

Central Administrative Tribunal, Principal Bench

Original Applications Nos.2046 & 2050 of 2000

New Delhi, this the 30th day of April, 2001

Hon'ble Mr.V.K.Majotra, Member (Admnv)
Hon'ble Mr.Shanker Raju, Member(J)

(1)Original Applications No.2046 of 2000

Smt. Komal Rani, W/o Sh. S.P.Arora, R/o
1529, Ram Lila Ground, Arjun Nagar, Gurgaon. - Applicant

(By Advocate Mrs.Meera Chhibber)

Versus

1. Union of India Through Secretary,
Ministry of Tourism & Culture, Department
of Tourism, Transport Bhawan, 1,
Parliament Street, New Delhi-110001.
2. Under Secretary (Admn.I), Department of
Tourism, Transport Bhawan, Parliament
Street, New Delhi-110001. - Respondents

(By Advocate Shri N.S.Mehta)

(2)Original Applications No.2050 of 2000

Mrs. Poonam S/o (sic) Mohan Dhayani, R/o
2/325, Nanta Flat, Paschim Puri, Delhi. - Applicant

(By Advocate Mrs.Meera Chhibber)

Versus

1. Union of India Through Secretary,
Ministry of Tourism & Culture, Department
of Tourism, Transport Bhawan, 1,
Parliament Street, New Delhi-110001.
2. Under Secretary (Admn.I), Department of
Tourism, Transport Bhawan, Parliament
Street, New Delhi-110001. - Respondents

(By Advocate Shri N.S.Mehta)

Common Order

By V.K.Majotra, Member(Admnv) -

As the facts involved are identical and issues raised are common, both these cases are being disposed of by this common order. The facts have mainly been culled out from OA 2046/2000.

2. These applications have been made against order dated 28.9.2000 (Annexure-P-1) indicating that services of these applicants, who had been appointed as LDCs on purely adhoc basis, would be terminated with effect from 30.9.2000.

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3. The applicants were selected for the post of LDC on adhoc basis for 89 days, on the basis of a typing test held on 30.12.1995. They were appointed on 26.8.1996 (Annexure-P-3) stating that they would continue with a day's break after 89 days subject to availability of vacancies.

4. Whereas applicant Komal Rani joined on 18.9.96 Mrs.Poonam joined on 12.9.1996. According to applicants they have been working continuously without any break, though on paper artificial breaks were shown. On 13.10.1997 even their pay scales were revised pursuant to 5th CPC. Their names were indicated in the seniority list of adhoc LDCs issued on 7.7.2000 as on 30.6.2000 at serial nos. 6 and 5 respectively. The applicants have stated that persons mentioned at serial nos.16 to 26 in the seniority list of regular LDCs, who were appointed initially on adhoc basis were subsequently regularised. Department of Tourism made a proposal in 1999 (Annexure-P-5A) to DOPT that a special qualifying test should be held for adhoc LDCs. The applicants have stated that after their services are terminated or if they are not adjusted in the Department of Tourism or in any subordinate office of the Department of Tourism or in any Corporation under the Department of Tourism such as IHM, ITDC, ITTDC, DTTDC, they would become age-barred for appointment on Government posts. The applicants have sought the following reliefs:-

"8.1 It is humbly prayed that Your Lordships may graciously be pleased to quash the impugned order dated 28.9.2000 and given her all consequential benefits.

8.2 To direct the respondents to consider the case of applicant for adjusting her in any of the sister concerns or the subordinate offices

under the department of Tourism. To direct the respondents.

8.3 To hold the special qualifying test for regularising the applicant as has been held for other similarly placed employees in department of Tourism.

8.4 To declare that applicant be entitled to take the test by SSC after giving her age relaxation.

8.5 In the alternative to direct the respondents to give preference to appointment over outsiders and freshers in case the work is available after 30.9.2000.

8.6 and/or to pass such other order/ orders that Your Lordships may graciously fit and proper in the circumstances of the case".

