleadings of each party by mentioning the name of the party.

3. The case of Suchita Solanki, who is the applicant in O.A. No. 1024/92 and who is Respondent No. 3 in O.A. No. 40/94 is as follows: The applicant was appointed on ad hoc basis as an additional Lecturer in the Vocational Guidance at All India Institute of Physical Medicine and Rehabilitation, Mumbai. She first came to be appointed in 1984 and she was continued on ad hoc basis from time to time. When her appointment came to be terminated on a previous occasion she moved this Tribunal

by filing O.A. No. 813/90. That O.A. came to be allowed.

by this Tribunal directing the management to continue her service as Ad Hoc Lecturer and her case for regularisation may be considered according to rules and further her services should not be terminated till a regular candidate was appointed. Subsequently the department called for applications for regular appointment of Additional Lecturer. The applicant also submitted her application. She was not called for interview at all. Though the applicant did not possess one particular qualification she had necessary experience in the field. Originally the application was filed for a direction to the Management to regularise her services and some other consequential reliefs. But subsequently she came to know that Respondents Nos. 3 and 4 Mr. Balkrishna Pal and Ms. Geeta D. Tolay have been appointed as Additional Lecturers in the said Institution. Hence she amended the O.A. to challenge the appointment of Respondent Nos. 3 and 4 in her application. Now her case is that appointment of Mr. Balkrishna Pal is bad because he does not have the required educational qualifications. As far as Ms. Gita Tolay is concerned it is alleged that she is over aged and hence she could not have been appointed as additional Lecturer. It is therefore alleged that the appointments of Mr. Balkrishna Pal and Ms. Geeta Tolay are illegal and liable to be quashed and she is entitled to continue in ad hoc appointment till a qualified regular candidate is appointed or in the

alternative she is entitled to get her services regularised as per rules. On these allegations she has approached this Tribunal for quashing the appointments of Mr. Balkrishna Pal and Ms. Geeta Tolay and then she wants that her services should be regularised ^{by} with the department and for other consequential reliefs.

4. The case of the department in both the cases is that in O.A. No. 1024/92 the applicant was appointed on ad hoc basis and she had no right to continue in that capacity indefinitely and her services were rightly terminated after regular candidate Ms. Geeta D. Tolay was appointed. It is stated that Geeta Tolay is a departmental candidate and she is entitled to get age concession and therefore she was not age barred for the purpose of the appointment. As far as Balkrishna Pal is concerned, the stand of the department is that he was appointed on a temporary basis in a temporary vacancy. It is pleaded that in this Institution there are only three posts viz., the Chief, Vocational Guidance Department, Lecturer Vocational Guidance and Additional Lecturer, Vocational Guidance. There is only one post of Additional Lecturer in the Institute. Regular selection was made in which Ms. Geeta Tolay was appointed to that post. Then it is pleaded that Mrs. M.A. Chaukar who was the Chief of the Vocational Guidance Department went on transfer on deputation as Assistant Professor in another Institute and on her deputation Mrs. Roopa Mehta was promoted and appointed as Chief

of Vocational Guidance Department. Then the post of Lecturer, Vocational Guidance ^{which} was held by Mrs. Roopa Mehta fell vacant and that post can be filled only by promotion from an Additional Lecturer. The post of Additional Lecturer was also vacant and hence the post of Lecturer was down graded as Additional Lecturer till incumbent comes back. Mr. Balkrishna Pal who was also selected in the impugned selection came to be appointed on ad hoc and temporary basis in the said down graded post of Additional Lecturer. It is ^{not} a permanent vacancy since any time the officer who has gone on deputation may come back. It is therefore stated that Balkrishna Pal has been appointed on temporary and ad hoc basis in the temporary vacancy to the down graded additional lecturers post.

5. The stand of Ms. Geeta Tolay is that she has all the qualifications and experience for the post of Additional Lecturer, though she is overaged. Being a departmental candidate she gets age concession up to 40 years and therefore she is entitled to be appointed as an Additional Lecturer. She has been duly selected by the D.P.C. and appointed as Additional Lecturer and therefore her appointment cannot be challenged by anybody.

6. At the time of arguments, the learned counsel appearing for Suchita Solanki contended that the appointments of Balkrishna Pal and Geeta Tolay are illegal and contrary to rules and are liable to be quashed. He argued that the service of Suchita Solanki should be regularised or in the alternative she should be allowed to continue till regular appointment is made in terms of the order passed by the Tribunal in the previous OIA.

The Department has supported the appointment of Ms. Geeta Tolay for the permanent post of Additional Lecturer and about the appointment of Balkrishna Pal on ad hoc basis in the temporary vacancy of the down-graded post. It is also submitted that Suchita Solanki being ^{not} qualified can have no right to challenge the appointments of Balkrishna Pal and Ms. Geeta Tolay.

