CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No 390/2002,OA 391/2002,
T.A.No.OA 392/2002, OA 396/2002
and OA 398/2002

Date of Decision 17.5.2002

1.Neelam Kumari Singh ... Petitioner
(OA 390/2002)
2.Tanuj Joshi 'OA 391/2002)
3.Km.Madhu Kumari(OA 392/2002)
4.M.K.Srivasta a(OA 396/2002)
5.V.N.P.Shukla(OA398/2002)

Shri Rakesh Verma Advocate for the Petitioner(s)

VERSUS

UOI through the Secretary Respondent
M/O Personnel & Training and
Ors.

Sh.M.M.Sudan, Senior counsel Advocate for the Respondents

Coram:-

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri V.K.Majotra, Member (A)

1. To be referred to the Reporter or not ? Yes

2. Whether it needs to be circulated to other Benches of the Tribunal? No

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.390/2002, O.A.391/2002, O.A.392/2002,
O.A.396/2002 and O.A. 398/2002

New Delhi this the 17 th day of May, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri V.K. Majotra, Member(A).

1. O.A.390/2002.

Neelam Kumari Singh,
D/o Shri Bhulan Singh,
R/o 109B/5, Anant Nagar,
Dhoomanganj,
Allahabad-211001. ... Applicant.

(By Advocate Shri Rakesh Verma)

Versus

1. Union of India, through the
Secretary,
Ministry of Personnel and
Training, Public Grievances,
New Delhi.

2. The Hon'ble Chairman through
Registrar, Central Administrative
Tribunal, Principal Bench,
Faridkot House, Copernicus Marg,
New Delhi.

3. The Hon'ble Vice Chairman through
Registrar, Central Administrative
Tribunal, Allahabad Bench, 23-A
Thronhill Road,
Allahabad. ... Respondents.

(By Advocate Shri M.M. Sudan, senior counsel with Shri Anil Srivastava, Deputy Registrar (Departmental representative)

2. O.A.391/2002.

Tanuj Joshi,
S/o Shri Chandra Shekhar Joshi,
R/o 555/184/2 Cha, Kailashpuri,
Alambagh,
Lucknow (UP). ... Applicant.

(By Advocate Shri Rakesh Verma)

Versus

1. Union of India, through the
Secretary,
Ministry of Personnel and
Training, Public Grievances,
New Delhi.

2. The Hon'ble Chairman through
Registrar, Central Administrative
Tribunal, Principal Bench,
Faridkot House, Copernicus Marg,
New Delhi.

3. The Hon'ble Vice Chairman through
Registrar, Central Administrative
Tribunal, Allahabad Bench, 23-A
Thronhill Road,
Allahabad. ... Respondents.

(By Advocate Shri M.M. Sudan, senior counsel with Shri Anil Srivastava, Deputy Registrar (Departmental representative)

3. O.A.392/2002.

Km. Madhu Kumari,
D/o Shri Ram Bhajan Singh,
R/o B-138/3, RDSO,
Manak Nagar,
Lucknow. ... Applicant.

(By Advocate Shri Rakesh Verma)

Versus

1. Union of India, through the
Secretary,
Ministry of Personnel and
Training, Public Grievances,
New Delhi.

2. The Hon'ble Chairman through
Registrar, Central Administrative
Tribunal, Principal Bench,
Faridkot House, Copernicus Marg,
New Delhi.

3. The Hon'ble Vice Chairman through
Registrar, Central Administrative
Tribunal, Allahabad Bench, 23-A
Thronhill Road,
Allahabad. ... Respondents.

(By Advocate Shri M.M. Sudan, senior counsel with Shri Anil Srivastava, Deputy Registrar (Departmental representative)

By

4. O.A.396/2002.

Manish Kumar Srivastava,
S/o Shri Suresh Kumar Srivastava,
R/o 257, New Mumford Gunj,
Allahabad. ... Applicant.

