

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 19th day of July, 2001.

CORAM :- Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

Original Application No. 638 of 2000.

Suresh Kumar Kushwaha a/a 29 years.

S/o Sri Ram Lal Kushwaha. R/o 164/2,

Mohalla Tallaiya Distt. Jhansi.

.....Applicant

Counsel for the applicant :- Sri A.K. Dave

V E R S U S

1. Union of India through the Comptroller and Auditor General of India, New Delhi.
2. Principal Director of Audit, Central Railway, Mumbai C.S.T.
3. Senior Audit Officer (Admn), C.S.T, Mumbai.
4. Divisional Audit Officer, Central Railway, Jhansi.

.....Respondents

Counsel for the respondents :- Sri Prashant Mathur

O R D E R (Oral)

(By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.)

By this application under section 19 of the Administrative Tribunal's Act, 1985, applicant has questioned the legality of the order dated 25.05.2000 by which his services have been terminated under rule 5 of the C.C.S (Temporary Service) Rules, 1965. The reasons stated in the order is that on the crucial date of

determining of age i.e. 26.11.1999, applicant was over aged <sup>could be</sup> and ~~can~~ not be appointed. The date of birth of the applicant is 05.12.1970. Applicant was appointed as temporary group 'D' w.e.f 04.02.2000. The order <sup>it further says</sup> ~~shows~~ that applicant was appointed by mistake and by this order, mistake has been corrected.

2. Learned counsel for the applicant has submitted that the applicant ought to have been given opportunity of hearing before passing the impugned order. The second submission is that since from the very first date, appointment of the applicant was on <sup>permanent</sup> ~~temporary~~ basis, under rule 5 of the C.C.S (Temporary Service) Rules, 1965, can not be invoked. Learned counsel for the applicant has placed reliance on the judgement of Hon'ble Supreme Court in case of Uptron India Ltd. Vs. Sammi Bhan and Ors (1999) 1, UPLBC 778 (SC) and Sanjeev Kumar and Ors. Vs. State of U.P. and Ors. (1999) 1, UPLBC 575.

3. Sri P. Mathur, learned counsel for the respondents on the other hand has submitted that the order has been passed under rule 5 terminating the service of the applicant. <sup>The</sup> ~~by~~ order of termination <sup>is</sup> ~~simpliciter~~ and no interference is required by this Tribunal.

4. I have considered the submission of counsel for the parties.

5. From the persual of the requisition sent to the Employment Exchange (annexure A- 2), it appears that the age limit prescribed was not less than 18 years and not more than 27 years on the date of interview of the candidate. In case of ST and SC candidates, the upper age limit was 32 years and in case of OBC, 30 years. Reference has also been given to the order dt. 21.12.1998. In the impugned



order, however, it has been stated that the age limit prescribed for group 'D' post was 18-25 years. On calculation the age of the applicant, it was ~~found~~ found that applicant is over aged and he was appointed by mistake. Learned counsel for the applicant has also submitted that before this selection, applicant had already served in the department from 03.04.1996 to 16.06.1999 with artificial break. It is also submitted that the applicant belongs to O.B.C category. If these facts are true then the <sup>upper limit</sup> age of the applicant on crucial date could be up to 30 years and he could not be termed over aged. Thus the reasons given by the respondents in the impugned order are not correct.

Applicant was within the age of 30 years on 26.11.1999.

<sup>Further</sup> However, as the applicant had already served in the department for three years and if there was marginal difference, he could be considered for relaxation <sup>in upper age limit</sup> as he has been found suitable for appointment, <sup>and after appointment</sup> he had already served for about three months.

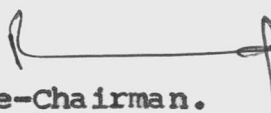
6. Sri Prashant Mathur, learned counsel for the respondents has <sup>laid</sup> ~~alleged~~ much stress on his submission that the order of termination is simpliciter and no interference is required. However, it is difficult to accept this submission. The order in fact amounts cancellation of appointment of the applicant which <sup>was</sup> allegedly made by mistake on account of applicant being over aged. One way, it also causes stigma that applicant is over aged and he can not be accommodated in government service. Before passing such order, an opportunity of hearing was <sup>required</sup> ~~ought~~ to be given to the applicant. In my opinion, applicant is entitled for relief.

7. The O.A is accordingly allowed. Impugned order dt. 25.05.2000 (annexure A-1) is quashed. Applicant shall be entitled for re-engagement with all consequential benefits. Order shall be given effect within one month and consequential benefits shall be paid to the applicant within three months from the date a copy of this order is filed. However, it



shall be open to the respondents to pass fresh order in accordance with law after giving opportunity of hearing to the applicant.

8. There will be no order as to costs.

  
Vice-Chairman.

/Anand/