

ANNEXURE No. A-1

CENTRAL ADMINISTRATIVE INSTITUTE, ALLAHABAD UNIVERSITY,
ALLAHABAD, U.P.

नि:शुल्क प्रतिलिपि

Dated at Lakewood, the 12th day of February, 2001

Conrn: Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Mr. S. Doyal, A.M.

ORIGINAL APPLICATION NO. 1012 OF 1998

1. Gurjeet Singh, S/o Sri R.K. Singh, 1/1 166, Mahendra Bihar, Ballupur Road, Dehradun.
2. Harpal Singh, S/o Prem Singh, 1/1 156, Dhananjpur, Dehradun.
3. Brij Mohan, S/o S. L. Lalit Prasad, 1/1 1/4, P. & T Colony, Dehradun Road, Meerut.
4. Har Govind Jiwakar, S/o Ram Babu Jiwakar, 1/1 156, Dhananjpur, Dehradun.
5. Prakash Chandra, S/o Samudri Lal, 1/1 119, L1C, MUSA Colony, Dehradun.

(By Advocate Sri K.C. Sinha)

... , applicant.

Versus

1. Union of India, through Director General Telecom, Department of Telecom, Sanchar Bhawan, 20, Ashok Marg, New Delhi.
2. Chief General Manager Telecom (U.P.), East, Lucknow.
3. Chief General Manager Telecom (U.P.) West, Dehradun.
4. General Manager Telecom, Jaipur.

(By signature or stamp below) . . . Respondent

(By Advocate Mr. Mukherjee)

with

Contd. . . 2

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2.

OFFICIAL APPLICATION NO. 1030 OF 1998

Istunden Kumar Rathor,
S/o Sri Mohan Lal Rathor,
Lithographer G.I. III in the
office of Telecom Divisional
Engineer, Rampur.

(By Advocate Sri K.C. Sinha) applicant

Versus

1. Union of India, through
Director General Telecom,
Department of Telecom,
Sanchar Bhawan,
20, Ashok Marg, New Delhi.
2. Chief General Manager Telecom (U.P.),
East, Lucknow.
3. Chief General Manager Telecom (U.P.)
West, Dehradun.
4. Telecom Divisional Engineer,
Rampur.

(By Advocate Sri A. Bhalekar) respondents

OFFICIAL APPLICATION NO. 1031 OF 1998

Brij Mohan Srivastava,
aged about 29 years,
S/o Lalta Prasad Srivastava,
R/o 8A/11-G, Tilak Nagar,
Allahpur, Allahabad, working as
Lithographer Grade-II in the office
of the General Manager, Tele-communication,
Meerut Contt., Meerut.

(By Advocate Sri B.P. Srivastava) applicant

Versus

1. Union of India, through the Director General,
Telecom, Department of Telecommunication,
Sanchar Bhawan,
20, Ashok Marg, New Delhi.
2. The Chief General Manager,
Tele-communication,
U.P. East Lucknow.
3. The Chief General Manager,
Telecom, U.P. (West),
Dehradun.
4. The Deputy General Manager (Administration),
Telecommunication, Dehradun.
5. The General Manager,
Telecommunication, Meerut.

(By Advocate Sri A. Bhalekar) respondents

Contd. 3



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3.

ORIGINAL APPLICATION No. 802 OF 1999

1. Harpal Singh,
s/o Sri Prem Singh,
r/o 156, Dharanpur,
District Dehradun.
2. Har Govind Diwakar,
s/o Sri Ram Babu Diwakar,
r/o 156, Dharanpur,
District Dehradun.
3. Prakash Chandra,
s/o Sri Sunmari Lal,
r/o B-54, Respna Nagar,
Hardwar Road,
District Dehradun.

(By Advocate Sri K.C. Sinha) applicant

Versus

1. Union of India, through
Director General Telecom,
Department of Telecom,
Sanchay Bhawan,
23, Ashok Marg,
New Delhi.
2. Chief General Manager Telecom,
U.P. (West), Dehradun.

(By Advocate Sri A. Shukla) Respondents

ORIGINAL APPLICATION No. 812 OF 1999


Jitendra Kumar Rathor,
s/o Sri Mohan Lal Rathor,
s/o Mohalla Purani Bazar,
Tehsil Meldubbad,
District Sitapur.

(By Advocate Sri K.C. Sinha) applicant

Versus

1. Union of India, through
the Director General Telecom,
Department of Telecom,
Sanchay Bhawan,
23, Ashok Marg,
New Delhi.
2. Chief General Manager Telecom
U.P. (West), Dehradun.
3. Telecom Divisional Engineer, Itanpur.

(By Advocate Sri N.B. Singh) Respondents

Contd. 4

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4.

O_R_D_E_R

(RESERVED)

(By Hon'ble Mr. S. Doyal, A.M.)

This is bunch of 5 original applications u/s 19 of the Administrative (Tribunals) Act, 1985, two of which were filed in 1998 and three in 1999, and have common issues of facts and law. Therefore, they have been heard together and a common order is being made.

2. The relief sought in O. 1012/98 and 1038/98 is for setting aside the cancellation of selection held to the post of stenographer Grade-III. The relief claimed in the remaining 3 original applications filed in 1991 is of setting aside the orders of termination dated 30.6.1999 and direction to the respondents to allow the applicants to work on the post of stenographer Grade-III.

3. The facts given in the original applications are that an advertisement no.3 of 1993 was published by the Chief General Manager, Tele-communication, U.P., Lucknow for appointment on the post of stenographer Grade-III. About 4,000 to 5,000 candidates applied. The applicants, who were eligible also applied. It appears that some delay took place in the selection, because the office of Chief General Manager Telecommunication, Lucknow was bifurcated on 1.4.1995 and the office of the Chief General Manager, Telecommunication, East at Lucknow and the Chief General Manager, West at Dehradun came into being. The selection was done by a Selection Committee nominated by the Chief General Manager, Tele-communication (East) at Lucknow.

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24/10/98

5.

