

C18/2001/01A

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P. No. 23/2000 in OA. No. 594/98 &
C.P. No. 22/2000 in OA. No. 595/98.

Dated this the 18th day of April 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)
Hon'ble Smt. Shanta Shastry, Member (A)

R.B. More & Ors & Sh B.V. Khirid & Others Applicants
By Advocate Shri Avinash Shivade

V/S.

1. Lt. Gen. B.S. Kochar,
The Commandant,
National Defence Academy,
P.O. Khadakvasla, Pune.
2. Col. R. Roy,
Col. Admn.,
P.O. Khadakvasla, Pune.
3. B.S. Sonawane,
Personnel Officer,
P.O. Khadakvasla,
Pune.

... Contemner/
Respondents

Tribunal's Order

The applicants in OA. Nos. 594/98 and OA. No. 595/98 have filed C.P. No. 23/2000 and 22/2000 respectively. Both the OAs. along with other OAs. were decided by a common order in OA. No. 208/98, 458/98, 594/98, 595/98 and 1013/98 on 3.6.1999.

2. The order passed in the said OAs. Para 13 & 14 of the order which are relevant for our consideration are as under :-



"13. As brought out earlier, the respondents have contested the claim of the working of the several applicants. The respondents have indicated that since a number of applicants have been engaged in the years of seventies, eighties and nineties, there is no record available in respect of several employees. They contest that they were engaged as regimental staff. Keeping the rival contentions in focus, it is considered necessary to lay down the following direction to resolve this dispute.



(a) In respect of the applicants where the respondents have not accepted their claim of working, the applicants would submit a representation within a period of one month from the date of receipt of the order giving the details of the engagement with documentary evidence as available with them. The respondents will then verify the claim of the applicants by associating the applicants. In case the claim of the applicants is found acceptable based on the details furnished by the applicants, such of the applicants would be included in the seniority list to be prepared as directed subsequently. In case the claim is not established, the concerned applicants will be replied through a speaking order within four months after the receipt of the representation.

(b) In respect of applicants, the respondents contend that they were engaged as regimental staff, such of the applicants will also make a representation within one month of the receipt of the order giving details along with documentary evidence. Here also the joint inspection of the record will be done to establish their claim. In case it is established that they were paid out of regimental funds, such of the applicants will not have any claim for regularisation keeping in view what is held by the Hon'ble Supreme Court in the case of Union of India and Others vs. Chotelal & Ors. - 1999 SCC (L&S) 332. In respect of such applicants, the respondents will reply to the representations through a speaking order within four months after the receipt of the representation.

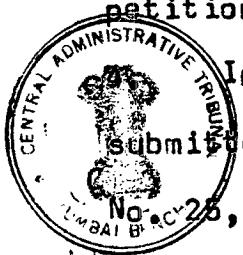
14. In the result of the above discussion, all the OAs, are allowed with the following directions :

- (a) The respondents will prepare the seniority list of the applicants alongwith the other casual labourers who had been engaged earlier or at present being engaged for consideration for regularisation against the Group 'D' vacancies based on the date of engagement and length of service.
- (b) The regularisation of the applicants along with others as per the seniority list to be prepared as indicated in (a) above will be done if found eligible in terms of the scheme as laid down as per O.M.s dated 10.9.1993 and 7.6.1998 by the Department of Personnel & Training against the existing and future vacancies when the respondents decide to fill up the vacancies keeping in view the ban imposed. The applicants along with other casual labourers will be regularised against vacancies as per the quota laid down in the O.M. dated 10.9.1993 before going to open market for recruitment to fill up the vacancies.
- (c) The applicants shall be allowed relaxation of age as provided in the O.M. dated 6.6.1988 in case the applicants were engaged within the age limit at the initial engagement.
- (d) The seniority list as indicated in (a) shall be prepared by the respondents within a period of six months from the date of receipt of the order and the same will be notified.
- (e) In respect of the applicants where the respondents have not accepted the claim of being engaged against leave vacancies or had been engaged as Regiment employee, directions as detailed in para 13 will be followed.
- (f) In the circumstances of the case, there will be no order as to costs."



The grievance of the applicants is that according to the said directions, the respondents ought to have prepared seniority list of the applicants according to the directions issued by this Hon'ble Tribunal. The respondents were also bound to notify the seniority list.

The respondents have failed to comply with the directions of this Tribunal. The respondents should have notified the list by the end of December, such list has not been notified so far. None of the applicants have been appointed till this date. The applicants served a notice dated 23.2.2000 through their Advocate upon the respondents to comply with the order which was received by the respondents but the respondents failed to comply with the same. The respondents are deliberately violating the orders passed by the Tribunal. Hence, this contempt petition.



