

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: GULESTAN BUILDING
6, FRESCOT ROAD, MUMBAI - 400 001

ORIGINAL APPLICATION NO. 47/1994
MONDAY, THIS THE 5TH DAY OF JULY, 1999

SHRI JUSTICE S. VENKATARAMAN .. VICE CHAIRMAN
SHRI S.K. GHOSAL .. MEMBER (A)

Girdharlal Balubhai Parmar,
Assistant Examiner of Trade
Marks, Trade Marks Registry,
Central Buildings, 101, Maharsi
Karve Road, Bombay - 400 020. .. Applicant

(By Advocate Shri V.S. Nasurkar)

vs.

1. Union of India, through
the Secretary,
Department of Industrial
Development, Udyog Bhavan,
New Delhi - 110 006.
- 2- The Controller General of Patents,
Designs and Trade Marks,
Head of the Department,
Trade Marks Registry,
Central Building, 101, M.K. Road,
Bombay - 400 020.
3. Joint Registrar of Trade Marks
(Appointing Authority of Group-C,
Non-Gazette),
Trade Marks Registry, Central Bldg.,
101, M.K. Road, Bombay - 400 020.
4. Shri H.L. Nariani,
Assistant Registrar of Trade Marks,
Trade Marks Registry, Central Bldg.,
101, M.K. Road, Bombay - 400 020.

5. Shri H.L. Varma,
Examiner of Trade Marks,
Trade Marks Registry,
101, M.K.Road, Bombay-400 020.
6. Shri Cyril Toppo,
Examiner of Trade Marks,
Deputy Registrar of Trade Marks,
Okhala Industrial Estate,
New Delhi - 110 020.
7. Shri K.K. John,
Examiner of Trade Marks,
Dy. Registrar of Trade Marks,
Shastry Bhavan, Shastri Bhavan,
Madras-600 006.
8. Shri D.S. Bansod,
Sr. Examiner of Trade Marks,
Trade Marks Registry,
Central Bldg., 101, M.K.Road,
Bombay-400 020.
9. Shri N.H. Idekar,
Examiner of Trade Marks,
Trade Marks Registry, Central Bldg.,
101, M.K.Road, Bombay - 400 020.
10. Shri S.D. Balgi,
Sr. Examiner of Trade Marks,
Trade Marks Registry, Central Bldg.,
101, M.K.Road, Bombay - 400 020.
11. Shri Amar Prakash,
Sr. Examiner of Trade Marks,
Trade Marks Registry, Central Bldg.,
101, M.K.Road, Bombay - 400 020.
12. Shri C.N. Kolgaonkar,
Examiner of Trade Marks,
Trade Marks Registry, Central Bldg.,
101, M.K.Road, Bombay - 400 020.
13. Shri Dharam Singh,
Sr. Examiner of Trade Marks,
Trade Marks Registry, Central Bldg.,
101, M.K.Road, Bombay - 400 020.
14. Smt. N.D. Kasturi,
Sr. Examiner of Trade Marks,
Trade Marks Registry, Central Bldg.,
101, M.K. Road, Bombay - 400 020.

15. Shri G.H. Khopkar,
Asst. Examiner of Trade Marks,
Trade Marks Registry, Central Bldg.,
101, M.K. Road, Bombay - 400 020.
16. Smt. S.V. Desai,
Asst. Examiner of Trade Marks,
Trade Marks Registry, Central Bldg.,
101, M.K. Road, Bombay-400 020.
17. Smt. Y.F. Gangurde,
Asst. Examiner of Trade Marks,
Trade Marks Registry, Central Bldg.,
101, M.K. Road, Bonbay - 400 020.
18. Smt. S.V. Hetangadi,
Asst. Examiner of Trade Marks,
Trade Marks Registry, Central Bldg.,
101, M.K. Road, Bombay - 400 020.
19. Shri U.L. Barve,
Asst. Examiner of Trade Marks,
Trade Marks Registry, Central Bldg.,
101, M.K. Road, Bombay - 400 020.
20. Shri V.S. Parab,
Asst. Examiner of Trade Marks,
Trade Marks Registry, Central Bldg.,
101, M.K. Road, Bombay - 400 020.
21. Shri S. Jayaraman,
Technical Asstt. of Patent Office,
C/o Patent Office, Govt. of India,
Ministry of Industry,
Opp. Police Station,
61, Walaja Road, Madras-600 002. .. Respondents

