

11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

O.A. No. 182 OF 1986.  
~~T.A. No.~~

DATE OF DECISION 2.3.1989

MISS. KAPADIA DIPTI THAKORLAL. Petitioner

MR. P.S. CHARI Advocate for the Petitioner(s)

Versus

THE UNION OF INDIA & ORS. Respondents.

MR. J.D. AJMERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal. *No*

Miss. Kapadia Dipti Thakorlal,  
Ambli-ni-pole, Kabir Mandir,  
Third Floor, 1393/3,  
Raipur Chakla,  
Ahmedabad.

12  
.... Petitioner.

(Advocate : Mr. P.S. Chari)

Versus.

1. Shri K.S. Khatri and/or  
his successor in the office  
Superintending Surveyor,  
Survey of India,  
In-charge No.6 Party (WC)  
Ashram Road, PB No. 4122,  
Ahmedabad 380 009 (Gujarat)
2. Shri Girish Kumar and/or his  
successor in the office of  
Dy. Superintending Surveyor,  
In-charge No.6 Party (WC),  
Survey of India,  
Ashram Road,  
Ahmedabad 380 009.
3. The Director,  
Western Circle,  
Survey of India,  
Jaipur.
4. The Dy. Director of Census Operations,  
Gujarat, Kerawala Building,  
Opp: V.S. Hospital,  
Ellisbridge, Ahmedabad-6. .... Respondents.

(Advocate : Mr. J.D. Ajmera)

J U D G M E N T

O.A.No. 182 OF 1986

Date: 2.3.1989.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioner Miss. Kapadia Dipti Thakorlal of Ahmedabad has filed this application on 29.7.86 under section 19 of the Administrative Tribunals Act, 1985, for the redressal of her grievance against the order of termination dated 27.2.1985. The petitioner has challenged the validity of the impugned order passed by Mr. K.S. Khatri,

13

Superintending Surveyor, whereby her services are terminated with effect from 28.2.1985. The said order (Annexure 'A') reads as under :-

No.430/4-E-i-i

SURVEY OF INDIA  
Office of No. 6 Party (WC),  
Ashram Road, PB No. 4122,  
Ahmedabad 380 009 (Gujarat)

Dated the 27.2.85

To

Miss. Kapadia Dipti Thakorlal.

Sub: Appointment in the post of L.D.C. on  
ad hoc basis.

Your appointment in the post of L.D.C. on ad hoc basis is hereby cancelled and terminated w.e.f. 28.2.85 (F/N) from the office of No. 6 Party (WC), Survey of India, Ahmedabad 380 009 (Gujarat).

2. According to the case set up by the petitioner the order of termination is passed under the assumption that the petitioner was over-aged. It is alleged that the work does exist in the office and the persons working with <sup>her</sup> her also continues in the same department and hence the impugned order is a camouflage. It is further submitted that the impugned order is bad in law as she ~~has~~ not been afforded any opportunity of being heard. The petitioner has therefore prayed that the impugned order be quashed and set aside and the respondents be directed to reinstate with all backwages on the post of Lower Division Clerk.

3. The respondents in their Affidavit-in-reply filed by Major K.S. Khatri, Superintending Surveyor, have resisted the petitioners' application on the grounds inter-alia that the appointment offered to the petitioner was purely temporary in the place of Mr. R.N.Mehta, who was promoted purely on ad hoc basis for a period not exceeding 90 days and on

14

completion of his tenure, he having reverted back to his substantive post of Clerk (LDC) on 26.2.85, the impugned order has been passed on 27.2.85. According to them, the services of the petitioners were not terminated on the ground of her being over-aged on the date of appointment. The stand of the respondents is that the services of the petitioner has been terminated as it was no longer required as there was no vacancy and hence the petitioner is not entitled to claim any relief.

4. When the matter came up for hearing Mr. P.S. Chari and Mr. J.D. Ajmera, the learned counsel for the petitioner and the respondents, respectively, waived oral hearing and preferred to file their written submissions. As permitted, they have filed their written submissions. The materials placed on record including the written submissions are perused and considered.

