

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

CAT/7/12

(21)

O.A. No. 173/88
T.A. No.

199

DATE OF DECISION 5.3.92

Sh. Kuldeep Singh & Ors. Petitioner
Sh. Gobinda Mukhoty, Sr. Counsel Advocate for the Petitioner(s)
with Sh. B.S. Mainee, Counsel.
Versus
Union of India & Ors. Respondent
Shri N.S. Mehta, Counsel. Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. D.K. Chakravorty, Member (A).

The Hon'ble Mr. J.P., Sharma, Member (J).

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal?

J.P. Sharma
(J.P. SHARMA) *SP/79*
MEMBER (J)

D.K. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

REGN.NO.OA 173/88

Date of decision: 5.3.92

Sh.Kuldip Singh & Ors. ...

Applicants

Versus

Union of India & Ors. ...

Respondents

Coram: THE HON'BLE MR.D.K.CHAKRAVORTY, MEMBER(A)
THE HON'BLE MR.J.P.SHARMA, MEMBER(J)

For the Applicants ...

Sh.Gobinda Mukhoty, Sr.Counsel with
Shri B.S.Mainee,
Counsel.

For the Respondents ...

Shri N.S.Mehta,
Counsel.

JUDGEMENT

(DELIVERED BY HON'BLE MR.J.P.SHARMA, MEMBER)

who
Shri Kuldip Singh & 26 others/ were appointed
as L.D.C in the office of the Superintending Engineer, C.P.W.D
assail the order of termination dated 22.7.87 purported
to be under sub rule(1) of Rule 5 of the Central Civil
Services(Temporary Services) Rules,1965. Similar orders
have been passed in the cases of other applicants also.
The case of the applicants is that having worked for
nearly 2 years and 2½ years their services were suddenly,
wrongfully and illegally terminated. Neither any enquiry
was held nor any show cause notice was issued to the
applicants before their services were terminated. The
impugned order is a non-speaking order and a number
of persons junior to the applicants have been retained
in service. It is further stated by the applicants that
in response to the advertisement for the post of L.D.C
they applied for the post in the beginning of 1983.
On the recommendations of the Staff Selection Commission,
the applicants were appointed as L.D.C in the grade
of Rs.260-400 on different dates as mentioned in their
appointment letters. The applicants were placed on probation

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for two years and most of them have passed Hindi Typing test and undergone accounts training and passed the test. The impugned orders of termination, according to the applicant, are punitive orders and have been passed in an arbitrary manner violating Fundamental Rights guaranteed under Articles 14 & 16 of the Constitution of India. The applicants also filed Writ Petition in the Hon'ble Supreme Court but they were withdrawn as they were advised to file their cases before the Central Administrative Tribunal. If an offer of appointment was made to the applicants on the basis of a mistake on behalf of the respondents that could not affect the validity of their appointment.

2. Respondents 1,2&3 have filed their counter-affidavits. It is stated that Respondent No.3 reported several vacancies of L.D.C to the Staff Selection Commission and requested them to nominate suitable candidates on the basis of the results of the competitive examination. Respondent No.3 received 11 separate communications purported to have been issued by the Staff Selection Commission nominating 114 persons including these 27 applicants for appointment to the post of L.D.C. On the basis of these nominations of the candidates by the Staff Selection Commission, each of the applicant was given separate offer of appointment (Annexure R-12). The respondents received a letter dated 22.7.87 wherein it was stated that the nominations purported to have made by the Staff Selection Commission in their letters were fake nominations. It was stated that these candidates had neither qualified at the examination nor were they communicated by the Commission. It is apparent from this that the applicants have got fake nominations against the roll numbers allotted to other candidates and not pertaining to them and have thus fraudulently obtained appointments in the department. The appointment of the applicants, therefore, was under

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a mistake which came to light later and since the applicants were not entitled to be nominated by the Staff Selection Commission, their appointments were void ab-initio and are no appointments at all. It is further stated that, in any case, such appointments are voidable at the instance of the Government. The department has to terminate their services in terms of the conditions of their appointment under CCS(Temporary Services) Rules, 1965. The termination was by way of correction of an administrative error or mistake.

