

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

OPEN COURT / PRE DELIVERY JUDGMENT IN OA 285/97

~~Hon'ble Vice Chairman / Member (J) / Member (A)~~

may kindly see the above Judgment for

approval // signature.

V.R. Kulkarni
~~V.C. / Member (J) / Member (A) (K/S)~~

22/7

Hon'ble Vice Chairman

Hon'ble Member (J)

Hon'ble Member (A) (K/S)

Agree Ashwade 22/7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 285/97

Date of Decision: 22-07-97

C.V.Vigi Rajan

.. Applicant

Shri S.P.Saxena

.. Advocate for
Applicant

-versus-

U.O.I. & anr.

.. Respondent(s)

Shri S.S.Karkear for Shri P M.

.. Advocate for
Respondent(s)

Pradhan $\frac{1}{2}$

CORAM:

The Hon'ble Shri B.S.Hegde, Member(J)

The Hon'ble Shri M.R.Kolhatkar, Member(A)

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

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

M.R. Kolhatkar

(M.R. KOLHATKAR)

M(A)

M

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.285/97

Pro nounced, this the 22nd day of July 1997

CORAM:

HON'BLE SHRI B.S.HEGDE, MEMBER(J)

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

C.V.Vigi Rajan
Clerk(Ad-hoc)
I.T.A.T.
Bangalore

C/o.Jaypal K,
B/208, Shivgarjana Co.op.Hsg.Scty.,
Gamdevi,
Dombivli, Thane Dist.

By Advocate Shri S.P.Saxena

.. Applicant

-versus-

1. Union of India
through
The Secretary,
Ministry of Finance,
Govt. of India,
New Delhi - 110 011.

2. The Registrar,
Income Tax Appellate Tribunal,
Central Government Offices Bldg.,
4th Floor, Maharshi Karve Road,
Mumbai - 400 020.

By Advocate Shri S.S.Karkera for
Shri P.M.Pradhan

.. Respondents

-: O R D E R :-

(Per M.R.Kolhatkar, Member(A))

The applicant was appointed to the post of L.D.C. on adhoc basis in the I.T.A.T. Cochin Bench, Cochin w.e.f. 20-1-1993 until further orders or till the vacancy is filled up on regular basis by the nominee of Staff Selection Commission, whichever is earlier, vide order dt. 23-2-1993, at Ex.A-2. His services were terminated on 4-3-1996, vide page 13, Ex.A-3. He was offered a fresh appointment of L.D.C. in I.T.A.T. Calcutta Bench, Calcutta with headquarters at Bangalore on adhoc basis vide memorandum dt. 21-3-1996 at page 15, Ex.A-5. On selection and posting of one Palash Podder as LDC by order dt.

10-1-1997, the services of the applicant stood terminated. However, it appears that Palash Podder the appointed candidate did not join immediately and the interim relief of status-quo was granted to the applicant on 21-3-1997. The prayer of the applicant is to direct the respondents to absorb the applicant against the vacancies existing on regular basis and to regularise his appointment.

2. Respondents have filed their reply. According to the respondents the applicant's appointment was purely on adhoc basis and is liable to be terminated on joining of a candidate selected by Staff Selection Commission and that Palash Podder in fact joined I.T.A.T. Calcutta Bench Calcutta on the A/N of 10-3-1997. The respondents have contended that the applicant as an adhoc appointed has no right to be continued in the post after regular selection has been made and in this connection respondents relied upon the judgment of the Supreme Court in the case of Dr. Arundhati Ajit Padgaonkar vs. State of Maharashtra & another, 1994(69)F.L.R. 695 wherein the hon'ble Supreme Court has held that persons appointed temporarily on a permanent post are not entitled for regularisation and the requirement of rules of selection through Commission cannot be substituted by humane considerations.

3. The applicant in his rejoinder has taken the stand that there are four sanctioned vacancies of LDCs and one vacancy is still unfilled and in this connection he has filed a copy of the letter addressed by Asstt. Registrar

I.T.A.T. Bangalore Bench to the I.T.A.T. Chennai. This letter shows that a request has been made to send atleast one clerk to the office on tour atleast for four weeks, to attend ^{to} urgent work. Respondents, however, have denied that there ^{is} any vacant post at Bangalore. The posts are controlled at Calcutta and the selected candidate~~s~~ was allowed to join at Calcutta and it is their contention that there is no vacancy at Bangalore.

4. No doubt the applicant has three years' adhoc service to his credit but that does not give him a right to be continued in the post when a regularly selected candidate is available. The learned counsel for the applicant would urge that an adhoc candidate with three years' service to his credit would have a better claim over an adhoc candidate who may be appointed. This may be so but there is no record before us to show that there is a vacancy and the respondents are trying to fill that vacancy on adhoc basis. Assuming that there is a vacancy the respondents cannot be compelled to fill that vacancy. We are, therefore, of the view that the main relief sought by the applicant cannot be granted to him under the rules and the subsidiary relief also cannot be granted under the circumstances. The O.A. is therefore dismissed at the admission stage with no order as to costs. The I.R. granted earlier stands vacated.

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

B.S. Hegde

(B.S. HEGDE)
Member(J)