

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW BOMBAY BENCH

O.A. No. 166/86

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198

DATE OF DECISION 11.6.1991

Smt. Ratna Hari Chellabi Petitioner

Mr. M. L. Pendse Advocate for the Petitioner(s)

Versus

Supdt. Engineer, CPMC & Ors. Respondent

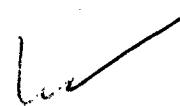
Mr. V. M. Bendre Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. U.C.Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y.Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

  
( U.C.Srivastava )  
V/C

15  
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY  
\* \* \* \* \*

Original Application No.166/86

Smt. Ratna Hari Chellani,  
6/96, Nirmal Jeeval Co-op. Hsg.  
Society, Thane 400 603.

... Applicant

v/s

1. The Superintending Engineer,  
Central Project Management Cell  
for UNICEF Stores,  
Commerce House, 1st Floor,  
Ballard Estate,  
Bombay 400 038.

2. Under Secretary to the Govt.  
of India,  
Ministry of Works & Housing,  
Nirman Bhavan,  
New Delhi 110 011.

3. Secretary,  
Department of Personnel & Training,  
Ministry of Home Affairs,  
North Block,  
New Delhi.

... Respondents

CORAM : Hon'ble Vice-Chairman, Shri U.C.Srivastava  
Hon'ble Member (A), Shri M.Y.Priolkar

Appearances:

Mr. M.L.Bendse, Advocate  
for the applicant and Mr.  
V.M.Bendre, holding the brief  
of Mr. P.M.Pradhan, Advocate  
for the respondents.

ORAL JUDGEMENT:

Dated : 11.6.1991

(Per. U.C.Srivastava, Vice-Chairman)

The applicant was appointed on 24th March 1977  
as a Clerk in the office of Superintending Engineer,  
Central Project Management Cell, Respondent No.1, vide  
appointment letter dated 22nd March 1977. She was  
appointed on a temporary post of Lower Division Clerk.  
When she entered service, as per certificate, she had  
already crossed the age of 25 years. Subsequently,  
another order was issued apparently on 11th October 1977  
as continuation of the earlier order informing her that

this post is included in the Central Secretariat Clerical Service and the post is intended to be filled by the Ministry of Works and Housing from the panel of candidates nominated by the Subordinate Service Commission. As such the appointment is only purely temporary and ad-hoc and as and when the qualified candidates are made available by the Ministry she will have to vacate this post. The applicant continued to remain in service for eight years and after eight years her services were terminated by the impugned order dated 1st July 1985 as a qualified person was available. The plea on behalf of the applicant now is that in the year 1985 an examination for regularisation of ad-hoc employees took place. The applicant was not allowed to appear in the same as she was at that time over aged though prior to that she had filed an affidavit stating that her year of birth was wrongly recorded in the Secondary School Certificate and instead of 1951 it should have been 1954. Obviously corrections on that basis in the school certificate could not have been made and her affidavit could not have been accepted for changing her date of birth.

2. In the written reply of the respondents it has been stated that her post was purely temporary and ad-hoc and she was recruited against the included post of CSCS and her appointment was not in permanent nature and under Rule 3 of the Central Civil Services (Temporary Services) Rule appointments are being made available on a temporary basis initially and suitability as one of the conditions. The applicant not being suitable and the fact that her services have already been terminated, she will have no right to the said post.

It is true that her earlier appointment order did not indicate anything but the second order indicated the nature of the appointment which she was holding. She was appointed in the year 1977 notwithstanding the fact that she had crossed the age of 25 years. The age bar not only applies to those who are regularly selected but also those who are appointed on ad-hoc and temporary basis. It may be that at that stage a direction, order or otherwise for relaxation was in contemplation and that is why she was appointed. In the O.M. dated 5th June 1985 issued by the Department of Personnel & Training it was clarified that under the provisions of the Department's O.M. dated 21st March 1985 administrative Ministries/ Departments were competent to relax the provisions of notified rules for Group C & D coming <sup>under</sup> <sub>their</sub> administrative control. The applicant worked for eight years and she was tolerated during all these eight years. The question of relaxation of age bar could have been considered and she could have been allowed to appear in the examination particularly in view of the fact that she was a woman and women have certain protection under Article 15(4) of the Constitution of India. We would not have interfered in the matter but for the reason that she was appointed when she was over aged and she was continued for eight years and <sup>only</sup> after eight years her substitute could be found out. May be because of certain reasons, the process of regular appointment or regularisation could not take place. While terminating her services the question of relaxation and allowing her to appear in the examination, it appears, was not considered though

(18)

the same should have been done in the interest of justice.

3. Accordingly we direct that the respondents shall consider the question of relaxation of the age of the applicant and in case it is necessary, she may be allowed to appear in the departmental examination, may be one specially held for such persons. In case relaxation is granted and she qualifies in the examination, she may be reappointed with continuity in service without any back wages for the period she had been out of service. Let the question of relaxation be considered within three months and qualifying test taken within three months thereafter. With the above direction the application is disposed of with no order as to costs.

u/s/

( M.Y. Priolkar )  
Member (A)

u/s/

( U.C.Srivastava )  
Vice-Chairman