The first test took place on 14/15th April, 1995. Those who qualified were asked to appear in the shorthand test held on 20/21st January, 1996. The result was declared on 19th March, 1996 and applicants were declared successful. The applicants underwent medical examination and were subjected to verification of character and antecedents. Thereafter, they were offered appointments and joined on various dates in June/July, 1996. The applicants had worked for more than two years, when they saw a notice dated 12.9.1998 in Hindi daily 'Dainik Jagran', by which the office of the Chief General Manager, Telecommunication, Lucknow notified that the selection held on the post of Stenographer Grade-III on 14/15th April, 1995 and 20/21st January, 1996 was cancelled as the same was not held by the Staff Selection Commission. The candidates were subsequently informed individually about the cancellation of selection. The applicants, however, continued to work as they had already been appointed. The services of all the applicants were terminated by the order dated 30.6.99, giving them one month's notice. The termination has been challenged by all the applicants, who had initially filed OAs Nos. 1012/98 and 1038/98, except Sri S.K. Srivastava in OAs 709/99, 802/99 and 812/99.

4. We have heard arguments of Sri B.P. Srivastava and Sri K.C. Sinha for the applicants and Sri Amit Rathalekar and Sri D.S. Shukla for the Respondents. We have also considered pleadings on record.

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5. The applicants have claimed relief on the ground that they were duly selected after following the competitive procedures for regular selection. They also claimed that the department of Tele-communication was competent to adopt procedures which were applied to the recruitment of the applicants because there was no statutory force behind the decision of the Department of Telecommunication to get the post of Stenographer Grade-III filled in through the Staff Selection Commission. The selection was held in a fair and impartial manner and was not vitiated by any fraud or mis-representation on part of the applicants. They had been appointed to the post of Stenographer Grade-III and had worked for more than two years before their selection was cancelled by the Department. They have worked for nearly three years after their appointments, when they were given notice regarding the cancellation of the appointments.

6. The respondents in their counter reply have claimed that the applicants were appointed as temporary Stenographers Grade-III after selection by the department directly and not through the Staff Selection Commission. They have stated that the department of Telecommunication had decided by their letter dated 27.8.79 that the recruitment to the cadres of LDCs and Stenographers in the circle and administrative offices should be entrusted to the Staff Selection Commission, New Delhi and followed it up by the instructions dated 20.9.79 to notify all the direct recruitment vacancies of the Staff Selection

Contd. 7

EX-14
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7.

Commission and that from 1980 onwards the Commission would nominate the candidates for the above mentioned posts on the basis of examination to be held by them for the purpose. The Heads of offices, districts and administrative offices were requested to send requisition in the prescribed pro-forma to the concerned regional office of the Staff Selection Commission. It is contended that the recruitment and selection held by the Department was, therefore, illegal. A reference is also being made to the letter dated 12.2.1996, by which the departmental officials were directed not to resort to any recruitment to open market and follow the prescribed procedures for recruitment through the Staff Selection Commission. It is contended that the selection process was against the instructions of the department of Telecommunication of the Department of Personnel & Training. It is also contended that the Staff Selection Commission had been established by a resolution of Parliament and, therefore, the selection has to be done through the Staff Selection Commission. It is mentioned that of the 29 candidates selected, 17 candidates, who were higher in merit were allotted to Eastern Telegram Circle and 12 candidates, who were lower in merit were allotted to Western U.P. Telegram Circle. They contended that by cancelling the selection as well as appointments, the respondents had merely corrected the wrong, which was occasioned due to selection of stenographers by the departments directly. It is also being contended that since the applicants were appointed on temporary basis, their services can be terminated at any time by giving one month's notice or one month's pay in lieu thereof.

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Exhibit 18

8.

7. For a just resolution of the controversy, it would be necessary to give a closer look to the sequence of events leading to selection, as contained in annexures to the pleadings. The annexures to the OA show that the respondents had sent letters on 6.3.91, 10.11.91, 10.12.91, 7.1.92, and 5.3.92 to the Staff Selection Commission for making recruitment to the post of Stenographers. Since the posts remained unfilled, Respondent no.2 wrote a letter to the Respondent no.1 on 7.1.93, mentioning that there were 123 posts of Stenographers, out of which 57 posts were filled up and 66 posts were lying vacant. Out of these 66 posts, 33 posts were to be filled up by direct recruitment of outside candidates. The Staff Selection Commission, which had the responsibility of recommending candidates was unable to recommend any candidate for filling up 33 vacant posts, despite the fact that the Respondent no.2 was continuously pursuing the case with the Staff Selection Commission since March, 1991.

8. Sri N. Vittal, Officer on Special Duty, visited office of the Chief General Manager Telocan, Lucknow on 21st September, 1993 and issued a note to D.G.(E)/D.G. (Pers) and Lt.U.P. Circle, giving permission to recruit candidates outside the Staff Selection Commission by getting names from the Employment Exchanges, provided there was no ban on filling up posts of Stenographers at circle level. The Respondent No.2 sent a requisition on 26.10.93 to the Staff Selection Commission to give names of suitable candidates for appointment to the post of Stenographer against 7 SC and 1 ST vacancies. Pursuant to the permission

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given by Sri N. Vittal, the respondent no.2 placed an advertisement no.3 of 1993 in the news-papers inviting application from eligible candidates registered with the Employment Exchanges in U.P. for the post of Stenographer Grade-III. The advertisement is said to have resulted in more than 4,000 to 5000 applications for the said post. Subsequently, the respondent no.1 by their letter dated 19.1.94 informed the Heads of Telecom Circles, district and administrative officers as follows (vide Page 51 of OA 802/99) :-

" SUBJECT: Filling up of vacant post of Stenographer
Sir,

Kindly refer to this office letter No.27-1/87-TB-II dated 11.7.1991 for the recruitment from the open market in any of the existing of restructuring cadres of Group 'C' and 'D', except in the cadre of JTO has been banned.

2. In view of the request received from the various field units seeking permission for filling up of existing vacancies in the cadre of Stenographers, the existing instructions issued vide this office letter referred to above have been received. Accordingly, I am directed to convey the approval of the Telecom Commission for relaxation of the ban order in the extent of filling up of vacant posts of Stenographer Grade-III as a one time measure. Wide publicity should be given amongst the departmental employees for filling up the existing posts of Stenographers. It may also be ensured that direct recruitment from the open market should be resorted to only if suitable persons are not available within the department and that this should be limited to the essential minimum no. of Stenographers needed for their work."

