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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, No.6 'GULESTAN'
PRESCOT ROAD; BOMBAY 400001

O.A. No.301/86
AND
O.A. No.300/87

O.A. No.301/86

Smt. Reshma Ramakant Kavale
19-A Nikadari Lane
Khatavkar Building; Room no.28
2nd floor; Girgaum; Bombay-400004 Applicant

V/s.

1. Union of India
through Director of
Supplies and Disposals,
Sapt Building; Graham Road;
Ballarad Estate; Bombay 400038

2. Director General of
Supplies and Disposals,
Nirman Bhavan; Parliament Street;
New Delhi 110011

3. The Under Secretary
Ministry of Personnel;
P.G.&.Pensions;
Dept. of Personnel and
Training; New Delhi Respondents

OA. No. 300/87

Smt. Neelam Niranjan Patil
522 A, Kalokh House
Room no.1; Near Maruti Mandir;
Worli Koliwada; Bombay 400025 Applicant

V/s.

1. Union of India
through Regional Labour
Commissioner (Central)
Wakefield House
2nd floor; Sprott Road;
Ballard Estate; Bombay 400038

2. The Chief Labour Commissioner (C)
Sharam Shakti Bhavan
Rafi Marg; New Delhi 110001 Respondents

CORAM: Hon.Shri G.Sreedharan Nair, V.C.
Hon.Shri P S Chaudhuri, Member(A)

APPEARANCE:

Shri V D Surve
Advocate for applicant

Shri V S Masurkar
Counsel for respondents

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JUDGMENT: DATED: 3_9_1991

(PER: P.S. Chaudhuri, Member(A))

These two applications filed under section 19 of the Administrative Tribunals Act 1985 can conveniently be disposed of by a common judgment and order as both the applications involve similar facts and common questions of law. In both the applications the applicants were working as Lower Division Clerk (for short, LDC) and their services were terminated for failure to qualify in the examination conducted by the Staff Selection Commission.

2. The applicant in O.A. No.301/86was appointed as LDC in the office of the first respondent initially in a purely temporary capacity with effect from 9.10.1978. She submits that her appointment was resorted to through the Local Employment Exchange after having passed the relevant test as per rules. By order dated 31.3.1986 her services were terminated with effect from the afternoon of the same date, since she has filed to qualify in the Special Staff Selection Commission Examination held in 1982, 1983 and 1985. She preferred a representation to the Director General of Supplies and Disposals, New Delhi on 4.4.1986 followed by a reminder dated 6.5.1986 and contends that she is yet to receive a reply. Being aggrieved she filed the present application.

3. The applicant in O.A. No.300/87 was appointed as LDC in the office of the first respondent initially in a purely temporary capacity in a leave vacancy

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with effect from 28.4.1980. She submits that her appointment was resorted to through the local Employment Exchange after having passed the relevant test as per rules. By order dated 13.10.1986 she was appointed against a regular vacancy with effect from 6.10.1986. By the impugned order dated 2-12-1986 her services were terminated with effect from 1-12-1986 since she has failed to qualify in the Special Staff Selection Commission examinations held in 1984 and 1985. She preferred a representation against this termination on 9-12-1986 and contends that she is yet to receive a reply. Being aggrieved she filed the present application.

4. The respondents have opposed the applications by ~~filing~~ filing their written statement. We have heard Mr. V D Surve, learned Counsel for the applicants and Mr. V S Masurkar, counsel for the respondents.

5. The impugned orders of termination were assailed as being illegal, bad in law improper and void as the respondents have not followed the procedure, no inquiry has been conducted and they have not been given any opportunity of being heard in the matter. It is also contended that an employee who has completed more than three years service is deemed to be a permanent Government servant ~~of such~~ and hence the services of such a person cannot be terminated without following the due process of law.

6. The Respondents denied these contentions and submit that the applicants were appointed in a purely temporary capacity and their services were liable to be terminated without any notice. Their services were terminated with effect from 31.3.86 and 1.12.86 respectively, since they did not qualify in the Special Staff Selection Commission examinations held in 1982, 1983 & 1985 and 1984 & 1985 for regularising the services of ad hoc LDCs recruited through the Employment Exchange. Such termination is undoubtedly in accordance with the instructions in this regard. Since their appointment was on ad hoc basis the question of declaring them as permanent does not arise.

7. We find ourselves unable to go along with the applicants. 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. It is not disputed that the applicants were given opportunities to qualify in the Selection Test but failed to become suitable. In these circumstances we have no hesitation in holding that there was nothing wrong in the respondent's action in terminat-

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ing the services of the applicants because of their failure to qualify in the Selection test. So, the applications must fail.

8. The two applications are accordingly dismissed. In the circumstances of the case there will be no order as to costs.

P.S. Chaudhuri

(P.S.CHAUDHURI)
MEMBER(A)

G. Sreedharan Nair

(G.SREEDHARAN NAIR)
VICE-CHAIRMAN.

3-9-1991