

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

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Regn. No. CA-1458/88 Date of decision: 18.12.1992

Shri Bhuvnesh Kumar Sharma .... Applicant

Versus

Union of India & Another .... Respondents

For the Applicant .... Shri D.C. Vohra, Advocate

For the Respondents .... Smt. Raj Kumari Chopra,  
Advocate.

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dholiwal, Administrative Member

1. To be referred to the Reporters or not? Yes

JUDGMENT

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

The question raised in this application relates to the validity of the termination of the services of the applicant by the impugned order dated 6.6.1988 issued under Rule 5(1) of the C.C.S. (Temporary Service) Rules, 1965.

2. We have gone through the records of the case and have heard the learned counsel for both the parties. The

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impugned order of termination is worded as an order of termination simpliciter, casting no stigma on the applicant as will be borne out by the order itself which reads as under:-

"In pursuance of the Proviso to sub-rule(1) of Rule 5 of the Central Civil Services(Temporary Service) Rules, 1965, I, M.K. Narayanan, Director Intelligence Bureau, Ministry of Home Affairs, Government of India, New Delhi, hereby terminate forthwith the services of Shri Bhuvnesh Kumar Sharma, Assistant, I.B. Hqs., and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing them immediately before the termination of his service."

3. The contention of the applicant is that the aforesaid order is not an order of termination simpliciter, but is by way of penalty. This has been denied by the respondents. The applicant has worked as L.D.C. in the Central Civil Services Sports and Cultural Board, Department of Personnel & Training from 16.3.1984 to 10.8.1985. On 16.8.1985, he was appointed as L.D.C. on the basis of the results of the Clerks' Grade Examination conducted by the Staff Selection Commission during 1983 and he joined the office of respondent No.2 (the Intelligence Bureau).

4. Respondent No.2 conducted an All India open competitive examination for filling up 32 posts of Assistants in their office. The qualifications prescribed were: Degree from any Indian University, or equivalent on 1.1.1986. The applicant fulfilled the same. He successfully competed in

the Assistant Grade Examination and was appointed by the respondents as such in a temporary capacity w.e.f. 25.3.1987. In the Memorandum issued by the respondents to him on 25.3.1987, it was stipulated, inter alia, that the appointment was temporary and that it may be terminated at any time by a month's notice given by either side. The appointing authority also reserved the right of terminating the services of the appointee forthwith or before the expiry of the stipulated period of notice by making payment to him of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.

5. The representations submitted by the applicant did not yield any favourable response. On 27.7.1988, the respondents informed the applicant that his request for reinstating him in service could not be acceded to. No reasons were given by them in this regard.

6. In the counter-affidavit filed by the respondents, they have stated that in July, 1987, it came to their notice that 34 LDCs of I.B., including the applicant, had secured appointment in Government service fraudulently with the connivance of some members of the Staff Selection Commission. On enquiries by them, it was found out that the roll number against which the applicant secured appointment in Government service, was, in fact, allotted

to one, Shri A.K. Chhabra, who also did not qualify for the said examination. Since it was proved that the applicant had secured appointment in Government service fraudulently, the respondents did not find him suitable for retention in service in their office, which is a sensitive organisation.

7. The applicant has claimed that he had appeared in the Clerk's Grade Examination, 1983 against another roll number and not that of Shri Chhabra. The respondents have stated that the roll number claimed by him had also not been allotted to him, but, in fact, belonged to one, Shri P.R. Kataria.

8. It is in the above factual background that we have to consider the validity of the impugned order of termination. The respondents have passed the impugned order after fully ascertaining from the records of the Staff Selection Commission that he had entered into Government service as L.D.C. fraudulently. The learned counsel for the applicant laid emphasis on the fact that the applicant secured appointment as Assistant on the basis of an open competitive examination conducted by the respondents and that there was no allegation of fraud in relation to the said selection. The respondents have stated that the applicant's conduct of securing initial

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appointment in Government service fraudulently in connivance with some members of the Staff Selection Commission, is in itself so grave that warranted his immediate removal from service.

9. It is by now well settled that if misconduct is only the motive and not the foundation of the order of termination, it cannot be called in question on legal or constitutional grounds. In the instant case, the applicant has stated that while terminating his services, the respondents have retained the services of his juniors. Such a contention would be relevant only in a case where the order of termination is other than by way of termination simpliciter.

10. After careful consideration, we are of the opinion that though the applicant had not practised any fraud in the matter of his selection to the post of Assistant in the All India competitive examination, the respondents had the authentic information from the Staff Selection Commission that he had secured Government employment in 1985 as L.D.C. due to some fraudulent practices with the connivance of some members of the Staff Selection Commission. To our mind, the termination of the applicant in the instant case is to be treated as termination due to general unsuitability and not due to any specific misconduct as such. The

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misconduct mentioned in the counter-affidavit may have served as the motive to the passing of the impugned order of termination, but not its foundation.

11. In view of the above, we are of the opinion that the applicant is not entitled to the relief sought by him. The application is, accordingly, dismissed. There will be no order as to costs.

*B.N. Choudhary*  
(B.N. Choudhary)  
Administrative Member

*sumb*  
18/12/92  
(P.K. Kartha)  
Vice-Chairman(Judl.)