This letter gives relaxation from the ban order, but required wide publicity amongst departmental employees and direct recruitment from the open market to be resorted to only if suitable candidates were not available within the department and this number was limited to the essential minimum no. of Stenographers

Contd. 10

EXHIBIT H

10.

loaded for this work. The annexure 1A to the short Counter affidavit shows that by a letter dated 5.12.94, the Assistant Director Telecom (Recruitment) of the office of Chief General Manager Telecom, U.P. Circle, Lucknow informed the concerned officers of U.P. Circle that a departmental examination was organised on 19.8.94 and only two candidates had applied, of which none could succeed (annexure C-4 to short Counter affidavit filed on 14.9.99). The office of C.G.M.T., Lucknow was bifurcated into the office of C.G.M.T. (West) and office of C.G.M.T. (East), Lucknow with effect from 1st April, 1995. The first test for recruitment of Stenographer Grade-III could be held on 14/15th April, 1995 and the shorthand test could be held on 20/21st January, 1996. The Respondent No.1 sent letter dated 12.2.96 to the Respondent no.2, which reads as under (vide Page 64 & 65 of OA 802/99):-

"SUBJECT: Filling up of vacant posts of Stenographers.

Kindly refer to this office letter No. even dated 19.1.1994 on the subject noted above vide which the circles were given permission to resort to direct recruitment of Stenographers from the open market in execution of the ban orders. The said permission was given only as a one time measure and to meet only the most pressing requirements.

The departments have objected to the direct recruitment of Stenographers instead of following the prescribed procedure of recruitment through Staff Selection Commission.

In view of above, no further recruitment from the open market should be resorted to. Only the prescribed procedure for recruitment through Staff Selection Commission may be followed. The number of Stenographers recruited in terms of this office letter dated 19.1.94 may be intimated to this office. The details of section taken to approach the SSC before the recruitment from open market was resorted to may also kindly be intimated along with the reply, if any, received from the SSC.

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EDUCATION DEPT.

11.

The above information may please be sent by Fax within 10 days positively.

Sd/- D. S. Verma
Director (TE)"

After a gap of 5 weeks of the test, result was declared on 19.3.96, in which 29 candidates were selected, of which 8 candidates belonged to the category of other Backward Classes and 9 candidates belonged to the category of Scheduled Castes and no candidates belonging to Scheduled Tribes or ex-serviceman could succeed in the selection test.

It is mentioned that one candidate belonging to the category of other Backward Classes was included beyond the number of posts reserved, because candidates at Slv Nos. 6, 7 and 8 had secured equal marks. Since the office of C.G.M.T., U.P. Circle was bifurcated, 12 candidates, who were last in the merit, were allocated to C.G.M.T. (West), Lucknow. (Para-20 of short counter affidavit filed on 5.8.99 in OA 802/99).

9. Some correspondence was exchanged between Respondent no.1 and C.G.M.T. (East), Lucknow. In this connection, a letter dated 30.6.97 is significant. The letter in vernacular is reproduced below (vide annexure no-19 to OA 802/99) :-

पत्र सं-ग्राह/पा-५८/८१०/९२/५

दिनांक 30-06-97

सेवा में,

प्री केऽस्नातीद,
प्रीनियर टी०टी०जी०१८टी०१
दरसावार विभाग
ग्राहार मैदान,
नई दिल्ली-११०००१

पिष्याः स्टेनोग्राफर ग्रॅड-१॥ के रिक्त पदों पर भर्ती करना।

तर्दर्शः आपका पत्रांक ९-४/९३-टी०१-१। दिनांक ७-५-९७

आपको उपर्युक्त पत्र के उत्तर में नीचे सभी विवरण व्योरेवार
दिये जाइ रहे हैं जिनके स्थान पर स्टेनोग्राफर ग्रॅड-१॥ में भर्ती
प्रक्रिया आरम्भ की गयी और टाइप/स्टेनोग्राफीटेस्ट के उपरान्त

राजा लाल

-: 12 :-

॥ अरिगग दो दिन कारणे विद्युत रात्रिपि ॥ आर्कांति दी गरी ॥

2- गर्दि 1993 मे उत्तर प्रदेशीय विभाग ने स्टेटोग्राफर ट्रैक-111 के 123 स्टीकूट पदों के मुद्रणमें बेवर 57 कर्मचारी कार्यरत थे। 66 दिनों पर्ते गे भवित्व 50 प्रतिशत वाह्य एवं 50 प्रतिशत विभागीय अधिकारियों को भवित्व की जानी थी। कर्मचारी चयन आयोग अनुसु गवर्नरी नामांकन करा पाता था इस नायालिय के समर्थक एवं एक दिनांक 6-3-91, 10-12-91, 5-3-92, 7-10-92, 9-11-92 के बावजूद तृतीय विभागीय भवित्व गवर्नरी नायालिय के अन्वेषण अनुमूलिक जाति स्वरूपित जन जाति की रिपोर्ट गयी थी। यह भार पायी है। समर्थक पत्र दिनांक 7-1-93 के प्रतिलिपि रैलगन्डी द्वारा दूरदृश्य विभाग के सलालकार मानव संग्रह विभाग से अनुरोध किया गया था कि एक बार वाह्य भवित्व अनुमति प्रदान की जाये।

3- श्री राजविट्टल उरा गम्य के ओ०एग०डी० के लगभग आगाम वर्ष
स्टोरोग्राफी की अंत्यन्त कारी को और उनका देवान भिनाने मुष एवं तुनः
अनुरोध करने पर उन्होने अपने पत्रांक डी०एग०टी०५८८/१३/१८१९/३७२
दिनांक २४-९-१९३। प्रतिलिपि गतान। दारा मुक्का गहाग्रबच्चा/गहाग्रबच्चा
प्रशासन। १९३० दूरसंचार परिषद्वाल को ताह्य भर्ती हेतु अधिकृत किया।
एवं श्री राजविट्टल उरा गम्य के ओ०एग०डी० के लगभग आगाम वर्ष
दूरसंचार विभाग के पत्रांक १९४/टी ८-१० दिनांक १९-१-१९४ प्रतिलिपि राजगढ़
न्युक्तम रख्या तो वाद्य कोटा में भर्ती हेतु छूट प्रदान करने की सूचना
गयी।

५- इन कार्यालय के ग्रामीणिक पत्र दिनांक ३-१-९४ द्वारा ग्रामीणवायोजन जारीलियो को अधिसूचना की प्रति भेजी गयी और उपके कार्यालय को उत्तराधीन ग्रन्ति १७-१-९४ द्वारा भेजी गयी।

5- दूरगचार विभाग के पञ्चांक 9-4/93-टीई-11 दिनांक 23-11-94 में गांगे दिनांक 19-1-94 के पश्चात् भूलिया गया है। भूलिया गया आगोग गेटोनोड्राफर श्रेणी-111 में गर्भी गतिशील गांगे दिनांक 23-11-94 की जांच कारी गांगी तथा भर्ती में तगड़ी शेषा भूलिया गया है। इसका नुगोदन भी किया जाएगा।

