

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

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O.A. No. 281 of 1986 198
T.A. No.

DATE OF DECISION 27.2.87

Smt. Mamlesh Madan Petitioner

Shri Anis Suhrawardy Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

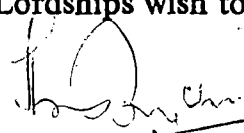
Shri M.L. Verma Advocate for the Respondent(s)


CORAM :

The Hon'ble Mr. S.P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. H.P. BAGCHI, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No


(H.P. BAGCHI)
JUDICIAL MEMBER


(S.P. MUKERJI)
ADMINISTRATIVE MEMBER

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

Regn.No. OA 281/86

DATE OF DECISION: 27.2.87

Smt. Mamlesh Madan

...Applicant

Versus

Union of India and others

...Respondents

For Petitioner: Shri Anis Suhrawardy, Advocate.

For Respondents: Shri M.L. Verma, Advocate

CORAM: HON'BLE MR. S.P.MUKERJI, ADMINISTRATIVE MEMBER
HON'BLE MR. H.P.BAGCHI, JUDICIAL MEMBER

JUDGMENT:

The applicant, who was working as a Hindi Stenographer in the All India Radio has moved this application under Section 19 of the Administrative Tribunals Act on 25.4.86 praying that the impugned order dated 16th April. 1986 terminating her ad hoc temporary service on the expiry of one month's notice under Rule 5(1) of the Central Civil Service (Temporary Service) Rules, 1965 may be set aside and she should be treated as a regular government servant with all consequential benefits.

2. The impugned order was stayed by our order dated 1.5.86. The brief facts can be recounted as follows. The applicant was appointed in the All India Radio as an ad hoc Junior Stenographer (Hindi) in the scale of Rs.330-560 through the Employment Exchange with effect from 15.5.80. The appointment was purely temporary and in ad hoc capacity. She worked for

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more than 5 years without any blemish when on 10.12.85 she was served with an order of termination of her services, which was challenged by her before the Tribunal in O.A.No.65/85. On 6.1.86, the Principal Bench presided over by the Hon'ble Chairman stayed the operation of the impugned order observing that the impugned order of 10th December, 1985 did not give one month's notice or one month's pay as required under the statutory rules. On 24.2.86, the Principal Bench, on being told by the respondents that the impugned order of termination having been found defective by the respondents had been cancelled, dismissed the petition as infructuous permitting the petitioner to file a fresh petition, if so necessary. On 16.4.86, ^{few months} ~~long~~ after the cancelling of the first order of termination, the respondents issued another ^{termination} order dated 16.4.86, which is challenged in this petition, terminating the petitioner's appointment.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The main contention of the petitioner is that she was not called upon to appear in the Special ^{Clerks' Grade} ~~Qualifying~~ Examination meant for regularisation of ad hoc appointment which were held in 1981 and 1982. No notice or information about these examinations was given to her. In 1985, however she applied for the Special ^{Clerks' Grade} ~~Qualifying~~ Examination, but unfortunately, she did not qualify. The termination orders one after another were issued because of her not being able to qualify ⁱⁿ the examination. The learned counsel for the petitioner has further argued

that the special qualifying examination was primarily meant for L.D.Cs, Telephone Operators, English Stenographers and Typists, but not for regularising the appointment of Hindi Stenographers like the petitioner in whose case knowledge of English to be tested in the Special ^{Clerks' Grade} ~~Qualifying~~ Examination was not only irrelevant but unfair. The learned counsel for the respondents has argued that having appeared in the Special ^{Clerks' Grade} ~~Qualifying~~ Examination without any protest, the petitioner cannot challenge its validity after having failed to qualify.

4. The scheme of regularisation of ad hoc employees in the grades of L.D.Cs, Telephone Operators and Grade 'D' Stenographers has been promulgated by the respondents in the Department of Personnel & Administrative Reforms O.M. of 28th February, 1985 (Annexure 'A' to the counter affidavit). Para 1 of the said O.M. reads as follows:-

" As the Ministry of Finance etc. are aware, the second Special Clerk's Grade Examination was held on 18th December, 1983 vide instructions contained in O.M.No.6/7/83-CS-II dated 17th August, 1983 for the regularisation of ad hoc employees working as Lower Division Clerks, Telephone Operators, Hindi Typists etc. against posts of Lower Division Clerks excluded from the purview of the Central Secretariat Clerical Service, in the Ministries/Departments participating in the service. Ad hoc employees working in non-participating offices were also made eligible to appear in the said examination in terms of D.O. No.6/5/82-CS-II dated 15/16th August, 1982."

