

Open Court.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

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Original Application No. 1019 of 1995
this is the 13th day of May 2002.

HON'BLE MR. S. DAYAL, MEMBER(A)
HON'BLE MR. RAFIQ UDDIN, MEMBER(J)

Rakesh Chand Srivastava, S/o P.C. Srivastava, aged about
22 years, R/o Jawahar Navodaya Vidyalaya, Mariahu,
Jaunpur, U.P.

By Advocate : Sri O.P. Gupta.

Applicant.

Versus.

1. Principal, Jawahar Navodaya Vidyalaya, Mariahu, District Jaunpur.
2. Deputy Director, Jawahar Navodaya Vidyalaya Samiti, Lucknow.
3. Union of India through Secretary Ministry of Human Resources Development, Govt. of India, Department of Education, New Delhi.
4. Samsher Singh working as Casual Electrician/Plumber in Jawahar Navodaya Vidyalaya, Mariahu, District Jaunpur.
5. Harish Chandra, working as Electrician/Plumber in JNV, Mariahu, through its Principal JNV, Mariahu, District Jaunpur.

By Advocate : Sri V. Swarup.

Respondents.

ORDER (ORAL)

BY HON'BLE MR. S. DAYAL, MEMBER(A)

This application has been filed for setting aside
the termination order dated 8.9.95 passed by the responde

no.1 terminating the services of the applicant and to declare the appointment of the respondent no.4 as illegal and to cancel the same. The reinstatement of the applicant with all consequential benefits has also been sought alongwith the regularisation of the services of the applicant as Electrician/Plumber as and when the sanction is available from the higher authorities. The applicant has also sought all the benefits of regularisation.

2. The applicant was appointed as Electrician/Plumber w.e.f. 15.3.1994 in Jawahar Navodaya Vidyalaya, Mariyah, District Jaunpur (JNV in short). By order dated 8.9.95 his services were terminated by an order, which reads as follows :

" आडिट आपत्ति के कारण आपका सेवाये दिनांक 8.9.95 से समाप्त की जाती है। Vacancy व Post होने पर आपको वरीयता दी जायेगी। "

This objection was raised by the audit in Jan.95, while the services of the applicant were terminated on 8.9.95. The applicant claims that he did not appear any result, although the applicant was terminated on the ground of non-availability of the sanctioned post. The respondent no.4, who said to be related to the respondent no.1 was engaged on 9.9.95. Thereafter the respondents prepared to have made a selection by giving an advertisement in the local Newspaper. The applicant moved Misc. Application No. 3885/99, which was disposed of by this Tribunal on 6.9.99 with the order that if any selection is made and appointment done on the post, in question, it will be subject to the orders passed in this Original Application. The applicant also sent an application to the respondent no.1 to consider his candidature in the said selection and on

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oral refusal on the part of the respondents, the applicant moved another Misc. Application no. 4447/99 before this Tribunal, which directed the respondents to consider the candidature of the applicant. The respondents filed the Counter reply in the month of November '99 in which they have stated that the selection was held without considering the candidature of the applicant, which was till awaited. This has led the applicant to file the present O.A.

3. We have heard the arguments of Sri O.P. Gupta learned counsel for the applicant and Sri Ravi Sinha and Sri V. Swarup, learned counsel for the respondents.

4. At the outset, the learned counsel for official respondents raised the objection that JNV is a registered society under the control of the Government of India and there was no notification of the Govt. of India which brought the employees of JNV to the Central Administrative Tribunals Act 1985 as the Tribunal has no jurisdiction to entertain the application, when it was filed and taking up on 10.12.95, but thereafter, by the time the respondent no.5 was selected during the pendency of the O.A., the jurisdiction has vested in the Tribunal by notification dated 17.12.1998. Therefore, this case has to be decided by this Tribunal despite the fact that it was not entertainable at the time the O.A. was filed initially.

5. The learned counsel for private respondent a has contended that the private respondent had been selected by following the procedure laid down in the selection in which the applicant was not a candidate. Therefore, he was wrongly been impleaded as respondent in this case and his appointment

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cannot be challenged by the applicant. This contention of the learned counsel for private respondent is not tenable because the post, in question, is that of Electrician/Plumber in JNV, Mariah, District Jaunpur. The respondent no.5 has been appointed on this post ^{for} ~~in~~ which the applicant has been a claimant after 8.9.95. We find from the Counter reply of the respondent no.1 that the post of Electrician/Plumber was sanctioned for the first time in the session of 1998-99 by office order dated 15.10.98. Applications were invited by publication in the daily Newspaper 'Tarun' and through Employment Exchange by publication dated 1.7.99. Only two applications were received in response to the advertisement and 20 persons were sent by the Employment Exchange. The respondent no.5 was selected by the Selection Committee out of these 22 candidates, whose sanctioned is said to be awaited. The learned counsel for private respondent has also stated that in O.A. no. 374 of 2002 the respondent no.5 had been served with the relief of regularisation the services on the post of Electrician/Plumber in JNV, Mariah, District Jaunpur. It is also stated that he has been working on the said post since 1.8.98 onwards. It is claimed that no approval was granted by the competent authority, nor the appointment has been given sofar. We find from the ordersheets that the applicant had moved a Misc. Application No. 3885/99 in the O.A. in which he had claimed that a post has been created and the applicant moved an application for appointment to the post only on 25.8.99, it was provided in the same order that if any selection was made and appointment done on the post, in question, it would be subject to orders passed in this O.A. By order dated 6.10.99 the respondent no.1 had been directed by the Tribunal to consider the candidature of the applicant

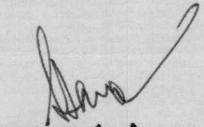
for the post of Electrician/Plumber in JNV, Mariyah, District Jaunpur if he is found fit to be so considered and fulfilled the requisite qualifications required for the post. Thus, the interim directions had been issued to the respondents and the respondent no.5 is still working on the said post on ad hoc basis since 1.8.98. The directions given to the respondents in O.A. No. 374/02 decided on 18.4.2002 do not curtail the right of the applicant in this O.A. as it only directs the respondents to consider and decide representation of the respondent no.5 within a period of two months. The selection of the respondent no.5 was done during the currency of the O.A. and has been made subject to orders passed in this O.A. Therefore, the respondent no.5 is to abide by the decision which is given in this O.A.

6. The respondents in the order dated 8.9.95 by which they have terminated the services of the applicant had given an undertaking to the applicant that he would be given seniority on availability of the vacancy and post when the post was created. A procedure was followed which did not permit the applicant to be considered alongwith others at the time of selection, which was the least the respondents were expected to do on account of their letter dated 8.9.95. The right of the applicant to be considered alongwith others who were considered for selection in the respondent no.5 was recommended, ^{which} ~~does not get extinguished~~ merely because the applicant had not applied for the said post as it was only two persons who had applied in response to the advertisement in the Newspaper, while other 20 persons have been sent by the Employment Exchange ^{for} ~~from~~ the same post.

7. We, therefore, direct the respondents to consider the applicant alongwith others for selection to the post of Electrician/Plumber in JNV, Mariah, District Jaunpur by holding a fresh selection. Any recommendations on the basis of the previous selection are set-aside as well as the appointment of the respondent no.4. A fresh selection shall be made for the post giving opportunity to the applicant to be considered for selection. The above directions shall be complied with by the respondents within a period of 4 months from the date of receipt of copy of this order. No costs.



MEMBER (J)



MEMBER (A)

GIRISH/-