

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1268 OF 2001
ALLAHABAD THIS THE 3rd DAY OF JUNE, 2003

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A
HON'BLE MR. A.K. BHATNAGAR, MEMBER-J

Km. Amite Singh,
S/o Sri S.N. Singh,
R/o 525 Old Katra,
Allahabad.

.....Applicant

(By Advocate Shri B.K. Srivastava & Shri Shyamal Narein)

Versus

1. Union of India,
through Secretary,
Ministry of Finance & Review,
Government of India,
New Delhi.
2. Chairman,
Central Board of Direct Taxes,
New Delhi.
3. Commissioner of Income-Tax,
Allahabad.

.....Respondents

(By Advocate Shri R.C. Joshi)

O R D E R

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER-A


In this O.A. filed under section 19 of Administrative
Tribunals Act 1985, the applicant has sought for the following
reliefs:-

"(a) to issue necessary order or direction setting
aside the termination order dated 01.04.1997 passed
by the opposite party no.3 and 9.8.2001 appellate

order passed by the opposite party no.2 Annexure 2 & 7 with this application.

(b) to issue necessary order or direction directing the opposite party no.3 to reinstate the applicant on her post of Typist/L.D.C. with all consequential benefits including arrears of salary as admissible under law within a reasonable time specified by this Tribunal."


2. The facts, in short, are that the applicant applied for the post of Typist in the respondent's establishment. She was selected after written and typing test. She was appointed as Typist on ad-hoc basis (local) on 04.09.1984, She joined on daily wage. The applicant and four others filed O.A. No.1043/90 claiming for equal pay for equal work which was decided on 08.04.1991 in favour of the applicants. The applicant was paid arrears since 01.12.1986. She started getting regular salary since 1991. She attained temporary status and was treated as temporary employee. The applicant alongwith four others filed O.A. No.1909/93 seeking regularisation even without appearing in the Special Qualifying Examination. The O.A. was dismissed on 14.08.1996 and the Tribunal held that "as required by the respondents appearing in the special qualifying test was necessary". The applicant appeared in the special qualifying examination in 1993 in which she failed. She was not given the second chance and her services were terminated vide order dated 01.04.1997. She sent a representation before respondent no.2 on 02.08.1997 for allowing one more chance to the applicant to appear in special qualifying examination. She also filed appeal on 12.01.1998 against termination order dated 01.04.1997. She also filed O.A. No.360/00 praying for suitable direction for deciding her appeal. The O.A. was disposed of by order



dated 14.07.2000 with direction to decide the appeal within three months. However, on non-compliance by the respondents within the specified time the applicant filed contempt petition no.137/00. During pendency of the contempt petition appellate order has been passed on 09.08.2001 rejecting the appeal of the applicant. Hence this O.A. which has been contested by the respondents by filing counter affidavit.

3. Shri Shyamal Narain, learned counsel for the applicant submitted that the Government policy exists for regularisation of Ad-hoc/Dailywage employees without special qualifying examination. Admitting the fact that the applicant failed ^{in the} in special qualifying examination held in 1993, the learned counsel for the applicant submitted that even after the applicant failed, she was allowed to continue for four years till 1997. She should have been given second opportunity to appear in the special qualifying examination as has been held by Full Bench in the case of Jathanand Versus Union of India. However, the applicant was not afforded second chance.

4. The learned counsel for the applicant further submitted that the applicant has unblemished service of about 13 years under respondents and ^{there} has been no complaint against the applicant yet she was given no notice or opportunity of hearing before the termination order dated 01.04.1997 was passed. Thus, the respondents have violated the principles of natural justice. The learned counsel for the applicant also submitted that number of persons employed after 1994 are still working on ad-hoc basis like one Shri Ashok Kumar and Asha Das. The respondents have not followed the principle



of first come last go which is required as per law in regard to ^{temporary} government servants. The learned counsel for the applicant finally submitted that in the appellate order the point raised by the applicants have not been addressed. The appellate order is a non-speaking order.

5. Resisting the claim of the applicant the learned counsel for the respondents submitted that for regularisation the applicant is required to pass the special qualifying examination. She appeared in 1993 and failed. Therefore, she is not entitled for retention in service. The respondents have also contended that no temporary status was conferred on the applicant and she was paid minimum of the scale due to courts order passed in O.A. No.1043/90. The respondents also submitted that for regularisation the scheme of Central Board of Direct Taxes for appearing in the special qualifying examination was one time measure and no provision exists for giving the second chance. The respondents have admitted that the service of 36 ad-hoc stenos working under CCIT Kanpur were regularised without their appearing in the examination in concurrence with Central Board Of Direct Taxes. All regular appointment to grade D and C are made through Staff Selection Commission as per statutory recruitment rules and, therefore, the applicant cannot be regularised.

6. We have heard counsel for the parties, considered their submissions and perused records.

7. It is an admitted fact, that the applicant has rendered about 13 years of unblemished service under the respondents. It is also admitted that applicant failed in the special

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qualifying examination held in 1993 but she was retained for about four years ^{whereafter} thereafter. ^{her services} her services were finally terminated by order dated 01.04.1997. The point for consideration before us is, as to what was the requirement of the respondents to have retained the applicant in the service for four years specially when she failed in the special qualifying examination held in 1993. The answer appears to be very simple i.e. the performance of the applicant was satisfactory and there was a requirement of stenos in the respondent's establishment. It ^{is} also not been denied by the respondents that number of persons were employed on ad-hoc basis after 1994 who are still working. Therefore, it is established that the work is there and once a willing ad-hoc employee was available, her claim should have been considered. We find force in the argument of the learned counsel for the applicant, that the applicant could have been continued in preference to those ad-hoc employees who were appointed after 1994.

8. We would also like to observe that once the applicant failed in 1993 special qualifying examination and was retained in service for four years thereafter, she had a legitimate expectancy about her continuing in the respondent's establishment.

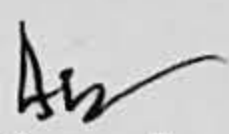
9. In para 10 of the RA, the applicant has given the names of 31 persons working under Chief Commissioner of Income Tax, Kanpur, who have been regularised without their appearing in the special qualifying examination. In para 7 of the Suppl. counter affidavit, the respondents have accepted this position and have stated that this has been done in concurrence with the Central Board of Direct Taxes.


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10. We are of the view that if the Central Board of Direct Taxes^d could concur for the regularisation of the services of 36 ad-hoc stenos without their appearing in Special qualifying examination, the same policy could have been adopted in regard to others as well including the applicant who had put in number of years of unblemished service. Since there is a admission to the effect that similarly situated persons are in ^{effective} service even today, the case of the applicant cannot be isolated in law, as there should have been a ^{uniform} policy and the applicant is entitled to the same benefits which other similarly situated persons are enjoying.

11. In the facts and circumstances and our aforesaid discussions, the O.A. is allowed. The order dated 01.04.1997 (Annexure-1) and order dated 09.08.2001 (Annexure-2) are quashed. The respondents no.3 i.e. Commissioner of Income Tax, Allahabad is directed to reinstate the applicant within one month from the date of communication of this order and to take up the case for the regularisation of the applicant with respondent no.2 on the same terms and conditions as has been done in respect of similarly situated persons under CCIT, Kanpur. The applicant ^{will} not be entitled for any arrears of pay for the period she has not worked with the respondents. However, her previous services shall be counted for the purpose of seniority and pension.

12. There will be no order as to costs.


Member-J


Member-A

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