The above will indicate that the Special Clerk's Grade Examination was meant primarily for regularising the ad hoc appointees in the grade of L.D.C. i.e., Rs.260-400 whereas the petitioner was admittedly

holding the post of Hindi Stenographer in the scale of Rs.330-560. However, para 7 of the same O.M. states that "Stenographers in the scale of pay of Rs.330-560 employed on ad hoc basis will be eligible to appear in the aforesaid special examination for regularisation of their appointment as Stenographers provided they were recruited through the employment exchange....." Thus, the petitioner could have got the aforesaid appointment regularised if she had qualified in the examination. Para 8 of the said O.M. states that "the ad hoc Stenographers appearing at the examination may be given regular appointment as Stenographers on their qualifying in the written part of the examination as also the stenography test. However, those ad hoc Stenographers who qualify in the written part of the examination but do not qualifying the Stenography Test will be considered for regular appointment as Lower Division Clerk subject to etc. etc."

5. It will thus be clear that for ^{the} Stenographers, it is absolutely necessary for them to pass the written test. The applicant, in the present case, failed in the written test because, according to her, being a Hindi Stenographer, she could not be expected to compete with others or qualify in the written test confined only to (a) English Language and (b) General Knowledge. Only these two subjects constitute Part I of the Examination in accordance with the Annexure to the aforesaid O.M. of 28.2.85. Part II of the Examination consists of Typewriting Test and Part III Stenographic Test which reads as follows:-

"PART III - Stenography test:(Applicable in
case of candidates appearing for

Stenographer Grade 'D' Examination only.

The candidates will be given one dictation test in English or in Hindi at 80 w.p.m. for ten minutes."

From the above, it will be clear that whereas for Stenographers, the Stenography Test could be either in English or in Hindi, there is no such alternative between English and Hindi in Part I of the examination which is confined to English Language and General Knowledge. To us, therefore, it appears that the Special Clerks' Grade Examination is unduly tilted in favour of English Stenographers as against Hindi Stenographers. Such a test cannot be considered to be reasonable and fair or giving equal opportunity between Hindi Stenographers and the English Stenographers. The test by giving equal treatment to unequals is violative of Articles 14 and 16 of the Constitution of India and is against basic tenets of the rule of law.

6. The learned counsel for the respondents argued that having appeared in the Special Qualifying Examination without any protest, the petitioner is supposed to have given up her right to challenge the validity of the examination and is estopped from doing so. We are not impressed by this argument as the petitioner cannot be deprived of the exercise of fundamental right of equality of opportunity in public employment merely because she appeared in the Special Clerks' Grade Examination without protest. In Behram Vs State

of Bombay (1955) ISCR 613 the majority on reference, without finally deciding the question, expressed the view that the fundamental rights, though primarily for the benefit of individuals have been put into our Constitution on grounds of public policy and in pursuance of the objective declared in the Preamble. Hence none of them can be waived. This view was upheld in Basheshar Vs. Commissioner of Income Tax AIR, 1959 SC 149 with the observation that a fundamental right being in the nature of prohibition addressed to the State, none of the fundamental rights can be waived by an individual. In Dasratha Vs. State of Andhra, AIR 1961 SC 564, the Supreme Court has held that a person who has applied for appointment to an office created by an Act, is not precluded from challenging its constitutionality on the ground that it violates his fundamental right under Article 16. In Kerala Education Bill in reference AIR 1958 SC 956, it was observed that a fundamental right cannot be lost merely on the ground of non-exercise of it.

7. The services of the petitioner are being terminated on the basis of para 5 of the O.M. of 28.2.1985 issued by the Department of Personnel and Administrative Reforms that those ad hoc employees who do not

qualify in the Special Examination should be forced out of their appointment. Since the Special ^{Clerks' Grade} Qualifying Examination, as discussed above, violate the fundamental rights of the petitioner, non-qualification in the said examination cannot be made a ^{valid} ground for terminating the service of the petitioner who has been satisfactorily discharging the duties of a Hindi Stenographer for more than 6 years by now. She is still continuing as Hindi Stenographer and nothing has been placed before us to show that as Hindi Stenographer, she is inefficient or lacks ⁱⁿ proficiency.

8. In the facts and circumstances, we hold that the Special ^{Clerks' Grade} Qualifying Examination of 1985 was not a valid examination for screening out and disqualifying Hindi Stenographers and since no regular appointee has so far been earmarked for the post held by the petitioner, her services cannot be terminated at this stage. We, therefore, allow the petition, quash the impugned order dated 16.4.86 and direct that the petitioner should be continued as ad hoc Hindi Stenographer till she is regularised through a proper qualifying examination or is removed from the post in accordance with law. There will be no order as to costs.


(H.P.BAGCHI)
JUDICIAL MEMBER


(S.P.MUKERJI)
ADMINISTRATIVE MEMBER