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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 2300/93.

Date of decision. 29/1/94

Hon'ble Shri N.V. Krishnan, Vice-Chairman (A)

Hon'ble Shrimati Lakshmi Swaminathan, Member (J)

Suresh Kumar,
S/o Shri Murari Lal,
C/o Shri D.P. Yadav,
C-253, Elbert Square Area, Gole Market,
New Delhi.

(By Advocate Shri S.D. Sharma)

versus

1. Director General,
Central Government Health Scheme,
II Section, Nirman Bhawan,
New Delhi.

2. Dy. Director,
Central Government Health Scheme,
102, Sotiganj,
Meerut.

(By Advocate Shri M.M. Sudan)

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[Hon'ble Smt. Lakshmi Swaminathan, Member (J)]

The applicant has filed this application under
Section 19 of the Administrative Tribunals Act, 1985
challenging the validity of the order dated 25th
June, 1993 issued by the Respondents whereby his
appointment as Chowkidar - Grade 'D' employee has
been discontinued with immediate effect.

2. The brief facts of the case are as follows:-

By Order dated 24.12.1992, the applicant was offered

a temporary post of Chowkidar in the Central Government

Health Scheme issued by the Additional Director,
Central Government Health Scheme, Meerut. Para
2(ii) of this offer is reproduced below:-

"The appointee may be terminated at any time by a months notice given by either side viz. the appointee or the appointing authority however, reserves the right of terminating the service of the appointee forth with or before the expirations of the stipulated period of notice by making payment to him/her of the sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof."

In pursuance thereof the applicant was appointed by the Ann.III order dated 7.1.93. That order appointed the applicant and 2 others as chowkidar and a fourth person as Nursing Attendant, all on ad hoc and temporary basis. Soon thereafter, by the impugned order dated 25.6.93 (Ann.1) the Deputy Director, Central Government Health Scheme, Meerut discontinued the ad hoc appointment of all the four persons with immediate effect.

3. The applicant is aggrieved by this order. The contention of the learned counsel for the applicant is that this order of termination of his services is malafide. In addition, he submits

that as no opportunity was given to the applicant to be heard in his defence before the impugned order was passed, it is illegal and against the mandatory provisions of Article 311 of the Constitution. He has relied on the judgment of the Supreme Court in O.P. Goel v. Himachal Pradesh Development Corporation and Another [AIR 1991 SC 1490] and three other decisions referred to in this case, namely Anoop Jaiswal v. UOI [AIR 1984 SC 636], Nepal Singh v. State of U.P. [AIR 1985 SC 84] and Jarnail Singh v. State of Punjab [AIR 1986 SC 1626]. He has also contended that in terms of para 2(ii) of the letter offering him the appointment to the 'temporary post' of Chowkidar, he had not been given one month's notice or in lieu thereof, pay and allowances for the period of notice.

4. We have seen the counter affidavit filed by the Respondents. According to the Respondents, in response to their requisition to the Employment Exchange, they sponsored 78 candidates, including the name of the

applicant, for Group 'D' posts out of which only 25 candidates were called for interview. They should have actually called all the candidates for interview as per rules and thereafter left it to the Selection Committee to select the suitable candidates for the posts in question. The learned counsel for the Respondents also pointed out that one of the members of the Selection Committee, Dr. Raj Kumar, S.M.O., was the real brother of the applicant who was selected by the Committee. In view of these facts, a decision had been taken not to accept the recommendations of the Selection Committee, following which the impugned order dated 25.6.93 had been issued. The learned counsel for the Respondents also referred to the decision of this Tribunal in the connected case of Vinod Kumar v. UOI & Ors. (O.A. No. 178/94) in which the same order dated 25.6.93 was challenged by Vinod Kumar, who was appointed as Chowkidar. In that case, the Tribunal had found that the action of the Respondents was neither arbitrary nor irrational

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in passing the impugned order of termination and dismissed the application. It was, however, submitted by the learned counsel for the applicant that a review petition has been filed against the order dated 6.4.94, which is pending, but that does not preclude us from deciding the instant case on the records and pleadings before us.

