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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 888/1986. DATE OF DECISION: July 23, 1990.

Shri Rishi Pal ..... Applicant.

Shri R.L. Sethi ..... Advocate for the Applicant.

V/s.

Union of India & Ors. ..... Respondents.

Smt. Raj Kumari Chopra ..... Advocate for the Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

Whether Reporters of local papers may be allowed to see the judgement? Yes.

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

2. Whether their Lordships wish to see the fair copy of the Judgement? No.

3. To be circulated to all Benches of the Tribunal? No.

(J.P. SHARMA)
MEMBER (J)

(P.C. JAIN)
MEMBER (A)

(10)

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(Judgement of the Bench delivered by Hon'ble Mr. P.C. Jain, Member)

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who was appointed as a Postal Assistant under the respondents, has prayed that he be declared in the service of respondent No.2 and respondent No.2 be directed to allow the applicant to join the post of Postal Assistant in the Department. It is further prayed that the order of termination of service, if any, is liable to be quashed and that the applicant is entitled to the salary due to him since December, 1985 till date.

2. The relevant facts, as disclosed in the pleadings, may be stated briefly as below: -

The applicant was selected as a Reserved Trained Pool (RTP) candidate against a vacancy reserved for Scheduled Tribe on the basis of merit list for the Schedule Tribe category prepared with reference to the marks obtained in High School Examination. He was appointed as RTP Postal Assistant after he was imparted practical training for 15 days with effect from 15.2.1983. He was further given institutional training for 2½ months with effect from 13.10.1983. Vide his letter dated 28.7.1983, he volunteered for posting in the Army Postal Service (A.P.S.). He was

deputed to A.P.S. on 2.7.1984 (After-noon). He was recalled from A.P.S. on administrative grounds and he was accordingly discharged from A.P.S. with effect from 6.11.85 (A.N.). He was granted leave for 21 days with effect from 7.11.1985 to 27.11.1985 and directed to report to the office of Controller Foreign Post, New Delhi. According to the applicant, he reported for duty to the office of respondent No.2 on 28.11.1985, but he was verbally informed by the officer in-charge in the office of respondent No.2 that there seems to be some mistake in calling him back from A.P.O. and he would be informed after scrutinising the papers. It is further alleged that he was also informed that he would be deemed to be on duty till the decision taken in the matter was communicated to him. He states that he went to the office of respondent No.2 several times to know about the decision taken, but he was neither given any positive reply nor was he allowed to join the duty. After visiting the office of respondent No.2 several times, he is said to have been informed that his services had been terminated, as the Scheduled Tribe certificate produced by him was wrongly issued. According to the respondents, however, he never reported for duty after discharge from the A.P.S. With his rejoinder-affidavit, however, the applicant has enclosed copies of his letters dated 18.3.86, 19.3.86 and 27.5.86, addressed to respondent No.2, respondent No.4 and respondent No.2 respectively. In all these letters, he complained of not being allowed to join duty after discharge from the A.P.S. Prima-facie, these letters appear to have been received by the addressees.

3. The applicant's case is that he was never served any notice before termination of his services, which was required as per para 2 of the letter of his appointment as Postal Assistant (Annexure 'C'). It is further stated that

he has not so far been served with any order terminating his services. His representation dated 5.3.1986 has not been replied to and he has not been paid any salary since December, 1985. As his services have not been terminated so far, he is deemed to be in service and entitled to payment of his salary. Action of the respondents in terminating the services of the applicant, if any, is stated to be against the principles of natural justice, equity and good conscience and against the service conditions and provisions of law. Such an order is stated to be wholly illegal, whimsical, arbitrary and against the terms of appointment.

4. According to the reply filed by the respondents, as the applicant did not fulfil the requisite conditions, his services were terminated. The applicant declared himself in writing to be a Scheduled Tribe candidate, but subsequently, it was found on enquiry that he did not belong to the Scheduled Tribe category. On verification of his Caste Certificate, it came to light that the applicant belonged to "Backward Class". The Ministry of Home Affairs (S.C./S.T. Division) intimated vide letter dated 2.5.1985 (copy at Annexure R-II) that the caste of the applicant had not been recognised as Scheduled Tribe in relation to the State of Uttar Pradesh and that he was not entitled to derive any benefits as admissible to the Scheduled Castes and Scheduled Tribes. It is stated that the selection of the applicant was against a reserved vacancy for Scheduled Tribe and since the selection proved to be wrong, his services were terminated under Rule 5 of Central Civil Services (Temporary Services) Rules, 1965, vide Memo No. 82/1-81/FP, dated 26.6.1986 by respondent No.2 (Appointing Authority) (Annexure R-III). The termination letter along with cheque dated 26.6.1986 for Rs.769.90 (being one month's emoluments in lieu of

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one month's notice) was sent to the applicant vide Registered letter No.3417, dated 26.6.1986, but the applicant refused to accept the delivery of the said letter. The termination order along with the cheque was again sent by respondent No.2 to Post Master, Saharanpur for effecting its delivery to the applicant, but he again refused to accept the delivery. A copy of the Senior Post Master, Saharanpur letter dated 26.8.1986 to this effect has been filed as Annexure R-IV. Thereafter a telegram dated 3.9.1986 was issued to the applicant calling him to attend office on 8.6.1986 at 10.30 hours. Copy of the telegram is at Annexure R-V. In response to this telgram, the applicant is said to have attended the office on 11.9.1986, but he again refused to accept the termination order along with the cheque which were presented to him in the presence of witnesses. The applicant has denied that he either refused to receive any letter or attended the office of the respondents in pursuance of any telgram. However, he has not filed any proof in support of this averment.

