

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 906/2001
DATED THE 4TH DAY OF APRIL, 2002**

**CORAM: HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT, VICE CHAIRMAN
HON'BLE SMT. SHANTA SHAstry, MEMBER(A)**

Mrs. Malini Bapat,
Lecturer-Ad-hoc (Group A),
R/o. 2nd Amod Vihar, Gujarat Colony,
Kithrud, Pune-411 029. Applicant

By Advocate Shri K.K. Waghmare

V/s.

1. Union of India,
Through the Secretary,
Ministry of Defence,
Raksha Bhavan,
South Block,
New Delhi-110 011.
2. National Defence Academy,
Through the Commandant,
Khadakwasla,
Pune. Respondents

By Advocate Shri R.K. Shetty

(ORAL)(ORDER)

Per Smt. Shanta Shastry, Member(A)

The applicant has approached this Tribunal being aggrieved by the letter dated 3/7/2001 by which the applicant's services as adhoc Lecturer in Chemistry in the National Defence Academy were terminated. The applicant has also impugned another order dated 3/6/2001 whereby the applicant was informed that her pay has been fixed according to rules as applicable to adhoc Lecturers in NDA. This was with reference to the grant of annual increment and other benefits.

2. The applicant was initially appointed in the NDA at Khadakwasla on 25/3/95 as adhoc Lecturer in the Department of Chemistry. Her appointment was extended from time to time with

...2.

artificial breaks during summer vacations/holidays. Her services were continued till 31/12/2001.

3. The applicant has therefore sought to quash and set aside the impugned order of 3/12/2001 with a direction to the respondents not to terminate her services till the availability of a regular candidate. The applicant has also sought regularisation of her services and to continue her without any break. In addition to these prayers, the applicant has claimed several other benefits like regular salary in the scale of Lecturer alongwith increments, allowing contribution to GPF, LTC, all kinds of leave and Maternity Leave as well. The applicant has also sought directions to the respondents to give her liberty to apply for a regular post as and when steps are taken by the respondents/UPSC and to direct the respondents to give relaxation of age to the extent of adhoc service put in by her. The applicant also wants that the respondents should not resort to any practice of reducing vacancies by increasing the number of students in every class and the respondents should maintain Departmental Seniority in respect of the applicant.

4. According to the applicant, several adhoc lecturers in NDA were granted various benefits of continuity in service, payscale, GPF, LTC, Leave, etc. The applicant being similarly placed ought to have been granted those benefits. In this context the applicant has produced copies of the judgements of this Tribunal dated 23/9/98 in OA Nos.57.95 and 490/98, dated 1/2/2000 in OA No.1061/99 and dated 17/4/2001 in OA No.478/99. In the judgement in OA Nos.57/95 and 490/98, this Tribunal

rejected the claim of the applicants for regularisation/absorption, the respondents were directed not to terminate the services of the lecturers till availability of regular candidates. They were to be allowed to continue on adhoc basis without any break during summer vacation or any other vacation and to give them in future regular salary as per the scale in which they are working after fixing their pay by giving notional increments from the date of their respective applications. They were entitled to other service benefits as detailed in para (8) and (9) except the entitlement of the applicants to credit of leave from the date of their respective application, all other benefits mentioned therein shall be prospectively given. In OA No.1061/99 also similar directions were passed. All the service benefits as observed in the judgement dated 23/9/98 in OA-57/95 were extended. In OA-478/1999 also directions were given to follow the directions in the judgement in OA Nos.57/95 and 490/98. In short all those adhoc Lecturers who had approached the Tribunal in different groups were allowed all the service benefits while rejecting their claims for regularisation/absorption.. While allowing the service benefits, the Tribunal had however held that the management can also terminate the service of the applicants therein as per rules if there was no work by giving proper notice and observing principles of natural justice. However, the applicant would be entitled to the benefits of all types of leave, etc as admissible to temporary employees under CCS (Leave Rules) 1972 from the date of the receipt of applications.

5. The present applicant had earlier filed a Miscellaneous Application No.808/2001 for joining as applicant in OA-586/2001. However, the same was not allowed and disposed of with a direction to file a fresh OA by order dated 28/9/2001 dated 28/9/2001. Thereafter, the applicant filed the OA No.771/2001 on 21/2/2001 alongwith some other applicants. This was disposed of as withdrawn with liberty to file fresh application vide order dated 22/11/2001 as it was lacking in certain details. Thereafter the applicant has now filed the present OA on 15/12/2001.

6. The applicant's contention is that being similarly placed to the applicants in the similarly decided OAs, the applicant is entitled to benefits of those judgements. The applicant had made a representation to the respondents on 23/6/2001 requesting to extend the benefits on par with those similarly placed persons. The representation was replied to on 3/9/2001 informing her that the benefits of the judgements in other OAs cannot be given to her as they were applicable to the applicants in those OAs.

