

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 180
T.A. No.

1988.

DATE OF DECISION May 25, 1990.Ms. Geetha George

Petitioner

Shri Anis Suhrawardy

Advocate for the Petitioner(s)

Versus

The Secretary, Ministry personnel & Administrative Reforms and Public Grievances & Pensions, and ors.

Shri P.P. Khurana,

Respondents.

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. M.M. Mathur, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? NO
2. To be referred to the Reporter or not? NO
3. Whether their Lordships wish to see the fair copy of the Judgement? NO
4. Whether it needs to be circulated to other Benches of the Tribunal? NO

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No.180/1988.

Date of decision: May 25, 1990.

Ms. Geetha George ...

Applicant.

Vs.

The Secretary,
Ministry of Personnel & Administrative
Reforms and Public Grievances & Pensions,
Department of Personnel & Training,
New Delhi and others ... Respondents.

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. M.M.Mathur, Member (A).

For the applicant ... Shri Anis Suhrawardy, counsel.

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

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

The applicant has filed the present Original
Application under Section 19 of the Administrative
Tribunals Act,1985 (hereinafter referred to as 'the Act')
against an order terminating her service with effect
from 4.11.1987 (Annexure P 2 to the O.A.). She has
prayed that the above order be set aside and has further
prayed that the respondents be directed to hold another
qualifying examination in respect of the petitioner for
absorption as LDC. The facts lie in a narrow compass.

The applicant was appointed as a Lower Division Clerk
(LDC) in the Department of Environment, Government of
India on 1st June, 1984 on ad-hoc basis. Her name had
been forwarded by the Employment Exchange. She was working

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as L.D.C. since the date of her appointment continuously without any break. Her services were sought to be terminated vide Office Memorandum No.6/60/84-CS.II dated 30.5.1985 issued by the Government of India, Ministry of Personnel & Training, Administrative Reforms and public Grievances and Pensions (Department of Personnel & Training), New Delhi on the ground that she did not fulfil the eligibility conditions to sit in the 'Special Qualifying Examination' conducted in the year 1985. The above Examination was conducted for the purpose of conferring regular status upon such employees who qualified the same. The applicant along with others filed a Writ petition in the High Court of Delhi but the same was transferred to the Tribunal under Section 29 of the Act and registered as T-1172/85-Miss. Veena Sharma & Ors Vs. U.O.I. & Ors. The above Transferred Application was decided on 4.12.1986 and the Bench along with others allowed the applicant to sit in the 'Supplementary Special Qualifying Examination'. The applicant undertook the aforesaid examination in March, 1987 and the result was declared in July, 1987. She was not in the list of successful candidates. The services of the applicant thereafter were sought to be terminated by letter dated 4.11.1987. She has further taken a plea that her services had been sought to be terminated at a time when she was on maternity leave. She has further claimed that the Examination which was ordered in the case of SATISH KUMAR AND OTHERS Vs. U.P.S.C. AND OTHERS (ATR 1986 (2)CAT 47) gave an opportunity to those persons who were deemed to be eligible. A similar

Examination was held for others in 1985. The applicant urged that the Examination held in March, 1987 was not a 'Qualifying Examination' but was a 'Competitive Examination' and the standard was different and the marking was strict.

Consequently, it was not same type of the examination which was conducted for others in 1985 and as such, a fresh examination be ordered for the applicant.

In the reply all these allegations about the examination were denied. It was stated that it was a 'Qualifying Examination' and not a 'Competitive Examination'. Everything remained the same and it was conducted by the Staff Selection Commission. The applicant did not qualify in the test and as such, her services were terminated. It was urged that the applicant has no case at all. She having not qualified in the 'Special Qualifying Examination' is not entitled to be retained in service and the termination of her service was in accordance with law.

It is relevant to mention here that the Bench admitting the O.A. had passed an order staying the operation of the order dated 4.11.1987 terminating the services of the applicant pending further orders. This order was passed on 5.2.1988. The order has remained in vogue, and the applicant has been working on the basis of the said order.

We have heard Shri Anis Suhrawardy for the applicant and Shri P.P. Khurana for the respondents.

There is no dispute that the applicant was appointed as

L.D.C on purely ad-hoc basis on 21.1.1984. The Government of India had made a scheme regarding regularisation of the services of LDCs appointed on ad-hoc basis.