(By Standing Counsel Shri R.R. Shetty)

O R D E R

Shri S.K. Ghosal, Member (A) :

The applicant was appointed as an L.D.C. in the office of the Trade Marks Registry on 11.2.1974 under the adm. directive control of the 3rd Respondent.

who is the appointing authority for Group 'C' Non-Gazetted categories. He had obtained permission from the competent authority to register his name in the Employment Exchange. Thereafter, he was sponsored by the Employment Exchange along with others and he was selected and appointed as an Assistant Examiner of Trade Marks on adhoc basis on 1.5.1979 in the same office. In the offer of appointment of the reply statement, made to the applicant along with dated 3.5.1979, available at Exhibit- 'B' / it was specifically mentioned that the appointment was purely on adhoc and temporary basis and was liable for termination at any time without notice. It was also mentioned therein that those vacancies had already been referred to the Staff Selection Commission (SSC for short) and would be filled up by the candidates sponsored by the Commission. They were also advised to be on the look out for notification of examination conducted by the SSC and to appear in that examination to be eligible for the said post of the Assistant Examiner of Trade Marks. Subsequently, in the Appointment Order dated 6.5.1979, issued to the applicant, available at Exhibit 'C' of the reply statement, it was again clarified that his appointment to officiate as an Assistant Examiner of Trade Marks with effect and temporary from the forenoon of 1.5.1979 was on an adhoc basis and was liable for termination without any notice. The applicant, in response to the offer of appointment dated 3.5.1979, sent a letter to the 2nd Respondent, i.e., the

Controller General of Patents, Designs and Trade Marks Bombay, that he had noted the instructions contained therein and that he would appear in the examination to be conducted by the SSC in the near future and thus would become eligible for the post of Asst. Examiner of Trade Marks.

2. The applicant has claimed that his appointment as an Asst. Examiner of Trade Marks with effect from 1.5.1979 in the office of the Trade Marks Registry, Bombay, under the control of the 2nd and the 3rd Respondents was in conformity with the Recruitment Rules notified in the Gazette of India dated 17.3.1962. A photocopy of those rules is available at Annexure-A17. We find that under those Recruitment Rules, Direct Recruitment is prescribed as the only method of recruitment and further that such direct recruitment was required to be made by interview by a Board consisting of the Registrar of Trade Marks, Joint Registrar of Trade Marks and the Assistant Registrar. The fact that the applicant was a direct recruitee as sponsored by the Employment Exchange and that he was selected by the Board as stipulated under the 1962 Recruitment Rules has not been denied by the Respondents. However, since the applicant had been asked to appear for the examination to be conducted by the SSC to become eligible for appointment as an Asstt. Examiner of Trade Marks, the

applicant did apply for the post in response to the advertisement of the SSC on 6.1.81 and 16.2.1982; but, he was not selected by the SSC. The applicant had simultaneously taken up the matter of regularisation of his appointment as an Asst. Examiner of Trade Marks when he found that in the seniority list of the Asst. Examiners of Trade Marks of 1.11.1982, (Asst. Examiners for short), his name had not been included. He started making detailed representations in ~~their~~^{his} behalf from 14.3.1983 claiming that he had been duly selected by the competent Board as prescribed under the relevant Recruitment Rules of March, 1962 and that his appointment was against a clear vacancy reserved for an S.C. candidate and that though the names of some of his juniors and the similarly placed persons were included in the seniority list of Asst. Examiners, his name had been left out. Even in the seniority list published subsequently of the Asst. Examiners on 1.9.1983, the name of the applicant had not been included. The applicant again submitted a detailed representation to the effect that he had not been allowed to cross Efficiency Bar on 1.5.1985 in the cadre of Asst. Examiners. After he had sent a reminder to the first Respondent, i.e., the Ministry of Industry, Dept. of Industrial Development, Union of India, represented by the Secretary, he was allowed to cross the Efficiency Bar; but, his

