

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.2140 of 2002

New Delhi, this the 25th day of July, 2003.

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

1. Karamvir Singh  
S/o Shri Tika Ram  
Mazdoor under C.W.E. Meerut  
803 Nagla Parshu  
P.O.Karkar Khera Meerut.
2. Kaniya Lal  
S/o Shri Chunni Lal  
Mazdoor under C.W.E. Meerut  
r/o 31/4 Rurki Road  
Meerut Cantt.
3. Manoj Kumar  
S/o late Shri Pritam Singh  
Safaiwala under C.W.E. Meerut  
r/o Vill Validpur,  
P.O.Dhorela, Distt. Meerut.
4. Mohd Farooq  
S/o Shri Habibur Rehman  
Chowkidar under C.W.E. Meerut  
r/o Vill Enchali, Pura,  
Thana, Meerut.
5. Ashok Kumar  
S/o late Shri Sohan Lal  
Safaiwala under C.W.E. Meerut  
r/o Anoop Nagar,  
Fasalpur, Meerut.
6. Mohd Javid  
S/o Shri Jamalluddin  
Mazdoor under C.W.E. Meerut  
r/o 708 Roshan pur  
Dhorli, Meerut.
7. Parsuram,  
S/o Shri Babu Ram  
Safaiwala under C.W.E. Meerut  
Village & P.O. Khetvali  
Distt. Meerut.
8. Amar Jeet,  
S/o late Shri Jodha Ram  
Mazdoor under C.W.E. Meerut Cantt.  
r/o 152 Chowk Mohalla  
Kankar Khera Meerut.
9. Sanjay Pandey  
S/o Shri Deen Dayal Pandey,  
Mazdoor under C.W.E. Meerut Cantt.  
r/o 414 Jawahar Nagar,  
Kankar Khera, Meerut.

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10. Smt. Babli  
W/o late Shri Vijay Kumar,  
Mazdoor, Vill. Anoop Nagar,  
Fasalpur, Meerut.

-APPLICANTS

(By Advocate: Shri V.P.S.Tyagi)

Versus

Union of India : through

1. The Engineer-in-Chief,  
Army Headquarter,  
Kashmir House,  
New Delhi.
2. The Chief Engineer,  
Bareilly Zone,  
Sarvatra Bhawan,  
Station Road,  
Bareilly Cantt-243001.
3. The Commander Works Engineer,  
29-J the Mall,  
Meerut Cantt.

-RESPONDENTS

(By Advocate: Shri R.N.Singh with Sh. Vivek)

O R D E R (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judl)

Heard learned counsel for the parties.

2. MA 1734/2002 for joining together is allowed.
3. All the applicants are aggrieved by a wrongful verbal order by which, the services of the applicants are not being allowed to perform their duties after having been appointed them on compassionate grounds.
4. Facts in brief are that all the applicants are son/wards of deceased government servants, who were employed under the respondents and expired while in service. All these applicants made applications for grant of compassionate appointment. Their applications were considered and appointment letters were issued to these applicants. Applicants against existing vacancies in relaxation of normal recruitment rules were issued appointment letters and copies of appointment letters so issued were also duly communicated to the applicants as per A-2 collectively. After the aforesaid appointment

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letters were issued to the applicants directing them to produce fitness certificate from Civil Surgeon/Commissioned Medical Officer as per Annexure A & B attached with the appointment letters. Applicants underwent medical examination and also produced medical fitness certificate as per Annexure A-4.

5. It is further stated that Medical Fitness Certificates were furnished by the applicants and they were allowed to perform duties w.e.f. 24.6.2002 to 27.6.2002. Thereafter respondents did not allow to work on the ground that further instructions were to be received from Bareilly. Ultimately applicants were not allowed to join the duties. Applicants challenged the same. The applicants alleged that a verbal order not to perform their duties is bad in law as they were appointed on compassionate grounds by the competent authority, who is C.W.E. Meerut Cantt. The said verbal order not to join duty amounts to denial of a reasonable opportunity to applicants which is arbitrary one and also the order passed is without assigning any reason the same should be quashed and directions have to be issued to allow to join their duty. Hence the OA.

