

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.349/2004

(8)

New Delhi, this the 23rd day of July, 2004

Hon'ble Shri S.K. Naik, Member(A)

Sangeeta Vashist
A-6/216, Paschim Vihar
New Delhi

Applicant

(Shri Subhash Sharma, Advocate)

versus

1. Director
Central Hindi Training Institute
M/Home Affairs, CGO Complex
New Delhi
2. Secretary
Dept. of Official Language
Ministry of Home Affairs, New Delhi
3. Secretary
Staff Selection Commission
Lodhi Road, New Delhi

Respondents

(Shri B.S.Jain, Advocate)

ORDER

Heard the learned counsel for the parties and
considered the pleadings.

2. Some of the relevant facts, which are not in dispute, for the purpose of proper adjudication of this case are that the applicant, who was working as LDC in the office of 1st respondent from November, 1994, had earlier filed OA 976/2001 challenging her termination w.e.f. 16.4.2001 and seeking regularisation w.e.f. date of initial appointment. This OA was disposed of by the Tribunal vide its order dated 16.1.2002 with the following observations:

2. In the event the applicant applies for participating in the selection for direct recruitment to the post of LDC to be held by SSC, she should route the same through the office in which she is working, who in turn will forward the application to the SSC for consideration, for relaxation to the extent that applicant has worked as LDC in respondents organisation. If applicant

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qualifies in the aforesaid selection, she may be considered for regular appointment as LDC, in accordance with rules and instructions on the subject.

3. Meanwhile applicant who is working on ad hoc basis as LDC with respondents since 1994 (even if the same be with breaks) should not be replaced by another ad hoc employee and should be replaced only by a regular employee.

4. This order is being passed in the particular facts and circumstances of this case and shall not be treated as precedent."

3. The applicant, along with three others similarly placed, were allowed to take the examination conducted by SSC but none of them could qualify in the written examination. Thereafter applicant filed CWP 628/2003 before the Delhi High Court for regularisation of her services. This petition alongwith CWP 4346/2002 filed by other three persons were dismissed by the High Court through a common order on 6.11.2003. In pursuance thereof, services of all the four persons including the present applicant were terminated w.e.f. 3.12.2003. Aggrieved by this, applicant is before this Tribunal, seeking a direction to the respondents to re-engage her on ad hoc basis as LDC till the post is filled by a regular employee selected by SSC.

4. Counsel for the applicant has insisted that the respondent-department has still vacancies in the grade of LDC and the applicant may be allowed to continue till regularly selected incumbent for the post takes over. According him, respondents have appointed another person on ad hoc basis in place of the applicant. Citing the decision of the Supreme Court in the case of State of Haryana Vs. Piara Singh & Ors. 1992(3) AISLJ 34, he has contended that an ad hoc employee cannot be replaced by another ad hoc employee.

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5. On the other hand, counsel for the respondents has taken preliminary objection that this OA is hit by the principle of constructive resjudicata because the applicant had not raised the issue of her right to continue until regularly selected candidate is posted in her place while pursuing her case for regularisation before the Hon'ble High Court who have since dismissed her WP. He has denied that any ad hoc appointment has been made in place of the applicant. He has contended that when the applicant has failed in the examination conducted by SSC, the question of taking her back in service does not arise, particularly when the respondent-department does not require the services of LDCs any more. Drawing my attention to the observation made by the Supreme Court in Piara Singh's (supra) case, on which reliance is being claimed by the applicant, which is extracted below:

"Secondly, an adhoc or temporary employee should not be replaced by another adhoc or temporary employee; he must be replaced only a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority".

counsel for the respondents contends that the decision in Piara Singh's case has no application to the present case inasmuch as no ad hoc appointment has been made in place of the applicant and as such no arbitrary action has been taken by the respondents. He further contends that the CP filed by the applicant has also been disposed of vide order dated 16.3.2004 as no contempt whatsoever was made out. The counsel has also drawn my attention to the DoPT OM dated 16.5.2001 on the subject of 'Optimisation of direct recruitment to civil posts' and submitted that in terms of this OM, since fresh

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recruitment is limited to 1% of total civilian staff strength, respondent- department is not making any direct recruitment in the grade of LDC.

6. The counsel concluded his argument by stating that the Tribunal cannot issue any direction for filling up of the vacancies as optimisation of staff strength had been issued by the government as a measure of policy to cut off the flag in the bureaucracy. In support of his contention he has cited the judgement of the Supreme Court in the case of UOI & Ors. Vs. Majji Jangammayya AIR 1977 SC 757.

7. I have considered the contentions raised by the learned counsel for both the parties. The counsel for the applicant has based his stake on the ground that the applicant having served for more than nine years on ad hoc basis has a right to be continued until replaced by a regularly selected employee. He has relied primarily on the judgement in Piara Singh's case. He has further strongly relied on para 3 of the judgement dated 16.1.2002 extracted above and has contended that since the Tribunal has categorically directed that the applicant should not be replaced by another ad hoc employee and should be replaced only by a regular employee, her right to continue on ad hoc basis will not be extinguished until she is replaced by another regular employee.

8. I am afraid, applicant's counsel has misread the order of the Tribunal. The word "meanwhile" in the judgement extracted above pertains only upto the time the applicant was to take her chance alongwith other candidates in the

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SSC examination and not for an indefinite period. This aspect, I find, has already been dealt with by this Tribunal while disposing of the CP filed by her. Thus, this will not give support to her claim. In so far as reliance on the judgement of Piara Singh is concerned, as has been argued by the respondents' counsel, the apex court had made certain observations on the subject and it cannot be said that it laid down any law on the subject. In the case in hand, applicant having failed to qualify in the test held by SSC, she cannot claim for reappointment or continuation solely on the length of her prior engagement on ad hoc basis. Applicant's counsel has not been able to make me believe that an employee with 9 years of experience who failed to qualify the examination held by SSC will have any right to continue in service even it may be on ad basis when there has been no replacement by a regular employee. Besides, on the basis of the policy decision of the Government with regard to optimisation of staff strength resulting in no further direct recruitment, Tribunal cannot be made a platform to obtain a wrong direction in the matter of continuing in service.

9. Under the circumstances, I find no merit in this OA and the same is accordingly dismissed.

S.K. Naik
(S.K. Naik)
Member(A)

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