

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY-400614

O.A. No. 87/1986

Smt. Priya Harishchandra Jiandani
97/5, Agra Road, Mulund Colony,
Bombay 400082

Applicant

V/s.

- 1) Superintending Engineer
Central Project Management Cell
for UNICEF Stores,
Department of Rural Development,
Commerce House, Ballard Estate,
Bombay 400038
- 2) Under Secretary to Govt. of India
Ministry of Works & Housing
Nirman Bhavan
New Delhi 110011
- 3) Secretary to the
Department of Personnel & Training
Ministry of Home Affairs
North Block, New Delhi-1

Respondents

- Coram: Honourable Member(A) Shri A Johri
Honourable Member(J) Shri M B Mujumdar

Appearance:

Mr. M L Pendse
Advocate
for the Applicant

Mr. S R Atre (for Mr. P M Pradhan)
Counsel
for the Respondents

ORAL JUDGMENT

Dated : 11.8.1987


(Per: M B Mujumdar (Member(J)))

The applicant has filed this application under section 19 of the Administrative Tribunals Act challenging the order by which her services are terminated.

2. The following facts are sufficient for deciding this application. The applicant was appointed as Lower Division Clerk by an order dated 16.7.1976 in temporary capacity. Along with the order of appointment a copy of the terms and conditions of appointment was supplied to the applicant, but unfortunately the terms and conditions are not happily worded and some portions which were required to be scored out were not scored out at all. By a letter dated 11 October 1977, the applicant was informed that her appointment was purely on temporary

and ad-hoc basis and as and when qualified candidates would be available she would be required to vacate her post. The applicant did not challenge this letter at any time. In 1981 she requested the authorities to declare her as a Quasi Permanent employee. Her letter was forwarded to the higher authorities recommending that she should be declared as a Quasi Permanent employee but no reply was sent to her nor she was at any time given that status. By a letter dated 4th April 1985 the applicant and one more Lower Division Clerk were informed that a supplementary examination would be held for regularising appointments of LDCs. Hence she submitted her form on 11.4.1985 for allowing her to appear for that examination. The examination was held on 28.7.1985 but in the meantime the applicant was required to proceed on Maternity Leave from 8.7.1985. The Doctor had given her due date of delivery as 25.7.85, but she prematurely delivered on 5.7.1985. In view of her expected date of delivery she had sent an application dated 28.6.1985 for exempting her from appearing for the examination as she was not in a position to do so due to her expected delivery. She had also requested that she may be allowed to appear for the next examination. But her request was turned down telegraphically and she received that telegram on 25.7.1985. In view of this refusal she appeared for the examination on 28.7.1985, but failed. Hence, by an Office Memorandum dated 16.12.1985 her services were terminated with effect from 16.12.1985.

3. We may point out here that Respondent 3 had held similar examinations in 1982 and 1983 but it was admitted before us by the Learned Advocate for the Respondents that the intimation about these examinations were not received in the office of Respondent No.1 in which the applicant was working. That is why the applicant could not appear for these examinations. Respondent 3 who had held these examinations was not previously made a party to this application, but subsequently the applicant had added him as a party to avoid further complications. Though Respondent Nos. 1 & 2 have filed the reply Respondent 3 has not filed any reply before us.

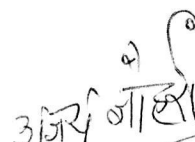


4. We have heard Mr. M L Pendse, the Learned Advocate, for the applicant and Mr. S R Atre, (for Mr P M Pradhan) the Learned Advocate for all the respondents. We have also gone through the record. We find that Respondent 3 had held the examinations in 1982, 1983, and 1985 on humanitarian grounds for regularising the appointment of those employees who were working on ad-hoc basis. The applicant could not appear for the examinations held in 1982 and 1983 because no instructions regarding these examinations were received in her office. These examinations were not given due publicity also. Hence the applicant cannot be held responsible for not appearing at these examinations. In view of the directions given by the Principal Bench of the Central Administrative Tribunal one more examination was held in 1987 but the applicant could not appear for that examination because she had failed in the examination held in 1985. Though the due date of delivery was 25.7.1985 we are told that she had prematurely delivered on 5.7.1985 evening. She had informed the authorities on 28.6.1985 itself that she was not in a position to appear for the examination in view of the delivery, but her request was rejected on 25.7.1985. In view of this she appeared for the examination but the result was obvious because she did not get sufficient time to prepare for the examination. The applicant had served for about 9 years. By the letter dated 11 October 1977 by which it was clarified that her appointment was clearly temporary and ad hoc. She was informed that she would be required to vacate her post when qualified candidates were made available. We are told at the Bar that no person is made available till to-day to fill up the post which the applicant was occupying.

5. In view of all these circumstances and in view of the undisputed fact that the applicant could not appear for the examinations held in 1982 and 1983 for no fault of hers, we feel that she was unduly discriminated. We are, therefore, of the view that the impugned order dated 16.12.1985 is liable to be quashed and set aside. We are also of the view that the applicant and persons similarly placed like her deserve to be given yet one more chance by holding a special qualifying examination. We, therefore, pass the following order:


ORDER

- 1) The impugned order dated 16.12.1985 is hereby quashed and set aside.
- 2) The respondents shall reinstate the applicant to the post of Lower Division Clerk forthwith. On reinstatement her status will be the same viz., Temporary and ad hoc.
- 3) The period from 16.12.1985 till the date of reinstatement shall be treated as leave of any kind due to her including Extra Ordinary Leave.
- 4) Respondent No.3 shall hold one more qualifying examination for the applicant and persons similarly situated like her i.e., those who could not appear for the examinations held in 1982 or 1983 for want of information as early as possible. Respondent no.3 may, if finds proper, enlarge the scope of eligibility for appearing for that examination to avoid injustice to applicant.
- 5) If the applicant fails in that examination the respondents will be at liberty to terminate her services on that ground.
- 6) Parties to bear their own costs.


11.8.87.

(A. Johri)

Member(A)

 22-8-1987
(M.B. Mujumdar)

(Member (J))