

Central Administrative Tribunal
Principal Bench

...

O.A.No. 853/1995

6

New Delhi, the 13th day of September, 1995

Hon'ble Shri A.V. Haridasan, Vice-Chairman (J)
Hon'ble Shri R.K. Ahooja, Member (A)

Ganesh son of Shri Ghamandi Lal
resident of L-II, 334,
Madangeer,
New Delhi- 110 062.

..Applicant

(By Shri A.K. Bhardwaj, Advocate)

Versus

Union of India through:

1. The Secretary,
Ministry of Science & Technology,
Department of Biotechnology,
Block - 2 (7th floor), Lodi Road,
New Delhi- 110 003.
2. The Deputy Secretary,
Ministry of Science & Technology,
Department of Bio-technology,
Block- 2 (7th floor), C.G.O. Complex,
Lodi Road,
New Delhi- 110 003.
3. The Under Secretary,
(Shri Ganga Singh),
Ministry of Science & Technology,
Block- 2 (7th floor), C.G.O. Complex,
Lodi Road,
New Delhi.

..Respondents

(By Shri N.S. Mehta, Advocate)

Order (Oral)

By Hon'ble Shri A.V. Haridasan, Vice-Chairman (J):

The applicant was first engaged as a casual labourer with Ministry of Science & Technology, Department of Bio-technology to work as a gardner. Thereafter, after being found medically fit, he was appointed by the Deputy Secretary the second respondent by order dated 6.4.1993 (Annexure-'B') as a Mali in the pay scale Rs. 750-940/-. He was put on probation for a period of two years. While so by a notice dated

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7

23rd December, 1994 (Annexure A-5) the Under Secretary, the respondent No. 3, purporting to act under sub rule 5(1) of the C.C.S.(Temporary Service) Rules, 1965 terminated the services of the applicant by giving one month's notice. Aggrieved by the termination of his services, the applicant approached this Tribunal filing O.A. No. 160/95 which was disposed of with a direction to the applicant to make a representation/appeal under sub rule 2 of Rule 5 of the C.C.S. (Temporary Service) Rules to the competent authority and with a direction to the competent authority to dispose of the appeal, with a speaking order. In view of the above directions, the applicant made a representation to the Deputy Secretary, the respondent no. 2, who by the impugned order dated 25th April, 1995 rejected the appeal of the applicant. It is under these circumstances, the applicant has filed this application challenging the legality, validity and correctness of the order of the third respondent terminating his services, praying for a declaration that the action of the respondents in terminating the services of the applicant is illegal, arbitrary, void and discriminatory with consequential relief of re-instatement in service with back wages. The applicant has alleged in this application that the third respondent was motivated by ~~Malice~~ in issuing the order of termination. He has also contended that the third respondent not being his appointing authority namely the authority who appointed him had no jurisdiction to terminate his services.

The respondents in their counter statement have admitted that the applicant was appointed as temporary Government servant by the second respondent but they contend that the third respondent, according to the rules, being the appointing authority, he was competent to terminate applicant's services.

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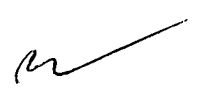
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8

The representation submitted by the applicant was properly considered and he was given a reasoned order according to the respondents.


We have heard the learned counsel for the parties and have perused the material on record. Shri A.K.Bhardwaj, counsel for the applicant argued that the order of the third respondent dated 23rd December, 1994 (Annexure A-5) is without jurisdiction as applicant having been appointed by the Deputy Secretary, the respondent no. 2, nobody subordinate to him is empowered by rules to terminate his services. He argued that this contention taken by the applicant in his appeal submitted to the Deputy Secretary, the second respondent, was not taken note of while disposing of the representation, and, therefore, the impugned order is liable to be struck down. Learned counsel for the respondents on the other hand invited our attention to the fact that in the case of group 'D' employees like the applicant, the Under Secretary is the appointing authority and as such is competent to award any of the penalties. Therefore, despite the fact that the applicant was appointed by the Deputy Secretary, Shri N.S.Mehta argued that the Under Secretary, the third respondent was competent to terminate the applicant's services under Rule 5 of the C.C.S.(Temporary Service) Rules, 1965. Shri Bhardwaj counsel for the applicant invited our attention to the rulings of the Hon'ble Supreme Court of India in the case of Om Prakash Gupta Swadheen V/s. Union of India and Ors. reported in 1975(2) S.L.R. P. 226 wherein in a similar circumstances it was held going by the definition of the appointing authority in Central Civil Services (Classification, Control and Appeal) Rules, 1965, the appointing authority should be deemed to be the highest authority contained in rule 2(a) of the Rules, and


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9

that if the termination order is issued by the lower authority than that of appointing authority then the same is not sustainable. In the case of Om Parkash Gupta Swadheen, he was appointed by a higher authority but his services were terminated by the lower appointing authority. The Hon'ble Supreme Court of India held that the order of termination was invalid. The dictum in Om Prakash Gupta Swadheen's case applies on all fours to the facts of this case. The applicant admittedly was appointed by the Deputy Secretary, the respondent no. 2. The Under Secretary, the respondent no. 3, being subordinate in rank to the Deputy Secretary who appointed the applicant, the order issued by the Under Secretary terminating the services of the applicant has to be struck down as incompetent. The impugned order (Annexure A-1) which does not show application of mind on this aspect also has to be struck down. In the result, the application is allowed. The impugned orders are set aside and the respondents are directed to re-instate the applicant in service forthwith, at any rate within a period of one month from the date of receipt of this order and to pay him full back wages for the period he was kept away from the service within a period of two months from the date of receipt of this order. The application is disposed of accordingly with no order as to cost.


(R.K. AHUJA)
MEMBER (A)


(A.V. HARIDASAN)
VICE-CHAIRMAN (J)

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