

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2568 of 1999  
M.A. 2611 of 1999

New Delhi, this the 2<sup>nd</sup> day of March, 2000

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN(A)  
HON'BLE MR. KULDIP SINGH, MEMBER(JUDL)

1. Maheshwar Lal  
R/o C-369 Desu Colony,  
Rajghat,  
New Delhi-110 002.
2. Bir Singh  
R/o Village Joorwar Purva  
Post Jindaura,  
District Kanpur Dehat (UP). .. Applicants

By Advocate: Shri G.K. Aggarwal.

Versus

1. Union of India thro Secretary,  
Min. of Works and Estates,  
Nirman Bhawan, New Delhi-110 011.
2. The Deputy Director,  
Central Public Works Department,  
Nirman Bhawan,  
New Delhi-110 011. .. Respondents

By Advocate Shri K.C.D. Gangwani.

O R D E R

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

The Applicants impugn respondents orders dated 30.11.1999 (Annexure A-1) terminating their services under Rule 5(1) CCS (Temporary Service) Rules and pray that they be treated as on duty will full back wages.

2. Respondents issued advertisement inviting applications for the post of Messenger by 15.1.99 (Annexure A-2) in response to which applicants applied, and were issued appointment offers (specimen copy dated 30.8.99 at Annexure A-3). Upon receiving their acceptance, applicants were taken on respondents rolls vide office order dated 8.9.99 (Annexure A-4).

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3. However respondents have terminated applicants services by impugned orders dated 30.11.99 which applicants now challenge.

4. The applicants assert that their appointments are being terminated owing to certain baseless allegations which have been levelled against the Selectors that the appointments are tainted by corruption. It is denied that their appointments are tainted by corruption and it is strongly contested that applicants have been regularly appointed against existing posts but respondents are now seeking to fill them up afresh.

5. It is further pleaded by applicants that they were not given any show cause notice against termination in terms of the appointment letter, and that while their appointing authority was the Deputy Director, CPWD, the impugned orders had been issued by some other authority.

6. The application is being contested by the respondents, who admit that an open advertisement was issued in response to which nearly 15,000 applications were received, amongst whom applicants were two candidates who were selected along with others.

7. Respondents aver that the impugned termination orders dated 30.11.99 were necessitated because prior to the issue of call letters for interview it was not checked whether the posts for which applications had been

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invited were actually available or whether the same had remained vacant for more than one year in which case, as per the rules, it would be deemed to have lapsed until it was revived with Finance Ministry's concurrence.

8. It was also urged on behalf of respondents that the No Objection Certificate issued by the Labour Ministry had lapsed at the time the appointments were made; the selection procedure was not properly followed in as much as the Selection Committee did not make any reference to the relative merits of the candidates or the yards stick adopted by them to adjudge the candidates; and the entire selections from the stage of interview till the issue of appointment letters was ~~not~~ <sup>rushed</sup> through in a single day. Furthermore, it was urged that there was a ban on recruitment at the relevant time.

9. Respondents aver that the impugned termination orders are fully in accordance with Rule 5(1) CCS (Temporary Service) Rules, 1965 and Form II prescribed thereunder. They state that the termination orders were handed over to the applicants and they were in the process of paying them one month's salary in lieu of notice on that very day, but the applicants ran away from the office and thereafter <sup>did</sup> not turn up to collect the one month's salary.

10. We have heard the learned counsel for the parties and have gone through the records.

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11. Applicants counsel Shri Aggarwal submitted that the applicants' services could not have been terminated without issuing of one month's notice. In this regard he referred to clause (1) of the appointment offer dated 30.8.99 (Annexure A-3) which provides that the appointment can be terminated on one month's notice given by either side. He emphasised that there was no provision in the appointment offer that salary could be paid in lieu of one month's notice and as such without serving a notice, applicants' services could not be terminated. He further submitted that since respondents themselves had prepared the appointment offer electing to issue a notice before terminating applicants services, they could not have resorted to Rule 5(1) CCS (Temporary Service) Rules, 1965 whereby in case of dispensing of notice, one month's salary in lieu of notice was to be paid. He, therefore, argued that the impugned termination orders were illegal, arbitrary and bad in law.

12. In reply respondents counsel Shri Gangwani submitted that every employee who has been given a civil post is to be governed by certain rules. Whatever might be the contents of the appointments offer, anything contrary to the rules could not stand. Since Rule 5 CCS (Temporary Service)) Rules, 1965 provided that a temporary employee's service could be terminated on one month's notice or one month's pay and allowances in lieu of notice, and as admittedly applicants were temporary employees, the impugned orders were perfectly in order.

13. We have considered the matter carefully.

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14. In view of the procedural and other infirmities pointed out by respondents in the appointments, it cannot be said that their decision to cancel them was illegal or arbitrary. Respondents are also correct when they state that a person who joins ~~the~~ service is bound by the rules applicable to that class of employees. As applicants were appointed as Messengers on purely temporary basis, ~~the~~ the CCS (Temporary Service) Rules, 1965 ~~were~~ applicable to them and respondents ~~were~~ empowered to terminate their services under Rule 5 thereof, either by giving one month's notice, or alternatively by paying one month's salary and allowances in lieu of notice.

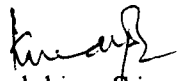
15. Shri Aggarwal has also submitted that on the principle of estoppel, respondents could not have terminated applicants services. It is contended that there was an implicit assurance that since applicants had joined Government service, they would have a long career ahead of them, during the course of which they would also have been promoted, all of which has been set at naught by the impugned orders. This contention has no merits because applicants services have been terminated in accordance with rules which have statutory force, and there can be no estoppel against statute.

16. During hearing Shri Aggarwal also prayed for damages but it is settled law that the Tribunal cannot award damages, and in any case there is no such prayer

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made in the OA to this effect.

17. In view of the above, we find that the OA has no merits and the same is dismissed. No costs.

  
( Kuldip Singh )  
Member(J)

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( S.R. Adige )  
Vice Chairman(A)