

(CJ)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

D.A. No. 1651 of 1991

Dated, New Delhi this the 25th day of January, 1996

Hon'ble Mr.Justice A.K.Chatterjee, Vice-Chairman(J)

Hon'ble Mr.R.K. Ahuja, Administrative Member

Shri Subhash Chander,
Ex-Craft Inspector(Fitter),
I.T.I.,
Khichripur,
Delhi

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Applicant

C/o.Shri B.S.Mainee,
240, Jagriti Enclave,
Vikas Marg Extn.,
Delhi

By Advocate : Shri B.S.Mainee, Ld.Counsel

Versus

1. Lt.Governor,
Delhi Administration,
Delhi

2. The Director of Training and
Technical Education,
Delhi Administration,
Rouse Avenue,
New Delhi

3. The Principal, I.T.I.,
Khichripur,
Mayur Vihar Phase-I,
Delhi

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Respondents

By Advocate : Shri Rajinder Panditha, Ld.Counsel

O R D E R

Hon'ble Mr.Justice A.K.Chatterjee, VC(J)

The applicant was offered the post of Sr.Mechanic (Mechanical Gr.II) in the Establishment of the Cabinet Secretariat on 11.4.90 temporarily with the condition that his permanent appointment to the post,if and when made,will depend upon various factors governing permanent appointment to such

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post in force and the appointment could be terminated by one month's notice on either side and certain other terms and conditions. Having accepted the same, the applicant was appointed on 29.8.90 on a purely adhoc basis for a period of three months pending completion of formalities regarding medical examination and verification of character and antecedents. He furnished the Attestation Form on 25.10.90 indicating therein that a criminal case was pending against him in a court of law, the next date of hearing of which was 17.12.90. The applicant continued to hold the post and the adhoc appointment was extended on or about 14.12.90 for a period of two months more pending completion of formalities regarding verification of character and antecedents. Such verification was received from the Deputy Commissioner of Police, Special Branch, Delhi by its secret letter dated 14.1.91, which disclosed that the applicant was an accused in a criminal case pending in certain criminal court, which was fixed for hearing on 15.1.91 and it was stated that the applicant should have given information regarding his arrest in the attestation form, which, however, he did not and thus, it might be deemed to be suppression of factual information in violation of the instruction on the subject. It was further stated in the secret letter that the identity of the candidate has been established and the attestation form was being retained in their office for record. Soon after the secret letter was received, an order was issued on 28.1.91 terminating the service of the applicant with effect from the afternoon of the said date and asking him to hand over complete charge without further delay on the ground that the secret letter had disclosed that a case was pending against

the applicant in a certain criminal court. This termination order is the subject-matter of challenge in the present O.A.

2. The respondents have contended that the application is not maintainable as mandatory provision has not been complied with and that as the applicant himself had given undertaking that his appointment would be subject to verification of character and antecedents from the police authority, the respondents had no option but to terminate his service on receipt of the secret letter dated 14.1.91.

3. We have heard the Learned Counsel for both the parties at length and also perused the application, counter reply and rejoinder together with all the annexures annexed thereto. The ground taken in the counter reply that since the applicant had given an undertaking that his appointment would be subject to verification of character and antecedents by the police authority, the respondents had no option but to terminate his appointment on receipt of the secret letter dated 14.1.91 from the office of the Deputy Commissioner of Police, Special Branch, Delhi, is ludicrous. In the said letter, it has been stated that there was a suppression in column 14 of the Attestation Form regarding his arrest, although it has been proved by the pleadings that he did disclose this information in the Attestation Form, which was dated 25.10.90. The respondents cannot be allowed to shut its eyes to the Attestation Form and blindly accept any statement to the contrary made on verification of character made in the secret letter dt.14.1.91. So, we find no force in the contention that the respondents were under obligation to terminate the service of the applicant on receipt of the secret letter dt. 14.1.91 because of the undertaking given by the applicant.

4. The Learned Counsel for the applicant has also contended that the order of termination of service made on 28.1.91 taking effect from the afternoon of the said date, is liable to be quashed because he was not given an opportunity of showing cause or making representation against the action proposed to be taken against him. In answer to this contention, the Learned Counsel for the respondents has argued that since the applicant was appointed purely on an adhoc basis, he was not entitled to any show-cause notice or opportunity to make any representation and his precarious service was liable to be terminated at any time without notice. In this connection, our attention was drawn to the office order dt.24.10.90, whereby the applicant was appointed for a period of three months w.e.f. 29.8.90, when he ~~was~~ reported for duty on an adhoc basis pending completion of formalities regarding medical examination and verification of character and antecedents. Now in the memorandum, which was an offer of appointment to the applicant dt. 23.8.90, it has been clearly stated that the appointment would be temporary and he would be on probation for a period of one year from the date of appointment. There being no question of probation in case of an adhoc appointment, it cannot be said that the applicant was appointed on an adhoc basis. A proper interpretation of the adhoc appointment for a period of three months ^{as stated in} ~~is pending~~ and the office order dt.24.10.90 is that the appointment was on such basis only pending completion of formalities regarding medical examination and verification of character and antecedents. Indeed, this adhoc appointment was again extended for a period of two months in December, 1990 pending completion of formalities regarding medical examination and verification of character and antecedents as at that

time the verification was yet to be received from the office of the Deputy Commissioner of Police, Special Branch, Delhi. Therefore, we are firmly of the opinion and accordingly find that the applicant was no doubt appointed on a temporary basis but cannot be said to have been given a purely adhoc appointment which was limited only for the period till completion of formalities. In such circumstances, there is least difficulty in coming to the conclusion that the peremptory order issued on 28.1.91 terminating the service of the applicant with effect from the afternoon of the said date apparently on the ground that a criminal case was pending against him which was very much known to the respondents, even when the appointment was given, cannot be sustained even if he was on probation at that point of time. Not only there was no opportunity afforded to the applicant to make any representation against the proposed order of termination but he was even denied a month's notice or payment of a sum equivalent to pay and allowances for the period of notice as contemplated in the offer of appointment.

5. The Learned Counsel for the applicant has also stated that he has since been acquitted in the case, which was pending against him at the time of appointment, which was not controverted on behalf of the respondents. As a matter of fact, on 25.5.93, a M.P. was filed being M.P. 1618 of 1993 for early hearing of the case in which it was stated that he has been acquitted in the criminal question in question. This M.P. was no doubt lost, but it appears that a copy thereof was served upon the Ld. Counsel for the respondents and thus, it was brought to their knowledge that the criminal case against the applicant had ended in acquittal. Therefore, on the materials

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on record, it can be reasonably said that the criminal case for pendency of which the applicant was apparently dismissed from service has since ended in acquittal, which is yet another ground why the order of termination cannot be upheld.

6. For reasons indicated above, we allow the application and the impugned order of termination dated 28.1.1991 as well as the order of the appellate authority dated 6.6.91 are set aside and the respondents are directed to pass appropriate order re-instating the applicant with all consequential benefits to be given only ~~in~~ notionally but no back wages shall be admissible to the applicant.

7. Parties to bear their own costs.

R.K. Ahuja
(R.K. Ahuja)
Member(A)

A.K. Chatterjee
(A.K. Chatterjee)
Vice-Chairman(J)
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