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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No.1595/89.

Date of decision: November 21,1989.

Smt. Lalita Rani Applicant.

Vs.

Union of India and Another ... Respondents.

Coram:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

For the applicant ... Shri G.D. Gupta, counsel.

For the respondents ... Shri P.H.Ramchandani,
Sr. counsel.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice Amitav Banerji, Chairman)

The applicant, Smt. Lalita Rani has filed this Application under Section 19 of the Administrative Tribunals Act,1985 (hereinafter referred to as 'the Act') challenging the act of respondents terminating her services as Lower Division Clerk (LDC). Her case is that she has been working in the said post from September,1982, though on temporary-ad-hoc basis, and she had already qualified the Special Qualifying Examination limited to ad-hoc employees working as LDCs, for purposes of regularisation of her services in the grade of LDC as per the scheme laid down in the Department of Personnel & Administrative Reforms Office Memorandum No.6/7/83-CS II dated 17.8.1983.

The applicant was appointed to the post of LDC by Office Order dated 16.9.1982 (Annexure A-I to the O.A.)

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in the National Institute of Social Defence, Ministry of Social Welfare, New Delhi (hereinafter referred to as 'the Institute') "with effect from the 16th September, 1982 (F.N) in a purely temporary capacity against a short term vacancy until further orders. Her appointment is subject to the terms and conditions laid down in this Institute Memo No.F 3/1/81-Admn. dated 14th September, 1982." The applicant joined duty in the Institute on 16.9.1982.

In 1983, she came to know that for the purposes of regularisation she will have to qualify the Special Qualifying Examination limited to ad-hoc employees to be conducted by the Staff Selection Commission (hereinafter referred to as 'the Commission'). She appeared in the said Special Qualifying Examination conducted by the Commission in 1983. Thereafter on 30.4.1984, the Commission sent to the Institute a list of candidates along with the dossiers of those who qualified the aforesaid Examination for regularisation of their services in the grade of LDCs as per the scheme of examination laid down in the D.P. & A.R. O.M. dated 17.8.1983 (Annexure A-2 to the O.A.). The applicant's name was among the list of candidates who had finally qualified in the examination for regularisation. The names of two candidates from the Institute were:

Lalita Rani (Roll No.1210246)

Neelam Gupta (Roll No.1210453)

Meanwhile, by an Office Order dated 26.8.1985 (Annexure A-3

to the OA) the applicant was allowed to draw her increments from the dates mentioned against each on her having qualified in the typing test. Subsequently, on 14.8.1989, by Office Memorandum No.F.3/2/89-Admn. the services of the applicant were terminated, which reads as under:

"No.F.3/2/89-Admn.
National Institute of Social Defence
Ministry of Welfare
West Block 1, Wing 7 Ground Floor,
R.K.Puram, New Delhi-110066.

Dated 14 August, 1989.

OFFICE MEMORANDUM

In pursuance of Department of Personnel & Training O.M. 28036/8/87-Estt.D dated 30.3.1988 regarding continuation of ad hoc appointment/continuation of services of ad hoc appointees, the case of Smt. Lalita Rani, ad hoc L.D.C. was referred to the Ministry of Welfare and they have now intimated, in consultation with the Department of Personnel & Training vide their letter No.14/6/89-SD dated 8.8.1989 that her services may be terminated immediately. Accordingly and in terms of the conditions contained in the offer of appointment issued to Smt. Lalita Rani, the services of Smt. Lalita Rani are hereby terminated with effect from the forenoon of 14 August, 1989.

This issues with the approval of Director.

Sd/- (Dr. Devakar)
Head of Division (Trg.)

To

Smt. Lalita Rani,
Ad-hoc L.D.C.
National Institute of
Social Defence, New Delhi."

The applicant has filed the present O.A. on 11.8.1989 by which time the termination order had not been

passed but she was apprehending the termination order.

She stated that she was not aware of the reasons for the termination of her services. She has on this basis claimed the quashing of the order of termination of ^{her} services and for a declaration that she is entitled to be treated as regular/permanent on the post of L.D.C. in the Institute, and grant her all consequential benefits with declaration that her services are not liable to be terminated on the ground that she was ad-hoc appointee.

In their reply, the respondents raised two preliminary objections. Firstly, the applicant had come to the Tribunal without exhausting the remedies available to her under the relevant services Rules, and as such the Application was not maintainable in view of the provisions of Section 20 of the Act. Secondly, she was not entitled to sit in the Special Qualifying Examination as she had not fulfilled the eligibility condition of one year's ad-hoc service in the grade of L.D.C. As far as the facts are mentioned above, there is no serious dispute except that being an ad-hoc employee, it did not give her a right to be regularised.

We have heard Shri G.D.Gupta for the applicant and Shri P.H.Ramchandani for the respondents.

As far as the first objection raised by the respondents is concerned, we would overrule it with the observation that when the applicant approached the

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Tribunal, the impugned order had not been passed. As far as the second objection is concerned, it raises a question on the merits. We will discuss the same hereunder.

The principal question in this case is whether the applicant was eligible to sit in the Special Qualifying Examination which was open to ad-hoc employees working as LDCs, Telephone Operators, Hindi Typists, Telex Operators etc. We have perused the papers filed in the case and also submitted before us today. It is true that on the date when her application was forwarded to the Commission, she had not completed a year's service on ad-hoc basis but she had in an application dated 13.9.1983 to the Director of the Institute stated clearly:

" I am falling short of 1 month 16 days to make full one year service. This may kindly be condoned and my application may please be forwarded to the Ministry of Welfare by 15.9.1983 for onward transmission to the Staff Selection Commission, New Delhi before 18.12.1983."

