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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.779/88

Mrs.Vrinda R.Samant,
"Rupali",
Block No.20,4th Floor,
Jai Hind Colony,
J.Gupte Road,
Dombivil,
Thane Dist.

.. Applicant.

vs.

1. Union of India
through
The Secretary,
Ministry of Finance,
Department of Revenue,
Settlement Commission(I.T. & W.T.),
4th Floor, Loknayak Bhavan,
Khan Market,
New Delhi.

2. The Deputy Director of
Investigation - I,
Settlement Commission(IT & WT),
Mahalakshmi Chambers, 2nd Floor,
Keshavrao Khadye Marg,
Mahalakshmi,
Bombay - 400 034.

3. The Settlement Commission(IT & WT),
Govt. of India,
Ministry of Finance
through the Secretary,
4th Floor,
Lok Nayak Bhavan,
Khan Market,
New Delhi.

.. Respondents

Coram: Hon'ble Shri M.Y.Priolkar, Member(A)

Hon'ble Shri J.P.Sharma, Member(J)

Appearances:

1. Mr.Mahalle
Advocate for the
Applicant.

2. Mr.S.R.Atre
for Mr.P.M.Pradhan
for the Respondents.

JUDGMENT

(Per M.Y.Priolkar, Member(A)())

Date: 6-4-1990

The applicant was appointed by order
dated 5-11-1983 as a Lower Division Clerk with
effect from 24-10-1983, in the Bombay Regional office
of Settlement Commission under the Ministry of
Finance. This order(Annexure A5)states ^{that} the appointment
is purely temporary on ad hoc basis and subject to the

(6)

condition that her services can be terminated at any time without assigning any reasons and that she will not have any claims for regular appointment on account of her ad hoc appointment. The grievance of the applicant is that by letter dated 26-9-1988, she has been given notice that her services shall stand terminated after one month from the date the notice is served on her. The applicant's prayer is for quashing this notice on the ground, mainly, that the termination of service without show cause notice is bad in law. The applicant, however, still continues in service due to an interim stay order of this Tribunal dated 27-10-1988.

2. According to the respondents, the applicant being an ad hoc employee was required to pass a qualifying examination conducted by the Department of Personnel and Training, New Delhi only with a view to regularising such ad hoc employees. A notice of such examination to be held on 28-7-1985 was given sufficiently in advance on 23-3-1985, in pursuance of which the applicant appeared in the said examination but failed to qualify. Under the scheme of special qualifying examinations, the applicant was not eligible to appear again for the examination held in 1987 and although the case of the applicant was recommended by the department, the Department of Personnel and Training did not grant any relaxation

in any of the conditions laid down in the scheme of special qualifying examination held in 1987. In these circumstances, the respondents had to terminate the applicant's services for having failed to qualify in the regularisation test.

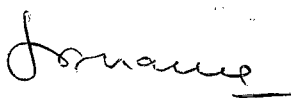
3. A Full Bench of this Tribunal in its judgment dated 5-5-1989 in the case of Jetha Nand and others v. Union of India and others (Page 353 of "Full Bench Judgments of C.A.T - 1986 to 1989" published by Bahri Brothers, Delhi) has held that the cardinal principle for regularising an ad hoc employee is that he must be qualified in the selection test to become suitable for the post. Shri M.A. Mahalle, learned advocate for the applicant cited some earlier judgments of some of the Benches of the Tribunal taking a contrary view but this subsequent judgment of the Full Bench should be held to be binding on this subject.


4. Shri Mahalle, also relied on two Supreme Court judgments, namely in the case of Narinder Chadha v. Union of India (1986(1)SLJ 287(SC) and Dr.A.K.Jain and others v. Union of India (1989(1)SLJ 188 (SC)). The first case of Narinder Chadha has already been discussed in the said Full Bench judgment. The second case of Dr.A.K.Jain also does not help the applicant as, after considering the peculiar features of that case, it was ordered that those appointed upto 1-10-1984 would be regularised on the basis of their service record, such evaluation being done by UPSC, while

others would have to qualify in the UPSC selection.

5. The applicant was given an opportunity to qualify in the examination for regularisation within two years of her appointment but she failed to make the grade. Her further continuance in service was due to her department's attempt to obtain a relaxation in her favour to enable her to appear for the qualifying examination of 1987 and, still further, by our interim stay order dated 27-10-1988. The legal position regarding termination of ad hoc employees for failure to qualify in the selection test has now been settled by the Full Bench judgment dated 5-5-1989 referred to by us earlier and we cannot direct that there should be any exemption from qualifying in the selection test.

6. In the result, we see no merit in this application which is accordingly dismissed, with no order as to costs. The respondents, may however, consider the feasibility of giving one more opportunity to the applicant to qualify in the next examination for regularisation, or if no such special qualifying examination is to be held in the near future, in the regular recruitment examination of the Staff Selection Commission by relaxing the upper age limit, if necessary, in her favour.


(J.P.SHARMA)
Member(J)


(M.Y.PRIOLKAR)
Member(A)