

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

OA 689/98

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 V.A.Salvi,  
working as Senior Artist in  
The Family Welfare Training  
& Research Centre in Mumbai  
and r/o New Haji Kasam Building,  
Room No.13

...Applicant

(By Advocate Shri R. Ramamurthy)

V E R S U S

1. Union of India : through  
Director General (Works)  
Central Public Works  
Nirman Bhawan, New Delhi
- 1) U.O.I. Through the Secretary  
M/o Health & Family Welfare,  
D/o Family Welfare, Nirman Bhavan,  
NEW DELHI 110 011.
- 2) The Chief Engineer (E)  
South West Zone  
Nishta Bhavan, 3rd Floor  
Churchgate,  
Mumbai - 400 020..
- 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 V.A.Salvi has challenged his  
non-regularisation as Sr. Artist under respondents.

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

3. To state in brief, the applicant, a  
Diploma holder in Commercial Arts from the  
J.J.Institute of Applied Arts, Mumbai was recruited as  
Artist on 24-10-1973 in the respondents' organisation  
and was appointed in the substantive capacity against

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the permanent post w.e.f. <sup>-2</sup> 24-7-1976. He was interviewed and selected by the DPC and appointed on ad hoc and temporary basis as Sr. Artist in the scale of Rs. 1640-2900/- from 3-5-1988. He has been holding the post since then. However, on 3.5.1991 the respondents modified the terms of his promotion to his dis-advantage, indicating that the same did not bestow on him any right for regular appointment, that <sup>ad hoc</sup> service rendered would not count for seniority and that it is ~~likely~~ likely to be terminated without notice when a regular nominee joined the post through UPSC. The post of Sr. Artist was in the line of promotion for an Artist. His duties are that of Instructor i.e teaching people in the preparation, for presentation and usage of visual aids in Family Welfare Programme. Besides he was teaching students in the One Year Post Graduate Diploma Course in Health Education. There was only one post each of Artist and Sr. Artist. Though the applicant has been working for more than 10 years without break and satisfactorily, the respondents had not regularised him and he was apprehending reversion to the post of Artist on the ground that he was holding the post only on ad hoc basis. The same, according to him was incorrect, as he had put in already ten years ~~of~~ <sup>of</sup> service and had been selected to the post by a duly constituted Departmental Promotion Committee. There was no reason why his promotion could be considered as temporary or stop gap or ad hoc in nature as has been sought and to be made out by the respondents. The attempts sought to be made out by the respondents are irregular, improper and, therefore, have to be set aside. Directions in the letter dated 3-5-1991 that


the appointment was likely to be terminated when a candidate from UPSC joined for the said post was illegal. In fact the post which he has been holding as Sr. Artist is a post arising from that of a post of Artist and, therefore, <sup>on</sup> no reason <sup>to</sup> same could have been denied to him. Besides, the post of Sr. Artist being a Group 'C' post the question of UPSC getting involved with the said post did not arise. By order dated 10.8.98 the respondents had been restrained from reverting the applicant. The interim relief granted continues.

4. In the rebuttal on behalf of the respondents, Shri V.G.Rege, learned counsel points out that the application was totally mis-conceived. In terms of the draft rules, the post of Sr. Artist are liable to be filled only on regular basis by promotion of the Junior Artist on selection and recommendation by DPC in consultation with the UPSC. The applicant's promotion having been ordered on recommendation by DPC, without consulting UPSC, it was only ad hoc and the applicant had no legal right to be regularised.

<sup>his</sup> appointment as Senior Artist was done in May 1998 on purely ad hoc basis and reiterated so in 1991, and therefore the OA filed in 1998 by him was liable to be ~~dismissed~~ <sup>being</sup> ~~set aside~~ as hit by limitation. It is not the case of the applicant that his appointment to the post of Sr. Artist has been done on selection on the recommendations of the DPC in consultation with UPSC. The fact that he has been considered along with others and that he was being paid in the regular pay scale of the post wherein he had drawn increments does not bestow any legal right on him as it was a purely ad

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hoc and temporary post. Having not ~~it~~ challenged the order of 3.5.1991, for nearly seven years he cannot claim any relief at this belated day. In terms of the draft Recruitment Rules submitted to the Ministry, the applicant has no right to claim regularisation. He has not established any of his legal right in his case and cannot, therefore, get the same. The applicant's appointment on 3-5-1985 was not a regular and in fact it was only an ad hoc and stop gap arrangement and the applicant cannot gain any benefit out of that. The respondents also can revert the applicant, as he was holding a purely ad hoc post. The respondents further point out in their additional reply that if a promotion/appointment has been ordered without necessary consultation from the UPSC, the concerned ad hoc appointment cannot be continued without the approval of DOPT and such continuation was irregular. case. In rejoinder, the applicant specifically avers  that merely on the basis of the draft Rules, his eligibility cannot be questioned as there was no post of Jr. Artist shown as the feeder ~~post~~ for Sr. ~~Artist~~ Artist. Having been appointed as Sr. Artist in 1988 and having worked over ~~10~~ 10 years in that post, his right for regularisation cannot be gainsaid. It is also pointed by him that it was for the respondents to have obtained the approval of the DOPT for his continuation and if they had failed to do so, he cannot be made to suffer for the same.



5. Both Shri Ramamurthy Shri Rege reiterated their pleas during the oral submissions.

6. We have carefully considered the matter. Respondents have challenged the OA on grounds of limitation stating that the applicant should have challenged his ad hoc appointment way back in 1991. The same is not maintainable as the applicants cause of action arose only with the likely appointment of an outsider on the basis of the proposed draft rules. This objection is therefore rejected.

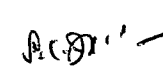
7. Undisputed facts in this case are that the applicant who was promoted on 3.5.88 as Sr. Artist, after working as Artist for nearly 15 years - of which nearly 11 years as a permanent Artist - is being sought to be deprived his regularisation on the ground that his first promotion in 1988 was on ad hoc basis - and reiterated so in 1991. This is being done on the basis of draft recruitment rules which had not seen the light of the day as yet and which indicate the non-existent post of Jr. Artist as the feeder post for Sr. Artist. By this move, the entire service of the applicant, of over 26 years is being sought to be washed off by the respondents for totally unexplained and inexplicable reasons. No justification or rationale of any sort is being canvassed by the respondents for the same, obviously as there is none. They have also not shown as to how the consultation with UPSC was involved or deemed necessary in respect of a Group 'C' post as UPSC concerns itself only with Group 'A' & 'B' posts normally. In the circumstances,

the proposed action of the respondents smacks of malafide and illegality. The same cannot be condoned except at the cost of justice, in view of the many decisions of the Courts of Law granting regularisation to employees, holding posts to which they are appointed by a selection process, uninterruptedly for a considerably long time, which in this case runs to over twelve years.

8. In the above view of the matter ~~the matter~~ the application succeeds and is accordingly allowed. The respondents are directed to consider regularisation of the applicant w.e.f. 5.8.1998 when he has filed this OA, and has completed more than ten years as Sr. Artist on ad hoc basis, with all consequential benefits. This should be done within three months from the date of receipt of a copy of this order. The respondents shall also pay to the applicant cost for the OA, quantified at Rs. 2000/- (Rupees two thousand only).

  
GOVINDAN S. TAMPI)  
MEMBER (A)

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(S.L. JAIN)  
MEMBER (J)