

(b)

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Dated : This the 02<sup>nd</sup> day of JULY 2007

Original Application No. 903 of 2002 (U)

Hon'ble Mr. Justice Khem Karan, Vice-Chairman  
Hon'ble Mr. P.K. Chatterji, Member (A)

Jai Pal Singh, S/o Late Sri Piyare Singh Ex-Mate,  
R/o Village Hissainganj Gotiya, P.O. Daurera, Tehsil  
Nawabganj, Distt: Bareilly (UP).

.... .Applicant

By Adv: Sri R.C. Pathak

V E R S U S

1. Union of India through the Defence Secretary, Ministry of Defence, Govt. of India, South Block, C.G.O. Complex, New Delhi.
2. The Chief Engineer, Bareilly Zone, Station Road, Bareilly Cantt.
3. The Commander Works Engineer (CWE), Station Road, Bareilly Cantt.
4. The Garrison Engineer (East), M.E.S. Bareilly Cantt.
5. The A.G.E., M.E.S. HEMPUR, Distt. Udhampur (Uttarakhand).

.... .Respondents

By Adv: Sri S. Singh

O R D E R

By Hon'ble Mr. Justice Khem Karan, Vice-Chairman

Admittedly the applicant was given compassionate appointment on 20.06.2002 under dying in harness rules on death of his father. There is further so dispute that he started working. Hardly had he worked for a week or so, the impugned orders dated 10.07.2002 (Annexure A-1) and 01.07.2002



(1)

(Annexure A-2) were passed. By order dated 10.07.2002 his appointment was cancelled and by letter dated 01.07.2002 his services were terminated. There is no dispute that the applicant was not given opportunity of hearing or any show cause notice. He has challenged both these orders mainly on the ground that he was not given opportunity of hearing or was not given show cause notice.

2. Parties counsel have informed that on the basis of interim order dated 22.10.2002 the applicant is continuing in service even today.

3. Respondents have replied by saying that in view of the law laid down by the Apex Court no reasonable opportunity or any show cause notice was required before canceling appointment so made dehorns the rules. They say that the appointment in question was not in vacancy within 5% quota of the direct recruitment, so was rightly cancelled.

4. We have just disposed of OA 38 of 2002, having identical facts and circumstances. We have come to the conclusion that in such case of appointment opportunity of hearing or show cause notice was required because appointment of the applicant cannot be said to be dehorns the rules. The applicant duly applied and the matter was duly considered by the

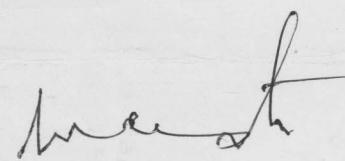


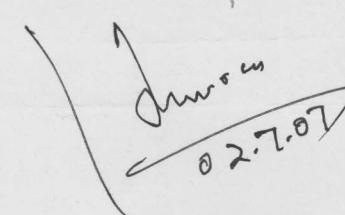
(2)

Board of Officers as per instructions on the subject and on the basis of the recommendation of the body, appointment was given. There is no allegation that the applicant practiced any fraud or suppressed any material facts in securing that appointment. We think the same could not have been terminated or cancelled without show cause notice. No more reasons are required for coming to the conclusion that two orders are bad in law and deserve to be quashed.

5. So the OA is allowed and the impugned order dated 10.07.2002 (Annexure A-1) and 01.07.2002 are quashed. No cost.

/pc/


  
Member (A)


  
Vice-Chairman

Corrected  
Vide order dated  
23/7/02  
In re  
23.7.02 23/7