

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1326/94.

Date of Decision: August 27, 1999.

Kum. Jayshree R. Chodankar,
and 7 Others, Applicants.

Shri M. S. Ramamurthy, Advocate for
Applicant.

Versus

Union Of India & Anr. Respondent(s)

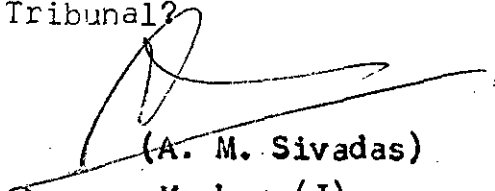
Shri R. K. Shetty, Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. A. M. Sivadas, Member (J).

Hon'ble Shri. D. S. Baweja, Member (A).

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?


(A. M. Sivadas)
Member (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1326 of 1994.

Dated this Friday, the 27th day of August, 1999.

CORAM : Hon'ble Shri D. S. Baweja, Member (A).
Hon'ble Shri A. M. Sivadas, Member (J).

1. Kum. Jayshree R. Chodankar.
2. Kum. Sanjivini Vishnu Desai.
3. Mannulal Kuber.
4. Ramsajan Gupta.
5. Dharmendra Kumar.
6. Debansu Prasad Sinha.
7. Smt. Anita Sinha, Nee
Anita Gaurishankar.
8. Kum. Suchita T. Surve. ... Applicants.

(Applicants 1 to 8 above named
employed as Lower Division Clerks/
Hindi Typists in the Office of
Directorate General of Shipping,
"Jahaz Bhavan", Walchand Hirachand
Marg, Bombay - 400 038).

(By Advocate Shri M. S. Ramamurthy)

VERSUS

1. The Union of India
through the Secretary,
Ministry of Surface Transport,
Transport Bhavan,
1, Parliament Street,
New Delhi - 110 001.

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2. Director General of Shipping,
Directorate General of
Shipping, "Jahaz Bhavan",
Walchand Hirachand Marg,
Bombay - 400 038.

... Respondents.

(By Advocate Shri R. K. Shetty).

ORDER

PER.: Shri A. M. Sivadas, Member (J).

The applicants seek to declare that the proposed termination of their services is illegal, to restrain the respondents from taking any step to dispense with their service and to direct the Respondents to regularise their services as Lower Division Clerk/Hindi Typist and also to strictly comply with the Government of India orders annexed as 'C' and 'D'.

2. The applicants 178 in number were appointed as Lower Division Clerks/Hindi Typists under the second respondent in the years 1993 and 1994 as selected by the Departmental Selection Committee. All the applicants were sponsored by the Employment Exchange. Though normally selection is made through Staff Selection Commission, certain appointments were made in the office of the respondents of persons even not sponsored by the Employment Exchange. Applicants apprehend that their services will be terminated by the Respondents for the purpose of accomodating surplus staff of Seamen's office or in the Ministry of Surface Transport.

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3. Respondents resist the O.A. They contend that the applicants have not been sponsored by the Staff Selection Commission that based on the instruction the Staff Inspection Unit of Ministry of Finance carried out work study of the Office of the Director, Seamen's Employment office, Bombay, which is an allied office of the Directorate General of Shipping, that 32 posts including 18 L.D.Cs. in that office have been rendered surplus consequent on the abolition of these posts and that these incumbents are required to be absorbed in the vacant post in the office of the second respondent.

4. The Learned Counsel for the respondents pressed ~~into service only on the ground~~ that the appointment of the applicants is illegal since they have not been selected by the Staff Selection Commission.

5. It is an undisputed fact that the applicants have not been selected by the Staff Selection Commission. They were sponsored by the Employment Exchange and selected by the Departmental Selection Committee. According to the respondents, at the relevant point of time when the applicants were appointed, the appointment could only be made on the basis of the selection made by the Staff Selection Commission and not by any other mode.

6. Though the applicants say that they were appointed as Lower Division Clerks/Typists, from the copy of the appointment order made available, it is seen that they were appointed only as Lower Division Clerks and not as Lower Division Clerks/Hindi Typists.

7. The question to be considered is, whether the appointment of the applicants is legal or not ? The applicants contend that selection through the Staff Selection Commission is not the only mode of selection and ^{the mode of} selection in this case is perfectly in order.

8. The Learned Counsel appearing for the respondents vehemently argued that the applicants were appointed only on a temporary basis for a period of one year and, therefore, the applicants are not entitled to any of the reliefs claimed. It is true that in the appointment orders it is stated that the applicants are appointed on a temporary basis for a period of one year or untill further orders, whichever is earlier. It is further stated in the appointment order that their appointment is as per terms and conditions given in the Office Memorandum dated 15.07.1993 which is marked as Exhibit 'F'. In this exhibit it is stated that "the appointment is temporary and the appointee will be on probation for a period of two years which may be extended or curtailed at the discretion of the competent authority.