Learned Counsel for Balkrishna Pal has argued that the appointment of Ms. Geeta Tolay is void and is liable to be quashed and his appointment is perfectly valid and that termination of his service by the department would be illegal and has to be quashed.

Learned Counsel appearing for Geeta Tolay ^{while} were supporting her appointment as perfectly legal and justified, and contended that Suchita Solanki was not qualified and has no right to challenge the appointments made by the department and then further argued that Balkrishna Pal was only the ad hoc appointee in a temporary ~~vacancy~~ position.

7. In the light of the arguments addressed before us the points that fall for determination in these two cases are :

- (I) Whether the appointment of Ms. Geeta D. Tolay is illegal and contrary to rules ?
- II) Whether the appointment of Balkrishna Pal is a regular appointment and the order of his termination is liable to be set aside ?
- III) Whether the services of Suchita Solanki are entitled to be regularised ?
- IV) Whether Suchita Solanki is entitled to continue in service till regular appointments are made by the department ?

POINT - I

8. Both the learned Counsel appearing for the applicants in these two O.A.s questioned the legality of the appointment of Ms. Geeta Tolay. The main argument is that she was over-aged and therefore her appointment is bad. The advertisement for filling up of this post is at page 55 of the paper book of O.A.No. 40/94. No doubt the age for this recruitment shown is 30 years and below. Admittedly Ms. Geeta Tolay was aged more than 36 years on the last date for receipt of applications. Hence it may be stated that she was over-aged as per this requirement. In the first column, on the left side, the general requirements are given. We are only concerned with Clause No.6 which reads as follows :

"6. Upper age limit relaxable for SC/ST ex-servicemen, physically handicapped and Government servants as per rules"

Therefore, though the requirement of age is shown as 30 years it is subject to Clause 6 which provides for relaxation of age for certain cases as per rules.

One of the categories of candidates who are entitled for age relaxation are Government servants. Our attention is drawn to Swamy's Manual on Establishment and Administration (1994 Ed.) page 114. It is Chapter No.14 which provides for age relaxation for appointments.

The relevant clause for our present purpose is clause (xi). It says that for departmental candidates with three years continuous service, in respect of Grade C & D posts by direct recruitment which are in the same line or allied cadre, the age relaxation is up to 40 years of age for general categories and 45 years for SC/ST candidates.

9. There is a serious dispute between the parties on the question of application of clause (xi) to Ms. Geeta Tolay. It is an admitted fact that Ms. Geeta Tolay was working at the time of her application at District Rehabilitation Centre, Thane District, which is under the Ministry of Welfare, Government of India. Therefore Ms. Geeta Tolay was a departmental candidate who was working in the Government of India under Ministry of Welfare. Then the question is whether

she was working in the same line or allied cadre.

Even on this aspect there cannot be any dispute at all.

10. The present post where Ms. Geeta Toley has been appointed is Additional Lecturer (Vocational Guidance) in All India Institute of Physical Medicine & Rehabilitation, that means she ^{has} is to teach Vocational Guidance in an Institute of Rehabilitation. Her previous post was Vocational Counsellor in District Rehabilitation Centre at Thane.

It is therefore seen that in the previous post she was Vocational Counsellor, but in the present post she is Lecturer in Vocational Guidance. The previous posting was in District Rehabilitation Centre and the present posting is in an Institute for Physical Medicine & Rehabilitation. In our view, Ms. Geeta Toley has been in the allied post or allied cadre in the previous post which is same or alike the present post. Earlier, her department was under the Ministry of Welfare and her present department is Ministry of Health & Welfare. Hence we can safely hold that she answers the description of working in the same line or allied cadre within the meaning of Clause 11 mentioned above.

11. Another argument on behalf of the applicants in both the cases is that there is no mention that age has been relaxed in favour of Ms. Geeta Toley on the ground of her previous appointment. The Rule says that in certain circumstances an applicant gets automatic age

concession or relaxation if he or she comes within the Rules mentioned in Chapter No.14 in Swamys' Manual on Establishment and Administration referred to above. We have already pointed out clause VI of the Advertisement which clearly mentions about relaxation of age to certain categories of applicants. If once Ms.Geeta Toley answers the description, she as of right, entitled to that age concession or age relaxation and no separate order or specific order need be passed.

We have perused the concerned Selection file produced before us. The Selection Committee has made a note that the three candidates considered by it fulfilled all the requirements of the Recruitment Rules. That means the committee is satisfied about their qualification, age and other things as required by the Recruitment Rules. If the committee had found that she was over age it would have rejected her case. The fact that the Committee has noted that she has all the requirement under the Rules it includes the question of age also. Further in the Minutes of the Committee she is shown as a departmental candidate.

