(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

1. OA 2591/1999 CP 22/2000 MA 500/2000	2. OA 2592/1999 MA 491/2000	3. OA 2593/1999 CP 28/2000 MA 366/2000 MA 504/2000
4. OA 2594/1999 CP 24/2000 MA 364/2000 MA 507/2000	5. OA 2595/1999 CP 33/2000 MA 492/2000	6. OA 2596/1999 CP 26/2000 MA 496/2000 MA 365/2000
7. OA 2597/1999 CP 25/2000 MA MA 498/2000	8. OA 2598/1999 CP 32/2000 MA 363/2000 MA 506/2000	9. OA 2599/1999 CP 22A/2000 MA 508/2000
10. OA 2600/1999 CP 27/2000 MA 367/2000 MA 501/2000	11. OA 2649/1999 CP 193/2000 MA 505/2000	12. OA 2650/1999 MA 510/2000
13. OA 2651/1999 MA 497/2000	14. OA 2652/1999 MA 499/2000	15. OA 2653/1999 MA 502/2000
16. OA 2654/1999 MA 509/2000	17. OA 2655/1999 MA 503/2000	18. OA 2727/1999

New Delhi this the 16th day of August, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

1. Sunil Kumar Singh S/O Birendra Kumar Singh,
R/O N-432, Sewa Nagar,
New Delhi.
... Applicant
in OA 2591/99

2. Manoj Kumar S/O Gopaljee Prasad,
R/O H.No.141, Aliganj
Kotla Mubarakpur,
New Delhi.
... Applicant
in OA 2592/99

3. Munna Shankar S/O Parshuram Singh,
R/O M-323, Sewa Nagar,
New Delhi.
... Applicant
in OA 2593/99

4. Sahib Rai S/O Bindhuyachal Rai,
R/O Sri Hanuman Mandir,
Bharti Nagar,
New Delhi.
... Applicant
in OA 2594/99

5. Gangadhar Rout S/O Prahlad Rout,
R/O Type V/47, Lodhi Colony,
New Delhi.
... Applicant
in OA 2595/99

6. Munna Ram S/O Jamuna Ram,
R/O Sri Hanuman Mandir,
Bharti Nagar,
New Delhi.
... Applicant
in OA 2596/99

7. Tuntun Chawrasiya S/O Bishwanath Prasad,
R/O D-345, East Kidwai Nagar,
New Delhi. ... Applicant
in OA 2597/99

8. Santosh Kumar Rai S/O Om Prakash Rai,
R/O D/52, Lodhi Colony,
New Delhi. ... Applicant
in OA 2598/99

9. Rakesh Kumar Singh S/O Chandradeep Singh,
C/O Uma Shankar Shah,
Qtr. No.83, Gali No.9,
Press Enclave, Vikas Nagar,
New Delhi. ... Applicant
in OA 2599/99

10. Mohan Yadva S/O Ram Dev Yadav,
R/O C-II/39, Lodhi Colony,
New Delhi. ... Applicant
in OA 2600/99

11. Vimal Mishra S/O Chander Bhan Mishra,
R/O 840, Sector 2, R.K.Puram,
New Delhi. ... Applicant
in OA 2649/99

12. Ram Khillari Meena S/O Ram Kishan Meena,
R/O 311-F, Sen Railway Colony,
Ghaziabad (UP). ... Applicant
in OA 2650/99

13. Virender Singh S/O Lallu Ram,
R/O Maharajpura,
Teh. Vair, Distt.Bharatpur,
Rajasthan. ... Applicant
in OA 2651/99

14. Rahul Kumar Srivastava S/O P.N.Srivastava,
R/O D-666, Kidwai Nagar,
New Delhi. ... Applicant
in OA 2652/99

15. Ram Barosi S/O Ram Lal,
R/O Vill. Naroli, Teh.Vair,
Distt.Bharatpur. ... Applicant
in OA 2653/99

16. Jhamman Singh S/O Bhoop singh,
R/O Vill.Guretha, Sultan Pur,
P.O.Bazidpur, Distt. Mahamaya Nagar,
Hathras (UP). ... Applicant
in OA 2654/99

17. Sanjeev Kumar Chauhan,
C/O Thakur Onkar Singh,
R/O N-12, Green Park Extn.,
New Delhi. ... Applicant
in OA 2655/99

18. Jagjeet Singh S/O Rajinder Singh,
R/O G-15, Vishnu Garden,
New Delhi-110018. ... Applicant
in OA 2727/99

(By Mrs. Shyamala Pappu, Sr. Advocate with Shri George Paracken, Advocate)

-versus-

Director General of Works
through
Central Public Works Department,
Nirman Bhawan,
New Delhi-110001. ... Respondent

(By Shri K.C.D.Gangwani, Advocate)

O R D E R (ORAL)

Shri V.K.Majotra, AM :

Since identical question of law and fact arises for adjudication in all these OAs, they are being disposed of by the present common order.