7. The applicant submits that she had applied for maternity leave of 27days with effect from 27/11/2000 to 23/12/2000. But the same has not been regularised. The learned counsel for the applicant submits that the applicant is entitled for the payment of the maternity benefits in terms of the Maternity Act 1965. The Supreme Court in SLP filed by Municipal Corporation of Delhi V/s. Female Workers (Muster Roll) held that the female workers on daily wages even on muster roll are entitled to the Maternity leave in terms of the Section 5 of the Maternity Benefit Act. The applicant therefore claims that though she was a adhoc Lecturer, she was entitled to maternity leave. However, even

this request of the applicant was rejected vide letter dated 14/3/2001 by the respondents. The applicant had been given breaks in service.

8. The learned counsel for the respondents submits that applicant's services had to be terminated. She was found to be surplus as there was no workload. The respondents were justified in doing so. In support of this the respondents have produced the workload pertaining to the "Peace Establishment" and have pointed out that they need only ten Lecturers in the Chemistry Department whereas there are eleven Lecturers, hence one is surplus and therefore applicant has been issued the termination letter.

9. We have heard the learned counsel on both sides. We have given careful consideration and have also perused the judgement on reference.

10. We find that this Tribunal has followed a consistent stand and has laid down that adhoc Lecturers need to be continued in service until regular candidates are selected. They ought not to be given any artificial breaks in service and they should be extended all the service benefits as given to the Lecturers or temporary employees. This is the ratio laid down in the judgement in OAs-57/95 and 490/98. This was repeated in the later judgements. It is also not disputed that all these judgements were with reference to the adhoc lecturers of NDA where the applicant was also working. In the fitness of things, the applicant also being an adhoc Lecturer, the respondents should have extended all the benefits of the earlier judgements of this Tribunal in respect of the adhoc Lecturers of the NDA.

Without driving the applicant to seek directions of this Tribunal separately. However, the respondents have not done so. In our considered view, the applicant's case is no different than the case of other adhoc Lecturers to whom service benefits were extended by this Tribunal by judgement dated 23/9/98. However, the applicant's case is slightly distinguishable in that her services have been terminated on account of reduction in workload. After going through the latest position produced by the respondents in regard to the Peace Establishment ~~of~~ in the NDA, we are satisfied that there was not enough workload to continue the applicant. This being so, we cannot find fault with the order of the respondents dated 3/7/2001 whereby the applicant's service is terminated. We are therefore unable to grant any relief prayed for by the applicant in this respect.

11. Coming to the question of regularisation of maternity leave, we find that while the applicant was in service, going by the ratio laid down in OA-57/95 by this Tribunal, the applicant should have been entitled to the benefit of Maternity Leave. Although the applicant was not a party to the earlier OAs, we find that the applicant had made an attempt to file an OA earlier also or to join as applicant in other OAs. Supreme Court has already held that the similarly placed persons in all respects should not be made to run to the Courts unnecessarily. We therefore hold that the applicant was entitled to Maternity Leave. Also in view of the judgement of the Supreme Court in the case of Municipal Corporation of Delhi V/s. Female Workers(Muster Roll) and another reported in 2000(2)ATJ-217 clearly laying down that even those who are on Muster Roll, the

female workers are entitled to Maternity Leave. This being so, even though the applicant had asked for Maternity Leave of 27 days, she ought not to have been granted the benefits of the Maternity Leave. Also was entitled to service benefits as granted to the other adhoc Lecturers.

12. The learned counsel for the respondents raised the point of order and submitted that even in the judgement of this Tribunal in OA-57/95, the Tribunal had granted the service benefits prospectively from the date of applications and therefore the applicant in this case also would be entitled to benefits of the judgement in OA-57/95 only from the date the applicant has filed the OA i.e. 18/12/2001 and not otherwise.

13. It is seen from para-7 of the judgement in OA-57/95 that the Tribunal had directed that from the date of respective applications, the applicants are entitled to benefits of all types of leave, including Maternity Leave, etc as admissible to the temporary employees under the CCS(Leave Rules) 1974. What this means is that in so far as leave is concerned, it is to be allowed from the date of the applications made for a particular type of leave. This is not with reference to all other service benefits.

14. In view of this position, we are of the considered view that the applicant should be granted various service benefits from one year prior to the date of filing of the OA. We hold that no relief can be given as far as termination of the service of the applicant is concerned. The applicant shall be entitled to grant of Maternity Leave as applied for and the respondents shall comply with the same. The respondents shall also extend

:8:

all the service benefits as applicable to the adhoc Lecturers in terms of the judgement in OA-57/95 for a period of one year prior to the filing of OA., this exercise shall be completed within a period of three months from the date of receipt of copy of this order. Accordingly, the OA is partly allowed with no order as to costs.

Kanta J-

(SMT. SHANTA SHASTRY)
MEMBER(A)

B. Dikshit

(BIRENDRA DIKSHIT)
VICE CHAIRMAN

abp

dt 4/4/92
order and report despatched
to App. for account (s)
on 22/4/92

h