

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD.

ORIGINAL APPLICATION NO. 262 OF 1998

THIS THE 29<sup>th</sup> DAY OF March 2005.

HON'BLE MR. JUSTICE S.R. SINGH, VICE CHAIRMAN

HON'BLE MR. S.C. CHAUBE, MEMBER (A)

Vinod Kumar Shukla,  
Aged about 20 years,  
S/o Sri Bipin Behari Shukla,  
R/o Jubli Quarters Kailana,  
Post Office Chakrata,  
District Dehradun.

.....Applicant.

By Advocate: Sri Rajesh Rai.

Versus

1. Union of India, through I.G. Head quarters,  
Special Frontier Force (SFF).  
Block No.5, East R.K. Puram,  
New Delhi.
2. Brig. Commandent, (Appointing Authority),  
Head quarters, Establishment No. 22.
3. Col. Offg. Commandant. (Appointing Authority),  
Records East No. 22,  
C/o 56 APO, Dehradun. ....Respondents.

By Advocate: Sri Satish Chaturvedi.

ORDER (ORAL)

JUSTICE S.R. SINGH, V.C.

Heard the learned counsel for the parties and  
perused the pleadings.

2. The applicant was appointed as Record Clerk in  
the Records Establishment no.22, C/o 56 APO





vide order dated 2.4.1997 which reads as under:-

" You are employed as a Record Clerk in this Establishment in the pay scale of Rs. 825-15-900-EB-20-1200 per month with usual allowances under orders enforce from time to time with effect from 02 Apr, 97.

2. Since you do not meet the civil educational qualification required for the post of a Record Clerk, I hereby relax the educational qualification for a period of two years under the provisions of para © of Government of India Ministry of Personnel Grievances and Pension letter no. 14014/6-86-Estt(D) dated 30 June, 87 beyond which no relaxation of educational qualification will be admissible and your services are liable to be terminated if you do not achieve the requisite educational qualification within the said time limit.

3. You will be on probation for a period of three years from 02 Apr 97.

4. The post is temporary and liable to be terminated on one month's notice on either side at the discretion of appointing authority.

Sd/-

(K. Pathak)

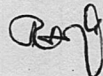
Colónel

Offg. Commandant.

Appointing Authority"

3. The notice impugned herein is dated 28.2.1998 and has been issued under sub-rule (1) of Rule 5 of the Central Services (Temporary Services) Rules, 1965 to the effect that the applicant's services would stand terminated w.e.f. the date of expiry of a period of one month from the date of service of the notice or, as the case may be, w.e.f. the date of the notice being tendered. The notice reads as under:-

"In pursuance of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Services), Rules, 1965, I hereby give notice to Sri Vinod Kumar Shukla, Record Clerk that his services shall stand terminated w.e.f. the date of expiry of a period of one month





from the date on which this notice is served on or, as the case may be tendered to him."

4. The appointment order clearly indicates that the post on which the applicant had been appointed was temporary one and the appointment was liable to be terminated on one month's notice on either side at the discretion of the Appointing authority. The learned counsel for the applicant contends that the appointment of the applicant was made on compassionate ground and, therefore, it was not liable to termination. The learned counsel for the applicant has placed reliance on the decisions of Ravi Kiran Singh Vs. State of U.P. & Others (1999(2)AWC 976); Om Prakash Vs. Superintending Engineer Nalkoop Division, Varanasi & Others (2000) 2 UPLBEC 1449) and Ajay Kumar Sharma Vs. State of U.P. & Others (2000)1 UPLBEC 719. Unreported decision of the High Court dated 11.8.2003 in Civil Misc. Writ Petition no. 19168 of 2000 in re. Smt. Rajodevi & Another Vs. State of U.P. & Others has also been relied upon by the applicant.
5. On the other hand, the respondents have submitted, in their Counter affidavit, that the applicant did not possess the requisite educational qualification on the date of his appointment as Record Clerk and he was appointed in relaxation of educational qualification for a period of two years under the provisions of Government of India letter no. 14014/6/86-Estt (d) dated 30.6.1987 subject to the condition that he would acquire the educational qualification within the said time limit. The applicant, according to the respondents, did not achieve the requisite educational qualification within the time

*Regd*



limit and accordingly the services of the applicant came to be terminated in terms of the conditions stipulated in the appointment letter itself. It is also the case of the respondents that the marks sheet of Secondary School Examination 1997 which purports to have been issued from Bihar School Examination Board, Patna, and has been relied upon by the applicant was found forged and bogus as per the report contained in the letter dated 29.4.98 of Joint Secretary, Bihar School Examination Board, Patna. A First Information Report regarding submission of forged marks sheet by the applicant, according to the respondents, was lodged with Police Station, Chakrata, District Dehradun on 3.5.1998. The applicant, it is admitted, is on bail in the criminal case registered on the basis of the said F.I.R. Counsel for the applicant, however, submits that the applicant has been acquitted in the criminal case.

6. The applicant, it would appear, was issued ~~to~~<sup>3</sup> show- cause notice dated 1-.2.1998 (Annexure-8 to the O.A.) calling upon him to explain why his services be not terminated for the reasons: firstly, that the post should have been filled by Departmental promotion instead of compassionate appointment; and secondly, the appointing authority had not been considered competent to relax the education standard. However, the appointing authority in the instant case has invoked the power under the provisions of sub rule (1) of Rule 5 of Central Civil Services (Temporary Services), Rules, 1964. Sub rule (1) of Rule 5 empowers the appointing authority to terminate the services of a temporary Government servant who is not in quasi permanent service, at any

*Raj*



time, by a notice in writing given to the Government servant by the appointing authority. The period of such notice, it is provided, shall be one month, provided that the service of any such Government servant may be terminated forthwith and on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or as the case may be for the period by which such notice falls short of one month. And that the post of Record Clerk being a promotional post, was not liable to be filled up by direct recruit on compassionate ground in relaxation of rules.

7. According to the averments <sup>2</sup> ~~made~~ made in the Counter Affidavit, the applicant's services were terminated before expiry of probationary period of two years due to the reason that the marks sheet relied upon by the applicant was found forged and also on the ground that the officer who had issued appointment order in favour of the applicant was not considered competent to relax the qualification in respect of the post of Record Clerk.
8. Having heard the learned counsel for the parties, we are of the view that the facts stated in the Counter affidavit at the most constitute a motive as distinguished from foundation to terminate the services of the applicant. That apart the post being promotional one ought not to have been filled up by direct recruitment. Benefit of ~~compass~~ <sup>compassionate</sup>

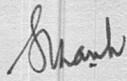
*[Signature]*

*[Signature]*

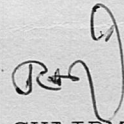


compassionate appointment is extendable to post to be filled up by direct recruitment. In the circumstances, recourse to the Central Civil Services (Temporary Services), Rules, 1965 cannot be held to be unjustified. Regular departmental enquiry into the allegations of using bogus educational certificate would have been more fatal to the applicant.

9. Accordingly, the O.A. fails and is dismissed with costs on parties.



MEMBER-A



VICE CHAIRMAN

GIRISH/-