

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 605/88  
T.A. No.

199

DATE OF DECISION 7.4.1992

Miss Bimlesh

Petitioner Applicant

Shri K.L. Bhandula

Advocate for the Petitioner(s) Applicant

Versus  
Union of India & Others

Respondent

Shri P.P. Khurana

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. A.B. Gorathi, Administrative Member.

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

(Judgement of the Bench delivered by Hon'ble  
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who has worked as a Lower Division Clerk-cum-Typist in the office of the Registrar of Companies, Delhi and Haryana, under the Ministry of Industry and Company Affairs, filed this application under section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

- (i) to quash the impugned order dated 20.10.87 whereby her services were terminated;
- (ii) to appoint her as a regular Lower Division Clerk-cum-Typist; and
- (iv) to pay her all consequential benefits.

2. On 5.5.1988, the Tribunal passed an interim order to the effect that if there are any vacancies and the respondents seek to appoint anyone, they shall first appoint the applicant before appointing anyone junior to her, or a fresh candidate.

3. The facts of the case in brief are as follows. The applicant was appointed as Clerk-cum-Typist on ad hoc basis and she continued as such from 3.8.1983 to 4.12.87. The period of service was not continuous in the sense that the respondents had given artificial breaks of a few days between one engagement and another. Her grievance is that while terminating her services, the respondents have appointed the following four persons as Clerk-cum-Typist and that they are still working in the office of the respondents:-

1. Shri Anil Kumar Sharma
2. Smt. Taranjit Kaur
3. Shri Pal Singh
4. Shri Shiv Parkash.

4. The respondents have not controverted the aforesaid averment made by the applicant.

5. The applicant has alleged that appointment of other persons after terminating her services, is discriminatory and violative of the provisions of Articles 14 and 16 of the Constitution.

6. The respondents have stated that the services of the applicant were terminated as per the decision of the Government of India contained in their letter dated 15.1.1987. They have stated that the post of L.D.C.-cum-Typist is filled up on the recommendation of the Staff Selection Commission and as such, the applicant has no legal right to be appointed on regular basis unless she is duly recommended by the Staff Selection Commission.

7. The respondents have, however, stated that the Staff Selection Commission did not nominate/recommend names for the vacant posts and appointment of certain candidates sponsored by the local Employment Exchange had to be made. Since the name of the applicant was not sponsored by the Employment Exchange, her grievance is not tenable.

8. We have carefully gone through the records of the case and have considered the rival contentions. The learned counsel for the applicant heavily relied upon the decision of this Tribunal dated 8.2.1991 in OA-1372/88 (Mrs. Usha Rani Vs. Union of India, through the Secretary, Ministry of Industry & Company Affairs & Another) in which a similar question had arisen for consideration. In that case also, the respondents had appointed other persons after terminating the services of the applicant. The

applicant was on maternity leave and her name was not forwarded by the Employment Exchange when some vacancies had arisen. The Tribunal held that the termination of the services of the applicant in Miss Usha Rani's case was illegal in view of the mandatory provisions of the Maternity Benefits Act, 1961. The Tribunal awarded back wages to her. The impugned order of termination of her services was also set aside and quashed. A direction was issued to the respondents to engage Miss Usha Rani as L.D.C.-cum-Typist on ad hoc basis as persons with lesser length of service had been re-engaged by them after terminating her services and some of them were still continuing in service though their continuance was stated to be on the basis of interim orders issued by the Tribunal in applications filed by them. It was further directed that such engagement shall be continued till a regularly selected candidate sponsored by the Staff Selection Commission is appointed to the post of LDC-cum-Typist and subject to the principle of 'last come, first go'. For the purpose of reckoning the length of service of the applicant, it was further directed that the artificial breaks in service should be ignored.

9. In our opinion, the applicant before us also deserves the same treatment as her case also is similar except that

15

the termination of the services of the applicant in the instant case was not during the period of maternity leave, as in the case of Miss Usha Rani.

10. In view of the foregoing, the application is disposed of with the following orders and directions:-

(i) The impugned order of termination of services of the applicant dated 20.10.1987, is hereby set aside and quashed. The respondents are directed to engage the applicant as L.O.C.-cum-Typist on ad hoc basis with immediate effect as persons with lesser length of service had been re-engaged by them after terminating the services of the applicant and some of them are still continuing in service. Such engagement of the applicant shall be continued till regularly selected candidates sponsored by the Staff Selection Commission are appointed to the post of LDC-cum-Typist and subject to the principle of 'last come, first go'. For the purpose of reckoning the length of service of the applicant, the entire period of service rendered by her from 3.8.1983 to 4.12.1987, should be taken into account, ignoring the artificial breaks in her service.

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(ii) The respondents shall comply with the above directions within a period of two months from the date of receipt of this order.

(iii) In the facts and circumstances of the case, we do not direct payment of back wages to the applicant.

(iv) There will be no order as to costs.

*Anusorn  
7/4/92*

(A. B. Gorathi)  
Member (A)

*7/4/92*

(P. K. Kartha)  
Vice-Chairman (Judl.)