5. We have carefully perused the documents on record and have heard the learned counsel for the parties.

6. It is not in dispute that the appointment of the applicant to the post of Postal Assistant was temporary and that he did not acquire any right to hold that post on a permanent basis. C.C.S. (Temporary Services) Rules, 1965 are, therefore, applicable to him. The documents filed on record show that in accordance with the terms of appointment as also in terms of the aforesaid rules, the services of the applicant could have been terminated by either giving one month's notice or pay in lieu thereof. Instead of giving notice, the respondents offered the payment vide cheque of the same date in lieu of the notice

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period along with the termination order. On the basis of the documents on record, it is not possible to accept the contention of the applicant that the termination order along with the cheque was never refused by him or that he did not attend the office of respondent No.2 in pursuance of the telegram, where again he is said to have refused to accept the termination order along with the cheque. Therefore, the termination order dated 26th June, 1986 (Annexure R-III) will be deemed to have been served on the applicant, and as the cheque for payment in lieu of notice was also tendered simultaneously, no fault can be found with the said termination order.

7. As regards the period from 28.11.1985 till the termination of services on 26.6.1986, according to the applicant, he reported for duty on 28.11.1985 and on several occasions thereafter, while, according to the respondents, he did not report for duty at all. The applicant filed copies of three letters, referred to above, with his rejoinder-affidavit, which prima-facie appear to have been received by the addressees thereof, in which he had complained about not being allowed to join duty. Apart from this, there is nothing before us to come to any conclusion whether the applicant had, in fact, reported for duty on 28.11.1985 or not. The first letter in this connection is dated 18.3.86, i.e., after a period of nearly 3½ months. The respondents neither filed any supplementary counter-affidavit nor any oral submission were made in this regard at the time of final hearing of the case. We are of the view that in these circumstances, it would be appropriate to issue a direction to the respondents to verify the correct factual position and if it is found that the applicant did in fact report for duty on 28.11.1985 or on any subsequent date, but was not allowed to join duty, then for such a period, he should be

allowed leave of the type due to him, if any, and paid the leave salary accordingly.

8. The learned counsel for the applicant argued that the allegedly false Scheduled Tribe Certificate is the foundation for the termination order and, as such, the termination order, which is on the face of it a discharge simpliciter, has, in fact, been passed by way of penalty and, therefore, it needs to be quashed as no opportunity had been given to the applicant to show cause against discharge. He cited the judgement of a Division Bench of the Principal Bench of the C.A.T. in O.A. 1902/88, which was decided on 20.4.1990. The said judgement is based on judgement dated 6.4.90 in O.A. 305/89 and other connected O.A.s. We have perused both these judgements and find that the facts in the above-cited cases are different on material points from the facts of the case before us. The cited cases related to employees in the Railways where even a casual employee, after having put in 120 days of continuous service acquires a temporary status and his services cannot be terminated without following the provisions of Railway Servants (D&A) Rules, 1968. In some cases, the concerned employees had been served show cause notice and after obtaining their reply, their services were terminated. In some other cases, regular departmental inquiry was conducted and then removal from service was imposed and yet in some other cases, no show cause notice was given, nor any departmental inquiry was conducted before terminat-int the services. In the judgement dated 6.4.1990 in O.A. 305/89 and seven other connected O.As, the Division Bench of the C.A.T. observed as follows: -

> "14. The upshot of the foregoing discussion is that in the cases where the respondents allege a charge of misconduct against a Railway employee and terminate his services on that ground, it amounts to the imposition of penalty

by way of disciplinary action. In case, he has acquired temporary status, even though the respondents allege that his initial engagement was by fraud or misrepresentation, his services cannot be terminated without following the procedure prescribed under the Railway Servants (Discipline & Appeal) Rules, 1968. In case, he has not acquired temporary status, we are of the opinion that termination of the services could be effected by affording him an opportunity to explain his conduct and to hear him on the point. If the respondents have formed an opinion on the basis of some documents, the employee should also be afforded an opportunity to submit his explanation. He would also be entitled to know the evidence by which it is proposed to prove the allegation of misconduct against him, to inspect the documents sought to be relied upon for the purpose of being used against him and to produce his own evidence in his defence. In case, he asks for a personal hearing, that also should be afforded to him."

