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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Transfer Application No. 135 of 1987

Hari Shanker Tripathi .. .. Applicant  
Versus  
Union of India and Others .. .. Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Chayya, Member (A)

( By Hon. Mr. Justice U.C. Srivastava, V.C. )

This is a transfer application filed under section 29 of the Administrative Tribunal Act 1985. The applicant filed a petition before the High Court against the order dated 2.3.85 terminating his services.

2. The applicant was appointed as acting jeep driver during the period 30.6.83 to 15.7.83 and again he was appointed on casual basis from 24.11.83 to 6.5.84. A requisition was thereafter made to Employment Exchange Gorakhpur. In the requisition it was said that the vacancy was shown as temporary and likely to be continued beyond the period of one year. The applicant also applied and he appeared in the interview test and thereafter he was appointed as such. He was continued to work on casual services and his services were terminated. The record which has been produced before us indicates that Post Master General U.P. wrote a letter to the Senior Superintendent Post Offices Gorakhpur on 26.2.85. It is

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submitted that Sri Jagannath Chowdhary was engaged as jeep driver on daily wages w.e.f. 24.10.78. It is also submitted that the Selection Committee interviewed and tested both the applicant and Sri Jagannath Chowdhary wherein Sri Jagannath Chowdhary could not read letters on board, stood second in written test and was declared medically unfit for driving and as such Sri Jagannath Chowdhary was not appointed on the post on 2.5.84. It is further submitted that the applicant was selected on 5.5.84 temporarily and he continued to work as such till 4.3.85. Meanwhile on a representation made by Sri Jagannath the P.M.G.U.P. Lucknow conveyed vide letter dated 13.6.84 that appointment of the applicant be treated as provisional and referred the case of Sri Jagannath Chowdhary to the Director of Medical Health Services, Government of U.P. and declared him as medically fit. The P.M.G. Lucknow in his letter dated 26.2.85 desired to consider and appoint Sri Jagannath Chowdhary as jeep driver by terminating the services of the applicant and in compliance thereof the services of the applicant were terminated on 4.3.85. Subsequently Sri Jagannath Chowdhary joined the post on 6.3.85. Under the directions from the High Court regarding stay of the operation of the order dated 4.3.85 he was taken to duty on 15.3.85. It has been pointed out in the year 1978 the services of the deponent were transferred from the Engineering division to the postal division and he started discharging his duties of a jeep driver under the supervision and control of the Senior Superintendent Post Offices Gorakhpur. He had worked for the period

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of 14 years holding the said post. According to the respondents Sri Ram Vyas Pandey, holding the charge of a post of Supdt. Post Offices Gorakhpur was infact interested in getting the applicant appointed as a jeep driver on account of ulterior motive. The applicant is the brother-in-law of the son of Sri Daya Shanker Shukla, Deputy Post Master Gorakhpur who is on very good terms with Sri Ram Vyas Pandey. According to the said respondents that on 22.11.83 the deponent went on medical leave and because of this an opportunity was given to the said Ram Vyas Pandey who availed this opportunity in getting the applicant appointed as a jeep driver as the deponent in the meantime got his eyes operated and when he came back he was not in a position to act as a jeep driver and the matter was referred to the Medical Board which found him medically unfit and it is thereafter the order dated 4.3.85 appointing the deponent on the post of jeep driver with immediate effect on daily wages. In this connection it may further be stated that on account of his continuous service for a period of 14 years and because of the trouble in his eyes he proceeded on leave and got his eyes operated.

3. Sri Jagannath Chowdhary contended that because the Statutory Rules had already come in force from 11.2.84 and it was thereafter the applicant was appointed as has been stated above there was no clear vacancy and in order that the work may go on a requisition was sent to the Employment Exchange in which it was clearly mentioned that the post is temporary and the post/is likely to be continued beyond a period of one year. It appears that it was expected that the said

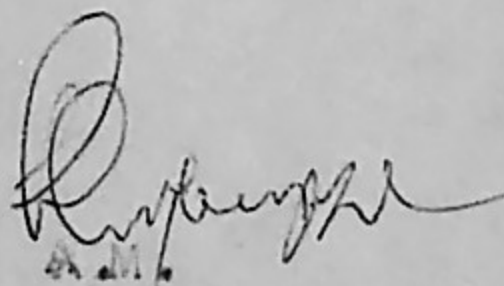
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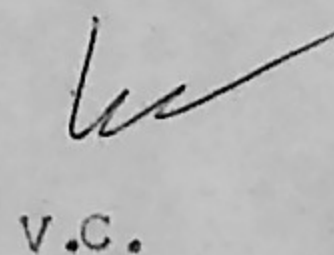


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Jagannath Chowdhary would not come back in service and that is why this provisions had been made but Sri Jagannath Chowdhary came back to service, the applicant cannot claim any right. It may be or may not be this cannot be denied that the applicant got some favour in getting the appointment and his appointment was only a temporary appointment and not a permanent appointment. His services were rightly terminated as the said deponent Sri Jagannath Chowdhary is never in service nor he was terminated merely because he proceeded on leave vacancy. It could not be said that the post at any count has fallen vacant but the respondents were in need of the appointment of a driver and that is why the applicant was appointed and as such the applicant cannot have a preferential claim above the said Sri Jagannath Chowdhary. However, in view of the fact that even if the applicant was favoured by some one the applicant was working in the department and will work when ever vacancies are available. The respondents will also accommodate him in the department or allow him to continue his work in the department or may be at other place. No order as to the costs.

  
A.M.

  
V.C.

Dated: 23th July, 1992:

(Uv)