6. Contesting the OA, learned counsel for respondents submits that action/orders not permitting the applicants to join their duty have been sanctioned by the competent authority and there is no infirmity therein. Sanction for appointment of the applicants was issued by Chief Engineer Bareilly Zone, Bareilly Cantt. Due to miscalculation of vacancies and based on that appointment letters issued by CWE Meerut, appointment letters were made. It is further submitted that letter based on the revised policy issued by the Government of India, by the DOPT. Guidelines issued vide OM No.2/98/2001/EIC dated



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16.5.2001 which were received in HQ dated 15.6.2002 by Chief Engineer, Bareilly on 21st June, 2002, vacancies for more than one year old were to be deemed lapsed/abolished. But till then sanction for appointment was already issued by Chief Engineer Bareilly and the said letters were by CWE Meerut. It is further submitted that the vacancies were actually calculated taking into consideration that the total vacancies as on 31.3.2002 including of previous years where as vacancies should have been taken 5% of wastage vacancies occurred due to death/retirement during the period on one year only i.e. 1.4.2001 to 31.3.2002. The vacancies prior to 2001 to 2002 were not to be considered as per policy. In order to safeguard Govt. interest to offer appointments issued to the applicants and were cancelled by CWE Meerut on the direction of CE BZ Bareilly vide their letter dated 10.7.2002. So in the circumstance, it is submitted that the respondents have a right to cancel the appointment letters issued to the applicants.

7. I have heard the parties and gone through the records. The short question involved in this case is whether the appointment letters issued to the applicants, which have been duly communicated, can be cancelled on the receipt of revised policy issued by the Govt. of India by the Department. Learned counsel for the applicants submits that the appointment having been made once cannot be cancelled nor can be reviewed by the higher authorities. In support of his contentions, learned counsel for applicants referred judgment, namely, Tagin Litin vs. State of Arunachal Pradesh & Ors. decided by Hon'ble Supreme Court reported at 1996 (2) ATJ 403 whereas some similar questions raised by the Hon'ble Supreme Court as per what the appointment takes the

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vacate. The facts in that case show that the State of Arunachal Pradesh where the post of Head Gaonburah had a vacancy to the death of incumbent. Thereafter a person was appointed and orders were to be issued. Thereafter the WT message issued by the Deputy Commissioner and sent to the Additional Commissioner to inform the petitioner. The Hon'ble Supreme Court observed as to the fact when appointment become effective. The observation of the laying on the law is as under:

"12 Here are concerned with appointment to a post. An appointment tot a post or office postulates:-

(a) a decision by the competent authority to appoint a particular person;

(b) incorporation of the said decision in an order of appointment; and

(c) communication of the order of appointment to the person who is being appointed."

8. Relying upon the above, learned counsel for applicants contends that applicants in this case also fulfil all the three elements of effective appointment which has vested a right on the respondents. Now the applicants have acquired a right which cannot be cancelled by higher authority themselves and the action of the respondents based on revised policy of Govt. of India, not permitting to perform the duty is bad in law. Applicants also referred another judgement reported at 2003 (1) 705 ATJ in the case of Jyothiraj Thirakappa Lalege Vs. The Senior Superintendent of Post Offices, Belgas and Ors. wherein it was also held that appointments have been duly made in this case. Respondents cannot cancel their appointment letters offered to the applicants and their action denying the applicants to perform their duties is bad in law.

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9. As against this, learned counsel for the respondents submitted that the offer of appointments issued to the applicants has been based on erroneous calculation of a number of vacancies and the Department has right to rectify the mistakes committed by them and more so when the revised policy has been issued by the Govt. of India in accordance with law. That vacancies for particular year were not available. So the applicants had been issued appointment letters wrongly. Respondents could withdraw the same.

10. A right which had been vested in the applicants the Department is not justified to take away the right by withdrawing the letter of appointments. I find that the appointments offered to the applicants had become complete when all the element of appointment referred in above the judgement of Tagin Litin (supra) as quoted above has been completed in this case. Decision had been taken by the competent authority and the same has been incorporated in the order of appointment and the order communicated to the applicants and were directed to furnish medical fitness. They have furnished medical certificate to the Department. All the required criteria had been fulfilled for appointment to become effective. Nothing remain to be done on the part of department. Assuming the factual revised policy had been received by the department, that cannot be taken into consideration for cancellation the appointment nor will reduce the number of vacancies which were available on the basis of revised policy appointment granted cannot be cancelled. Moreover, it can have prospective effect. So once right had already been vested to the applicants as they had been communicated the appointment letters

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which was issued on the basis of the appointment order made by the competent authority. Non-permitting of the authority to perform their duty or cancelling the appointments is illegal and amounts to termination of service which is also against the law laid down (supra).

11. In view of above circumstances, I am of the considered view that the cancellation of appointment by the respondents is totally illegal and their action for not permitting to perform duty cannot be justified. Accordingly OA is allowed and respondents are directed to permit to perform their duties as they had already been communicated the appointment letters which had become effective. Respondents are further directed to allow the applicants to perform their duties forthwith. No costs.



( KULDIP SINGH )  
MEMBER(JUDL)

/kdr/

*Pragn. 12/15 for extra 7 months 2000*