Failure to complete the period of probation to the satisfaction of the competent authority will render the appointee liable to discharge from service." If the appointment is purely on a temporary basis in a short term vacancy as a stop-gap arrangement, it is not known why this condition of two years probation period is made applicable to the applicants. If the appointments were only on an adhoc basis for short period against temporary vacancies, there is no question of reporting the vacancies to the Staff Selection Commission and requesting the Staff Selection Commission to make available the requisite number of persons selected for appointing as L.D.Cs. Exhibit R-2 ~~clearly~~ clearly says that "requisitions are to be sent to the Commission only for filling up regular vacancies. Temporary vacancies to be filled up on short-term/ad hoc arrangements are not to be included in the requisitions. Such vacancies are to be filled through local employment exchange." It is the admitted case of the respondents that they approached the Staff Selection Commission for the purpose of filling up the vacancies and the Staff Selection Commission could not fully cater to their need but only to the very limited extent of providing one candidate. So it is clear that appointment of applicants was not for a short term period or on ad hoc basis but only towards regular vacancies. From exhibit R-3 it is seen that respondents requested the Staff Selection Commission to provide eleven suitable candidates for appointment. Two posts were to be filled with Ex-Servicemen. Leaving those

two posts for Ex-Servicemen, nine posts were vacant to be filled up in a regular basis. It is now to be considered when the respondents approached the Staff Selection Commission to cater to their need by providing the requisite number of candidates and the Staff Selection Commission could only cater their need to the limited extent of providing one candidate and when candidates were selected by a duly constituted Departmental Selection Committee, what is the position. There is absolutely no case for the respondents that the applicants do not fulfill the requisite qualification or that they did not qualify in the test held by the Departmental Selection Commission. The position that prevailed at the time of selection and appointment of the applicant was that these posts had to be filled up for implementation of the Official Language Act, 1963 and in the absence of required number of candidates being provided by the Staff Selection Commission, the applicants were selected by the Departmental Selection Committee who were sponsored by the Employment Exchange. In Rabinarayan Mohapatra V/s. State of Orissa [(1991) 2 SCC 599] the Apex Court considered the applicability of Section 3 of the Orissa Aided Educational Institutions (Appointment of Teachers Validation) Act, 1989. The Apex Court set aside the judgement of the High Court and directed that the appellant be treated as a regularly appointed teacher in the School w.e.f. 12.07.1982 and is entitled to the salary for summer vacation and other breaks must be taken as non est, though the appellant continued with 89 days appointment and one day break in between the

spell and not paid salary during summer vacation during all the years.

9. In Baleshwar Dass V/s. State of Uttar Pradesh
[(1980) 4 SCC 226] the Apex Court has observed as follows :

"If a public servant serves for a decade with distinction in a post known to be not a casual vacancy but a regular post, experimentally or otherwise kept as temporary under the time-honoured classification, can it be that his long officiation turns to ashes like a Dead Sea fruit because of a label and his counterpart equal in all functional respects but with ten years less of service steals a march over him because his recruitment is to a permanent vacancy? We cannot anathematize officiation unless there are reasonable differentiations and limitations."

10. The posts were in existence when the applicants were appointed. The authorities, due to the inability of the Staff Selection Commission to cater their need to the required extent, fell back to the Recruitment Rules, and then selected them by a duly constituted Departmental Selection Committee.

11. Some of the applicants were given extension on expiry of one year period. This is also an indication that they were appointed towards regular posts and they were not appointed on adhoc or short term basis as contended by the Learned Counsel for the respondents. There was much need for the appointment as borne out by Exhibit 'C'. It is also specifically stated in the

reply statement by the respondents that in order to implement Official Language Act, 1963, and rules framed thereunder from time to time, the respondents sent a requisition to the Staff Selection Commission for filling up the post of Lower Division Clerks.

12. In the affidavit filed by the Director General of Shipping dated 13th of July, 1998, it is stated this in para 8 - "I say that the file containing the order for appointment of 8 applicants herein, is missing from my office." When the missing of file took place is conspicuously absent in the affidavit. It is not even stated when the deponent of the affidavit came to know of the fact that the file is missing.

13. In the statement filed by the Assistant Director General of Shipping, which is undated, the first paragraph reads this :

"I have read the O.A. No. 1326 of 1994. I have perused all the relevant documents available in my office in connection with issues involved in the application."

So it is very much clear that the file pertaining to the appointment of the applicant was available in the office of the respondents at the time when the Assistant Director General of Shipping signed the statement which was filed before this Tribunal on 23.12.1994.