6- स्टेनोग्राफर ग्रेड -111 की शर्फ हेतु 20/21 जनवरी 96 को ग्राम्पुत्रिनी पारीका गमना कराया गया। अंतिम दिन 11-3-96 को यो धोपिया करने 3054-96 को दूररक्षार विभाग के निवेशक 11-1-111 को

कृपया: - - - - - । ३



1970.8.23

- 13 :-

उन्हिं दिया । डूरी जाव चर्चान अभ्यासियों का आवंटन पूर्व
में परिचय उत्तर प्रदेश दूर्लभार परिषद १ के नियुक्त हुए
कार्यवाही शुरू कर दी गयी ।

7- परिचयी उपर्युक्त दूरसंचार परिषद्वाल में आठ अभ्यासियों
को स्टेनोग्राफर ग्रेड-III पद पर नियुक्ति दी जा चुकी है ताकि
पूर्वी उपर्युक्त दूरसंचार परिषद्वाल में १७ अभ्यासियों को प्राप्ति
पूर्व में कार्यवाही नथा पुनिर्वापी किलोशा दिलोह एवं गोकिल
प्रिस्टोस ग्रामिय करारी जा चुकी है । जिन अभ्यासियों को नियुक्ति
कही गिली है उनमें से अधिकांश ने नियन्त्रित तात्र विभिन्न
न्यायालयों में प्रसूत बर कु सहते हैं । गग्नी वाद विवाराधीन
है :-

- 1- 574/96 की एसोसिएटी वनाम भारत राष्ट्र
- 2- तदेव 608/96 एसोसिएटी तथा अन्य वनाम भारत राष्ट्र
- 3- 625/96 की राज्य शिक्षा वनाम भारत वनाम भारत राष्ट्र
- 4- तदेव 1195/96 की रत्न ज्ञान शीकायत वनाम भारत राष्ट्र
तथा अन्य
- 5- रिट ग्राम ०७२७७/९६ की गत्य पाल वनाम भारत राष्ट्र

8- ग्राम्यक ज्ञान के ३ वा गोकिल ग्राम्यालय गोकिल
वनाम १ वा ज्ञान ५ इकाहालाद एवं ज्ञान ५ उच्च न्यायालय वनाम
में विवाराधीन है ।

9- अब आपके गद्भित पत्र दिनांक ७-५-९७ के निर्देशानुसार
गविला वा ग्राम्यक ग्रेड-III की गर्भी कार्यालय पर्याय ग्राम्यक
के ग्राम्यक वा ग्राम्यक किन्तु चयनित ग्रन्ति के विरक्त
करने की दशा में नियन्त्रित ग्राम्यालय आ जाएगी जिस पर फिले
ही वेचार झटना आवश्यक है :-

कृपया जिन ४ अन्य अभ्यासियों को परिचयी उत्तर-
प्रदेश परिषद्वाल में नियुक्ति दी जा चुकी है
और करीब एह गर्भी वा उपर ग्राम्य गोकिल कर
रहे हैं, उन पर कार भवर होगा- या उनको
भवर हो जानाने की प्राप्ति शुरू की जाएगी ।

क्रमांक: --- 14



दृश्यालय भैंड

-: 14 :-

१६) जिन ग्रन्थाधिकों को नियुक्ति नहीं मिली है और नियुक्ति गाने के उद्देश्य के अनुच्छेद-७ से उल्लिखित वाद विभिन्न न्यायालयों में धारित कर रखे हैं, तो वे भूति वाली लूची विवरण की जाती है तो न्यायालय इस पर ग्रन्थ अपनायेगा, दूसरा पर भी गिराव गरना आवश्यक है ।

॥५॥ चयनित सूची प्राप्त फरने गे आड्से गे एसी वायर
वायरों के अतिरिक्त और तामाम गुणोंमें भी निभाग
के विचार पे आ गकता है जिसका सभालना अत्यन्त
कठिन दोगा ।

15- पर्दा पर एक तथ्य और भी आपके सामने आया जा रहा है। यह वह है कि दिनांक जनवरी 1996 को जरायी गयी स्टेनो ग्रेड-11। की परीक्षा में कुछ परिक्षाधियों के चयनित होने के छिनाफ विजिलेन्स शिकायत हुई। इस शिकायत को दूरसंचार महानिदेशालय के गतर्वना अनुभाग ने जांच पढ़ताल किया। जांच के आधार पर पत्र सैंडया 2-45-96-बी एग-1। दिनांक 1-5-97 प्रतिलिपि गलानी के द्वारा निर्णय लेने के लिये भी गुनील गिरा, निकेशक छीर्झ एवं धीपी धूरसंचार गहा निदेशालय, नह दिल्ली की प्रतिलिपि गलानी लिखा गया ताकि वे अपने पत्र रीट्या 25-27/9- छीर्झ जिम्मा 30-5-97/एग्जाम भी तहर लिया, सहायक महा निदेशक बी0एप0-1। ई0ओ0टी0नई दिल्ली को गाने निर्णय रो अपात करा दिया है। अतः निर्णय लेने गमय इस तथ्य को भी ध्यान राना आवश्यक है।

ज्ञार दिये गगे निस्तृत रिपोर्ट छा पुाः ग्रामोज्ञा कर ॥११२॥
 एवं भविष्य के प्रश्नाव स्वं परिभाषा को ध्यान ने रखते हुये चयन प्रणिता को
 रद्द करने के निर्णय पर पुर्वविधार करने का छट करें तथा अपने निर्णय से
 इस कार्यालय को सहित भी करने का कष्ट करें ।

रामग्रन्थः उपरोक्तान्वार

८० ३०-६-९७
ଶ୍ରୀପଣ୍ଡିତମାତ୍ର
ଉପ ମହାପାତ୍ରମାତ୍ର



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The Respondents have stated (in their short counter affidavit filed on 5.8.99 in para-22 of OA 802/99 on page 187) that the candidates, who were not given appointments by C.G.M.T. (East), UP Telecom Circle, Lucknow, filed Original Applications before the Lucknow Bench of the Tribunal. The Lucknow Bench of the Tribunal directed the Respondents to take a decision in the matter of the applicants in OA 608 of 1996 on 6.1.98 on the proposal of C.G.M.T. (East) U.P. Circle, Lucknow dated 21.12.97. Some more correspondence ensued and the Chief General Manager Telecom (East), Lucknow wrote a letter dated 5.2.98 to Respondent no.1 as follows (vide Pages 205-207 of OA 802/99) :-

"SUBJECT: Filling up the vacant posts of Stenographers Grade-III.