services as an Asst. Examiner were not regularised. The applicant made a further representation dated 11.9.1986 reiterating his request of regularisation. Eventually, the 4th Respondent, in his capacity as the Senior Examiner of Trade Marks informed the applicant through the O.M. dated 11.12.1987 at Annexure-A11 that the representations of the applicant made to the first Respondent for regularisation in the post of Asst. Examiner had been carefully considered by the 1st Respondent and that the 1st Respondent had intimated that his request for regularisation could not be acceded to. On the same day, another office Order was issued signed by the 3rd Respondent, i.e., the Joint Registrar of Trade Marks, Trade Marks Registry, Bombay, available at Annexure-A12, that consequent to the decision of the 1st Respondent on the representation of the applicant for regularisation communicated to the applicant on that date, the applicant, then working as officiating Asst. Examiner of Trade Marks on adhoc basis was reverted to the post of Upper Division Clerk (UDC for short) with effect from the afternoon of that date.

3. The applicant being aggrieved by that order approached this Bench of the Tribunal in O.A. No.12/88 seeking the quashing of the said reversion order dated 11.12.1989 and also praying for his regularisation as

an Asst. Examiner of Trade Marks with effect from 1.5.1979. The Tribunal, in its order dated 26.9.1991 in the said O.A. observed as follows:

".....Although the Staff Selection Commission (SSC) had come into existence the candidates were called from the Employment Exchange for the posts of Assistant Examiners for the reserved category of SC on 27.1.1979. The applicant who was already working in the department as UDC also applied through the Employment Exchange and had appeared for the written test and oral interview as a direct candidate and he was qualified and as such he was appointed on 1st May, 1979. It appears that thereafter, the SSC held test and the applicant appeared for the test and both the times the applicant is said to have not qualified in the same although according to the applicant he was told by the interview board that ofcourse, he need not worry as his case for regularisation would be considered. But, notwithstanding the fact that the applicant failed to qualify according to the respondents in the said test which was taken, the applicant was allowed to continue to hold the post of Assistant Examiner for five years and during the period he was allowed to cross Efficiency Bar. The posts for which the respondents had done the selection was still vacant that is why the applicant was allowed to continue, meaning thereby that so far as the applicant's merit is not qualifying in SSC's examination was taken to have no consequence or the same was waived and condoned and the applicant's earlier merit when he qualified in the examination in the year 1979 was taken into account.

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Notwithstanding the fact he did not qualify in the year 1982 as he was allowed to continue for 5 years there appears to be no reason why his case for regularisation was not considered and he was not regularised.

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3. Accordingly, as this application deserves to be allowed in part and the respondents are

directed to consider the case of the applicant for regularisation within a period of 3 months taking into consideration of the fact that he member of SC community on which the government has issued circulars in this behalf. There appears to be no reason why the applicant who has been allowed to work for 5 years and also allowed to cross Efficiency Bar would be deprived of regularisation except in cases of compelling reasons. With the above observation the application stands disposed of. After the applicant is regularised he will be again promoted to his post and the question whether he will be ~~be~~ entitled to any back benefit or not has to be considered by the department. *(Emphasis on)*

4. The applicant thereafter filed contempt proceedings in C.P.No.99/1992 in the same O.A.No.12/1986 before this Bench alleging that the directions given by the Tribunal quoted above were being wilfully disobeyed by the Respondents. The Tribunal observed that on 26.8.1992, the Asst. Registrar of Trade Marks had passed an order in pursuance of the directions of the Tribunal to the effect that if the applicant was regularised with effect from 1.5.1979, the consequence would be that 10 of the existing officers who have all been appointed either by promotion or by selection by SSC on an all India basis were likely to be superseded. Thereafter, the Tribunal ordered as follows:

