

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 32/95

Date of Decision: 15/4/99

Smt. M.M. Pawar,

.. Applicant

Shri P.A. Prabhakaran

.. Advocate for  
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri V.S. Masurkar.

.. Advocate for  
Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G. Vaidyanatha, Vice-Chairman,  
The Hon'ble Shri D.S. Baweja, Member(A).

(1) To be referred to the Reporter or not ? *ND*

(2) Whether it needs to be circulated to  
other Benches of the Tribunal ? *ND*

*R.G. Vaidyanatha*  
(R.G. VAIDYANATHA)

VICE-CHAIRMAN.

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THE CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.32/95.

*Pronounced* , THIS THE 15<sup>th</sup> DAY OF April 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,  
Hon'ble Shri D.S.Baweja, Member(A).

Mrs.Milinda Madhukar Pawar,  
25/B, Hari Baug,  
Sitaram Jadhav Marg,  
Lower Parel(West),  
Bombay - 400 013.  
(By Advocate Mr.P.A.Prabhakaran)

... Applicant.

V/s.

1. Union of India  
Ministry of Industry  
through Controller General of  
Patents, Designs & Trade Marks,  
Old C.G.O. Building,  
101, M.K. Road,  
Bombay - 400 020.

2. Assistant Controller of Patents  
and Designs,  
Patent Office Branch,  
3rd floor, Todi Estate,  
Sun Mill Compound,  
Lower Parel (West),  
Bombay - 400 013.

... Respondents.

(By Advocate Mr.V.S.Masurkar)

: O R D E R :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard the learned counsels appearing on both sides.

2. The applicant came to be appointed in a vacant post of Hindi Typist on ad-hoc basis from 19.1.1993. The said appointment continued till 28.2.1993. Then the appointment came to be extended from time to time for several periods as mentioned in para 4.1 (e) of the Original Application. Then the last term of the appointment was from 1.7.1994 to 31.10.1994. At this stage, we may point out that in para 6 of the OA it is shown as 1.7.1993, but it should be

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1.7.1994. The applicant has not been continued from 1.7.1994 and onwards. The applicant's name was sponsored by the Employment Exchange and she had appeared for the interview and then she was selected. It was against a vacant post. Though the words ad-hoc or temporary have been used in the appointment orders, the nature of appointment must be held to be permanent. The applicant has now attained 25 years and therefore she is barred for applying for fresh appointment under the Government. The applicant's appointment must be treated as a regular appointment or alternatively her ad-hoc appointment has to be regularised. Therefore, she has filed the present OA for a direction to the respondents to continue her as a Hindi Typist, to treat her initial appointment on 19.1.1993 as a regular appointment and she be granted all consequential benefits like seniority, leave etc. as applicable to regular employees.

3. The respondents in their reply have stated that applicant's appointment was purely temporary and ad-hoc. It cannot be called as a regular appointment. A regular appointment has to be made only after selection through Staff Selection Commission (for short, SSC). The applicant's name was not recommended by SSC, but she was appointed on ad-hoc basis locally. The appointment was made for a particular period as per different orders issued by the respondents. Since there was no sufficient Hindi typing work from 1.7.94 and onwards, the applicant was not issued fresh appointment order. The applicant fully knew the conditions of her service and nature of temporary, ad-hoc and service for limited period. It is also stated that no one is posted or appointed in the vacancy caused due to non-continuation of the applicant in that post. It is therefore, stated that the applicant is not entitled to any of the reliefs claimed in the application.

4. The learned counsel for the applicant contended that though it is styled as ad-hoc or temporary appointment, it must be treated as a regular appointment. Alternatively, he submitted that the applicant's ad-hoc or

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temporary appointment should be regularised. He also contended that discrimination has been done so far as the applicant is concerned and some other typist[ who were appointed at that time came to be regularised. He therefore, submitted that applicant is entitled to all the reliefs prayed for in the application. The learned counsel for the respondents maintained that there cannot be any permanent appointment or a regular appointment contrary to the Recruitment Rules. His contention is that as per rules, regular appointments can be made only through SSC and since applicant's appointment was not through SSC she cannot claim any regularity in her appointment. Her appointment was purely temporary and ad-hoc and for a limited period, therefore, after the expiry of the limited period she cannot have any right to the post. It was also submitted that there is no question of any discrimination at all and may be some Group 'D' employees who came to be promoted to Group 'C' post as per their quota might have been regularised, which is permissible under the rules, but the same will not apply to direct recruits.

