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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.23/95.

Date of Judgement : 19/11/9.1996.

Between

S.Subramanian

.. Applicant

And

Union of India, Rep. by

1. The Secy., to Govt.,
Min. of Defence,
New Delhi.
2. The Director-General of
Ordinance Services,
Army Headquarters,
New Delhi.
3. The Officer Incharge,
AOC Records Office,
Trimulgherry,
Secunderabad.

.. Respondents

Counsel for the Applicant

.. Shri N.Raman

Counsel for the Respondents

.. Shri N.V.Raghava Reddy,
Addl. CGSC with Shri W.Satya-
narayana

C O R A M

Hon'ble Shri Justice M.G.Chaudhari : Vice-Chairman

Hon'ble Shri H.Rajendra Prasad : Member(A)

Judgement

(Order as per Hon'ble Shri Justice M.G.Chaudhari : Vice-Chairman).

The applicant was initially appointed as a Peon in Group D in the Office of AOC (Records) in Defence Department at Secunderabad. His substantive post continues to be Group D as Peon.

2. By order dated 30.4.85 he was appointed on adhoc basis in a purely temporary Group C post in lieu of Combatant at Army Ordinance Corps Unit AOC Records as Lower Division Clerk (LDC). The applicant is a civilian employee. The order stipulated that the post was purely temporary and his services "are liable to be terminated when a Combatant becomes available". The applicant was appointed after

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his name was sponsored by the Employment Exchange and after he was selected by the Board of Officers.

3. However the applicant was served with a notice dated 16.3.1987 issued by the Officer Incharge of AOC Records terminating his service as LDC (in lieu of Combatant) with effect from 30.4.1987. It was however clarified in the order that he will continue to remain in service in his original post as Peon.

4. It is stated by the applicant that he had filed the first representation against the said notice on 17.12.1988 which however was submitted long after the order had taken effect. Another representation was submitted as an application on 24.1.1991 requesting for grant of reclassification as LDC. He was informed by the letter dated 2.4.1992 by the 3rd respondent that his representation was not considered by the Ministry of Defence (to extend the benefit of court judgement to similarly placed individuals).

5. The applicant again made a representation on 12.10.1994 reiterating his request to be reclassified from Group D to Group C from the date of reversion (which was 30.4.1987) in the light of order obtained by another similarly situated employee D.Revathi, in O.A.No.77/92 decided on 21.9.1994.

6. The applicant has not referred to any reply received by him but it is stated in the counter of the respondents that he was informed as follows:-

"Action on your petition will be taken by AOC (R) on receipt of decision on the judgement dated 21.9.1994 in respect of Peon Smt. D.Revathi from Army HQ".

The said letter is dated 28.11.1994. On the basis of this letter the applicant has filed the O.A. He prays as follows:-

"Hon'ble Tribunal may be pleased to direct the Respondent No.2 to extend the benefit of the judgement of this C.A.T. in O.A.No.77/92 delivered on 21.9.1994 and the judgement of Chandigarh Bench

in T.A.No.12 PB 89 dated 31.7.89 by declaring the order by the 3rd respondent as arbitrary and illegal and further direct the Respondent No.3 to regularise the appointment of LDC against regular vacancy from the date of the order of reversion with all consequential benefits."

7. The O.A. was filed on 28.12.94. The dates relating to representations filed and reply given as stated in the O.A. and in the counter differ but substantially contents are the same.

8. The respondents resist the application. Firstly they say that the O.A. is hopelessly time barred. Next they point out that the Army HQ AG Branch clarified through the letter dated 10.6.86 that individuals employed in Group D post through Employment Exchange and later recruited in Group C post of LDC were not in order. Hence notice of termination was issued to the applicant similarly as was issued to employees in other depots.

9. It is true that since the applicant has ever emphasised the order of reversion though he has not prayed for its quashing and as it was issued on 16.3.87 the application would seem to suffer from long unexplained delay and would appear to be liable to be rejected on that ground. That question however would not arise when the relief sought by the applicant is properly understood. The applicant does not seek setting aside of the order dated 16.3.87 terminating his adhoc appointment in Group C post which was in lieu of Combatant. He is also not seeking reinstatement in lieu of a Combatant Group C post. What he seeks is regular appointment as LDC against a regular post. The prayer for setting aside the order dated 28.11.94 and for consequent regularisation from the date of reversion must be regarded incidental and misconceived. However if the applicant could be found entitled to regularisation

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that need not be necessarily with reference to the date of reversion but can be from a date falling within limitation.

10. We are therefore inclined to take the view that bar of limitation does not shut out partial relief. Accordingly we do not agree with the submission of Shri N.V.Raghava Reddy, learned Standing Counsel that the O.A. is liable to be dismissed as barred by limitation prescribed under Section 21 of the Administrative Tribunals Act.

11. It is however clear that the applicant has slept over his remedy for long and is guilty of laches. Even so there are few circumstances to relieve him from the rigour of that lapse. Firstly the applicant seems to have laboured all through ^{but} under the impression that he was entitled to be regularised ipso facto by reason of his appointment on adhoc promotion to a post which was temporarily filled up in lieu of Combatant. That seems to have resulted in his claim for consideration for regular post ^{not to have} ~~has not~~ received due scrutiny from the respondents. Secondly by letter dated 28.11.94 of the 3rd respondent cognizance of the claim of the applicant was taken by the respondents and thus the claim remains live. We are not therefore inclined to refuse entirely the applicant's claim on the ground of laches.