"4. Having read the order carefully, we feel that reasons have been given for not considering the applicant's case for regularisation of service. A legitimate attempt has also been made to give compelling reasons. Whether the reasons are valid or invalid cannot be the subject matter of an adjudication in the

present proceedings. It cannot be said that the respondents are willfully disobeying the directions of this Tribunal. The remedy of the applicant, if any, is to file a fresh original application in this Tribunal seeking the quashing of the order dated 26.8.1992." ^(emphasis supplied)

5. The applicant had also filed an S.L.P. before the Hon'ble Supreme Court of India bearing SLP No.4761/93 against the order of the Tribunal, dated 11.12.1992 in the above mentioned C.P. No.99/1992. in Q.A. No.12/1992. However, the Hon'ble Supreme Court dismissed that SLP on 5.5.1993. Thereafter, the applicant wrote a letter dated 11.6.1993 to the Registrar of Trade Marks, Trade Marks Registry, Bombay, available at Annexure-15. He followed it up with a reminder dated 25.6.1993 again at Annexure-A15. He was informed in response to his letter dated 11.6.1993, requesting for furnishing of copies of certain documents, that as the matter had already been agitated before this Bench and had been decided finally, there was no necessity to supply copies of those documents. This reply dated 5.7.1993 at Annexure-A16 was sent by the 4th Respondent to the applicant as directed by the Registrar of Trade Marks. The applicant has impugned the office order dated 26.8.1992 signed by the 4th Respondent as the Head of Office to the effect that the case of the applicant for regularisation had been carefully considered in pursuance of the orders of this Bench and that it

was not possible to regularise his services as an Asst. Examiner of Trade Marks with retrospective effect from 1.5.1979. That Office Order also mentions the fact that the applicant had already been promoted to the post of Asst. Examiner of Trade Marks with effect from 4.12.1991 as per his own seniority.

above,

6. As we have noted/ essentially the case of the applicant is that he was appointed on a regular basis in terms of the provisions of the March, 1962 Recruitment Rules and that there were others who were also appointed in the same manner upto October, 1978 whose appointments had been treated as regular even though they did not appear for the examinations conducted by the SSC. He has, thus, alleged invidious discrimination against him on the part of the Respondents. He has similarly alleged that the Respondents could not have validly incorporated the requirement at the time of appointing him with effect from 1.5.1979 that he should take the examination conducted in this behalf by the SSC and qualify there in order to become eligible for a regular appointment as an Asst. Examiner; because the provisions of the March, 1962 Recruitment Rules, still held the field in respect of not only the mode of recruitment, but also the manner of recruitment

through selection by the Board as was done in his case. The requirement of selection by SSC through an examination by issuing administrative instructions to that effect in controvention of the method of recruitment laid down under the statutorily prescribed Recruitment Rules had no legal existence. *The law carried*

7. The applicant has sought the following reliefs.

- a) To quash and set aside the order No. F-1-2(4)/92-Admn-E/533 dated 26.8.92 (Ann-A1) passed by Respondent No.4 and also to direct and order the Respondents No.1 to 4 to regularise the services of the applicant with effect from 1.5.1979 as Asstt. Examiner of Trade Marks with all consequential reliefs;
- b) To order and direct the Respondents No.1 to 4 to promote the applicant as Examiner with effect from 1.5.1984 with all consequential benefits;
- c) Such other and further reliefs be granted as the nature and circumstances of the case may permit; and
- d) costs of the application.