5. The applicant is Mrs. Milinda Madhukar Pawar which is the present name after marriage. Her maiden name was Ms. Milinda D. Chavan. We have mentioned both these names since earlier orders contained applicant's maiden name and some subsequent orders mention her name after marriage.

The first appointment order is dt. 15.1.1993 which is at page 10 of the paper book. It clearly says that the applicant's appointment is purely ad-hoc and it is for a period up to 28.2.1993 and liable for termination at any time without giving any notice. The order also enjoins the applicant to give an undertaking as mentioned in para 2 of the order. In pursuance of that Clause (a) of para 2 in the appointment order, the applicant did give an undertaking dt. 19.1.1993 which is at page 12 of the paper book and it reads as follows:

"I understand that my employment in the Patent Office Branch Bombay as Hindi Typist is purely Temporary and on adhoc basis and is

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- 4 -

terminable at any time without giving any notice.

Yours faithfully,

Sd/-

(Kum.Milinda D.Chavan) "

Therefore, the applicant knows that it is purely temporary and ad-hoc appointment and terminable without any notice. Then subsequent appointment orders also mentions the same conditions. We can refer to the last order dt.20.6.1994 which is at page 7A of the paper book. It clearly says that the appointment is purely on ad-hoc basis and for the period from 1.7.1994 to 31.10.1994 or till the post is filled up on regular basis whichever is earlier.

One thing is clear that the appointment is only upto 31.10.1994. The order further makes it clear that it could be terminated earlier on selection of a regular candidate. This clearly shows that the applicant's appointment was not regul[r and not as per Recruitment Rules, but it was like a stop gap arrangement. How can the applicant claim that her initial appointment should be regularised on the face of the orders which she has produced.

6. As per the rules, the post of Typist can be filled up only by selection of candidates through Staff Selection Commission. Admittedly, the applicant has not been selected through SSC. In fact, the SSC calls for applications and holds written examination and then on the basis of merit select the candidates for different posts. In this case, the applicant is selected through Employment Exchange as a stop gap arrangement till the post is filled up by a regular candidate. Therefore, in our view, the applicant's very initial appointment is not as per Recruitment Rules and it is not through SSC and therefore, she cannot claim that her services should be regularised from the date of her initial appointment.

7. Another thing to be noticed is that admittedly after 31.10.1994 the applicant's appointment has not been renewed. No fresh appointment order is issued from 1.11.1994 and onwards. The applicant has filed the present OA on 30.12.1994 and on that day she was no longer in service. The Tribunal cannot give any directions contrary to the service rules. If the Tribunal now gives

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a direction to the respondents to regularise the services of the applicant and reinstate her in service, then the Tribunal will be violating the service rules which provide only for one mode of regular recruitment viz. through SSC.

We may also mention that recruitment through Employment Exchange is only a local arrangement which is a stopgap arrangement. As per rules, recruitment for this particular post has to be done by the SSC. Any other appointment is dehors the rules and in such a case the question of regularisation does not arise.

8. The learned counsel for the applicant contended that even if applicant's appointment was not through SSC, still her services can be regularised and placed reliance on some authorities.

The applicant has produced Swamy's Case Law Digest at pages 23 and 24 of the paper book where there is a reference to two cases.

