

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 570/  
XXXXXX

1991

(7)

DATE OF DECISION 5-6-91

MRS. ALAYAMMA Petitioner

SHRI D.R. GUPTA Advocate for the Petitioner(s)

THE PRINCIPAL, GOVT. OF INDIA,  
R.A.K. COLLEGE OF NURSING, N.DELHI Respondent

MRS. RAJ KUMARI CHOPRA Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. D.K. Chakravorty, Hon'ble Member (A)

The Hon'ble Mr. J.P. Sharma, Hon'ble Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Y
2. To be referred to the Reporter or not ? Y
3. Whether their Lordships wish to see the fair copy of the Judgement ? X
4. Whether it needs to be circulated to other Benches of the Tribunal ? X

Donee(J.P. SHARMA)  
MEMBER (J)Dechbhuji 5/6/48,  
(D.K. CHAKRAVORTY)  
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

OA NO. 570/1991

DATE OF DECISION 5.6.91

MRS. ALAYAMMA RAJAN

.....APPLICANT

VS.

THE PRINCIPAL, GOVT. OF INDIA, .....RESPONDENT  
RAJKUMARI AMRIT KAUR COLLEGE  
OF NURSING, NEW DELHI

CORAM

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

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

FOR THE APPLICANT

.....SHRI D.R. GUPTA

FOR THE RESPONDENTS

.....MRS. RAJ KUMARI CHOPRA

JUDGEMENT

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

The applicant who was employed as L.D.C. with the respondent, filed this application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the order of her termination (though alleged to have not been served dated 2.3.1991). The applicant has claimed the following reliefs :-

- (i) That the Hon'ble Tribunal may be pleased to set aside the arbitrary order terminating the services of the applicant as having been made against the principles of natural justice and in contravention of the Constitutional provisions.
- (ii) That the Hon'ble Tribunal may direct the respondent to treat the applicant in continuous service as if

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the order of termination has not been made. Further, the respondent be directed to continue the applicant against the existing vacancy and consider her for regularisation of her appointment as L.D.C.

(iii) Any other relief which the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

The facts of the case are that the applicant was appointed as L.D.C. by the order dated 22.8.1988 w.e.f. 5.9.1988 and on various dates till 4.12.1990, her appointment was terminated and subsequently she was re-appointed on various dates shown below :-

(1)	5.9.1988	appointed by order dt. 22.8.1988
(2)	2.3.1989	terminated order dt. 14.3.1989
(3)	4.3.1989	appointed order dt. 20.3.1989
(4)	31.8.1989	terminated order dt. 14.9.1989
(5)	2.9.1989	appointed order dt. 14.9.1989
(6)	1.9.1989	appointed order dt. 1.9.1989 (For 6 months)
(7)	27.2.1990	terminated order dt. 8.3.1990
(8)	1.3.1990	appointed order dt. 12.3.1990
(9)	31.8.1990	terminated order dt. 18.9.1990
(10)	4.9.1990	appointed order dt. 14.9.1990
(11)	1.12.1990	terminated order dt. 31.12.1990
(12)	4.12.1990	appointed order dt. 31.12.1990 (For 3 months).

The order dated 22.8.1988 is as follows :-

"Km. Aleyamma Phillip is informed that she has been selected for appointment to the post of Lower Division Clerk on ad-hoc basis in the pay scale of Rs.950-20-1150-EB-25-1500. In case Km. Aleyamma Phillip accepts the offer, she may report for duty to the undersigned immediately but not later than 5th September, 1988. If no reply is received by the stipulated date, it will be presumed that she is not interested in the offer which will be treated as cancelled."

The order dated 17.9.1988 giving appointment is in Hindi and when translated into English reads as follows :-

"Kumari Alayamma Phillip is appointed in a leave vacancy on ad-hoc basis w.e.f. 5.9.1988 (F/N) as L.D.C. in the scale of Rs.950-20-1150-EB-25-1500."

The other appointment orders issued to the applicant from time to time, which the applicant has herself filed as annexures to the application, go to show that she has been appointed afresh only on leave vacancy and not on a clear vacancy. These facts, therefore, are not disputed.

2. The case of the applicant is that she has been working since 5.9.1988 as L.D.C. with artificial breaks given by the respondents occasionally and so having put in a longer year of service of more than 2 years, she cannot be unceremoniously terminated in view of the fact that one Rajni Aggarwal has been given a fresh appointment as L.D.C. on 2.2.1991 though the services of the applicant are said to have been terminated by the order dated 2.3.1991. There exists about 9 sanctioned posts of L.D.C. and so the applicant deserves to be retained in service and regularised.

3. The respondent filed a short reply and took a preliminary objection that the applicant had concealed the material facts in the application regarding her appointment only on ad-hoc basis in a leave vacancy and as she has not

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come with clean hands, the application is liable to be dismissed on this account alone. It is stated that the application is also hit by doctrine of acquiescence as the applicant was well aware that her appointment was against leave vacancy and that too on purely ad-hoc basis and yet she accepted with open eyes. The applicant's services were terminated w.e.f. 2.3.1991 and she filed the petition, i.e. the Original Application much after that, i.e., on 6.3.1991 and ex-parte stay order was got by her on 7.3.1991 by making a false statement.

