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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**

ORIGINAL APPLICATION NO. 318/2002  
Date of decision : This the 23<sup>rd</sup> day of Mar., 2004

**Hon'ble Mr. J K Kaushik, Judicial Member**  
**Hon'ble Mr. G R Patwardhan, Administrative Member**

Bhanwar Singh S/o Sh. Inder Singh  
Aged 20 years, R/o House No. 89, Hanwant  
Sector B, BJS Colony, Jodhpur.

[By Advocate Mr. P.P.Choudhary, for applicant]

.....Applicant.

vs.

1. Union of India through the Secretary,  
Ministry of Defence, CGO Complex, New Delhi.
2. The Air Officer Commanding,  
Airforce Station, Jodhpur.
3. The officer-in-charge (Civil Administration)  
Office of Air officer Commanding,  
Air Force Station, Jodhpur.
4. Medical Officer -in - charge,  
Station Health Organisation,  
Air Force Station, Jodhpur.

[By Advocate Mr. Vineet Mathur and Mr. Mahendra Godara, for  
the respondents]

.....Respondents.

.....

ORDER  
[BY J.K.KAUSHIK]



Shri Bhanwar Singh, has filed this Original Application  
assailing the termination order dated 22.11.2002 (A/1) and has  
prayed for setting aside the same with all consequential benefits.

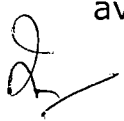
2. With the consent of the learned counsel for the parties,  
the arguments were heard for final disposal of this case at

admission stage and we have bestowed our earnest consideration to the pleadings and the records of this case

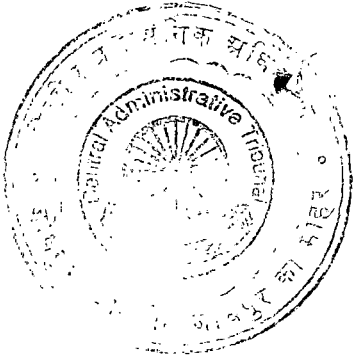
3. As succinctly put in, the material facts necessitating filing of this Original Application, are that the applicant was selected against a vacant post of Anti-malaria Lascar, by a Board of Officer. He joined his duties on 30.8.2001. He last worked upto 12.11.2002. His services have been terminated vide order dated 22.11.2002 (A/1), from a retrospective date i.e. 13.11.2002. He was not given any show cause notice or hearing prior to issuance of the impugned order. The termination order has been passed on the basis of a report of SMO enunciated in para 4.7 of the Original Application. He was compelled to submit an apology application under duress. He did not commit any misconduct but, the termination order has been issued on the basis of alleged misconduct without issuance of any charge sheet or any notice.

4. The salient grounds on which the impugned order has been challenged, are that it is not an order of termination simpliciter but, its very foundation is the alleged misconduct and is stigmatic in substance. The same has been issued without affording any opportunity of hearing. The order has been passed by a subordinate authority and not by the appointing authority. There has been infraction of Articles 14, 16, 21, 300A and 311 of the Constitution.

5. The respondents have resisted the claim of the applicant and have filed a detailed counter reply. They have also made available the relevant records for perusal of this Tribunal. It has



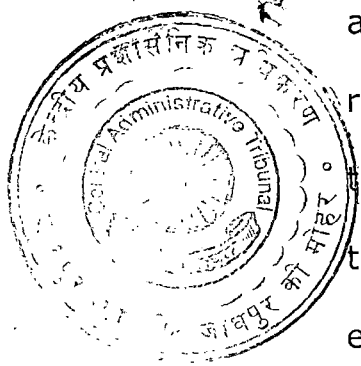
been averred that the applicant was engaged during the period from 19.9.2001 to 30.9.2001 and from 15.6.2002 to 12.11.2003. The necessary approval of the AOC in the matter was obtained. The applicant is only a seasonal employee and he is not governed by the CCS (CCA) Rules. The instructions issued by the Headquarters envisages that Anti-malaria Lascar could be terminated who are not found to be of good conduct. During all the period, the services of the applicant were not found satisfactory as he was found under the influence of Alcohol during working hours and the SMO was of clear opinion that the applicant should not be allowed to continue in service any more.



