

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO. : 1390 of 1995.

Dated this Tues the 31st day of October, 2000.

Shri S. P. Sinha, Applicant.

Shri M. S. Ramamurthy, Advocate for the applicant.

VERSUS

Union of India & Others, Respondents.

Shri R. K. Shetty, Advocate for Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

(i) To be referred to the Reporter or not ? Yes

(ii) Whether it needs to be circulated to other Benches of the Tribunal ? No

(iii) Library. No

(B. N. BAHADUR)
MEMBER (A)

sj*

THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No. 1390/95

Dated this Tuesday the 31st Day of October, 2000.

Coram: Hon'ble Shri B.N. Bahadur, Member (A)
And
Hon'ble Shri S.L. Jain, Member (J)

1. Shri S.P.Sinha,
employed as Stenographer,
Grade III in the office of
the Director General of
Shipping, 'Jahaz Bhavan', Applicants

(By Advocate Shri M.S.Ramamurthy)

Vs.

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

2. The Director General of Shipping,
'Jahaz Bhavan',
Walchand Hirachand Marg,
Bombay 400 038.

3. The Director (Policy)
Department of Official Languages
Ministry of Home Affairs,
Govt. of India,
Loknayak Bhavan,
Khan Market,
New Delhi 110 003. ... Respondents

(By Advocate Shri R.K.Shetty)

O R D E R

[Per B.N.Bahadur, Member (A)]

This is an Application made by Shri S.P.Sinha, Stenographer Grade III in the Office of Director General of Shipping, at Mumbai, seeking the relief from this Tribunal for the quashing and setting aside of the impugned orders dated 12.5.1995 (Exh.A)

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and 7.6.1995 (Ex.B). The Applicant also prays that the Order of Respondents dated 27.1.1994 (Ex.C), through which the Applicant was appointed on regular basis with effect from 18.1.1994 be held as valid.

2. The facts of the case made out by the Applicant are that after initial appointment on ad hoc basis, he was appointed as Hindi Stenographer on regular basis with effect from 18.01.1994. It is the grievance of the Applicant that this Order has been cancelled by the aforesaid impugned order. The Applicant claims that his appointment as Stenographer Grade-III was made after due process, and candidates, including himself had been sponsored by the Regional Employment Exchange, Mumbai. He asserts that he was subjected to a rigorous selection process by a Committee consisting of D.G. Shipping as Chairman, as described and that this process also involved a Written Examination, viva-voce and stenographic test. Applicant was appointed only after being found suitable, vide Memorandum dated 30.12.1992, on a temporary basis and on probation. He took charge after a regular Medical Examination, and has been provided all regular benefits (health insurance, increments, etc.). Details are provided in the Application.

3. The Respondents in the case have filed a reply statement where the first point made is that the appointment made vide Order dated 13.10.1992, (after which the Applicant duties w.e.f. 19.02.1992) was temporary and made only for a period upto 07.06.1993. Thereafter, the Respondents had extended the employment of the Applicant w.e.f. 08.06.1993 for two years/until further orders, whichever was earlier. Thus, it is claimed that no rights for regular appointment accrued to the applicant.



4. Respondents admit (vide order dated 27.01.1994), that Applicant was regularised with effect from 19.04.1994 and takes the contention that this regularisation was erroneously done and that there was no substantive post of Stenographer Grade-III available then. Further, the D.G. Shipping had no right to create such a post. It is averred that the creation of posts cannot be ordered by Tribunals and Courts, as per settled law. Parawise comments are made in the further portion of the reply, where a point is also made that those Stenographers in the Office who are only English-knowing are being trained in Hindi Stenography to get the services of Hindi stenography upto the requirements envisaged by Government orders.

5. A rejoinder has been filed by the Applicant, where he contests the claim that the regularisation was erroneously done or that the post was not available. Applicant contests the claim by stating that the Respondents be directed to produce the file on the subject and attempts to give details of vacancies, etc. to contend that it is incorrect to say that no substantive post of Stenographer-III was available when order dated 27.01.1994 was made.