12. It is very easy to say that the file is missing. An office cannot afford to miss the file, much less a file relating to the appointment of eight persons. If the file is missing, it is not known what difficulty is there to say from what date onwards the file is missing and whether any step was taken to reconstruct the file. If it is irrecoverably lost, the alternate available is to reconstruct the file. The statement that the file is now missing is not easy to accept.

13. The Learned Counsel appearing for the respondents drew our attention to the ruling in Ashwani Kumar & Others V/s. State of Bihar & Others [1997 (1) SLJ 178] in support of his argument that the services of applicants are liable to be terminated. This ruling has no application to the facts of the case at hand. In Ashwani Kumar's case, it was a case of recruiting 6000 persons when authorisation was only to recruit 2500 persons. Here it is not a case like that. The appointment of applicants, 8 in number, was not in excess of the posts or vacancies available but only within the available number of posts or vacancies. Though the applicants were not issued with any termination order at the time of filing of the O.A. and they only apprehended that their services will be terminated, their apprehension is well founded is evident from the statement filed by the respondents wherein it is clearly stated that their services are required to be terminated on the grounds stated therein.

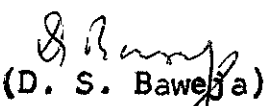
14. It is also pertinent to note that in the statement filed by the respondents it is stated that in the Call Letters issued to the applicants it has been clearly stated that their appointment will not bestow any claim for regular appointment or serving for a period of more than six months. Call Letters do not show that their services will be terminated on expiry of six months. What is stated is that the appointment is for a period of one year or until further orders. If it is a case of ad hoc appointment for a short term vacancy, it is not known what prevented the respondents to state specifically that the appointment is only for a particular period or until candidates selected by the Staff Selection Commission are available, whichever is earlier.

15. In the present case, as appointments were made in accordance with the rules and continued in certain cases for more than one year cannot be treated as ad hoc or fortuitous.

16. Accordingly, it is declared that the proposed termination of the services of the applicants working as Lower Division Clerks is illegal. Respondents are directed to consider the question of regularising the services of the applicants in accordance with law.

17. The O.A. is disposed of as above. No order as to costs.


(A. M. Sivadas)
Member (J).


(D. S. Bawajha)
Member (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

C.P. NO. 34/2000 In O.A. No. 1326/94.

Dated this Friday, the 17th day of August, 2001.

CORAM : Hon'ble Shri Justice B. Dikshit, Vice-Chairman.
Hon'ble Shri B. N. Bahadur, Member (A).

Kum. Jayshree R. Chodankar & Ors. ... Applicant
(By Advocate Shri M. S. Ramamurthy)

VERSUS

Union of India & Others ... Respondents.

AND

1. Shri D. T. Joseph,
Director General (Shipping),
Jahaz Bhavan,
Walchand Hirachand Marg,
Mumbai - 400 038.
2. Joy Valentine,
Dy. Director General (Shipping),
Personnel Branch,
Directorate General of Shipping,
Jahaz Bhavan,
Walchand Hirachand Marg,
Mumbai - 400 038. ... Contemnors.

(By Advocate Shri R. R. Shetty)

TRIBUNAL'S ORDER

This Contempt Petition has been filed on the ground of wilful disobedience of order dated 27.08.1999 passed in O.A. No. 1326/94. Shri R. R. Shetty, appearing for respondents has produced a copy of order on Writ Petition No. 2291 of 2000. A certified copy has also been shown by Shri M.S. Ramamurthy appearing for Applicants. By order dated 31.01.2001 the High

B. Shankar

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Court of Judicature at Bombay passed interim order on Writ Petition No. 2291 of 2000 (Union of India & Another V/s. Kum. Jayashree R. Chodankar & Others) staying the operation of judgement of this Tribunal for alleged wilful disobedience of which, this contempt petition has been filed. As the operation of the judgement stands stayed, the contempt proceedings are to be dropped.

2. The Learned Counsel for applicant argued that the contempt petition may remain stayed as in case the Writ Petition is dismissed and stay is vacated, then the Tribunal can continue the proceedings. So far this contempt proceedings are concerned, as observed earlier, they are liable to be dropped but in case if the Writ Petition fails and any wilful disobedience of the order takes place, then it will still be open to him to file a fresh contempt petition.

3. Subject to aforesaid observation, the contempt petition is dismissed. Notice is dropped. No costs.

B. Bahadur
(~~B. N. BAHADUR~~)
MEMBER (A)

B. Dikshit
(B. DIKSHIT)
VICE-CHAIRMAN

OS*

dt. 17/8/01
order/Judgement despatched
to Applicant/Respondent (s)
29/8/01
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