

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~XXXXXXXXXXXX~~

NEW BOMBAY BENCH

O.A. No.158/86

198

~~XXXXXXXX~~DATE OF DECISION 28-1-1988Mrs. Pradnya Pramod Pathare PetitionerMr. V. D. Surve Advocate for the Petitioner(s)

Versus

Union of India RespondentMr. J. P. Deodhar Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. Srinivasan, Member(A)

The Hon'ble Mr. M. B. Mujumdar, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
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*

*P. Srinivasan**✓*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.158/86

Mrs. Pradnya Pramod Pathare,
Om Jaishree Guru Kripa,
D/12, 3rd Karter Road,
Borivali(E),
Bombay - 400 066.

.. Applicant

vs.

1. The Union of India,
Office of the Custodian
of Enemy Property,
Kaiser-I-Hind Bldg.,
Currimbhoy Road,
Ballard Estate,
Bombay - 400 038.

2. The Under Secretary,
to the Government of India,
Ministry of Commerce,
New Delhi.

.. Respondents

Coram: Hon'ble Member(A) P. Srinivasan

Hon'ble Member(J) M. B. Mujumdar

Appearance:

1. Mr. V. D. Surve,
Advocate for the
Applicant.
2. Mr. J. P. Deodhar,
Advocate for the
Respondents.

JUDGMENT

Date: 28-1-1988

(Per P. Srinivasan, Member(A))

The applicant was appointed as Lower Division Clerk-cum-Typist in the Office of the Custodian of Enemy Property for India (Custodian), Bombay with effect from 14-5-1980 by office order of the same date issued by the Custodian. The said order narrated that the appointment was against a temporary post and her appointment was purely temporary liable to be terminated at any time without previous notice. The applicant

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continued to work in this capacity till 1986. By letter dtd. 30-1-1986, the Custodian gave the applicant notice that her services would stand terminated from the date of expiry of one month from the date on which the said notice was served on her. The applicant made a representation against the said letter of termination of her services but this request was rejected in a letter dtd. 6-3-1986 addressed to her and signed by the Under Secretary, Ministry of Commerce, on behalf of the Govt. of India. The applicant was duly relieved of her post on 28-2-1986. In this application she has prayed that she should be reinstated with immediate effect with continuity of service and full backwages from 1-3-1986. She has also sought a declaration that she is a permanent employee of the Government. Though it is not specifically stated, by implication the applicant wants us to set aside the letter dtd. 30-1-1986 addressed to her by the Custodian giving notice of termination of her services and the subsequent letter dtd. 6-3-1986 also addressed to the applicant by the Under Secretary to the Govt. of India.

2. Mr. V.D. Surve, the learned counsel for the applicant made the following submissions. The applicant had been appointed as LDC-cum-Typist by order dtd. 14-5-1980, her name having been sponsored by the Employment Exchange and she having passed the requisite oral and written test held by the respondents. The appointment order did not state that she would have to qualify the selection ⁱⁿ ^{test to be held} by the

P. J. Surve

Staff Selection Commission for being regularised in a post or that she was an ad-hoc employee whose services would be dispensed with on regular candidates from Staff Selection Commission becoming available. Her appointment was described as temporary and after completion of three years she was eligible to be declared Quasi-Permanent. Though the status of Quasi-Permanent is not automatic under Rule 3, the instruction of Govt. were that the Govt. official concerned should be informed if for any reason he or she could not be made Quasi-Permanent after the completion of three years of temporary service. No such intimation had been received by the applicant. She should, therefore, be deemed to have become Quasi-Permanent and her services could not be terminated under Rule 5 of the CCS(Temporary)Service Rules as was done in this case. The applicant was asked to take the special qualifying examination held by the Staff Selection Commission for regularising ad-hoc appointees in posts of LDCs. The applicant not being an ad-hoc employee was not liable to take the said examination, more particularly because her appointment order did not contain any such stipulation. The applicant took the qualifying examination held in December, 1982 but failed to qualify. She was asked to appear in the next examination held for the same purpose on 18-12-1983 but she could not appear therein for personal reasons. A final chance was given to her to appear in a qualifying examination held on 28-7-1985 in which also the applicant failed.

P. S. -ve

Shri Surve contended that because the applicant failed in the qualifying examination it did not mean that her services should be terminated. Having completed nearly six years of temporary service by February, 1986 she should have been considered for regularisation without having to pass the qualifying examination. In a letter dtd. 18-9-82 the Staff Selection Commission had advised the Custodian that a certain Mrs. Seth ^M could be regularised without reference to them because she had been working as LDC for nearly six years while the applicant having ^{or} ~~been~~ worked for less than three years at that time could not be considered for regularisation. Shri Surve submitted that the applicant completed three years of service subsequent to this letter i.e. in May, 1983 and the respondents should have regularised her at that time without reference to the Staff Selection Commission. In O.A. 87/86 this Tribunal had directed the respondents to give the applicant therein one more chance to pass the qualifying examination as she had been able to take only two chances and could not appear third time due to illness. Similarly the applicant had been ^{M able} to take only two chances and she should be allowed to take one more chance. ^{equity} On grounds of equality ^{M who had} the applicant ~~could have~~ performed the duties of LDC ^{M satisfactorily} for six years (should not have been abruptly terminated without giving her an opportunity of being heard.

3. Shri Deodhar strongly refuted the contentions of Shri Surve. The applicant was appointed to a temporary post and her own appointment was temporary liable to be terminated at any time. The sanction for the post lapsed in 1981 itself but the respondents

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obtained renewal of sanction from time to time only to enable the applicant to qualify in the Staff Selection Commission Examination, so that she could be appointed in ^{the} regular vacancy. She was not made Quasi-Permanent because she did not pass the qualifying examination. The relevant record at the time of the applicant's recruitment shows that she was appointed on condition that when names of suitable candidates were received from Staff Selection Commission her services would be terminated. The service of temporary Govt. servants, as the applicant was, could be terminated by an order simpliciter if she was found unsuitable for ^{by continuance} continuation. Not having passed the qualifying examination she was not found suitable for continuance and so her services were terminated with a month's salary. ^{of notice} There was no legal infirmity in the order of termination.

4. We have considered the matter very carefully. It has to be remembered that the applicant's appointment was temporary and that too in a temporary post. The respondents have shown that sanction for the post was extended from time to time to enable the applicant to qualify herself for regular appointment. The applicant failed to qualify and when regular candidates from the Staff Selection Commission were available her services had to be terminated.

P. S. 

Services of temporary Govt.servants can be terminated at a month's notice if he or she is found unsuitable. Not passing the qualifying examination held by the Staff Selection Commission is a reasonable ground to show that the person is not suitable for being continued in ~~a department~~ ^{are} service. We ~~have~~ ^{are} satisfied therefore that the order of termination of services of the applicant under Rule 5 of the CCS(Temporary) Service Rules was not by way of punishment but on the ground of suitability and we do not find any infirmity in the said order.

5. In result the application is dismissed.
Parties to bear their own costs.


(P.SRINIVASAN)
Member(A)


(M.B. MUJUMDAR)
Member(J)