12. The applicant has rested and indeed solely, his case on the decision of this Tribunal in D.Revathi's case (O.A. No.77/92 dated 21.9.94). Revathi was similarly placed as the applicant. The applicant therefore naturally expected similar treatment from the respondents. The Army HQ however had earlier decided to confine the benefit of the order to Smt. Revathi but had later on postponed the decision on applicant's representation finally, informing him by letter dated 29.3.95 that action can be taken only after the decision in this O.A.

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13. In order to understand the impact of the decision in Revathi's case it is necessary to note that her adhoc appointment was terminated on the ground that at the time of the adhoc appointment she had not been sponsored through Employment Exchange and thus it was irregular. Same is the position as regards the applicant. Both of them were sponsored through Employment Exchange at the time of their initial appointment to Group D post after due selection. That was the question involved in Revathi's case. The Tribunal followed the decisions of Chandigarh Bench of Central Administrative Tribunal in T.A.No.12-PB-1989 and O.A.No.375-B/89 in which it was held that since the employees were initially employed after having been sponsored by the Employment Exchange and as departmental candidates ^{had} and also been considered the ruling of the Army Headquarters and the action of termination based thereon was not right. The Tribunal therefore was not right. The Tribunal therefore directed to consider the case of Revathi for regular appointment against regular vacancy. The said decision being rendered on similar facts and on ^{same} legal issue and has achieved finality we see no justification for the respondents not to extend the benefit of similar consideration to the applicant.

14. Had the question arisen for consideration before us at its initial stage, we would have been required to examine whether the test of being sponsored through Employment Exchange could be regarded as a requirement of the Recruitment Rules ^{as} since the post to be filled up is a Group A post in view of a Combatant and ~~different~~ ^{post} considerations would apply to a Combatant ^{post} and a civilian ^{post} and whether it was rightly insisted upon or not and further whether the rules applicable for recruitment to a lower post to any extent can dispense with the requirement prescribed for the higher post particularly ^{where} the adhoc appointment of a civilian to a

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Combatant's post is being claimed as a source of recruitment to a Group C post, ~~meant for Combatant and alternatively for a regular civilian Group C post.~~ However we need not enter upon that discussion in view of the decisions of Chandigarh Bench which has already been followed by this Bench earlier. Judicial propriety demands us to follow the said decisions. It must however be made clear that the view taken in the aforesaid decisions merely results in the applicant not being required to be sponsored afresh for selection to regular Group C post and that advantage he must be said to have gained by reason of his adhoc appointment. However other conditions as may have been prescribed for the said recruitment would be necessary to be fulfilled. We make it clear that such consideration will relate to regular Group C post and not to a post in lieu of Combatant.

15. In the circumstances of the case we are of the opinion that the respondents should consider extending the benefit of decision in Revathi's case to the applicant as modified to the extent of the applicant as indicated in the order passed below. Owing to long lapse of time after 1987 we do not think it appropriate to direct consideration of appointment of the applicant from the date of reversion. That will create lot of complexities as many regular appointments may have been made during the intervening period and the applicant cannot be allowed to unsettle that position.

16. It has been argued by the learned counsel for the applicant that since the applicant is senior to Revathi in Group D post and similarly placed it will cause serious prejudice to him if he is not given retrospective benefit. Although there is substance in this submission but the applicant has to take the consequence of his inaction between 1987 and 1995. His filing representation after Revathi had obtained a relief cannot retrieve the situation

as she was more vigilant and had approached the Tribunal but the applicant has become wiser only after that event.

17. In the result, following order is passed:-

(i) Respondents are directed to consider the applicant for appointment to regular Group C post for any existing vacancy or as soon as a vacancy may arise next and appoint him if otherwise eligible. It is made clear that the post need not be the same where he had worked earlier on adhoc basis.

(ii) In the event of the applicant being appointed he will be given benefit of notional entry into regular Group C post retrospectively from the date of reversion i.e., 16.4.87 for the purpose of consideration for a further higher post in the event of such occasion may arise and he would be otherwise eligible under the relevant rules in that behalf. In all other respects the appointment when made shall be treated as prospective from that date.

(iii) The applicant shall not be entitled for backwages if and when made.

18. As the O.A. is now disposed of, the respondents do take necessary decision as regards the case of the applicant expeditiously and communicate him the decision as may be taken.

19. The O.A. is partly allowed. No order as to costs.

(H. Rajendra Prasad)
Member(A).

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(M.G. Chaudhari)
Vice-Chairman.

Dated: 19.9.1996.

br.

Deputy Registrar (S) cc

O.A. 23/95.

To

1. The Secretary to Govt.,
~~Ministry~~ of India,
Ministry of Defence, New Delhi.
2. The Director General of
Ordinance Services, Army Headquarters,
New Delhi.
3. The Officer Incharge, AOC Records Office,
Trimulgherry, Secunderabad.
4. One copy to Mr.N.Raman, Advocate, CAT.Hyd.
5. One copy to Mr.N.V.Raghava Reddy, Addl.CGSC.CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. Copy to All Reporters as per standard list of CAT.Hyd.
8. One spare copy.

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23/10/96

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE M.G. CHAUDHARY
VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)

Dated: 19-9-1996

~~ORDER~~ / JUDGMENT

M.A/R.A./C.A. No.

in

O.A.No. 23/95

T.A.No. (w.p.)

Admitted and Interim Directions
Issued.

Allowed.

Disposed of with directions

Dismissed

Dismissed as withdrawn.

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

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केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण/DESPATCH
15 OCT 1996
हैदराबाद न्यायपीठ
HYDERABAD BENCH