Hence, in our view, Ms.Geeta Toley is entitled to age concession up to the age of 40 years and she is about 37 years and ^{hence} she was not dis-qualified from being appointed to this post.

12. Another argument on behalf of the applicant in O.A. 40/94 is that Ms.Geeta Toley's application did not reach the Office of the First Respondent within the last date viz. 1.2.1993 and therefore

...11.

her application could not have been considered by the Selection Committee. Reliance was placed on the covering letter of the District Rehabilitation Centre which is dt. 3.2.1993 forwarding the application of Ms.Geeta Toley and that letter with the application was received by the Ist Respondent on 5.2.1993. The last date for submitting the application was 1.2.1993. It was therefore argued that since the application was received after the last date it could not have been considered by the Selection Committee. In our view, there is no merit in this argument.

It is well settled and even not disputed that a departmental candidate has to submit application through the Head of the Department. Accordingly, Ms.Geeta Toley submitted her application to the Officer under whom she was working in the District Rehabilitation Centre. Accordingly, the District Rehabilitation Officer forwarded the application of Ms.Geeta Toley to the appointing authority. The learned counsel appearing for the Ist Respondent made available to us the Selection file. We have perused them and we find that Ms.Geeta Toley's application is dt. 30.1.1993 and it was given to the department where she was working on that day. But the Department took three or four days time to forward the application to the Ist Respondent. In our view, when the application has to be submitted through proper channel and when the application is submitted to the Head of Office on or before the last date it would be sufficient and the delay in one department forwarding the application to the other department will not come in the way of the selection committee considering the application.

12. Another contention urged on behalf of the applicant in O.A. No.40/94 is that he was appointed as the main candidate and Ms. Geeta Toley was appointed in the waiting list and therefore his appointment is regular appointment and her appointment should be treated as ad hoc appointment. There is no merit in this submission.

We have seen the minutes of the Selection Committee Proceedings (vide page 56 in the paper book of O.A. 40/94). There were three candidates before the Selection Committee of whom Ms. Geeta Toley at Sl.No.1, Shri N.C. Mohanty at Sl.No.2 and Shri Bal Krishna Pal at Sl.No.3. The committee has selected Ms. Geeta Toley and Shri Bal Krishan Pal to the post of Additional Lecturer. Therefore, we find that Ms. Geeta Toley's name appears at Sl.No.1 in the list and even in the order her name is shown as first and Shri Bal Krishan Pal's name is shown as second.

13. In this connection, we may also notice one of the points which has been urged on behalf of the respondents. As already seen Ms. Geeta Toley was working in the District Rehabilitation Centre. It was a Project of Central Government and funded by Central Government, but managed or administered through State Government; then the Central Government took a policy decision to wind up this project. The posts were abolished. Therefore, the persons who were holding the posts were treated as surplus staff, this point has been raised in the written statement. In addition to this we have the affidavit of

Dr.B.D.Athani who is the Director of the All India Institute of Physical Medicines and Rehabilitation. The relevant portion of his affidavit dt.5.6.1995 at page 64 of the paper book of O.A. 40/94 is as follows :

"..... apart from the said fact the post on which the said Miss Geeta Toley was working at the District Rehabilitation Centre, Virar was abolished by the Government of India in 1990 and as such the said Miss. Geeta Toley who was confirmed employee had become surplus and was required to be continued in the said post till she is absorbed either in the Central Government or in the State Government. I say that in so far as surplus personnel are concerned, there is no age limit for their being absorbed and even on that count, the appointment of Miss. Geeta Toley could not be said to be irregular or illegal as alleged or otherwise."

It is therefore clear that when the post has been abolished and she was in a confirmed Government job, she had become surplus and she had to be absorbed in another Government post. Now she has all the qualifications for the present post of Additional Lecturer, she has been duly selected. Therefore, the question of her age does not arise at all. Hence even on this ground the appointment of Ms.Geeta Toley cannot be said to be illegal or irregular.

After considering ^{all} the rival contentions our finding on Point No. I is in the negative.

P O I N T - II

14: Shri Balkrishan Pal claims that he was senior to Ms.Geeta Toley in the selection and he was appointed on regular basis and that Ms.Geeta Toley's appointment should be treated as ad hoc.