3. The Staff Selection Commission, Respondent No.4 filed a separate counter-affidavit, however, reiterating the same points taken by Respondents 1,2 &3 in their counter-affidavit. Annexure I of this counter is reproduced below which shows the real position that the roll numbers under which the applicants have claimed appointments were in fact of other candidates:-

Sl. No.	Roll No. under which the applicants are purported to have been nominated.	Name of the Examination	Name of the applicant who has been fakely nominated under the Roll number mentioned at Col.2	Name of the actual candidate who had been allotted the Roll No. mentioned at Col.2 in the Exam. mentioned at Col.3
1.	2.	3.	4.	5
1.	1278352	Clerks Gr.Exam.1983	Ashok Kumar	Kukreti GoelC.
2.	1280247	-do-	Kamal Kishore	Vineeta
3.	1254018	-do-	Narendra Singh	Manral Sushila
4.	1253878	-do-	Surender Kumar	Parnesh Kuma
5.	1274415	Clerks Gr.Exam,1982	Surender Kumar	Benth B.B.
6.	1246112	Clerks Gr.Exam,1983	Pramod Kumar Sharma	Gupta R.
7.	1247420	-do-	Rakesh Kumar Kukreti	Sharma U.K
8.	1253281	Clerks Gr.Exam,1984	Manbar Singh	Mehrishi.J.
9.	1230422	Clerks Gr.Exam,1983	Tilak Raj Pathi	Fathunya K.M.
10.	1247515	-do-	Ved Prakash	Jaitwal D.C.
11.	1215655	-do-	Ripu Daman Joshi	Yadav R.N.
12.	1266466	-do-	Ramesh Chand	P.K.Garg
13.	1246755	-do-	Smt.Usha Sehgal	Gyaneshwar
14.	1255320	-do-	Deepawali Bhatnagar	S.C.Anthqal
15.	1215682	-do-	Vinod Kumari	Bhalla S.B.
16.	1266982	-do-	Padam Kishore Sharma	B.Tiwari
17.	1236548	-do-	Jagdish Prasad Sharma	Hemant Kumari

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1.	2	3	4	5
18.	1222821	Clerks Gr.Exam 1983	Chander Pal Sharma	R.Prabhakar
19.	1243192	-do-	Ajay Kumar Aggarwal	Thakur I.P.
20.	1235686	-do-	Amrish Kumar Sharma	Rai R.B.
21.	1253260	-do-	T.S.Rawat	R.S.Bhandari
22.	1227839	Clerks Gr.Exam.1982	Sunita Kumar Bhasin	A.Sehgal
23.	1256985	Clerks Gr.Exam.1984	Hari Prakash Sharma	Ahuja D.
24.	1251741	-do-	Yogendra Singh Rohilla	H.T.Prasanna
25.	1261420	Clerks Gr.Exam.1983	Ram Bir Singh Yadav	Nagar K.K.
26.	1250421	-do-	Kuldeep Singh	Kushwaha U.
27.	1223189	-do-	Bhagd Ram	Raj Singh

4. We have heard the learned counsel of the parties at length and have gone through the records of the case. In fact the recent case is fully covered by the judgement of this Tribunal in the case of Sanjiv Kumar Aggarwal & 3 others Vs. Union of India & Ors & batch reported in A.T.R.1987(2)C.A.T. 566. In that case also three applications were filed in which common questions of law were raised and all the applications were taken together and disposed of by the said judgement. The orders of termination in those cases were also passed under sub-rule(1) of Rule 5 of the Central Civil Services(Temporary Service) Rules,1965. The order of termination passed in those cases is reproduced below:-

" In pursuance of the proviso to sub-rule(1) of Rule 5 of the Central Civil Services(Temporary Service)Rules, 1965, I.A.S. Jain,Superintending Engineer, Co-ordination Circle I,C.P.W.D.,New Delhi hereby terminate forthwith the services of Shri Sanjeev Kumar Aggarwal, L.D.C. 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."

5. The Bench consisting of the then Chairman, Hon'ble Mr. Justice K. Madhava Reddy and Hon'ble Shri Kaushal Kumar, Member gave a detailed judgement citing a number of authorities such as P.L. Dhingra, AIR 1958 S.C. 36; Jagdish Mitter Vs. U.O.I, AIR 1964 S.C. 449; Ram Gopal Vs. State of M.P., AIR 1970 SC

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158 and had held as under:-

" These letters of appointment were actually intended for some other candidates and erroneously it was thought that the applicants herein were those candidates. We hold that none of the applicants were qualified to be appointed."