In T. No. 1172/85 a Division Bench of this Tribunal held that candidates such as the applicant should be allowed to appear in the 'Supplementary Special Qualifying Examination' if they apply for such admission within time.

The applicant had applied and was allowed to sit in the aforesaid Examination along with 4 other ad-hoc LDCs in March, 1987. The other 4 candidates qualified the said examination but not the applicant.

The recruitment to the cadre of LDCs in the Central Secretariat as well as subordinate offices is done through the Staff Selection Commission. From time to time, exigency of situation has led to the appointment of LDCs purely on ad-hoc basis. Efforts have been made to regularise them through Qualifying Examinations. This facility has been recognised in the case of SATISH KUMAR & OTHERS (supra). Therefore, it was essential that LDCs appointed on ad-hoc basis ⁱⁿ qualify the examination which was known as 'Supplementary Special Qualifying Examination'. The applicant sat in the said examination and did not qualify. The question is: could she be retained any further in service? When she failed to qualify the examination, she also forfeited her right to continue. The reason being that she could not be regularised and, therefore, her services had to be terminated. The order of termination was accordingly passed. We do not find any error in the procedure leading to

termination of her service.

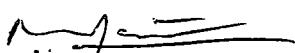
Shri Anis Suhrawardy stated that this was a case where the examination was conducted not on the same pattern as was intended in the case of SATISH KUMAR & ORS (supra). In other words, his contention was that this was not a 'Qualifying Examination' but was a 'Competitive Examination'. This fact had been stoutly denied on behalf of the respondents. This becomes a disputed question of fact. It is the settled practice of Courts considering the petitions under Article 226 of the Constitution not to enter into disputed questions of fact; nor give a finding thereon. The burden lay on the applicant to prove beyond doubt that the 'Supplementary Special Qualifying Examination' held in the case of the applicant was different from that held for others in 1985. However, before that stage was reached the applicant had to show that there was a direction by the Tribunal in the case of SATISH KUMAR AND OTHERS (supra) that the examination should be the same or conducted in the same manner as the 1985 Examination. In other words, there is no indication in that order that the 'Supplementary Special Qualifying Examination' for the applicant had to be exactly the same as held in 1985 for others. There is no such indication in that judgment. What was intended was that there should be a 'Qualifying Examination' for all those who were not eligible otherwise, but who were deemed to be eligible under the above judgment. The applicant has no supporting evidence to show that the examination conducted

for her was different from the one held in 1985. A mere bald statement by an interested party will not be sufficient. We are, therefore, unable to hold that the 'Supplementary Special Qualifying Examination' was different from the one held in 1985. We are not shown any material that it was a 'Competitive Examination' and not a 'Qualifying Examination'.

We may also mention here that it is well settled that a person who sits in an examination and does not succeed cannot be permitted to complain about the examination unless it is proved that there were mala fides in conducting the same. There is no dispute that an examination was ordered to be conducted and the applicant sat in the same. She having sat in the examination, cannot now complain of the standard of question papers or the marking therein. There is no allegation of mala fides anywhere in this case.

Another argument raised by learned counsel for the applicant was that she was on maternity leave when her services were terminated and it was urged that this could not be done. We do not think that this is a material question to be considered in this Application. Whether she was on leave or not will not matter but the question is: had she any right to continue in service or not? We have already held that she had no right to continue after she had failed in the Special Qualifying Examination. The only thing by which she could have been benefitted was the pay etc. for the period she had been granted leave.

That she had got because she obtained a stay order staying the operation of the termination order. Consequently, the point that she was on maternity leave and her services could not be terminated is of no avail. Lastly, the learned counsel stated that this was a very hard case, a young woman who had been working now for more than six years in Government service is to be terminated from service. He asked that the case of the applicant be considered with sympathy. Even though we have sympathy, we cannot disregard the judicial orders or directions and the Rules. Her services had been terminated vide order dated 4.11.1987. She had been continuing only on the basis of the stay order obtained from the Tribunal. She had not qualified the Special Qualifying Examination which was conducted for regularisation of her services and as such, we do not find any ground for interference. In the result, therefore, this O.A. fails and is dismissed. Interim order dated 5.2.1988 is vacated. In the circumstances of the case, there will be no order as to costs.


(M.M. Mathur)
Member (A)

(Amitav Banerji)
Chairman
25.5.90.