D.L.P: D.L.P. (E) D.O.I. No: 2-4/93 TE 11 dt. 19.1.98
and D.O. No. 2-45/96-VI-II dt. 10.11.1997.

1. This is in connection with the regularisation case of examination/selection of Stenographer Gr.III from open market. The details of the case has already been reported to Shri P.S. Dhillon, Director (TE) through the D.O. letter of Shri D.P. Misra, Dy.G.M.(A) of this Office No. Recd/M-47/1492/5 dated 19.12.97. Now keeping in view the Directorate instructions, which have been communicated to me (copy enclosed) through D.O. letter of Shri Ashutosh Pandey Director (VI) referred above, the instant case has since been examined and my observations on the subject are given below:-

2. In this regard, I would like to mention that there was acute shortage of stenographers in U.P. (E) Circle. Against 123 posts of Stenographers Gr.III, only 57 were working and 66 of acute shortage of Stenographers in the circle.

3. Shri N. Vittal, the then O.D. Telecom Commission during his visit to Lucknow could guess the pathetic situation and keeping in view the earnest requirement of stenographers had

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kindly granted the permission to recruit the Stenographers in the interest of service. The recruitment process was started on specific instructions of Shri N. Vittal, the then OSD Telecom Commission and later on Chairman, Telecom Commission. His decision was conveyed to this office vide his letter dated 24.9.93, which was later on confirmed by DOT letter dated 19.1.94. Accordingly, the examination was conducted and result was declared vide this Office letter dated 19.3.96 and total 29 candidates were selected through the said letter dated 19.3.96 and amongst them 12 candidates were allotted to U.P. (W) Circle which was lower in the merit and 07 out of them were appointed as Stenographer Gr. III and they are still working in U.P. (W) Circle, while 12 candidates were allotted to this Circle but none of them was given appointment in view of complaints regarding using unfair means in the examination by the candidates. The complaint was investigated by vigilance section of DOT and as per enquiry report, it has been found that amongst 29 selected candidates only two candidates were found guilty by using unfair means and none else. Among the candidates who have not been given appointments 15 candidates have filed court cases in CAT Lucknow/Allahabad and High Court, Lucknow.

4. It is agreed that Dte. vide letter No. 9-4/93-TU-II dated 12.2.96 has communicated that no further recruitment should be resorted to from open market, but the same could not be operated in this examination as there was acute shortage of Stenographers in this circle and the result of successful candidates was declared and it was not possible to cancel the whole process at this belated stage. However, in the above mentioned letter of dated 12.2.96 the Directorate has also instructed to send the list of Stenographers already recruited in terms of their letter dated 19.1.94. In compliance with the directions of the Dte. conveyed through letter dated 12.2.96 a list of total 29 selected candidates for the post of Stenographers Gr. III was sent to Shri B.S. Verma the then Director (TE) through letter No. Recd/M-47/ T/9/5 dt. 19.1.96 and since then the matter continuously being taken up with the Directorate for regularization of selection.

5. In letter No. 9-4/93-TE-II dated 19.1.98 the Director (TE) Sri Dhillong has termed this selection illegal. Here I would like to mention very specifically that the said 'illegal selection' was only started when the then Chairman Shri Vittal has initiated the same in the best interest of service.

6. Apparently, the existing so-called legal procedures for recruitment of Stenographers centrally for a large country like ours is totally improper. That is why inspite of so much of shortage, much of unemployment we are failing to get the recruitment done and suffering from

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inefficiency. Therefore, there is immediate need for intervention of Telecom Commission as the power is vested with the Telecom Commission, Govt. of India to reverse and adopt the procedure initiated by Shri Vittal, the then Secretary, Telecommunications.

7. I very strongly recommend that the said selection must be regularised by giving special one time relaxation, keeping in view not only the earnest need of Stenographers in our circle but also probability of generation of several court cases if the said selection would be cancelled.

8. Seeing the present need of the Stenographer in the department and further consequences of cancellation of whole examination undersigned feels that it would not be proper to cancel the examination as a whole at this belated stage, therefore, the examination as a whole is not being cancelled. Only the candidates who have been selected and appointed because of using unfair means in the examination, their candidature shall be cancelled after observing required departmental procedure.

(Sd/-Shabbir Ahmed)
Chief General Manager Telecom
Eastern U.P. Telecom Circle,
Lucknow."

10. One of the applicants, namely, Sri Jitendra Kumar Juthor has annexed Telegram dated 5.6.98 offering appointment to him as Stenographer 'D' in the Home Ministry of Under Secretary, Ministry of Home Affairs, Government of India, as Annexure No. 4-18 to the O.M. No. 812 of 1999. The applicant had appeared in an examination conducted by the Staff Selection Commission, but declined it as he had already served for nearly two years and earned increments on the post in the Department of Telecom.

11. The main ground on which the cancellation of selection and termination of appointments of the applicants has been done is that they had not been recommended by the Staff Selection Commission. The respondents have along with written arguments placed

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before us the genesis, functions and the orders of Department of Telecom with regard to the selection of Stenographers through Staff Selection Commission. They have brought on record a Resolution dated 4.11.75 of Government of India, Cabinet Secretariat, Department of Personnel and Administrative Reforms, by which it has been mentioned that the Government of India had decided to set up a Subordinate Services Commission on a careful consideration of the recommendations of Administrative Reforms Commission. The functions of the Commission is stated to be "Recruitment to non-Technical Class III posts in the Departments of Govt. of India and in the Subordinate Offices, except posts for which the recruitment is made by the Railway Service Commission, staff in the office of the Comptroller and Auditor General and the Accountant General and Industrial Establishment." The main thrust of the Commission work appeared to be recruitment for the Ministries and departments of the government. However, the Commission was also charged with making recruitment on regional basis, so that candidates from different regions could be absorbed in the vacancies arising within the respective regions. With regard to the Subordinate offices, the Commission was charged with the responsibilities for preparing schemes for the recruitment of Class III non-technical posts in the subordinate offices, Government of India, in consultation with the department concerned and to conduct examinations for recruitment for non-technical class III posts in the subordinate services in the attached and subordinate offices, as may be specified by the government from time to time. The scheme envisaged phase-wise taking