(By Advocate Shri Rakesh Verma)

Versus

1. Union of India, through the Secretary, Ministry of Personnel and Training, Public Grievances, New Delhi.

2. The Hon'ble Chairman through Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi.

3. The Hon'ble Vice Chairman through Registrar, Central Administrative Tribunal, Allahabad Bench, 23-A Thronhill Road, Allahabad. ... Respondents.

(By Advocate Shri M.M. Sudan, senior counsel with Shri Anil Srivastava, Deputy Registrar (Departmental representative)

O.A. 398/2002.

Vishva Nath Prasad Shukla,
S/o Shri Om Prakash Shukla,
R/o 566/10 Ka/2 Jai Prakash Nagar,
Alambagh,
Lucknow. ... Applicant.

(By Advocate Shri Rakesh Verma)

Versus

1. Union of India, through the Secretary, Ministry of Personnel and Training, Public Grievances, New Delhi.

2. The Hon'ble Chairman through
Registrar, Central Administrative
Tribunal, Principal Bench,
Faridkot House, Copernicus Marg,
New Delhi.

3. The Hon'ble Vice Chairman through
Registrar, Central Administrative
Tribunal, Allahabad Bench, 23-A
Thronhill Road,
Allahabad. ... Respondents.

(By Advocate Shri M.M. Sudan, senior counsel with Shri Anil Srivastava, Deputy Registrar (Departmental representative)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

Along with the aforesaid five applications, there were four other O.As (O.A.393/2002, O.A.394/2002, O.A.395/2002 and O.A. 397/2002) listed which, during the hearing, were disposed of as not pressed on 14.5.2002 when the cases were taken up for hearing, based on the submissions made by Shri Rakesh Verma, learned counsel. With regard to the remaining five cases listed above, learned counsel for the parties have submitted that the relevant facts and issues raised in the cases are similar and may be taken up together and disposed of by a common order.

2. For the sake of convenience, the facts relating to **Neelam Kumari Singh Vs. Union of India & Ors.** (OA 390/2002) have been referred to during the hearing which are pari materia to the facts in the other cases. In this case, the applicant is aggrieved by the order issued by the respondents dated 31.7.2000 terminating her services as Stenographer Grade 'C'/Court Master (ad hoc), on the ground that she is no longer required by the Central Administrative

Tribunal, Allahabad Bench w.e.f. 1.8.2000. Shri Rakesh Verma, learned counsel for the applicant has submitted that the impugned termination order has been issued without giving any show cause notice or reasons. According to him, the applicant has been working satisfactorily as Stenographer Grade 'C'/Court Master after her ad hoc appointment in that post w.e.f. 5.4.2000 and in any case if the respondents were not satisfied with her work, she should have been suitably informed or given a show cause notice, in accordance with law which has not been done. Learned counsel has submitted that the applicant had been appointed against an advertisement which was issued by the Central Administrative Tribunal, Allahabad Bench - Advertisement No. 1/99. In this advertisement, it has been stated that the Tribunal proposes "to fill up six (6) posts of Stenographer Grade 'C'/Court Masters (Group 'B' non gazetted) in the pay scale of Rs.5500-175-9000 in the Central Administrative Tribunal, Allahabad Bench, Allahabad for a short and specified period of time till these posts are filled up on regular basis". Shri Rakesh Verma, learned counsel has submitted that even though the appointment is purely temporary and on ad hoc basis, the same could not have been terminated unless the respondents show that they are filling up the post on regular basis and in any case they cannot terminate the services of the applicant, on the ground that her work was unsatisfactory, as has been made out by them in the counter affidavit. He has submitted that no doubt this applicant and the other applicants in the aforesaid four applications are raw hands and did not have experience but if the respondents did find any deficiency in their working,

they ought to have been told so in writing and given an opportunity to improve their work. According to him, nothing of this sort has been done.

3. In the reply filed by the respondents, they have submitted that the applicant was verbally asked to improve her work but this has been denied by the applicant in the rejoinder. Learned counsel for the respondents has submitted that no doubt the applicant had been asked to improve in her work only verbally and not in writing although she was fully aware of her deficiency.

