

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-858/89

Date: 9.8.1989.

Shri Chet Bahadur and Applicants
seven others.

Versus

Union of India & Ors. Respondents

For the Applicants Shri K.L. Bhatia, Advocate

For the Respondents Smt. Raj Kumari Chopra,
Advocate

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri M.M. Mathur, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicants, who were appointed as Peons on ad hoc basis, have filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that the respondents be directed to set aside the impugned orders dated 21.4.1989 regarding termination of their services and that they may be deemed to be in service as if no such orders have been issued. They have also sought regularisation in the post of Peon as they have been working against regular vacancies which still exist.

2. The case of the applicants is that their names were sponsored by the Employment Exchange for the posts of Peon in the Planning Commission and that they were appointed on ad hoc basis as Peons in September, 1988. Since then, the period of their appointment has been extended upto 30.6.1989 or till further orders. No.

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notice of termination of services was given to them before the impugned order dated 21.4.1989 was issued. They have contended that the termination of their services without any reason casts a stigma on their career. They have also alleged that their juniors have been retained in service.

3. The case of the respondents is that the applicants gained employment through unfair means and played a fraud upon the Government and secured such employment. Eight applicants were selected and offered the posts of Peon on ad hoc basis from out of 60 candidates whose names were received through a list purported to have been sent by the Sub-Regional Employment Exchange, New Delhi, on 12.8.1988. At the time of issuing appointment order after completion of formalities like, medical examination, etc., all the candidates were asked to produce certificates showing their educational qualifications and date of birth. From the certificate produced by one, Shri Praduman Singh, according to On it was found that his date of birth as recorded in the educational qualifications certificate, he was over-age at the time the list containing his name was received from the Employment Exchange in the Planning Commission. His offer of appointment was, therefore, cancelled and the Sub-Regional Employment Exchange was requested to institute an inquiry into the matter. The Director (Employment) of the Directorate of Employment, Delhi Administration, vide his letter dated 10th April, 1989, informed the respondents that the list containing the names of 60 candidates, including the applicants' names was a bogus one issued under the forged signature of the Sub-Regional Employment Officer, Sub-Regional Employment Exchange, New Delhi. He also requested the respondents to terminate the appointment of On

the applicants forthwith as their selection was void ab initio. The Joint Director and Deputy Secretary (Employment) of the Directorate of Employment, Delhi Administration, wrote to the respondents on 19th April, 1989 that none of the applicants selected from the bogus list have been registered with the Employment Exchange, New Delhi, against the registration numbers shown in the list.

4. The respondents have contended that the appointment of the applicants was on ad hoc basis and their services could be terminated without giving any notice, in accordance with the terms and conditions of their appointment and in the facts and circumstances mentioned above.

5. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. The learned counsel for both the parties have relied upon numerous rulings in support of their respective contentions.

6. The respondents have not produced any evidence to indicate that the applicants adopted unfair means and got their names sponsored through the fake letter purported to have been sent by the Employment Exchange to the respondents. At the same time, it is clear from the records that the supplementary list purported to have been sent by the Employment Exchange on 12.8.1988, is a fake one and that it was not sent by the Employment Exchange. The learned

*Cases relied upon by the learned Counsel of Applicants:

Shri P.L. Dhingra Vs. Union of India, A.I.R. 1958 S.C. 36; Shri Bishan Lal Vs. State of Haryana, AIR 1978 S.C. 1963; Shri Prasidh Narain Vs. State, A.I.R., 1964 Allahabad, 278; Shri Swaminath Sharma Vs. Union of India, A.T.R. 1988(1), C.A.T. 84; Shri Anoop Jaiswal Vs. Union of India, A.I.R. 1984 S.C. 636; and Shri Ajit Kumar Vs. State of Punjab, 1989 S.L.J. T.N.H. 129.

Cases relied upon by the learned counsel of Respondents:

Shri Sanjiv Kumar Aggarwal Vs. Union of India & Others, A.T.R. 1987 (2) C.A.T. 566.

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counsel for the respondents stated that appropriate action has been initiated against those responsible for sending the fake letter dated 12.8.1988. The decision of this Tribunal in Sanjiv Kumar Aggarwal's case, relied upon by the learned counsel for the respondents, is not on all fours with the facts and circumstances of the present case. In that case, the Tribunal had found that the applicants, whose names were purported to have been forwarded by the Staff Selection Commission as having appeared in the examination and recommended by the Commission, could not produce any documentary evidence to show what real marks were allotted to them and from where they took the examination. As already pointed out, there is no evidence in the instant case that the applicants got their names sponsored through the Employment Exchange by unfair means.

7. The mere fact that the names of the applicants were sponsored by a letter purported to have been sent by the Employment Exchange which ^{on} turned out to be fake, would not disentitle them to be considered for appointment on ad hoc basis as Peons. They have worked as Peons from 29.9.1988 to 21.4.1989. The respondents have admitted in their counter-affidavit that there was no cause for complaint against the applicants in regard to their performance of duties as Peons.

8. As regards the practice of appointing persons through nominations received from the Employment Exchange, the Supreme Court has held in Union of India & Others Vs. N. Hargopal & Others, 1988 (1) S.L.R. 5 (SE) that the object of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 is not to restrict, but to enlarge ^{On}

the field of choice so that the employer may choose the best and the most efficient and to provide an opportunity to the worker to have his claim for appointment considered without the worker having to knock at the door for employment. The Court has held that the said Act does not oblige an employer to employ those persons only who have been sponsored by the Employment Exchange (vide para. 6 of the judgement). However, the Supreme Court held that in the absence of a better method of recruitment, any restriction that employment in Government departments should be through the medium of employment exchanges, does not offend Articles 14 and 16 of the Constitution (vide para. 8 of the judgement).

9. In the light of the above, we are of the opinion that the termination of the services of the applicants by the impugned order dated 21.4.1989, cannot be faulted on the ground that the applicants had not been given any show-cause notice before such termination. The reason is that the respondents never intended to act upon a list of candidates purported to have been sent by the Employment Exchange which, in fact, turned out to be a fake one. The applicants have stated in the application that there are vacancies in the posts of Peon in the Office of the respondents. They have also stated that their names have been registered with the Employment Exchange. In view of this, we direct that the respondents shall verify the fact of the registration of the applicants with the Employment Exchange and consider them also for appointment as Peons in the existing or future vacancies along with other candidates sponsored by the Employment Exchange and appoint them as Peons if they are otherwise found to be

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suitable for such appointment and if, on verification, the respondents are satisfied that the applicants were in no way responsible for their initial appointment as Peons on the basis of the fake communication from the Employment Exchange.

10. The application is disposed of on the above lines. The parties will bear their own costs.

M.M. Mathur
(M. M. Mathur) / 8185
Administrative Member

P.K. Kartha
(P.K. Kartha)
Vice-Chairman (Judl.)