6. We have considered all papers in the case and the arguments made by Learned Counsel on either side. Learned Counsel for the Applicant Shri M.S. Ramamurthy took us over the facts and sequence of events of the case, and first made the point that the offer of initial appointment was made after the entire process of regular selections had been gone through as described and took the stand that the S.S.C. of Western Region had been unable to provide Hindi Stenographer/s and it was only because of this that the Respondents have gone to the Employment Exchange. It had also become necessary to extend the temporary appointment (order



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at Exhibit 'H' dated 07.06.1993). Shri Ramamurthy sought to draw strong support from the Order made by this Bench of the Tribunal on 27.08.1999 in O.A. No. 1326/94 filed by Kum. Chodankar & Ors.

7. Shri Ramamurthy alleged that the stand of a mistake being made was being made now as an after thought. Direct Recruitment was permissible through Employment Exchange and this was the intention. The subsequent action of regularisation was also a clear and conscious decision, and the Applicant was now estopped from the action they were taking. The ignorance of rules pleaded is also an after thought; it was argued that the Applicant cannot be deprived of the service except by a regular inquiry. The ratio decidendi in the case of Narendra Chhadda was cited to make the point regarding assumed relaxation. Shri Ramamurthy also made the point about the need for producing the Original file in the case.

8. Arguing the case on behalf of the Respondents, their Learned Counsel Shri R.K. Shetty, reiterated the stand taken in the Written Statement that Recruitment Rules envisaged selection being made by the Staff Selection Commission. Also, no relaxation had been sought or made in the matter. He also took strong support from the argument that D.G. of Shipping had no right to create a post, and since this was a mistake made as claimed in the Written Statement, no rights could accrue to the Applicant.

9. It was contended by Learned Counsel for Respondents that the Applicant's name was not in Seniority List and the entire appointment and regularisation process being conforming to law, there was no need for Show Cause Notice either. The learned Counsel also stated that the file on the subject was missing, and made more than a hint to suggest that some of the staff of

the Official Languages Wing of Respondents Office in Mumbai was responsible as per stand taken in the aforesaid case of Kum. Chodankar cited.

10. Learned Counsel for the Respondents cited the case of Govt. of Orissa vs. A. Roy [1998) SCC L&S 1622] to make the point that a Court itself cannot provide the relaxation process. He also cited the case of Ashwani Kumar & Ors. etc. v/s. State of Bihar & Ors. (1997) (1) SLJ 178 to take the contention that no recruitment can take place if posts were not available. Similarly, Shri Shetty took support from the case of A.K. Sharma v/s. Union of India [1991 (1) Supreme 171] regarding there being no necessity of Show Cause Notice.

11. In recapitulating the sequence of the Orders made in this case, we find that the chronology of important events is as follows :

13.08.1992	Offer of Appointment (Exhibit D).
30.10.1992	Order of Appointment (Exhibit F).
07.06.1993	Continuance of Temporary Appointment (Exhibit H).
27.01.1994	Regularisation Order (Exhibit C)
10/12.05.1995	Cancellation Order dated 27.01.1994.
07.06.1995	Order No. 68 abolishing post from 08.06.1995.

12. It is seen from the Roznama order that an ad-interim stay was granted in terms of prayer made at para 9 (a) of the Application, which restrained the Respondents from discontinuance of the Services of the Applicant. The interim relief has been continued from time to time.



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13 We notice, at the first instance, from a study of overall facts in the case, that a conscious process of recruitment had been undertaken by the Dte. General of Shipping. Not only were candidates called from the Employment Exchange, but a regular process of testing through Written Test, viva voce and stenographic test was undertaken. It has been stated by Applicant, (not rubbuted) that there was a regular Committee of officers which undertook the selection process. It is seen that this Committee comprised interalia the D.G. and though the composition of the Committee was not as exactly as per Recruitment Rules, it, in fact, more than met the requirements in that the D.G. himself was chaired the Committee, as against the requirement in Recruitment Rules is for a Committee headed by Dy. Director General.

