

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ADDL. BENCH
ALLAHABAD

DATED: THE 14th DAY OF JULY 1997

CORAM : HON'BLE MR. S.DAS GUPTA, A.M.
HON'BLE MR. T.L.VERMA, J.M.

ORIGINAL APPLICATION NO. 901 OF 1995

Krishna Murari Dubey aged about 35 years
son of Late Jagannath Prasad,
7, Liddle Road, George Town,
Central Govt. Health Scheme,
Allahabad.

..... Respondents

C/A Shri Sudhir Agrawal, Adv.

Versus

1. Union of India through the Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi.
2. The Director General of Health Services,
Directorate General Health Services,
Nirman Bhawan, New Delhi.
3. The Deputy Director (Administration)
Central Govt. Health Scheme, Directorate
General of Health Services, Nirman Bhawan,
New Delhi.
4. The Additional Director, Central Govt.,
Health Scheme, Allahabad.
5. Rakesh Kumar Safaiwala in Central Govt.
Health Scheme, 7, Liddle Road,
George Town, Allahabad.
5. Smt. Sangeeta W/o Rakesh Kumar C/o Rakesh
Kumar Safaiwala, Central Govt. Health Scheme,
7, Liddle Road, George Town, Allahabad.

..... Respondents

C/R Shri Amit Sthalekar, Adv.

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CONNECTED WITH O.A.NO.902 OF 1995

Asha Ram S/o Shri Ram Harsh
R/o 1-A/26-B/1 Ram Priya Road,
Prayag, Allahabad.

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Applicant

C/A Shri A.B.L.Srivastava, Adv.

Versus

1. Union of India through the
Director General of Health Services (C.G.H.S.)
Ministry of Health,
Nirman Bhawan, New Delhi.

2. The Additional Director, Health Services (C.G.H.S.)
Liddle Road, Allahabad.

3. Shri Rakesh Kumar,
Safaiwala, C/o Additional Director,
C.G.H.S., Allahabad.

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Respondents

C/R Shri Amit Sthalekar
Shri D.C.Saxena,

CONNECTED WITH C.C.P.No.125 OF 1995

In

O.A.NO. 901 OF 1995

Krishna Murari Dubey son of
Late Jagannath Prasad, Posted as
Lower Division Clerk, Central Govt.
Health Services, Allahabad.

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Petitioner

C/A Shri Sudhir Agrawal, Adv.

Versus

Dr. B.N.Chaturvedi, Chief Medical Officer,
Central Government Health Scheme Dispensary, 6-Allahabad
Discharging current duties of Addl. Director, Central
Govt. Health Scheme, Allahabad.

Opp. Party.

C/R Shri Amit Sthalekar.

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ORDER

BY HON'BLE MR.S.DAS GUPTA, A.M.-

O.As. Nos.901/1995 and 902/1995 are based on controversies which are similar in nature. They ~~all~~ have. therefore, been taken up together and are being disposed of by this common order. Since the contempt application arises out of an interim order passed in O.A.No.901/1995, the same is also being disposed of by this order.

2. In O.A.No.901/1995 the applicant Krishna Murari Dubey was working on the post of peon in Group-D in the Central Government Health Scheme, Allahabad. He was appointed on this post in 1976. The recruitment rules to the post of Lower Division Clerk (L.D.C. for short) provide that 5% of the posts shall be filled by promotion from Group-D employees on the basis of seniority-cum-fitness, ^PFrom among those who possessed matriculation and other qualifications and typing 30 words per minute in English and 25 words per minute in Hindi. The rules also provide that another 5% of the post shall be filled from among group-D employees possessing similar qualifications on the basis of departmental test. The applicant appeared in such a selection test comprising the written and typing test in pursuance of an office order dated 13.12.1991. The applicant was selected and was consequently promoted on the post of L.D.C. by an order dated 12.2.1992. The applicant joined the higher post on 13.2.1992 and since then had been discharging his duties and had even earned three increments when by order dated 30.7.1995 respondent no.3 had directed the respondent no.4 to promote one Rakesh Kumar on the post of L.D.C. from the date the applicant was promoted and to revert the applicant, to his previous Group-D post. The applicant has filed the O.A. seeking quashing of the order dated 13.8.1995 and for a direction to the respondents to treat him as continuously working on the post of L.D.C. with all consequential benefits.