4. Another ground taken by the learned counsel for the applicant is that the aforesaid termination order has been abruptly passed by the respondents without giving any reasonable chance to the applicant to improve in her work. He has relied on the judgement of the Hon'ble Supreme Court in Dr. (Mrs.) Sumati P. Shere Versus Union of India & Ors. (1989) 11 ATC 127).

5. Learned counsel for the applicant has submitted that the respondents have taken a plea in the counter affidavit that the appointment of the applicant was not made on the basis of selection as prescribed in the Rules. He has submitted that this can hardly be a valid plea as the respondents themselves have carried out the selections after publishing the advertisement and conducting the examinations of typing and shorthand, as prescribed therein. He has relied on the judgement of the Supreme Court in State of Haryana Vs. Piara Singh (1992 SCC (L&S) 825- paragraph 47). In this paragraph, it has been held that where an ad hoc or temporary employment is necessitated on account of the

exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 of the Constitution should be followed. The Supreme Court further held that 'In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly". Learned counsel for the applicant has submitted that this procedure has been followed by the respondents and it does not lie in their mouth to now say that the selections have been done contrary to the Rules. He has also relied on the judgement of the Supreme Court in **Direct Recruit Class-II Engineering Officers' Association Vs. State of Maharashtra & Ors.** (1990 SCC (L&S) 339 - Paragraph 47). Learned counsel has submitted that even if the applicant has been appointed on ad hoc basis and may not be able to count her services for seniority purposes, it cannot be stated that her appointment is not in accordance with the Rules in the light of these judgements. Learned counsel for the applicant has submitted that even till date, the respondents have not filled the posts of Stenographer Grade 'C'/Court Master in Allahabad Bench of the Tribunal by regular appointees and these posts are lying vacant, even though in the reply they have stated that ~~the~~ steps have been taken by them to fill up the posts on regular basis. He has fairly submitted that in case regularly appointed candidates are available, then in terms of the advertisement as well as the appointment order, the applicant will have no prior right to continue in that post on ad hoc basis. During the hearing, learned counsel has

also submitted that in case the application is allowed and the applicant is reinstated in service, he does not press for back wages from the date of termination of her services to reinstatement.

6. We have seen the reply filed by the respondents and heard Shri M.M. Sudan, learned senior counsel. He has drawn our attention to one of the terms and conditions of the offer made to the applicant dated 5.4.2000 which provides that in case of any adverse report, the appointment shall be liable to be cancelled. He has submitted that the applicant was appointed on ad hoc basis till the filling up of the post on regular basis to meet the exigency of work with the stipulation that such appointment will not confer any right for regularisation or eligibility for promotion to the next higher grade. He has submitted that the applicant has utterly failed to improve the professional skill of stenography and also lacked adequate knowledge of English language and she was fully aware of this deficiency and she was verbally told to improve her work. Learned senior counsel has submitted that as the applicant did not pick up during the period of her attachment with Stenographer Grade 'D', 'C' and Private Secretary, they have to terminate her services. He has submitted that the termination order is an order simpliciter which is not stigmatic and the applicant can have no grievance on the same. Learned senior counsel has submitted during the hearing that the posts of Stenographer Grade 'C'/Court Masters against which the applicant in O.A. 390/2002 and other applicants were appointed have since been filled up or about to be filled up by regular appointees in pursuance of their action to fill up the same on regular basis in accordance with the

recruitment rules, in terms of their letter dated 11.7.2000. This fact has, however, been disputed by Shri Rakesh Verma, learned counsel, who has submitted that the posts are still vacant. In any case, the respondents have failed to produce the relevant documents to substantiate their arguments that the five posts in question have since been filled up by regular appointees.

7. In the facts and circumstances of the case, learned senior counsel has submitted that there was general dissatisfaction against these Senographers, among the concerned officers/Members of the Tribunal about their professional skill of Stenography and knowledge of English. Therefore, it was an unanimous decision of all of them to discontinue the applicant in OA 390/2002 and other applicants who were appointed earlier on ad hoc basis as a stop gap arrangement, He has submitted there was nothing illegal in the impugned termination order passed in this O.A. and the other aforesaid four O.As.