8. The official Respondents have sought to defend their actions on the ground that in 1978 the Department of Personnel & Administrative Reforms in the Ministry of Home Affairs, issued an O.M. dated 4.11.1978 to all Ministries/Departments of Govt. of India reiterating that the incumbents to all Group 'C' Non-technical posts

should be recruited through the SSC and mentioned that the SSC felt that all offices did not seem to be reporting vacancies to be filled up by direct recruitment to the Group 'C' posts to the Commission. Since recruitment to Group 'C' non-technical posts was to be made only through the Commission, in accordance with the resolutions of the Department of Personnel and Administrative Reforms, the said O.M. dated 4.11.1978 requested that the Ministries/Departments to issue suitable instructions to the effect that recruitment to Group 'C' posts should not be made by any Department/Office without reference to the SSC and that all vacancies should be invariably reported to the Commission. That O.M. further stipulated that only in those rare cases where the Commission permitted the Department/Office to make recruitment through other channels, the recruitment could be made by the Department/Offices themselves. That O.M. dated 4.11.1978 is available at Exhibit-'A' of the reply statement filed by the official Respondents. Further the learned counsel for the official Respondents has contended at the stage of arguments that as laid down by the Hon'ble Supreme Court, such matters having ~~any~~ ^{of serious} effect of inter-se seniority, as the one being agitated by the applicant, should not be reopened at this distance of time. It would only unsettle issues which have been settled since long. In particular it has been pointed out on behalf of the

official respondents that the private respondents, i.e., Respondents No.4,6,7 and 8 were appointed in the same manner as the applicant, but their appointments were treated as regular because they were all appointed before December, 1978; for the reason that the O.M. dated 4.11.1978 of the Department of Personnel and Administrative Reforms mentioned above to the effect that all non-technical posts belonging to category 'C' in Government offices should be filled up through the SSC, was received only in December, 1978. It has also been contended on behalf of the official respondents that there were several others who were appointed along with the applicant with effect from 1.5.1978 on an adhoc and temporary basis and that they were required to pass the examination conducted by the SSC. Since some of them had done so, their adhoc appointments were regularised on their qualifying at the said examination. As regards the private Respondent No.12, the official Respondents have clarified that he was regularised with effect from 31.5.1981, though he had earlier been appointed on an adhoc basis on 22.7.1978. This was done in terms of the revised Recruitment Rules which came into force from 9.5.1981 prescribing that 50% of the posts of Asst. Examiners would be filled by promotion, and ~~because~~ the private Respondent No.12 Shri

C.B. Kolgaonkar was senior to the applicant and had satisfied the requirement of 5 years regular service as an U.D.C. as prescribed under the amended Recruitment Rules of 1981. At that time, the applicant had not fulfilled the minimum eligibility condition of 5 years of regular service as an U.D.C. for promotion to the post of Asst. Examiner of Trade Marks. The official Respondents have further pointed out that since the applicant was holding the post of 'Asst.' Examiner on an adhoc basis and since he had been representing for regularisation at that post and since these matters had already been referred to the Government for clarification and consideration, he was permitted to cross the Efficiency Bar as an Asst. Examiner of Trade Marks pending a decision by the Government. Further, this was done in the light of the clarification received from the Government that the crossing of the Efficiency Bar and the regularisation in the grade of Asst. Examiner of Trade Marks were two different issues, ^{as} ~~as~~ ^{as} far as stated.

9. The official Respondents have also raised the issue of limitation pointing out that the impugned order is dated 26.8.1992, whereas the present O.A. was filed on 5.1.1994. However, we observe that the SLP filed by the applicant in this behalf was dismissed by the Hon'ble Supreme Court only on 5.5.1993 and that thereafter

the applicant had sought certain documents which were finally denied to him by the order dated 5.7.1993 by of the Respondents. We, therefore, are of the opinion that the O.A. cannot be held to be barred by time.

10. Coming to the main defence taken by the official Respondents in support of their actions in not having treated the appointment of the applicant as an Asst. Examiner on a regular basis with effect from 1.5.1979 and then having reverted him as a U.L.C. on 11.12.1987 and then having finally rejected his representation under the impugned order dated 26.8.1992, we observe that the official Respondents have relied heavily on the O.M. dated 4.11.1978 from the Department of Personnel & Administrative Reforms in the Ministry of Home Affairs at Exhibit-'A' of the reply statement filed by them. We notice that, that O.M. specifically states that the SSC was set up with effect from 1.7.1976 by the Govt. of India in the Department of Personnel and Administrative Reforms vide their resolution dated 4.11.1975 to make recruitment to Group 'C' non-technical posts in the Govt. of India, Ministries/Departments and their attached and subordinate offices located throughout the country. It also states that the Commission evolved a criterion for classification of posts as technical and non-technical posts and that was

