

ORIGINAL APPLICATION NO.: 148 of 1998.

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 148 of 1998.

Dated this 28th day of September, 1999.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri B. N. Bahadur, Member (A).

Smt. Amruta Satish Naik,
Skilled Worker under the
Director, Advanced Training
Institute at Sion, Mumbai,
under the Director General of
Employment & Training,
Ministry of Labour.
Residing at -
Room No. 14, Type-III,
Staff Quarters, Advanced Training
Institute Campus, Sion,
Mumbai - 400 022.

... Applicant.

(By Advocate Shri M. S. Ramamurthy)

VERSUS

1. Union of India through
The Secretary,
Ministry of Labour,
Shram Shakti Bhavan,
Rafi Marg,
New Delhi - 110 001.
2. The Director General of
Employment & Training,
Ministry of Labour,
Shram Shakti Bhavan, Rafi Marg,
New Delhi - 110 001.
3. The Director,
Advanced Training Institute,
V. N. Purav Marg, Sion,
Mumbai - 400 022.
4. B. R. Patil,
Tool Store Incharge,
Advanced Training Institute,
Mumbai - 400 022.

... Respondents.

(By Advocate Shri R. K. Shetty for
Respondent Nos. 1 to 3.
By Advocate Shri B. Dattamoorthy
for Respondent no. 4).

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O R D E R

PER : Shri B. N. Bahadur, Member (A).

This is an application made by Smt. Amruta Satish Naik substantially seeking the quashing of the order dated 09.12.1987, as illegal. The applicant also seeks a declaration from the Tribunal that she is entitled to be promoted against the upgraded post of Junior Technical Assistant (Electronics) with effect from 29.08.1987 and, further, to promotion as Senior Technical Assistant/Assistant Training Officer in pursuance of the earlier aforesaid prayer. The applicant also seeks the declaration that her promotion as Skilled Worker from 29.06.1993 is legal and valid.

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2. The facts of the case as brought forth by the applicant in brief are as follows :

The applicant joined the Advance Training Institute under the respondents initially as Maintenance Electronics on 28.02.1984 on adhoc basis and was regularised on this post by Office Order dated 29.05.1985. The applicant states that, in 1987, the Staff Inspection Unit (S.I.U) of the Finance Ministry visited the office to study the staffing pattern and man-power requirement in the office of Respondent No. 3. The S.I.U. subsequently made recommendations in this regard and, based on these recommendations, the President of India was pleased to abolish certain posts and upgrade others and to create some others in the Groups 'A', 'B', 'C' and 'D'. The applicant goes

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on to aver that one of the recommendations of the S.I.U. was that the post of Maintenance Electronics (Group-C) held by the applicant (pay scale Rs. 1320-2400) be upgraded to Group 'C' in the pay scale of 1400-2600, and be redesignated as Junior Technical Assistant (Electronics). This recommendation is stated to be found in para 8 of Minutes of Meeting of S.I.U. dated 19.06.1997.

3. The applicant goes on to contend that despite these recommendations, the applicant continued in the post of Maintenance Electronics in the scale of Rs. 1320 - 2040. Her contention is, that she was therefore continued in the non-existing post of Maintenance Electronics, but the payment of salary was charged against the post of Junior Technical Assistant. Subsequently, she was promoted as Skilled Worker in the pay scale of Rs. 1400 - 2300.

4. The applicant further states that a Show Cause Notice dated 13.08.1996 was issued to her asking her to show cause why her promotion as Skilled Worker should not be cancelled. A reply was filed by her on 26.08.1996. She was also informed that

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personal hearing would be given to her on 30.08.1996. But before the personal hearing came about, she was informed that copies of certain documents asked for by her could not be given to her and therefore, no personal hearing was also accorded and, thereafter, the applicant has come before this Tribunal challenging her proposed reversion. A stay has been granted to her by this Tribunal vide order dated 06.09.1996 in O.A. No. 895/96. Thereafter, the O.A. was disposed of with directions for deciding of the case after giving personal hearing. Finally, the impugned order dated 19.12.1997 was passed against the applicant.

