

(8) P2

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No. 56 of 1987

Ghanshyam Tiwari & Others..... Applicants

Versus

Union of India & Others Respondents

Connected with

Registration O.A. No. 57 of 1987

Kedar Nath & Others Applicants

Versus

Union of India & Others Respondents

Connected with

Registration O.A. No. 108 of 1987

Ram Naual * Applicant

Versus

Union of India & Others Respondents

Connected with

Registration T.A. No. 1849 of 1987

Ram Sewak Yadav ... Applicant

Versus

Small Arms Factory, Kanpur
through its General Manager
and Another.

Respondents

Hon. Mr. D.K. Agrawal, J.M.

Hon. Mr. K. Obavva, Member (A)

(By Hon. Mr. D.K. Agrawal, J.M.)

The above four cases have been filed by 12 persons out of 13 persons aggrieved with an order dated 3.3.1985 contained in Annexure-8 to the claim petition O.A. No. 56/87 whereby the services of 13 persons appointed as Labour 'B' were done away with under the proviso to Sub Rule 1 of Rule 5 of C.C.S. (Temporary Service) Rules, 1965. The subject matter being identical and represented by same set of counsel, although argued separately in each case, we propose to dispose of them by one common judgement.

2. Briefly stated the facts are that 29 persons were appointed vide an order dated 20.12.82 on the post of Labour 'B', Wireman, Fitter 'C' and Turner 'C'. We are concerned in the present petition ^{with} ~~that~~ those who were appointed as Labour 'B'. The terms and conditions of the

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appointment letter dated 20.10.82 as contained in Annexure-3 to O.A. No.56/87 make a mention that the appointees will remain on probation for a period of six months. The period of probation of six months expired sometime in April, 1983. ~~Though~~ The allegation of unsuitability or inefficiency or misconduct has not been made either during the probation period of six months or thereafter on the part of the applicants by their employers. However an order dated 8.1.84 vide Annexure-1 to O.A. No.56/87 was passed in respect of 13 persons (whose services were terminated vide an order dated 3.3.85 as mentioned above) mentioning that their appointment is on provisional basis. Finally, the said 13 persons were turned out from service vide an order dated 3.3.85 as mentioned above. Aggrieved with the termination order, 12 persons have filed a Writ in the High Court of Judicature at Allahabad which was decided by an order dated 5.8.85 directing the competent authority to decide the representation of aggrieved persons within six months which was decided by the Chairman, Ordnance Factory vide an order dated ^{23.2.86} ~~22.2.86~~ as contained in Annexure-2 to O.A. No.56/87. The representation has been rejected. Therefore the present bunch of cases has been filed seeking (a) quashing of the termination order dated 3.3.85, (b) quashing of the order dated 22.2.86 as contained in Annexure-2 and the order dt. ^{8.1.84} ~~4.8.85~~ as contained in Annexure-1 mainly on two grounds, firstly that the termination order was not a simpliciter termination order and secondly that the termination order was passed in breach of the provisions of Section

*Ambedkar
Ordnance Factory
dated 20.6.94
Case No 107692
Arun*

Dec 1994

25-N of Industrial Disputes Act, 1947.

3. The Counter Affidavit filed by the opposite parties resolves the controversy that the termination order was not a simpliciter termination order. It states that the termination order was passed on account of a fraud detected by the appointing authority. The breach of the provisions of Section 25-N of Industrial Disputes Act, 1947 has been simply denied without stating reasons.

4. In view of the pleadings of the parties the first point which calls for determination is as to the element of fraud present in the appointment of the applicants and involvement of the applicants therein. The only evidence before us constituting the facts of the fraud or the applicants' involvement is alleged to be contained in two Annexures i.e. Annexure-1 & Annexure-2 to the Counter Affidavit. Annexure-1 is a letter from Employment Exchange to the Appointing Authority which states that 13 persons had got their names included in the list sponsored by the Employment Exchange by committing fraud. Therefore they are not entitled to be absorbed in the Department. The facts constituting the fraud have not been mentioned in the aforesaid letter. Annexure-2 is again a letter from Employment Exchange addressed to the Appointing Authority in reply to some queries made by the Appointing Authority as regards the action taken by the Employment Exchange in respect of the fraud committed in sending a list which included the name of 13 persons in question. This letter

