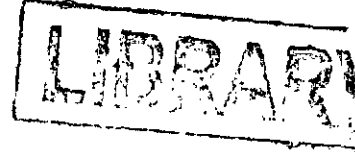


CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA



O.A. No.350/01396/2018.

Date of order: This the 7th Day of January, 2020.

Hon'ble Mrs. Bidisha Banerjee, Judicial Member

Hon'ble Dr (Ms) Nandita Chatterjee, Administrative Member



Hari Om Kumar Bhagat
Son of Shri Lakshman Bhagat
Aged about 33 years, Ex MTS (MIN)
Office of the Naval Officer-in-Charge (WBG)
Nausena Karyalaya, Nepier Road,
Hastings, Kolkata, residing at Chowk Bazar,
Barakar, P.O. Barakar, Dist, West Burdwan,
Pin 713344.

.....Applicant

- Versus -

1. Union of India
Through the Secretary to the
Govt. of India, Ministry of Defence,
South Block, New Delhi - 110001.
2. Chief of Army Staff, Indian Army,
Integrated Headquarters of Ministry of Defence (Army)
DHQPO, New Delhi - 110 001.
3. General Officer Commanding-in-Chief,
Headquarters, South West Western Command,
C/o 56 APO, Pin 908546.
4. Chief Staff Officer (P&A),
Headquarters, Eastern Naval Command,
Naval Base, Visakhapatnam-530014.
5. Naval Officer-in-Charge (WBG),
Nausena Karyalaya, Nepier Road,
Hastings, Kolkata-700 022.

.....Respondents

Advocate for the applicant : Mr S.K. Datta

Advocate for the respondents : Mr A.K. Chottopadhyay

ORDER

MS BIDISHA BANERJEE, MEMBER(J)

The applicant has preferred this O.A for the following reliefs :

- "(a) An order quashing and/or setting aside the impugned order dated 7.8.2018 and the recommendations dated 15th June, 2017 and 13th September, 2017 so far as the applicant is concerned.
- (b) An order directing the respondents to reinstate the applicant in service with effect from the date the applicant was terminated from service with all consequential benefits including back wages with interest.
- (c) An order directing the respondents to produce/cause production of all relevant records.
- (d) Any other order or further order/orders as to this Hon'ble Tribunal may deem fit and proper."



2. The grievance of the applicant in a nutshell is as under :

The applicant joined service as Messenger at the Headquarters South Western Command in the year 2006 on regular basis by a positive act of selection. In consideration of his willingness, he was transferred to Eastern Naval Command in 2016 and posted as MTS (MIN) in 5N Detachment Kolkata. While working as MTS in Kolkata he was served with the impugned order of termination dated 7th August, 2018 by which he was terminated from service. He thereafter preferred a representation dated 23.08.2018, through proper channel to the authority concerned but to no effect. Facing tremendous financial hardship along with his family since then, he is left with no other alternative but to approach this Tribunal for the ends of justice. He has alleged that the termination order is in clear violation of principles of natural justice and fair play and such termination of service after a lapse of about 12 years from the date of appointment and after his transfer to another command is bad in law, arbitrary and tainted with malice, is highly arbitrary and in clear violation of right guaranteed under Articles 14 and 21 of the Constitution of India.

3. The respondents have refuted the claim of the applicant in their reply. The admitted facts as per reply are as under :



Recruitment for 92 vacancy was carried out by Headquarters South Western Command during year 2005-06 in the first phase and 92 Group 'C' & 'D' Defence Employees were selected and recruited after duly carrying out written test and interviews. Appointment letters were issued to selected candidates including Shri Hari Om Kumar Bhagat which clearly mentioned that the appointment was provisional and purely on temporary basis. The initial appointment was on probation for two years and during the probationary period, if the individual was found unsuitable, his service was to be terminated without notice. After declaration of result of selection Board, Mr Bajrang Lal Gurjar, an aspirant for the post of messenger who was not selected, challenged his non selection alleging discrepancies in the merit list, by filing SB Civil Writ Petition No.1586/2006 in the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur. The said Writ Petition was dismissed as infructuous vide order dated 21 Nov 2008. In the meantime the following were detected that :

