

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Dated : This the 4th day of June 2002

Hon'ble Maj Gen K.K. Srivastava, Member (A)
Hon'ble Mr. A.K. Bhatnagar, Member (J)

Original Application no. 555 of 1999

Ambrish Nandan, S/o Sri Om Prakash Agnihotri,
R/o Vill- Hatha Raghunathpur, Post Srinagar,
Distt. Aligarh.

... Applicant

Alongwith

Original Application no. 556 of 1999.

Girraj Kishore, S/o Sri Kaushal Pal Singh,
R/o Vill Jagdevpur, Post Office Hasayan,
Distt. Aligarh.

... Applicant

By Adv : Sri OP Gupta, Sri R.K. Tewari & Sri R.P. Tiwari
(in both the OAs).

Versus

1. Union of India through Ministry of Posts,
New Delhi.
2. Sr. Supdt. of Post Office, Jhansi.
3. Secretary U.P. Board of Education, Meerut.

... Respondents
(in both the OAs)

By Adv : Sri K.P. Singh & Km Sadhna Srivastava

O R D E R

Hon'ble Maj Gen K.K. Srivastava, AM.

Since the controversy involved in both the OAs
is similar, the facts and relief sought are same, both
the OAs are being decided by common order. Leading OA
being 556 of 1999.

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OA 555 of 1995

2. In this OA, filed under section 19 of the A.T. Act, 1985, the applicant has challenged order dated 23.2.1999 of respondent no. 2 (Ann 9) and has prayed that the same be set aside and respondents be directed to permit the applicant to continue in service with all consequential benefits.

3. The facts giving rise to this OA, in short, are that the respondent no. 2 invited applications for the post of Postal Assistant (in short PA). The applicant applied and appeared in the written examination and qualified in the same. His name appeared in the select list of 1994. The applicant was directed by respondent no. 2 by order dated 28.6.1996 (Ann 3) to attend 2½ months theoretical training at Postal Training Centre (in short PTC) Saharanpur in session no. 271 commencing from 8.7.1996. After completion of 2½ months theoretical training at PTC, Saharanpur the applicant completed the practical training at Jhansi, Head Post Office. He was appointed as PA temporarily at Jhansi Head Post Office by order dated 7.10.1996 (Ann 5). On complaint the applicant was issued show cause notice on 14.10.1998 (Ann 6) for submitting forged and fabricated High School/Intermediate certificates to seek the job of PA. An FIR was lodged against the applicant on 25.8.1998 under section 468/471 IPC at Police Station Navabad. Notices were issued on 11.1.1999 and 15.1.1999 by respondent no. 2, that the services of the applicant shall stand terminated w.e.f. the date of expiry of a period of one month from the date of service of notice. Respondent no. 2 by order dated 23.2.1999 terminated the services of the applicant. Hence this OA which has been contested by the respondents by filing counter affidavit.

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OA 556 of 1999

4. The facts, in short, in this OA are that the applicant attended session no. 269 at PTC ^hSakaranpur^h from 8.1.1996 for two and a half months theoretical training and thereafter completed practical training at Jhansi Head Post Office. He was appointed as PA by order dated 4.4.1996 (Ann 2). On complaint made against the applicant he was issued notice dated 11.9.1998 (Ann 3) for submitting forged High School/ Intermediate certificates to seek the job of PA. On 11.1.1999 and 15.1.1999 he was served with notices that his services shall stand terminated w.e.f. the date of expiry of a period of one month from the date on which the notice was served upon (Ann 4). The respondent no. 2 by order dated 23.2.1999 terminated the services of the applicant (Ann 6). Respondent no. 2 also lodged FIR against the applicant on 25.8.1998 under section 420/468/471 of IPC at Police Station Navabad. Hence ^hthis^h OA which has been contested by the respondents by filing counter reply.

5. Heard Shri O.P. Gupta, learned counsel for the applicant and Miss. Sadhna Srivastava and Sri K.P. Singh, for the respondents and perused records.

6. Sri O.P. Gupta, learned counsel for the applicant submitted that the services of the applicant have been terminated without affording any opportunity of hearing violating the principles of natural justice. The entire action of the respondents is illegal. The respondents should have held regular enquiry which they did not. Sri Gupta, further submitted that though initially the appointment of applicant was temporary but the appointment made was of permanent nature and the services of the applicant

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could not have been terminated without giving an opportunity to the applicant to defend himself. The learned counsel has placed reliance upon the decision of Hon'ble Allahabad High Court Lucknow Bench in Hulashi Ram Sagar Vs. State of UP and others ESC (ALL) 2002 (1) page 497 in which it has been held that order of punishment passed without holding any detailed enquiry is liable to be set aside. In support of his arguments Sri O.P. Gupta, also cited the judgments of Hon'ble Supreme Court in Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic ^{Sciences} Calcutta and others 1999^h SCC (L&S) 596 Basudeo Tiwari Vs. Sido Kanhu University & ors 1999 SCC (L&S) 174 and Radhey Shyam Gupta Vs. UP State Agro Industries Corporation Ltd & Ors 1999 SCC (L&S) 439. The learned counsel for the applicant finally submitted that Jaipur Bench of this Tribunal

in similar case of Pawan Kumar Vs. Union of India & Ors ATJ 2000 (1) page 456 gave relief to the applicant with all consequential ^h benefits. ^h Concluding the arguments the learned counsel for the applicant submitted that since the foundation of termination are allegation the respondents should have held regular enquiry. Procedure adopted is illegal and ^{amount to be} denial of natural justice.