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also does not mention the facts constituting the fraud or the involvement of the applicants except that one Asstt. Employment Officer has been suspended and made to face the departmental enquiry. Thus the conclusion is inevitable that the Employment Exchange alleged a fraud and the Appointing Authority believed it. How the fraud was committed? Who were responsible for the fraud? How the applicants were involved in the fraud? All these facts have been kept away from us either inadvertently or purposely. Therefore, we are unable to find out as to how far the applicants were involved in the fraud, if any. Thus the allegation that the applicants were responsible for committing fraud in obtaining their names from the Employment Exchange is still to be proved. It appears to us that an inference has been drawn that the fraud was committed on the part of the applicants. The Department in order to justify ^{its} actions has also pleaded that a show cause notice was given to the applicants to explain the contents of the letters as contained in Annexure-1 and Annexure-2 to the Counter Affidavit. The applicants are said to ^{have} ~~pledged~~ innocent in their explanation. Thereafter, no enquiry was held to fix their part in the alleged fraud and without ascertaining the responsibility of the applicants in the fraud, if any, their services have been terminated by the impugned order dated 3.3.85. Thus the order of termination is not an order of simpliciter termination. The services of the applicants have been put to an end on a conclusion (without an enquiry) that their names were sponsored by the Employment Exchange as a result of fraud and therefore their initial appointment is itself void ab initio.

Dec 22/85

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5. We have given our anxious consideration to the plea raised by the opposite parties and impugned action in their parts. We can observe without any hesitation that the termination order after about three years of service without an enquiry into the alleged fraud and the extent of involvement of the applicants therein is bad in law. In our opinion, the same is liable to be set aside. It need not be emphasized that the competent authority has always the discretion to institute an enquiry as warranted by law.

6. The next point urged on behalf of the applicants is about the non compliance of the provisions of Section 25-N of the Industrial Disputes Act, 1947. In view of our findings on the aforesaid issues, we need not dilate on this point except making an observation that undoubtedly the compliance of the provisions of Section 25-N of the I.D. Act was not made. Its result would be that the applicants would become eligible to all consequential benefits.

7. In the background of the facts and circumstances mentioned above, the applications are liable to be allowed, termination order dated 3.3.85 to be quashed, applicants to be entitled to all consequential benefits. It need not be

*Amended order
Order dt 28.6.85
Bardhaman P.No
1076/92*
emphasized that the competent authority has always the discretion to institute an enquiry as warranted by law. It also follows that the order dated 4.8.84 B+1.84/2 making the appointment of the applicants as provisional is also liable to be quashed.

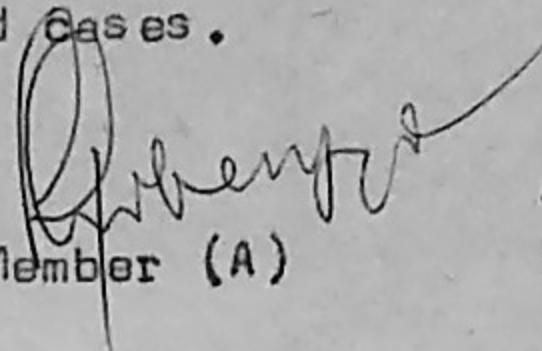
8. In the result, the above applications are allowed.

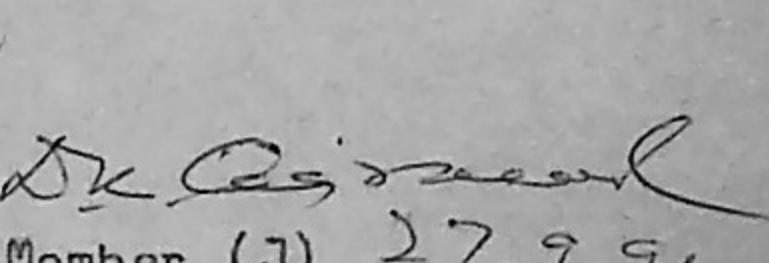
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8.1.86 8.1.84

The orders dated 4.8.84 and 3.3.85 and the appellate order dated 23.2.86 stand quashed. The applicants are entitled to be reinstated forthwith with all consequential benefits. Parties are left to bear their own costs. A copy of this order shall be placed on all the connected cases.


Member (A)


Member (J) 27.9.91

Dated the 27th Sept., 1991.

RKM

Amended under
Order dt 28.6.91
passed in msc no 1976/92
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