- "(i) SC/ST/OBC candidates less than 25 years of age but higher in merit than selected General candidates are placed against SC/ST/OBC categories.
- (i) Quota for physically handicapped is 3% of the notified vacancies. It stands exceeded by selecting three persons against 45 vacancies.
- (ii) Quota for SC vacancies came to seven whereas only six vacancies are shown reserved and filled.
- (iii) Candidates belonging to ex-servicemen are not placed against their respective categories i.e. SC/ST/OBC/General."

In view of the above anomalies, the higher authorities held the existing panel as invalid and directed to recast the panel afresh in accordance with Government orders on the subject (Annexures R-2 & R-3). In view of the



observations raised by Army Headquarters with respect to validity of the Board, the irregular employees including Shri Hari Om Kumar Bhagat were allowed to continue in service and their probation period was extended from time to time. Consequent to the observations raised by Army Headquarters (SD-7), the recast Board of Officers for selection was carried out in 2012 strictly in accordance with Govt. policies on reservation and to rectify the observations foretasted. As per the fresh recast panel 19 personnels including Shri Hari Om Kumar Bhagat were not selected in the recast select panel. The recast panel of selection was as forwarded to Integrated Headquarters of Ministry of Defence (Army) SD-7). The higher Headquarters advised that it is mandatory to issue offer of appointment to the 19 persons who were selected in the recast select panel. The irregular employees thereafter submitted representation dated 02 May 2017 praying for regularizations of their appointments. The said representation after due consideration was rejected by General Officer Commanding in Chief, South Western Command vide speaking order dated 08 May 2012 stating therein the detailed reasons for non confirmation of their appointments.

Thus the irregular employees were fully aware of invalidity of Board by which they were selected, observations raised by higher headquarters or the select panel and their present status as temporary employees on probation. In all fairness the case was taken up by Headquarters South Western Command with higher Headquarters to regularize the services of the irregular civil defence employees including Shri Hari Om Kumar Bhagat, not found in the list of selected candidates of recast panel. Further, out of 19 irregular employees, four resigned from service and services of one person was already terminated. In the meantime, Shri Hari Om Kumar Bhagat's posting order was issued by ADG of Manpower, MP-4, Integrated



Headquarters of Ministry of Defence (Army) vide posting Order No.16000/Mar/2006/Mp-4 (Civ) (b) dated 02 Mar 2016 and he got posted out to 5 Naval Detachment, Kolkata on 13 Apr 2016. Integrated Headquarters, Ministry of Defence (Army) after due consideration intimated Headquarter South Western Command vide letter dated 15 Jun 2017 that in respect of the irregular employees including Shri Hari Om Kumar Bhagat, the claims to Government jobs ceased to exist of the very day when their names got removed from the redrawn select panel and it was recommended to terminate their services forthwith. As per Rule 5 of DOPT guidelines, the services of temporary Govt. employee can be terminated forthwith and on such termination, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services or as the case may be for the period by which such notice falls short of one month.

The irregular employees including Shri Hari Om Kumar Bhagat were well aware of their status of being irregular in service and it was also highlighted to them from time to time that there are observations in the recruitment process and their services cannot be regularized till the time the observations are rectified and clearance is given by Integrated Headquarters of Ministry of Defence (Army). Shri Hari Om Kumar Bhagat have at no stage challenged the proceedings of recast select panel wherein they were not selected in the panel.

The respondents would cite the Constitution Bench decision **in Secretary, State of Karnataka & Ors. vs. Uma Devi and Ors. (2016) 4 SCC 1** where it was held as under :

"Absorption, regularization or permanent continuance of temporary, contractual casual daily wage or adhoc employees appointed recruited and continued for long in public employment de hors the constitutional scheme of public employment. Merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance if the original appointment, was not made by following a due process of selection as envisaged by the relevant rules."



