

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1327/2002

with

O.A.NO.1328/2002

O.A.NO.1329/2002

O.A.NO.1330/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 31st day of May, 2002

O.A.NO.1327/2002:

Mr. Mahender Singh
s/o Sh. Lakhn Chand
r/o V & P O Halabpur
Distt. Sonapat, Haryana.

... Applicant

with

O.A.NO.1328/2002:

Mr. Deshraj
s/o Sh. Chandgi Ram
r/o A-561, Pana Udhyan
Narela, Delhi-40.

... Applicant

O.A.NO.1329/2002:

Mr. Raghubir Singh
s/o Sh. Badlu Ram
r/o H.No.1352, Pana Paposiyan
Narela, Delhi - 40.

... Applicant

O.A.No.1330/2002:

Mr. Krishan Kumar
s/o Sh. Bhim Singh
r/o V & PO Ghoga
Delhi-39.

... Applicant

(By Advocate: Shri Rohit Sharma)

Vs.

1. Govt. of National Capital Territory of Delhi
through its Secretary, Ministry of Education & Ors.
5, Shamnath Mark, Delhi.
2. Directorate of Employment,
Govt. of NCT of Delhi
through its Director,
2-Battery Lane
Delhi.

... Respondents in all
the four OAs.

O R D E R

By Shanker Raju, M(J):

As the aforesaid four OAs involve ^{ann} identical

Contd...2/-

4

question of fact and law, are being disposed of through this common order.

2. In all these OAs, applicants have challenged their termination and consideration for resumption of service.

3. Applicants having been sponsored through Employment Exchange in Class-IV prior to 1992 were given an offer of appointment to the post of Peon on ad hoc basis on emergent basis. Consequently, they were appointed on regular basis.

4. All the applicants have been terminated by an order passed by the Directorate of Employment Exchange which was assailed in OAs No.2331/94, 2526/94, 2474/94 as well as in OA 339/95.

5. In the aforesaid OAs, the Tribunal felt convenient to dispose of these applicants individually though heard together. After termination, the matter has been referred for investigation by the Anti Corruption Branch, the Co-ordinate Bench, after scrutiny of the material available on record, though observed that the orders have been passed as per the rules and law, and does not require judicial interference but keeping in view of the investigation undertaken by the respondents, and being probationers order of discharge does not carry any stigma, the request for quashing of the orders has been rejected rather it was observed that on completion of the investigation if it is established that the

5

appointment of the applicants were not vitiated, the respondents shall consider the resumption of services of the applicants.

6. Learned counsel appearing for the applicants by drawing my attention to the report of the Anti Corruption Branch, contended that one Shri H.D.Birdi, who filed an affidavit in the previous OA and was inimical to former Director, Employment Exchange, Shri R.B.S.Tyagi alleged false allegations against him but no such finding has been given by the Director of Vigilance in its report. It is also stated that the Members of SSB have stated that before the vigilance that they were members of SSB constituted by Shri R.B.S.Tyagi and duly signed the minutes of the meeting which establishes that the applicants were regularly appointed as per the rules by a duly constituted SSB which finalising the affidavit of the H.D.Birdi. As per the applicants, recruitment for Class-IV appointment is to be made by the Head of Office, i.e., Shri R.B.S.Tyagi whereas the conclusion arrived at in the report held the appointment of the applicants as irregular. As Shri Tyagi, while acting as Joint Director failed to get the approval of the Head of the Department, i.e., Director, Employment Exchange rendering the appointment null and void, is not correct.

7. It is further stated that appointment of the candidates cannot be treated as irregular as they have not been sponsored through Employment Exchange. Mere non-approval of the HOD is a petty procedural lapse. It is also contended that the termination is

5

in violation of Articles 14 and 16 of the Constitution of India. Whereas the applicants have worked for a period of one year shows that they were working against a vacant post and in this process principles of natural justice have been given a go by.

8. I have given careful thought to the contentions of the learned counsel for applicant. In my considered view the termination of the applicants has been meticulously gone into in the previous OA and after perusal of the relevant record, a finding has been arrived at by the Tribunal that, as the applicants have been discharged during the period of probation on a temporary appointment, without casting any stigma and as the appointment was found in excess of the sanctioned strength against non-existence vacancies, in the public interest, was to be discontinued. Moreover, the official record also disclosed that the matter was probed into and the appointments made are without following proper procedure, no legal infirmity or irregularity was found and the decision of the respondents was also not found erroneous. However, the observation which is not a mandate, that after the completion of investigation if it is found that the appointment of the applicants have not been vitiated, the respondents shall consider for resumption of their services. In my considered view the challenge to the termination has been unsuccessfully carried out before the Tribunal. Once a finding has been recorded after hearing the parties, upholding the validity of the termination, the applicants are precluded from assailing the termination order again in this OA which

-5-

(7)

would suffer from the vice of resjudicate as the matter attained finality between the parties having same cause of action. The aforesaid attempt has been made on the strength of the observations made earlier which was subject to the consideration of the resumption of the applicants if the investigation discloses that the appointment has not been vitiated, whereas in the investigation report, it has been conclusively held that the appointment of the applicants have been vitiated, which does not give rise to a fresh cause of action to the applicants. As the consideration for resumption was conditional, and irregularities have been found in the investigation report, the applicants have no cause of action to assail their grievance.

9. In a recent decision in K.V.S. Vs. Ajay Kumar, JT 2002 (4) SC 467 the Apex Court observed that if the appointment orders are nullity there is no question of observation of principles of natural justice. Moreover an illegal appointment without following due process and contrary to Rules, shall not bestow an indefeasible right to assail the same, more particularly when the same has already been upheld by the Tribunal.

10. In this view of the matter and having regard to the reasons recorded above, I am of the considered view that these OAs do not warrant any interference, and are accordingly dismissed, as bereft of merit, at the admission stage itself but without any order as to costs.

S. Raju
(Shanker Raju)
Member(J)