The first case is a Judgment dt. 24.3.1993 of the Ernakulam Bench of this Tribunal. There also it was noticed that appointment was not a regular appointment, but it was an ad-hoc appointment. The applicants in that case were members of the Scheduled Caste. Then the Tribunal has mentioned some other special circumstances of that case. What the Tribunal has observed is <sup>that</sup> ~~that~~ those persons must be given a chance to get themselves regularised by appearing for a regular departmental examination. It is clearly observed that having regard to the facts and circumstances of the case, the Tribunal gave a direction to the Government to consider the claim of the applicants for regularisation provided they are successful in the departmental examination. Therefore, there was no question of automatic regularisation, but since the applicants were already in service in that case, a direction was given to the government to consider their case for regularisation if they pass in the departmental examination.

Similarly, the next case, at page 24 of the paper book pertains to a Judgment dt. 28.2.1993 of the Cuttack Bench of the Tribunal. There also, it

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is observed that the applicants must be given additional chance for passing the examination.

In this case, the applicant is no longer in service. Therefore, directing the respondents to give a chance to the applicant for appearing in the examination does not arise. Now the applicant must take her chance and appear whenever the SSC holds next examination and if she passes she will be entitled to be appointed. If by chance she has become over-aged due to lapse of time, she may move the Government for relaxing her age to the extent of the period for which she had worked as a Hindi Typist in the office of the second respondent. The government shall consider the same and grant relaxation as per rules.

In 1998 SCC (L&S) 1116 (Arun Kumar Rout and Ors. V/s. State of Bihar and Ors.) no doubt the Supreme Court noticed that it was a case of irregular appointment, but still gave certain directions in view of the peculiar facts and circumstances of that case. Further in the end of the Judgment the Supreme Court has made it clear that these directions are given on the special facts of this case and it should "not to be treated as a precedent". Since the Supreme Court itself has given a direction that the decision should not be treated as a precedent, and applicant cannot get any benefit from the directions given in the said judgment. We must also bear in mind that the powers of the Supreme Court under Article 142 of the Constitution are very wide and unlimited. The Supreme Court can give any direction in any case for doing complete justice between the parties. Such a power cannot be exercised by any other Court or Tribunal.

Reliance was placed on 1999(1) ATJ 33 (B.S.Santha Kumari V/s. Government of A.P. and Ors.), where the learned Single Judge of the Andhra Pradesh High Court has given certain directions regarding regularisation of Lecturer.

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- 7 -

In our view, the facts of that case are distinguishable from the facts of the present case. Further that decision is based on some of the government circulars and rules of Andhra Pradesh Government. Further, there were number of proceedings between the official and the Government of Andhra Pradesh in that case. We are concerned with rules of the Central Government, where there is no provision for regularisation of an ad-hoc appointee dehors the rules.

Then reliance was placed on 1991(18) ATC 338 (Smt.Sadhana Saxena and Ors. V/s. Union of India & Ors.), where a Division Bench of Jabalpur Bench of this Tribunal has made some observations regarding regularisation of services.

In that case it was established and admitted that though the applicants have been appointed on ad-hoc basis they have been given all service benefits like annual increments, Contribution to G.P.F., Contribution to Group Insurance, Grant of E.L., Maternity Leave, Opening of Service Book etc. The Tribunal observed that having regard to the facts of that case the applicants had been treated as regular government servants and not as temporary or ad-hoc officials. In fact, there the Tribunal observed that the services of those employees could not have been terminated in the manner it had been done. Then the Tribunal itself observed that it is a different matter whether these employees should be regularly absorbed or not. Then in para 21 it is observed that the government may examine and review the position as to whether it is possible to regularise the services of those applicants by relaxing the Rule of Recruitment through SSC. Therefore, the Tribunal gave no direction that the applicant should be regularised as a matter of course. The government was asked to examine the question whether it is possible to regularise their services. Then it was also observed that the applicants may be given a chance to appear in the test to be held by the SSC.

In our view, even the above decision is not helpful to the applicant in the present case.