The respondents have claimed that the application is bad for non joinder of parties since Shri Hari Om Kumar Bhagat has not impleaded the persons who were selected in the recast panel held in 2012 instead of Shri Hari Om Kumar Bhagat and Shri Hari Om Kumar Bhagat failed to make out even a prima facie case for grant of any relief as laid down by the Apex court in catena of judgments. The respondents have admitted that Shri Hari Om Kumar Bhagat was appointed by HQSWC(Army) on probation as Messenger vide HQSWC(Army) appointment Order dated 18 Oct 2006. His posting order was issued by ADG of Manpower MP-4 (Civ) (b).IHQ MoD (Army) vide posting order No.16000/Mar/2016/MP-4(Civ)(b) dated 02 Mar 2016, he got posted out to 5N Detachment Kolkata on 13 Apr 2016. He served with HQSWC(Army) w.e.f. 31 Oct 2006 to 12 Apr 2016. Yet they say that "between this period he was never given substantive post and his services were never regularized as per records held with HQSWC(Army)." They have averred that "he was transferred from HQSWC(Army) to 5N Detachment, Kolkata on compassionate grounds vide AG's Branch letter 16000/Mar/2016/MP-4(Civ)(b) dated 02 Mar 2016 and he reported to 5N Detachment w.e.f. 16 Apr. 2016." They would aver that "in the fresh recast panel of selection, 19 persons including Shri Hari Om Kumar Bhagat were not selected. Hence, the services of Shri Hari Om Kumar Bhagat were

terminated after approval of competent authority on the basis of recommendation made by HQSWC(Army) vide letter 46006/1/CC/HR/A dated 13 Sep 2017 and DG (MP&PS) DO letter 15901/Gen/MP-4(Civ)(b) dated 15 Jun 2017."



4. The applicant has placed a decision of Jaipur Bench of the Tribunal in **O.A.414/2018 in Ranjit Singh Chahar vs. Union of India & Ors.**, whereunder similarly circumstances, a terminated employee was granted full relief. The order is extracted to the extent found relevant :

"The pleaded case of the applicant herein is that an advertisement was issued by the South Western Command, Headquarters on 13.07.2005 inviting therein the applications for appointment on various posts including the post of a Mazdoor. The applicant applied against the post of a Mazdoor. He succeeded in the selection process and, accordingly, he was offered appointment on 18.10.2006. In terms of his appointment letter, he was on probation for a period of 02 years. However, his probation period was extended by one year vide order dated 15.12.2008. Thereafter, vide order dated 31.12.2015, an order was issued by the respondents whereby the names of employees mentioned therein, including the applicant herein, were transferred on permanent basis to different places. The applicant was given posting at Military Farm, Agra. On 15.06.2017, a communication was sent by the Director General (MP&PS) to Major General-Incharge Administration, South-Western Command referring to a select list having been re-drawn in the year 2012 on account of which the services of 09 individuals became irregular and a recommendation was made for termination of their services as their names stood excluded from re-drawn panel. On 13.09.2017, an order was passed by General Officer Commanding, South-Western Command, Jaipur stating therein that the appointments of some defence civilian employees have become irregular and a further recommendation for termination of their services was made. The said order dated 13.09.2017 also included the name of the applicant herein. The order dated 13.09.2017 was conveyed to the Military Farm, Agra where the applicant was posted. Pursuant to said order, the respondent no. 4 issued an order dated 29.11.2017 terminating the services of the applicant. Aggrieved by the said order, the applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.