5. In their counter the respondents have stated that six posts of LDC out of 36 have been abolished in implementation of SIU report in the department vide their order dated 24.8.2000 (Annexure-R-1). Applicants being the junior most adhoc LDCs were to be terminated on 30.9.2000. However, vide Tribunal's order dated 3.10.2000 and 6.10.2000 it was ordered that status quo may be maintained and the applicants may be continued as ad hoc LDC in preference to juniors, outsiders and freshers. These orders have been continued from time to time. The respondents had also approached the Department of Personnel & Training to examine the feasibility of requesting the SSC to consider holding a special examination for their adhoc employees along with employees of other Ministries/ Departments (if any). The DoPT, however, told them that there was no proposal to consider holding of such an examination (Annexure-R-II). The respondents have also stated that the services of the applicants were continued after giving them a periodical break on completion of 89 days of their service. Such periodical break of one day was not artificial but was actually implemented. They were not given any salary for the days of break. The respondents have stated that if the applicants actually

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worked on the days of break without any administrative instructions, the department is not responsible for such conduct of the applicants. The respondents have further added that bio-data of the applicants along with other adhoc employees was forwarded by the Department to its sister organisations, namely, HM&CT, IIT&TM, DTTDC and ITDC, with the request to adjust them against any vacancies. Whereas only one adhoc LDC Shri Sanjeev Kumar-II was selected for appointment at IIT&TM, Gwalior as LDC, the rest of adhoc employees including the applicants were not selected because of non-availability of vacancies in aforesaid sister organisations. As regards other adhoc employees who are still retained in the department, they are stated to have been officiating against sanctioned posts in different grades and their services are also subject to availability of vacancies. According to respondents order dated 28.9.2000 is neither illegal nor arbitrary.

6. We have heard learned counsel of both sides and perused material available on record.

7. The learned counsel of applicants contended that respondents should consider the cases of applicants for adjusting them in their sub-ordinate offices/ sister concerns, like they have been doing in the case of other colleagues of the applicants. In this regard, the learned counsel of respondents stated that whereas on account of abolition of six posts of LDCs in implementation of recommendations of SIU report, there are no vacancies to accommodate applicants in the department, Even the sisters concern of the department have expressed their inability to accommodate them because of non-availability of any vacancies. To a pointed query of the Court, the learned counsel of

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applicants admitted that no junior adhoc LDCs than applicants have been accommodated by the department against any regular vacancies.

8. The learned counsel of applicants next proposed that if respondents allow the applicants to continue for some more time, some vacancies in the higher posts are going to fall vacant in the near future which will lead to vacancies in the cadre of LDCs where they can be accommodated in future. The learned counsel of respondents rebutted the claim of applicants contending that there are not going to be any vacancies in the grade of LDC. The learned counsel of applicants further pointed out that applicants would be age-barred in a short-while for recruitment to Government jobs. Therefore, taking a compassionate view of the matter respondents may be directed to allow the applicants to continue in their service.

9. The learned counsel of respondents relied on the case of N.Ramanatha Vs. State of Kerala, AIR 1973 SC 2641 in which it was held as follows:-

" The power to create, continue and abolish any civil post is inherent in every sovereign Government. It is a policy decision exercised by the executive and is dependent on exigencies of circumstances and administrative necessity. (para 14)

The abolition of post may have the consequence of termination of service; but such termination is not dismissal or removal within the meaning of Art.311 because both in case of dismissal and removal there is a stigma. The abolition of post is not a personal penalty against the Government servant. Therefore, the opportunity of showing cause against the proposed penalty of dismissal or removal does not arise in the case of abolition of post. Nor does it confer on the person any right to hold the post after it is abolished or to any other employment". (paras 33,36)

The learned counsel on the basis of above ratio maintained that abolition of posts is a matter relating to Government policy and consequential termination of

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service does not attract Article 311 of the Constitution. He also referred to the case of State of Orissa and others Vs. Dipitimala Patra and others, 1995 Supp (4) SCC 49 wherein Tribunal's order, to accommodate adhoc teachers by creating additional posts so that they are not required to vacate their posts on arrival of regular appointees, was held to be without jurisdiction. Relying on these judgments the learned counsel of respondents maintained that adhoc appointment of applicants have not created any right in their favour and termination of their services on abolition of posts is absolutely legal and unexceptionable.