7. Resisting the claim of the applicant Miss Sadhna Srivastava, learned counsel for the respondents submitted that no written test was held. The appointment of the candidates to the post of PA is done on the basis of marks obtained by them in High School and Intermediate Exams subject to verification. In the appointment letter it is specifically mentioned that the appointment is subject to satisfactory verification of certificates. In the instant case on verification from Madhyamik Shiksha Parishad Regional

Office Meerut, it has been found that the certificate of ^{and} High School/Intermediate in respect of applicant and three others are totally forged. The counter affidavit to this effect has been filed by respondent no. 3 i.e. Secretary Madhyamik Shiksha Parishad Regional Office, Meerut.

8. Miss Sadhna Srivastava, learned counsel for the respondents further submitted that show cause notice was given which the applicant has filed as annexure A-6 to the OA but he did not respond to the same. When the applicant did not submit any explanation, the respondents considered the entire issue and since the applicant was not confirmed ^{as confirmed} and ~~confirmed~~ to be a temporary government servant, the respondents invoked provisions of Rule 5 of CCS Temporary Service Rules 1965. The learned counsel has placed reliance on the judgment of Hon'ble Supreme Court in Union of India and others Vs. Bihari Lal Sidhana, 1997 SCC (L&S) 1076.

9. Replying to the arguments of the learned counsel for the respondents, Sri O.P. Gupta applicant's counsel submitted that show cause notice is not to be equated with charge sheet. The show cause notice was never delivered to the applicant and, therefore, the reasonable opportunity has not been provided to the applicant.

10. We have heard the learned counsel for the parties, carefully considered their submissions and closely examined the records and pleadings.

11. Admittedly the applicant was a temporary government



servant^{an}. The applicant's case is that he has^{an} been given reasonable opportunity including that^{an} of hearing before passing the impugned order dated 23.2.1999. We have also gone through the various judgments in the cases on which the applicant's counsel has placed reliance. All the judgments lead to one conclusion that opportunity should be given to an employee to defend himself and we have no doubt^{an} that this is the law laid down. However, in the instant case we have to consider the facts and also the point whether the action of the respondents is in accordance with rules^{an} or not.

12. In the present case, the main allegation is that^{an} the applicant^{an} has obtained the appointment by fraud. Respondent no. 3 ie Secretary UP Board of Education Meerut in her counter affidavit^{an} has averred in Para 7 that the certificates of High School and Intermediate Submitted by the applicant were found forged. It has also been averred that the letter purported to have been issued by her office on 14.10.1998 (Ann A-6 to the OA) is also false and forged. We have examined the covering letter of Secretary UP Board Meerut dated 20.7.1998 and verification list filed as annexures CA-1 and CA-2 to the CA of respondent no. 3 and in our opinion the applicant has forged the documents to seek appointment. Respondents have lodged an FIR on 24.4.1998^{an} a criminal case no. 995 of 1998 under section 420, 468 and 478 against the applicant and three others has been registered on 25.8.1998.

13. The crux of the matter is whether the opportunity was given to the applicant or not. In our view, it has been

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given. We do not agree with the submission of applicant's counsel that the show cause notice was not delivered to the applicant. The very fact that the copy of show cause notice has been filed as Annexure A-7, the submission of the applicant's counsel does not have any substance or force.

14. The learned counsel has heavily relied upon the judgment of this Tribunal Jaipur Bench in Pawan Kumars' case (supra). In Pawan Kumar's case (supra) the applicant was terminated from service on the ground that he secured the selection by submitting a false marksheet without any verification of enquiry made by the authorities in this regard and, therefore, the impugned order of termination was quashed. However, the decision of the Jaipur Bench of this Tribunal in Pawan Kumar's case will not be of much help to the applicant in this OA because the facts are different. In Pawan Kumar's case (supra) the applicant submitted the marks sheet of Intermediate Examination issued by Bihar Intermediate Education Council Patna bearing Roll No. 10398. On verification it was found that the marks sheet pertained to the candidate having Roll no. 10397 which was the actual roll no of the applicant. It was a mistake/error on the part of the council who issued the marks sheet. In the instant case facts are quite different and, therefore, easily distinguishable.

15. The question, now, before us to adjudicate is whether the respondents have the powers to terminate the services of the applicant under Rule 5 (i) of CCS (Temporary Services) Rules 1965. In this connection for convenience

sake we would like to reproduce the relevant para no. 5 of the judgment of the apex court in Bihari Lal Sidhana's case (supra) which reads as under :-

".....Mere acquittal of government employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondents is only a temporary government servant, the power being available under Rule 5 (1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Reinstatement would be a charter for him to indulge with impunity in misappropriation of public money."

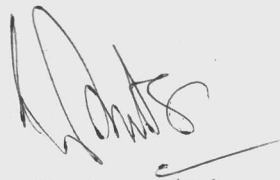
As per law laid down by the Hon'ble Supreme Court in Bihari Lal Sidhana's case (supra) the respondents are legally right in invoking the provisions of Rule 5 (1) of the CCS (Temporary Service) Rules 1965 and terminating the services of the applicant. Such an order does not constitute stigma.

16. Therefore, in our opinion, the impugned order dated 23.2.1999 does not suffer from any error of law and there is no good ground for intervention. The OA is devoid of merits and is accordingly dismissed.

17. There shall be no order as to costs.



Member (J)



Member (A)

Dated : 04/06/2002

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