

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

08.12.07
745/97
OA.NO.745/97 & OA.NO. 879/97

Friday this the 24th day of October, 1997

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri M.R.Kolhatkar, Member (A)

1. Asha Rani Singh
Lecturer,
C/o Santosh Pawar,
MIG/1965, MHB Colonies,
Pune.
2. Khan Anwar Ali,
Lecturer,
1103, Old Modi Khana,
Pune.

By Advocate Shri A.V.Shivade
V/S.

1. Union of India
through the Secretary,
Ministry of Defence,
South Block, New Delhi.
2. National Defence Academy
through the Commandant,
Khadakvasla, Pune.

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

Applicant
Shri Santosh
... Applicants

... Respondents

ORDER

(Per: Shri Justice R.G.Vaidyanatha, VC)

Both these applications are filed under
Section 19 of the A.T.Act. Respondents have filed
reply. The point involved is short point. By consent
of both the counsels we have taken both the applications
for final hearing. Heard both the counsels.

2. Few facts necessary for the disposal of these applications are as follows :- Both the applicants were appointed as adhoc Lecturers in the National Defence Academy, Khadakvasla, Pune. The applicant in OA.NO. 745/97 Miss Asha Rani Singh was appointed as adhoc Lecturer in Geography, whereas the other applicant in OA.NO.879/97 Khan Anwar Ali was appointed as adhoc Lecturer in the Foreign Languages Department and his subject is Urdu. It is common ground that these two applicants were appointed in the first instance for a period of 11 months on purely temporary and adhoc basis and continued for 3-4 years with, however, break during the months of April and May. It appears that for the academic year of 1997-98 fresh advertisement was given calling for appointment of adhoc Lecturers. Both the applicants also filed their applications. However, the administration appointed two other Lecturers in the two subjects mentioned above. Since the applicants were not appointed as Lecturers, they have approached this Court with these two applications for appropriate relief. Their main prayer is that a direction be issued to the respondents to appoint the applicants as Lecturers for the respective subject on the same term as their previous appointment.

3. The respondents have filed written reply in both the cases. The fact that the applicants were being appointed on adhoc basis from time to time as Lecturer

is admitted. The fact that few other persons came to be appointed in place of the applicants for the current year is also admitted. But the defence appears to be that since the applicants did not have full sufficient qualification as required by the recruitment rules, the applicants could not be appointed but, on the other hand, since better candidates were available having full sufficient qualification, they came to be appointed. Therefore, the defence is that the applicants are not entitled to be considered even for adhoc appointment for want of essential qualification.

4. According to the Recruitment Rules, the candidates should have Master Degree in particular subject along with NET/SET qualification. It is the contention of the respondents that the applicants do not possess NET/SET qualification. But the contention of the applicants' counsel is that since the applicants were appointed on adhoc basis from time to time, their services cannot be terminated or they cannot be replaced by another adhoc candidates unless a regular recruitment take place through the UPSC. This contention urged by the applicants is no longer res-integra and is covered by direct authority of Apex Court reported in 1992(4) SLR 770 (State of Haryana & Ors. vs. Piara Singh & Ors.). In particular, reliance was placed on the following observation of the Apex Court at page 776 which reads as follows:-

" Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority."

5. It is, therefore, seen that the law declared by the Apex Court is that one adhoc employee cannot be replaced or substituted by another adhoc employee. It may be that the adhoc employee has no permanent lien on the post but he can be replaced only by another candidate regularly appointed through the UPSC. In these two cases, we find admittedly no recruitment has been done through UPSC. But what the respondents is doing is to appoint ad hoc candidates every year. But since the respondents are making ad hoc appointments, they cannot, in the face of law declared by the Apex Court, appoint a new ad hoc candidate in place of old ad hoc appointment. Therefore, we say that the action of the respondents in substituting or replacing the applicants by another ad hoc candidates is not in accordance with the law.

6. But the learned counsel for the respondents contended that since the applicants do not have a necessary essential qualification, then there is no bar on the part of the management to appoint a sufficiently qualified ^{candidate} ~~as~~ per the observation made by the Supreme Court in the above dicision itself.

7. It is true that the Supreme Court has observed in the same decision in the same page 776 that "An unqualified person ought to be appointed only when qualified persons are not available through the above processes."

8. As far as this point is concerned, the respondents are relying on the advertisement issued by them for appointment of ad hoc candidates. Though the rules provide for essential qualification as Master Degree and NET/SET qualification but the advertisement issued by the respondents do not make NET/SET qualification as absolutely essential. In the Newspaper advertisement though NET/SET qualification is provided, there is a note stating that NET/SET qualification would be relaxed as per rules and non NET/SET candidates will be considered if found suitable. Therefore, it is seen that it is not absolutely necessary and it can be relaxed and further if no suitable candidates are available having NET/SET qualification, other candidates will be appointed.

