

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

OA 632/98

Mumbai, this the 31st day of July, 2001

HON'BLE SHRI S.L.JAIN, MEMBER (J)
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Shri A.D.Pansare,
working as Statistical Asstt.
in the Family Welfare, Training
& Research Centre, Mumbai, and
residing at E-202, Vanashri, Khadakpada,
Kalyan (West) Distt. Thane.

...Applicant

(By Advocate Shri R.Ramamoorthy)

V E R S U S

1.Union of India : through

the Secretary
Ministry of Health and
Family Welfare, Deptt. of
Family Welfare, Nirman Bhawan
New Delhi - 110 011.

2.The Director
Family Welfare Training &
Research Centre,
332, S.V.P.Road, Khetwadi
MUMBAI - 400 004.

...Respondents.

(By Advocate Shri V.G.Rege)

O R D E R


BY HON'BLE SHRI GOVINDAN S. TAMPI.

Shri A.D.Pansare, applicant in this OA, seeks
regularisation of his services as Statistical
Assistant in Family Welfare Training and Research
Centre, Mumbai.

2. Heard Shri Ramesh Ramamurthy, and Shri
Vijay G.Rege, learned counsel for the applicant and
the respondents respectively.

3. The applicant who joined the respondents
as a "Computer" on 15-11-1973 in the grade of Rs.
380-560/-, was regularised on 24-7-1976 and allowed to

cross E.B. on 13-2-1985. He was also approved/selected to work in the senior post of Statistical Asstt. in shorter spells during 1983-84. The applicant applied for the post of Statistical Assistant, on 9-1-1987, was considered by the DPC along with others sponsored by Employment Exchange and was appointed as Statistical Assistant on 21-1-1987 on ad hoc basis in the scale of Rs. 1400-2300/- w.e.f. 19-1-1997. On the same day, he was also permitted to cross E.B. in the earlier scale of Rs. 1320-2040/- w.e.f. 1-11-1986. His pay as Statistical Assistant was fixed at Rs. 1680/- in the scale of Rs. 1400-2300/-, On 28-7-1989 but w.e.f. 19-1-1987. On 14-1-1991, he was permitted to cross E.B. in this scale, raising his pay to Rs. 1850/- w.e.f. 1-1-1991. Thereafter on being selected by DPC which met on 21-6-1996, he was promoted as Statistical Investigator in ad hoc and temporary capacity, in the scale of Rs. 1640-2900/-, on 1-8-1996 for a period of three months and his pay was fixed at Rs. 2180/- + Rs. 40 as PP from the same date. He was continued as Statistical Investigator on 31-10-1996, with fixation of pay in the scale of Rs. 5000-8000/- after Fifth Central Pay commission, till 6-3-1998, when he was reverted as Statistical Assistant in the scale of Rs. 4000-7000/-. Thus he had been working as Statistical Assistant continuously from January, 1987 and performing similar duties on and off from 1983, but has not yet been regularised. His representation dated 8-6-1998, requesting for regularisation as Statistical Asstt. has not been responded to. Hence this application.



4. The applicant claims that as he has been performing the duties of Statistical Assistant from 1983 onwards off and on and continuously from 1987, both times after being selected by DPC, keeping his appointment as ad-hoc and temporary was illegal, more so as he was appointed against a permanent post. It is also worth mentioning that he had been permitted to earn increments and also to cross E.B., which would go only with regular appointment. He had even worked for more than two years in the still higher grade of Statistical Investigator. Even now there was no candidate sponsored by the Staff Selection Commission for appointment as Statistical Assistant to come in his way of regularisation. His case is also clearly covered by judicial pronouncements, in favour of regularisation of ad hoc employees, appointed after following the proper procedure and continuing in the position, uninterruptedly for a long time.

