

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 421/2000

New Delhi this the 31st day of July, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

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

Shri Rajeev Kumar
S/o Shri Ram Dass
R/o 4/468, Trilok Puri,
Delhi-110 091.

Applicant

(By Shri S.K. Gupta, Advocate)

-Versus-

1. Govt.of NCT of Delhi
through Chief Secretary
5, Sham Nath Marg,
Delhi.

2. Principal Secretary/Director
Directorate of Training &
Technical Education
M.M.R. Marg, Pitam Pura
Delhi-110 034.

3. Principal
G.B. Pant Polytechnic
Govt.of NCT of Delhi
Okhla
New Delhi.

Respondents

(Shri Praveen Chaturvedi, proxy for Sh.Devesh
Singh, counsel)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

Termination of the applicant from the post of Workshop Instructor (Painting) vide order dated 1.3.2000 at Annexure A-1 is impugned in the present OA. He was appointed to the aforesaid post by an offer of appointment issued to him on 17.6.1999. Aforesaid appointment has been terminated by the aforesaid impugned order of 1.3.2000. The same is impugned by contending that once appointed, the appointment could not have been rescinded without following due principles of natural justice.

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2. Applicant, it is pointed out on behalf of the respondents, does not possess the requisite qualification for the aforesaid post, whereas a candidate for the aforesaid post requires to possess 10+2 examination with Science and Mathematics, Applicant ~~does~~ not possess the same. His appointment was accordingly rescinded.

3. Shri S.K. Gupta, learned counsel appearing on behalf of the applicant has placed reliance on the case of Jitender Kumar and others vs. State of Punjab and others, (1985) 1 SCC 122 wherein it has been observed as follows:-

"12. The establishment of an independent body like Public Service Commission is to ensure selection of best available persons for appointment in a post to avoid arbitrariness and nepotism in the matter of appointment. It is constituted by persons of high ability, varied experience and of undisputed integrity and further assisted by experts on the subject. It is true that they are appointed by Government but once they are appointed their independence is secured by various provisions of the Constitution. Whenever the Government is required to make an appointment to a higher public office it is required to consult the Public Service Commission. The selection has to be made by the Commission and the Government has to fill up the posts by appointing those selected and recommended by the Commission adhering to the order of merit in the list of candidates sent by the Public Service Commission. The selection by the Commission, however, is only a recommendation of the Commission and the final authority for appointment is the Government. The Government may accept the recommendation or may decline to accept the same. But if it chooses not to accept the recommendation of the Commission the Constitution enjoins the Government to place on the table of the Legislative Assembly its reasons and report for doing so. Thus, the Government is made answerable to the House for any departure vide Article 323 of the Constitution. This, however, does not clothe the appellants with any such right. They cannot claim as of right that the Government must accept the recommendation of the Commission. If, however, the vacancy is to be

filled up, the Government has to make appointment strictly adhering to the order of merit as recommended by the Public Service Commission. It cannot disturb the order of merit according to its own sweet will except for other goods reasons viz. bad conduct or character. The Government also cannot appoint a person whose name does not appear in the list. But it is open to the Government to decide how many appointments will be made. The process for selection and selection for the purpose of recruitment against anticipated vacancies does not creat a right to be appointed to the post which can be enforced by a mandamus. We are supported in our view by the two earlier decision of this Court in A.N. D'Silva v. Union of India, AIR 1962 SC 1130 and State of Haryana vs. Subash Chander Marwaha, (1974) 1 SCR 165. The contention of Mr. Anthony to the contrary cannot be accepted." (9)

Shri Gupta has further placed reliance on the case of Roshan Lal Tandon v. Union of India, (1968) 1 S.C.R. 185 wherein it has been observed as under:-

... It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Art. 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Art. 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group

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of which power and duties are exclusively determined by law and not by agreement between the parties concerned..." 10

4. Shri Praveen Chaturvedi, proxy counsel Shri Devesh Singh, counsel for the respondents on the other hand has placed reliance on the case of Dr. M.C.Bindal v. R.C. Singh and others, (1989) 1 SCC 136 wherein it has been held as under:-

"....The Commission, therefore, revised its earlier decision and withdrew the candidature of the appellant and also cancelled its recommendation earlier given in favour of the appellant. This decision of the Public Service Commission, in our considered opinion cannot be faulted..."

5. In our judgement, the decisions cited by Shri Gupta cannot have any application to the facts and circumstances arising in the present case. Applicant, it cannot be disputed, does not possess the requisite qualification for being appointed to the post of Workshop Instructor (Painting). The requisite qualification for the aforesaid post is 10+2 with Science and Mathematics which the applicant does not possess. The case of the applicant, in the circumstances, will be covered by a decision of the Supreme Court in the case of State of M.P. and others vs. Shyama Pardhi and others, 1996(7) SCC 118 wherein the Supreme Court has held that termination of appointment which was per se illegal does not attract the principles of natural justice. Though appointed, it has later on been found that the applicant does not possess the requisite qualification. Once this is found, the principles of natural justice are not attracted. The order of termination in the

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circumstances is just and proper and does not call for any interference by us in the present OA. The same is accordingly dismissed without any order as to costs. (11)

V.K.Majotra,
(V.K.Majotra)

Member (A)

sns

Ashok Agarwal
(Ashok Agarwal)

Chairman