In C.P.No.23/2000 in OA.NO.594/98 the respondents submitted the reply to the effect that applicants at Sr. No. 23, 39, 51, 52, 54, 63, 64, 67, 75, 86 and 98 and

In C.P.No. 22/2000 in OA.NO.595/98 applicants at Sr.No. 16 & 19 are those persons who are clearly covered by the directions of this Tribunal in para 13 of this judgement.

5. The respondents have stated in their reply that in the entire list as made out by them (Ex.CPR-II) only two persons are in a position to fall under the purview of regularisation of their service, i.e. Shri V.Ram and Smt.N. Sathidevi. We have carefully perused the names of the applicants in both the OAs. (OA.No.594/98 & 595/98) and we do not find the names of the said persons as applicants. Hence, we restrain ourselves from deciding any point in respect of Shri Khuliram and Smt.N.Sathidevi.

6. In respect of persons mentioned in para 4 of this order, the respondents have submitted that on receipt of representation, the respondents have sent them speaking orders explaining as to how they are not entitled to be part of seniority list as directed by this Tribunal in para 14 of the order.

7. Regarding other applicants, it is stated that the directions as set out by the Tribunal in para 14 of the order have been completely followed by preparing a seniority list (Exh.CPR-I), it is also alleged that purely temporary employment of all employees and also such persons who had applied in response to judgement are covered in Exh.CPR-2. The respondents claim that for preparation of the seniority list, they have followed O.M. of Govt. of India, Ministry of Personnel, Public Grievances & Pensions, Deptt. of Personnel & Training dated 26.7.1979, Exh.CPR-3, O.M. of Govt. of India, Ministry of Personnel & Training No.49014/86/Estt(C), dated 7.6.1988 Exh.CPR-4 and Govt. of India, Ministry of Personnel, Public Grievances & Pensions O.M.No.51016/2/90-Estt(C) dated 10.9.1993. It is further explained that directions for regularisation could have come into play only on the relaxation of the ban imposed upon recruitment which is still in force. The directions which remained to be complied with regarding preparation of seniority list and sending of orders upon representations have been duly complied with. It is further stated that after relaxation on ban, the question of regularisation subject to fulfilment of the requirement of eligible persons will come into play resulting ⁱⁿ contempt petition

being premature. Hence, prayed for dismissal of contempt petition.

8. The applicants in C.P.No.22/2000 have filed the rejoinder alleging that the order is not complied with within six months, the respondents have included names of various employees in the list who are either already employed or dead. The list of the persons is also mentioned in the rejoinder. It is further stated that the list is not complete one. It is also claimed that they have worked on regular posts and not on the post of a seasonal nature. One Sikandar Popat Shaikh had filed a dispute under Industrial Disputes Act in the Industrial Tribunal and the respondents have contended therein that NDA was not an industry. A finding was also recorded accordingly which was challenged in the High Court of Judicature at Bombay and the said finding was upheld. It is alleged that if the Industrial Court was of the view that NDA was not an industry, it could not have gone into merits as to whether employees have worked for 240 days or not. Suffice to state that this Tribunal is not an appellate authority or a revisional authority to consider the finding of the Industrial Tribunal or the High Court of Judicature at Bombay.

9. The applicants contended ^{that} the O.Ms. on the basis of which the respondents have arrived to a finding does not apply to the present case and the order passed by the

Tribunal is rendered ineffective. We have clearly perused the order passed by the Tribunal and are of considered opinion that the respondents have considered the directions in a manner required by law. However, if the applicants are aggrieved, this is not a matter to be decided in contempt petition and the applicants are at liberty to agitate the matter by filing a separate OA. as laid down in case of J.S. Parihar's case.

10. It is further stated that the contention of the respondents that there being a ban on the recruitment is not correct for the reasons that before the Bombay High Court in petition filed by one leave vacancy worker Ananda Kamble, the respondents have themselves stated that there is no ban on recruitment. Neither the affidavit filed by the respondents is brought on record nor finding of the High Court is placed^r on record. Such vague defences holds no ground to arrive to a finding.

11. It is further stated in the rejoinder that during the period 1996 to 1998 the respondents have appointed so many workers from time to time suggesting that there was no ban. We are not in agreement with the contention raised because right of the applicants comes into existence only after pronouncement of the order passed in the OA., i.e. 3.6.1999. There exists a ban on appointments.



12. We do not find any wilful disobedience of the order by the alleged contemners/respondents. Hence, contempt petitions deserve to be dismissed and are dismissed. Notices issued to the respondents/alleged contemners stands discharged. No order as to costs.



Certified True Copy
Date. 26.4.2001

g. Mehta
Section Officer
Central Admin. Tribunal
Bombay Bench

CAT/MUM/JUDL/O.A. 594 & 595/98/29848
copy to 2985

dated 27/4/01

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2. Sh. R.K. Shetty, adv. for the respondents.

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hahole
27/4/2001
for R.K. Shetty
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Despatched on 27/4/01

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DESPATCHER