Her name was forwarded by the Administrative Officer of the Institute to the Secretary, Staff Selection Commission by letter dated 23.9.1983. It referred to the Circular No.6/7/83-CS(II) for holding an examination in December, 1983 for regularising the services of ad-hoc LDCs working in various Central Government Offices. It was stated in that letter:

to
" I am to state that Mrs. Lalita Rani has submitted her application form sitting in

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the aforesaid examination. The same is forwarded for further necessary action.

She was appointed as L.D.C. in this Institute in a purely temporary capacity against a short term leave vacancy w.e.f. 16.9.1982."

Thereafter she was allowed to sit in the examination. Her result was completed and she was declared successful.

The stand taken by the respondents is that she was not eligible when she made an application for sitting in the examination, for she had not completed the minimum of one year's service as ad-hoc employee in a Central Government office. The objection was that her sitting in the examination or qualifying the same did not entitle her for regularisation in service because she was not eligible to sit in the examination.

Learned counsel for the applicant drew our attention to the scheme of examination (to be conducted by the Commission in December, 1983) for regularising the services of the ad-hoc LDCs working in various Central Government offices. Last two paragraphs of the above scheme reads as follows:

"SELECTION OF CANDIDATES.

After the examination, the Commission will draw up a list, in order of merit as disclosed by aggregate marks finally awarded to each candidate at the examination, and in that order so many candidates as are found by the Commission to be qualified shall be recommended for regular appointment.

SUBMISSION OF APPLICATIONS:

The ad-hoc employees would submit their applications in the prescribed form by 30.9.1983

through their Departments who would scrutinise their applications and ensure that applications of only such candidates were forwarded to commission's office at Headquarters who are eligible and fulfil all the conditions of eligibility."

In view of the procedure laid down for submission of applications, the applicant had submitted her application referred to above to the Director of the Institute for condonation of the shortfall of one month 16 days service and with a prayer that her application be forwarded to the Ministry of Welfare by 15.9.1983 for onward transmission to the Commission. This application was forwarded by the Administrative Officer of the Institute by letter dated 23.9.1983 referred to above. In view of the above, it is not open to the respondents to challenge her eligibility for appearing in the examination. The matter had to be considered by the Director of the Institute and he had only to send such applications after scrutiny. The finality of the decision on the question of eligibility lay with the departmental Head and not with that of the Commission.

It is not a fact that the applicant had concealed any material fact, she had made an application for condonation of the shortfall and the same will be presumed to have been done when the departmental Head forwarded her application to the Commission. She thereafter sat in the examination, qualified and from 1984, for the last five

years has been working in the Department. It is not now open to the respondents to question her selection or appointment. We are firmly of the view that the order dated 14.8.1989, impugned in this Application, is wholly unwarranted and bad in law. Once her application Form for sitting in the examination had been forwarded by the Department and she had been permitted to sit in the examination, qualified successfully in the examination, she would be entitled to be regularised.

A reference may be made to paragraph under the heading 'Selection of Candidates' in the scheme of examination to be conducted by the Commission in December, 1983 for regularising the services of ad-hoc LDCs working in various Central Government offices. This clearly states that after the examination, the Commission will draw up a list, in order of merit as disclosed by aggregate marks finally awarded to each candidate at the examination and the Commission shall recommend their names for regular appointment. This was an open invitation to the ad-hoc employees to take the test. The applicant's name was recommended to the Commission. She sat in the examination and was declared successful, and even after this, her services are sought to be terminated.

A reference may be made to the decision in the case of PREM PRAKASH ETC. Vs. UNION OF INDIA AND OTHERS decided by the Supreme Court of India and reported

in AIR 1984 S.C. 1831, laid down the following law, keeping in view the Office Memorandum No.22011/2/79-Estt. (D) dated 8.2.1982 issued by the Govt. of India, Ministry of Home Affairs, Department of Personnel & Administrative Reforms on the subject of validity period of list of selected candidates prepared on the basis of direct recruitment Departmental Competitive Examination and in particular in regard to para 4 of the said instructions:

"Once a person is declared successful according to merit list of selected candidates, which is based on the declared number of vacancies, the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change, after his name has been included in the list of selected candidates."

It, therefore, means, once a candidate has been finally selected after Examination/Test, he has to be appointed. The plea taken now by the respondents that he lacked the requisite period of service cannot be taken into consideration when his name had been included in the Select List after a proper Examination/Test.

We may now consider the question of applicability of the doctrine of promissory estoppel relied on in the case of UNION OF INDIA Vs. M/S. ANGLO AFGHAN AGENCIES (AIR 1968 SC 718: (1968) 2 SCR 366). Their Lordships of the Supreme Court made the following observations:

"Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency


fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisalment of the circumstances in which the obligation has arisen".


Further, the point was considered in the case of ISHWAR SINGH KHATRI AND OTHERS Vs. UNION OF INDIA AND OTHERS ((1987) 4 ATC 932) by a Division Bench of this Tribunal which held:

"the petitioners are entitled to appointment not only on the basis of government instructions on the subject and application of the doctrine of promissory estoppel, but also on grounds of equity."

We are in respectful agreement to the above view in the present case too. The doctrine of promissory estoppel, government instructions and grounds of equity are also applicable in the present Application.

We, therefore, set aside the order of termination dated 14.8.1989. The applicant would be deemed to be in service. We further declare that she will be entitled to be regularised on the post of LDC in the Institute in accordance with Rules. Lastly, she would also be entitled to all consequential monetary benefits. In the circumstances, we direct the parties to bear their own costs.


(B.C. Mathur)
Vice-Chairman (A)
21.11.1989.


(Amitav Banerji)
Chairman
21.11.1989.