7.....The applicant, who submitted his willingness, was ordered to be posted in Military Farm at Agra as Farm Hand and his services were confirmed there. Whereas, the applicants in OA No. 291/455/2017 did not give their willingness to get posting on other stations and they opted to invoke the jurisdiction of this Tribunal in order to challenge their termination orders. While dealing with their O.A., this Tribunal arrived at a conclusion that termination of their services cannot be justified after a period of more than 11 years as no fraud, mischief or misrepresentation was found on their part. It was further held that the error, while allocating the vacancies to different categories, on the part of the respondents cannot be attributed to the disadvantage of the applicants, who have rendered more than 11 years of unblemished services. After holding that the termination of the applicants' services were bad in law, a direction was issued to the respondents to reinstate them in services with all consequential benefits. The order passed by this Tribunal in OA No. 291/455/2017 has already been implemented and the applicants therein have been reinstated in services with all consequential benefits.

8. Shri N.C. Goyal, learned counsel for respondent no. 5 remained unable to refute the fact with regard to implementation of the order passed by this Tribunal in OA No. 291/455/2017. The specific pleading made by the applicant in the present Original Application that the matter is squarely covered by the said judgment in OA No. 291/455/2017 has not been disputed.

In this view of the matter, the present Original Application deserves to be allowed.

9. Accordingly, the present Original Application is allowed. The order dated 29.11.2017 (Annexure A/2) is hereby quashed and set aside. The respondents are directed to reinstate the applicant in service forthwith with all consequential benefits. However, there shall be no order as to costs.

5. In the present case we discern as under :

(i). Applicant was appointed on 18.10.2006 as a Messenger on probation with a condition that "the initial appointment will be on probation for a period of two years. During the probationary period, if you are found unsuitable, your service will be terminated without notice." His service was never terminated during such probation.

(ii) Vide order dated 02.03.2016 the applicant was depicted as transferred, as under :

"The individual mentioned below are transferred on permanent duty to Units/Estts shown against their names under the provisions of AO 22/2001:-

Name & Trade	From	Posted to	Remarks
Shri Ram Nivas Yadav, Safaiwala	HQ South Western Command Jaipur	GE(W) Mathura	As Peon
Shri Hari OM Kumar Bhagat Messenger	HQ South Western Command Jaipur	5N, DET Kolkata	As MTS (Min)

No TA/DA will be admissible to the individual(s) concerned and he/she will consequently travel at his/her own expense. The journey period in connection with the posting will be covered by grant of Earned Leave/Half Pay Leave, if due or Extra ordinary Leave, if there is no such leave due to his credit.

As per Govt. instructions on the subject, the lien of above named individuals would stand terminated on transfer to new estt/unit and they will acquire a lien on the new posts. They will not be entitled to repatriation on joining the new estt./unit.

Posting on compassionate grounds is to be carried out only against (a) post/grade in which direct recruitment is made. The receiving unit will, therefore, confirm availability of vacancy to relieving unit only after ascertaining availability of vacancy in the direct recruitment quota of the concerned trade/grade and also after ascertaining (from the dispatching unit) that the transfer meets the QRs laid down in the relevant Recruitment Rules.

(a) In cases where posting/transfer involves no change in trade/grade, the service rendered prior to such posting/transfer will be treated as continuous and the individuals may be allowed to draw the last pay drawn.

(b) In cases of appointment of Govt. servants to posts carrying lower Grade Pay under FR 15 (a) on their own request, the service rendered prior to such posting/transfer will be treated as continuous and the pay in the pay band of the Govt. servant will be fixed at a stage equal to the pay in the pay band drawn by him prior to his appointment against the lower post. However, he will be granted grade pay of lower post. Further, in all cases, he will continue to draw his increments based on his pay in the pay band+Grade Pay (lower)."



Therefore, his nature of employment had all attributes of a permanent employment viz. lien, pay scale, grade pay, continuous service, TA, DA, EOL, EL, HPL etc. Hence, admittedly and indubitably, he was given appointment against a substantive post, vide order dated 12.03.2016.

(iii) The Movement Order of April 2016 (Annexure A-3) clearly spells out the following :



"You are hereby relieved from HQ South Western Command on 12 Apr (A/N) and directed to report 5N Detachment, Kolkata (WB) **for permanent posting as MTS (Min)**. You have been Struck of Strength from HQ South Western Command with effect from 12 Apr 2016 (A/N).

