

(OPEN COURT)

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

(THIS THE 10th DAY OF NOVEMBER 2009)

PRESENT

HON'BLE MR. JUSTICE A. K. YOG, MEMBER (J)

Hon'ble Mr. D.C. Lakha, Member (A)

1. ORIGINAL APPLICATION No. 849 OF 2004.
(U/S 19, Administrative Tribunal Act, 1985)

Naimuddin Ahmad, S/o Sri S. Ahmad, R/o House No. E-3/573 Shaheed Nagar, New Ashok Park, Agra.

.....Applicant.

By Advocate: Sri A.K. Jaiwawal
Sri A.P. Srivastava
Sri L.M. Singh

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, AHQ, New Delhi.
2. Director General Ordnance Services, Master General of Ordnance Branch, Army Head Quarter, DHQ, New Delhi.
3. Commandant, Central Ordnance Depot. Agra.

..... Respondents.

By Advocate: Shri R.K. Srivastava.

Connected With

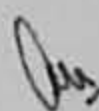
2. ORIGINAL APPLICATION No. 850 OF 2004.
(U/S 19, Administrative Tribunal Act, 1985)

Umesh Singh, S/o Shri Ranjit Singh, R/o House No. 64/193, Tal Firoze Khan, Agra, Distt: Agra.

.....Applicant.

By Advocate: Sri A.K. Jaiwawal
Sri A.P. Srivastava
Sri L.M. Singh

Versus



2. Union of India through Secretary, Ministry of Defence, South Block, AHQ, New Delhi.
2. Director General Ordnance Services, Master General of Ordnance Branch, Army Head Quarter, DHQ, New Delhi.
3. Commandant, Central Ordnance Depot. Agra.

..... Respondents.

By Advocate: Shri R.K. Srivastava.

Connected With

3. ORIGINAL APPLICATION No. 851 OF 2004.
(U/S 19, Administrative Tribunal Act, 1985)

Anil Kumar Mishra, S/o Shri Ramesh Dutta Mishra, R/o Plot No. 38 Ram Vihar Colony, Phase III, Near Paramount School, Deoria - road, Agra.

.....Applicant.

By Advocate: Sri A.K. Jaiwawal
Sri A.P. Srivastava
Sri L.M. Singh

Versus

3. Union of India through Secretary, Ministry of Defence, South Block, AHQ, New Delhi.
2. Director General Ordnance Services, Master General of Ordnance Branch, Army Head Quarter, DHQ, New Delhi.
3. Commandant, Central Ordnance Depot. Agra.

..... Respondents.

By Advocate: Shri R.K. Srivastava.

Connected With

4. ORIGINAL APPLICATION No. 852 OF 2004.
(U/S 19, Administrative Tribunal Act, 1985)

1. Smt. Indu Devi, W/o late Vijay Kumar
2. Ajay

3. Ashwani

4. Abhishak

All sons of the Deceased Applicants Vijai Kumar and are minors.

.....Applicants.

By Advocate: Sri A.K. Jaiwawal
Sri A.P. Srivastava
Sri L.M. Singh

Versus

4. Union of India through Secretary, Ministry of Defence, South Block, AHQ, New Delhi.

2. Director General Ordnance Services, Master General of Ordnance Branch, Army Head Quarter, DHQ, New Delhi.

3. Commandant, Central Ordnance Depot. Agra.

..... Respondents.

By Advocate: Shri R.K. Srivastava.

O R D E R

(DELIVERED BY: JUSTICE A. K. YOG, MEMBER-JUDICIAL)

Heard Sri A.K. Jaiswal, Advocate, learned counsel appearing for the applicant and Shri D. Tiwari, Advocate, holding brief of Shri R.K. Srivastava, Advocate representing the respondents.

2. All the four applicants (in the above-mentioned four OAs) were charged on similar/identical facts-and relying upon similar evidence and approached the Tribunal against similar impugned order. Learned counsel agree that all the four OAs can be decided together by a common order.

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3. For convenience we shall refer to record of leading OA No. 849/2004 (Naimuddin Ahmad Vs. UOI & Ors.). According to the applicants they were appointed/engaged as Casual Labour at Military Farm, Jhansi. Treating the applicants as regular employee they were transferred as 'surplus' hands to COD, Agra. According to the respondents the transfer orders were forged, fabricated and manipulated by one Capt. V.B. Singh who later absconded. Charge sheet was served upon the applicants. Copy of memorandum containing Article of Charges as Annexure A-8/Compilation No. II.

4. The charge sheet in brief, is to the effect that the applicants, while engaged directly to work in Military Farm, Jhansi by the then OIC Capt. V.P. Singh during the period from April 1984 to February 1985 as daily rated labourer purely "as and when required basis", has committed an act of gross misconduct of forgery/fraud for personal gain showing himself as regular employee and getting transferred from Military Farm Jhansi to COD, Agra on fake documents with illegal help and connivance of said Capt. V.P. Singh against posting order dated 06.02.1985 vide which 04 Farme Hands were to be transferred from Mil Farm Jhansi to COD, Agra. Thus the applicant succeeded in getting themselves treated as regular employee in COD Agra w.e.f. 11.02.1985 on the basis of illegal

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appointment/adjustment/transfer from Mil Farm Jhansi in collusion with the then Capt. V.P. Singh which was found to be false/illegal and thus, by committing aforesaid act the applicant in collusion with Capt. V.P. Singh deceived the department, such that it renders them unfit and unsuitable for continuance in service as he exhibited conduct of unbecoming of a Govt. Servant in violation of Rule 3 of the CCS (Conduct) Rules, 1964. Alongwith memorandum /Charge sheet list of documents by which Article of Charges framed against the applicant has been proved, were also given. List of witnesses were also annexed therein.

