

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

DA.NOS. 1314/92, 1315/92, 1316/92, 1352/92,
414/94, 415/94, 416/94, 1010/94.

1. Shankar Nivrutti Mokashi & Ors.
2. Shrimant Kisan Wayadande & Ors.
3. Kailas Baburao Wanjale & Ors.
4. Sunil Dnyanoba Takke & Ors. Applicants
5. Deepak Jagannath Mangaldas & Ors.
6. Dattatraya Dashrath Waghchoure & Ors.
7. Hiraman Dnyanoba Wanjale & Ors.
8. Tanaji Namdeo Tidke & Ors.

v/s.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri (Dr.) A.S.Shivade
Advocate
for the Applicants

**Shri R.K.Shetty
Advocate
for the Respondents**

ORAL JUDGEMENT

Dated: 23.8.1995

(PER: M.S.Deshpande, Vice Chairman)

The applicants in all these cases were employed as Casual Workers either in leave vacancy or short term vacancies and their employment came to an end on different dates. They were all sponsored by the Employment Exchange and when they were recruited they were within the age limit prescribed for appointment. However, technical breaks or short breaks were given to them and their appointments were renewed from time to time. According to the applicants, there were several vacancies in the post of Groundsman, Cadet Orderlies, Fatifuereman, Mess Waiters, Groom, Lashkar Tandil, Chowkidar and other Class IV posts in excess of 300, inspite of these vacancies,

the applicants were not continued though their appointments were made from the year 1983. Some of the applicants belong to Scheduled Caste, some to Scheduled Tribe and some to other categories. The applicants have, therefore, approached the Tribunal for a direction to the respondents to appoint them in posts in Class IV category in the National Defence Academy where they have been engaged with effect from the dates of their first appointment disregarding the breaks in service, and to give them all the benefits such as seniority, increments, etc. from the said date.

2. The respondents have opposed these applications contending that the applicants were not regular employees and since they were either in leave vacancy or short term vacancy, they were not entitled to continue in the post in which they worked and have not put in the number of days of service which would enable them to claim relief of being continued.

3. It has been pointed out to us that some of the employees similarly situated had approached the Bombay High Court by Writ Petition No. 1230 of 1984, Ananda Tanaji Kamble vs. National Defence Academy and by the decision rendered on 29.9.1984 the respondents were directed to appoint the Petitioner on regular basis in the first available vacancy to the post of Groom in Class IV cadre or to some other available vacancy in the said Class, namely Class IV, at the earliest opportunity and thereafter to transfer him as and when a vacancy arises in the post of groom and that this should be done speedily without depriving the petitioner of his bread.

4. In OA.NO. 196/88, Vilas Vitthal Dhile vs. Union of India, this Tribunal by its decision dated 27.6.1988 directed the respondents to give the applicant employment as Groundsman within six months from the receipt of the order by relaxing the upper age limit. In a group of petitions including OA.NO. 714/88, Sambhaji Dhondiba Salunke vs Union of India, the Tribunal directed the respondents to give priority and preference to the applicants in the matter of appointment as and when vacancy arises taking into account their first date of appointment for the purpose of same even if they are over-aged provided they were within the age at the time of their initial appointment. In OA.NO. 1164/93, Ashok Sakaram Dhumal & Ors. Vs. Union of India & Ors. decided on 11.2.1994, the Tribunal directed the respondents to consider the applicants on their merits when the fresh vacancies would be filled but that was because some other candidates sponsored through the Employment Exchange were to be employed in the category in which the applicants were previously worked.

5. The common thread which ran through all these decisions ^{was} ~~rest~~ that the applicants who came to be appointed when they were within the prescribed age limit, were given artificial or short term breaks who came to be re-appointed should not be deprived of their bread only because the initial appointments were made either on short term basis or in leave vacancy despite their continuation after repeated breaks time and again.

6. Shri Shivade, learned counsel for the applicants urged the defence that the applicants are now over-aged and that there is ^{now} ~~now~~ ban on the vacancies should not come in the way of the applicants' appointments at this distance

of time when no ban was there at the initial stage when
~~of appointments~~^{were} made. We see the merit in this submission. The learned counsel for the respondents, however, urged that the Tribunal cannot by giving a direction ask the respondents to create new posts only to enable the applicants to get into the employment of the respondents without regard to rules. We must make it clear that that is not our intention either and all that we wish to say is that the applicants who belonged to deprived category should not be deprived of their source of living only because the respondents who had initially recruited the applicants when they were within age, though they could have tried their luck elsewhere, and were continued from time to time have special responsibility, if the jobs are available to see that the applicants are continued in the employment, nor are we asking the respondents to create any additional posts for the applicants. The order which we propose to pass would take care of the rival contentions raised by the parties and we, therefore, direct that the respondents should prepare a seniority list of the applicants based on the date of their initial appointment and on that basis offer employment to the applicants whenever a vacancy occurs relaxing the age limit, if any of the applicants have been appointed initially when they were within the age limit prescribed for the post. After such appointment they may be regularised in the available vacancies according to their turn. The respondents shall not in the guise of filling up the vacancies bring any employees from other stations for showing that no vacancy exists. With these directions the OA. is disposed of.

(P.P.SRIVASTAVA)
MEMBER (A)

(M.S.DESHPANDE)
VICE CHAIRMAN