

(17)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2060/88

~~XXXXXX~~

DATE OF DECISION 12.02.1993

Smt. Amrit Devi

Petitioner

Shri M.L. Ohri

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent s

Shri P.P. Khurana

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.C. Jain, Member (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 ?**

J. Sharma
(J.P. SHARMA)
MEMBER (J)

P.C. Jain
(P.C. JAIN)
MEMBER (A)

(18)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

* * *

O.A. NO.2060/88

Date of Decision : 12.02.93

Smt. Amrit Devi

...Applicant

Vs.

Union of India & Others

...Respondents

CORAM

Hon'ble Shri P.C. Jain, Member (A)

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri M.L. Ohri

For the Respondents

...Shri P.P. Khurana

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant was working as LDC-cum-Typist w.e.f. 23.1.1982 in the Office of Registrar of Companies (Delhi and Haryana) and continued to serve with respondent No.2, Registrar of Companies till the date of termination of the service by the impugned order dt.24.11.1987 with certain technical breaks of one or two days after every 89/90 days of service. She assailed her termination order before the Hon'ble High Court, Delhi by filing Writ Petition No.3340/87 and obtained a stay order in her favour, but before the stay order could be served on respondent No.2, she was relieved and that became ineffective. However, she filed the present application under Section 19 of the Administrative Tribunals Act, 1985 on 21.10.1988 and prayed for the grant of the following reliefs :-

- (a) An order declaring that termination of the applicant's services by the respondents vide Annexure B is illegal and that the applicant is entitled to reinstatement with full back wages and benefit of seniority and necessary direction to that effect to the respondents.

- (b) A direction to the respondents to regularise services of the applicant on the post of LDC-cum-Typist w.e.f. the date of her initial appointment, i.e., 23.1.1982.
- (c) A direction to the respondents to give the applicant due benefits of pay scale, salary, arrears and other perquisites alongwith benefit of seniority on the post of LDC-cum-Typist on the basis of the aforesaid regularisation.
- (d) Any other appropriate order or direction granting the applicant reliefs which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case.

The grievance of the applicant is that even after putting service for about more than 5 years, she had not been regularised in her appointment and further that juniors to her whose services were also terminated along with the applicant were again reappointed and are still continuing in service. The names of such juniors appear at Sl.No.1, 4 and 5 of the impugned order dt.24.11.1987 (Annexure B, p-19).

2. The respondents contested the application and filed the reply stating that because of the policy pursued by the Government of India, it was necessary to terminate the services of the employees working on ad-hoc basis, but subsequently keeping in view the exigency of the office work, requisition was sent to the local Employment Exchange and on the nomination made by the Employment Exchange of the suitable candidates, they were given adhoc appointment as LDC-cum-Typist as a stop-gap arrangement till the nomination of candidates by the Staff Selection Commission is received. Since the name of the applicant was not sponsored by the Employment Exchange, she was not given fresh appointment.

3. We have heard the learned counsel for both the parties at length and perused the record. The contention of the learned counsel for the applicant is that the respondents cannot adopt hire and fire policy and giving artificial breaks in the service for one or two days will not change the continuous employment of the applicant with the respondents. The learned counsel for the applicant also referred to the fact that a colleague of the applicant, Ms. Rani was also similarly terminated and she filed OA before the Principal Bench, which was decided in her favour by the judgement, reported in SLJ 1991 (3) CAT p-529. It was held by the Tribunal that she is entitled to be continued in service till a regularly appointed candidate replaces her. In fact, the respondents in their reply have admitted that even after the termination of service, there was a breach of the policy of the Government of India of not appointing on ad-hoc basis and when this policy has been relaxed in the case of juniors to the applicant, namely, Shri Anil Kumar Sharma, Kumari Charanjeet Kaur and Shri Paul Singh, then the case of the applicant should also have been considered for re-engagement. When the applicant has already been working for a number of years, fresh requisition from the Employment Exchange was totally uncalled for and cannot be said to be fair and just. It was the arbitrary act of the respondent No.2 in depriving the applicant's fresh engagement, while those who were junior to her and appointed much after her

were again called and engaged. The learned counsel for the respondents, however, argued that in ad-hoc appointment, it cannot be said for want of the seniority list that the applicant has been senior to those who have been sponsored subsequently by the Employment Exchange and engaged on ad-hoc basis. It is further stated by the learned counsel for the respondents that it was because of certain stay order obtained from the competent court that the services of some of the juniors were continued.

