



CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH ALLAHABAD

Original Application No. 169 of 1987

Rajendra Kumar Gupta . . . . . Applicant

Versus

Officer Commanding and another . . . . . Respondents

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

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

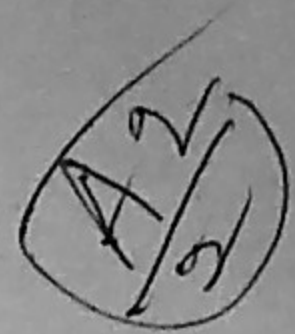
( By Hon'ble Mr. Justice U.C. Srivastava, VC)

This application is directed against the removal order dated 27.9.1985. Although according to the applicant he served the department upto 7.6.1986 and the date on which the termination order was served upon him. The applicant was offered appointment vide Government of Uttar Pradesh Directorate of Training and Employment dated 23.4.1983. He was employed by O.C. Headquarter Squadron 2 Armed Brigade as civilian store keeper Technical through the employment exchange for the period from 28.10.1983 to 27.10.1984. It appears that at the end of one year the applicant has stated that his term was extended indefinitely, but no such document is forth coming. While according to the respondents after the end of one year period of employment, permission from AG's Branch Army Headquarter was to be obtained. But according to the respondents as the applicant was dealing with his own personal file and it was his responsibility to bring this fact to the notice of the Officer Commanding, but the applicant did not do so.

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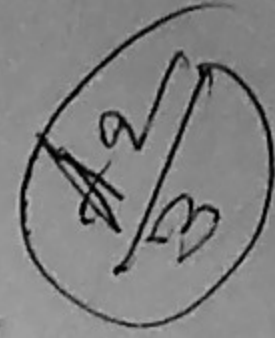
With the result, he is continuing to draw pay and allowances from the Regional C.D.A. without bringing the facts of the case to the notice of the Officer commanding. When this fact was noticed then of course payment was stopped. The applicant kept drawing salary till 31.12.1985. Although his engagement had expired on 27.10.1984. This case was taken up with the Army Headquarter for adjustment of surplus civilian store keeper vide letter dated 25.3.1986, but a reply was given that surplus post cannot be adjusted. As the applicant continuing to serve, <sup>without sanction of Post</sup> as such he is not entitled to the benefits of the same. "

2. The applicant has pointed out by rejoinder affidavit that juniors to the applicant who are similarly circumstanced, have since been regularised viz. H.N. Pastor and Satyabrat and they have been posted at various Units like N.C.C. Gwalior and Shakoor Basti Ordnance Department respectively. But the applicant was denied the said benefits. According to the applicant the matters of posting etc. was controlled by the O.C. of the Unit and the main dealing clerk was Harnam Singh and not the applicant and as such the charge against him was not fair and he has been wrongly <sup>removed</sup> ~~removed~~ out of service. "

3. These facts make it clear that if the applicant's extension was not granted, both the parties were under a mistake of fact, if both the parties were under a mistake of fact, the applicant squarely can not be held responsible for the same. It was duty of the respondents to find out as to what is the position and even if the file was under custody of the applicant the respondents were not exonerated of their respon-

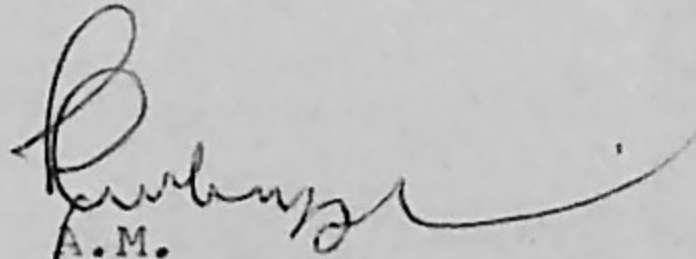
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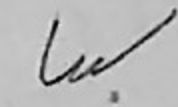




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sibility and liability to make an enquiry in the matter and make the position of the same. It may be, deliberately of some reasons or the other that he continued to tolerate the applicant or were expecting <sup>Continuation</sup> expectation and anticipation of the same, they allowed the applicant to continue. The applicant can not be <sup>made to suffer</sup> ~~prayed~~ for the same. As the applicant was allowed to continue for which he can not be held ~~for~~ responsible and the officer concerned could be held responsible. The applicant's case for regularisation or absorption elsewhere should have been considered in cases the person who was junior to him was considered and they were absorbed and accordingly although the services of the applicant have been terminated, but the respondents are directed to consider the case of the applicant for employment, absorption or regularisation, in case any juniors of his was so regularised or absorbed or given employment. Let this be done within a period of three months from the date of the communication of this order. No order as to the costs.

  
A.M.



V.C.

Allahabad dated 2.9.1992.

(RKA)