10. The learned counsel of applicants did not dispute the fact of abolition of six posts of LDC. She also did not plead for creation of any new or additional posts as such creation has been held to be ^{beyond the} pale of Tribunal's consideration. However, she insisted upon a sympathetic consideration for applicants who have served the respondents in adhoc capacity since September, 1996 and have become over-aged for fresh employment in the Government, by relying on following cases :- (i) Registrar, University of Hyderabad & Anr. Vs. M.V.Santa Kumari, JT 2000 (Suppl.2) SC 341; (ii) Yogender Prasad & another Vs. State of Manipur & ors, 83 (2000) Delhi Law Times 59; (iii) Smt.Vijay Goel & ors Vs. Union of India & anr., 1997 (5) SLR 803 (SC); (iv) J & K Public Service Commission & others Vs. Dr.Narinder Mohan & others, (1994)27 ATC 56; (v) Mrs.Indra Bathla & another Vs. Union of India & others, O.A.815/89 decided by this Tribunal on 18.3.1994.

(i) In the matter of M.V.Shanta Kumari (supra) pursuant to High Court's order her services were regularised against vacant post subject to result of appeal. She had worked for about a decade. It was held

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that appointment was made against clear vacancy and that she must continue on the post. The present case is distinguishable from this case as after abolition of six posts of LDC, there are no vacant posts available with the respondents. Unlike the appellant in the case of M.V.Shanta Kumari, she has not been regularised against any vacant post certainly present applicants cannot derive any benefit from the ratio of this case.

(ii) In the matter of Yogender Prasad (supra) again when two posts of LDCs were available, petitioners were held to be entitled for regularisation against the said two vacancies. Again as there are no vacancies available with the respondents, the question of regularisation of the applicants does not arise.

(iii) In the case of Smt. Vijay Goel (supra), appellants' services were sought to be terminated on the ground that test was to be held by Subordinate Services Selection Board (SSSB). The petitioners had been regularised and absorbed in the cadre. Whereafter they had worked for five years. However, in view of the fact that test by the SSSB had not been held their services were stated to be terminable. In such circumstances adhoc appointment made in accordance with the rules were not treated as adhoc or fortuitous. The facts of the present case are distinguishable from those of the above cited matter. The applicants had been appointed on a short terms adhoc basis initially for a period of 89 days. They were to continue with a day's break thereafter subject to availability of vacancies. Their services were stated to be liable for termination at any time without notice and without reasons being assigned therefor. When order dated 28.9.2000 was issued for a period up to 30.9.2000 it was indicated that their appointments are purely on adhoc basis, not conferring

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any title to or claim for regular appointment and that their services will be terminated with effect from 30.9.2000. The undisputed fact is that six posts of LDC having been abolished there are no vacant posts with the respondents. The present case cannot be treated as a similar case to that of Smt.Vijay Goel.

(iv) In the matter of Dr.Narinder Mohan and others (supra) persons had been appointed on adhoc basis in violation of statutory rules and regularised in service by purportedly relaxing the rules. Relaxation of recruitment rules was held to be impermissible. It was further held that only conditions of service such as age limit could be relaxed for appearing in the examination.

(v) In the case of Mrs.Indra Bathala (supra) it was held that when the applicants possessed the required qualifications, they would be eligible for consideration for regularisation. It was also noticed that it was not the case of the respondents that it had become necessary to displace the applicants to accommodate persons duly selected for appointment for the post occupied by the applicants. The present matter is entirely different than the above case. The question of displacement of applicants to accommodate duly selected persons for appointment is not the question here. As a matter of fact there are no vacancies available with the respondents. In order to help the applicants the respondents have taken quite a few steps such as consultation with DoPT on possibility of regularisation of services of the applicants and also possibility of their adjustment in subordinate offices of the department and sister organisations. The Department has cut a blank everywhere and has not been

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able to either regularise the applicants in view of non-availability of any vacancies in the department or adjustment in subordinate offices/ sister organisations.

11. As it has already been established above that whereas there are no vacancies of LDCs available with the respondents they have not regularised the services of any juniors than the applicants nor appointed any freshers after abolition of six posts of LDCs, however, the fact that the applicants have worked continuously as adhoc LDCs for more than 4 years, they do deserve some sympathetic consideration. In this background and having regard to all the circumstances we consider it just and proper to dispose of these two applications with the following directions:-

The respondents shall consider the candidature of the applicants at the time of future recruitment for the post of LDC by according them age relaxation of the period of service they have rendered with them; and in the meantime the respondents are further directed to give preference to the applicants over outsiders and freshers in case it is proposed to make appointments on adhoc basis.

- No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Member (Admnv)

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