

Central Administrative Tribunal

Principal Bench: New Delhi

OA No.2525/94

New Delhi this the 21st day of January 1997
Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

Hon'ble Mr K.Muthukumar, Member (A)

Satbir
son of Shri Man Chand
R/o H.No. 506 Pana Udhyan
Narela
Delhi - 110 040.

...Applicant.

(By advocate: Mr V.P.Sharma)

Versus

1. National Capital Territory of Delhi
through Chief Secretary
Old Secretariat, Delhi
2. The Director
Directorate of Employment
16, Rajpura Road
Delhi
3. The Joint Director
Directorate of Employment
2 Battery Lane
Delhi
4. The Asst. Director (VO/EMT)
Market Information Office
Pusa, New Delhi.

...Respondents.

(By advocate: Shri Jog Singh)

O R D E R

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

This application was heard alongwith OA Nos.2096, 2108, 2331, 2332, 2471, 2472, 2095, 2526, 2582 of 1994, 39, 217, 345 and 1429 of 1995 as the background in which the services of the applicants in these cases were dispensed with was identical and as common question of law and facts were involved. All these applications refer to discontinuance of services of Class-IV employees under the Directorate of Employment on ad-hoc basis during a particular time. However, as each of the case presents its own special features, we find that it is more convenient to dispose of the applications individually though heard together.

24

-2-

2. In this application, the applicant has assailed the order dated 13.12.94 of the second respondent discontinuing his services with immediate effect. The applicant was given an offer of appointment as peon in the Directorate of Employment by order dated 1.7.92. He joined the post on 3.7.92 and was on probation. As the applicant completed the period of two years of probation on 2.7.94 and as there was no extension of probation, according to the applicant, he became entitled to the status of a permanent employee and termination of his services without giving him a notice and an opportunity to defend himself by the respondents is violative of Article 311 (2) of the Constitution.

3. Respondents in their reply contend that on a probe into the matter of appointments during the particular period, on the basis of complaints of illegal and irregular appointments, it was detected that the appointments were made by the then Joint Director against the provisions of recruitment rules and in excess of sanctioned strength of the establishment, putting the official under suspension. It was then decided to discontinue the services of those persons who were appointed and refer the matter for an investigation by the Anti-Corruption Department and that the applicant's appointment being one made irregularly, he does not get any valid right to hold the post and therefore the action is perfectly justified.

4. We have perused the pleadings in this case and have heard the learned counsel on either side. We have also perused the file which led to the passing of the impugned order.

3

25


5. The applicant has completed two years of service but no order of confirmation has been issued to him. An order by the competent authority to the effect that the probationer has satisfactorily completed the period of probation and confirming him is necessary for a probationer to be confirmed on a permanent post. If the probation has not been satisfactorily completed or if there is some impediment in confirming the probation even after the period of two years he cannot be deemed to have been confirmed. Admittedly, no such order has been passed in the case of the applicant. Though the applicant has continued beyond the period of probation, as no order of confirmation has been issued, his status even beyond the period of probation can only be that of a probationer. There is no stigma attached in the order discontinuing the service of the applicant though it is stated that the appointment was irregularly made. The file produced by the learned counsel for the respondents discloses prima facie that the appointments including that of the applicant were made when there was no vacancy and violating the rules and instructions relating to the recruitment and that the matter was under investigation by the Anti-Corruption Department. The learned counsel of the applicant argued that just because the respondents have a doubt as to whether the appointments were made erroneously, it is not permissible to ~~discontinue~~ the appointment and that they could have suspended the applicant. We do not find it possible to accept this argument. Suspension of an employee is permitted only if a departmental proceedings against him is either pending or contemplated or when a criminal investigation or trial is pending. In the instant case no


3

departmental proceedings was even ~~under~~ contemplation against the applicant and no criminal case is pending. What is contemplated is action against the Joint Director by the Vigilance. Therefore, the applicant could not be placed under suspension. If the appointment was made when there was no post for ulterior motive illegally as contended by the respondents, the mistake has to be reflected by discontinuing the appointment lest public interest should suffer.

6. In these circumstances, the respondents have discontinued the services of the applicant bonafide and no exception can be taken against him.

7. In the result we find that the applicant is not entitled to any relief. However, if as a result of the investigation it is found that the applicant was appointed properly against a vacancy and that there was no irregularity in the procedure the respondents shall consider the resumption of his service. The application is disposed of with the above direction without any order as to costs.


(K. Muthukumar)
Member (A)


(A.V. Haridasan)
Vice Chairman (J)

Ashraf

Mittal