

(7)

. Central Administrative Tribunal
Principal Bench: New Delhi

OA No.878/88

New Delhi this the 30th Day of November, 1993.

The Hon'ble Mr. N.V. Krishnan, Vice-Chairman
The Hon'ble Mr. C.J. Roy, Member (J)

Smt. Indu Srivastava,
R/O 11-A, Lok Vihar,
Karawal Nagar,
New Delhi-110 094.

...Applicant

(By Advocate Sh. E.X. Joseph though none appeared)

Versus

Union of India through
Secretary, Ministry of
Human Resources & Development
(Deptt. of Education), Shastri
Bhawan, New Delhi.

...Respondents

(By Advocate Sh. M.L. Verma though none appeared)

ORDER(ORAL)

(Hon'ble Mr. N.V. Krishnan)

The applicant was initially appointed as a Telephone Operator in the Ministry of Education and Culture by the order dated 20.10.81 (Annexure A-2) purely on an ad hoc basis for a period of six months from 14.10.81. The tenure of her appointment was extended from time to time.

2. The applicant had prayed for the regularisation of her services by her application dated 30.9.85 (Annexure A-6). Instead, by the Annexure A-14 order dated 11.4.88 issued by the respondents, the services of the applicant, alongwith another person, were terminated with effect from the same date after sanctioning payment equal to one month's pay plus allowances. The applicant is aggrieved by this order and has filed this O.A seeking a direction to the respondents to confirm and regularise the applicant as a Telephone Operator.

✓

3. The respondents have filed a reply in which they contest this claim. Their main ground is that the applicant did not pass the examination which ad hoc employees were required to pass before regularisation.

4. We have seen the records of the case. The applicant refers in para 6.10 to the fact that she was served with a copy of the office memorandum dated 26.8.86 which is at Annexure A-10. This memorandum of the respondents enclosed a copy of the OM dated 1.8.86 of the Department of Personnel and Training. The extract of that OM is reproduced in Annexure A-10. That conveys the decision of the Government to hold a supplementary Special Qualifying Examination in 1986 for those who could not or did not take the special Qualifying Examination 1985 because of age and service qualification, but have since become eligible by the revised interpretation. According to that interpretation those who were within the age limit at the time of their initial appointment as daily rated clerks through the Employment Exchange followed by appointment as ad hoc LDCs and have put in one year's continuous service on 1.1.1985 would also be eligible to appear.

5. The applicant states that this memo applies only to those Telephone Operators who are appointed departmentally from amongst the LDCs who were getting special pay and that this was not applicable to the Telephone Operators like him who were recruited directly after proper selection through the Employment Exchange and who were not getting any special pay. In other words, it is contended that this circular does not apply to the applicant.

✓

6. It is stated that the applicant sent a letter to the respondents on 4.9.86 (Annexure A-11) seeking exemption from the examination so that this may not stand in her way of regularisation. It is stated therein that the applicant was working only as a Telephone Operator and that she has never done typing and was trying to learn typing and hence, the exemption was sought. Apparently, no reply was given to the letter and the applicant appeared in the examination. However, in Annexure-12, which is a note dated 6.11.86 cautioning the applicant about punctuality, the applicant has been described as a Telephone Operator.

7. It is stated by the applicant that in other ministries the Telephone Operators have been regularised as L.D.C. without passing any examination. Annexure-13 relating to the Ministry of Commerce is filed in this connection.

8. It is contended by the applicant that insistence on passing the typing examination for regularisation as a Telephone Operator is entirely unwarranted. The applicant states that in para 6.19 that she was informed orally that her appointment was terminated because she could not qualify in the supplementary Qualifying Examination held in March, 1987.

9. It is in these circumstances that the impugned order (Annexure A-14) has been challenged and a direction sought to confirm and regularise her.