13. Another point that is relevant in the case is the time lag involved. The offer was made in October, 1992 and the Applicant joined on 19.10.1992. Thereafter, through a conscious decision in 1993, there is an extension for two years made vide order dated 07.06.1993. It is not as though, for all this time, the Respondents could have continued the appointment without need for work, or ~~were~~ ^{but} ~~ever~~ totally oblivious to the rules regarding the post. In the absence of the file not being available, as explained, for production, it would be reasonable to assume in the circumstances described above that regular candidates from the Staff Selection Commission were indeed not available for one reason or the other. The appointment does not have the ingredients of a mere stop-gap arrangement as per law settled.

14. The defence taken by the Respondents is that this is an error. Certainly errors can be corrected depending on the circumstances of a particular case. Here an "error" was made,

and was allowed to continue for a period of some years and realisation then occurs that the work in Hindi can be done by training english knowing stenographers. Much as the policy would be in a realm of decision by the executive, this kind of defence in the background of the facts certainly seems as an afterthought and cannot affect the right of a particular individual like the Applicant. Orders regarding use of hindi and the need for Hindi Staff of this type made by Government and cited in argument cannot be ignored. The technicality of a post being non existent and lack of power with the Director General of Shipping cannot be allowed to shield the Respondents again in the background of the facts of the case discussed above. The relevance of the case of *Narendra Chadda V/s. Union of India [1986 SCC (L&S) 226]* has to be underscored in this case on the point relating to the continuation of the Applicant for a few years, as argued by the Learned Counsel for the Applicant. Moreover, the cases cited by the Learned Counsel for Respondents as mentioned would not have any relevance in the peculiar facts and circumstances of the case. The non-production of the file and an allegation that those who have come up in various O.As. before this Tribunal are themselves involved in the file being removed from the Office, cannot come to the rescue of the Respondent in the circumstances of the case. We have seen the judgement in the case of *Kum. Chadankar V/s. the present Respondents made in the O.A. No. 1326/94* and although that O.A. relates to L.D.Cs, the relevance of some of the observations made therein are not lost on us (especially in para 8 to 10).

15. This is not a case where some junior officer of the Respondents organisation in Mumbai has provided a benefit of

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employment, either unknowingly or through some design, to the applicant. It is a case of something done through a regular process by a Committee headed by a Senior Officer/s. Obviously, it had the approval of the Director of Shipping, who is also an Additional Secretary, (Ex-officio) in the Ministry of Surface Transport, Government of India. A conscious decision is then taken first to extend the appointment and then to regularise it. In this background, it is difficult to accept the plea of a mere error and the relaxation to the extent of the appointment not having been made in consultation with the Staff Selection Commission would have been deemed to have been made, even if found necessary. It is nowhere the contention of Respondents that the applicant does not have other qualifications regarding age or educational qualifications prescribed.

16. In view of the discussion above, we hold that the impugned orders dated 10/12.05.1995 and 07.06.1995 (Office Order No. 6 and 68 respectively) are unjust and arbitrary and can be held to be bad in law. They will need to be quashed to be set aside in the interest of justice. Thus, the order of the Respondents dated 27.01.1994 will hold as valid.

17. In the circumstances, the O.A. is allowed and both impugned orders dated 10/12.05.1995 and 07.06.1995 (Exhibit 'A' and 'B') are hereby quashed and set aside. Consequently, the Applicant will continue in terms of Order dated 17.01.1994 (Exhibit 'C'). There is no order as to costs.

SL Jain
(S.L. JAIN)
MEMBER (J)

sj/os*

B.N. AHADUR
(B. N. AHADUR)
MEMBER (A)

31-10-2000