

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD.

Dated : This the 08th day of NOVEMBER 2004.

Hon'ble Mr. Justice S.R. Singh, Vice-Chairman  
Hon'ble Mrs. Roli Srivastava, Member-A.

Original Application no. 580 of 2004.

1. Prem Shanker Prasad, Chawkidar, S/o Late J.P. Trivedi
2. Mahendra Prasad, Chawkidar, S/o Babu Ram
3. Kamta Prasad, Chawkidar, S/o Sri K Ram
4. Ram Dular, Chawkidar, S/o Sri K. Ram
5. Chhedi Lal, Chawkidar, S/o Late Narain
6. Ravi Nath Tiwari, Chawkidar, S/o late S.N. Tiwari
7. Ram Chandra Shukla, Chawkidar, S/o late J.P. Shukla
8. Rajendra Prasad Mishra, Store Keeper cum Accounts Clerk  
S/o late J.N. Mishra
9. Algu Ram, Chawkidar, S/o Dhani Ram
10. V.D. Dixit, Store Keeper cum Accounts Clerk  
S/o late R.A. Dixit.
11. Vipin Chandra Joshi, Store Keeper cum Accounts Clerk  
S/o Sri D.N. Joshi
12. Suresh Chandra Pandey, Carpet Training Officer,  
S/o late D.D. Pandey.

The applicants nos. 1 to 10 are R/o Lekhrajpur,  
Tehsil Phoolpur, Distt Allahabad and Applicants no. 11 & 12  
are R/o Benjeer Cottage, Mall Road, Almorah, Uttranchal  
... Applicants

By Adv : Sri N.L. Srivastava

V E R S U S

1. Union of India, Ministry of Textile, Udyog Bhawan,  
New Delhi, through its Secretary.
2. Development Commissioner (Handicrafts), West Block no. 7  
R.K. Puram, New Delhi.
3. Secretary, Ministry of Personnel Public Grievances & Pension  
Department of Personnel and Training, Govt. of India,  
through its Secretary.
4. Regional Director (Central Region) O/O Development  
Commissioner Handicrafts, Kendriya Bhawan, 7th Floor  
Sector-H, Aliganj, Lucknow.
5. Assistant Director, Service Centre,  
Allahabad.
6. Assistant Director, Service Centre,  
Dehradun.

... Respondents

By Adv : Sri S. Singh

*(Signature)*

...2/-

2.

ALONGWITH

Original Application no. 484 of 2004.

1. Avinash Chandra Srivastava, Carpet Training Officer,  
S/o Sri L.N. Srivastava, R/o 860 Muthiganj,  
Allahabad.
2. Abhay Raj Singh, Carpet Training Officer,  
S/o Late D.P. Singh
3. Anil Kumar Srivastava, Carpet Training Officer,  
S/o K.L. Srivastava
4. G.P. Tiwari, Carpet Training Officer,  
S/o V.R. Tiwari
5. K.C. Thapliyal, Carpet Training Officer,  
S/o D.P. Thapliyal
6. Anuraj Katara, Carpet Training Officer,  
S/o N.K. Katara.
7. S.S. Mishra, Carpet Training Officer,  
S/o late G.S. Mishra
8. Niaz Ahmad, Store Keeper, S/o Late Mohd Khan.
9. C.S. Tiwari, Store Keeper, S/o R.S. Tiwari
10. R.K. Pandey, Store Keeper, S/o R.P. Pandey
11. Ishrar Ahmad, Store Keeper cum Accounts Clerk  
S/o Munauvar Ali.
12. M.K. Gupta, Store Keeper cum Accounts Clerk,  
S/o Hira Lal.
13. M.A. Siddique, Store Keeper cum Accounts Clerk  
S/o Late Mohd Siddique.
14. Ram Samuj, Chawkidar, S/o late Punavashi
15. Jagannath, Chawkidar, S/o late Budhu.
16. Sheo Narah, Chawkidar, S/o late Chandrase Singh
17. Babu Lal Chawkidar, S/o late Bindayee
18. Bhola Chauhan, Chawkidar, S/o Dal Singar Chauhan.
19. Mirza Prasad Sharma, Chawkidar, S/o R.D. Sharma
20. Deena Nath, Chawkidar, S/o R.C. Tiwari

*(Signature)*

21. Sheo Prasad Pandey, Chawkidar, S/o late B. Pandey
22. D.P. Singh, Chawkidar, S/o Tribhuwan Singh
23. Jeet Ram, Chawkidar, S/o late Mishri Lal
24. Gaya Prasad, Chawkidar, S/o Bhaggan
25. Lalta, Chawkidar, S/o Vishwanath
26. G.B. Singh, Chawkidar, S/o R.D. Singh
27. Hari Ram Chawkidar, S/o Nangu

The applicants are working in the office of the Development Commissioner (Handicrafts) Ministry of Textile, New Delhi and posted at Allahabad and Dehradun.

... Applicants

By Adv : Sri N.L. Srivastava

V E R S U S

1. Union of India, Ministry of Textile, Udyog Bhawan New Delhi.
2. Development Commissioner (Handicrafts) West Block No. 7 R.K. Puram, New Delhi.
3. Secretary, Ministry of Personnel Public Grievances and Pensions, Department of Personnel and Training, Govt. of India, New Delhi through its Secretary
4. Regional Director (Central region) office of the Development Commissioner, Handicrafts, Kendriya Bhawan, 7th Floor, Sector H, Aliganj, Lucknow.
5. Assistant Director, Service Centre, Allahabad.
6. Assistant Director, Service Centre, Dehradun.