X X X X

The service particular of the individual are appended below -

Date of birth	05 Jan 1985
Date of appointment	31 Oct 2006
Subscribers PRAN Account.No	110060177369
Next date of increment	01 Jul 2016

The individual is in receipt of the following pay and allowances as per 6th Pay Commission 2008 and pay and allowances is claimed upto 31 Mar 2016

EMOLUMENTS

(a) Basic Pay	Rs. 7370/-
(b) Grade Pay	Rs. 1800/-
(c) D A @ 119%	Rs. 10912/-
(d) H R A @ 20%	Rs. 1834/-
(e) Transport Allos	Rs. 600/- + DA 714/-
	Total Rs. 1314/-
(f) Washing Allos	Rs. 90/-
(g) Spl Pay (FPA)	Rs. 0/-
(h) Gov. monthly contribution	Rs. 2008
Total allowances	Rs. 25328/-

DEDUCTIONS

(a) Income Tax deducted till date	Rs. Nil
(b) Govt monthly contribution	Rs. 2008/-
(c) Individual NPS contribution	Rs. 2008/-
(d) CGEIS	Rs. 30/-
(e) CGHS	Rs. 125/-
(f) Festival Adv Recovery	Rs. 450/-
Total Deductions	<u>Rs. 4621/-</u>
<u>NET Pay</u>	<u>Rs. 20707"</u>

X X X X

The order extracted supra, does not speak that he was a temporary employee on probation. Therefore, the respondents' claim that he was never given a substantive post and his services were never regularized as

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per records held with HQSWC(Army), is unfounded and baseless. The applicant was not a temporary employee. Once posted against a permanent vacancy on lien, the applicant could no more be treated as a temporary employee on probation to whom Rule 5 of Temporary Service Rules would apply. He was to be treated as a confirmed, regular employee. There cannot be a discharge simpliciter under Temporary Service Rules, in his case. The constitutional safeguard that is provided to a Government servant under Article 311(2) of the Constitution that equally applies to him could not have been taken away.

6. More than anything else, being a permanent employee under Government his services could not have been terminated in the manner it has been.

In **Kamal Nayan Mishra vs. State of M.P. (2010) 2 SCC 169** Hon'ble Apex court, in a case where service of a confirmed employee was terminated invoking a clause in the attestation form, after 14 years of service, on the ground that he had given incorrect/false information while filling up the form considered the "instructions to employees in preamble to attestation form envisaging that any false information could result in termination of employee's service without an enquiry, and undertaking to that effect required in verification certificate at the end of attestation form" and the "contention that employee is estopped from objecting to termination without notice" held that "the said contention may merit acceptance in case of probationer but not in case of confirmed government employee." "No term in attestation form, nor any consent given by a government servant, can take away constitutional safeguard provided under Art. 311(2)." While reiterating that "probationer's services can be dispensed with during period of probation or at end of probation

period, if found unsatisfactory or unfit for appointment." Hon'ble Apex Court in the matter directed reinstatement with continuity of service and other consequential relief (except salary for the period of termination till order).



7. We noted the decision of the Jaipur Bench extracted supra, and its implementation vide order dated 13.12.2019 in the case of Shri Ranjit Singh Chahar, Farm Hand, Military Farm, Agra, as placed before us, that reads as under :

"You have been reinstated in service forthwith by competent authority i.e. Dir MF HQ Central Command vide their letter No.660407/Termination/E/MF-2 dated 11 Dec 2019 addressed to you."

In view of such, we have no hesitation to quash the impugned speaking order and remand the matter back to the respondents to issue appropriate order in accordance with the decision, with full consequential benefits (except salary from termination till the date of order).

8. O.A is accordingly allowed. No order as to costs.

(DR NANDITA CHATTERJEE)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)