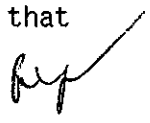
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9. We had occasion to consider a similar question of regularisation of employees who were recruited through Employment Exchange, but not recruited as per the Recruitment Rules, in OA 1180/97 and connected cases. In our Judgment dt. 24.8.1998 after referring to number of decisions of the Supreme Court we have held that any ad-hoc appointment dehors the rules cannot be regularised. In particular we referred to some decisions of Supreme Court viz. (1) 1994 (27) ATC 56 {J & K Public Service Commission & Ors. V/s. Dr.Narinder Mohan & Ors.}, (2) 1996 LAB IC 588 {Dr.Kashinath Nagayya V/s. State of Maharashtra & Ors.}, (3) 1997 SCC L&S 331 {E.Ramakrishnan & Ors. V/s. State of Kerala & Ors.}, (4) 1997 SCC (L&S) 751 {Santosh Kumar Verma V/s. State of Bihar} and on that basis of the law declared by the Supreme Court we have held that ad-hoc appointment made dehors the Recruitment Rules cannot be regularised. We adopt the same reasoning in the present case also.

Since the applicant's appointment was purely for a temporary period and on ad-hoc basis it cannot be regularised unless the applicant appears for selection conducted by the SSC and then selected by the Commission. As already observed, if the applicant is over-aged, she has to make proper application to the government or the Commission and pray for relaxation of age to the extent of the period for which she had worked on ad-hoc basis under the second respondent and on such request the government may consider and relax the age limit as per rules. The applicant's prayer for regularisation or reinstatement into service cannot be granted dehors the rules.

10. Another contention of the applicant's counsel is that the applicant has been discriminated since some other officials who were appointed along with the applicant have been regularised. There is no proper foundation in the pleadings on this point. Further, no materials on record are produced to show that the applicant is similarly placed like any other person who has been regularised. In fact, the learned counsel for the respondents submitted that



some of the ad-hoc promotees from Group 'D' posts came to be regularised, but that does not apply to regularisation of direct recruits. There is certain percentage of quota for promotion from Group 'D' to Group 'C' and in such a case the ad-hoc appointees can be regularised as permissible in the rules. But, as far as direct recruits are concerned the one and only method of recruitment is through SSC. Even granting for a moment that one or two persons might have been regularised irregularly, though there is no material before us to substantiate this contention, that will not give any right to applicant to claim regularisation dehors the rules. If some irregularity has taken place in regularising one or two persons by the department, this Tribunal cannot give direction to commit the same irregularity in regularising the applicant or some other person. There is no question of equality to do illegal or irregular acts.

11. Applicant's counsel had filed MP 339/96 for production of certain documents and the MP was allowed since the respondents undertook to produce the documents.

At the time of argument, the learned counsel for the respondents placed before us the xerox copy of the documents sought for by the applicant, which is about the creation of posts including Hindi Typist at different places in India. These documents clearly show that it is a creation of temporary posts. For example, in the letter dt. 28.2.1992, which is now produced, temporary posts of three Hindi Typists were created. This is followed by another letter dt. 3.3.1992 as to how these three posts of Hindi Typists should be distributed among different offices. This letter shows that out of three temporary posts of Hindi Typists one such post was allotted to the Bombay Office. This also gives a clear indication that the posts were temporary in nature and were sanctioned from time to time or renewed from time to time depending upon the quantum of work. Then, another document



produced is letter dt. 20.3.1996 under which sanction was given for creation of 46 temporary posts in different cadres, of which only one post of Hindi Typist was sanctioned.

Respondents contention is that since there was no sufficient work for Hindi Typist from 1.11.1994 no fresh order of appointment was issued to the applicant and nobody else was appointed in the place of the applicant by way of ad-hoc arrangements. Therefore, the new documents which are produced by the respondents on the request of the applicant do not help the applicant in any way.

After considering all the facts and circumstances of the cas, we hold that applicant is not entitled to any of the reliefs prayed for.

12. In the result, the application fails and it is hereby dismissed. No order as to costs.

  
(D.S. BAWEJA)

MEMBER(A)

  
(R.G. VAIDYANATHA) 15/4/99

VICE-CHAIRMAN.

B.