4. The learned counsel for the applicant, during the course of the arguments, has also produced a registered letter sent at the residential address of the applicant wherein there is an endorsement that the applicant is away for a long period, but the applicant herself visited the office on 11th and 12th March, 1991 while the endorsement by the Postman on the registered envelope is dated 11.3.1991. The Peon Book has also been shown in the presence of the learned counsel for the applicant which goes to show that on 2.3.1991, a letter was sent to the applicant at her residence-Quarter No.393, Pocket-I, Paschim Vihar, New Delhi and she refused to accept the same.

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5. The respondents, therefore, stated that the application be dismissed and the applicant is not entitled to any relief.

6. We heard the learned counsel for the applicant at length and gone through the record of the case. The learned counsel for the applicant has not filed any Recruitment Rules regarding the recruitment to the post of L.D.C., but as the applicant claims the appointment of L.D.C. in a Central Government Office/Organisation, then she can come only through Staff Selection Commission by regular competition and not otherwise. The question whether Lower Division Clerks appointed on casual ad-hoc basis are entitled to regularisation or whether they should give way to the nominees of the Staff Selection Commission, has been in issue for a long time and the matter has also gone up to the apex court. The engagement of the applicant has been from time to time for a particular number of months and she has been appointed in leave vacancy, so it cannot be said that she has been given appointment on a clear vacancy. The applicant has alleged in the application that there are 9 sanctioned posts, but the regular appointments to those posts of L.D.C. can only take place by a competitive examination to be conducted by S.S.C. who shall sponsor the name of the candidates for ultimate appointment with the respondents. This

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fact is not disputed. What the learned counsel pressed during the course of arguments is that as the applicant has worked continuously as L.D.C. for about 2 years with artificial breaks, she should be regularised. In this connection, the learned counsel has referred to the judgement of the Hon'ble Supreme Court in Jackob M.Patuparambil and Others Vs. Kerala Water Authority and Others-JT 1990 (4) S.C. Page-27 where the Hon'ble Supreme Court considered a similar issue relating to the regularisation of persons who had been appointed on ad-hoc basis for several years. The Supreme Court had directed the respondents to regularise the services of such employees who have put in continuous service of not less than one year, as a separate block in consultation with the Kerala Public Service Commission. In doing so, the Kerala Public Service Commission has been directed to take the age factor as waived. In arriving at this conclusion, the Supreme Court relied upon its earlier decision in P.K. Narayani & Others Vs. State of Kerala & Others, 1984 Suppl. S.C.C. 212 and in Dr. A.K. Jain & Others Vs. Union of India & Others, 1987 S.C.C. 497. In Narayani's case, the Supreme Court directed that the petitioners and all other similarly placed should be allowed to appear at the next examination that the Public Service Commission may hold without raising the question of age-bar; till then

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they may be continued in service provided there are vacancies. The Court, however, clarified that this will not confer any right on the employees to continue in service or of being selected by the Commission otherwise than in accordance with the extant rules and regulations, the Court gave the above directions describing the case as, 'human problem which has more than one facets' In Dr. A.K. Jain's case, the services of ad-hoc Assistant Medical Officers who were initially appointed for six months but were continued for periods ranging upto four years, were sought to be terminated to accommodate the candidates selected by the U.P.S.C. The petitioners claimed that their services should be regularised. The Supreme Court directed the regularisation of the services of all members appointed upto 1st October, 1984 in consultation with the U.P.S.C. on the evaluation of their work and conduct based on the Confidential Report in respect of the period subsequent to October 1, 1982. The Supreme Court also relied upon its earlier decision in daily rated casual labour employees under P & T Department Versus Union of India & Others-1988 (1) S.C.C. P-122. On the basis of the above judgement, the learned counsel for the applicant pointed out that since the applicant has worked for a number of years and Rajni Aggarwal, junior to the applicant has been given employment on 2.2.1991, in that case the services of the applicant should not have been terminated. The learned

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counsel for the applicant also placed reliance on the case of Guru Prasad Vs. Union of India reported in 1988 (6) ATC 47. In this case also, the Jabalpur Bench allowed the applicants, Arun Kumar and Guru Prasad who has put in one year of services in aggregate at the time of their termination to be given an opportunity of appearing at the next examination of the S.S.C. for their recruitment and regularisation on the post of L.D.C. if they fall within the zone of selection on the result of the examination. Taking the above settled view on this point, we find that the respondents have not denied the parawise allegations made in the application by the applicant, particularly with regard to the appointment of one Rajni Aggarwal as L.D.C. w.e.f. 2.2.1991 and as such when a junior to the applicant is continuing, then in the same vacancy, the applicant could have been allowed to continue. In fact, the applicant has no case to be regularised nor the applicant has made out any substantial cause to continue in service, but when a junior to the applicant is already there, then the services of the applicant could not be terminated and the applicant should have been allowed to continue.

7. We are, therefore, of the opinion that the respondents take steps to regularise the services of the applicant in consultation with the S.S.C. and the age restriction shall be waived in the case of the applicant if she has become

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over-age. The services of the applicant shall not be dispensed with if there is still a vacancy and the junior to the applicant is allowed to work and if that is the case, the applicant should also be given the minimum of the pay <sup>as said above through S.S.C.</sup> scale of L.D.C. till she is regularised <sup>w.e.f.</sup> the date of this order. The respondents shall comply with the above directions within a period of three months from the receipt of this order. There will be no order as to costs.

Signature:

(J.P. SHARMA) 576/9  
MEMBER (J)

Signature -  
(D.K. CHAKRAVORTY) 576/48,  
MEMBER (A)