5. A reply has been filed on behalf of respondents in this case. Respondents state that the promotion of the applicant to the post of Skilled Worker, made vide order dated 30.06.1993 was illegal, as the post of Maintenance Electronics, which was a feeder category to the post of Skilled Worker was not in existence, having been abolished on 08.10.1987. They also plead that the D.P.C. proceedings held on 28.09.1987 and 29.09.1987 were also Bmb illegal and were cancelled on 09.12.1997. The respondents aver that the post of Maintenance Electronics was not upgraded; The action was one of abolition of the post of Maintenance Electronics and another of the creation of a post of Junior Technical Assistant vide order dated 08.10.1987. It is argued that the orders of Government are the real decisions and not the minutes of the meeting of S.I.U.

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6. In the written statement, further, detailed parawise remarks have been made with reference to the Original Application. Some sailent points made are as follows :

- (a) Since the post of Maintenance Electronics was abolished, the applicant could have been retrenched as per rules, but she was continued out of sympathy and paid salary against the post of Junior Technical Assistant in her existing pay scale in order to avoid her retrenchment. She was never appointed as J.T.A. but the arrangement made was a technical arrangement in order to enable her to get her salary.
- (b) Certain procedural flaws in regard to the Departmental Promotion Committee, as described, have made these proceedings as illegal.
- (c) The respondents seek dismissal of the application as being devoid of merits.

7. The papers in this case, including the rejoinder and other statements, have been seen. Arguments made before us by the Learned Counsels appearing on both sides have been also considered.

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8. The Counsel for the applicant argued the case before us in detail. The arguments/contentions made by him are recalled in brief below :

- (a) The impugned order dated 09.12.1997 does not give any reasons for the decision that has been taken in this order. The Counsel for the applicant took us over the various documents showing the organisational structure of the Institution, especially drawing our attention to the orders of the Ministry of Labour placed between pages 40 to 53 of the paper book i.e. mainly the orders of creation and abolition of the posts referred to.
- (b) It was contended out that the applicant's designation was shown as Junior Technical Assistant (Electronics) in the pay slip for the month of March, 1991.
- (c) Although technically the post of Maintenance Electronics was abolished, the applicant was continued in the same post actually by giving her salary and allowancance. The D.P.C. promoted her as Skilled Worker. It was argued that the post of Skilled Worker was not divided trade-wise.

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- (d) There was no ground for her reversion which was bad in law in view of the grounds described out in the O.A., and that she deserved the relief that she seeks.

9. The arguments/contentions raised by the Learned Counsel for the Respondents before us are as follows :

- (a) The minutes of the meeting attended by officers of S.I.U. were not binding on the Government. Although upgradation of the post of Maintenance Electronics was proposed, what was relevant was the final decision of the Government thereon, and not discussions or recommendations in the Meeting with S.I.U. officers.
- (b) The Counsel for the respondents took us over the various orders of abolition and creation of posts and said that it was these orders which were relevant and were distinct action.
- (c) On the date of promotion, the post supposed to be Maintenance Electronics was not in existence and the applicant not being in the feeder category could not be promoted correctly speaking.

10. Arguing the case for Respondent No. 4, his counsel stated that there was no Skilled Worker in Electronics as such, and referred to the affidavit of Shri N. K. Mangal in this regard.

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It was argued that Respondent No.4 was promoted as Assistant Store Keeper in the scale of Rs. 1200 - 2040 on 07.05.1987. Further, as no S/T candidate was available, the post was specifically dereserved by obtaining orders and Respondent No. 4 being the senior most person, was eligible for promotion as Skilled Worker. However, the applicant was selected for this promotion, but her promotion is irregular since the post of Maintenance Electronics, which she held, was abolished and applicant was thus not in the feeder cadre. It was argued that it was Respondent No. 4 who was in the eligible feeder grade and was fully eligible, on the basis of qualification and experience, to be considered for the post of Skilled Worker dereserved in 1993.