9. We are also constrained to observe that the department has not taken consistent stand in some of the previous selections and the respondents have not made NET/SET qualification as an essential one and that no candidate would be appointed without such a qualification. When the department is not in the habit of NET/SET qualification being made essential when applicants were initially appointed and now after 3-4 years' ad hoc service

cannot be terminated on that ground. Some candidates have obtained court's orders and joined service on ad hoc basis to which we will presently point out. In those cases the respondents have never said NET/SET qualification as essential but the present applicants should not now be placed in such a situation that they are not fully qualified without having NET/SET qualification when other similarly situated were appointed as per the orders of this Tribunal and the High Court. Hence, we are not very much impressed by the stand taken by the respondents.

10. Along with the written statement in OA.NO. 879/97 the respondents have produced Merit List pertaining to Foreign Language subjects. Five candidates were short-listed at the interview. The first candidate is not shown having NET/SET qualification but probably that qualification must have been relaxed since that candidate has obtained M.Phil. in 1991. The candidate at Sl.No. 2 is shown as NET qualified. If the present applicant had no right to be considered for want of NET/SET qualification, he should not have been shown at Sl.No. 3 but he should have been shown in the last. The NET candidate is shown below applicant. It only shows that the respondents have not seriously treated NET/SET qualification as essential and that is why they have not taken such a stand where similar ad hoc Lecturers brought orders from this Tribunal and from the High Court.

11. The learned counsel for the applicants has placed before us some copies of unreported judgements of the High Court and of this Tribunal.

12. In Writ Petition No. 2993 of 1997 by order dated 4.8.1997 a Division Bench of Bombay High Court held in identical circumstances that a fresh ad hoc candidate cannot be appointed in place of existing ad hoc Lecturer. It is further observed that it is open to the respondents to make regular appointments through U.P.S.C. and a direction is given ^{that} till such regular appointment is made, the petitioner before the High Court should be continued on ad hoc appointment.

13. Similarly in other case, Writ Petition No. 2994 of 1997, an identical order is passed on the same day where also the High Court has also observed that the ad hoc Lecturer cannot be replaced by another ad hoc Lecturer.

14. In OA.NO. 591/97 on 4.8.1997 a Division Bench of this Tribunal passed an identical order where the respondents themselves conceded to appoint the candidate of that case on ad hoc basis.

15. It is interesting to note that in those cases the respondents did not take the position that the applicants have NET/SET qualification or not.

16. There is one more case of this Tribunal in OA.NO.449/97 where by order dated 26.5.1997 the direction is given to continue the applicant of that case on adhoc basis and he should not be replaced by another ad hoc appointment.

17. Therefore, we see that the respondents have not taken ^{consistent} stand. They have allowed ad hoc appointment from year to year . In the present case, admittedly no recruitment is done on regular basis through UPSC. In view of the law declared by the Apex Court, we hold that an ad hoc appointment should not be replaced by another ad hoc appointment. In these circumstances, we are constrained to allow the applications. At one stage, the learned counsel for the respondents stated that there is no vacancy and therefore the present applicants cannot be adjusted. On our direction, both the counsels filed affidavit explaining the position. As far as the subject ^{Geography} is concerned, admittedly a serving officer had been deputed as a Lecturer in Geography, without any difficulty, the serving official can be repatriated to accommodate the applicant;

but if there is sufficient work, it is open to the respondents to continue the applicant along with the serving official. As far as Foreign Language is concerned, admittedly, two vacancies are available. It is brought to our notice that the applicant in OA.NO.879/97 is a

Lecturer in Urdu and there is no vacancy of the post of Lecturer but there is vacancy in the department but in a different subject. It is open to the respondents to find out the way as to how they can accommodate the applicant. It is open to the respondents to take action against the newly appointed candidates or they can otherwise accommodate the applicant in the Institution. If the applicant's services are dispensed with contrary to the law laid down by the Apex Court, now they cannot plead in circumstances for not complying with the order of the court.

Before parting with the case, we would like to observe that in future the respondents should insist all the requisite qualification even for ad hoc appointment and if such a stand is taken, then there will be no such difficulty as has been pointed out in these two cases and other cases.

18. In the result, both the applications are allowed. The respondents are directed to continue both the applicants as ad hoc Lecturers on the same terms and conditions on which they were working prior to the dispute. It is without prejudice to the right of respondents to make appointments through UPSC in which case the applicants can be replaced by regularly selected candidates by UPSC.

In OA.NO. 745/97 M.P. is filed for taking action in contempt. In our view, no case is made out for initiation of contempt. M.P. is dismissed. The respondents are given 15 days time to take the applicants on duty. The applicants will be entitled to salary and allowances only from the date of joining duty and onwards.

(M.R.KOLHATKAR)

MEMBER (A)

(R.G.VAIDYANATHA)

VICE CHAIRMAN

mrj.