circulated to different ministries and Departments vide Commission letter dated 22.7.1977. Given these undisputed facts, we find it difficult to accept the contention of the official Respondents that just because the same position was reiterated about the recruitment of all category 'C' non-technical personnel by the SSC through that O.M. dated 4.11.1978, the official Respondents could validly treat appointments made to the post of Asst. Examiner of Trade Marks before December, 1978 as regular. Even in those cases, if the official Respondents ~~AS~~ ~~AS~~ believed in following a rational ^{AS} and consistent policy, ^{AS} should have insisted upon the incumbents qualifying at the examination conducted by the SSC, if such appointments were made after 22nd July, 1977.

11. More importantly, however, we find that the official Respondents have not produced any material to indicate that even that O.M. dated 4.11.1978 would prevail over the express~~as~~ provisions of March, 1962 Recruitment Rules relating to the method and manner of recruitment of the Asst. Examiner of Trade Marks. It is well settled that executive instructions per-se cannot over-ride specific provisions of the statutorily prescribed Recruitment Rules. It would appear from the contents of the O.M. dated 4.11.1978 that the SSC was set up under ~~the~~ an official resolution and further that

the relevant Recruitment Rules for recruitment to specific posts like the Asst. Examiner of Trade Marks had not been amended, replacing the prescribed authority for recruitment viz., the Board comprising the Registrar of Trade Marks, Joint Registrar of Trade Marks and Assistant Registrar of Trade Marks by the SSC. The official Respondents, in this particular, have failed to point out that when the applicant was appointed following the procedure stipulated under the March, 1962 Recruitment Rules as a direct recruit selected by the above mentioned Board with effect from 1.5.1979, those provisions of the Recruitment Rules had already been amended and that more specifically the role of the Board had been taken over by the SSC. We, therefore, hold that, that plea of the official Respondents that in terms of the administrative instructions conveyed to them under the O.M. dated 4.11.1978, they had required all those, who were appointed following the procedure prescribed under the March, 1962 Recruitment Rules, further to subject themselves to an examination conducted by the SSC after December, 1978, is totally untenable.

12. As regards the repercussions of the above finding, we only wish to observe that till the Recruitment Rules were amended in 1981, all those appointments which were made in conformity with the provisions of March, 1962 Recruitment Rules will get similar benefits.

Even if a number of such appoints are involved in the process and thus some dislocation in the existing inter se seniority positions takes place, as reported by the official Respondents, it is required of them to comply with the law laid down by the Hon'ble Supreme Court that administrative instructions, however well-intentioned they may be, cannot over-ride the express provisions of the statutorily prescribed Recruitment Rules. Further, we have made a note of the submission made by the learned counsel for the applicant that the applicant in any case would not be eligible for consideration for the next promotional post of Examiner, he having not qualified himself with a Law degree, as required under the Recruitment Rules. Therefore, we find that the reasons advanced by the official Respondents for not regularising the services of the applicant as an Asst. Examiner of Trade Marks with effect from 1.5.1979 cannot be considered validly as compelling reasons.

13. In the light of the detailed discussions above, we allow the O.A. partly and direct the Respondents to treat the appointment of the applicant as an Assistant Examiner of Trade Marks with effect from 1.5.1979 on a regular basis and extend to him all the consequential benefits arising therefrom. However, the payment of arrears if any, on account of refixation of his seniority

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and consequent refixation of his pay, if any, will be limited to the period starting one year prior to the filing of this O.A., i.e., 5.1.1993. The directions given here are to be carried out by the official Respondents within a period of 3 months from the date of receipt of a copy of this order. No costs.

(S.K. GHOSAL)
MEMBER(A)

(S. VENKATARAMAN)
VICE CHAIRMAN

psp.