5. The main grievance of the petitioner is that the respondents have terminated her services on the basis of her being over-aged at the time of her appointment and hence the impugned order is in violation of principles of natural justice and hence it is liable to be set aside. According to her, the order of termination suffers from infirmity and legal malafides. In support of her submissions the reliance has been sought on the cases viz;

- (1) Ramgiri Keshavgiri Goswami V/s. K.M.Raval & Ors. 1985 G.L.H. p.315.
- (2) Anand Prakash V/s. Union of India, C.W.P. No. 1203 of 1983, Rajasthan High Court, 1986 F.L.R. (Summary of cases) p.8.
- (3) State of Orissa V/s. Dr.(Miss) Binapani Dei & others. A.I.R. 1967 S.C. 1269

15

6. At the outset it may be stated that the petitioner was appointed to the post of clerk (LDC) in Group 'C' ministerial establishment purely on adhoc basis, as per the terms and conditions of the appointment <sup>laid down in</sup> letter dated 30th November, 1984 (Ann.'E'). It was stipulated that her services are liable to be terminated with one day simple notice. It is borne out from the materials brought on record that when S/Shri B.N. Tadvi & R.N. Mehta were promoted purely on adhoc basis to the post of U.D.C. for a period not exceeding 90 days, three candidates including the petitioner were selected. Letters offering purely adhoc appointments for periods not exceeding 90 days were issued on 25.10.84 to the two selected candidates directing them to report duty on 1.11.84. It is stated that Shri Jadav reported on 2.11.84 but when Kum. Narsinghani failed to do so, the petitioner was given offer of appointment purely on adhoc basis vide letter dated 30.11.84. Thus, it is obvious that the petitioner was appointed on adhoc basis in the place of Shri R.N. Mehta who was promoted purely on adhoc basis.

8

8. It is pertinent to note that the fact that Shri R.N. Mehta was reverted back to his substantive post of clerk (LDC) on completion of his tenure of adhoc promotion i.e. from 28.11.84 to 25.2.1985 is not in dispute. More over there is nothing on the record to even suggest that the services of the petitioner was terminated on the ground of over-age. The letter dated 4.3.85 stating ("इन्हें आयुमें छूटकी पात्रता है") = "applicant is entitled to relaxation", supports the Respondent's stand, on the point. The

16


case of Ramgiri Goswami (supra) is of no assistance to the petitioner. The contentions therefore canvassed by the petitioner are based on conjectures and wrong assumptions. It is now settled law that an order terminating the services of a temporary Government servant, an ex-facie innocuous, in that it does not cast any stigma on the Government servant or visits him with penal consequences, must be regarded as effecting a termination simpliciter.

8. The respondents in their counter has clearly stated that in case the over-age was to be taken into consideration, she could not have been appointed. The petitioner in response to her representation dated 10.7.85, was informed by the Superintending Surveyor under his reply (Annexure 'F') dated 18.10.85, that her services were no longer required by his unit and the same were terminated after giving one day notice on 27.2.85 in terms of para No.2(i) of the appointment order. It is not the case of the petitioner that any person junior to her is retained. Thus it can not be said that the impugned order suffers from any vice of arbitrariness as alleged. The impugned order therefore does not suffer from any infirmity whatsoever.

9. Before parting with this case, we note that Mr. Chari, the learned counsel for the petitioner for the first time in his written submission has attempted to rely on the case of Anand Prakash (supra) wherein it was held that termination of employee working in "Census Department", without following Section 25 F of the I.D. Act is illegal.

In this regard, it may be stated that the petitioner in her application has not raised any such plea. The petitioner worked on the post as L.D.C. from 30.10.84 to 27.2.85 (i.e., only for 4 months). Some time prior to it, she only worked as "Coder" and that too for a specified period. Thus, knowing well this position the petitioner has not assailed the impugned order on the ground of non-compliance of S. 25 F of I.D. Act. Obviously, the petitioner can not be allowed to raise a plea which has not been taken in the application. Even otherwise having regard to the fact that she worked as L.D.C. for a period of 4 months only, petitioner can not be said to have been covered by S.25 F as contended.

10. In this view of the matter, we find no merits in this petition. The impugned order i.e., termination of service of the petitioner is held quite legal and valid. The petition is accordingly dismissed with no order as to costs.

  
( P.M. JOSHI )  
JUDICIAL MEMBER

  
(P.H. TRIVEDI)  
VICE CHAIRMAN