

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 17th day of **August, 2011**

Present:

HON'BLE MR. JUSTICE S.C. SHARMA, MEMBER- J

HON'BLE MR. D.C. LAKHA, MEMBER -A

ORIGINAL APPLICATION NO. 1584/2005

Subhash Chandra Vishwakarma s/o Gauri Shankar Vishwakarma
r/o Village Ratanpur, P.O. Bachaldi, District Deoria.

.....Applicant.

VERSUS

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. The Chief Army Staff, New Delhi.
3. The Officer In charge Staff Officer, G.R.D. Kunraghat, District Gorakhpur.
4. The Principal, Army School, Kunraghat, Gorakhpur.

.....Respondents

Present for the Applicant:

Sri K.N. Rai

Present for the Respondents:

Sri R.P. Singh

ORDER

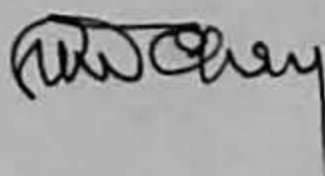
(Delivered by Hon'ble Mr. Justice S.C. Sharma, J.M.)

Under challenge in this O.A. is the order dated 19.7.05 (Annexure 4) passed by the respondents. A further prayer has also been made for a direction to the respondent No. 4 to pay the entire pecuniary benefits which have been stopped by punishment order dated 13.9.02. A prayer has also been made for giving direction to the respondents to assign the duty to the applicant and pay salary to the applicant month to month and not to interfere in peaceful performance of the duties of the applicant in the interest of justice.

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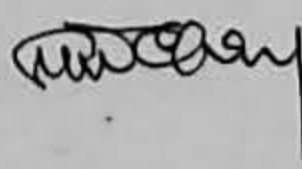
2. Pleadings of the parties in brief are as follows. A post was advertised by the respondents of Peon cum Generator mechanic Kunraghat in Army School, Gorakhpur. The applicant was duly qualified for the post and submitted application in the prescribed manner. The applicant was found fit for the post and he was selected. The applicant was appointed on the post on a probation of one year on dated 26.7.2002. Necessary documents were issued in favour of the applicant on 5.8.2002. The applicant had already completed one year of probation and the respondents appointed the applicant as a permanent employee on the post in Army School Kunraghat Gorakhpur. That all of a sudden the respondents informed the applicant that you are not employee of the Institution and liable to be dismissed and accordingly dismissal order was passed. The applicant approached the competent authority to assign him the duty and pay the salary. month to month, but the respondents did not consider the request of the applicant. Consequently O.A. No.423/05 was filed in the C.A.T Allahabad Bench and the O.A. was disposed of by giving direction to the respondents to decide the representation of the applicant by reasoned and speaking order within a period of three months and in pursuance of the direction of the Tribunal, the respondents disposed of the representation of the applicant vide impugned order and the representation of the applicant was rejected and the order was passed in a routine and mechanical manner without application of mind. This order is illegal and liable to be quashed. No opportunity was provided to the applicant of hearing. A person cannot be deprived from the right of hearing, but the respondents passed the order without affording any opportunity. The respondents are not assigning any duty to the applicant and dismissal order was passed without conducting any enquiry. Hence this O.A.

3. The respondents contested the case of the applicant and filed Counter reply and denied the allegations made in the O.A. A preliminary objection has been raised regarding the maintainability of the O.A. in this Tribunal. It has been alleged by the respondents that the applicant has alleged in the O.A. that he had



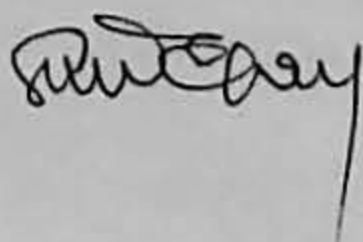
been engaged to work as Peon cum Generator Mechanic in the Army School, but this school is governed by the Army Welfare Education Society, a Society registered under the Societies Registration Act and it has not been notified in the notification under the Central Administrative Tribunals Act, and the O.A. deserves to be dismissed on this ground. The applicant can raise his grievance before the Hon. High Court. Earlier, the applicant agitated the matter before the Labour Commissioner, Gorakhpur by filing C.P. No.50/04. Notices were issued by Assistant Labour Commissioner, Gorakhpur of the C.P. As the applicant has invoked the jurisdiction of the Labour Commissioner under the Industrial Disputes Act by filing the C.P., hence this Tribunal has no jurisdiction. O.A. No. 423/05 was disposed of by the Tribunal at the admission stage without calling any Counter reply from the respondents. Although the Tribunal has got no jurisdiction to entertain and adjudicate the matter regarding Army School, but as per directions of the Tribunal the representation of the applicant was disposed of by passing a reasoned and speaking order. Whatever has been alleged in the O.A. is wrong and the O.A. is liable to be dismissed as it lacks merit.

