

(b)

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 02nd 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 Hussainganj 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. Udham Singh
Nagar (Uttranchal).


. . . .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




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(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} ~~in~~ ^{canceling} appointment so made ~~dehors~~ ^{the} rules. They say that the appointment in question was ^{not} ~~in~~ vacancy within 5% quota of the direct recruitment, so was rightly cancelled.

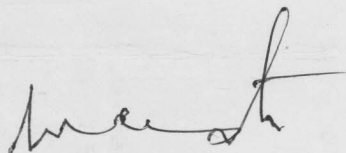
4. We have just disposed of OA 38 of 2002, having identical facts and circumstances. We have come to the conclusion that in such case of appointment opportunity of hearing or show cause notice was required because appointment of the applicant cannot ^{be} ~~dehors~~ the rules. The applicant duly applied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



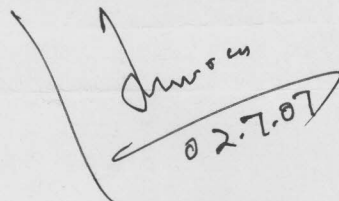
(3)

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} ~~supers~~ 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 ^{CA-2 as relate to the applicant,} are quashed. No cost.



Member (A)



Vice-Chairman

/pc/

Corrected
Vide order dated
23/7/07
Inmate
23.7.07 23/7