

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 281 of 1994.

Dated this Friday, the 12th day of March, 2004.

Ashok Kumar Chatterjee & Another, Applicants.

Shri G. K. Masand, Advocate for
Applicants.

VERSUS

Union of India & Another, Respondents.

Shri V. G. Rege, Advocate for
Respondents.

CORAM : Hon'ble Shri A. K. Agarwal, Vice-Chairman.

Hon'ble Shri S. G. Deshmukh, Member (J).

- (i) To be referred to the Reporter or not?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal?
- (iii) Library.


(A. K. AGARWAL)
VICE-CHAIRMAN.

OS*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 281 of 1994.

Dated this Friday the 12th day of March, 2004.

CORAM : Hon'ble Shri A. K. Agarwal, Vice-Chairman.

Hon'ble Shri S. G. Deshmukh, Member (J).

1. Ashok Kumar Chatterjee,
Residing at Bunglow No. 11,
C. N. P. Colony,
Nashik Road.
2. Pramod Sadashiv Ughade,
Residing at Panchasheel
Bunglow, Nalanda Co.Op.
Housing Society, Jail Road,
Nashik Road. Applicants.

(By Advocate Shri G. K. Masand)

VERSUS

1. Union of India through
The Secretary,
Ministry of Finance,
Dept. of Economic Affairs,
New Delhi.
2. The General Manager,
Currency Note Press,
Jail Road,
Nashik Road. Respondents.

(By Advocate Shri V. G. Rege)

O R D E R

PER : Shri A. K. Agarwal, Vice-Chairman.

This O.A. has come before us in pursuance of the order dated 25.08.2003 of the High Court of Judicature at Bombay remanding back the matter for decision on merits.

... 2



2. The O.A. was dismissed by the Division Bench of this Tribunal vide order dated 24.04.2002 on the ground that the applicant has asked for more than one relief which are not consequential in nature. Thus, the prayers seeking relief are not based upon a single cause of action; which infringes Rule 10 of the C.A.T. (Procedure) Rules, 1987. The High Court in its order passed in Writ Petition No. 4771 of 2003 held that the "petition was thus based on a single cause of action based on a single ground that the petitioners held posts of Safety Officers on regular basis. All the reliefs claimed were consequential to the petitioners succeeding in this contention."

3. We have heard the arguments put forth by both the counsels on merit. The Learned Counsel for applicants mentioned that Applicant No. 1 was selected by the Currency Note Press and appointed as a Safety Officer w.e.f. 15.09.1987. The second applicant was appointed w.e.f. 16.09.1987 as Safety Officer in India Security Press. Both these appointments were made on the basis of recommendations of the Departmental Promotion Committee. The qualification for the Safety Officers has been prescribed under Factories Act. The Rules are known as the Maharashtra Safety Officers (duties, qualifications and conditions of the service), Rules, 1982 and rule 3 prescribes the qualification for the post of Safety Officer and under rule 4 it is incumbent on every occupier to appoint the requisite number of Safety Officers. Further, rule 7 (5) prescribes the conditions

which the occupier has to observe whenever he intends to terminate the services of the Safety Officer. The Learned Counsel further mentioned that both the applicants have been working as Safety Officer continuously right from the year 1987 i.e. for almost 17 years now.

4. It has been stated by the applicants that with a view to comply with the provisions of the M.S.O. Rules, the Central Government sanctioned one post of Safety Officer and one post of Additional Safety Officer for C.N.P. Similarly, one post of Safety Officer and two posts of Additional Safety Officer for I.S.P. were sanctioned. One of the eligibility condition is that the incumbent must have a diploma in Industrial Safety. Both the applicants were selected and deputed for training by a Committee appointed for this purpose. Thereafter, the C.N.P. by order dated 01.07.1985 deputed both the applicants for undergoing one year training for diploma in Industrial Safety in the Central Labour Institute, Sion, Bombay. Both the applicants were paid salary during the period of training and after passing the course became eligible for appointment to the post of Safety Officer in accordance with the M.S.O. Rules. Thereafter, a D.P.C. was held and both the applicants were recommended for appointment as Safety Officer and took charge in September, 1987. The Learned Counsel for the applicant mentioned that both of them were thus appointed after prescribed training and on the recommendations of the D.P.C. Inspite of this, treating their appointment only as ad hoc is not just and fair.

