

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH
CAMP AT NAGPUR

O.A. NO: 826/90

199

T.A. NO:

DATE OF DECISION 11.3.1992

Smt. Ashwini V. Moghe & Another Petitioner

Mr. M.M. Sudame Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Mr. K.D. Kelkar Advocate for the Respondent(s)

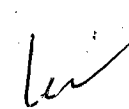
CORAM:

The Hon'ble Mr. Justice U.C. Srivastava, V/C

The Hon'ble Mr. M.Y. Priolkar, M (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 ?

mbm*


(U.C. Srivastava)
V/C

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY
CAMP AT NAGPUR
* * * *

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Original Application No.826/90

Smt. Ashwini Vivek Moghe & another ... Applicants

V/s

Union of India & Ors. ... Respondents

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

Appearances:

Mr. M.M.Sudame, Advocate
for the applicants and
Mr. K.D.Kelkar, Counsel
for the respondents.

ORAL JUDGMENT:

Dated : 11.3.1992

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

The applicants, two in number, have filed this application against the order dated 11.1.1990/6.12.1989 passed by the respondents and also against the order dated 19.9.90/16.7.90 by which it has been directed that in case the applicants fail to appear in the examination their services will be terminated. The applicant No.1 completed three months of training of Telephone Operator from commercial university and on her application she was given an appointment in the month of March 1982 purely on temporary daily wage basis. The applicant No.2 is also a Trained Telephone Operator and she was similarly given an appointment on 7.3.1982. Since then they are continuing to work on daily wage basis. The applicants made representations for their regular appointment but their representations were not agreed upon which was conveyed to them vide letter dated 10.11.1989/25.8.1989. Vide letter dated 19.9.90/16.7.1990 the Ministry of Personnel directed one time relaxation in recruitment

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rules to absorb casual workers in Group-C posts. It directed that since casual employment was banned no casual employment should be permitted and all casual employees should be directed to appear in the examination conducted by the Staff Selection Commission for Stenographers and LDCs. It was made clear that if any casual employee fails to appear in the examination his/her services should be terminated. The applicants said that as they received the letter only on 8.10.90 and the last date for making the application was August 1990 they could not appear in the examination as time for application was over. But as far as the examination referred to therein the letter is concerned that was in respect of LDCs and Stenographers but not for Telephone Operators. As it is a skilled trade and the applicants cannot be asked to sit in the examination which is not meant for them and they have prayed that because of their services of several years they may be regularised. The respondents have opposed the claim of the applicants and have pointed out that in the very beginning the applicants were informed that there was no regular post of Telephone Operator in the department of Income Tax at Nagpur and therefore they can be engaged only on daily wages and their consents to work as Telephone Operator on daily wages were taken. The applicants having accepted the posts with a clear understanding that they have to work on daily wage basis and there being no regular post of Telephone Operator cannot claim any regularisation. Even for purposes of regularisation in the post of LDC it was necessary that they should pass a departmental examination for that

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purpose even relaxation in the age was granted to them but they did not appear in the examination and as such they cannot claim that they should be appointed as LDCs or they be regularised as appearing in the examination is a must. Further there being no post of Telephone Operator in the department and the recruitment rules do not provide recruitment to the post of Telephone Operators the applicants cannot be regularised as Telephone Operators as their initial appointment was not on the post of Telephone Operator as such which they have claimed. The applicants representations were considered afresh but as the department was not in a position to accept the same and that is why they were rejected again. The facts as indicated above show that there may not be a regular post of Telephone Operator in the department but the work is available and that is why on daily wage basis the applicants were employed in the year 1982. In case the applicants are thrown out of their service obviously there will be no one who may handle the work of Telephone Operator in the absence of any regular appointment in the said post. The applicants have gained sufficient experience in the said work and although they had not appeared in the examination earlier but they can appear even now. If they are ^{allowed to} appear in the examination of LDC and the work of Telephone Operator is taken from them, according to them they will have no objection. The circumstances stated by the applicants show that for no fault of theirs' they could not appear in the examination although relaxation was granted to them. However, in view of the facts that the applicants are in service there appears to be no reason why ^{at least} two more opportunities will not be given to the applicants to

purpose even relaxation in the age was granted to them but they did not appear in the examination and as such they cannot claim that they should be appointed as LDCs or they be regularised as appearing in the examination is a must. Further there being no post of Telephone Operator in the department and the recruitment rules do not provide recruitment to the post of Telephone Operators the applicants cannot be regularised as Telephone Operators as their initial appointment was not on the post of Telephone Operator as such which they have claimed. Further applicants representations were considered afresh but as the department was not in a position to accept the same and that is why they were rejected again. The facts as indicated above show that there may not be a regular post of Telephone Operator in the department but the work is available and that is why on daily wage basis the applicants were employed in the year 1982. In case the applicants are thrown out of their service obviously there will be no one who may handle the work of Telephone Operator in the absence of any regular appointment in the said post. The applicants have gained sufficient experience in the said work and although they had not appeared in the examination earlier but they can appear even now. If they are allowed to appear in the examination of LDC and the work of Telephone Operator is taken from them, according to them they will have no objection. The circumstances stated by the applicants show that for no fault of theirs they could not appear in the examination although relaxation was granted to them. However, in view of the facts that the applicants are in service there appears to be no reason why two more opportunities will not be given to the applicants to

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appear in the examination. In case they fail in the examination both the times, then their services may ~~be~~ ~~not~~ be terminated and so long as these two opportunities are not given to them it is expected that they will not be thrown out of service in case work is available which they are still performing. It will be for the department to consider their claim for regularisation in case such posts in future are created in the department and by that time the applicants continued to remain in service. With these observations the application stands disposed of finally. No order as to costs.



(M.Y. Priolkar)
Member(A)



(U.C. Srivastava)
Vice-Chairman

v/-