It is common ground that the advertisement was only for one vacancy. It is an admitted fact that

there was only one substantive vacancy of the post of Additional Lecturer in the Institute. The minutes of the Selection Committee shows two persons were selected of whom Ms.Geeta Toley's name appears first and Shri Balkrishan Pal's name appears as a second name. When there was only one vacancy and when Ms.Geeta Toley's name appears as first name in the selection list then her appointment will be a regular appointment for the substantive vacancy as per the advertisement. We have also perused the appointment orders issued to both these persons. The appointment order of Shri Balkrishan Pal shows that it was purely an ad hoc and temporary appointment. But the appointment order of Ms.Geeta Toley shows that her appointment was a regular appointment for a substantive vacancy on probation. Though identical offer of appointment was issued to both of them, we have to spell out the exact nature of appointment by seeing the appointment orders. There is no doubt that Shri Balkrishan Pal's appointment was purely ad hoc and temporary.

15. We have already pointed out that there was only one substantive vacancy of Additional Lecturer. We have already seen that one post of Lecturer was down graded as Additional Lecturer in view of the ad hoc promotion of the incumbent Lecturer as Chief of the Vocational Guidance Department. That vacancy arose because of the then incumbent Mrs.Chaukar going on deputation to another department. Since it was a purely temporary vacancy and a down graded post Shri Balkrishan Pal has been appointed on ad hoc basis

in that temporary vacancy, hence he cannot claim any permanent right in that post till his services are regularised according to law.

16. In view of the anticipated return of the official who had gone on deputation, the Institute terminated the services of Shri Balkrishan Pal. After filing of this O.A. the Tribunal has passed an interim order directing the Institute to continue Shri Balkrishan Pal in service since the said post is still vacant. Accordingly, Shri Balkrishan Pal has continued in service in the down graded post of Additional Lecturer till to day. He is entitled to continue there till the official who has gone on deputation returns to the Institute. If by chance the official who has gone on deputation does not want to return to his post in the Institute, then the post of down graded Additional Lecturer becomes a regular vacancy and then the Institute may consider whether Shri Balkrishan Pal who has been regularly selected can be absorbed in that post. It is open to the Institute to take ^{appropriate} proper decision on this point according to rules. Till such time Shri Balkrishan Pal can continue in service in the downgraded Additional Lecturer's post on ad hoc basis as per the original order of appointment issued to him.

Though the learned counsel for Ms. Suchita Solanki contended that Shri Balkrishan Pal did not have the required qualification and experience, he has not substantiated the said argument. On the other hand, the materials produced by the Department show that Shri Balkrishan Pal had all the required qualifications

and experience.

For the above reasons our finding on Point No.2 is that Shri Balkrishan Pal's appointment was only an ad-hoc appointment to the post of the down-graded Additional Lecturer and the order of termination is liable to be set aside and he should be allowed to continue in that post till the regular incumbent comes back or in the alternative the Institute takes a decision on regularisation of his appointment as per rules.

P O I N T N O - III

17. In our view, Point No.III does not survive when regular appointment is made by appointing a fully qualified candidate. The question of regularisation of services of Ms.Suchita Solanki does not arise at all when after advertising the department has filled up the post by regular appointment of Ms.Geeta Toley. Even otherwise Ms.Suchita Solanki does not have the required qualifications as on the date of advertisement or on the date of her application or on the date of selection. When she does not have the required qualifications at that time her services could not be regularised and in the meanwhile a regularly appointed candidate has taken charge of the post.

Point No.III is answered in the negative.

P O I N T N O - IV

18. It was argued on behalf of Ms.Suchita Solanki that the appointment of Ms.Geeta Toley was illegal because she was over-aged and appointment of Shri Balkrishan Pal was also bad since he did not

have required qualification and further his appointment was ad hoc appointment and further contended that one ad hoc appointee cannot replace another ad hoc appointee. Some comment was made on different dates of appointments of these two persons and the date of termination of the services of Ms. Suchita Solanki. In our view, these contentions have no merit.

We have already held that the appointment of Ms. Geeta Toley is perfectly valid and she fulfilled all the requirements of the advertised post both regarding qualifications and age, which is relaxable to her being a departmental candidate. If once her appointment is legal and valid, then there is no question of continuing the services of Ms. Suchita Solanki who was only an ad hoc appointee and further she did not have the required qualifications at that time. In our view, the termination of the services of Ms. Suchita Solanki is perfectly justified and she has no right to continue in service. In fact she has been relieved of the post and she is no longer working there for the last four years.

Point No. IV is answered in the negative.

19. In the result, it is ordered as follows :

O R D E R

- (1) The Original Application No. 1024/92 filed by Ms. Suchita Solanki is hereby dismissed.
- (2) The Original Application No. 40/94 filed by Shri Balkrishan Pal is partly allowed. The order of termination of Shri Balkrishan Pal is hereby set aside. Shri Balkrishan Pal is allowed to continue in service in the downgraded post of Additional Lecturer till the original incumbent comes back. In case the original incumbent does not turn up, then the Institute shall consider whether Shri Balkrishan Pal's services can be regularised or he can be absorbed in