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over of work relating to recruitment. In the first phase, the Commission was to take over the function of the examination wing of the Institute of Secretariat Training and Management. In the second phase, the Commission was to take over the work of recruitment of Class III non-technical posts in the subordinate offices and the departments located in Delhi, and in the subsequent phase, the Commission was to take over the work of recruitment of Class III non-technical posts in the subordinate and other offices located outside Delhi. The Department of Posts & Telegraph by an order dated 27.8.79 decided that the recruitment to the cadre of LDCs and Stenographers in circle and administrative offices should be entrusted to the Staff Selection Commission, New Delhi and that from 1980 onwards, The Commission would nominate candidates for these posts, on the basis of examinations to be held by them for the purpose. The subordinate offices were directed to send requisition in the prescribed proforma to the concerned Regional offices to the Commission from the year 1980 onwards. It is, thus, clear that the work of recruitment to the post of Stenographer Grade-III was entrusted to the Staff Selection Commission by executive instructions by the department concerned. The statutory instructions for recruitment to the post of Stenographers by an amendment carried out in 1983 only required that the posts of Stenographers be filled up on selection basis through a competitive examination. There is no stipulation in the rules that the said competitive examination should be conducted through Staff Selection Commission. This distinguishes Staff Selection Commission from Union and State Public Service Commissions.

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Exhibit 18

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The latter bodies are constitutional and selection of higher echelons of Government servants is entrusted to these bodies. Although the Commissions send names of selected persons by way of recommendations which can be accepted or rejected but the instances of rejection of the recommendations of those bodies, as mentioned in their annual reports have to be laid on the table of the House with memorandum of explanation as per provisions of Article 323 of the Constitution of India. The applicant in his Rejoinder affidavit has filed the Indian Administrative Service (Recruitment) Rules, 1954 as Annexure IV-A-2. Rule 7 of the said Rules reads as follows (Page 161 of OA 812 of 1999):-

" 7. RECRUITMENT BY COMPETITIVE EXAMINATION

(1) A competitive examination for recruitment to the Service shall be held at such intervals as the Central Government may in consultation with the Commission, from time to time, determine."

This is produced in order to substantiate the contention of the applicant that the recruitments to be made by the Public Service Commission are provided in the statutory rules. No such provision exists in the rules for direct recruitment of Stenographer Gd.III.

12. Although the Staff Selection Commission now fills up non-technical class III (Group C) posts in the subordinate offices of Government of India, there are instances of the posts being filled up by the departments themselves in exceptional cases. The learned counsel for the applicant has in this connection relied upon the judgment of the Apex Court- *Vijai Goel and others Vs. Union of India and another* 1998 SCC (L&J), 302. In this case, the authorities of Safdarjung Hospital

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had sent a requisition to the SSC on 30.4.77 for filling up posts of LDCs. The Staff Selection Commission informed the Hospital that the qualified candidates would be available only in early 1978 and if the vacancies were required to be filled up urgently, the authorities might themselves make arrangement to fill up those vacancies through other authorised channels. A duly constituted D.P. C. prepared panel of 18 candidates, 13 of which were appointed - 7 in 1978, 4 in 1979 and 2 in 1981. In the offer of appointment letters as well as the order of their appointments, it was made clear that the appointments were purely ad hoc and temporary basis and appointees against the vacancies would be reverted or retrenched, as and when candidates sponsored by the Commission join their duties or in the case of leave vacancy, when candidates return from leave. The applicants in this case were regularised from the dates of their induction, and subsequently, the dates of regularisation of those candidates were sought to be changed and yet later the candidates who could not qualify any special qualifying exam. held by Staff Selection Commission were informed that their regularisation was not in order and after they are given opportunity to represent, they were told that their regularisation was cancelled and their vacancies to be filled by nominees of SSC LDC and the appointments of the applicants as ad hoc would be terminated as and when nominees from SSC reported for duties. The Apex Court following the ratio in SCC, Hon'ble Chief Justice Karnataka High Court, 1992 SCC (L&S), 53 and Baleshwar Das Vs.

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State of U.P., 1980 SCC (L&S), 531 set aside the impugned orders. In the case before us, applicants are those who were recruited as one time exception to recruitment through Staff Selection Commission and although their orders of appointments stipulated that their appointments were purely temporary and provisional and that their services could be terminated at any time by giving one month's notice or one month's pay in lieu thereof without assigning any reason, their appointments cannot be set aside on the ground that they were to be recruited through the Staff Selection Commission, when the recruitment was made by the respondents against the vacant posts in accordance with the recruitment rules and there was no stipulation in their appointment orders that they were appointed on ad hoc basis and were liable to be reverted or retrenched, when candidates sponsored by the SSC joined.

13. We find from the above narration of events based on the annexures filed by the applicants as well as the respondents that the selection, which resulted in the appointments of the applicant was carried out on the basis of clearance given by the department as 'one time exception' to the recruitment of Stenographer Grade-III through Staff Selection Commission. Note dated September 24, 1993 of Sri N. Vittal (Page 46 of OA 812/99) and letters dated 19.1.94 (Page 49 of OA 812/99) and 12.2.96 (Page 60 of OA 812/99) of Department of Telecom make it clear that such 'one time exception' was allowed by the Department of Telecom. The views of Respondent no.1 appear to have become different after 12.2.96, but the respondent no.2 maintained the

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same stand, as reflected in his letters dated 30.6.97 (in vernacular) (Page 02 of O. 812/99) and 5.2.1998 (Page 88 of O. 812/99). The reasons put forth before us for cancellation of selection as well as termination of appointments varied from time to time. The learned counsel for the respondents contended that condition precedent to selection set by Respondent No.1 were not followed by Respondent no.2 in carrying out the said selection. It appears that the respondent No.1 got an enquiry conducted from the Respondent no.2 regarding irregularities in the selection made. It has also been contended that the selection made otherwise than through Staff Selection Commission was not consonant with the instructions of Government.

14. As regards condition precedent to selection, it has been said that the Respondent no.2 did not obtain the names of candidates from the Employment Exchange. The Respondent no.2 invited names through advertisement in the news-paper. In the application form, the registration no. of the application with the Employment Exchange and its renewal upto the date of submission of application was also sought for in paragraph 12 of the advertisement. This shows that the Respondent no.2 took adequate precaution to see that the candidates, who were registered with the Employment Exchange, got due recognition and the act of inviting applications from eligible candidates through news-paper cannot be faulted in this case, because the recruitment was required to be made for the posts existing in various districts of State of Uttar Pradesh, and the advertisement was the quickest

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method of getting the names of registered candidates. In *Atul Kumar Nigan Vs. State of Uttar Pradesh, 1999(3) E.C. 2002 (S.C.)* in similar situation was contemplated and the Hon'ble High Court of Allahabad decided that inviting names through advertisement was not an irregular procedure.