5. In the reply filed on behalf of the respondents, the application is described as being totally mis-conceived and not tenable in law. As the applicant's original appointment had been made on 21-1-1987, on purely, ad hoc and temporary basis as Statistical Assistant, present OA filed on 28-7-1998, is hit by limitation. According to the respondents in terms of the Recruitment Rules governing the post of Statistical Assistant, the said post is to be filled 100 % by direct recruitment of candidates between the ages of 21 & 30. As the applicant was born on 1-6-1949, on 21-1-1987, the date of his alleged selection for appointment as Statistical Assistant, he was over-aged for being so considered. Further, the

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regular appointment to the said post could have been made only by Staff Selection Commission and the applicant was not one, selected and recommended by the Commission. He was, therefore, not entitled for regular appointment as Statistical Assistant. Besides, the applicant is a Commerce Graduate from the University of Pune with Advance Accountancy and Auditing as special papers, though he had Statistics also as one of his subjects. Therefore, he did not fulfil the educational qualifications of graduation with Mathematics and Statistics which was required for being posted as Statistical Assistant. Neither the Departmental Committee which interviewed the applicant and recommended him for the appointment as Statistical Assistant nor the Officer In-charge of the Family Welfare Training and Research Centre, Mumbai who had issued the orders had any powers to effect selection or order such appointment and/or for granting any relaxation of age. The appointment was, therefore, made de hors the Recruitment Rules. The averments made by the applicant about his suitability for the post are wrong and cannot be endorsed. It is also relevant that he had not questioned the legality or validity of his reversion from the post of Statistical Investigator as he correctly knew he was not entitled to be appointed to the said post. The same logic would apply to the case of Statistical Assistants, in respect of which also he was not qualified. The plea of the applicant that he was entitled to be regularised as Statistical Assistant merely because he has been holding the post for over 11 years or that he was promoted against the permanent post or that he was permitted to cross the E.B. in the said post cannot

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make him an automatic choice for regularisation. It has been repeatedly indicated in the relevant appointment orders that his promotion as Statistical Assistant was only purely, ad hoc and temporary and that the same did not bestow on him any right for the said post. Unless he was appointed on a regular basis through the normal and proper selection procedure, he had no right for regularisation, according to the respondents.

6. In the rejoinder, the applicant controverts all the points raised by the respondents and states that his appointment should not be considered as stop gap arrangement as it was based on the selection by DPC and he had held the post for over 11 years. Since the delay/inaction of the respondents for regularising him even after ten years is the subject matter of the OA, the question of limitation as alleged by the respondents did not arise. Subsequently an additional affidavit was filed by the respondents alleging that the applicant did not have the educational qualification for being posted as Statistical Assistant in terms of the Recruitment Rules. In the reply the applicant states that the respondents were attempting to substitute the Recruitment Rules prescribed for the post of Technical Assistant for the post of Statistical Assistant, also which was totally incorrect.

7. During the personal submissions, Shri Ramesh Ramamurthy, learned counsel for the applicant states that as regular Recruitment Rules were not framed, the selection of the applicant made by the DPC

was to be considered as a proper selection and not de hors the rules and that such an approach is supported by the decision of the Hon'ble Supreme Court of India in the case of Nagpur Improvement Trust Vs. Yadaorao Jagannath Kumbhare in Civil Appeal No. 21-21A of 1992 (1999 (2) SCSLJ 280). Shri Ramamurthy, learned counsel also rejected as irrelevant the respondents' letter dated 1-1-1973 to Regional Employment Officer in in Employment Officer, Mumbai, calling for candidates for the post of Statistical Assistants as irrelevant as in fact, the applicant's posting was made nearly 14 years thereafter, when the respondents were aware of the requirements, if any, and still chose to select the applicant, as they found he was suitable. They cannot after more than a decade change their stance and penalise the applicant, for no fault of his, is what Shri Ramamurthy pleads.

8. We have carefully considered the matter and seen all the papers brought on record.

9. In this case we observe that the applicant is being denied regularisation in the post of Statistical Assistant in the respondents' organisation on the alleged ground that his original appointment was de hors the recruitment rules, as the same provided only for 100 % ; by direct recruitment; the applicant did not have the educational qualification for being so appointed, he was overaged on the date of his alleged selection as Statistical Asstt. and that the Selection Committee which selected him and the officer who issued the order of appointment were not empowered to do so, and that the orders have always