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3. O.A.No. 902/1995 has been filed by Asha Ram who was earlier promoted from Group-D post to the post of L.D.C. on ad hoc basis but was subsequently reverted to his substantive post in Group-D. He was appointed as a group-D employee in 1979 in C.G.H.S., Allahabad. His case is that the respondent no.2, as he was then, invited applications from Group-D ^{employees for promotion} on ad hoc basis. The applicant appeared in the ~~same~~ test and having qualified therein was appointed as L.D.C. for a period of 11 months or until a regular appointee would become available, whichever was earlier. The said appointment, however, was terminated after he rendered service as L.D.C. for a period of 9 months and one day with effect from 30.9.1984, even though no regular appointee was allegedly available. He was again appointed as L.D.C. on adhoc basis with effect from 3.10.1984 for a further period of six months or until a regular appointee would ^{be} available and he was again reverted with effect from 2.4.1985 after rendering service ~~s~~ for six months and one day. Though allegedly no regular appointee became available. Later there was another notification in 1991 inviting application ~~from~~ from Group-D employees for appearing in written and typing test for appointment as L.D.C. The applicant appeared in the test and though he qualified in the written test, he failed in the typing test on 5.1.1992. He again appeared in typing test on 9.2.1992 and it is alleged that although he was already in the 35th year of age, he was subjected to typing test on 9.2.1992 though the applicant was entitled to exemption from typing test as per Government of India Order 12(II) below FR 26. On the basis of this fact the applicant has prayed that the operation of the order by which Rakesh Kumar was promoted as L.D.C. be stayed and that the respondents be directed to treat the applicant to be in continuous service as L.D.C. since 31.3.1984 till a regularly appointed candidate joins, condoning the technical break

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caused, with all consequential benefits. He also sought quashing of the departmental test and a direction to the respondents to grant exemption to him from typing test.

4. The respondents have contested both the cases. In the C.A. filed in O.A.No.901/1995 it was stated that the result of the Departmental Examination was placed before the D.F.C. which declared ~~as~~ K.M.Dubey as no.1 in the merit list while Shri Rakesh Kumar was placed at serial no.2 of the list. Shri K.M.Dubey was appointed as L.D.C. pursuant to the said recommendation. However, subsequently during a meeting of the All India C.G.H.S.Employees Association, Allahabad Branch held on 12.4.1993, the staff side brought to the notice of the Deputy Director (Admn.) some irregularities ^{and} in the appointment of the applicant ^{and} it was decided to hold an enquiry into the matter and the Additional Director, C.G.H.S., Allahabad was given appropriate instructions. The enquiry committee comprising three officers looked ^{into} the irregularity alleged and gave a report which was forwarded to the Director General Health Services. In the report it was ~~alleged~~ that Shri Rakesh Kumar secured more marks than Shri K.N.Dubey and consequently order was passed reverting Shri K.N.Dubey and promoting Shri Rakesh Kumar. A separate C.A. was also filed by Shri Rakesh Kumar which, however, does not bring out any new fact. In the R.A., the applicant pointed out that the impugned order of reversion was passed in violation of the provisions contained in Article 311 of the Constitution, inasmuch as no opportunity had been afforded to him before passing the order. It was asserted that he was never associated with any enquiry held into the allegation that his selection was irregular.

5. ^{During} ~~With~~ the course of hearing ~~a~~ specific question was put by the Bench as to whether the marks given in the typing test are added to the marks given in the written test.

^{ul} Through a supplementary affidavit the respondents submitted

that the marks given in the typing test are to be added ^{to} the marks obtained in the written test. It was also admitted that after adding the typing test marks, the total marks obtained by the applicant was 134.5 whereas the total marks obtained by Rakesh Kumar was 132.5.

6. In the C.A. filed in O.A.No.902 of 1995 it was submitted that the application is barred by limitation as the applicant had been seeking continuity in service since 1984. On merit it has been held that the applications were invited for appointment on adhoc basis on the post of L.D.C. in the absence of regular appointees and Asha Ram was appointed on adhoc basis for a period of 11 months ^{and} until a regular ^{adhoc} appointee would become available. Such appointment did not confer any right of seniority, confirmation or regular appointment of the applicant. The subsequent appointment ^{of} ~~that~~ another period of 6 months was also ^{held} the condition that on cessation of the adhoc appointment, the applicant would stand reverted to his original post of peon without assigning any reason. It has been brought out that after the reversion of the applicant to the post of peon on termination of adhoc appointment as L.D.C., the applicant did not submit any representation nor approach any legal form challenging the order of reversion and now after a long gap of 10 years he has filed this petition which is barred by limitation. The respondents have further brought out that in 1991 a regular post of L.D.C. was created for C.G.H.S., Alhabad and to fill this post, a circular was issued for holding a written and typing test on 5.1.1992. It is stated that all the candidates failed in the typing test and, therefore, they were again called for typing test on 9.2.1992. On completion of the typing test the D.P.C. put Shri K.M.Dubey, the applicant in O.A.No.901/1995 at the top of merit list and he was accordingly appointed. The applicant in this ~~CA~~ ^{CA}, however, failed

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in the typing test.

