

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1827 of 1988
T.A. No.

DATE OF DECISION 23.1.1990

Miss Madhu Popli Applicant (s)

Shri R.R. Rai, Advocate for the Applicant (s)

Versus
Union of India & Others Respondent (s)

Shri N.S. Mehta, Sr. Standing Counsel Advocate for the Respondent (s)

CORAM :

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

The Hon'ble Mr. J.P. Sharma, Member (J).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

(Judgment of the Bench delivered by
Hon'ble Mr. B.C. Mathur, Vice-Chairman)

Miss Madhu Popli, the applicant, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, challenging Order No. 10/1/84-Adm. dated 9.2.87 terminating her services as Statistical Assistant from 30.11.1986.

2. The case of the applicant is that she was sponsored for the post of Statistical Assistant in the office of the National Institute of Social Defence, R.K. Puram, New Delhi, by the Employment Exchange. After going through the process of interview by the Board of Directors, she was selected and posted on 12.4.84 as Statistical Assistant in the pay scale of Rs. 425-700 vide letter dated 26.5.84 on purely temporary ad hoc basis for a period of three months or until further orders whichever is earlier vide Annexure 'H' to the application.

3. A copy of the Recruitment Rules (Annexure I) reveals that there are two cadre posts to be filled up by direct recruitment. However, one of the posts was earlier manned by a Scheduled Caste candidate,

who resigned and the other incumbent who was holding a general category post had been promoted. Both the posts were available when the applicant joined as Statistical Assistant. The Staff Inspection Unit assessing the staff requirements made a recommendation in the month of April, 1986 for the reduction of 20 posts including one post of Statistical Assistant and this report was to be implemented by the organisation within three months. The second post ^{was} filled up on 1.9.86 by one Shri Jaswant Singh, Scheduled Caste candidate. The contention of the applicant is that the junior who joined in September, 1986 was retained and she was relieved on 30.11.86 and this itself is discriminatory and violative of Articles 14 and 16 of the Constitution of India.

4. The contention of the applicant is that she was continuously working from 12.4.84 and all of a sudden her services were terminated with effect from 30.11.86 in an illegal and arbitrary manner. She was not even given a month's notice before terminating her services. The order of termination is at Annexure 'F'. She made departmental representations but to no avail.

5. The respondents contested and denied the contention of the applicant stating that the applicant was given appointment on a purely temporary ad hoc basis of which she was well aware of. In the appointment letter itself it was clearly mentioned that her services were to continue for 3 months or until further orders. It is further said that the order of termination, Annexure 'F' is quite legal and correct and is not arbitrary. This is dated 2.12.86 though wrongly mentioned by the applicant in Annexure 'F' as being dated 9.2.87. The concerned Ministry of Social Welfare had given clearance to fill only one post and after adopting formalities through Employment Exchange, the Scheduled Caste candidate joined in September, 1986. The first post of Statistical Assistant fell vacant on 14.10.81, which was reserved for Scheduled Caste candidate and the second general category post fell vacant on 31.3.83 due to the promotion of Shri Amar Singh as Statistician. The applicant was employed as a stop gap arrangement. The selection of the Scheduled Caste candidate has been done after getting clearance from Staff Selection Commission while in the case of the applicant, the Staff Selection Commission clearly observed that any ad hoc appointee will not be regularised.

6. We have heard the learned counsel for the parties at length and perused the record. The cadre of Statistical Assistant originally consisted of two posts, but Staff Inspection Unit gave the report reducing the cadre to one. In view of this, the reservation in favour of Scheduled Caste candidate should not have been contemplated. However, the post was abolished w.e.f. 1.3.87 vide Ministry of Welfare Order No. 14-3/86-D dated 5.5.88 and as such one of the two posts remained reserved till then. Before this communication, the Scheduled Caste candidate had already joined on 1.9.86 after selection and due clearance and permission from the Staff Selection Commission. The applicant herself came to the Tribunal quite late in 1988 basing her claim on the fact she worked from 12.4.84 to 30.11.86 and that she was appointed after interview out of the six sponsored candidates from the Employment Exchange. The fact, however, remains that she was appointed in stop gap arrangement on purely ad hoc and temporary basis. The appointment letter is clear and the applicant was not kept in dark that she has been given appointment purely on ad hoc basis. Learned counsel for the respondents referred to the authority reported in S.L.R. 1981(1) 314 **Om Prakash Vs. State of Haryana** wherein it has been clearly laid down that ad hoc appointee has no lien to the post.