... Respondents

By Adv : Sri V.V. Mishra

O R D E R

By Hon'ble Mr. Justice S.R. Singh, V.C. :

Sri N.L. Srivastava, learned counsel for the applicant and Sri S. Singh, learned counsel for the respondents in both the OAs.

2. Both these OA which are based on a common cause of action and which raise common question of law, are being disposed of by a common order.

3. The applicants herein were appointed under carpet Scheme (Plan) in the Massive Training Programme, Carpet Weaving Center by separate orders issued between 1978-79 and have been continuously working since then. In 1995-96, <sup>Subs</sup> they were conferred ~~Substantive~~ Status by a common order passed by respondent No.4, i.e. Regional Director (Central Region) Office of the Development Commissioner Handicrafts, Kendriya Bhawan, 7th Floor Sector-H, Aliganj, Lucknow. By the impugned order dated 05.03.2004, the conferral of ~~Subs~~ substantive status has been cancelled "with immediate effect and until further orders" by the Development Commissioner, Handicraft Govt. of India, Ministry of Textiles, New Delhi.

4. The applicants have challenged the validity of the order impugned herein basically on two grounds : Firstly, that the impugned order has been passed without affording any opportunity of any show cause and, therefore, it is illegal and unsustainable; and , secondly, that it has been passed under the dictates of an authority other than the appointing authority. The conferral of substantive status, according to the counter affidavit has been cancelled inter-alia on the ground that the Regional Director, Central Region, office of the Development Commissioner, Handicrafts, Kendriya Bhawan, Aliganj, Lucknow, has no jurisdiction to substantive status in respect of the applicants in as much as the power to confer substantive status was with the Development Commissioner, Handicrafts, and secondly, that there were no substantive posts in any cadre of Carpet Scheme (Plan) and, therefore, conferral of substantive status in respect of the applicants was illegal and contrary to law.

*Ques*

5. We have given our anxious considerations to the submissions made across the bar. Regional Directors Bombay, Calcutta, Lucknow, Madras & New Delhi were appointed as Disciplinary Authority under the CCS (CCA) Rules, 1965 in respect of Group 'C' and 'D' posts in the Carpet scheme under their administrative control by the Govt. of India Ministry of Textiles, Office of the Development Commissioner New Delhi by means of order no. 6/3/91-Admn-II dated 26.10.1992 issued in continuance of the office order dated 24.1.1992. The question whether the Regional Director (Central region) office of the Development Commissioner Handicrafts, Kendriya Bhawan, Lucknow was competent to confer substantive status in relation to the applicants ought not to have been decided without affording opportunity of showing cause to the applicants. Similarly, the question whether there were substantive posts in the Carpet Scheme (Plan) in relation to which substantive status could be conferred too ought to have been decided after affording opportunity of <sup>0</sup> showing cause to the applicants particularly because substantive status in the present case was conferred way back in 1995-96.

6. In case of Basudeo Tiwari Vs. Sido Kanhu University (1998) 8 SCC 194, the services of the appellant therein were terminated on the ground that his appointment was made by an incompetent authority and was, therefore, invalid. Section 35 (3) of the Bihar Universities Act provided that "Any appointment or promotion made contrary to the provisions of the Act, statutes, rules or regulations or in any irregular or unauthorised manner, shall be terminated at any time without notice." Their Lordships of Supreme Court held that in order to arrive at a conclusion that an appointment is contrary to statutory provisions, a finding has to be recorded and unless such a finding is recorded,

*(Signature)*

termination cannot be made and to arrive at such a conclusion, necessarily, an enquiry will have to be made as to whether such appointment was contrary to the provisions of the Act etc and, further that if, in a given case, such exercise is absent the condition precedent stands remains unfulfilled. The order of termination, if passed, without complying with these requirements, cannot be sustained.

7. In the instant case the applicants were conferred substantive status way back in 1995-96 and the order so passed has been cancelled after about 8 years without holding any enquiry as to whether the authority conferring the substantive status was incompetent to do so. In the case of Bhagwan Shukla Vs. U.O.I. & Ors, (1994) 6 SCC 154, the pay of the appellant therein was reduced and he was not even put to notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. The Hon'ble Supreme Court held that such order passed in flagrant violation of principles of natural justice causing financial loss to the appellant was not sustainable.

8. Following the decisions cited above, we are of the view that the impugned order in the instant case cannot be sustained for the reason that it has been passed in flagrant violation of principle of natural justice. In this view of the matter it is not necessary for us to go into the question whether the impugned order has been passed at the behest of an external authority namely DOPT and suffers from illegality on that account.

DRG

7.

9. Accordingly, the OA succeeds and is allowed. The impugned orders dated 5.3.2004 in both the OAs are set aside with liberty reserved to the respondents to pass such order as may be deemed fit and proper in the circumstances after affording opportunity of hearing to the applicants.

10. There shall be no order as to costs.

*D. B. S. Nair*  
Member A

*R. H. J.*  
Vice-Chairman

/pc/