

Central Administrative Tribunal
Jodhpur Bench, Jodhpur

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Date of Order : 11.02.2003

O.A. NO. 274/2002

Dinesh S/o Shri Bhanwar Lal Kubhavat,
aged about 27 years, R/o Old Ginnani,
Behind Gayatri Mandir, Bikaner.
At present SAML, Air Force Station, Bikaner.

..... Applicant.

Versus

1. The Union of India through the Secretary,
Ministry of Defence,
Vayu Bhawan, New Delhi.

2. The Air Officer Commanding in Chief,
Headquarters Western Air Command,
IAF, Subarto-Park, New Delhi-110 010.

3. The Senior Administrative Officer,
Air Force Station,
Well Road, Bikaner - 334 001.

..... Respondents.

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CORAM :

Honourable Mr. J.K. Kaushik, Judicial Member

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Mr. S.K.M. Vyas, Advocate, for the applicant.

Mr. Kuldeep Mathur, Advocate, brief holder for
Mr. Ravi Bhansali, Advocate, for the respondents.

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ORDER

BY THE COURT :

Shri Dinesh, has filed this Original Application assailing the order dated 25.9.2002 (Annex.A/1) by which his services have been ordered to be terminated with effect from 25.10.2002 and has prayed for all consequential benefits.

2. The material fact necessitated filing of this case are that the applicant is employed on the post of (SAML) Seasonal Anti Malaria Laskar/at Air Force Station, Bikaner, since April 1999. He is said to have been discharging his duties on technical as well as industrial side with utmost dedication and sincerity. He has been granted extension from time to time and was conferred with temporary status vide letter dated 19.3.2001 (Annex.A/3). The applicant was faced with a fact finding inquiry alleging certain fabrication of documents for recruitment of SAML wherein certain incorrect details were intentionally forwarded to the Headquarters. The name of Shri Sanjay was got typed at Sl.No. 1 under the direction of Junior Warrant Officer-In-Charge and the impugned termination order is liable to be quashed and set aside.

3. The O.A. has been filed on the ground that the impugned order is issued in complete violation of service jurisprudence and the order was passed in a most arbitrary

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and mechanical manner just to harass and humiliate the applicant. During the fact finding inquiry, he clearly stated that he acted as per the orders given to him by his superior authority.

4. A counter reply has been filed on behalf of the respondents. The defence, as set out in the reply to the OA is that Shri Dinesh was not sponsored from the Local Employment Exchange and he committed a fraud. He intentionally tampered the document and tried to take advantage of working in administrative section. A Court of Inquiry was conducted and the applicant was found blame-worthy whereby, the a disciplinary action was initiated against him. The further ground of stand of the respondents is that grant of temporary status, does not guarantee any special status. In the Court of Inquiry, it was proved that the character, professional reputation and integrity of the applicant has been doubtful. The Junior Warrant Officer, did not issue any instruction for tampering with the list and the applicant has been trying to evade the basic issue. He is, therefore, not entitled to continue in service and his term of engagement has also come to an end on 25.10.2002.

5. I have heard the learned counsel for the parties and given my most careful and anxious consideration to the pleadings and records of this case.

6. At the very out-set, the learned counsel for the applicant has submitted that the controversy involved in

the present case is squarely covered on all fours by a judgement of this very Bench dated 9.7.2002 delivered in the case of Bheek Singh Rathore Versus Union of India and Others in O.A. No. 24 of 2001. In the said case also, the controversy involved was regarding the termination on the ground of mis-conduct on the basis of a Court of Inquiry and the applicant therein, was also a temporary status holder. It was held that a person, who is holding temporary status, cannot be terminated from service on the basis of a fact finding inquiry and also Court of Inquiry has no application to the cases of civilian Government servants in defence. It has been submitted that applicant is also a civilian in defence and admittedly, has been granted temporary status. Further, my attention was invited to the impugned order so as to indicate that applicant has been ordered to be terminated on the basis of a Court of Inquiry.

7. On the contrary, the learned counsel for the respondents has opposed the contention of the applicant with full force and even allowed the Officer-In-Charge of this case who was very anxious to put forward defence on behalf of the respondents. The facts narrated in the reply have been reiterated and they did not produce any authority contrary to the one what has been submitted on behalf of the applicant. However, the learned counsel for respondents did not seriously dispute the fact that the *ibid* judgement covered the controversy involved in the present case.

8. I have considered the rival contentions made before me. It is a fact that applicant has been granted temporary

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status and is a civilian in defence. As has been elaborately discussed in the aforesaid judgement, the applicant is not subject to the Air Force Act and the findings of the Court of Inquiry, which is just a fact finding inquiry, has no application to his case and also the same cannot take place of a regular inquiry wherein a chargesheet is required to be issued and the inquiry is required to be a confronted inquiry in case of the not conducted in mis-conduct which is the case here. But, in the instant case, admittedly, the applicant has not been issued even with a chargesheet. The case of Bheek Singh Rathore (supra), fully covers the controversy involved in this case and I wish to cut-short and refrain from repeating the discussions by taking a copy of the judgement in that case, on records. It also comes to my mind that a similar controversy came up for adjudication before the Ahmedabad Bench of the Tribunal in Malkondaiya Versus Union of India and Others case reported in 2002 (3) ATJ 100, in which, I was one of the party. It was a case of un-authorised absence which is a mis-conduct and the applicant therein, was a temporary status-holder and his services were terminated without holding a detailed inquiry, hence, the termination was quashed there in.

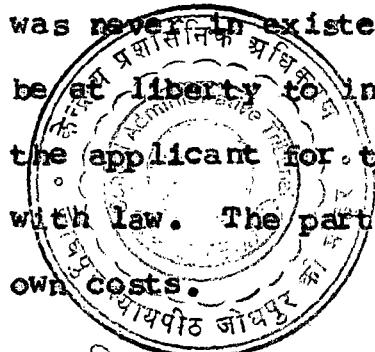
9. I have no hesitation in relying upon and following the aforesaid judgements in the present case and settle the controversy in terms of the aforesaid cases.

10. In view of the foregoing discussions, the O.A. has force and the same is hereby allowed. The impugned

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order dated 25th of September, 2002 (Annex.A/1), is quashed and set aside and the applicant shall be entitled to all consequential benefits i.e. Pay and Allowances, Continuity in service etc., as if, the impugned order was never in existence. However, the respondents shall be at liberty to initiate disciplinary proceedings against the applicant for the alleged mis-conduct in accordance with law. The parties are, however, left to bear their own costs.



J.K. Kaushik
(J.K. Kaushik)
Judicial Member

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Part II and III destroyed
in my presence on 14.5.88
under the supervision of
Section Officer () as per
order dated 31.12.88.

V.G.S.
Section Officer (Record)