

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA 2551/1990

Date of decision: 05.04.1991.

Ms. Vijay Kumari

...Applicant

Vs.

U.O.I. through the Secretary,
Ministry of Human Resource
Development & Others

...Respondents

For the Applicant

...Shri R.P. Sharma,
Counsel

For the Respondents

...Mrs. Aynish Ahlawat,
Counsel

CORAM:

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

THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

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

JUDGMENT

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

The applicant, who has worked as Jr. Lecturer in Women Polytechnic, Directorate of Technical Education, Delhi Administration, filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

- (1) To direct the respondents to regularise her appointment as Junior Lecturer with effect from the date she was duly selected by the Selection Board, namely, 23.3.1988 with all consequential benefits; and
 - (2) to direct them to pay to her the salary of the post of Jr. Lecturer in the Department of Secretarial Practice? (Hindi) from the date she has been performing the duties of teaching under orders of the respondents for the period 16.7.1984 to 22.2.1988.
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2. The facts of the case in brief are that the applicant has been working in the Polytechnic since 8th October, 1973. The details of the posts held and the pay scale and the duties performed are contained in the certificate given by the Principal of the Women Polytechnic on 12.12.1989, which has been reproduced at Annexure A-5, page 29 of the rejoinder-affidavit, filed by the applicant. These particulars are as under:-

"1. Certified that Miss Vijay has been working in the polytechnic since 8th Oct., 1973. The details of the post held, pay scale & duties are as under:-

<u>Period</u>	<u>Post held</u>	<u>Pay scale</u>	<u>Duties performed</u>
8.10.1973 to 31.8.82	Lab. Attendant	950-1500	Laboratory
1.9.82 to 15.5.84	-do-	-do-	Study Leave for a regular Two Years diploma Course in S.P.(H)
16.5.84 to 22.2.88	Lab. Attendant + Part Time Lecturer	950-1500 + Honorarium	Teaching to the students of 2 years diploma course in S.P.(H) with allied duties like admission work, ex-amination work, internal assessment etc.
23.2.88 to 22.8.88	Jr. Lecturer in S.P.(H)	2000-3200	- do -
23.8.88 to onwards	Representation pending as the post abolished w.e.f. 13.7.88 and in lieu of same Lecturer post created		- do -

2. It is further certified that Miss Vijay has been teaching since 26.7.1984 three subjects such as (i) S.P. (ii) B.C. and (iii) G.K. out of the ten prescribed subjects viz. (i) Sectt. Practice (ii) Business Organisation (iii) General Knowledge (iv) Accountancy (v) Type (theory) (vi) Shorthand (Theory) (vii) Type Practical (viii) Shorthand Practical (ix) Hindi and (x) Business Correspondence to the students of 2 years diploma course in S.P.(H).

She has been teaching 19 hours a week against prescribed teaching load of 16 hours a week for a lecturer. Her

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performance/results in the subjects of teaching is as under:-

<u>ACADEMIC YEAR</u>	<u>PART I</u>	<u>PART II</u>
1984	96%	100%
1985	95%	100%
1986	100%	100%
1987	100%	100%
1988	100%	100%
1989 Continuing		"

3. The present application was filed in the Tribunal on 3.12.1990. On 12.12.1990, the applicant wrote to the Principal of the Polytechnic informing her about the filing of the present application in the Tribunal. On the same day, the Principal passed the following office order, endorsing a copy to the applicant:-

" OFFICE ORDER

It has been brought to my notice by Mrs. N. Prasad, H.O.D. that inspite of her verbal advise given to me on 28th Nov., 1990 not to engage classes, she is continuing teaching and insisting on written orders. The Joint Director of Tech. Education vide order No.F. 194/2/90-91/TE/AD/24899 dated 30.11.1990 has also made it clear that teaching assignments are to be given only to regular faculty or qualified part time lecturer. Ms. Vijay. Kumari is accordingly not covered under any of the two categories. She should comply with the above orders".

