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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 3350 of 1992

New Delhi, this the 19<sup>th</sup> day of March, 1999

HON'BLE MR. R.K.AHOOJA, MEMBER (ADMNV)  
HON'BLE MR. S.L.JAIN, MEMBER (JUDL)

Sh. Abhay Jain, S/O Sh. Lal Chand  
Jain, I.O.W., under Northern Railway,  
H.Q., Baroda House, New Delhi.

---APPLICANT.

(By Advocate Sh. B.S.Maine)

**Versus**

Union of India: Through

1. The General Manager, Northern  
Railway, Baroda House, New  
Delhi.
2. The Chief Administrative Officer  
(Constn.) Northern Railway,  
Kashmeri Gate, Delhi.
3. The Chairman, Railway  
Recruitment Board, Jammu Tawi.

---RESPONDENTS.

(By Advocate Sh. P.S. Mahendru)

**O R D E R**

Delivered By HON'BLE MR. S.L.JAIN, MEMBER (JUDL)

This is an application under section 19 of the administrative Tribunal Act 1985 for the Direction to the respondents to produce the file and record and quash the terminal order.

2. Applicant's case in brief is that he holds a diploma in three years course in Civil Engineering and in response to an advertisement by the Railway Board for the post of Inspector on work, he had applied for the same. A written test was held on 27.08.1989, thereafter an interview on 19.01.90 & 20.01.90 at Jammu was held, he was declared successful in the aforesaid test, his name was placed on the panel of IOW which was forwarded by the Chairman to the Northern Railway Baroda House, New Delhi.

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The Chairman to the Northern Railway Board also sent a letter to the applicant dated 31st October, 1991 informing him that his name had been recommended to the General Manager (P), Northern Railway Baroda House New Delhi for the post of IOW and the offer of appointment will be given by him after completion of the formalities and final check of the original documents subject to the availability of the post in turn. In pursuance of the aforesaid letter, respondent No.1 sent offer of appointment to the applicant and the applicant was posted in construction organisation and he joined as New Ganga Bridge Bala Bali, Northern Railway on 27.1.92 from where he was relieved on 24.4.92 and was sent to Kanpur Ceta where he worked from 27.4.92 to 25.8.92. Again he worked at Kanpur Ceta from 31.8.92 to 30.11.92. He was again posted at Bala Bali where he joined on 1.12.92. On 2.12.92, the IOW, Naziabad, under whom he was working spared him with directions to report to Senior Personnel Officer at Headquarter Office, Baroda House, New Delhi. Immediately, after the aforesaid letter the applicant reported for duty to the Senior Personnel Officer, Headquarter Office but no further orders were given to the applicant for more than a week. In the meantime he fell ill and sent back to Senior Personnel Officer Northern Railway Baroda House, New Delhi requesting for ten day's leave. During his sickness he was informed that the respondent has taken a decision to terminate his services without giving any reasons whatsoever and any show cause or any opportunity of hearing. The orders are illegal, arbitrary, discriminatory and unconstitutional one.

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3. The respondents have alleged that the applicant has not applied for the post of Inspector on Duty GA (3) in response to the advertisement issued by the Railway Recruitment Board in March 1989, he was not examined for the said post and was not informed selected for the same post. He has got the employment fraudlently on the basis of bogus panel. Selected Roll No. 13565 does not appear from the result declared by the Railways and publication including local newspapers, no selection letter was ever sent to him. He further alledged that no cause of action arises in favour of the applicant. Hence prayed for dismissal of the O.A. alongwith costs.

4. The respondent's counsel has drawn our attention to para 4.10 of the OA which is to the following effect:-

4.10. That during his sickness, the applicant was informed that the respondents have taken a decision to terminate his services without giving any reasons whatsoever and any show cause or any opportunity of hearing to the applicant.

5. On perusal of the OA we find that the contents of the said para 4.10 of OA are <sup>Denied</sup> ~~reviewed~~ and in para 1.1 of CA, it is mentioned that "Applicant has no cause of action because his removal from his post is perfectly legal." Thus, it is a fact that the applicant has been removed from his job. The respondents have failed to mention the exact date of removal. If the respondents have mentioned the date which must have been before or after the date of filing of the OA, it must be a significant date to come to a conclusion that the applicant filed the OA without there being a cause of action.

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6. The learned counsel for the applicant relied on 1974 (4) SCC 176 Madurai Port Trust case for the proposition that when the case on merits is well founded the Government should not stand on technical pleas. We agree to the said proposition of law. The respondents are evasive one but infact service of the applicant has been terminated. Hence we hold that there is a cause of action in favour of the applicant.

7. On perusal of the CA, we find that the respondents have come before this Tribunal on the plea of fraudulent appointment. The applicant's counsel relied on 1992 (1) SLJ 110 - Nath Yadav Vs. State of Bihar & Others which lays down that even in case of illegal and irregular appointment, the respondents are duty bound to afford an opportunity to the applicant before terminating his services. The said authority is based on 1990 (2) BLJ 707 - Om Prakash Narayan & Others Vs. State of Bihar & Others and AIR 1991 Supreme Court 309 - Shravan Kumar Jha & Others Vs. State of Bihar & Others. On persual of the said authority, we find that in case of illegal appointment or irregular appointment, an applicant/employee is entitled to a raesonable opportunity of being heard.

8. In the present case, the applicant has come before this Tribunal on the allegation that he was appointed in the due course while the respondents' contention is that the applicant obtained the appointment fraudulently when even not applied.

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9. Thus, it is a case of appointment which may be illeal one. In such circumstances, 1992(1) SLJ 110 - Kumar Jha & Others Vs. State of Bihar & Others applies to the present case.

10. Admittedly, no opportunity of hearing was afforded to the applicant before terminating his services. Thus, the order passed, terminating the services of the applicant, deserves to be quashed.

11. The learned counsel for the applicant relied on AIR 1964 Supreme Court 449 - Jadish Vs. The Union of India and argued that whether the case is of discharge simplicitory or of punishment, the order of discharge of temporary servant is passed on the ground that he was found undesirable to be retained in Government service is to be held as an order of dismissal. His contention is that the Tribunal is to look into the substance of the order, the background of the orders and not to the actual words. We agree to the contention of the learned counsel for the applicant in view of the authority referred above.

12. The question regarding production of relevant file before the Tribunal does not deserve to be allowed for the reason that it is for the respondents to inquire into the matter, hence production of the same before the Tribunal is not necessary one.

13. In the result, OA deserves to be allowed. The order of the respondents terminating the services of the applicant is quashed and respondents are ordered, if they

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intend to do so they must do it by affording an opportunity to the applicant before any termination order is passed against him and decide the matter accordingly.

14. Looking to the facts and circumstances of the case, it is ordered that both parties shall bear their own costs.

*S.L. Jain*  
(S.L. JAIN)  
MEMBER (J)

*R.K. Ahuja*  
(R.K. AHUJA)  
MEMBER (A)

/SUNIL/