4. In response to the Counter reply of the respondents, the applicant has filed Rejoinder and thereafter the respondents also filed Supplementary Counter Affidavit. In the R.A. as well as in the Supplementary Counter, the applicant as well as the respondents reiterated the facts alleged earlier in the O.A. and Counter reply. It has further been alleged by the respondents that the Army School is governed by the Army Welfare Education Society, a Society registered under the Societies Registration Act which is not a State within the meaning of Article 12 of the Constitution of India. The Hon. High Court in Writ Petition No. 23130 of 2004 and Writ Petition No. 17380 of 1992 had already been decided that the applicant aforesaid is not functioning under the Ministry of Finance, Govt. of India and as such Ministry of Defence/ Union of India has wrongly been arrayed as respondents and the Tribunal has no jurisdiction and it has not been notified under the C.A.T. Act.



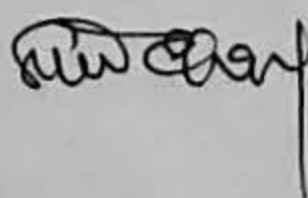
5. We have heard Shri K.N.Rai, Advocate for the applicant and Shri R.P. Singh, Advocate for the respondents and perused the entire facts of the case.

6. At the outset, a preliminary objection has been raised by the respondents and it has been alleged that the Army School is governed by the Army Welfare Education Society, a Society registered under the Societies Registration XXI of 1861 Act. That Army Welfare Education Society, is not a State within the meaning of Article 12 of the Constitution of India. The Hon. High Court in Writ Petition No. 23130 of 2004 and Writ Petition No. 17380 of 1992 had already decided that the aforesaid Society is not functioning under the Ministry of Finance, Govt. of India and in view of this judgment, Ministry of Defence/ Union of India has wrongly been arrayed as respondents. It has been argued by the learned counsel for the respondents that the O.A. is not maintainable before this Tribunal and it is liable to be dismissed on this Ground. It has also been alleged by the respondents that the applicant being conscious of this fact earlier agitated the matter before the Labour Commissioner Gorakhpur by filing C.P. No.50 of 2004 regarding the same controversy. A notice was issued to the respondents by the Assistant Labour Commissioner Gorakhpur in the above C.P. and as the applicant rightly invoked the jurisdiction of the Labour Commissioner, hence the O.A. is not maintainable. We have enquired categorically from the applicant's Advocate whether the respondent Institution is a Central Government Institution and its employees are governed by CCS (CCA) rules and whether the School is being funded by the funds of the Central Government. But no proper reply has been given to this query and an attempt has been made to state that the respondent Institution is a Government of India Organisation like Kendriya Vidyalayas etc. and it is governed by the Central Government and hence the Central Administrative Tribunal has got jurisdiction over this Institution. But it is a fact that this Army School is a Society registered under the Societies Registration Act. It has been established for the welfare of the children of the Army personnel. It is a welfare Scheme introduced and plotted by the army



personnel and not funded by the Central Government. Merely due to the reason that it is called Army School, it cannot be presumed that it is funded by the Ministry of Defence or Union of India. The learned counsel for the applicant failed to show that the Army School, Kunraghat has been notified under the Central Administrative Tribunal so as to entertain the cases relating to this Institution. The institutions regarding which the Central Administrative Tribunal has got the jurisdiction have been notified by the Union of India. But the Army School Kurnaghat has not been notified. It is a Society registered under the Societies Registration Act and it cannot be treated as an Institution notified in the Act. Although in the Supplementary Counter reply it has been alleged by the respondents that the Hon. High Court, Allahabad in W.P. No. 23130/04 and W.P. No. 17380/92 had decided that the aforesaid Society is not functioning under the Ministry of Defence/Union of India, but the judgments of these writ petitions have not been produced for perusal before us. Hence we are not in a position to state on this point. But we are also of the opinion that the Institution has been established and set up for the welfare of the children of the Army personnel and it is governed by the Army Welfare Educational Society and it is not governed by the Central Administrative Tribunal because the employees of the school are not to be treated as Central Government employees as the Institution is not funded by the Union of India.