9. The learned counsel for the respondents cited the judgement of the Supreme Court in the case of SATISH CHANDRA ANAND Vs. THE UNION OF INDIA, (1953) S.C.R. 655; and the cases of S. RAMASAMY & OTHERS Vs. EMPLOYEES STATE INSURANCE CORPORATION, NEW DELHI AND OTHERS, (1988) 7 ATC 615; and SANJIV KUMAR AGGARWAL AND OTHERS Vs. UNION OF INDIA AND OTHERS, (1987) 3 ATC 990. The case at (1988) 7 ATC 615 is not relevant. In the case of Satish Chandra Anand (supra), a Five-Judge Bench of the Supreme Court held that there was no violation of Articles 14 and 16 of the Constitution and that Article 311 had no application because this was neither a case of dismissal nor removal from service nor of reduction in rank. It was an ordinary case of a contract being terminated by notice under one of its clauses. In that case, the petitioner had been employed by the Government of India on a five year contract

but before the expiry of the said contract, Government made a new offer to continue him in service in his post temporarily for the period of the Resettlement and Employment Organisation on the condition that he will be governed by the Central Civil Services (Temporary Service) Rules, which provided for termination of the services by one month's notice on either side. The petitioner accepted the offer and continued in service, but subsequently his services were terminated after giving him one month's notice. In the case of Sanjiv Kumar Aggarwal and Others (supra), the applicants who were appointed as Lower Division Clerks on the basis of a letter purportedly issued by the Staff Selection Commission sponsoring the applicants, but whose services were later on terminated under the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, as it was found that either the applicants had not taken the examination held by the Staff Selection Commission or if they had taken the examination, they were not successful in the same and that the Staff Selection Commission had, in fact, never sponsored such candidates for appointment. The observation of the Division Bench in this case are reproduced as below:

> "43. To sum up: 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 offer of appointment as well as under CCS (TS) Rules, 1965. The services of the applicants were terminated under 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

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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 order on the face 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 statements 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 (CC&A) Rules (which, in our opinion is not required) and such an inquiry not having been held, 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 applications, therefore, fail and are accordingly dismissed, but in the circumstances without costs."

10. After a careful perusal of the facts in the case of Sanjiv Kumar Aggarwal (supra) and the case before us, we find that this case is on all fours with Sanjiv Kumar Aggarwal's case. In the case before us also, the order of termination is an order of discharge simpliciter and no stigma is attached. Instead of one month's notice, pay in lieu thereof was tendered along with the termination order. The appointment could be terminated on either one month's notice or pay in lieu thereof. The respondents intended to appoint only such a candidate who belonged to Scheduled Tribe category and they could not have appointed a General category candidate to the post to which the applicant was appointed, unless the post had been dereserved. There is neither any averment, nor any document to show that the post had been dereserved. The application in which the applicant described himself as belonging to Scheduled Tribe category and the certificate produced in support thereof, both relate to the dates prior to the date of appointment. The impugned order of termination is not said to be based on any misconduct on the part of the applicant during the period of service. It was at best a case of mistake in appointment on the premise which had been discovered to be incorrect.

11. It was held in the case M. NARAYANAN & OTHERS Vs. UNION OF INDIA & OTHERS (ATR 1986 (CAT) 130) that if a person is appointed contrary to the Recruitment Rules and subsequently reverted when the mistake is detected, no show cause notice is required to be given for correcting the mistake. In such cases, the provisions of Article 311 would not also apply. A similar view was taken in the cases of Sunder Lal Vs. State of Punjab (1970 SLR 59), Ranjit Singh Vs. President of India (1971 SLR 56), K.S. Srinivasan Vs. Union of India (AIR 1958 SC 419) and Dr. Ramji Dwivedi Vs. State of U.P. & Others (1983 SCC (L&S) 361).

12. Another important fact in the case before us is that admittedly the applicant belongs to 'Kumhar' community and belongs to the State of Uttar Pradesh. According to the Constitution (Scheduled Tribes) Order, 1967, 'Kumhar' community has not been recognised as Scheduled Tribe in relation to the State of Uttar Pradesh. This is a constitutional provision and does not require any factual investigation or inquiry with respect to which it can be said that the applicant could possibly rebut it and, therefore, he should have been given an opportunity to do so in accordance with the principles of natural justice and the doctrine of audi-alteram partem. Even till the date of final hearing of this case, the applicant did not produce before us anything to show that he belonged to Scheduled Tribe. The certificate purportedly issued by the Tehsildar and in which he has been shown as belonging to Scheduled Tribe would not grant him such a status as that certificate itself also mentions that he belongs to Kumhar community. Granting to the applicant the relief of reinstatement would amount to a declaration by us to the effect that the applicant belongs to Schedule Tribe category, which we are in no position to say.

13. In view of the above discussion, we find no

basis for quashing the impugned order of termination dated 26th June, 1986. We also hold that this order will be deemed to have been served on the applicant. However, for the period from 28.11.1985 to 25.6.1986, respondents are directed to take action within a period of three months from the date of receipt of a copy of this order as indicated in para 7 above. The respondents will pass a speaking order in this connection and send a copy thereof to the applicant. The Application is disposed of accordingly. There shall be no order as to costs.

(J.P. SHARMA)
MEMBER (J)

(P.C. JAIN)
MEMBER(A)

23/7/90