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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 535/86
T.A. No.

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DATE OF DECISION 28.7.1988

Shri Ramesh Chandra Chaturvedi Petitioner

In person Advocate for the Petitioner(s)

Versus

Secretary, Ministry of Defence, Respondent
Govt. of India, New Delhi.


Shri N.S. Mehta Advocate for the Respondent(s)

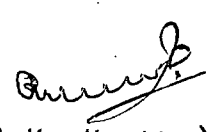
CORAM :

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

The Hon'ble Mr. S.P. Mukerji, 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*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*


(S.P. Mukerji)
Administrative Member


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

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Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. DA-535/86

Date: 28.7.1988

Shri Ramesh Chandra Chaturvedi Applicant

Versus

Secretary, Ministry of Defence, Respondents
Govt. of India, New Delhi.

For the Applicant In person

For the Respondents Shri N.S. Mehta,
Advocate.

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

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

The applicant, who has worked as Master in Hindi in Rashtriya Indian Military College, Dehra Dun Cantt., filed this application under Section 19 of the Administrative Tribunals Act, 1985 against the Secretary, Ministry of Defence and the Commandant, Rashtriya Indian Military College, praying that the impugned order dated 31.5.1986 terminating his appointment as Master in Hindi should be quashed.

2. The facts in brief are that the applicant had worked as Manual Training Assistant (non-gazetted Class III post) w.e.f. 7.9.1962. As a permanent incumbent of the post, he also holds a lien on the post. The next promotion to which he is entitled is the post of Drawing and Manual Training Master. There is no avenue of promotion in the higher post at present. The applicant had been assigned to conduct classes in Hindi in the Rashtriya Indian Military College. He applied for appointment to the post of Master in Hindi (Gazetted Group 'B' post) in response to the advertisement which

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appeared in the daily 'Doon Darpan' dated 4.11.1983. After holding an interview by the Selection Committee, he was appointed to the post of Master in Hindi w.e.f. 24.1.1984. The offer of appointment stipulated that the appointment was purely temporary against a permanent post for a period not exceeding six months in the first instance and thereafter extendable from time to time on required basis. The appointment was terminable without any notice and without assigning any reason. The appointment did not confer any right on the applicant for permanent absorption in the post of Master in the Rashtriya Indian Military College or in any of the institutions under the Ministry of Defence. In addition to the duties of Master, he was also required to carry on the duties of Manual Training Assistant till such a replacement was arranged and the applicant should not claim any extra remuneration for the same. He would be entitled to hold a lien in his permanent appointment of Manual Training Assistant for a period of two years from the date of his appointment in the post of Master.

3. The applicant accepted the offer of appointment and he continued to work in the post of Master in Hindi upto 15.6.1986. On 31.5.1986, the respondents wrote to the applicant stating that in terms of para.2(b) of the offer of appointment dated 24.1.1984, his appointment as temporary Master in Hindi is terminated w.e.f. 15.6.1986 and that he will be reverted to his original appointment as Manual Training Assistant w.e.f. the same date. The applicant has challenged this order of termination in the present proceedings.

4. The applicant has stated that he possesses the requisite qualifications for appointment to the post of Master in Hindi and that his performance and conduct had been to the entire satisfaction of the respondents. The post of Master in Hindi is a Civilian Gazetted Group 'B' post and unless the said post is converted from a civilian post to an Army post, excluding thereby the jurisdiction of the Union Public Service Commission, the respondents are not entitled to appoint a serving officer from the Army to the said post.

5. The respondents, in their counter-affidavit, have stated that after the termination of the appoint^{ment} of the applicant, the post has been filled up by an A.E.C. (Army Education Corps) Officer, as per the rules, on regular appointment. They have also pointed out that his appointment as Hindi Master was not a continuous one as there were technical breaks in between and for the period of break, he had been reverted to his original appointment. Further, the respondents have also taken a decision to fill up the post of Master in Hindi through the U.P.S.C. Therefore, his appointment to the post was in the nature of a stop-gap arrangement as the post was lying vacant due to non-selection of a regular incumbent by the U.P.S.C.

6. We have carefully gone through the records and heard the applicant in person and Shri N.S. Mehta, the learned counsel for the respondents. It was mentioned during the hearing that two posts of Hindi Master are presently lying vacant. There was also nothing on record to indicate as to why the appointment of the applicant was terminated by the respondents.

