

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

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O.A. No. 422/89
T.A. No.

1989

DATE OF DECISION 3.11.1989

Smt. Pushpa Rani Tomar
Applicant (s)

Shri K.L. Bhatia
Advocate for the Applicant (s)

Versus
Union of India
Respondent (s)

Shri P.H. Ramchandani
Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. I.K. Rasgotra, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

(delivered by Hon'ble Shri P.K. Kartha, V.C.)

The grievance of the applicant, who joined the Directorate of Communications as a Lower Division Clerk on ad hoc basis in 1978, is against the impugned order of termination of service dated 9th February, 1989 which was issued in pursuance of the provisions of Sub-Rule (1) of Rule 5 of the C.C.S. (Temporary Service) Rules, 1965. By the impugned order, while terminating her services from the post of Stenographer Grade III in the Directorate General of Inspection, Customs and Central Excise, New Delhi, the respondents have directed that she shall be entitled to claim a sum equivalent to the amount of her pay plus allowances for the notice period of one

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month. In addition, she will also be entitled to pensionary benefits as admissible to temporary Government servants, under the Rules.

2. Though the wording of the impugned order is innocuous, it has been alleged that in reality it is one of misconduct. The respondents have sought to defend the validity of the impugned order on the ground that misconduct is not the foundation of the order. According to them, the appointment of the applicant throughout the period from 1978 to 1989 was due to alleged manipulations/irregularities at the instance of her father and this is presently under investigation by the respondents. As the applicant has challenged the validity of the impugned order before the Tribunal, they have given an account of these alleged manipulations/irregularities in their counter-affidavit.

3. We have carefully considered the pleadings of the case and have heard the learned counsel for both the parties. The applicant has held various posts for different periods under the Government on ad hoc basis as will be seen from the particulars given below:-

<u>Post Held</u>	<u>Date of Order and duration of the service rendered</u>	<u>Office in which appointed</u>	<u>Nature of appointment</u>
Lower Division Clerk	8.3.78; from 8.3.78 to 30.8.78	Dte. of Communication	<u>Ad hoc</u>
Hindi Typist	20.9.78; 30.6.78 to 15.5.79	-do-	-do-
Lower Division Clerk	19.5.79; 15.5.79 to 1.8.79	-do-	-do-
Stenographer OG/Gr. III	1.8.79; 1.8.79 to 30.9.85	Dte. of Inspection/ Dte. of O&M Services	-do-
Stenographer Grade II	4.10.85; 1.10.85 to 13.11.86	Customs, Excise & Gold Control Appellate Tribunal	Deputation
Technical Asstt.	30.9.86; 14.11.86 to 6.2.89	Dte. of Trg.	<u>Ad hoc</u>
Stenographer OG	6.2.89 on reversion from 9.2.89 Discharged under Service Rules by	Dte. of Training Dte. of Inspection.	

4. The learned counsel for the applicant argued that the applicant was qualified for appointment for each of the above mentioned posts, that she had passed the necessary test for appointment as an LDC in 1978, that her character and antecedents were verified at the time of original appointment and that she had also been found medically fit. She had qualified in the shorthand test before appointment as Stenographer Grade III in 1979. Her name figured in the seniority list of Stenographers published in 1981.

5. The respondents have given the background to the applicant's appointments to various posts mentioned above and have alleged that all these were due to the manipulations/irregularities at the instance of the father of the applicant who is still working as Administrative Officer in the Directorate of Preventive Operations. She did not enter Government service after being sponsored by the Employment Exchange. They have denied that the applicant possessed the qualifications prescribed for some of the posts, e.g., that of Hindi Typist, and Stenographer Grade III. They have added that the matter is being further processed for fixing responsibility on the erring officers involved in the alleged manipulations/irregularities.

6. The learned counsel for the respondents contended that even though the applicant herself may not be guilty of fraud, she cannot, in law, enjoy the benefit, or the fruit of any fraud perpetrated by any other person. However, to be fair enough to the applicant who has worked in various posts for a period of ten years, the respondents have directed to give her proportionate pension for the service rendered by her. It is significant to observe that payment of such pension is not on provisional basis, pending the outcome of the on-going investigations against the officers concerned, mentioned above.

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7. After giving consideration to the rival contentions, we are of the opinion that the impugned order of termination is legally sustainable. This is a case in which the motive for termination of the services of the applicant is the alleged misconduct on the part of some officers in the various departments in which she was employed for which responsibility is sought to be fixed on the officers concerned at the conclusion of the ongoing investigations. That would not vitiate the validity of the impugned order. The learned counsel for the respondents very candidly stated that the motive for terminating the services of the applicant had to be brought out in the counter-affidavit in view of the allegation in the application that it is founded on misconduct. He also stated that the termination of services was not on account of the unsatisfactory performance of the applicant or of any misconduct on her part.

8. In the facts and circumstances of the case, we do not think that the numerous decisions relied upon by the learned counsel for the applicant will be of any assistance to the case of the applicant. * These cases are clearly distinguishable on the ground that they do not deal with similar factual situations as in the instant case. The question of giving a show-cause notice or observing the principles of natural justice, cannot be invoked in a case of this kind.

9. The applicant has contended that the termination of her services, while retaining her juniors, is bad in law. The learned counsel for the respondents argued that this would not vitiate the impugned order of termination. In this context, he has relied upon certain observations contained in the decision of the Supreme Court in *Manager, Government Branch Press Vs. D.B. Belliappa*, 1979(1) SLR 351. In that case it was observed that no special circumstance/or

*Decisions cited by the learned counsel for the applicant

A.I.R. 1984 S.C. 636; A.T.R. 1988 (1) 464; A.T.R. 1988 (1) C.A.T. 556; A.T.R. 1988 (1) S.C. 77; A.T.R. 1988 (1) C.A.T. 84; A.T.R. 1987 (2) C.A.T. 233.

or

reason had been disclosed which would justify discriminatory treatment to the petitioner as a class apart from his juniors who had been retained in service. The stand of the respondents throughout was that the petitioner's services were terminated under the conditions of employment. In the instant case before us, the respondents have brought out the special circumstances or reasons which would justify discriminatory treatment to the applicant as a class apart from her juniors who have been retained in service. We are also of the view that neither in law nor in equity is the applicant entitled to any of the reliefs sought in the present application.

10. In the light of the foregoing, we see no merit in the present application and the same is dismissed. The parties will bear their own costs.

I.K. Rasgotra
(I.K. Rasgotra)
Administrative Member

P.K. Kartha
3/11/88
(P.K. Kartha)
Vice-Chairman (Judl.)