7. The learned counsel for the applicant argued that the services of the applicant had been dispensed with by an order and no enquiry etc. was conducted against the applicant for his termination or dismissal of services and without conducting any enquiry or without providing any opportunity to show cause, the services of the applicant have been dispensed with and this is violation of the principles of natural justice. But as we have decided above, that the Central Administrative Tribunal has got no jurisdiction to entertain and decide the cases relating to the Army School governed by the respondents, and hence we are not supposed to comment that whether the respondents are justified in passing the oral



order of dismissal without conducting an enquiry. The principles of natural justice can be invoked when an Institution is being governed by the rules and regulations framed by the Government of India and if an Institution is being run by a Society registered under the Societies Registration Act, without any funds of the Central Government, then we have no jurisdiction to adjudicate this matter. It is a fact that earlier an O.A. was filed by the applicant and the O.A. was decided by the Tribunal at the admission stage without calling any Counter reply etc. from the respondents by giving direction to the respondents to decide the representation of the applicant. The respondents allege that as the order was passed by this Tribunal in O.A. 423/05 without calling any Counter reply from the respondents, hence no opportunity was provided to them to question and challenge the jurisdiction of the Tribunal. We have perused the impugned order passed by the respondents in pursuance of the direction issued in O.A. 423/05 and in the speaking order it has been specifically alleged by the respondents that the Tribunal has got no jurisdiction to agitate and entertain the matter but as a direction was given, hence in order to follow the direction of the Tribunal, the order was passed. We have perused this order and it is a speaking order and detailed and cogent reasons had been given in deciding the representation of the applicant.

8. It has also been alleged by the respondents that there does not exist any duly sanctioned post of Generator Mechanic cum Peon in the Army School Kurnaghat Gorakhpur and hence there was no occasion for the respondents to appoint the applicant on that post. That the applicant was engaged on contractual basis for looking maintenance work of Generator which has been installed in the premises of the Institution and no appointment letter was issued in favour of the applicant for appointment on that post. The applicant has also not filed any appointment letter. But certain documents have been filed by the respondents to show that the applicant was an employee of the respondent School. It includes the Identity Card and the salary slip of the applicant deposited in the Allahabad Bank by the respondents. The respondents have not denied this fact, but it has been

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alleged by the respondents that the documents were issued to the applicant as a matter of convenience and identity and these documents are of no use for any other purpose. Annexure No.2 is also relevant and it is being said by the applicant that it is appointment letter. We have perused this document (Annexure 2) to ascertain that on what post the applicant was posted. It has been called as appointment letter of Peon cum General Mechanic in Army School. It has further been alleged "Wee are pleased to inform you that after successful completion of probation period you have been appointed as Peon cum Generator Mechanic in Army School Kunraghat w.e.f. 26 July 2002, your pay scale is Rs. 2550/- per month. 2. However, please note that the management without assigning any reason whatsoever may terminate your services after giving one month notice or one month pay in lieu of notice." From the perusal of this letter it can be inferred that the respondent Institution appointed the applicant on the post of Peon cum Generator Mechanic in Army School, but from this appointment letter it cannot be inferred that the applicant was appointed in an Institution governed by the Ministry of Defence. It has been alleged specifically that the management without assigning any reason whatsoever may terminate his services after giving one month's notice or one month's salary. We have decided above that the Army School Kunraghat is not a Government of India organization and it is not funded by the Government and hence there is no binding force of this appointment letter on the respondents and this Tribunal has no jurisdiction. Either the matter should be agitated before the Hon. High Court or before the Labour Commissioner as earlier a case was filed before the Labour Commissioner, Gorakhpur.

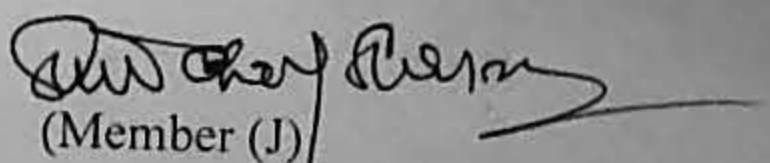
9. For the reasons mentioned above we are of the opinion that the Army School Kunraghat Gorakhpur is a Society registered under Societies Registration Act and it is an Institution established and set up for Army Welfare in the field of education. This Institution has not been notified under Central Administrative Tribunals Act so as to confer the jurisdiction on this Tribunal. There is no material before us to draw an inference that the Army School Kunraghat

[Signature]

Gorakhpur is an Institution notified under this Act. Hence we are of the opinion that this Tribunal has got no jurisdiction and the O.A. is liable to be dismissed.

The O.A. is dismissed. No order as to costs.


Member (A)


(Member (J))

s.a./