

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1799/90
T.A. No.

199

DATE OF DECISION 16.8.1991

Smt. Pratima Sharma

>Petitioner Applicant

Shri R.K. Kaura

Advocate for the >Petitioner(s) Applicant

Versus

Union of India through the

Respondent

Dir. (Research), National Instt. of Social Defence,

Miny. of Welfare.

Advocate for the Respondent(s)

Shri M.L. Verma

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Jud1.)

The Hon'ble Mr. B.N. Dholiwal, Administrative 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*
4. Whether it needs to be circulated to other Benches of the Tribunal?

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

The short point for consideration is whether the
 termination of services of a handicapped lady who has
 worked as Junior Technical Assistant in the office of
 the respondents for more than $4\frac{1}{2}$ years, is legally
 sustainable.

2. The applicant is a physically handicapped lady
 from her birth. Her name was sponsored by the Special
 Employment Exchange for Physically Handicapped, Curzon
 Road, New Delhi, for the post of Junior Technical Assistant
 in the pay-scale of Rs. 330-10-308-EB-12-500-EB-15-560 in

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the office of the respondents. She was selected for appointment to the said post and was appointed on 28.11.1984. The offer of appointment dated 28.11.1984 indicated, inter alia, that the appointment is on purely and temporary ad hoc basis, that it can be terminated at any time without notice, and without assigning any reasons. She continued in the post of Junior Technical Assistant till her services were terminated by Office Memorandum dated 17.7.1987 which reads as under:-

"Consequent upon Shri Chinta Mani Bhatt, Junior Technical Assistant in this Institute having been repatriated from Office of the Commissioner for Scheduled Castes and Scheduled Tribes, where he was on transfer on deputation, the services of Smt. Pratima Sharma, ad hoc Junior Technical Assistant, who was appointed against the vacancy of Shri Bhatt are hereby terminated w.e.f. forenoon of 17 April, 1989."

3. Repeated representations made by her directly and through a Member of Parliament, did not yield any favourable response from the respondents. Her contention is that she had been recruited against the 3 per cent quota reserved for physically handicapped persons as per Government policy. According to her, the statement in the impugned order of termination that she had been appointed against the vacancy of another employee, is an after thought. 

4. The respondents have stated in their counter-affidavit that her appointment was on contract basis, that the application is barred under Section 20 and Section 21 of the Administrative Tribunals Act, 1985, and that there is no Government order to allow reservation for physically handicapped women.

5. The applicant has also filed MP-2154/90, wherein she has prayed for condonation of delay in filing the application.

6. In a case of this kind, we are of the opinion that the respondents should not raise the technical plea of limitation. The applicant also has pursued her remedies, without any tangible results.

7. We have carefully gone through the records of the case and have considered the rival contentions. Normally, ad hoc appointment is made as a stopgap arrangement. In the instant case, the applicant has worked for more than 4½ years and it cannot be termed to be a 'stopgap' arrangement.

8. There are administrative instructions issued by the Government regarding the engagement of physically handicapped persons in Group 'C' and Group 'D' posts. There is an overall reservation of 3 per cent - 1% each

for the blind, the deaf, and the orthopaedically handicapped. The applicant belongs to the last category. The policy also envisages inter se exchange of vacancies if any candidate belonging to a category is not available, or if the nature of vacancies in office is such that a given category of persons cannot be employed. If, in any year, the vacancies reserved for these categories are not filled, the reservation should be carried over for a period upto three recruitment years. The reservation policy of the Government in favour of physically handicapped persons is reproduced in Chapter XXII of Swamy's Complete Manual on Establishment and Administration for Central Government Offices, by P. Muthuswamy, 2nd Edn., pages 215-227.

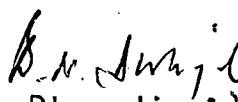
9. In the instant case, the offer of appointment did not stipulate that the applicant was being appointed in a leave vacancy. The respondents have also not produced any records to indicate that the quota reserved for the handicapped persons has already been filled and that it is not available for the applicant. In any event, the applicant having worked as Junior Technical Assistant for more than $4\frac{1}{2}$ years and that too without any adverse

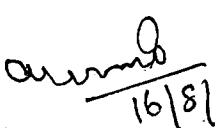
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remarks about her performance and conduct, we are of the considered view that the termination of her services without any notice, is not legally sustainable.

10. In the light of the foregoing, we allow the application and direct the respondents to reinstate the applicant immediately in the post of Junior Technical Assistant. The applicant would also be entitled to all consequential benefits, including back wages from the date of termination to the date of reinstatement of her services. The respondents shall comply with the above directions within a period of three months from the date of receipt of this order.

11. There will be no order as to costs.


(B.N. Dhoundiyal)
Administrative Member


16/8/91
(P.K. Kartha)
Vice-Chairman (Judl.)