5. In the appointment orders of both the applicants it was mentioned that they were being appointed on an ad hoc basis for a period of one year. A notional break of one day after the expiry of one year was given and, thereafter, the appointment was continued. The Learned Counsel for the applicant has contended that this type of break is not legally permissible because even one day's break constitutes termination of service. As contemplated by Rule 7(5) of M.S.O. Rules, for terminating the service, the employer has to give due notice as well as to indicate the reason and has to follow the prescribed procedure. Nothing of this type was done. He further said that in a number of cases the Courts have held that such notional termination or break of one day is not legally tenable and that such a break has to be ignored so as to treat the entire service as a continuous one.

6. The Learned Counsel for the applicants continuing his submissions mentioned that the Government framed rules in the year 1988 for the recruitment of Safety Officers and Senior Safety Officers in I.S.P. and C.N.P. The Government thereafter issued notification in the Employment News on 29.02.1994 inviting applications for the post of Sr. Safety Officers, C.N.P., Nasik. It was the contention of the Learned Counsel that when applicants working on those posts were duly qualified and were appointed after the recommendations of the D.P.C., then to treat them as ad hoc and to invite applications for regular appointment, is not justified at all. The Learned Counsel mentioned that even the

Recruitment Rules of 1988 were found defective and are no longer in force. They have been replaced by the Recruitment Rules of 1995.

7. The Learned Counsel for respondents starting his submission mentioned in the beginning that this is essentially a case for the regularisation of the services of petitioners. Both of them are continuously working since 1987. However, when they were appointed, there were no Recruitment Rules, although a D.P.C. was constituted and it recommended their names. Since there were no recruitment rules the appointment was only on an ad hoc basis. The Recruitment Rules were finalised in the year 1988. These rules were further revised and now the Recruitment Rules 1995 are in operation.

8. Making his submission on the rules, the Learned Counsel for respondents mentioned that though in the O.A. the applicants have questioned the Recruitment Rules of 1988 but it was well within their knowledge that the revised rules of 1995 have come into operation. They have neither amended the OA nor filed a M.P. challenging the Recruitment Rules of 1995. The petitioners are well aware that Recruitment Rules, 1995, have been brought into force w.e.f. 03.07.1995. The Learned Counsel for respondents further mentioned that in view of "The India Security Press and Currency Note Press (Senior Safety Officer and Safety Officer) Recruitment Rules, 1995" which have been brought into force w.e.f. 03.07.1995, the applicants are not entitled to any relief either final or interim, restraining the respondents to fill up the post in accordance with rules of 1995.

9. The Learned Counsel for the respondents further stated that the initial appointment was made on an ad hoc basis in September, 1987 and is yet to be regularised. This according to him can be done only by following the procedure laid down in the recruitment rules. Continuous working on the post since 1987 can at best, entitle the applicants for consideration among others. When the applicants were appointed in September, 1987 on the post created in 1985, there were no rules issued by the President under Article 309 of the Constitution of India. Even the D.P.C. recommending their names in the year 1987 was not based on any rules framed under Article 309 of the Constitution. In view of this, the appointment of both the applicants can be assumed only as ad hoc. The matter is still under consideration in consultation with the U.P.S.C. He further mentioned that the Supreme Court has already laid down certain conditions in Piara Singh's case to be followed in such matters.

10. The Learned Counsel for the petitioner cited certain rulings in favour of his contention. He particularly laid emphasis on the ratio laid down by the Supreme Court in Rudra Kumar Sain & Others V/s. Union of India & Others [2000 SCC (L&S) 1055]. In para 16 of the judgement the Apex Court has observed as followed :

"The three terms "ad hoc", "stopgap" and "fortuitous" are in frequent use in service jurisprudence. In the absence of definition of these terms in the Rules in question we have to look to the dictionary meaning of the words and the meaning commonly assigned to them in service matters.....The expression "ad hoc" in Black's Law Dictionary, means something which is formed for a particular purpose.