11. ~~Now~~ Now, it is an admitted fact that the applicant was appointed as Maintenance Electronics on 30.03.1984, on adhoc basis, and with effect from 29.05.1985 on regular basis. Even assuming that the argument of Respondents is accepted to the effect that the post of Maintenance Electronics was not upgraded but abolished, and that in its place ^a new post of Junior Technical Assistant created and that this was a separate distinct action, there is no gain ~~saying~~ saying the fact that the applicant continued to work on the post. It cannot be said that a vacuum came to exist because the post of Maintenance Electronics had been abolished. There was no vacuum, suddenly, as far as applicant was concerned, since she was continued, even though payment of salary to her was made by drawing her salary against the post of Junior Technical Assistant. It cannot be an argument, as indeed is made by

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respondents, that the applicant continued only as an act of sympathy on the part of respondents. If indeed, as they say, she could have been retrenched, they could have resorted to such an action, if it was permissible under law, which is doubtful. Having continued her and drawn her pay by keeping the higher post vacant, they were bound to regulate her services in accordance with some sound principles of service law. Infact, if the post of Maintenance Electronics was abolished, some definite action should have been taken regarding placement of applicant and similar personnel. The point laboured about creation of Junior Technical Assistant and abolition of Maintenance Electronics being distinct action, is also not helpful to the case of respondents.

12. Later, what they have done is that they had promoted her as skilled worker with effect from 30.06.1993, after a regular D.P.C. was held. However, Respondents hold that the D.P.C. was invalid and therefore, the promotion was illegal. It is difficult for us to go into the analysis as to why or whether the D.P.C. was invalid but the important point is, that since there is not even an allegation that applicant had anything to do with it, it cannot be taken to go against the applicant's interest, retrospectively. In the affidavit (filed by Shri N. K. Mangal) the respondents have stated that the post of Skilled worker went trade-wise, and there were various trades as enumerated by them in the said affidavit. It is stated that promotion to the post of Skilled Worker went only to the persons who were in the

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corresponding trade in the lower feeder post. It is averred that the applicant cannot be appointed as Skilled Worker and even if the past practices were wrong, they cannot be allowed to prevail over the statutory rules of recruitment. The fact, however, remains that the applicant was indeed promoted without any indication as to whether she was promoted in a particular trade or not. The order of promotion of the applicant reads as under :

"On the recommendation of the D.P.C. meeting held on 28/29.12.1992, Smt. A. S. Naik, Maint. Electronics, in the pay scale of Rs. 1320-30-1560-EB-40-2040 is promoted as Skilled Worker in the pay scale of Rs. 1400-40-1800-EB-50-2300 on the following terms and conditions :

1. She will be on probation for a period of two years from the date of joining."

13. Thus, it is clear from this order that the issue of trade-wise promotion was not ordered at this stage. Had it been done and had the contention of the respondents been correctly interpreted, she perhaps could not have even been in the zone of promotion. Even if promotions are being regulated trade-wise, as argued, this argument cannot be used to undo all that has been done by respondents in promoting applicant now retrospectively. The claims made by the applicant do hold force. For the respondents to justify their action as an act of grace, and to say that applicant should have lost her job defies sound logic and certainly does not show that any well-considered action was taken as a follow up on decisions taken by Government after S.I.U.'s

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study. If the Respondent No. 4 has become eligible for promotion as Skilled Worker on the strength of his own eligibility, it is not our intention to down grade him. The Respondents' should decide his case as per rules, but her continuance as Skilled Worker has to be without detriment to the interest of the applicant. Thus, the reversion of the applicant through the impugned order is bad in law and would need setting aside.

14. The second relief sought by the applicant is that she be declared entitled to be promoted against the upgraded post of Junior Technical Assistant (Electronics) w.e.f. 29.08.1997. This is not something that can be granted to her automatically. In seeking this relief she obviously rests her case on the argument that since the Staff Inspection Unit had recommended upgradation of the post of Maintenance Electronics, she should be automatically deemed to have been upgraded as J.T.A. from 29.08.1987. As has been argued by the respondents, it is not the recommendation of the S.I.U. that will form the basis of any claim but Government orders. The promotion to the post of J.T.A. will not be automatic. Infact, we cannot decide on this in this application. The Respondents should decide on it as per rules. Hence, the relief sought by the applicant at para 8(b) cannot be accepted.

15. Similarly, the relief at para 8(c), to the effect that we declare that the applicant be considered for seniority and further promotion cannot be provided here. However, for the reasons discussed above, the promotion given to the applicant as

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