

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

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Original Application No. 83 of 2003

this the 9th day of August 2004.

HON'BLE MR. JUSTICE S.R. SINGH, V.C.
HON'BLE MR D.R. TIWARI, MEMBER(A)

Pramed Kumar Jha, S/o Shri Siyodhan Jha, presently serving
as Store Khalasi under Senior Section Engineer (Track),
Northern Railway, Junghai, District Jaunpur.

Applicant.

By Advocate : Sri A.K. Dave.

Versus.

1. Union of India through General Manager, Northern
Railway, Baroda House, New Delhi.
2. General Manager, Northern Railway, Baroda House,
New Delhi.
3. Divisional Railway Manager, Northern Railway,
Lucknow.
4. Divisional Superintending Engineer, (Co-ordination)
Northern Railway, Lucknow.
5. Divisional personnel officer, Northern Railway,
Lucknow.

Respondents.

By Advocate : Sri Anit Sthalekar.

ORDER

BY JUSTICE S.R. SINGH, V.C.

The applicant who was appointed as Gangman in the
Engineering Department, Lucknow Division vide office letter
dated 10.12.1982 and was borne on the panel of Office Clerk

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in the grade of Rs. 950-1500 (RPS) against 33 1/3rd quota of Group 'D' employees vide letter no. 220-N/E-1/33 1/3 dated 18.4.1998, ^{has been} ~~was~~ depanelled with the approval of the competent authority as he was appointed as Gangman in the grade of Rs. 775-1025 (RPS) vide order dated 15/16.6.1998, a copy of which has been annexed as Annexure A-2 to the O.A. The applicant preferred O.A. no. 714 of 1998 before this Tribunal challenging the illegality of the said order. The Tribunal disposed of the said O.A. vide order dated 3.8.2001 with a direction to the respondents to re-consider the matter and pass appropriate order after giving an opportunity of being heard to the applicant. Thereafter, by means of the impugned order dated 12.6.2002 (Annexure A-1), the Divisional Personnel Officer, Northern Railway, Lucknow held that the applicant being Gangman, his promotion to the post of Clerk was not permissible and accordingly his name was rightly depanelled from the panel of Clerk issued by the Administration vide office letter no. 220 6/6 -1 (33-1/3% dated 15.6.1998).

2. The learned counsel for the applicant has submitted that similarly circumstanced Gangman namely D.S. Yadav, Hori Lal, Baij Nath and Radhey Shyam and others were considered alongwith the applicant and empanelled for Clerical post, but the applicant has been depanelled, while others have been allowed to be continued on the panel of Office Clerk in the grade of Rs. 950-1500 (RPS) against the quota of Group 'D' employees, and, therefore, the learned counsel for the applicant submitted that the same ^{would} amount to discrimination and violation of Article 14 of the Constitution of India. It is also submitted by the learned counsel that though the competent authority was directed to give an opportunity of being heard, but ^{the applicant} ~~he~~ was not afforded any opportunity of hearing on the date fixed.

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3. Sri Amit Sthalekar, learned counsel for the respondents on the other hand, submitted that the applicant has been depanelled with the approval of the competent authority as he was appointed as Gangman in the grade of Rs.775-1025/- (RPS) and was empanelled erroneously as Office Clerk in violation of the existing channel of promotion for the post of Office Clerk vide order dated 15/16.6.1998. Be that as it may the similarly circumstanced Gangman S/Sri D.S. Yadav, Heri Lal, Baij Nath and Radhey Shyam were also empanelled for the post of Office Clerk by the D.R.M., but they have not been depanelled, while the applicant has been depanelled without assigning any reason in the impugned order dated 12.6.2002.

4. In the case of Basudeo Tiwari Vs. Sido Kanhu University & Others reported in (1998) 8 SCC 194) the Hon'ble Supreme Court has held that: "Non-arbitrariness is an essential facet of Article 14 pervading the entire realm of State action governed by Article 14. Natural justice in turn is an antithesis of arbitrariness. It, therefore, follows that audi alteram partem which as facet of natural justice is a requirement of Article 14. In the sphere of public employment, it is well settled that any action taken by the employer against an employee must be fair, just and reasonable, which are the components of fair treatment. The conferment of absolute power to terminate the services of an employee is an antithesis of fair, just and reasonable treatment." In that case, the appointment of the appellant therein was terminated on the ground that his appointment was made by an incompetent authority and was, therefore, invalid. This was done in exercise of powers under Section 35(3) of the Bihar Universities Act, which provided that any appointment or promotion made contrary to the provisions of the Act, Statutes, rules or regulations or in any irregular or unauthorised manner shall be terminated at any time without notice. The apex court held that the condition precedent for exercise of power under Section

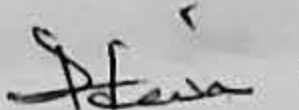
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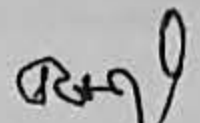
35(3) of the Bihar Universities Act ^{was} ~~is~~ that an appointment has made contrary to the Act, rules, statutes and regulations or otherwise and further ^{in order to arrive at a conclusion} that an appointment is contrary to statutory provisions, a finding has to be recorded and unless such a finding is recorded, termination cannot be made. To arrive at such a conclusion, necessarily, an enquiry will have to be made as to whether such appointment was contrary to the provisions of the Act etc. If in a given case, such exercise is absent, the condition precedent stands unfulfilled. To arrive at such a finding necessarily enquiry will have to be held and in holding such an enquiry, the person whose appointment is under enquiry will have to be issued a notice. If notice is not given to him, then such a conclusion would not be just, fair or reasonable. In such an event, it has to be held that there is an implied requirement of hearing for the purpose of arriving at a conclusion that an appointment had been made contrary to statutory provisions. It is only on such a conclusion being drawn, the services of a person can be terminated without further notice." In the present case also the question whether the applicant was entitled to be empanelled or not ought to have been decided ^{after} ~~without~~ notice to the applicant particularly because of the reasons ^{and} ~~that~~ that the applicant had already been empanelled. That apart ~~from~~ the question as to why ~~was~~ similarly circumstanced employees in the panel for the post of Office Clerk ^{prepared} by the D.R.M. were not de-panelled, also needs to be decided by the competent authority. In our view, both the impugned orders dated 12.6.2002 and 15/16.6.1998 suffer from patent illegality and are liable to be quashed.

5. Accordingly, O.A. succeeds and is allowed. The impugned orders dated 12.6.2002 and 15/16.6.1998 are quashed. The competent authority namely D.R.M., N.R., Lucknow, is directed to decide the matter afresh in accordance with law and also ^{in the light of} ~~also~~

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the observations made hereinabove within a period of three months from the date of communication of this order, parties are directed to bear their own costs.


MEMBER (A)


VICE CHAIRMAN

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