(Vide Annexure A-8, page 33 of the Rejoinder)

4. On the receipt of the aforesaid office order, the applicant wrote to the Principal requesting for giving to her the copy of the orders of the Joint Director dated 30.11.1990, on the basis of which, the said order has been issued so as to apprise this Tribunal. She also stated that at the time of issuing the said office order, the fact of her having filed the present application in the Tribunal has escaped the attention. of the Principal.

5. On 17.12.1990, the Principal issued the following office order, whereby the applicant was transferred from Secretarial

Practice Department to Medical Lab. Technology Department:-

" Miss Vijay Kumari, Lab. Attendant is hereby transferred from Secretarial Practice Department, to Medical Lab. Technology Department with immediate effect. She is advised to report to lecturer-incharge, M.L.T."

(Vide Annexure A-8-A, page 34 of the Rejoinder)

6. In the endorsement of the office order to the Joint Director, the Principal has stated that "above transfer was necessitated in administrative as well as academic interest. Matter was also discussed with him personally".

7. The case of the applicant is that her reversion from the post of Jr. Lecturer to her substantive post of Laboratory ~~Assistant~~ ^{Attendant} is mala fide and for extraneous considerations. Admittedly, from 16.5.1984 till the respondents directed the applicant to discontinue teaching assignment, the applicant had in fact performed teaching work, as is borne out from the certificate issued by the Principal, referred to above. It is true that from 1984 to 1988, she drew only the salary of Laboratory ~~Assistant~~ ^{Attendant} but during that period she was paid some honorarium. From 23.2.1988 to 22.8.1988, she was paid the salary of Jr. Lecturer.

8. The respondents have stated in their counter-affidavit that the applicant did not possess the requisite qualification for direct recruitment in accordance with the Recruitment Rules of 1986. The rules prescribed that the person concerned should possess B.A./B.Com Degree in IIInd Division, 2 years diploma in Sectt. Practice from a recognised university or institution or equivalent and three years teaching experience in the field of English/Hindi Stenography from a recognised university. As against this, the applicant possessed B.A. degree IIIrd Division, M.A. degree in Hindi IIIrd Division and diploma in Sectt. Practice.

9. The Recruitment Rules were, however, amended in 1988, according to which, the qualifications prescribed for the post of ~~Jr.~~ ^a Lecturer is graduate from recognised university or equivalent, 2 years diploma/2 years certificate in Sectt. Practice from a recognised university/institution and 2 years

teaching or professional experience.

10. There is no doubt that the applicant fulfils the qualifications prescribed by the amended rules of 1988. Strictly speaking, she does not fulfil the qualifications prescribed under the old rules of 1986 to the extent that she holds a IIIrd Division in B.A. though she possesses Masters Degree in Hindi which is a higher qualification. The fact that she has scored only IIIrd Division in the M.A. does not detract from the fact that M.A. degree is superior to B.A. degree IIInd Division. At any rate, the respondents found her fit to do teaching job and the certificate given by the Principal indicates that she had been teaching from 1984 to 1989, 19 hours a week against the prescribed teaching load of 16 hours a week for a lecturer. The Madan Committee recommended restructuring of staff in Engineering Institutions/ Polytechnics in the Union Territory of Delhi. In implementation of the recommendations of the said Committee, the Ministry of Human Resource Development, Department of Education, Government of India, wrote to the Secretary, Technical Education, Delhi Administration on 25.9.1987 as follows:-

"The existing staff which will be declared surplus by virtue of the implementation of Madan Committee recommendations may be absorbed in the revised structure provided they fulfil the necessary prescribed qualifications in the required post. However, the existing staff members who do not have the requisite qualifications for appointment in a particular grade should be given an opportunity to upgrade/improve their qualifications within a period of 8 years and they be sent for this purpose to the appropriate institutions under the available schemes".

11. The question arises whether in the light of the afore-said recommendations made by the Government of India, the reversion of the applicant from the post of Jr. Lecturer to her substantive post of Lab. ~~Assistant~~ ^{Attendant} is legally tenable. On 30.12.1988, the Services Department of the Delhi Administration gave the following opinion in this regard:-

"If Smt. Vijay Kumari continues on the post of Jr. Lecturer on ad hoc basis, her extension on this higher

post can be considered by the department. But in case she has already been reverted to the lower post as stated in X on pre-page, it may not be advisable to promote her again to this higher post even for a limited period unless the department feels justified to do so".