✓

10. The respondents have stated that the applicant was given only ad hoc appointment. For regular appointment, the OM dated 13.2.71 of the Department of Personnel requires Telephone Operators who did not belong to the Central Secretariat Clerical Service, to qualify in an examination of the same standard, as is conducted by the Institute of Secretariat Training and Management for L.D.C. The Department of Personnel issued a circular on 7.11.85 wherein the earlier conditions were liberalised to the extent that the Telephone Operators appointed in 1982 or thereafter on regular basis and have rendered three years' service or those who had been declared quasi permanent could be inducted as L.D.C. in the Central Secretariat Clerical Service. The applicant, being only an ad hoc appointee, could not be regularised under this circular. Earlier, the Department of Personnel had issued a circular dated 7.8.82 deciding to hold a special examination for ad hoc employees for getting entry into the aforesaid service. It is then stated in the reply as follows:-

"Two chances were decided to be allowed within which the existing Telephone Operators had to qualify for induction into the Central Sectt. Clerical Service. In 1985, vide Deptt. of Personnel & Training's Office Memorandum No.12/4/83-CS.II dated 7.11.1985, the condition was liberalised to the extent that the Telephone Operators appointed in 1982 or thereafter on regular basis and had either rendered three years' service or had been declared quasi-permanent could be inducted in the Lower Divn. Grade of the Central Sectt. Clerical Service. In between, Deptt. of Personnel & Training decided vide their Office Memorandum No.6/5-82-CS.II dated 7-8-1982, to hold a Special Examination for ad-hoc employees to afford them an opportunity for induction in the Central Sectt. Clerical Service. It was also decided by that Deptt. that services of those ad-hoc employees who fail to qualify in the Special Examination will

ll

be terminated. The Staff Selection Commission held such Special Examinations for Ad-hoc employees in the years 1982, 1983, 1985 and 1987 for absorption of as many ad-hoc employees as possible in Central Sectt. Clerical Service. The applicant being overaged was not eligible for the Special Examination, 1985. Later, on direction from the Tribunal, Principal Bench, the Ministry of Personnel, Public Grievances & Pension (Deptt. of Personnel & Training), vide their Office Memorandum No.6/14/86-CS.II dated 1.8.1986, liberalised the eligibility conditions in regard to age and for those who did not or could not appear in the Special Examination, 1985, because of age etc. arranged a Supplementary Special Qualifying Examination, 1985. Even in the liberalised condition, the applicant was not eligible. However, a special relaxation in the eligibility conditions was obtained for her from the Deptt. of Personnel & Training and she was allowed to appear in the Supplementary Special Examination, 1985, which on cancellation, was held in the year, 1987. The applicant availed of this opportunity but could not qualify the examination. Consequently her ad-hoc appointment could not be converted into regular appointment."

11. In this circumstance the respondents terminated the services of the applicant on the advice of the Department of Personnel. Therefore, the respondents contend that this application has no merit and should be dismissed. Reliance is also placed on perhaps an unreported judgement of this Tribunal (Principal Bench) in Smt. Anil Ram Mallik Vs. Union of India in OA-105/86.

12. The applicant has filed a rejoinder, reiterating the stand taken in the O.A.

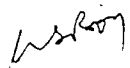
13. We have carefully considered the pleadings in the case. The Annexure A-1 order dated 3.10.81 makes it clear that the applicant was appointed only on an ad hoc basis. Merely because she was recruited through Employment Exchange does not make the appointment regular. Admittedly, it was known to everyone concerned that regularisation of ad hoc appointment would only be on the basis of passing the Special Examination conducted for

U

ad-hoc appointees, requiring them to pass in that examination. She cannot now complain that she was not required to appear in the test at all and she should have been regularised as LDC even without a test. If, as a Telephone Operator, she felt that she was not required to appear in the examination she should have sought such a declaration then. Instead, she appeared in the examination and failed.

15. The reliance on Annexure A-13 referred to in para 7 supra is misconceived. The persons at serial No. 50, 51, 96 and 97 in the Ministry of Commerce list are not ad hoc operators. They are officiating or confirmed operators. Hence, they have been absorbed without a test and they were appointed as L.D.C. in 1981 or later.

16. In view of the fact that the applicant did not qualify in the examination held for the purpose of regularisation, the respondents cannot be faulted for terminating the ad hoc appointment by the issue of the impugned Annexure A-14 order. In the circumstances, we find no merit in the O.A, which is dismissed. No costs.


(C.J. ROY)
MEMBER(J)


30.11.83
(N.V. KRISHNAN)
VICE-CHAIRMAN(A)

San.