

(12)

Central Administrative Tribunal
Principal Bench

O.A. 912/97

New Delhi this the 25 th day of September, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri K. Muthukumar, Member(A).

Naresh Kumar,
(Ex-Civilian Chowkidar),
S/o Shri Brij Lal,
R/o Bharatpur Gate, Nai Mandi,
Balmiki Basti,
Mathura (UP).

... Applicant.

By Advocate Shri D.N. Sharma.

Versus

1. The Union of India,
through the Secretary,
Ministry of Defence, South Block,
New Delhi.
2. The Director General of Medical Services,
Army Medical Corps, 'Sena Bhawan',
DHQ Post Office, New Delhi.
3. The Deputy Director of
Medical Services,
Headquarters UP Area,
Bareilly.
4. The Commandant,
Military Hospital,
Mathura (UP).

... Respondents.

By advocate Shri Harveer Singh, proxy for Mrs. P.K. Gupta.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the order passed by the respondents dated 12.1.1997 cancelling his appointment order.

2. The applicant was appointed by the respondents as a civilian Chowkidar in a temporary capacity on probation ^{for} ~~of~~ two years by the order dated 19.12.1996. Within one month, his appointment order has been cancelled

18/

13

by the impugned order dated 12.1.1997. According to the applicant, he had filed an appeal against this order, to which he had received no reply. He submits that he has been appointed on a regular post on two years' probation and there was no ground for cancellation of his appointment order. Shri D.N. Sharma, learned counsel, has also submitted that the applicant has fulfilled all the eligibility conditions before the appointment against a regular post. He has, ~~therefore~~, submitted that there was no reason to terminate the services of the applicant in a most arbitrary fashion without even giving him a show cause notice. He has, therefore, prayed that the impugned order may be set aside and the applicant may be restored to his post as civilian Chowkidar with all consequential benefits.

3. The respondents in their reply have stated that there was a vacancy of Chowkidar in Military Hospital, Mathura on the death of Shri Jamuna Prasad, which was informed to the Headquarters, UP Area, Bareilly. This post was earmarked for SC category against ^{the B2} 100 point roster and it is not disputed that the applicant belongs to this community. They have submitted that 10 vacancies were released to the Military Hospital by the Headquarters, UP Area, Bareilly, including the vacancy of Chowkidar. They have also admitted that Military Hospital, Mathura, after due consideration selected the applicant against the vacancy and his name was forwarded to Headquarters for issuing ^{the B2} appointment order. Subsequently, according to the respondents, it came to their notice that the vacancies, in fact, were never released by the Army Headquarters and, therefore, no appointment could be made. Hence, they

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cancelled the appointment order of the applicant by the impugned order dated 12.1.1997. They have tried to explain their lapses stating that due to the rush of work load while scrutinising the documents, they could not detect the mistake made by the Military Hospital, Mathura which has led to the cancellation of the appointment order. In short, their contention is that as per the relevant instructions, vacancies have to be released by the Army Headquarters, New Delhi before they are filled. In the circumstances, they have submitted that the application is without any merit and it should be dismissed with costs.

4. In the rejoinder filed by the applicant, he has submitted that the respondents themselves have referred to the vacancy of Chowkidar occurring¹⁸ in the Military Hospital, Mathura on 25.1.1996 due to the death of late Shri Jamuna Prasad, which vacancy was reserved for SC candidate. Therefore, he has submitted that the respondents have erred in mixing up this vacancy with those of the fresh posts which were to be released by the Army Headquarters. He has also submitted that even under the CCS (Temporary Service) Rules, 1965, his services could not have been terminated without giving him notice or in lieu thereof payment of salary, which has not been done in the present case. He has further submitted that under the Government of India's orders issued under FR 31-A, it is provided that except where the appointing authority is the President, the question whether promotion/ appointment of a particular post was erroneous should be decided by ^{next higher than the appointing authority} ~~the~~ authority¹⁸ in accordance with the established principles governing promotions/ appointments (GOI, Ministry of Finance O.M. dated 14.3.1963). He has submitted that in the present case

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his appointment order was issued by the DDMS, Headquarters, UP Area who had issued the order dated 19.12.1996 and the next higher authority who should have approved the cancellation would, therefore, be the Director General of Medical Services. He has pointed out that in the impugned cancellation order, the authority mentioned is Headquarters UP Area (Med). Learned counsel, therefore, submits that this is also an infirmity in the cancellation order. Finally, he has also urged that since admittedly the post was reserved for a SC candidate and the applicant who belongs to the SC community had been appointed after fulfilling all the eligibility conditions, the cancellation order was unjustified.

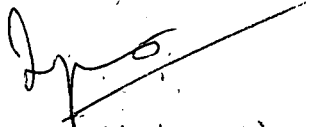
5. We have carefully considered the submissions of the learned counsel for the parties. We are not impressed by the arguments of the learned proxy counsel for the respondents that the applicant had been selected against a vacancy which has not been released by the Army Headquarters. The very first paragraph in their reply under "Brief History" refers to a vacancy of Chowkidar occurring in the Military Hospital, Mathura on 25.1.1996 due to the death of the earlier Chowkidar late Shri Jamuna Prasad. In the appointment order issued by the DDMS dated 19.12.1996, it is mentioned that the applicant has been appointed as Civilian Chowkidar in a temporary capacity on probation for a period of two years. The impugned cancellation letter has been issued without giving any notice. Under Rule 5(1) of the CCS (Temporary Service) Rules, 1965, the applicant's services could not have been terminated without giving the

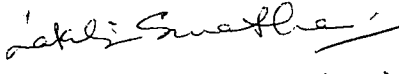
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notice or in lieu thereof payment of salary, as provided therein. In the circumstances, it is liable to be quashed on this ground alone.

6. In the cancellation letter, the authority is shown as the Headquarters, UP Area (Medical) Signal No. A-8031 dated 11.1.1997 as the basis for issuing the order. The appointment order which is sought to be cancelled had been issued by the DDMS. In the facts and circumstances, we find force in the submissions of the learned counsel for the applicant that even assuming that the impugned order is erroneous, the same could not have been cancelled without approval of the higher authority which has not been brought out from the reply or the documents placed on record by the respondents.

7. For the reasons given above, the impugned order dated 12.1.1997 is quashed and set aside. The respondents are directed to reinstate the applicant as Civilian Chowkidar within one month, from the date of receipt of a copy of this order. He shall be entitled to consequential benefits in accordance with the law and Rules. No order as to costs.


(K. Muthukumar)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

"SRD"