7. The applicant has relied upon the decisions of the Supreme Court in Rattan Lal & Others Vs. State of Haryana and Others, 1985(4) S.C.C. 43 and of this Tribunal in Dr. (Mrs.) Sangeeta Narang & Others Vs. Delhi Administration & Others, A.T.R. 1988(1) C.A.T. 556 in support of his contention that the termination of his appointment by the respondents was illegal. In Rattan Lal's case, the question which arose before the Supreme Court was whether it was open to the State Government of Haryana to appoint teachers on an ad hoc basis at the commencement of an academic year and terminate their services before the commencement of the next summer vacations, or earlier, to appoint them again on an ad hoc basis at the commencement of the next academic year and to terminate their services before the commencement of the succeeding summer vacations or earlier, or to continue to do so year after year. The Supreme Court observed that it was the duty of the State Government to take steps to appoint teachers in those vacancies in accordance with the rules as early as possible. The State Government had failed to discharge that duty in these cases. Therefore, the Supreme Court directed the State Government to take immediate steps to fill up the vacancies in accordance with the relevant rules. The teachers who were working on ad hoc basis, if they had prescribed qualifications, might also apply for being appointed regularly in those posts. The State Government might also consider the question of relaxing the qualification of maximum age prescribed for appointment to those posts in the case of those who had been victims of this system of ad hoc appointments. In Dr. (Mrs.) Sangeeta Narang's case, this Tribunal referred to the decision in

Rattan Lal's case and other relevant decisions and held that the services of the petitioners could be terminated only if the same were no longer required or if the concerned authority was of the opinion that their performance was not up to the mark or they were not otherwise suitable for the post.

8. The aforesaid decisions would be relevant in the present case to the extent that the termination of appointment of the applicant cannot be justified in law if he is qualified to hold the post for which a vacancy exists and if his performance has been satisfactory. The services of the applicant cannot be terminated on the ground of delay in finalisation of the recruitment through the U.P.S.C. for which he is not in any manner responsible.

9. The applicant has raised a contention that the termination of his appointment was in violation of Rule 5 of the C.C.S. (Temporary Services) Rules, 1965. Rule 5 contemplates giving of a month's notice before terminating the services of a temporary Government servant. No such notice was given to the applicant in the instant case.

10. Shri N.S. Mehta, the learned counsel for the respondents, contended that no notice under Rule 5 of the C.C.S. (Temporary Service) Rules, 1966 is required to be given in a case where the Government servant whose services were terminated holds a lien on any post under the Government of India. In the present case, the applicant holds a lien in the post of Manual Training Assistant. In this context, Shri Mehta referred to the provisions of Rule 1(3)(i) of the C.C.S. (Temporary Service) Rules, according to which, these rules shall apply to all persons "who hold a civil post, including all civilians paid from the Defence

Services Estimates under the Government of India and who are under the rule-making control of the President, but who do not hold a lien or a suspended lien on any post under the Government of India or any State Government".

11. The contention of the learned counsel for the respondents is valid. The requirement of giving one month's notice will not apply to the instant case.

12. Incidentally, it may be mentioned that civilians in Defence Services are not entitled to the protection of Article 311 of the Constitution. In this context, reference may be made to the decisions of the Supreme Court in Lekh Raj Khurana Vs. Union of India, 1971(1) S.C.C. 780, and Union of India & Another Vs. K.S. Subramanian, 1976(3) SCC 677. In the latter case, the Supreme Court observed as follows:-

"Whereas the power contained in Article 310 governs all Government servants, including those in the Services connected with defence, the benefits of Article 311 which impose limitations on the exercise of this power in the cases of punishments, do not extend to those who hold posts connected with defence".

13. In the light of the foregoing discussion, we are of the opinion that the termination of the appointment of the applicant as Hindi Master, cannot be challenged on the ground of violation of Article 311 of the Constitution or for non-compliance with the provisions of Rule 5 of the C.C.S. (Temporary Services) Rules, 1965.

14. The admitted factual position is that there are two vacancies in the post of Hindi Master and that the Army Officer who was appointed in that post after the termination of the appointment of the applicant, is no longer in position and that the applicant has been discharging the duties of Hindi Master. In the interest of equity and justice, we order and direct that the applicant should be treated to have continued in the post of Hindi Master from the date the Army Officer left the job of Hindi Master and till a regular incumbent selected by the U.P.S.C. is duly appointed to the post. He would also be entitled

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to full pay and allowances admissible to the post of Hindi Master. The application is allowed to this extent, with no order as to costs.

S.P. Mukerji
28/7/58

(S.P. Mukerji)
Administrative Member

P.K. Kartha
28/7/58

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