

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this Tuesday the 30th day of April 2002

Coram: Hon'ble Mr.B.N.Bahadur - Member (A)
Hon'ble Mr.J.K.Kaushik - Member (J)

O.A.644 OF 1998

Smt.Shantha Krishnamurthi,
Administrative Officer (Ad-hoc),
National Firm Archive of India,
Law College Road,
Pune - 411 004
(By Advocate Shri S.P.Saxena)

- Applicant

VERSUS

1. Union of India
through the Secretary,
Ministry of Information &
Broadcasting,
'A' Wing, Shastri Bhawan,
New Delhi - 110 001.
2. The Director,
National Film Archive of India,
Law College Road,
Pune - 411 004.
3. The Chairman,
Union Public Service Commission,
Dholpur House,
New Delhi - 110 001.
(By Advocate Shri V.S.Masurkar) - Respondents

O R D E R

Per: Hon'ble Mr.B.N.Bahadur - Member (A) -

This is an application made by Smt.Shantha Krishnamurthy who is aggrieved at her non-promotion, on regular basis, to the post of Administrative Officer. She seeks a declaration from this Tribunal (Para 8 of OA) to the effect that the post of Administrative Officer should be filled up first by resorting to the method of promotion from eligible candidates and also a direction to the respondents to hold DPC in preparing a select panel for promotion to the post of Administrative officer, separately for the years 1995 to 1998. Consequential/allied benefits are also sought as detailed in Para 8 of the OA.

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2. The brief facts as relevant to the case are that the applicant was initially appointed in 1967 as LDC against a regular and permanent post and was further appointed as Accountant in February, 1985. She was subsequently promoted to her present post of Administrative Officer on ad-hoc basis on 18.5.1995 and has been continued there from time to time without any break. The applicant draws attention to the Recruitment Rules (Exhibit A-2) where it is provided that the method of recruitment shall be "by promotion/transfer or deputation failing which by direct recruitment". The main issue that is raised is that the action of the applicant in taking up selection simultaneously by the composite method of "promotion" and "transfer" on "deputation" is wrong. She contends that earlier since no one was eligible for promotion, amongst the lower ranks, resorting to the method of transfer of deputation was justifiable, but not so now. In fact she claims that in 1995 she should have been considered for regular promotion. It is stated that in 1997, vide order dated one Shri R.R.Ankalgi has been found suitable for filling up the post by transfer on deputation by ignoring the legitimate claim of the applicant for the post of promotion. The earlier litigation undertaken by her by filing OA 699/97 and orders thereon are discussed. The Tribunal had directed the applicant to submit an additional representation and to take decision on it on merits. It is this decision through impugned order that has now become the basis for grievance of the applicant.



3. The respondent nos. 1 & 2 have filed a reply resisting the claims of the applicant, and first making the point that applicant's representation was duly replied to by a speaking order. It is also asserted that the applicant had agreed to undergo the selection process and having failed, now, wants to challenge the decision of the competent authority, which is not permissible in law (**Madan Lal Vs. Jammu & Kashmir**, JT 1995 (2) SC 291). Holding the facts listed in Para 4.1 to 4.4 of OA as substantially correct, it is contended that holding a Group 'B' post on ad-hoc basis without selection through UPSC confers no right to the appointee. The post of Administrative Officer has throughout been filled in as per Recruitment Rules i.e. adopting composite method of recruitment. Earlier, of course, upto 1993 no eligible departmental candidate was available. It is contended that question of selection or non-selection post is not applicable. The recruitment rules are then sought to be interpreted in Para 9 in the written statement, and these points were elaborated and expounded by learned counsel for respondents in his oral arguments.

4. We have seen all papers in the case and have heard the learned counsel on both sides. The learned counsel for the applicant - Shri S.P.Saxena argued that the applicant should have been considered on regular basis, in fact, at the very time that he was provided ad-hoc promotion. He stated that the issue



involved in the present OA is whether it is incumbent upon the respondents to consider the methodology of promotion before resorting to the other mode of selection namely that of transfer on deputation. The learned counsel sought support from the case law, copies of which have been filed between pages 35 and 51.

5. It was argued that the applicant has done the same work for six years, and it is now sought to pitch her against outsiders in a selection process, which process is against her. The process of composite selection does not provide her with a clear opportunity, and if a composite selection process is resorted to, it will mean blocking of promotional chances of all the lower staff.

6. Arguing his case on behalf of the respondents, their learned counsel, Shri V.S.Masurkar, stated that the applicant is estopped, in the first place, from coming up with a grievance w.e.f. 1995. The learned counsel also then referred to the relevant provisions in the Recruitment Rules, and stated that when there was a single post which was in Group 'B', it could not be argued that the post was 'non-selection post'. The Recruitment Rules as laid down in Columns 10, 12 and 13, it was argued envisaged a simultaneous selection process for promotion and transfer on deputation. - Shri Masurkar stated that the case of the present applicant was also considered on merits when selection process was undertaken and a suitable person was selected. The applicant had failed in the selection process. He then went on to argue how in a gazetted post, it was in public

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interest that selection was made from a wide choice and depended upon his written submissions. One of the case laws that was presented by the learned counsel for the applicant and which is important in this case is the case of Ramesh Hanumantrao Bhalekar Vs. Union of India & others, 2002 (2) AISLJ 52. After considering all facts and arguments raised, it is indeed clear that the question to be decided in this OA is whether a composite selection is in order with reference to the recruitment rules or it is incumbent upon the respondents to first exhaust the method of promotion (if a suitable candidate/s are available).