7. The applicant has filed a rejoinder affidavit in which it was alleged that the administration of C.G.H.S. was acting under ^{pressure of} All India C.G.H.S. Employees Association and was not acting impartially. He has reiterated that the termination of appointment is wholly arbitrary.

8. We have heard the learned counsel for both the parties both in O.A.Nos. 901 and 902 of 1995. We have also carefully perused the record. So far as the case filed by Asha Ram is concerned, we do not see any reason to consider the merit of the claim as the application is wholly time barred. The adhoc appointment was terminated as far back as in April 1985 and he cannot be allowed to agitate this matter 10 years after he was reverted to his substantive post. Also the subsequent allegation in which Shri K.M.Dubey was selected took place in 1991-1992. The applicant admittedly failed in the typing test and therefore he was not selected. Whether or not the applicant was entitled to any exemption from type-writing test, cannot be adjudicated at this stage. If the applicant was aggrieved, he should ^{have} filed ^{an} appropriate application ^{within} ~~to~~ the period of limitation. Not having done so and there being no adequate explanation as to why he did not challenge the selection of K.M.Dubey within the period of limitation, we do not feel called upon to adjudicate in the matter. The case is accordingly dismissed.

9. So far as the claim of K.M.Dubey is concerned, we have given our anxious consideration to the question as to whether there was any irregularity in the selection of K.M.Dubey and his appointment as L.D.C. The admitted facts are that there was a selection which comprised both written test and typing test. Admittedly Shri K.M.Dubey obtained

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higher marks than Rakesh Kumar, If the marks in the written test and typing test are taken together, We have not been shown any order or rule by which it can be said that the marks in the written test alone would be the determining factor for merit rating. Had that been so, no doubt, Shri Rakesh Kumar should have been selected for the post. In the absence of any such rule or order, we see no irregularity in the selection of K.M.Dubey on the basis of total marks obtained. In any case admittedly K.M.Dubey was reverted by the impugned order without being given any opportunity. Thus he was visited with civil consequences without any notice or opportunity. This is in clear violation of the principles of law laid down by the Hon'ble Supreme Court in the case of State of Orissa v. Beenapani Dei A.I.R. 1967 (SC) 1269 in which it was held that administrative orders involving civil consequences must abide by the principles of natural justice. This land mark ^{decision} ~~position~~ has been ^{consistently} ~~constantly~~ followed by the Apex Court itself and also by other subordinate courts. There being no patent irregularity in the selection and appointment of K.M.Dubey, he should not have been reverted without being given a notice and opportunity. The impugned order of reversion is, therefore, wholly bad in law.

10. In view of the fore-going, we quash the order dated 30.8.1995. In case Shri K.M.Dubey was reverted pursuant to the impugned order which is now being set aside, he shall be forthwith restored to the post of L.D.C. and he will be treated as if he had continued on that post and was never reverted. He shall be entitled to all consequential benefits of seniority as well as back wages for such continuity in service. As to whether Shri Rakesh Kumar will be reverted or not, ^{it} is a matter to be decided by the respondents and we do not pass any direction in this regard. The application stands disposed of accordingly leaving the parties to bear their own costs.

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Civil Contempt Application No.125/1995 -

11. This contempt application arises out of an interim order passed by the Bench of the Tribunal in O.A.No.901/1995. At the time of admission of the aforesaid O.A., an interim order was passed on 13.9.1995 staying the operation of the impugned order dated 30.8.1995 provided the same had not been implemented already. In the contempt application the applicant alleges that the respondents had manipulated and issued an order of reversion of the applicant despite having knowledge of the stay order. The respondents who have filed the counter affidavit, have denied this allegation and have submitted that the order which was passed pursuant to the impugned order dated 30.8.1995 was only a consequential order and the same was issued before the interim order was passed.

12. We do not see any reason to enter into this controversy. The main O.A. has already been decided in favour of the applicant. As to whether the offending orders ~~which~~^{were} issued before ~~or~~^{after} the communication of the interim order is a question of fact and on this question there is a dispute. There is nothing to indicate that there was any wilful or deliberate violation of the Tribunal's directions by the respondents. We, therefore, see no reason to continue the contempt proceedings and the same are accordingly dropped. ~~and~~ The notices issued are discharged.

J. K. Sharma
MEMBER (J)

W. S.
MEMBER (A)