

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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Regn.No.OA-258/1987

Date of Decision: 27.10.88

Smt. Kaushalya Devi Sahotra

.... Applicant.

Vs.

Union of India and Others

.... Respondents.

For the applicant

.... Shri S.C. Luthra,
Advocate.

For the respondents

.... Mrs. Raj Kumari Chopra,
Advocate.

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(Judicial)

THE HON'BLE MR. P. SRINIVASAN, MEMBER(Admn.)

1. Whether Reporters of local papers may be allowed to see the Judgment? *N*
2. To be referred to the Reporter or not? *N*

JUDGMENT

(Judgment of the Bench delivered by Hon'ble Shri P. Srinivasan, Member(A)).

The applicant was appointed as a Stenographer, Grade III on adhoc basis on 8.1.1975 ~~1985~~ for a period of three months in the Directorate of Advertising & Visual Publicity, (DAVP), New Delhi. Her appointment was, however, extended from time to time. With effect from 8.1.1981 she was allowed to cross the Efficiency Bar in the grade of Stenographer Grade 'D' (which is same as Stenographer Grade III). She continued in the post till 1.4.1986 without interruption. By order dated 1.4.1986, the Deputy Director, DAVP terminated the services of the applicant with effect from the afternoon of 31.3.1986. It is this order which is challenged in this application filed under Section 19 of the Administrative Tribunals Act, 1985.

2. Shri S.C. Luthra, learned Counsel for the applicant submitted that the respondents had practised hostile

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discrimination against the applicant by terminating her services because persons like her who had been appointed as Stenographers on adhoc basis in the Central Water Commission prior to 4.11.1978 had been regularised by order dated 8.6.1984 issued by the Ministry of Irrigation, Government of India. Moreover, LDCs who had been similarly recruited on adhoc basis had been given the opportunity of taking a special qualifying examination for regularisation thrice in 1982, 1983 and 1985 while Stenographers Grade III were given only one opportunity to take a special qualifying examination in 1985. In this way ^{also} Stenographers Grade III had been discriminated against. The applicant had worked as Stenographer Grade III continuously for a period of over 11 years before her services were terminated. Her long service in the cadre showed that she ^{had} fulfilled the requirements of the post and was working satisfactorily on that post; therefore, her services should not have been terminated.

3. Mrs. Raj Kumari Chopra, learned Counsel for the respondents resisted the contentions of Shri Luthra. The essential condition ^{for} of regular appointment as Stenographer Grade III was that the person concerned should qualify in the examination held for the purpose by the Staff Selection Commission (SSC). When the applicant was initially appointed in 1975, the order of appointment clearly stated that her appointment was purely adhoc and would last only till qualified candidates became available. After the constitution of the Staff Selection Commission in 1978, regular appointment could be made only of candidates selected by the SSC. However, for adhoc Stenographers like the applicant, a special qualifying examination for regularisation was held in 1985 but the applicant failed to qualify in that examination. There were special reasons for holding such special qualifying examination for LDCs in

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1982 and 1983 which did not exist so far as Stenographers were concerned and so there was no question of discrimination between the two categories of employees. The Central Water Commission may have had special reasons for the treatment accorded to adhoc Stenographers working in that organisation prior to 1978. If the applicant could not pass the qualifying examination, she could not be given regular appointment because that would amount to promoting inefficiency. No exception to the Rule could be made in her favour.

4. We have considered the rival contention carefully. We are not impressed by the contention of Shri Luthra that there was any discrimination against the applicant vis-a-vis employees of the Central Water Commission because we do not have the full facts on the basis of which the order referred to by Shri Luthra was passed by the CWC. We, however, feel that it was not fair to give Stenographers only one chance to qualify themselves for regular appointment while LDCs were given three chances to do so. We feel that it will meet the ends of justice if the applicant is given one more chance to attend and pass the qualifying examination. We direct the respondents to hold a special qualifying examination for the applicant. If she passes the qualifying examination she should be given regular appointment, relaxing the age limit, if any, prescribed for the purpose. On such regular appointment, her pay should be fixed at the same figure which she was drawing before her services were terminated. Since she did not pass the qualifying examination in 1985 she will not be eligible for any back wages for the period between the date of termination and her reappointment and this period

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will not count for increments. However, the said period should not be treated as break in service for any other purpose. We would also like to clarify that if she does not pass the special qualifying examination to be held in accordance with our directions, she will not be entitled to regular appointment.

5. Before parting with this case, we must here refer to one more contention of Shri Luthra. Relying on the decision of the Jabalpur Bench of this Tribunal in A.N. Sharma Vs. Union of India, ATR 1987(2) CAT 377, Shri Luthra contended that adhoc appointments should not ordinarily continue beyond a period of eighteen months and if a person, like the applicant in the present case, is allowed to continue in an adhoc appointment for as long as eleven years, he or she should be automatically regularised in that post. While we do agree that it is undesirable to continue adhoc appointments indefinitely we also feel that where a qualifying examination is required to be passed for appointment to a post as in this case, it would not be in the best interests of administration of persons who do not pass the qualifying examination are given regular appointment. Moreover treating unequals, viz., those who pass the examination and those who fail, as equals would be patently unjust. No doubt, as urged by Shri Luthra, the SSC had not been constituted in 1975 when the applicant was first appointed but the order of appointment clearly stipulated that she would be continued until regularly selected persons became available. It is the right of Government to prescribe from time to time the conditions to be fulfilled by a candidate for regular appointment and we would be slow in interfering with the exercise of that right except in cases of patent illegality of proven malafides. We find

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no illegality in the condition for appointment prescribed in this case nor has the applicant established a case of malafides against the respondents.

6. The application is disposed of on the above terms but in the circumstances of the case, parties are left to bear their own costs. Respondents will comply with our directions within three months of the date of receipt of this order.

P. Srinivasan
(P. SRINIVASAN)
MEMBER (AM)
28/10/88

P.K. Kartha
(P.K. KARTHA)
VICE CHAIRMAN(J)
28/10/88