5. By means of letter dated 07.08.2003 the applicant /Naimuddin Ahmad claimed copy of documents mentioned at Sl. No. 1 to 27 in order to enable him to given reply. Several documents have been annexed alongwith OA which shows that the applicant was provided requisite documents. Inquiry Officer was appointed and submitted his report. Thereafter, the Disciplinary Authority after giving opportunity to the applicant, as were claimed, confirmed the finding of the Inquiry Officer and held the charge against the applicant proved and awarded impugned order of punishment dated 31.07.2003 (Annexure A-1/Compilation No. I). Feeling aggrieved the applicant filed appeal which was also dismissed vide order dated 23.03.2004 (Annexure A-2/Compilation No. I).

See

6. Learned counsel for the applicant made a very wide submission when he submitted that entire inquiry is vitiated. Learned counsel for the applicant, submits that no witness was produced. It has come on record that matter being old and the concerned/officers were not available. Reference may be made to the office correspondence - letter dated 05.12.2002 filed as a part of the Inquiry Report dated 15.01.2003 (Particularly page 79/Compilation No. II). The relevant contents of the said letter reads:-

"The above individuals were posted from this farm to COD Agra during the year 1985 ie 17 years ago. The staff who was serving at this farm during 1985 and been posted/retired from this farm, Capt VP Singh then Officer Incharge is not in service. Hence the witnesses can not be made available at this stage."

7. Learned counsel for the Applicant then argued that inquiry after 18 years of alleged incident was not warranted. This argument has no force; particularly when there is a charge of 'fraud' deception.

8. Learned counsel for the applicant next argued that the applicant has not been given opportunity. This arguments also stand vitiated in view of the ground taken in the OA. Reference may be made to Ground 'C' where the applicant himself stated that, "no proper inquiry was conducted by the Inquiry Officer nor Capt. VP Singh was examined nor other employees whose statements have been relied upon by the respondents were produced for examination before the Inquiry Proceedings, nor the applicant was provided any opportunity to cross

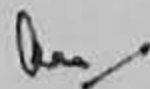
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examine the witness, as such, entire inquiry proceedings is unfair, illegal and vitiated in law." Otherwise, these are no specific ground of denial of 'opportunity'. Otherwise also documents annexed alongwith compilation No. I and II, of leading OA show that applicant was provided reasonable/adequate opportunity. This argument is against record and has no force.

9. In the facts of the instant case, non production of witness does not vitiate the inquiry. The charge has been proved with reference to the documents on record which show that the applicants were never engaged as regular, employee and hence there was no question to treat them as 'regular employee' transfer then as surplus.

10. In the last, learned counsel for the applicant submits that the order of punishment passed by the Disciplinary Authority stand vitiated in view of the fact that the same has been passed at the dictates of 'higher authority'. The said argument has no basis since the applicant has failed to point out any such 'ground' taken in the OA. Such an allegation is an afterthought.

11. It may be noted that the applicant was served with show cause notice dated 22.03.2002 (Annexure A-6/compilation No. II) and he submitted his reply dated



25.02.2002 (Annexure A-7/Compilation No. II) to the same.

12. Learned counsel for the applicant has placed photo copies of the following decisions in his support:-


- i. (2003) 4 SCC 531 : Union of India and others Vs. V.N. Jha
- ii. 2005 (2) ESC (SC) 158 : Chief Engineer MSEB and others Vs. Suresh Raghunath Bhokare
- iii. (2002) 7 SCC 142 : Sher Bhadur Vs. Union of India and others
- iv. 2004 (1) ATJ 100 : Sitendra Kumar Singh Vs. State of Bihar and others
- v. AIR 1991 SC 295 : H.C. Puttaswamy and others Vs. The Hon'ble Chief Justice of Karnataka High Court, Bangalore and others.
- vi. 2004 (2) ATJ 1 (FB) : R. Jambukeswaran and ors Vs. Union of India and ors
- vii. 1979 (3) SLR 1 : Keshri Mal Vs. State of Rajasthan
- viii. (1999) 1 SCC 729 : Union of India and others Vs. Kishorilal Bablani
- ix. (2005) 6 SCC 636 : P.V. Mahadevan Vs. MD, T.N. Housing Board
- x. 1991 SCC (L&S) 638 : State of MP Vs. Banish Singh and others
- xi. 1982 LAB.I.C. 575 (Calcutta High Court) : Surendra Chandra Das Vs. State of West Bengal and others
- xii. 2006 (2) ATJ 581 (FB) : Government of AP and others Vs. M.A. Majeed and anr.
- xiii. (1991) 18 ATC 921 : Lacchman Dass Garg Vs. Union of India and others
- xiv. 2004 (1) ATJ 301 : Girja Shanker Singh Vs. Union of India and others
- xv. 1999 SCC (L&S) 429 : Kuldeep Singh Vs. Commissioner of Police and others

Ans.

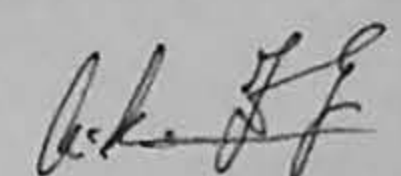
xvi. 2004 (1) ATJ 409 : Shri S.P. Tiwari Vs. Union of India and Ors

13. Aforesaid citations are distinguishable on facts and not relevant for deciding the present case. In the instant case applicants are guilty of playing fraud which tendency cannot be encouraged and rather condemned.

14. In view of the reasons given above all the aforesaid OAs are dismissed. Costs easy.


Member (A)

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Member (J)