(vide Annexure A.8, page 38 of the paper book)

12. Prior to that date, however, the respondents had reverted the applicant from the post of Jr. Lecturer to that of Laboratory ~~Assistant~~ ^{Attendant} with effect from 23.8.1988 by order dated 19.9.1988, which reads as follows:-

"In continuation of this Directorate order of even number dated 24.7.1988, and with prior approval of Secretary, Training and Technical Education, Miss Vijay Kumari, appointed as Jr. Lecturer, Secretarial Practice (Hindi), on purely ad hoc and emergent basis stands reverted to her original post of Laboratory Attendant w.e.f. 23.8.1988".

(Vide Annexure A-2, page 26 of the paper book)

13. We have gone through the records of the case carefully and have given careful thought to the rival contentions. In our opinion, the impugned action of the respondents in reverting the applicant from the post of Jr. Lecturer to that of Laboratory ~~Assistant~~ ^{Attendant} by the impugned order dated 19.9.1988 is not legally sustainable. The Government of India have informed the Delhi Administration that those who fulfilled the necessary prescribed qualifications should be absorbed in the revised structure in implementation of the Madan Committee recommendations. Those who did not have the requisite qualifications were required to be given an opportunity to upgrade/improve their qualifications within a period of 8 years and for this purpose, they were to be sent to appropriate institutions under the available schemes. In the instant case, the action taken by the respondents is not in conformity with the aforesaid directives given by the Government of India.

14. Our attention has been drawn to the orders passed by the respondents, whereby the surplus staff have been adjusted against posts of Lecturers. In the order dated 27.4.1989, the name of the applicant figures at S.No.5 but she had been adjusted against the post of a lady Lecturer (Secretarial Practice Hindi) only upto 22.8.1988. In our view, this is discriminatory and violative of the principles of justice and fairness. The Services Department of the Delhi Administration had also given the opinion that if the applicant continued on the post of Jr. Lecturer on ad hoc basis, her extension on the higher post of Lecturer could be considered by the Department.

15. In the conspectus of the facts and circumstances of the case, the application is disposed of with the following orders and directions:-

(i) We set aside and quash the impugned order dated 19.9.1988 whereby the applicant was reverted from the post of Jr. Lecturer to the post of Laboratory ~~Assistant~~ ^{Attendant} with effect from 23.8.1988, the impugned order dated 12.12.1990 whereby the applicant was divested of her teaching assignment in the Women's Polytechnic and the impugned order dated 17.12.1990 whereby she was transferred from Secretarial Practice Department to Medical Lab. Technology Department. The applicant should be adjusted against the post of lady Lecturer (Secretarial Practice Hindi) notwithstanding the fact that she has worked as Jr. Lecturer only on ad hoc basis.

(ii) The respondents are directed to give to the applicant salary of the post of Jr. Lecturer from 23.8.1988 onwards.

(iii) The respondents are directed to consider appointing the applicant as Lecturer on regular basis if she fulfils the necessary prescribed qualifications. If it is found that she does not possess such qualifications, the respondents shall give adequate opportunity to upgrade/improve her ^a qualifications within a


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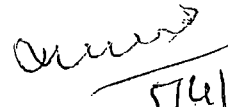
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period of 8 years and for this purpose, send her to the appropriate institutions under the available schemes, as envisaged in the letter No.F-1-27/81-T-2/T-10(Pt. File dated ²25.9.87) from the Ministry of Human Resource Development addressed to Delhi Administration at Annexure A-6 to the application.

(iv) The respondents are directed to comply with the aforesaid directions within a period of three months from the date of receipt of this order.

There will be no order as to costs.


(D.K. CHAKRAVORTY)
MEMBER (A)


(P.K. KARTHA)
VICE CHAIRMAN(J)