7. The learned counsel for the applicant hotly contested the manner of termination contending that when already the applicant has worked from 12.4.84 to 30.11.86 for over 2 years, she stands in a category other than ad hoc and cannot be asked to go and she has come through proper selection by respondent No. 2. Reliance has been placed on S.L.R. 1972 (2)540 **Smt. Shanti Devi Vs. M.C.D. Delhi** where it was held that the services of ad hoc, officiating or temporary employees cannot be done away with without rhyme or reason. It is, however, to be noted that one of the two posts has already been abolished in the cadre and the other post is manned since September, 1986 by a Scheduled Caste candidate, Shri Jaswant Singh, who has been given appointment after due process with the Staff Selection Commission and is to be treated as regular appointment according to Rules.

Reliance has also been placed by the applicant on **Rattan Lal & Others Vs. State of Haryana - 1985 (4) S.C.C. 43** - which directs that adhocism in service should be avoided. Having worked for two years, it was claimed that the applicant did not remain purely on ad hoc basis.

8 Reliance has been placed by the learned counsel for the applicant on the principles of natural justice and equity contending that the applicant is an unmarried lady and has become overage for any Government service and that a sympathetic and magnanimous view is to be taken. The authority of **OA 1595/89 Smt. Lalita Rani Vs. Union of India** decided by this Bench on November 21, 1989 has been cited by filing the certified copy of the judgement. A perusal of this order shows that equitable principles have been applied as per authority **Ishwar Singh Khatri Vs. Union of India & Others 1987(4) ATC 932 D.B.** Another photostat copy of the order of High Court of Himachal Pradesh **Miss Saroj Devi Vs. Commissioner Kendriya Vidyalaya Sangathan & Others** decided on 21.6.86 has been filed, which is also based on principles of natural justice and equity. The applicant also relies on an uncertified note of the Joint Secretary and Secretary of the Department of Welfare dated 11.5.89 where sympathy has been expressed for ad hoc employees. The note is as follows:

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Secretary may kindly see the factual note submitted by the NISD with reference to his marginal observations on p. 1 ante. The explanation given by NISD is purely technical and devoid of any personal considerations. This is yet another case where the Institute has sought to terminate the services of its employees after they have served for more than three years. The other two cases that have come to my notice are that of Ms. Pratima Sharma and Ms. Madhu Popli. The justification given by the NISD in defence of their action is that these employees were appointed on purely ad hoc basis and it was so mentioned in their offer of appointment. These employees, I notice, have been appointed in vacancies arising out of deputation. I am constrained to observe that such a practice of appointing persons on purely ad-hoc basis, continuing them for a fairly long time and then terminating their services on the plea that their initial appointment was purely temporary, does not stand to test of any sound personnel policy. There is something basically wrong with the policies pursued by the Institute in making appointments. Otherwise, there could not be so many cases of the same nature at the same time. It is not correct to appoint anybody against deputation post from outside. Every organisation is supposed to have a deputation/leave reserve. If there was no such provision, the Institute should not have released any officer to proceed on deputation. Having appointed these employees, initially, on ad-hoc basis and having continued them for over three years naturally gives them an expectation that they would be absorbed ultimately. Continuing an employee for a long time and throwing him/her out when

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he/she has already crossed the maximum age limit for employment in Government would only be termed as highly immoral. I understand that the Institute has already created a number of posts and I do not think why these employees could not be adjusted against those posts. Perhaps, the Institute could have suitably re-designated the posts or while creating the post, the fact of absorbing these employees should have been kept in mind.

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xx	xx	x	xx	xx	xx

Sd/-
(P.G. Lele)
Joint Secretary (L)
10.5.89

Secretary

Sd/-
Secretary (Welfare)
11.5.89"

9. It is noted that another hurdle in the case of the applicant is that there was a ban against appointments to vacant posts and there was no clearance by the Staff Selection Commission, rather it was clearly communicated to Respondent No. 2 that there will be no regularisation of any ad hoc employee.

