

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA 1470/988

Decided on: 15.10.93.

Smt. Usha Rani ... Applicant

Versus

Union of India ... Respondents

through Secretary,

Deptt. of Official

Language, Min. of

Home Affairs, New Delhi

and Another.

CORAM: HON'BLE MR. J.P.SHARMA, MEMBER(J).

HON'BLE MR. B.K.SINGH, MEMBER(A).

For the applicant ... Shri Umesh Misra, Counsel.

For the respondents ... Shri P.P.Khurana, Counsel.

JUDGMENT

(HON'BLE MR. J.P.SHARMA):

The applicant was offered the post of Technical Assistant on ad hoc basis in Central Translation Bureau, Ministry of Home Affairs on 15.7.83 as her name was sponsored by the employment exchange and one post of Technical Assistant, was vacant on ad hoc basis. The terms and conditions of appointment clearly showed that she will not be entitled for substantive appointment. Further, it was also a condition of engagement that her appointment may be terminated at any time by one month's notice given by either side without assigning any reason.

By the order of 3-8-87, she was appointed on the terms and conditions given in the offer of appointment dated 15.7.83, i.e., the appointment is purely on ad hoc basis. It does not entitle her for any claim for regular appointment, seniority, promotion and confirmation etc. in the grade. On the date of appointment, the applicant had completed 29 years of age, her date of birth being 29.7.1954.

The services of the applicant were terminated by the order dated 29.7.88 (Annexure A) under Rule 5(1) of CCS(Temporary Services) Rules, 1965. She filed the application on 10.8.88 and by the order dated 12.8.88, the interim direction was issued to the respondents to maintain status quo as of that day and by virtue of that interim direction, the applicant continuous to be serving on ad hoc basis in the same capacity as Technical Assistant in the Central Translation Bureau.

The applicant prayed for the grant of relief for quashing the order of termination dated 29.7.88 (annexure A) with consequential benefits.

A notice was issued to the respondents and they contested the application by filing a reply stating that the applicant has no case as she was appointed only on ad hoc basis informing her the clear terms of appointment that she will not be entitled by virtue of the appointment to any claim of regular appointment, seniority etc. The respondents have also annexed a copy of the recruitment rules in which the mode of recruitment is laid down which involves the examination to be taken by the incumbent before regular recruitment who will be informed date, time and place of examination. Her appointment was not regular and fell outside the

recruitment rules, so she has no claim of regular appointment. The rules in her case could not be relaxed which vest with the Staff Selection Commission only through whom direct appointments are made. There is no provision for deemed relaxation in the said rules. The applicant before her appointment fully knew the conditions of her appointment which was purely ad hoc and was to come to an end as and when direct recruitees through Staff Selection Commission joined their duties in the Central Translation Bureau. In fact, several posts of Technical Assistants were advertised through Staff Selection Commission in the year 1984 and 86, whereas others availed of this opportunity, the applicant did not do so while she was within the age limit. Because of her ad hoc appointment, her officiation entitled to her 5 years relaxation in age. Since the names of the candidates for regular appointment to the post of Technical Assistant have been already received in the Bureau against the indent sent to the Staff Selection Commission by this office, the Bureau was left with no alternative but to terminate the services of the applicant in accordance with the terms and conditions laid down in her offer of appointment, which has been accepted by her as a pre-requisite to her appointment as Technical Assistant. Thus, the applicant has no case.

We have heard the learned counsel of the parties at length and perused the record. The learned counsel for the applicant has relied on the State of Haryana and Others V. Piare Singh and Others reported in Judgment Today 1992(5) p.179. The judgment has not helped the case of the applicant at all. Their lordships of the Hon'ble Supreme Court have held that an ad hoc or


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temporary employee should not be replaced by any ad hoc or temporary employee; he must be replaced only by a regularly selected employee. Further, it is laid down that if for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authority must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not turn counter to the reservation policy of the State. It is also laid down that exigencies of administration may sometimes call for a temporary or ad hoc appointment to be made. In such a situation, efforts should always be to replace such an ad hoc/temporary employee by regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. In the present case, the applicant^{was} aware that in 1984 and 1986, there was a selection for the post of Technical Assistant but she did not avail of the chances. She has worked only on ad hoc basis for less than 5 years and thereafter under the interim directions of this Tribunal, she is continuing on that post. It cannot be said to be a fairly long period as was the case in Narender Chadha, ^{is known & is reported in} ~~reported in~~. The matter of relaxation of rules was also considered by Hon'ble Supreme Court in the case of State of Orissa and Others V. Sukant Mahapatra and others^(1974 2 SCR 579). The Hon'ble Supreme Court observed that relaxation of persons recruited dehorse the rules is ultra vires. The relaxation cannot be said to have been the mode of recruitment to the service. Again, in the case of

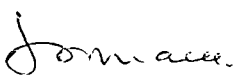
Director, Institute of Management, U.P. V. Smt. Pushpa Srivastava, reported in 1992 Judgment Today Vol.4 p.489, the Hon'ble Supreme Court held that appointment which was purely ad hoc and contractual for a limited period, the right to remain in the post come to an end after the expiry of the period. The matter was again considered in the case of Surinder Kumar Gyani V. State of Rajasthan reported in 1992(5) Judgment Today p.293 where the Hon'ble Supreme Court considered the case of certain appointees on certain posts and held that appointment on temporary posts as a stop gap measure on notified terms of service communicated in the order can be determined without notice on making proper recruitment to the service. Applying the ratio of the aforesaid cases, the applicant does not have any case that the order of termination which was issued on the basis of terms and conditions of her employment is against the rules or principles of natural justice. The illegal entry in service cannot be allowed to be regularised in exercise of the powers under rule 14.

In a decision of the Central Administrative Tribunal, Principal Bench, Dr. Pramila Srivastava V. D.G., Health Services, reported in ATR 1992(2) CAT 752, it has been held after considering the relevant law on the point that when the mode of selection and appointment to a post is required by the rules to be made in a particular manner, it cannot be filled up by resorting to a process which is contrary to the statutory mandate. It, however, does not preclude stop gap arrangement being made on temporary and ad hoc basis pending regular recruitment in accordance with the statutory rules or having regard to other exigencies of service. The respondents have also cited the case of one of the ad hoc employees Shri Chain Pal Singh who was subsequently recommended by the Staff Selection Commission and was appointed on regular basis. There is no ad hoc employee to replace the applicant. In fact, the respondents have stated that regularly selected candidates are waiting appointment at the time when the reply was filed and it was because of the interim direction that the applicant continued in service.

In view of the above facts and circumstances, the applicant has no case on merit and the impugned order does not call for interference and the same is dismissed. No costs.


(B.K. SINGH)
MEMBER(A)

pkk/151093.


(J.P. SHARMA) 15.10.94
MEMBER(J)