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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No.761/94

NEW DELHI THIS THE 7TH DAY OF NOVEMBER, 1994.

MR. JUSTICE S.K.DHAON, VICE-CHAIRMAN (J)  
MR. B.N.DHOUNDIYAL, MEMBER (A)

Miss Poonam Bisaria,  
D/o Shri S.P. Bisaria  
R/o 202, Natraj Apartments  
67, I.P. Extension  
Near Patparganj Depot  
New Delhi. ....

Applicant

BY ADVOCATE SHRI M.L. CHAWLA.

Vs.

1. Government of the National Capital Territory of Delhi (through the Chief Secretary), Old Secretariat Building Delhi-110054.
2. The Director of Education (N.C.T.D.) Delhi, Old Secretariat Delhi-110054.
3. The Deputy Director of Education (N.C.T.D.) (District Central), Bela Road Daryaganj, Delhi.
4. The Deputy Director of Education (N.C.T.D.) (District East) Rani Garden Delhi-110092. ....

Respondents

BY ADVOCATE SHRI RAJ SINGH.

ORDER (ORAL)

JUSTICE S.K.DHAON:

The order dated 7.3.1994 passed by the Deputy Director of Education terminating the services of the applicant in the purported exercise of power under sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965 (hereinafter referred to as the Rules) is being impugned in the present OA.

2. The applicant was appointed as a Temporary Trained Graduate Teacher (T.G.T) on 19.10.1993. Prior to that, on 17.7.1993, a letter was issued to her offering her appointment. One of the terms of the appointment was that the appointment can be terminated by a month's notice given by either side without assigning any reason. The appointing authority, however, reserved the right of termination of services forthwith or before the expiry of the stipulated period of notice by making payment

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to the person concerned of a sum equivalent to the pay and allowances for the period of notice or the unexpired period thereof. The letter of appointment dated 19.10.1993 also refers that the appointment would be subject to the terms and conditions already mentioned in the offer of appointment and accepted by the applicant.

2. At the initial stage of the hearing of this OA, the learned counsel for the applicant urged that the order, in fact, was by way of punishment and resort to Rule 5 of the Rules was a mere camouflage. He, therefore, insisted for the production of the relevant record. Under our direction, the record has been produced and we have perused the same.

3. Before advertng to the record, we may notice the material averments made in the counter-affidavit filed by the respondents. They are:

In the application form given by the applicant, in Col.11, she had given out that she was a Scheduled Tribe. The <sup>of the total</sup> cut-off/ marks for a Scheduled Tribe candidate/ <sup>qua the applicant</sup> was 37 whereas the cut-off of the total marks in relation to a general candidate was 49.33'. The applicant failed to secure 49.33' and she was given an appointment on the footing that she was a Scheduled Tribe.

4. The aforesaid averments made in the counter-affidavit are amply substantiated by the record which has been shown to us. As against Col.11 of the application form submitted by the applicant, she has clearly mentioned "2". The learned counsel has pointed out that there is an overwriting <sup>but</sup> ~~and~~ on a careful perusal of the entire application form, we find similar overwritings as against other columns also. We, therefore, reject the contention of the applicant that the entry against Col.11 is not genuine.

5. The learned counsel for the applicant has vehemently urged that the applicant had deposited a sum of Rs.50/-

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in the relevant bank the fee prescribed for the general candidates. This allegation has been refuted in the counter-affidavit. In the rejoinder-affidavit filed, a photostat copy of the receipt has been produced. However, in the affidavit filed by the applicant before this Tribunal, the number of the Demand Draft and the other particulars have been given. Be that as it may, nothing will turn on the mere fact that the applicant had submitted a fee of Rs.50/-. We are unable to draw any inference against the respondents on this score. We see no reason to disbelieve the record of the respondents.

6. Considerable reliance has been placed upon the affidavit filed by the applicant and also upon the fact that on 22.5.1993, the applicant had submitted a representation to the Director of Education pointing out therein that the result declared and as printed in the Newspapers contained a misprint in so far it showed that the applicant fell in the category of Scheduled Tribe candidates whereas she fell in the category of general candidates. Again, emphasise has been laid by the learned counsel upon the letter dated 13.7.1993 issued to the applicant asking her to report to the Administrative Officer on any working day along with her original certificates/documents. It is asserted that the respondents admitted the applicant with their eyes open. Therefore, the question of the applicant's making a misrepresentation did not arise.

7. It is a settled law that there is a distinction between the foundation of an order and the motive for passing an order. It is also a well-settled law that even if an order of termination simpliciter is camouflaged in the language which goes to show that power has been exercised under provisions as contained in Rule 5 of the Rules, the Court/Tribunal is entitled to tear

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the veil. It appears to us that no misconduct has been attributed to the applicant in this case. We have already indicated that the applicant failed to qualify amongst the general candidates as she did not secure 49.33 marks in all. It also appears to us that the applicant was mistakenly appointed treating her as a Scheduled Tribe candidate.

8. The learned counsel for the applicant relied upon a number of authorities. They are:

(1) Shri Om Parkash Goel Vs. Himachal Pradesh Tourism Development Ltd. Shimla Corporation (1991(2) ATJ Vol. II SC 137). In this case, an inquiry was duly conducted. However, before the final order could be passed, the disciplinary authority took resort to the provisions of Rule 5 of the Rules. In these circumstances, it was held that the foundation of the order was misconduct. Therefore, the order passed under Rule 5 was bad. This case is distinguishable.

(2) Shri Naresh Kumar Vs. Union of India & ors. (1991 (1) A.T.J. Vol. 10 627 CAT). In this case, the finding recorded by this Tribunal was that the foundation of the order of termination was the alleged misconduct attributed to the applicant before it. This case is also distinguishable.

(3) Shri Ramkesh Meena Vs. Delhi Administration through Chief Secretary and Another (1993(1) ATJ Vol. 14 638 CAT). In this case, a memorandum of charges was served upon the Government servant concerned. He filed a written statement thereto. Thereafter, no further inquiry was held and an order terminating the services of the Government servant concerned in the purported exercise of power under Rule 5 of the Rules was passed. In this case it was held that the real reason for passing the order of termination was the misconduct attributed to

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the Government servant. This case too is distinguishable.

9. This OA fails and is dismissed but without any order as to costs.

*B. N. Dhaon*  
(B.N.DHOUNDIYAL)  
MEMBER(A )

*S. K. Dhaon*  
(S.K.DHAON)  
VICE-CHAIRMAN(J)

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