At page 580 of the aforesaid judgement, the Bench held as follows:-

" No Appointing Authority having appointed a person albeit temporarily would terminate the services of any public servant unless there is some reason. If the termination were to be without any reason, whatsoever it would be arbitrary and would be liable to be quashed as violative of Article 16. So every termination to be valid must be supported by some reason but the reason for every termination need not be misconduct of the public servant. It may be a valid reason not impinging upon the conduct of the public servant. Termination of service for a valid reason other than misconduct would not be by way of punishment. Every termination need not be by way of punishment. Only if the termination is for misconduct or the termination casts a stigma, that would amount to dismissal attracting Article 311 of the Constitution. It would not be a termination simpliciter. But where the termination order is, on the face of it, innocuous but the public servant challenges the order alleging mala fides or improper motive and contends that it is by way of punishment and in the reply filed before the Tribunal the respondents disclose facts which do not impinge upon the conduct of the employee exhibited during the course of his service but relate to events which occurred prior to his appointment or which establish that he was not qualified for rendering his appointment itself invalid, that would not amount to dismissal from service. Such an order of termination is not one based on any ground of misconduct but on the ground that under the Rules, the employee was not eligible to be appointed and could not have been appointed. Where such an appointment is terminated by an order simpliciter, it cannot be termed as punitive so as to attract Article 311 of the Constitution. In so terminating, the Appointing Authority need not, and in fact in this case did not, allege fraud or mistake on the part of the applicants; it merely terminated those appointments by an order simpliciter. No stigma or aspersion is cast on the applicants

as a result of such termination. Whatever is stated in the counter affidavit was only in answer to allegation that the termination was arbitrary. That was not the foundation of the order. Merely because in answer to the allegation made in the petition, the Respondents in their reply also stated that they "suspect" and do not categorically assert that the employee was guilty of fraud or misconduct, such termination does not become punitive. The respondents primarily support the impugned orders of termination on the ground that the applicants did not pass the tests and were not eligible to be nominated by the Staff Selection Commission. The respondents have no doubt stated in their counter that the applicants were either guilty of fraud or victims of fraud. But thereby the order of termination does not become vitiated, for that was not the foundation of ^{the} order of termination; the termination was ordered because it is now discovered that the applicants were not qualified to be appointed even initially. That was a disability attaching to the applicants on the date of appointment; that disability continues to stick to them. That was an event which occurred anterior to the date of appointment and prior to their entry into service. It is not an act of misconduct or anything done by them during the course of their service or any event which occurred subsequent to their appointment that forms the basis of the impugned termination orders. The subsequent averments in the counter do not render the termination orders punitive."

The matter was summed up in the last paragraph as under:-

" The applicants were temporary public servants and they had not acquired any right to the post. Their services could, therefore, be terminated by an order simpliciter both under the terms and conditions of the offer of appointment as well as under CCS(TS)Rules, 1965. The services of the applicants were terminated by an order simpliciter. The respondents intended to appoint only those candidates who had qualified at the Staff Selection Commission examination and were nominated by them. The Staff Selection Commission is alleged to have nominated the applicants either under erroneous impression that they had qualified at the examination or as a result of fraud or mistake. When it was discovered that the applicants were not

qualified to be nominated and the Staff Selection Commission never intended to nominate persons who did not qualify at the examination, irrespective of whether or not the applicants or someone else committed any fraud or mistake their services could be validly terminated. These termination orders are not based upon any allegation of fraud or mistake on the part of the applicants. The orders of termination simpliciter are made because the applicants were not qualified for appointment. Such a termination is neither arbitrary nor by way of punishment. Though the termination order on the fact of it may be innocuous and may be termed as termination simpliciter yet in reality it may be by way of punishment. Where such an allegation is made, the Tribunal can certainly tear the veil and find out what the true foundation of the order is. If the Tribunal finds from the record that the termination made without any inquiry is based on misconduct or is, in fact, by way of punishment it can strike it down. Where the public servant challenges the order as mala fide or that it is by way of punishment and in reply to that the respondents state before the Tribunal facts which do not impinge upon the conduct of the employee during the course of his service but relate to events which occurred prior to the appointment which renders his appointment invalid, the order of termination could not thereby be treated to be by way of punishment. On tearing the veil and going behind the order, it is found that the temporary public servant was not qualified to be appointed under the Rules and that the termination order is not based on any ground of misconduct or fraud. Termination of such an appointment can neither be deemed to be arbitrary nor to be by way of penalty. Offer made on assumption of facts which are not true, is not a valid offer of appointment. There can be no valid acceptance of such an offer, especially by a person who accepts the offer knowing that material statement in the offer are not true. Consequently, there was no valid contract. Any agreement which never fructified into a valid contract cannot give rise to a status which the Tribunal is obliged to protect. Assuming that such termination orders should have been preceded by an inquiry in accordance with the CCS(CCA) Rules(which, in our opinion, is not required) and such an inquiry not having been held,

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the orders of termination are bad, even then if the Tribunal finds that quashing these orders would result in reviving appointments which should never have been made, would not issue any writ, direction or order. Granting any relief to the applicants would amount to allowing them to abuse the process of court. The Tribunal, therefore, declines to grant any relief to the applicants. For the aforesaid reasons, the impugned orders do not call for interference. These application, therefore, fail and are accordingly dismissed, but in the circumstances, without costs."

