

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

O.A.NO.1322/88.

Date of decision: 12.10.93

Smt Kanta

Petitioner.

Versus

Union of India through
The Secretary,
Department of Official Language,
Ministry of Home Affairs,
New Delhi & Anr.

Respondents.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. S.R. ADIGE, MEMBER(A).

For the petitioner

Shri Umesh Mishra,
Counsel.

For the respondents

Shri P.P. Khurana,
Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioner, Smt Kanta, commenced her career as Lower Division Clerk on 1.4.1972 in which post she was duly confirmed w.e.f. 1.1.1976. When the department needed the services of Technical Assistants, the petitioner's candidature was considered and she was subjected to a test along with others whereupon she was selected and appointed as Technical Assistant purely on ad hoc basis by order dated 23.5.1981 w.e.f. 6.5.1981. She continued in that post for nearly seven years. It is when she apprehended that she is likely to be reverted back to her original post of Lower Division Clerk, she approached this Tribunal with application filed on 18.7.1988. The prayer of the

petitioner in this application is for a direction to the respondents not to terminate or revert her from the post of Technical Assistant and to regularise her service in the said post and to grant consequential benefits. During the pendency of this application, she obtained an interim order restraining the respondents from reverting her from the post of Technical Assistant. On the strength of the said order, she has continued in the said post from 1988 till this date. Thus, she has continued as Technical Assistant for more than 12 years from 1981.

2. The recruitment to the post of Technical Assistant is governed by the statutory rules which provide that 90% of the posts have to be filled up by direct recruitment and 10% of the posts by promotion, failing which by direct recruitment. The feeder cadre for promotion is the cadre of Proof Readers. They should have put in at least three years of service in that grade. They should possess the essential qualifications prescribed for regular recruitment to the said post. We are also informed that the scale of pay of Proof Reader is the same as that of Upper Division Clerks. On the date the petitioner was appointed as Technical Assistant on ad hoc basis, she was only a Lower Division Clerk, a grade lower than that of the Upper Division Clerk. She was not in the feeder cadre of Proof Readers. So far as the essential qualifications prescribed for the said post under the rules are concerned, they are, a Master's degree in Hindi

with English as a subject at degree level or Master's degree in English with Hindi as an elective subject at degree stage or Master's degree in Sanskrit with Hindi and English as elective subjects at degree stage. The petitioner has stated in the application that she holds a Degree in Master of Arts. It is reasonable to presume that she has a Degree with the requisite subjects prescribed for the post for the reason that the respondents have stated in the reply that the petitioner twice appeared for the selection to the said post by the Staff Selection Commission but was not successful. The petitioner's case is that as a special case she came to be appointed on ad hoc basis as Technical Assistant by order dated 23.5.1991 having regard to the fact that 1981 was declared as a year of the handicapped persons and the petitioner belongs to that category, she having suffered disability on account of the serious ailment of polio. It is in this background that the petitioner has sought the relief, as aforesaid, having regard to the special facts and circumstances summarised above.

3. The respondents have stated that the petitioner was not given appointment on ad hoc basis as Technical Assistant because she is a handicapped person. That according to them was not the reason for giving the ad hoc appointment as Technical Assistant which is two posts higher than the post she was holding as Lower Division Clerk in the year 1981 and that too when she was

not in the feeder cadre of Proof Readers. The fact that the petitioner is a handicapped person suffering serious disability on account of polio is not disputed. The fact that the petitioner was appointed on ad hoc basis as Technical Assistant after selection and interview in the year 1981 is also not disputed. The fact that the petitioner served for nearly seven years continuously before approaching the Tribunal is also not disputed. That the petitioner has continued on the strength of the interim order for the last 5 years is also not disputed. Having regard to this background, it would be most inequitable and unjust not to pay attention to the question as to whether the petitioner can be continued on regular basis as Technical Assistant by relaxing the relevant provisions. One of the factors that merits consideration is that the petitioner is a disabled person. It appears that inspired by the celebration of the handicapped year 1981, the petitioner was given ad hoc appointment. What is more important to notice is that the petitioner possesses the essential qualifications for recruitment to the post of Technical Assistant. The petitioner being a handicapped person deserves sympathetic consideration. He has worked in that post for nearly 12 years quite satisfactorily. The respondents must pay attention to these special circumstances and examine the possibility of accommodating the petitioner for regular induction as

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Technical Assistant by relaxing the relevant provisions in accordance with the law. Until decision is taken in this behalf, we direct the respondents not to terminate the ad hoc appointment of the petitioner as Technical Assistant. This O.A. is disposed of with the above directions. No costs.

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(S.R. ADIGE)
MEMBER(A)

V.S. Malimath
(V.S. MALIMATH)
CHAIRMAN

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