

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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J.A. NO. 1990/90

DATE OF DECISION 20. 11. 91

MRS. NILIMA SHARMA

...APPLICANT

VS.

UNION OF INDIA

...RESPONDENTS

COUNSEL

SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

.....

FOR THE APPLICANT

...SHRI R.L. SUTHI

FOR THE RESPONDENTS

...SHRI A.K. SIKRI

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

JUDGEMENT

(DELIVERED BY SH. J.P. SHARMA, HON'BLE MEMBER (J),

The applicant, who was selected as Female Telephone Operator in 1983 recruitment under RTP Scheme, filed this application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the non decision of the respondents on her representation dt. 3.3.1989 in not allowing the applicant to join the post of Female Telephone Operator.

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2. The applicant has claimed the relief that the respondents be directed to allow the applicant to join the post of Female Telephone Operator.

3. The facts of the case are that the selection was held for Female Telephone Operators in RTP Scheme in 1983 recruitment. The applicant was selected, but was placed much below in the merit list and so she was issued an offer of appointment on 6.5.1985 which, it is said by the applicant, was not received by her. The applicant accepted the offer by the letter dt. 13.9.1985. The applicant had also undergone the medical and produced the necessary testimonials in compliance with the letter dt. 5.11.1985. The applicant thereafter did not receive any communication and she sent a letter dt. 9.11.1987 for allowing her to join the duty. But this request was disallowed by a non speaking order dt. 16.11.1987. The applicant preferred an appeal dt. 3.3.1989 which, according to the applicant, had not been disposed of and it is the only grievance of the applicant.

4. The respondents contested the application and stated that the applicant had not come with clean hands. It is said that the applicant was offered an appointment, but she did not join the same within the stipulated period.

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The appointment letter issued to the applicant was for short duty staff and Annexure A-4 dt. 5.11.1985 clearly lays down that due to the low position of the applicant in the merit list, she has been kept in the reserve trend pool for the post of Female Telephone Operators. She had to serve as short duty staff as and when called for on remunerations at the rate of Rs.2.75 per hour of duty performed. After serving as and when regular vacancy arises, she can be considered. It was also indicated in the letter that in case she fails to report for duty whenever called for, her name will be removed from the approved list and ^{she} shall not be eligible for absorption in the regular establishment. The respondents have filed the letter dt. 19.9.1985 (Annexure-B to the counter) pointing out that she did not join in spite of this letter dt. 6.5.1985. The applicant has also filed a copy of this letter dt. 19.9.1985 (Annexure A-2). This letter clearly lays down that if she does not give a satisfactory reply till 30.9.1985, her name will be struck down from the Select List of Female Telephone Operators 1983 recruitment. The applicant duly received this letter, but she did not report for duty. Further she did not assail this order anywhere. As such respondents plead that the application is barred by limitation.

5. It is also stated by the respondents that the applicant submitted an application for joining in 1987 and

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she was specifically told by the letter dt. 16.11.1987
(Annexure-C to the counter) that her request for joining
could not be considered at that stage. It is said that
the applicant also did not assail the order dt. 16.11.1987.
The applicant has filed these proceedings in
August, 1990.

6. We have heard the learned counsel for the applicant
at length. In fact, the letter of appointment
(Annexure A -4) clearly goes to show the terms and
conditions of appointment. The applicant is bound by
these terms and conditions. It is specifically stated
in this letter that she can only be given an appointment of
short duty staff because of low position in the merit
list and can only be regularised in any vacancy subsequently.
If she does not report for duty as short duty staff whenever
called for, then her name is liable to be removed from
the Select List. The letter dt. 19.9.1985 was a notice
to the applicant that she should give a satisfactory
reason by 30.9.1989 why she has not joined. The case
of the applicant is that she has sent a letter and was willing
to join. But if at that time the applicant was not
allowed to join, then she should have assailed her non
joining in the competent forum and she has not done that. It
clearly gives an impression that the applicant was not
interested to join as short duty staff on hourly basis.

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7. Even taking into account that the applicant was not allowed to join, then she herself has sent a letter in November, 1987 in reference to the letter dt. 19.9.1985 where she stated to join as short duty Female Telephone Operator. The applicant herself has filed a reply to the same dt. 16.11.1987 (Annexure A-7) where the applicant was informed that her request cannot be acceded to. Thus the applicant herself was at fault. She could have assailed the letter dt. 16.11.1987, but she kept silent for more than three years and allowed the time to pass. The learned counsel for the applicant pointed out that a Writ Petition was pending before the Hon'ble Supreme Court which was filed by certain daily wagers for short duty staff personnel-Writ Petition No.901/1988 PC.Ramani Kutty and Others Vs. UJI, and it was decided by the order dt. 4.8.1989. The case of the applicant is that since there was no vacancy available, so the applicant did not take any proceedings earlier. It is also said by the applicant that only those who have been selected in 1982 have been absorbed and the selected persons of 1983 list have been absorbed. The judgement of the Hon'ble Supreme Court regarding regularisation of some of the short duty staff has nothing to do with the case of the applicant. The applicant was given an offer of joining on the basis of her selection in 1983 as on short duty staff. In the

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appointment, it was clearly stated that if she did not turn and call upon to work as short duty staff, her name will be struck off from the Select List. Thus the applicant was very well aware that refusing to join or making excuses of not joining will entail her removal from the Select List and she has been informed specifically about it by the letter dt. 19.9.1985 (Annexure-B to the counter/Annexure-A 2 of the application). Thus, the applicant did know even in 1985, then again in 1987 that she will not be given any appointment on the basis of Select List of 1983. In view of Section 21 of the Administrative Tribunals Act, 1985, the applicant should have come for the redress of her grievances arising out of the order of September, 1985 and November, 1987 after making a representation within one and a half year, but the applicant has not come within that period. The applicant also did not assail these orders even now. The applicant has avoided any reference to these orders in the relief clause and only contended herself for a prayer that the respondents be directed to allow the applicant to join as Female Telephone Operator, but it is not practicable as well as possible unless both these orders of September, 1985 and November, 1987 are struck down and that is not the prayer of the applicant.

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3. Curiously enough, the applicant has stated in para 4.10 that non speaking order was passed on her representation dt. 9.11.1987 by the order dt. 16.11.1987 and she has preferred the appeal against the same on 3.3.1989. The representation dt. 3.3.1989 (Annexure A-1) cannot be termed to be an appeal nor it is within any prescribed period. Even though this is termed as an appeal, but it cannot be said in any way assailing the order of 16.11.1987 as no ground in that regard has been taken in this representation. Thus there is great force in the contention of the learned counsel for the respondents that the application is barred by time.

4. On merits too, we find that the terms and conditions of appointment as laid down in appointment letter (Annexure A-4 to the application), the applicant is to be blamed/not the respondents and it is the applicant who did not join and succumbed to her own tactics of delaying, joining for whatever reason it may be. Though the learned counsel for the respondents pointed out if the selected person does not join, then he foregoes the claim for appointment on the basis of said selection.

5. We, therefore, find that the present application is devoid of merits and is dismissed leaving the parties to bear their own costs.

J. P. SHARMA
(J.P. SHARMA) 20.11.89
MEMBER (J)

D. K. CHAKRABORTY
(D.K. CHAKRABORTY)
MEMBER (A)