15. The Respondent no.1 had also required the Respondent no.2 to first see whether the departmental candidates were available. In this connection, we have already seen that the departmental examination was organised on 19.8.1994, which did not yield even a single candidate, who was fit to be appointed. Thus, the entire year of 1994 was spent in pursuing the selection of departmental candidates, which proved to be futile.

16. The alleged irregularities are referred to in the letter of Chief General Manager Telecom dated 6.2.1998 and it has been mentioned that an enquiry was conducted. The result of the enquiry was that two of the candidates were found to have indulged in certain mal-practices. This enquiry, therefore, could not have been made basis of the cancellation of the entire selection.

17. We find that the advertisement inviting applications, the offer of appointment do not disclose that the selection was only an interim measure, pending selection of candidates by Staff Selection Commission. The letters of Respondent no.2 addressed to Respondent no.1 placed by the applicants on record show that the selection was done on the understanding that it was a regular selection made as 'one time exception' / selection

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through the Staff Selection Commission. Most of the candidates, whose names were sent to the Circle of Chief General Manager Telecom (West) were appointed and worked for about 3 years. One of the 5 applicants, who have challenged their orders of appointment had been subsequently offered appointment as a Stenographer Grade - III on the basis of selection done through Staff Selection Commission, but he declined offer on the understanding that his appointment in the Circle of Chief General Manager Telecom (West) had been done on a regular basis. The Respondents having given the impression that the selection was a regular selection cannot subsequently cancel the same on the ground that it was not done through Staff Selection Commission. As such, an action of the respondents would be barred by promissory estoppel. In an order of the Principal Bench in the case of Lalita Rani Vs. Union of India and another (1990) 12 ATC 664, the ratio of Union of India, 1970 SC 718 has been quoted with approval. The same is as follows:-

(Para 14) "Under our jurisprudence the govt. is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisement of the circumstances in which the obligation has arisen."

This order of the Principal Bench is consistent with the judgment of the apex Court in the case of Express News-papers Pvt. Ltd. Vs. Union of India and others,

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AIR 1986, Supreme Court, 872. The following quotation from Prof. De Smith in his judicial review of the administrative action at Page 803 is cited to define the basis of promissory estoppel.

"176. In 1948, Denning, J. in Robertson Vs. Minister of Pensions, (1949) 1 KB 227 laid the foundation to the applicability of promissory estoppel in public law. As Prof. De Smith in his Judicial review of Administrative action, 4th edition at p.103 observes:

"There is a growing body of authority, attributable in large part to the efforts of Lord Denning, to the effect that in some circumstances when public bodies and officers, in their dealings with a citizen, take it upon themselves to assume authority on a matter concerning him, the citizen is entitled to rely on their having the authority that they have asserted if he cannot reasonably be expected to know the limits of that authority; and he should not be required to suffer for his reliance if they lack the necessary authority."

The learned author then states:

"But, it is extremely difficult to define with any degree of precision the circumstances in which the courts will be prepared, in the interest of 'fairness' to the individual to deviate from the orthodox notion of ultra vires."

The above view is also consistent with the judgment of the apex Court in M/s Moti Lal Padiapati Jumla Mills Company Ltd. Vs. State of Uttar Pradesh and others AIR 1979, Supreme Court, 621, which is as follows:-

"In India not only has the doctrine of promissory estoppel been adopted in its fullness but it has been recognised as affording a cause of action to the person

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to whom the promise is made. The requirement of consideration has not been allowed to stand in the way of enforcement of such promise. The doctrine of promissory estoppel has also been applied against the Government and the defence based on executive necessity has been categorically negatived. Where the Govt. makes a promise binding on itself that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be unenforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Art. 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Every one is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned; the former is equally bound as the latter. The Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action."

18. It has been contended by the learned counsel for the respondents that the appointment of the applicants were temporary and, therefore, their services could be terminated without giving them any opportunity of showing cause. In this connection, they have relied on the authority of J & K Public Service Commission and others Vs. Dr. Narendra Mohan and others, in which it has been laid down that the Government of India had no power to make regular appointment under the rules without selection by Public Service Commission, which was provided under Section 103 (1) of the Constitution of Jammu & Kashmir State, read with rule 5 and Schedule 3 of the Rules.

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This judgment is, however, not applicable to the case before us, as the facts in that case were different in so much as appointees were ad hoc and had not been recruited through open recruitment method. In the case before us, the applicants were recruited by the open selection as one time exception to recruitment through Staff Selection Commission. We have seen that in the case of Vijai Gopal and others Vs. Union of India and another, Staff Selection Commission itself had allowed the departmental authorities to fill up the posts of LDCs through other various channels. Thus, in case of recruitment through Staff Selection Commission, exceptions could be made.

19. We find that no show-cause notice was given to the applicants before termination of their services under Rule 5 of Temporary Appointment Rules. The learned counsel for the respondents has relied on the authorities of Madhya Pradesh Hasthilp Vikash Ltd. Vs. Devendra Kumar Jain JT 1995, SC 190, it has been held in this case that when appointment is temporary, officials were not entitled to be heard before passing the order of termination. However, conclusion appears to have arrived by the apex court in the facts and circumstances of that case, because the Government had dis-approved the project under which they were subsequently appointed and had stipulated that no appointments could be made without obtaining prior approval of the State Government, yet appointments were made in hot haste just before the retirement of Managing Director. The ratio of



this case cannot be applied to the case before us. The learned counsel for the respondents has also relied on the authority of Principal of Institute of Post-Graduate Medical Education & Research, Pondicherry Vs. S. Angel and others, 1995 Supp (4) SCC 609, in which a staff nurse was warned more than once that her services were unsatisfactory and she should show improvement. She failed to show any improvement and was terminated without notice, which was upheld. In the case before us, there is no such stigma against the applicant and, as a matter of fact, their termination has been ordered through a notice of termination simpliciter. The learned counsel for the applicant, on the other hand, relied on Shrawan Kumar Jha Vs. State of Bihar and others, 1991 SCC (L & S), 1078. The learned counsel for the applicant has also relied on Sanjeev Kumar and others Vs. State of U.P. and another, 1999 L.W. 1.C. 1720. The applicants in that case were appointed Junior Cashiers in a similar fashion, but their appointments were mentioned as temporary. It was held that such appointments could not be terminated in the manner prescribed for temporary appointments. The Hon'ble High Court of Allahabad has relied on the judgment of apex Court- Vasudeo Tewary Vs. Sidhi Kanhu University and others, 1998 E.C.G. 1916 and has passed its order on the law laid down in the following paragraphs 7 to 10:-