7. We have carefully considered the judgments made by the Principal Bench of this Tribunal in the aforesaid matter of Bhalekar (supra) decided on 14.5.1999. After going through the facts of the present OA before us and the facts in the case of Bhalekar (supra), it is clear that the facts are similar and the issue involved is the same. Wherever the clause of 'failing which' exists, the matter is clear. It is only in the cases where there is interpretation of '/' that the matter assumes the controversy that has come about. The interpretation of the term 'not applicable' comes as an answer to the query 'whether selection post or non-selection' is also discussed in Para 6 of the aforesaid judgment. Now all the important conclusions reached are relevant to the present case. As recorded in Para 10 of the judgment in Bhalekar's case, it is first held that the post therein was not a selection post. Obviously, this is a

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conclusion based on the discussions made in Para 6. The second conclusion reached is to the effect that the symbol ' / ' used in entries below column 11 signifies 'or' or 'in the alternative' and the composite method of selection has been ruled out. It is not in dispute in the present case that the applicant is eligible to the post. In fact it was because she was held eligible that she was considered at the selection process.

8. It is seen that the issue discussed and decided in the case of Bhalekar (supra) are squarely applicable to the issues raised in the OA before us. The entire gamut of issues has been discussed in very great detail by the Division Bench in its judgment dated 14.5.1999 (Bhalekar case) and we do not find it necessary to further repeat the points made. A detailed analysis has been made therein and conclusions reached as a consequence of which we must decide that the present OA succeeds.

9. The relief to be granted at the present juncture will need to be looked at, however, in the peculiar facts and circumstances where the selection had already been made by transfer on deputation years ago and the clock obviously cannot be put back. In order not to upset the administrative arrangement suddenly, we feel that the order in Para 10 ahead will meet the ends of justice.

10. Before parting with this case we must state that the Ministry of Personnel would be well advised to consider how best to advise the Ministries that it would be to the advantage of everybody and the administration in general if recruitment rules



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clearly stated the intention vis-a-vis composite selection. The use of '/' should be avoided in Recruitment Rules. For instance, in a small office, the intention may be to first consider promotion, and so on. In any case this is a matter on which the judgment will need to be made on a case to case basis and by the concerned Ministry/DOPT. What would be desirable that there is clarity in the Recruitment Rules Ministry of Personnel may decide how best to achieve this.

O R D E R

10. The OA is allowed. If any officer is working on the said post of Administrative Officer by transfer on deputation, he or she will be repatriated to his original Department from a date not later than three months from the date of receipt of these orders. It is clarified that in no ^{other hand} ~~way~~ should this judgment adversely affect the person on deputation. No doubt, however, he will have to be repatriated as above. Meanwhile the case of applicant will be examined by DPC for prospective benefit. This process will also be completed within ten weeks from the date of receipt of a copy of this order. Benefit to the applicant will accrue only prospectively. No costs.

11. A copy of this order will be sent to Secretary, Ministry of Personnel with reference to Para 10 above.

B.N.B.

J. K. Kaushik
(J. K. Kaushik)
Member (J)

B.N. Bahadur
(B.N. Bahadur)
Member (A)

mb

dr 30/4/02
Order/Judgement despatched
to Applicant/Respondent (s)
On 14/6/02

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

CONTEMPT PETITION NO. 84 /02

IN

O.A. NO. 644 OF 1998 .

SMT. SHANTA KRISHNA MURTHY)
ADMINISTRATIVE OFFICER(AD-HOC)) ... APPLICANT.
NATIONAL FILM ARCHIEVE OF INDIA,)
LAW COLLEGE ROAD, PUNE-411 004.)

VERSUS

1. SHRI. PAWAN CHOPRA)	RESPONDENTS
SECRETARY,)	
MINISTRY OF INFORMATION)	
AND BROADCASTING, SHASTRI)	
BHAVAN, <u>NEW DELHI-110001.</u>)	
2. SHRI. L.K. UPADHAYE,)	... CONTEMNERS.
DIRECTOR,)	
NATIONAL FILM ARCHIEVE OF)	
INDIA, LAW COLLEGE ROAD,)	
<u>PUNE - 411 004.</u>)	

CONTEMPT PETITION

MAY IT PLEASE THE HON'BLE TRIBUNAL :

Amrit Singh
The Applicant most respectfully submits that, she has filed the O.A. No. 644/98 before this Hon. Tribunal in respect of her regular promotion to the post of the Administrative Officer.

2. It is submitted that, the Hon. Tribunal was please to allow the O.A. No. 644/98 vide its order dt. 30.4.02.

(EXH. 'A') A copy of the Judgement is enclosed as (EXH. 'A').

3. It is submitted that the copy of the said judgement was received by the Applicant through her advocate around 15/16 June 2002. The Applicant has submitted the copy of the Judgement dt. 30.04.2002, to Respondents on 17.06.2002, along with her representation. A copy of the representation is enclosed as (EXH. 'B') ed as (EXH. 'B').

4. It is respectfully submitted that, while allowing the Original Application, the Respondents were very specifically directed that, "the case of the Applicant will be examined by D.P.C. for prospective benefit. This process will also be completed within ten weeks from the date of receipt of a copy of this order".

5. It is most respectfully submitted that, till dt. the Respondents have not taken any steps to implement the Judgement. By this inaction, the Respondents have committed the Contempt of the Court.

6. It is therefore prayed before the Hon. Tribunal as follows :-

- (a) to allow the Contempt Petition.
- (b) to punish the Contemners in accordance with the law.
- (c) to pass any other just and proper orders.

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VERIFICATION

I, Mrs. Shanta Krishna Murthy, presently working as Administrative Officer (ad-hoc) in the office of National Film Archive of India, Pune, do hereby verify that the contents of the above paragraphs of this Contempt Petition are true and correct as per my knowledge and information.

I further declare that I have not suppressed any material facts.

PLACE : PUNE.

DATE : 26.3.02

Shanty
(APPLICANT)

○ (Anil) Ad.
(ADVOCATE)