6. The learned counsel for the applicant has contended that the impugned order is stigmatic as the alleged misconduct is the foundation of the termination order. The same tantamounts to removal from service and could not have been issued except after following the procedure established by law which admittedly was not followed. The basis is the alleged misconduct and the competent authority seems to have simply passed the impugned order on the basis of report of the SMO, without application of mind. There is a reference of two witnesses in the note of SMO but, neither their names have been disclosed nor their statements have been taken. There is no evidence in support of the allegation of under the influence of alcohol. He has cited numerous decisions in support of his contentions that the corporate veil is required to be lifted in such case so as to unfold the true reason and the foundation of the

termination order which may be innocuous in form but punitive in substance.

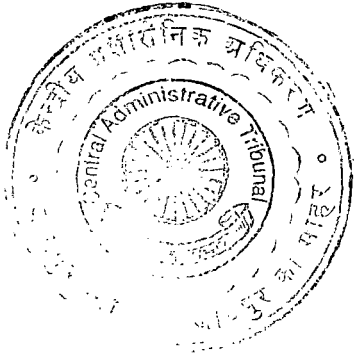
7. Per contra, the learned counsel for the respondents has strenuously endeavoured to counter the submissions made on behalf of the applicant and submitted that the order of termination has been passed after the due approval of the competent authority. He has next contended that his service had to be terminated since he committed misconduct and as per the terms and conditions of his service at Annexure R/1 (sic A/1) to the reply. The impugned order has been issued since the applicant was not found to be of good conduct. Therefore, the respondents have committed no wrong and the applicant should thank to himself for the same. He was only a daily wager and the procedure prescribed for taking disciplinary action for regular employees need not be adopted in such cases.



8. We have considered the rival submissions made on behalf of the parties and have also waded through the records made available to us by the respondents. As per the note made by the SMO, the applicant is said to be suspect of stealing money and he is said to have admitted the same before two witnesses whose names have not been disclosed. We also do not find any statement of the said persons. They have also not signed the so-called confession letter. Nothing is disclosed as to what has further happened in the matter.

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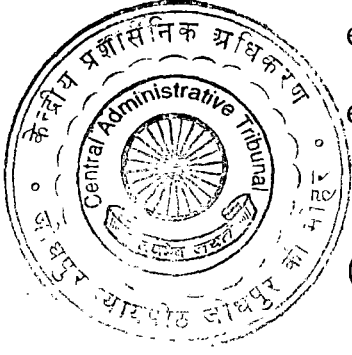
9 . There is further mention that the applicant was under the influence of alcohol but there is nothing more than a mere assertion. After all, the applicant was employed in the Hospital and there was no difficulty in subjecting the applicant for medical examination and the truth could have been evident without any difficulty. But such course of action has not been found expedient for the respondents. Thus, the complete note is based on hearsay evidence and there is no explanation as, why medical examination of the applicant was not carried out and in such case it can not be said to be a finding of fact. We are fortified of our view from a judgement of Allahabad High Court in case of Sudhakar Rai V. Dy IGP Varansi & Anr 1999 LAB I C 3328 wherein, their Lordships has held that there was no direct evidence in absence of medical examination in such cases and charge can not be said to be proved.



10. If, one has regard to the aforesaid analysis, the approval or otherwise of the order by the competent authority become insignificant. We are of the firm opinion that the impugned order though clothed in innocuous terms but the same is punitive and stigmatic in substance. The same can be sustained in the eye of law. The law on this point is well settled and we are refraining from referring the judgements cited by the learned counsel for the applicants.

11. The upshot of the aforesaid discussion inevitable leads us to the conclusion that there is force in this Original Application and the same stands allowed. The impugned order dated

22.11.2002 (A/1) is hereby quashed and the applicant shall be  
 entitled for all consequential benefits as such order was never in  
 existence. No costs.



(G.R.Patwardhan)  
 Admv.Member

(J.K.Kaushik)  
 Judicial Member

jrm

Received copy

Bhawan  
(P.L. S. W. M.)  
Adv. 25.3.04  
For P. P. Choudhary

Part II and III destroyed  
in my presence on 23/10/13  
under the supervision of  
section officer (I) as per  
order dated 18/10/13

D. R. Sharma  
Section officer (Record) 23.10.2013

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