2. The applicants have challenged the respondents' orders dated 30.11.1999 (Annexure-A) terminating their services under Rule 5(1) of the Central Civil Services (Temporay Service) Rules, 1965, and have sought quashing of the said order with backwages.

3. The respondents advertised posts of Messengers/Farash/Safaiwalas vide advertisement in the Employment News (January 2-8, 1999) (Annexure A-1). After participating in the process of selection in response to the aforestated advertisement, the applicants were appointed to the said posts. The applicants have alleged that the respondents have arbitarily invoked the provisions of the 1965 Rules, despite the applicants being on probation for two years, whose suitability could be judged only at the end of two years.

4. The respondents have stated in their counter that before the publication of the advertisement in the Employment News, no objection certificate from

Surplus Cell of Directorate General of Employment, Ministry of Labour was obtained. However, the no objection certificate was valid for three months only. Out of 3000 plus applications received in response to the advertisement, 297 candidates were called for interview; 126 candidates actually appeared in the interview. The respondents have contended that before issuing the call letters for interviews, it was not checked whether the posts for which recruitment had to be made had remained vacant for more than one year. As per the instructions of Ministry of Finance, a post which has remained vacant for more than one year shall be deemed to have lapsed unless it is revived with the concurrence of the Ministry of Finance. A fresh no objection certificate was not obtained from the Ministry of Labour as the earlier certificate issued by them was valid for three months only. According to the respondents termination of services of the applicants is not because of any tainted selection or corruption but because of the fact that there were serious irregularities in giving them appointments. The respondents have stated that the applicants were given appointments during the period when there was a complete ban on recruitment to all posts in all Government organisations, and that the only course open for them was to terminate the services of the applicants who were appointed contrary to the Government ban order, apart from the fact that the posts had also lapsed and a fresh no objection certificate from the Ministry of Labour was not obtained. The applicants have filed a rejoinder as well.

5. We have heard the learned counsel on both sides and gone through the record available on file.

6. The learned counsel for the applicants pleaded that the applicants were on probation and had not been served any notice nor were they given any chance for improvement in their performance or conduct, if anything was lacking in them. The learned counsel also contended that the applicants were not responsible for any infirmities in the process of their selection.

7. Reiterating the averments made in the counter, the learned counsel for the respondents relied on an order dated 2.3.2000 passed by this Tribunal in OA No.2568/99 - **Maheshwar Lal & Anr. v. Union of India & Anr.** The facts in the instant case are identical to those of the said case. It was held therein, "In view of the procedural and other infirmities pointed out by the 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 service is bound by the rules applicable to that class of employees. As applicants were appointed as Messengers on purely temporary basis, 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." The OA was accordingly dismissed being devoid of merit.

8. We find that the services of the applicants have not been terminated on any ground of misconduct or non-suitability. Their services have been terminated particularly because of the following reasons :

I. There was a ban on filling up of all vacancies in all Government organisations w.e.f. 5.8.1999 and, therefore, the selection held on 28.8.1999 was uncalled for and irregular.

II. The respondents had not checked whether the posts for which the selection was to be made were lying vacant for more than one year or not.

III. Before holding selection to fill up these posts which had lapsed, Ministry of Finance was not consulted for revival of the same.

IV. Fresh no objection certificate from the Ministry of Labour was not obtained before the selection.

Obviously the respondents had proceeded to resort to selection process for non-existent posts.

9. The contention of the applicants in their rejoinder that the mere fact that the posts were advertised would show that the posts had not lapsed, is not acceptable in the light of the facts brought to our notice by the respondents.

10. For the reasons stated above, we find that the respondents had made recruitment to non-existent

posts without reviving the same with the concurrence of the Ministry of Finance. Recruitment made to such non-existent posts, thus, cannot be upheld.

11. Having regard to the facts and circumstances of the case and also to the ratio of the case of **Maheshwar Lal** (supra), we find that the applicants were appointed against non-existent posts on purely temporary basis and thus the 1965 Rules are clearly applicable and the respondents were empowered to terminate their services under Rule 5(1) thereof.

12. In view of the above, we find that the OAs are devoid of merit and the same are accordingly dismissed. There shall be no order as to costs.

13. The Contempt Petitions and Misc. Applications also stand disposed of.

(V. K. Majotra)
Member (A)

(Ashok Agarwal)
Chairman

/as/

Attested