5. In this case the impugned order has not only terminated the services of the applicant but three other persons selected to various other posts by the Selection Committee, in which the brother of the applicant was also one of the members. Apart from this, it is seen that the rules for calling all the candidates sponsored by the Employment Exchange have not been adhered to.

6. A faint submission was made by the learned counsel for the applicant, that the applicant had no connection with his brother who was in the Selection Committee. We are unable to accept this contention because owing to the relationship between the applicant and one of the members of

the Selection Committee, which has not been denied, there is more than a reasonable ground for assuming the possibility of bias in favour of the applicant. This ground of bias is alone sufficient to set aside the recommendations of the Selection Committee. We may refer to the following two cases.: In A.K.

Kraipak v. Union of India & Ors. [AIR 1970 SC 152 at p.155] the Supreme Court held :-

"The real question is not whether he was biased. It is difficult to prove the State of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias."

In that case one of the candidates for selection to the higher post was himself a member of the selection Board and the Court held that he was undoubtedly a judge in his own case, a circumstance which is abhorrent to our concept of justice.

In another case (Subhash Chander v. State of Haryana [1984 (1) SLR Punjab & Haryana 165 (D B)] the Punjab & Haryana High Court held :-

" It seems to be now well-settled by the
afore said authorities that where a selection
into the civil service is even tainted by a
reasonable likelihood of bias it is not only
to be set aside qua the particular person
or persons but may well vitiate the whole
selections which may have to be quashed.
The question, therefore, in the present
case is whether the petitioners would be
able to establish a reasonable likelihood
of bias and not to prove the actuality of
bias beyond all doubt. Indeed to insist
upon the later would be placing an
impossible burden on the Writ petitioners
which would render the high spirited principles
underlying the Constitution for ensuring the
purity of the civil/^{service} virtually illusory in
their practical application."

7. In the facts and circumstances of the case,
we are of the view that the Respondents have rightly
taken the decision not to accept the recommendations of
of the Selection Commission in so far as the applicant
is concerned as the same cannot be sustained both on
the grounds of bias and non-compliance of the rules.
It is also relevant to note that the Respondents
have taken necessary action to pass the impugned
order within a period of six months of the appointment
of the applicant. Besides the applicant, other persons

who had been selected have been terminated from service by the same order. In the facts of this case we do not think that the applicant should derive any benefit from this selection.

8. We have also seen the judgments of the Supreme Court relied upon by the applicant. It will suffice to refer to the judgment in O.P. Goel v. Himachal Pradesh Development Corporation & Another [AIR 1991 SC 1490] in which reference has been made to the other three cases referred to above. The learned counsel for the applicant has relied upon these judgments to show that even in the case of an order of termination in the case of a temporary employee, the court has to see whether the order was made on the ground of misconduct and the court should examine the real circumstances as well as the basis of the order. In O.P. Goel's case, the order of termination mentioned that the services of the petitioner were no longer required. However, from the record, the Supreme Court came to the conclusion that the juniors to the petitioner were retained

and they continued in service for which only a vague reply had been filed by the Respondents and, therefore, the termination order was set aside. It is clear that the cases relied upon by the applicant are not applicable to the facts of this case where, improper selection and bias in selection is the basis for termination.

9. Admittedly, the order of termination of the applicant's service is not on the ground of misconduct which would attract the provisions of Article 311(2) of the Constitution. Therefore, the plea on this ground that an enquiry ought to have been held against the applicant under Article 311(2) of the Constitution and that he should have been afforded an opportunity of hearing is without basis and is rejected.

10. The plea of the applicant that the impugned order is mala fide has not been substantiated and is, therefore, rejected.

11. There is a further plea that the impugned order is void because neither notice nor pay in lieu thereof was given relying on para 2(ii) of the offer of appointment. In the facts and circumstances of the case,

this will not vitiate the order of termination of the applicant, for the termination of service has been ordered de hors this offer, on the ground of improper selection. i.e. cancellation of the selection itself. We do not also find any merit in the other submissions made on behalf of the applicant.

12. In the result, the application fails and is dismissed. There will be no order as to costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member(Judicial)

N.V. Krishnan
29/1/84
(N.V. Krishnan)
Vice Chairman(A)