

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.13/85
Application Stamp No. 19/85

1. Kum. Shamim Basheeruddin Khan, I

... Applicant

V/s.

1. Union of India
2. The Flag Officer Commanding-
in-Chief Head Quarters,
Western Naval Command,
Shahid Bhagatsingh Road,
Bombay-1.
3. The Naval Armament Supply
Officer, Naval Armament
Depots, Bombay & Karanja.
4. G.B.Nair.
5. Kum. S.R.Salvi
6. Kum. J.K.Kapadne
4 to 6 serving as Telephone
Operator Gd.II at Naval
Armament Depot, Karanja
(Uran).

*Action
Complete*

... Respondents

Coram: Vice-Chairman Justice B.C.Gadgil

Member

J.G.Rajadhyaksha

Oral Judgment: (Per Vice-Chairman Justice B.C.Gadgil)

The short question that arises in this application is as to whether the termination of the services of the applicant w.e.f. 20th of November, 1985 is legal and valid. There are certain facts which are not in dispute. Initially, Western Naval Command appointed the applicant as a Telephone Operator w.e.f. 23.4.84 (vide page 29 of the compilation). That appointment was on casual basis and the services of the applicant were liable to be terminated without any notice. The appointment was for a period from 23.4.1984 to 30.9.84. It seems that there were some difficulties that were experienced by the Naval Armaments Supply Officer, while taking the applicant and other Lady Telephone Operators on duty. He, by his letter dt. 23rd April, 1984, wrote to Respondent No.2 that in view of those difficulties, it would be better if Male Telephone Operators are employed

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The main difficulty was that the Telephone Exchange was located in a place where there were no good Washing and Toilet facilities. Thereafter, a decision was taken to shift the Telephone Exchange to some other convenient place, as can be seen from the letter dt. 14.6.1984 (vide exhibit 31 of the compilation). Thereafter, a fresh appointment order was issued to the applicant on 2.7.1984 and she joined her posting. That appointment was again on a casual basis for a limited period. The appointment was continued from time to time, the last such continuance is dated 18.11.1985 (vide page 22) which states that the appointment of the applicant would continue upto 20.11.1985. After this letter of 20th November, 1985 there was no further continuance. Consequently, the applicant is not on duties since then. The grievance of the applicant is that this dis-continuance of service after 20.11.1985 amounts to illegal removal from service and in that background she is entitled to reinstatement and all consequential benefits. Before considering the reply of the Respondents, we may also observe that the applicant relies upon an order dated 4th October, 1985 (page 20 of the compilation) whereunder the applicant and certain other Telephone Operators were appointed on regular basis, but on probation for a period of 2 years from 1st October, 1985. The letter further states that the services will be terminated without any notice, during the probation period. Mr. Thakore relies upon this order for the purpose of contending that the earlier appointment of a casual nature has been converted into a regular appointment on probation.

2. The Respondents have filed an affidavit in reply. They did not challenge that the applicant was appointed on casual basis. Their main contention is that the services of the applicant stood terminated at

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the end of 20.11.1985, as it is only till that date that the services were continued. It was then contended that the letter dt. 4th October, 1935 appointing the applicant on probation was not at all served on the applicant and that in substance it was withdrawn. It is also stated that this can be seen from paragraph four of the order dated 18th November, 1985 (vide page 22). It was also stated, in reply, that a decision was taken not to appoint the applicant even on probation on account of some adverse factors which were mentioned in a confidential correspondence.

3. There is no dispute that the vacancy in which the applicant was appointed was a clear vacancy. At one stage Mr. Thakore submitted that the appointment of casual nature was effective from 23.4.1984 and not from 2.7.1984. We have already observed that initially there was an appointment letter dt. 23.4.1984. Mr. Thakore wants to rely upon it for the purpose of contending that the said appointment letter continued to be operative so long as it had not been withdrawn. In our opinion this submission is without any substance. The simple reason is that the applicant did not make any grievance till she filed the present application about non-receipt of salary from 23.4.1984 to 1.7.1985. The second important factor is that the Respondents have issued a fresh appointment letter on 28.6.1984. The first appointment dt. 23.4.1984, would have been valid up to 30.9.1984. If it was to be observed in that background, one does not understand as to what was the necessity for the Respondents to issue a fresh appointment letter dated 28.6.1984 w.e.f. 2.7.1984. It was rightly urged by Mr. Sethna that this subsequent

appointment from 2.7.1984 meant that the earlier appointment had not been given effect to and that the applicant joined duties on the basis of the later appointment letter.

4. The next point that is urged by Mr.Thakore is that the applicant's services have been regularised on probation basis and consequently the termination of service is bad. We have already observed that there is a dispute as regards the issue of the order dt. 4.10.1985 under which the applicant is said to have been appointed on probation. There appears to be much substance in the contention of the Respondents that this order though prepared had not been delivered to the applicant. In that background, the matter need not be decided by accepting the said order dated 4.10.1985 as a valid one. In its absence the services of the applicant were continued only upto 20.11.1985. In the absence of any further orders, those services came to an end after 20.11.1985. There is nothing wrong with this.

5. The matter would not be important even if it is assumed that the order dt. 4.10.1985 was a valid one and having a binding force between the parties. We have already observed that by that order the applicant was appointed on probation for a period of 2 years from 1.10.1985, but that is not enough. It is further mentioned in the order that the services of the applicant are liable to be terminated without any notice during the period of probation. The present termination or cessation of services has taken place during the probation period and in our opinion the applicant cannot make any grievance about the termination of her service,

particularly when it is permissible under the appointment order. This is more so when no mala-fide or discriminatory treatment has been alleged. Of course, there is a suggestion that some other employees who are covered by the said order dt. 4th October, 1985 have been continued in service. This circumstance however, is worthless for the purpose of considering as to whether the Respondents were right in terminating the services of the applicant in terms of the appointment order.

The net result is that the application fails and is dismissed. There would be however, no order as to costs.

B.C. Gadgil

(B.C.GADGIL)
VICE - CHAIRMAN

J.G. Rajadhyaksha
(J.G. RAJADHYAKSHA)
MEMBER.