In para 20 of the aforesaid judgement the Apex Court has observed as follows :

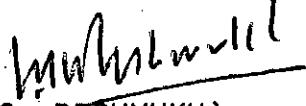
"In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be "stopgap or fortuitous or purely ad hoc"

11. Regarding the rule position, it has been conceded by the Learned Counsel for respondents that the rules were made for the first time in the year 1988. The rules were found lacking in certain matters and had to be revised and finally the revised rules came into force in 1995. Under such circumstances, the appointment made in 1987 could not be based on any rules as such. We are inclined to agree with the argument put forth by the Learned Counsel for applicant that in the absence of any specific rules framed by the Government of India, the rules framed by the State Government of Maharashtra under the Factories Act should be taken as the base for appointment of Safety Officers in an organisation. These rules have prescribed the qualification of Safety Officer, the mode of recruitment as well as the procedure required to be followed by the employer in case he intends to terminate the services of the Safety Officer. In this case, both the applicants had also undergone the requisite training for the post. In fact, in both the organisation, i.e. I.S.P. as well as CNP, the post of Safety Officer was created in compliance of M.S.O. Rules. The posts were later on redesignated as Sr. Safety Officer and Safety Officer. One of the eligibility conditions under the rules was that the incumbent should possess diploma in industrial safety. It is also an undisputed fact that

both the applicants were sent for training at the cost of the employer i.e. I.S.P. and C.N.P. and after satisfactory completion of the training only they were appointed on the post of Safety Officer. If the Central Government did not frame the rules for a long period, then it is not the fault of the applicants. Moreover, as per the statutory provisions the Currency Note Press has also to fulfil the requirements laid down in the Factories Act and rules made thereunder.

12. We, therefore, hold that the appointment of both the applicants was made after they acquired the requisite qualifications and was based on the recommendations of a D.P.C. constituted by the competent authority. It is very common to follow general principles of constituting promotion committees in the absence of rules. They had been working on that post satisfactorily right from the year 1987 and, therefore, the appointments, keeping in view the ratio of the Supreme Court cited above, cannot be held as purely ad hoc, fortuitous or stopgap. However, we also appreciate that when a new set of Recruitment Rules, 1995, has come into force, then any action at this stage has also to be in conformity with these rules. If the applicants fulfil the qualifications as required under the Recruitment Rules of 1995 after making use of relaxation clause, if any, then they have the right to be considered on priority. The respondent should consider some one else only thereafter.

13. The O.A. is thus allowed and the respondents are directed to consider the case of both the applicants for regularisation on the post of Senior Safety Officer as per the provisions contained in the Recruitment Rules, 1995. If any of them is considered not suitable as per the new rules, the reasons for the same should be given clearly in a speaking order. No order as to costs.


(S. G. DESHMUKH)

MEMBER (J)


(A.K. AGARWAL)

VICE-CHAIRMAN

os*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

C.P. NO. 23/2005

ORIGINAL APPLICATION NO. 281/1994

Shri A. K. Chaterjee.

APPLICANTS.

V/s.

Min. of Finance.

RESPONDENTS.

CORAM: HON'BLE SHRI A. K. AGARWAL (VICE CHAIRMAN)
HON'BLE SHRI MUZAFFAR HUSAIN MEMBER (J)

Tribunal's Order :

Date : 13.03.2007.

Applicant by Shri S. S. Karkera.

Respondents by Shri V. S. Masurkar.



Learned counsel for respondents submitted a copy of order dated 16/03/2007 whereby the applicant has been promoted as Senior Safety Officer Group 'A' on adhoc basis for a period of one year. Shri Masurkar submitted that the file is with the UPSC and compliance of the Tribunal's order is under proess. He seeks and is granted three months time for compliance of the Tribunal's order.

List the contempt petition for orders on 27. 06.2007.

True Copy
16/3/07

Section Officer
Shri V. S. Masurkar
MUMBAI BENCH

Despatched on 16/3/07

STOKE

NO. CAT MUM JUDL OA. NO. 281/1994 / 1667-1668 DATE : 16/3/07
Copy to

1. Shri S. S. Karkera, counsel for the applicant.
2. Shri V. S. Masurkar, counsel for the respondents.

Kar Section Officer

OK

16/3/07
VINAY S. MASURKAR
Govt. Counsel