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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

Dated : Allahabad this the 5th day of December, 1996.

Coram : Hon'ble Mr. S. Das Gupta, Member-A
Hon'ble Mr. T. L. Verma, Member-J

Original Application No. 93 of 1995.

Sri Narendra Mishra, son of Sri
Ram Briksha Misra, R/o. Jigana Misir,
P.O. Bhatni, Tehsil Salempur,
District Deoria.Applicant-petitioner
(Through Counsel Sri Swaraj Prakash)

Versus

1. Union of India through the Secretary,
Ministry of Communication,
New Delhi.
2. Director, Postal Services, Gorakhpur Region,
Gorakhpur.
3. Senior Superintendent , R.M.S. 'G' Division,
Gorakhpur.Respondents-
Opp. parties.

(Through counsel Sri Km. Sadhana Srivastava)

O R D E R (Oral)

(By Hon. Mr. S. Das Gupta, Member-A)

Under challenge in this O.A. under Section
19 of the Administrative Tribunals Act, 1985, an order
dated 6.7.1994 by which the nomination of the applicant,

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for the post of Extra Departmental Agent was cancelled and also the order dated 22.7.1994 by which his name was retrenched from the approved list of Casual Labourers. He has prayed that the aforesaid orders be set-aside and the applicant be allowed to continue in service with all consequential benefits. He has also prayed that until disposal of this application, no person be appointed in place of the applicant where he was posted by order dated 12.11.1993.

2. The admitted facts in this case are that the applicant was working as Casual Labourer in the department of the respondents and by virtue of working ~~for~~ ^{for} a number of days, he was conferred with temporary status in accordance with the scheme which was formulated by the department for regularisation of the services of the casual labourers pursuant to the decision of Hon'ble Supreme Court. Thereafter he had given his option for appointment on a post of Extra Departmental Agent and he was accordingly nominated for that post. However, by the impugned order dated 6.7.1994 the said nomination was cancelled and subsequently by the order dated 22.7.1994 his name was struck off from the list of approved casual labourers and his services were dis-engaged. Hence this application for the aforementioned reliefs.

3. The respondents have stated in the counter-affidavit that during the inquiry it revealed that the

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applicant had submitted a forged educational certificate. It was found that the Transfer ^{certificate} Application and Progress Report alleged to have been issued in the name of the applicant, were ^{not} correct and actually these ^{were} issued in the name of Shri Mani Shankar Misra S/o. Shri Dhruva Nath Misra. It is further stated that the Principal of the institution, on inquiry, intimated that neither the applicant was enrolled in that institution nor was he student of that institution. In view of this, forgery committed by the application, action was taken against him by way of issuing the impugned orders after giving him one month's pay in lieu of notice.

4. The applicant has filed a Rejoinder-Affidavit in which he has specifically denied the statement of having submitted any certificate of education and has further stated that there was no requirement of submitting any such certificate. He further contends that his services were terminated without giving him any notice of being heard, in contravention of the requirement in this regard contained in the aforesaid Scheme for regularation of services of the casual labourers.

5. We heard the learned counsel for the parties and perused the record carefully.

6. During the course of the argument, learned counsel for the applicant ^{has} specifically drawn out attention to paras 10 and 11 of the departmental Scheme circulated under letter dated 12.4.1991.

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.4.

These paragraphs envisage that while grant of temporary status to a casual labourer does not debar ~~from~~ dispensing with the services of the casual labourer, if his services are dispensed with on the ground of mis-conduct, the same should be done after holding an inquiry and giving him a reasonable opportunity. It is not denied that the applicant was granted temporary status, pursuant to the aforesaid scheme, therefore, ^{confession} ~~justification~~ on the part of the respondents that the applicant's case will not come within the scheme, ^{is not tenable} ~~is not tenable~~ ^{persuaded} ~~proceeded~~ to accept the contention of the applicant that if his services are dispensed with on account of misconduct, he ought to have been given an opportunity to defend himself in an inquiry. Admittedly no such confronted inquiry took place till today. The respondents have stated that they have inquired into the matter and obtained ^{information} ~~opinion~~ from the Principal of the institution. This, however, is not an inquiry in which the applicant ~~got~~ the opportunity to defend himself. Since this was not done, the entire action on the part of the respondents, in terminating his services and deleting his name from the approved list of casual labourers, is wholly arbitrary and illegal.

7. In view of the foregoing, we quash the order dated 22.7.1994. The applicant shall be re-instated forthwith as casual labour with temporary status. The respondents, however, shall be at liberty to hold a confronted inquiry in accordance with law in case they are satisfied that there is *prima-facie* case

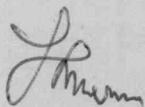
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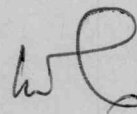
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against the applicant of having committed misconduct, and thereafter take an appropriate action in accordance with law. We are not setting aside the order dated 6.7.1994. We ,however, provide that in case the applicant is finally exonerated in the inquiry, he shall ^{have} be a claim to be nominated on the poste of Extra Departmental Agent.

8. This O.A. is disposed of with the aforesaid direction. No order as to costs.



Member-J



Member-A

(Pandey)