

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.2172 of 1995

New Delhi, this the 3rd day of January, 2000

HON'BLE MR. KULDIP SINGH, MEMBER (J)
HON'BLE MRS. SHANTA SHAstry, MEMBER (A)

Smt. Manjula Bhardwaj
H.No.705, Chirag Delhi,
New Delhi-110 017.

Applicant

By Advocate Shri Jog Singh.

Versus

1. Director General
E.S.I.C.,
I.T.O., Kotla Road
New Delhi.
2. Regional Director.
E.S.I.C.,
Rajender Place.
New Delhi.
3. Dy. Regional Director.
F.S.I.C.,
Rajendra Place,
New Delhi. Respondents

None for the respondents.

ORDER

Hon'ble Mr. Kuldip Singh, Member (J)

This is a second round of litigation.

2. Facts in brief are that the applicant is an ad hoc employee of respondents - Employees State Insurance Corporation. When her services were terminated earlier, she had approached this Tribunal for quashing of the termination order. The Tribunal vide its order dated 21.8.1995 had allowed the O.A. and quashed her previous termination order but observed that, the respondents will be at liberty to terminate the ad hoc services of the applicant for accommodating the nominee of the Staff Selection Commission.

Km

(10)

3. After the passing of this order, the applicant alleges that she approached the respondents on 5.9.1995, but she was refused to join her services on the pretext that certified copy of the judgment was not available with them and after that, the applicant procured a certified copy of the judgment and then approached the respondents and was allowed to join the office on 12.9.1995, but on the same evening her services were terminated vide impugned order Annexure A-1. The applicant again made a representation but she was not allowed to join. The applicant while assailing the impugned order alleges that this order has been issued with a mala fide motive and in an arbitrary manner and respondents have invoked Section 25-F of the Industrial Disputes Act, 1947 while terminating the services of the applicant, but they failed to comply with the requirements of payment of retrenchment compensation.

4. The impugned order is also stated to be in violation of the orders passed by this Tribunal.

5. It is also stated that juniors to the applicant have been retained and the impugned order has been issued to mislead the applicant and the court and they have wrongly stated that the services of the juniors have been terminated. The applicant has prayed that the impugned order be quashed and the respondents be directed to reinstate her with all consequential benefits including salary and other perks and allowances, seniority etc.

km

(11)

6. The application is contested by the respondents. The respondents admitted the fact that the applicant was appointed on ad hoc basis pending recruitment in accordance with the Recruitment Rules through the Staff Selection Commission. Besides, they submitted that an opportunity was provided for regularisation to all ad hoc employees as all ad hoc employees were advised to take a special test as per circular dated 22.2.1997, but since the applicant did not appear and she did not opt for her services to be regularised, so her services have been properly terminated to make room for the regularly selected candidates.

7. It is denied that any mala fide or arbitrary exercise of power has been made.

8. It is further stated that the applicant did not possess the qualifications to hold the duties as Computer Operator and since she did not appear in the selection test, so her services have been properly terminated.

9. We have heard the learned counsel for the applicant. Since no one had appeared for the respondents, so after hearing the learned counsel for the applicant, we had reserved the orders.

10. The counsel for the applicant submitted that the applicant after having obtained an order in her favour from the Tribunal for quashing of her previous termination order and reinstatement, she approached the respondents' office but she was met with a cruel treatment and merely because the applicant had approached the Tribunal and was

km

successful in getting quashed the previous termination order, the respondents authorities were annoyed with her and due to vengeance, she has been thrown out of service by issuing a fresh termination order, which is the impugned one. Since the same has been issued in exercise of mala fide and arbitrary power, it should be quashed.

11. The counsel for the applicant further submitted that along with the applicant there were certain other ad hoc employees who were still being retained by the respondents so the respondents while terminating her services, have not followed the principles of "last come first go". So on that principle also, her termination order cannot be sustained and as such she should be reinstated.

12. To our mind, the contention of the learned counsel for the applicant has no merits as the applicant herself admits in the rejoinder that a special test was conducted to regularise the ad hoc employees but she has taken the plea that she was not aware of the same and could not appear. So whatever be the plea of the applicant here, but the fact remains that the applicant had not appeared in the test which was conducted to regularise all the ad hoc employees. As far as retaining of her junior ad hoc employees ^{is} concerned, the respondents have specifically stated that all those candidates who had qualified the test conducted by the respondents for regularisation of their services had been appointed and regularised. Since the applicant herself had not appeared, so she could not be regularised and as such her services had to be terminated. In view of this
km

position, we find that when the applicant herself had not appeared in the test which was held by the Department to regularise the services of the ad hoc employees, so she cannot claim her right to remain in service and she has to make room for the regularly selected candidates and the similar direction has been passed when the applicant had approached this Tribunal earlier. So the holding of the test was in compliance of the rules, for which the applicant can have no grievance.

13. In view of the above discussion, we find no merits in the O.A. and is same is liable to be dismissed. Accordingly, O.A. is dismissed with no order as to costs.

In ant F
(SHANTA SHAstry)
MEMBER (A)

Kuldeep Singh 2nd
(KULDIP SINGH)
MEMBER (J)

Rakesh