"7. Sri Akhilesh Kumar Pandey, learned counsel for the respondent submitted that the appointment made by the University was not at all proper inasmuch as the appellant should have been appointed to a post in the service of the University purely on temporary basis

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Exhibit

not exceeding a period of 6 months. Since the appellant had been appointed for a period longer than that, it was not open to the university to do so without the express sanction of the Govt. In this situation it was certainly open to the Vice-Chancellor to treat the appointment made as contrary to the provisions of the Act or statutes or rules or regulations or in any other manner irregular. If that was so, it was certainly not necessary for the University to have afforded an opportunity of being heard to the appellant. He relied upon Section 35 (3) of the Act which was introduced into the enactment by an amendment made by Bihar Act 17 of 1993 which came into effect from 22.8.93.

8. Several contentions have been addressed by learned counsel on either side. However, for the purpose of disposal of this appeal, it is suffice to consider only one aspect of the matter and that is whether the appellant had been given an opportunity of being heard before terminating his services and in the absence of the same whether such termination is valid. The High Court took the view that the appointment of the appellant made by the Syndicate of the University by its resolution dated 24.1.86 is illegal and on that basis took the view that the termination of the services was in order but did not examine the aspect with which we are concerned in the present case as to the non-observance of rule of Audi Alteram Partem.

9. The law is settled that non-arbitrariness is an essential facet of Article 14 pervading the entire realm of state action governed by Article 14. It has come to be established, as a further corollary, that the audi alteram partem facet of natural justice is also a requirement of Article 14 for natural justice is the antithesis of arbitrariness. In the sphere of public employment it is well settled that any action taken by the employer against an employee must be fair, just and reasonable, which are components of fair treatment. The conformance of absolute power to terminate the services of an employee is antithesis to fair, just and reasonable treatment. This aspect was exhaustively considered by a Constitution Bench of this Court in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress reported in JT 1980 (3) SC 725.

10. In order to impose procedural safeguards, this Court has read the requirement of natural justice in many situations when the state is silent on this point. The approach of this Court in this regard is that omission to impose the hearing requirement in the statute under which the impugned action is being taken does not exclude hearing - it may be implied from the nature of the power particularly when the right of a party is affected.

Contd. 31



Exhibit 14

adversely. The justification for reading such a requirement is that the Court merely supplies omission of the legislature (vide Mohinder Singh Gill & another Vs. The Chief Election Commissioner & Ors. A.I.R. 1978 SC 851) and except in case of direct legislative negation or implied exclusion. (vide S.L. Kapoor V. Jayamohan & Ors. A.I.R. 1981 SC 136)."

20. The learned counsel for the applicants has contended before us that the equity requires that the applicants, who had worked for 3 years beyond the period of probation should have been allowed to continue and has in this connection cited judgment of the apex Court- Rajendra Prasad Mathur and another, Vs. Karnataka University and another, A.I.R. 1986, SC 1448- Washim Dey Vs. State of U.P. and others, 1990 (L & S), 840.

21. We find from the fact that the Respondent No. 1 after issuance of letter in February, 1996 started taking stand that the selection otherwise than through Staff Selection Commission was not in order and directed Respondent no. 2 to cancel the same. The Respondent No. 2 requested re-consideration of stand of Respondent No. 1 by a letter dated 30.6.97 and 5.2.98, but due to instructions of Respondent no. 1, the orders of cancellation of selection and termination of appointments were issued. Thus, the orders were issued on the basis of the directions given by the authorities ^{other} than the appointing authority. The appointing authority in the case of stenographers is R.G.M. (Staff) C.G.M.T. (West), Dehradun. In this connection, the High Court of Allahabad in Sanjeev Kumar & others Vs. State of UP and others, 1999 (1), E.C. 754 has held as follows:-



Exhibit No. 1

"The services of the petitioners were terminated by the appointing authority on direction given by the Transport Commissioner. Prof. Wade states the principle thus-

"An element which is essential for the lawful exercise of power is that it should be exercised by the authority upon whom it is conferred and by no one else."

Dr. Smith has expounded the principle as under-

"An authority entrusted with the discretion must not in the purported exercise of its discretion, act on the dictation of another body or person.... Authorities directly entrusted with the statutory discretions, be that executive officers or members of distinct Tribunals, are usually entitled and are often obliged to take into account consideration of public policy, and in such context the policy of a Minister or of the Government as a whole may be a relevant factor in weighing those considerations; but this will not absolve them from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for them to be given by binding instructions by a superior, or (possibly) unless the cumulative effect of the subject matter and the hierarchical subordination (in the case of civil servant and Local Government Officers) make it clear that it is constitutionally proper for them to receive and obey instructions conveyed in the proper manner ~~quodlibet~~."

21. There is no denying the fact that relationship of a master and servant is between the Government and the employees irrespective of which is the appointing authority and in that view of the matter, the Government may lay down norms and guidelines for guidance of the appointing authority and violation of such norms and guidelines may, in appropriate cases, call for an action against the officer concerned but the statutory power conferred upon the appointing authority cannot be usurped by superior officer. The orders impugned herein having been passed on the dictates of the superior officer are liable to be quashed."

22. We, thus, find that in any view of the matter, the act of cancellation of selection and termination of appointments of the applicants cannot be sustained. We, therefore, set aside the orders of cancellation of selection as challenged in OA No. 1012 of 1998 and OA No. 1038 of 1998.

Contd. 33



EX-1012/1038

We also set aside the orders of termination of appointments dated 30.6.99 impugned in OA No.789 of 1999, OA No.802 of 1999 and OA No.812 of 1999. The applicants in the latter out of original applications shall be entitled to all consequential benefits.

The costs as worked out by the office of the Tribunal as per rules shall be paid by the Respondent No.1 to the applicants.

The compliance of the order shall be made within two months of receipt of a copy of this order.

Seal.

Am.

Seal

U.C

TRUE
COPY

16/2/2001
Section Officer
Central Admin. Tribunal
Aligarh



EXCERPT