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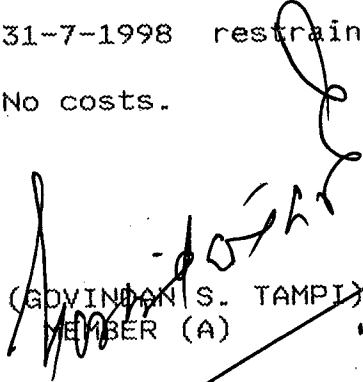
indicated that the appointment was purely temporary and ad hoc not bestowing any right for regularisation or seniority. The position on the other hand is that the applicant who was originally recruited as Computer in 1973 in the respondents' organisation was regularised in 1976, was promoted as Statistical Asstt. for the first time in 1983 for a shortwhile, and was selected by the DPC and posted as Statistical Asstt. on 21-1-1987, and continuing in that post till date uninterrupted. He has also been permitted to cross the E.B. in the pay scale of Statistical Asstt. w.e.f. 1-1-1991. Not only that from 30-10-1996 to 6-3-1998, he had also worked in the next higher post of Statistical Investigator. He has thus been working from 1983, in the post of Statistical Asstt. in short spells and continuously from January 1987, including one and half years in the senior post of Statistical Investigator. Still regularisation is being denied to him and he is even threatened by reversion, which have driven him to the portals of this Tribunal. The respondents assail his appointment on the ground of lack of academic qualification basing their stand on the letter No.FP/Estt/Staff/72-73 dated 1-1-1973 issued to Regional Employment Officer, Mumbai. ^{calling} ~~calling~~ for applications for the post of Statistical Assistant, wherein graduation or post-graduation in Mathematics or Statistics is shown as requisite qualification. Still fourteen years later, the DPC had considered his case along with those who have been sponsored by the Employment Exchange found him fit and selected him for appointment as Statistical Assistant, though on an ad hoc basis which continues till date. Obviously, therefore, the respondents were very much

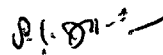
of the view

that the applicant was fit enough to be considered for selection and appointment as Statistical Assistant and keeping in mind his experience in the Department as Computer, inspite of the educational requirements shown in the letter of 1-1-1973. That being the case. To hold that the individual was not academically qualified or that he was over aged at the time of the "alleged" selection for appointment is an argument, which cannot be accepted. The respondents' version that the DPC was not competent to effect the selection or that the Officer In-charge who issued the order was not authorised to do so, would again be a preposterous claim, as it would ^{give an impression} ~~mean~~ that the institute has been working in ^{an irregular} ~~a regular~~ manner all ~~these~~ while, according to their own admission, ~~the~~ same cannot be accepted. After selecting the individual who has appeared along with the candidates from the open market, permitting him to continue for over 11 years, though under the garb of ad hoc appointment, permitting him to cross E.B. and even promoting him to the higher post of Statistical Investigator and continuing him in that post for nearly two years to follow, yet not regularising him in the substantive post ~~and~~ even threatening him with reversion is neither administrative propriety nor accepted procedure in law. Further, the plea of the applicant that the respondents were attempting to substitute the Recruitment Rules for Technical Assistant for Statistical Assistant also has not been effectively rebutted in the oral submissions. The decision of the Supreme Court in the case of Nagpur Improvement Trust Vs. Yadaorao Jagannath Kumbhare (supra) holding that

in the absence of recruitment rules, the authorities were entitled to make recruitment by any prescribed method is applicable in this case and protects the selection. In the circumstances, the applicant who has been selected by the DPC along with the candidates who have been sponsored by the Employment Exchange by following a selection method and continuing for more than 11 years in that post (14 years now) is entitled to get the benefits of the decision of the Hon'ble Supreme Court in the cases of Direct Recruits Class II Engineering Officers Association & Ors. Vs. State of Maharashtra & Ors. (JT 1990 (2) SC 264) up to Rudra Kumar Sain & Ors. Vs. Union of India (2000 SCC (L&S) 1055). He is, therefore, correctly entitled for regularisation, but his request would be limited to the day he has filed the application and has also completed more than 10 years of un-interrupted ad hoc service as Statistical Assistant.

10. In the circumstances, the application succeeds and is allowed. Respondents are directed to consider the case of the applicant for regularisation as Statistical Assistant from the date of filing of this OA, 1-8-1998, when he had also completed 10 years of ^{uninterrupted} ad hoc service from 19-1-1987, with consequential benefits. This exercise shall be completed within a period of three months from the receipt of a copy of this order. Interim order dated 31-7-1998 restraining his reversion is made absolute. No costs.


(GOVINDAN S. TAMPL)
MEMBER (A)


(S.L. JAIN)
MEMBER (J)