6. In view of the above, since it is a covered case by an earlier judgement and the learned counsel for the applicants could not distinguish the facts of this case from the reported case, the judgement is per incuriam and equally applies to the case of the applicants. The applicants themselves have filed appointment letter dated 28.8.85(Annexure A-2). Para 10 as well as para 24 of the conditions of appointment are material and are reproduced below:-

"10. If it is proved after acceptance of this offer and appointment that he has been a disqualified/dismissed servant by any Commission, Union or State under the offices of Govt. of India or he has fraudulently obtained the appointment, his services will be terminated without payment of any remuneration.

24. If any declaration given or information furnished by the candidate proves to be false or if the candidate is found to have wilfully suppressed any material information he will be liable to be removed from service and such other action taken as Govt. may deem necessary."

Though this appointment letter pertains to Ram Vir Singh, applicant No.26, similar offer of appointment has been issued by the C.P.W.D, respondent No.3 to the applicants. In condition No.10 of the offer of appointment it is clearly laid down that if the candidate has fraudulently obtained the appointment his services will be terminated without payment of any remunerative and in condition No.24 it is laid down that if any declaration or information furnished by the candidate

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proves to be false or if the candidate is found to have suppressed wilfully any material information, he will be liable to be removed from service and such other action taken as Government may deem necessary. Though there are 27 applicants but none of them has filed the admit card nor they have given the roll numbers allotted to them and in the rejoinder to the counter filed by the Staff Selection Commission there is Annexure 1 to the counter wherein it has been specifically mentioned that the roll numbers under which the appointments were made in fact belonged to other candidates. So, the applicants have miserably failed to rebut the contention of Respondents No.4 that the applicants did ^{not} appear with roll numbers of which their appointment letters were issued. For instance in the case of Sh.Ram Bir Singh Yadav, his roll number is mentioned as 1261420. This roll number belongs to Nagar K.K. and the year of examination was 1984 and he was not recommended for appointment. Similar is the case of other applicants. For the sake of brevity each case is not being taken up and the case of Ram Bir Singh is taken as a specimen case though similar infirmity is present in the cases of other applicants also. The learned counsel for the applicants also referred to the case of **Satbir Vs.U.O.I (1988 ATLT(1) 213)** wherein while agreeing with the judgement in Sanjiv Kumar Agarwal's case, it was held that no one should be condemned without hearing is the essence of justice in both quasi-judicial and administrative action. The simple case taken up by the learned counsel for the applicants is that no opportunity of hearing was given before terminating their services. So, the impugned order cannot stand but the answer to this is already in the judgement of Sanjiv Kumar Aggarwal(supra).

7. The learned counsel for the applicants stressed on

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the principles of natural justice quoting the judgement of the Hon'ble Supreme Court AIR 1970 SC 150 wherein it is held that "the aim of rules of natural justice is to secure justice or to put it effectively to prevent mis-carriage of justice." The learned counsel for the respondents, however, stated that the principles of natural justice cannot be applied to and referred to the decision of the Hon'ble Supreme Court in the case of **Chairman, Board of Mining Examination vs. Ramjee**, (AIR 1977 SC 965), relevant portion of which is given below:-

" Natural Justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of such situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction."

This was also quoted with approval in the case of **R.S.DASS vs. UNION OF INDIA**, AIR 1987 SC 593. Lord Denning in **R.Vs. Secretary of State ex-parte Mughal** (1973) 3 All England Law Reports p.796 held and observed as follows:-

" The rules of natural justice should not be stretched too far. Only too often the people who have done wrong seek to invoke the rules of natural justice so as to avoid the consequences."

8. In view of the above discussion, we find that the case is fully covered by the decision of the Sanjiv Kumar Aggarwal

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and we are in full agreement with the reasoning given therein. This application is, therefore, devoid of any merit and is accordingly dismissed, leaving the parties to bear their own costs.

J. P. Sharma

(J.P.SHARMA)
MEMBER(J)

5/3/92

D. K. Chakravorty

(D.K.CHAKRAVORTY)
MEMBER(A)

5/3/1992