

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NOs.274/97, 275/97 & 276/97

Dated this the 28th day of March 2002.

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

Hon'ble Smt.Shanta Shastry, Member (A)

1. Smt.Mangala Madhav Warkhandkar
2. Smt.Shakuntala Subhas Salian
3. Smt.Deepali Dilip Dattar

All are Lower Division Clerks,
O/o the Textile Commissioner,
New C.G.O. Building,
48, New Marine Lines,
Mumbai.

...Applicants

By Advocate Shri B.Dattamoorthy

vs.

1. Textile Commissioner,
New C.G.O. Buildings,
48, New Marine Lines,
Mumbai.
2. Union of India
through Secretary,
Ministry of Textiles,
New Delhi.

...Respondents

By Advocate Shri R.R.Shetty
for Shri R.K.Shetty

O R D E R

{Per : Shri S.L.Jain, Member (J)}

We proceed to decide all these OAs. (OA.NOs.274/97, 275/97 and 276/97) together as the same question of fact and law is involved in the said OAs, at the request of the parties. The parties have argued the case of all the OAs. jointly.

2. Applicant in OA.Nos.274/97, 275/97 and 276/97 have filed separate OAs., OA.NOs.107/86, 106/86 and 108/86 before this Bench which were decided by a common order dated 25.9.1991 and the operative part of the order is as under :-

"Accordingly, we direct the respondents that the cases of the applicants be considered for regularisation without intervention of the Staff Selection Commission once again. But if it is not possible one more opportunity should be given to them and in case they appear for the test, they shall be regularised and their services shall not be terminated. At the same time, care should be taken that a person who has gained considerable experience for sufficient number of years should not be thrown out in this manner. With the above observations, the applications are allowed and are disposed of finally with no order as to costs."

Thereafter, the respondents filed Special Leave to appeal No.4316-18/92 before the Hon'ble Supreme Court of India which was decided vide order dated 14.12.1995 by an order as under :-

"Having regard to the facts and circumstances of the case, we do not consider it a case for interference by this court under Article 136 of the Constitution. We leave the question of law open. The special leave petitions are, therefore, dismissed."

3. The Applicant in OA.NO.274/97 claims that she was appointed on 25.8.1981, the Applicants in OA.Nos.275/97 and 276/97 claim that they were appointed vide order dated 11.12.1980.

4. The grievance of the applicants in all these OAs. is that the Respondent No.1 after the decision of SLP referred above issued an order No.6/1/95/EST.II/932, Dated 28.6.1996 regularising the services of the applicant w.e.f. 28.6.1996. The applicants have impugned this order.

5. The ground to impugne the order is that the regularisation is to take effect from 28.6.1996 while it ought to have been with effect from the date of the order of the Tribunal, i.e. 25.9.1991. The applicants have represented the matter and respondents have replied vide their letter dated 2.1.1997 that the regularisation of services of the applicant is in order.

6. The applicants claim that the respondents called for nominations/sponsorship from the Employment Exchange in the absence of availability of candidates from the Staff Selection Commission, the applicants were approved for appointment after interview/test to meet the immediate requirements of the office. Thereafter, they were continued in service as the Staff Selection Commission did not provide candidates for several years. The Applicant in OA.NO.274/97 claims that w.e.f. 25.8.1981 she continued to worked till 1986. The applicant in Oa.No.275/97 claims that except for technical breaks on 1.3.1981 to 29.5.1981 to 31.5.1981 and 28.8.1981 to 31.8.1981 she continued in service.

Similarly, the Applicant in Oa.No.276/97 claims that except for technical breaks on 1.3.1991 to 31.5.1981 and 20.8.1981 to 31.8.1981 she continued in service.

7. The claim of the applicants is being resisted by the respondents.

8. It is even by averments of the applicants is clear that the posts are to be filled up by Staff Selection Commission which did not provide the candidates and in exigency of services, the applicants whose names were sponsored by Employment Exchange after due selection, they were appointed. The right for regularisation was recognised by the Tribunal vide its order dated 25.9.1991. It is true that the respondents have filed Special Leave to Appeal which was rejected vide order dated 14.12.1995. Thus, the right for regularisation was crystalised vide order dated 14.12.1995. The respondents were within their right to agitate the matter before the Apex Court vide Special Leave to Appeal. The applicants are not entitled to say that as soon as their right is recognised by the Tribunal vide its order dated 25.9.1991, the order passed by this Tribunal should have been acted upon.

9. After the order of the Apex Court of the 1and dated 14.12.1995, the respondents have passed the order. The respondents have acted well within the reasonable time.

10. The learned counsel for the respondents argued that in case the regularisation is ordered with effect from 25.9.1991 or even within three months thereafter as pleaded by the applicants, the right of the persons who were not before the Tribunal is likely to be jeopardised. As such, in absence of the said persons before the Tribunal, no such order which affects their seniority deserves to be passed.

11. The learned counsel for the respondents relied on 2001 (1) S.C. SLJ 345 - All India SC & ST Employees Association & Anr.etc. vs. A.Arthur Jeen & Ors.etc. On perusal of the said authority, we are of the considered view that the said case relates to selection/appointment and the Apex Court has held that if the said selection is challenged by unsuccessful candidates, selected candidates not made parties, the decision to quash the selection panel is not right. In the present case the persons appointed since 1980 after due selection by Staff Selection Commission till 1996 are not parties before us. As such, any order which may affect the seniority of such persons cannot be passed in absence of notice to them. Even on the said ground of non-joinder of necessary parties, all the OAs. fail.

12. Adhoc appointment dehors the rules does not entitle any seniority. In the present case, the appointment of the applicants was dehors the rules. As such, their case for regularisation with effect from the date of their appointment/ date of the decision of the Tribunal cannot be considered. The

applicants have not raised any dispute regarding their seniority as such 1998 SCC (L&S) 611 - B.S.Bajwa & Anr. vs. State of Punjab & Ors. is of no assistance to the respondents.

13. In the result, we do not find any merit in the OAs. They also suffer from defect of non-joinder of necessary parties. As such, OAs. are liable to be dismissed and are dismissed with no order as to costs.

(SMT.SHANTA SHASTRY)

MEMBER (A)

(S.L.JAIN)

MEMBER (J)

mrj.

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to applicant dependent (s)
on 18/4/97
CC in OA 24/97
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