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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.470/89.

Smt. Sharmila A. Damle,
Bldg. No.18, Flat No.282,
First Floor, Om Aditya Co.op.
Housing Society Ltd.,
Adershanagar, Prabhadevi,
BOMBAY - 400 025.

.. Applicant.

V/s.

1. Union of India, through
The Deputy Director, CGHS,
United India Building,
2nd Floor, Sir P.M. Road,
Bombay - 400 001.
2. The Director (CGHS),
Directorate of Health Services,
Government of India,
Ministry of Health & Family Welfare,
Nirman Bhavan, Maulana Azad Road,
New Delhi - 110 011.
3. The Jt. Secretary to Government,
Government of India,
Directorate of Health Services,
Ministry of Health and Family Welfare,
Nirman Bhavan, Maulana Azad Road,
New Delhi - 110 011.
4. The Secretary to the Government of India,
Ministry of Personnel,
Public Grievance and Pensions,
Department of Personnel & Training,
Shastri Bhavan,
New Delhi - 110 001.

.. Respondents.

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

ORAL JUDGMENT

DATED: 17.7.1991.

¶ PER : Hon'ble Shri U.C. Srivastava, Vice Chairman. ¶

Against the termination order with one month's notice the applicant has approached this Tribunal making a

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grievance against the said termination alleging that the post was held by one Shri Kukadwal and she has become over age though qualified and her services have been terminated in violation of Article 311 of the Constitution of India, the termination/retrenchment being without following the procedure prescribed under law.

2. The respondents have resisted the application stating that she was appointed in place of Shri Kukadwal who was absenting from service. Admittedly some candidates were called from the Employment Exchange and the applicant along with other was interviewed and 3 candidates were selected and the applicant was placed at No.3. Thereafter, she was appointed. In the written statement it has been stated that Shri Kukadwal was absenting from duty from the year 1982 and keeping in view the urgency being a service department it was not possible to keep the post vacant for long and as such for smooth running of the department the applicant was appointed on purely temporary basis against the leave vacancy of Shri Kukadwal. This appointment was made in the year 1986 i.e. 4 years after the absence of said Shri Kukadwal. It has been further stated in the sur-rejoinder that a lower post of Lab. Assistant was offered to her but she has not accepted the same. The first appointment letter was issued to the applicant on 11.10.1985 when she was appointed for 90 days. Thereafter, another appointment letter was issued to her on 1.11.1986 appointing

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her as a temporary employee. As mentioned in the order, the post was temporary and will not consider any right of permanent appointment and can be terminated at any time by a month's notice. Some 27 days thereafter i.e. 20.1.1986 yet another appointment letter was issued to her stating that she was being appointed as a Lab. Technician in a temporary capacity in the Central Government Health Scheme on a particular pay scale w.e.f. fore noon of 21.9.1985, the date on which she was appointed initially. In this appointment letter it is nowhere stated that her appointment was temporary or on the same terms and conditions as she was earlier appointed. In none of the appointment letters it was stated that her appointment was in place of Shri Kukadwal. The said Shri Kukadwal had filed an application before this Tribunal which has been allowed in the month of February, 1991 by the Tribunal. But admittedly the said Shri Kukadwal has not yet joined the service. Even the respondents admit that the post is now lying vacant, though according to the applicant she was not appointed against any such post but it was an existing temporary post on which she was appointed. In any case, there was no reason whatsoever for terminating the services of the applicant as it is not the case that her services are no longer required or that the post has already been filled by appointment of another person. The termination order in these circumstances was arbitrary and without legal justification. Accordingly the order is quashed and set aside and the applicant will be treated to be

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in continuous service; and she shall be put on duty forthwith. There will be no order as to costs.

M.Y. PRIOLKAR
(MEMBER (A).)

U.C. SRIVASTAVA
(VICE CHAIRMAN.)