

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 323/1990

TXXXXXX

198

DATE OF DECISION 7.11.1990

Smt. V.J.Deshpande Petitioner

Shri P.K.Joshi Advocate for the Petitioner(s)

Versus

Divisional Officer (Telecom) Respondent
Latur.

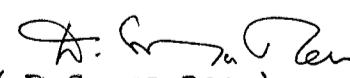
Shri P.G.Godhangaonkar Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. D.Surya Rao, Member (J)

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

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
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


(D. Surya Rao)
Member (J)

(4)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY,
CAMP AT AURANGABAD

* * * *

Original Application No. 323/1990

Smt. V.J.Deshpande ... Applicant

vs.

Divisional Officer (Telecom),
APMC Building, Market Yard,
Latur, Pin 413 512. ... Respondent

CORAM: Hon'ble Member (J), Shri D. Surya Rao.
Hon'ble Member (A), Shri P.S.Chaudhuri.

Appearances:

Shri P.K.Joshi, Advocate,
for the applicant and
Shri P.G.Godhangaonkar,
Advocate, for the respondent.

ORAL JUDGEMENT: Dated : 7.11.1990
(Per. Shri D.Surya Rao, Member (J))

The applicant herein states that she applied for the post of Telephone Operator in Latur Telecom Division, that she was selected and called for a medical examination vide letter dated 16.12.1989 issued by the respondent. She appeared before the Civil Surgeon, Latur, on 21.12.1989. On that date she was ~~at~~ ^{at} the 7th stage of pregnancy and therefore declared temporarily unfit. Consequent thereon the respondent deleted her name from the select list. She is aggrieved by her deletion therefrom. Therefore she contends that she was only temporarily declared unfit and that after ~~her~~ delivery she is entitled to medical re-examination and that deletion of her name from the select list has deprived her in securing her job. It is contended that deletion of her name is contrary to the rules. She, therefore, seeks a suitable direction from the Tribunal. We had given notice to the respondent. Respondent's representative Shri J.I.

Hirwani had taken notice on the previous date of hearing ie. on 5.11.90 and the case has been adjourned for hearing for admission ~~as~~ to today. A written reply has been filed by the respondent at the stage of admission. It is contended therein that the applicant is not deprived ~~employment~~ from securing ^{that a} by the respondent, ~~but~~ the respondent had directed her to undergo medical examination wherein she was found temporarily unfit, that the applicant sought six months time to appear for further medical examination and that this time did not suit the department for administrative and technical reasons. It is, therefore, stated that her name was deleted from the select list of Telephone Operators and the next person from the list was appointed. It is further stated that the said person has now completed the training and has joined duties and ~~the~~ notified post is not now available for accommodating the applicant. It is further contended that the training of selected Telephone Operators is for a period of three months, ^{and} that the training is imparted to a group of ~~individual~~ candidates, ^{and} ~~that~~ individual training cannot be arranged ^{if} and that too at the request of the applicant. Had the period of six months ^{requested by the applicant - A} ~~would have been granted to the~~ ^{if} applicant, the contingency of making individual arrangement ^{been necessary} would have occurred ~~of making special arrangements~~ which was impracticable. It is contended that there was urgent need for inducting newly recruited staff since some of the existing staff had sought transfer under rule 38 dealing with transfer at the request of the employees. A preliminary objection is also raised that the applicant could have approached the Director of Telecom, Nanded, and the application is premature. For these reasons it is contended that there is no merit in ^{it} the application and ~~is~~ liable to be rejected. Since ^{are available} ~~both~~ the averments on behalf of the applicant ^{and the} ~~since the~~

counter ~~have~~ ^{had} been filed we had decided to dispose the main application at the stage of admission. We have heard the arguments of Shri P.K.Joshi, learned counsel for the applicant and Shri P.G.Godhangaokar, Central Government standing counsel on behalf of the respondent.

2. In reply to our query as to what is the real position governing the employment of women candidates in ~~a~~ state of pregnancy, Shri Godhangaokar has very fairly brought to our notice the correct position namely the instructions of the Government of India dated 12.12.1968 ¹⁹⁻⁷⁻¹⁹⁷⁶ and ~~22.12.1959~~ dealing with ^{Supplementary} ~~Statutory~~ Rule 4 of the Fundamental Rules. The said ~~rule~~ ^{wish} is extracted below for easy reference:

"(13) Employment of women candidates in a stage of pregnancy. - It has been decided that a woman candidate, who as a result of tests, is found to be pregnant of 12 weeks' standing or over, should be declared temporarily unfit until the confinement is over. The candidates should be declared temporarily unfit until the confinement is over. The candidates should be re-examined for a fitness certificate six weeks after the date of labour, subject to the production of a medical certificate of fitness from a registered medical practitioner.

(G.I., M.F., O.M.No.F.5-21/68-M.A. dt.12.12.1968)

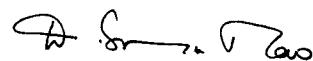
It has been noticed that certain Ministries/ Departments have not strictly followed the instructions contained above and certain women candidates were appointed even while they were in advanced stage of pregnancy. In order to avoid recurrence of such instances it has been decided that a woman candidate who as a result of tests is found to be pregnant of twelve weeks' standing or over shall be declared temporarily unfit and her appointment held in abeyance until the confinement is over.

She should be re-examined for a fitness certificate after the date of confinement, subject to the production of medical certificate of fitness from a registered medical practitioner. The vacancy against which the woman candidate was selected should be kept reserved for her. She should be re-examined for medical fitness six weeks after the date of confinement. If she is found fit she may be appointed to the post kept reserved for her and allowed the benefit of seniority in accordance with para 4 of annexure to M.H.A., O.M.No.9/11/55-RPS dt. 22.12.1959."

(G.I., Dept. of Personnel & A.R., O.M. No 14034/5/75 - "Estt. (D) dated 19-7-1976).
4/-

It has also been made clear that these orders have been specifically extended to all services and posts in the P & T Department vide D.G., P&T, New Delhi, letter dated 28th July 1969. It is clear from the above rule that in cases like the instant ^{one} ~~case~~ where a lady candidate is found pregnant of 12 weeks' standing or over ^{she} ~~she~~ should be declared temporarily unfit until the confinement is over. Thereafter she has to be re-examined for a fitness certificate six weeks after the date of labour. There is no provision for deleting her name from the select list. It is clear, therefore, that the action of the respondent in deleting her name from the select list is illegal. We, therefore, direct the respondent to restore the applicant ^{to} ~~her~~ position in the select list. The respondent shall make arrangements for her early medical examination as required under instructions dated 12.12.68 19.7.1976 and 22.12.1959 extracted supra. If she is found medically fit she shall be sent for training at the first available opportunity and given appointment immediately thereafter. In any event the appointment shall be made before 31st May 1991. Her seniority in the panel will be protected in accordance with the ~~rule~~ dated 22.12.1959. The application is accordingly disposed of with above direction and with no orders as to costs.


(P.S. Chaudhuri)
Member (A)


(Dr. Surya Rao)
Member (J)