10. It is difficult to accept the contention of the applicant that her removal suffers from bias and is illegal. The respondents have clarified that in order No. 10/1/84-Admn. dated 2.12.86 (shown by the Applicant as 9.2.87), the Ministry of Welfare had given clearance to fill one post only. The applicant knew that on the joining of the Scheduled Caste candidate, she would be rendered surplus. Her representation was considered by the Ministry of Welfare and it was decided to continue her services upto 30.11.86 and this was intimated to the applicant vide letter dated 30.9.1986. The question of terminating her services, therefore, does not arise as her post was continued only till 30.11.1986 and she was informed of this fact. As such, no formal notice was necessary and she was intimated that she had been relieved of her duties with effect from 30.11.86. It has also been pointed out by the respondents that the applicant had herself stated in her request dated 11.3.87 for release of pay and allowances as she had been relieved from service from 30th November, 1986.

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11. Another point to consider is whether it was proper to appoint a Scheduled Caste candidate when the SIU had recommended the abolition of one post. If there was one solitary post of Statistical Assistant, it could not be reserved for a Scheduled Caste person. Here again, it is noted that the Ministry's order abolishing one post came much later and when the Scheduled Caste candidate actually joined the post, there were two posts and as such, one post could be reserved for Scheduled Caste. Besides, the appointment of the Scheduled Caste candidate, Shri Jaswant Singh, in 1986 was in accordance with the instructions of the Staff Selection Commission and as such a regular appointment according to the rules against the ad hoc appointment of the applicant. The position would have been slightly different had the applicant continued in ad hoc service for more than three years as Courts have held that persons working continuously on ad hoc basis for more than three years should not be relieved after such a long time. But, in this case the post has been extended from time to time and the final extension was till 30.11.86 which is less than three years. One of the posts has been abolished and there is only one post now against which a regularly appointed Scheduled Caste person is working. It will not be possible to order that a person of a Scheduled Caste community appointed on a regular basis and who has now been working for over three years should be replaced by the applicant as there is no other post, specially as the Staff Selection Commission had clearly stated that they would not agree to regularisation of any ad hoc employee.

12. While it may not be possible to quash the order terminating the services of the applicant by the respondents, this certainly is a very hard case and deserves serious consideration by the respondents with a view to help her in getting a suitable appointment. The circumstances under which her services were terminated are not entirely free from doubt. It is true that she was appointed on ad hoc basis, but her post was continued from time to time. It cannot be said that as she knew that her post had been extended ^{finally} till 30.11.86 only, she need not have been ^{given} a month's notice as required for temporary employees. When the Staff Inspection Unit had recommended reduction of certain posts,

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including one of the Statistical Assistant, in April 1986 and wanted compliance within three months, there was really no justification in employing a person, even though a Scheduled Caste candidate, in September, 1986. There cannot be any reservation on a single post. If a technical view is taken that actual abolition of the post took place on 1.3.87, the reason for not extending the services of the applicant till the end of February, 1987 is not clear. It was mentioned that of the 20 posts declared surplus by the Staff Inspection Unit, 19 were lying vacant as they had not been filled up and the only effective reduction was of the post held by the applicant. This point was, however, not confirmed and can be examined by the Ministry of Welfare. The applicant was informed by the Institute's O.M. dated 30.9.86 that her services were to continue till 30.11.86 or until further orders whichever is earlier. It is not clear why her services were continued beyond 30.9.86 when the SIU's report was available and when the respondents had already appointed another person to that post. The letter of 30.9.86 is again a repetition of similar letters in the past continuing her services till a particular date or until further orders whichever was earlier and this does not give any impression to the applicant that her services would not be continued beyond that date. Even earlier, it is not clear why it was not possible to appoint a Statistical Assistant of the general category through Staff Selection Commission. The Commission could not provide a Scheduled Caste candidate, but there is no letter or averment that they could not also provide a general candidate and why the applicant was continued on ad hoc basis for over 2-1/2 years. Terminating her services without giving her due notice, in the circumstances mentioned above, cannot be considered proper and it is directed that the respondents should pay her the salary of the post till 28.2.1987 till the post existed. It is further suggested that the Ministry of Welfare may consider her case sympathetically and try to adjust her in any available vacancy or a post which may have to be filled by fresh recruitment as suggested in the note of the Joint Secretary (L) dated 10.5.89. With these observations, the application is disposed of. There will be no orders as to cost.

J. Sharma
(J.P. Sharma)

Member (J)

B.C. Mathur
23.1.90
(B.C. Mathur)

Vice-Chairman