8. We have carefully considered the pleadings and the submissions made by learned counsel for the parties.

9. It may be mentioned here that Departmental representative present on behalf of the respondents has submitted that we have not dealt with these cases at any time on the administrative side.

10. In the advertisement issued by the respondents, it has been stated, inter alia, that there is a proposal to fill up six posts of Stenographer Grade `C'/Court Masters in the Central Administrative Tribunal,Allahabad Bench for a

short and specified period of time till these posts are filled up on regular basis. The applicant had applied against this post and an offer of appointment had been sent to her dated 5.4.2000. In the offer of appointment also, it is mentioned that she has been appointed to the post of Stenographer Grade 'C'/Court Master in the scale of Rs.5500-175-9000 on ad hoc basis, till the time the post is filled up on regular basis. Nothing has been brought on record by the respondents to show that at the time when the impugned order was issued on 31.7.2000, they had a candidate who has been regularly appointed to fill up the post against which the applicant had been appointed earlier purely on ad hoc basis. It is also relevant to note that in the impugned termination order what has been stated is that the applicant's services are no longer required w.e.f. 1.8.2000. Although the respondents have submitted orally that some of the posts of Stenographer Grade 'C'/Court Master have since been filled up on regular basis, the details of the same were not forthcoming nor the relevant documents were produced.

10. In the counter affidavit filed by the respondents, they have stated that the services of the applicant were unsatisfactory as she lacked adequate professional knowledge and skill. As contended by the learned counsel for the applicant, there is no doubt that she was a raw hand and did not have any experience but was selected by the respondents themselves after holding the test prescribed by them in which she had passed. Therefore, we find force in the submissions made by Shri Rakesh Verma, learned counsel that in the circumstances of the case, the respondents ought to have issued show cause notice in

writing to the applicant to point out the deficiency and to give her a chance to improve in her work which has apparently not been done in the present case. If that had been done, then as pointed out by Shri M.M. Sudan, learned senior counsel, in terms of the offer of appointment issued to the applicant dated 5.4.2000, they could have cancelled the appointment. Learned counsel for the applicant has, on the contrary, contended that as nothing adverse has been brought to the notice of the applicant, her services have to be considered as satisfactory. The judgements of the Hon'ble Supreme Court relied upon by the applicant are relevant to the facts of this case. Although, as contended by Shri M.M. Sudan, learned counsel, the impugned termination order is an order simpliciter and does not cast any stigma as it merely states that her services are no longer required by the respondents w.e.f.1.8.2000, it is relevant to note that the reasons given by the respondents are quite different. In the counter affidavit, the main contention of the respondents is that the applicant's services were found to be unsatisfactory and not that her services were no longer required. As mentioned above, it is also not clear from the documents on record or the submissions made by the learned counsel for the respondents, whether regularly appointed persons have become available and/or have already been appointed against the post(s) against which the applicants in the aforesaid cases had been earlier appointed.

11. In the facts and circumstances of the case, the aforesaid five O.As succeed and are allowed with the following directions:

(i) The impugned termination orders issued by the respondents dated 31.7.2000 are quashed and set aside;

(ii) The respondents are directed to verify the position regarding the posts against which the applicants had been appointed as Stenographers Grade `C'/Court Masters and if any of the posts have not been filled up on regular basis till date, the applicants shall be reinstated to those posts to which they were earlier appointed on ad hoc basis. We, however, make it clear that in the circumstances of the case, the applicants shall not be entitled to any pay and allowances for the intervening period from the date of termination of their services till they are reinstated.

(iii) The applicants in the aforesaid five Original Applications shall be entitled for reinstatement to the posts of Stenographers Grade `C'/Court Masters on ad hoc basis, subject to availability of vacant posts and on the basis of their merit position obtained in the Examination held by the Respondents at the time of their initial appointment.

No order as to costs.

12. Let a copy of this order be placed in O.A. 391/2002, O.A.392/2002, O.A.396/2002 and O.A.398/2002.

(V.K. Majotra)
Member(A)

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

`SRD'