4. There is no force in the contention of the learned counsel for the respondents that those who were removed along with the applicant by the impugned order dt.24.11.1987 were engaged because of fresh nomination by the Employment Exchange. The termination of the applicant is, therefore, not proper and one ad-hoc employee should not be replaced by another ad-hoc employee. The learned counsel for the applicant has referred to the authority of Smt.Nita Rani Vs. Union of India, 1990(1) ATJ 377 of the Chandigarh Bench of the Central Administrative Tribunal where the Tribunal held that an ad-hoc employee cannot be replaced by another ad-hoc employee. The learned counsel for the applicant has also placed reliance on the case of State of Haryana Vs. Pyara Singh, reported in ATR 1992 (2) 577 and highlighted para-25 of the said report. In the above reported case, the

Hon'ble Supreme Court has given certain guidelines for regularising the services of the ad-hoc teachers employed in the State of Punjab. The learned counsel has also referred to the case of Karnataka State Private College Stop Gap Lectures Association Vs. State of Karnataka, reported in 1992 SCC (Labour and Services) p-394 and also in the same journal at p-122 of Manipur Substitute teachers Vs. State of Manipur. In the case of Karnataka State Private College Teachers Association, it was held that the breaks given were only technical and do not affect the continuity of service. The learned counsel for the applicant also referred to the fact that the services of the applicant were governed by Temporary Service Rules, 1965 and the applicant's services cannot be dispensed with without following the procedure laid down under the Industrial Disputes Act, 1947 and the applicant is a workman ^{for} as the definition of Rule 2(s).

5. We have given careful consideration to the law cited before us and we are of the considered opinion that for being appointed as LDC, the applicant has to pass the required examination held by SSC. The applicant also appeared in the selection, but she failed in 1980. As regards the regularisation of the applicant, since she has not cleared the qualifying test held by SSC in any of the years, so inspite of long tenure of service on the post of LDC-cum-Typist, she cannot be regularised

and the relief in this regard cannot be granted.

6. However, with regard to her fresh engagement, action of the respondents is arbitrary and discriminatory in as much as they have given appointment to the juniors to the applicant ^{who} ~~who~~ were allowed to continue in service on ad-hoc basis. The ratio of the case of Usha Rani Vs. Union of India (supra) fully applies to the case of the applicant also.

7. The learned counsel for the applicant has also argued that the applicant is also entitled to back wages and the impugned order is illegal. In this connection, the learned counsel has referred to the case of M. Ashirvadhan Vs. Union of India, reported in 1990(13) ATC p-439 where the Ernakulam Bench of the Central Administrative Tribunal has awarded back wages also where the order of termination is invalid and illegal.

However, in the present case, we are not inclined to award any back wages for the reason that the appointment of the applicant was specific for a particular term and the respondents have not extended her appointment on the basis of the policy being followed in the Government offices to discontinue adhocism. Further, the applicant has networked in all these years and on the principle of 'No Work No Pay', she cannot be allowed the back wages. Still further, the applicant herself did not avail of the chances of getting selected through SSC and merely because some

le

of the persons who were sponsored by the Employment Exchange happened to be junior when engaged earlier along with the applicant, so the applicant cannot be allowed back wages.

8. In view of the above facts and circumstances, the present application is partly allowed and disposed of with the following directions :-

- (a) The respondents are directed to re-engage the applicant, in the event any of her junior is still serving, within a period of two months from the date of receipt of a copy of this judgement and she will be entitled to her wages from the day she joins. The applicant shall be allowed to continue till she is replaced by a regularly selected candidate or she gets regularised according to the extant Rules.
- (b) The other reliefs, claimed by the applicant for grant of back wages etc., are disallowed.
- (c) In the circumstances of the case, the parties are directed to bear their own costs.

J. P. Sharma
(J.P. SHARMA) 12.2.93
MEMBER (J)

P. C. Jain
(P.C. JAIN) 12.2.93
MEMBER (A)