

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00221/2014

Jodhpur, this the 7th day of November, 2014

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (Judicial)

No. 2665 Civ/Barber Mukesh Sain son of Shri Radha Kishan Sain, aged about 20 years, Bonafide resident of Villarge Barsas, Post Jajod, Tehsil Laxmangarh, District Sikar, at present residing at 39, Dadhimati Nagar, behind Bhadwasiya School, Jodhpur (Raj.)

.....Applicant

By Advocate: Mr. Y.P. Khileri

Versus

1. Union of India through its Defence Secretary, Ministry of Defence, South Block, New Delhi.
2. The Chief of Army Staff, Army Headquarters, Sena Bhawan, New Delhi.
3. The Commanding Officer, Western Command Provost Unit, PIN 900475, C/o 56 APO.
4. The Officer-in-Charge Records, Corps of Military Police Records, PIN-900493, C/o 56 APO

.....Respondents

By Advocate : Mr. M.S. Godara

ORDER (ORAL)

In this OA filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant is aggrieved of his termination of service vide order dated 7.9.2013 (Ann.A/1) and, therefore, he has prayed for the following reliefs:-

- (i) It is, therefore, humbly prayed that this Hon'ble Tribunal may kindly be pleased to accept and allow the present original application and the impugned order dated 07/09/2013 (Anx.A/1) issued by respondent No.4, served upon him vide communication dated 18/9/2013 (Anx.A/2) issued by respondent No.3, may kindly be quashed and set aside and be declared void;

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- (ii) The respondents may kindly be directed to re-instate the petitioner in his service on the post in question with all consequential benefits;
- (iii) Any other appropriate order or direction, which this Hon'ble Tribunal deems (sic) fit, just and proper may kindly be passed in favour of the applicant.
- (iv) Cost of the O.A. may kindly be awarded in favour of the applicant.

2. Brief facts of the case, as stated by the applicant, are that pursuant to an advertisement issued in the year 2012 by the Commanding Officer, Western Command Provost Unit, Chandimandir Contonment-07, PIN 900475, the applicant applied for the post of Barber which is a Group-D post. The last date for submission of application form was 25th February, 2012. Thereafter the applicant was issued a call letter for interview scheduled to be held on 10th May, 2012 at Western Command Provost Unit, Chandimandir Cantonment, Panchkula, Haryana. The applicant appeared in the interview on the scheduled date alongwith the documents required and was selected by the Board of Officers for the post. The applicant was issued appointment letter dated 8.8.2012 and accordingly he join on the said post on 21.8.2012 in the Western Command Provost Unit. After joining the post, the applicant was also issued a temporary identity card dated 25.9.2012. Subsequently, he was handed over order dated 7.9.2013 issued by respondent No.4 whereby the services of the applicant were terminated under proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 which was served to the applicant vide communication dated 18.9.2013. The reason given by the respondents for terminating services is that the applicant was below the age limit on the cut-off date fixed for determination of age. Being aggrieved of the order dated 7.9.2013 served upon the applicant by communication dated 18.9.2013 (Ann.A/2), the applicant has filed this OA praying for the reliefs as extracted above.

3. By way of filing reply to the OA, the respondents have denied the right of the applicant. It has been submitted by the respondents that after joining of the applicant, his case was referred for pay and allowances to the PCDA, Western Command, but the same was rejected vide letter dated 21st December, 2012 on the ground that the applicant had not completed 18 years of age as on 29th February, 2012. Thus, he was not entitled or eligible for appointment on the post of Barber being lower in the age and the appointment of the applicant was dehors the rules. It has been further submitted that the Board of Officer remained under the bonafide impression that the crucial date for determining the age is the date on which the final result was declared i.e. 10th May, 2012, but in fact, it was erroneous as the crucial date for determining the age is that closing date of receiving the applications as per Recruitment Rules, 2011, as such, in these circumstances, the matter of the applicant was referred by the provost-martial to the Army Headquarter for regularization vide letter dated 18.1.2013 but the same was denied by the Army Headquarter vide letter dated 1st March 2013 for the reason that since there is no provision to waive of the age limit prescribed under the Rules, hence the same cannot be regularized. Thus, in view of the decision taken by the authority, a show-cause notice was issued to the applicant on 7th August, 2013 to terminate his services and thereafter vide order dated 7th September, 2013, his services were terminated under Rule -5 of CCS (Temporary Service) Rules, 1965. Thus the order passed by the respondents terminating services of the applicant is perfect, just and in accordance with the rules. The respondents have further submitted that the applicant cannot be allowed to have the benefit of the bonafide mistake, as for the purpose of getting employment he is require to have all the eligibility criteria prescribed in the rules and merely

by serving under the respondents for few days does not create any right in his favour, therefore, the OA deserves to be dismissed being devoid of merit.

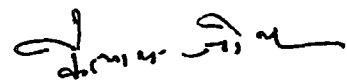
4. Heard both the counsel. Counsel for the applicant contended that the termination of service of the applicant is on the basis of the fact the he did not attain the minimum age of 18 years as on the cut-off date, but the applicant neither misrepresented his age at any stage of recruitment process nor committed any concealment of the fact of his age or any other requisite eligibility. The respondent authorities were having every opportunity to have a consideration of his age and it has to be deemed that the respondent authorities after perusing all the requisite documents with open eyes granted appointment to the applicant. Counsel for the applicant further contended that the applicant faced the recruitment process with clean hands and therefore, punishing him with the severest punishment of termination is highly injustice towards the applicant. Counsel for the applicant further submitted that termination of service by the respondent authorities is not a justifiable ground, as there is neither any misconduct on the part of the applicant nor it is a case that the applicant is not fit for service. The mere fact that he did not attain the minimum age limit as on the cut-off date does not attract the severest punishment. Therefore, the impugned order deserves to be quashed and set-aside.

5. Per contra, counsel for the respondents contended that services of the applicant were terminated by the appointing authority under the CCS (Temporary Service) Rules, 1965 during the probation period after following the due process of law and merely working for few months under the respondents has not created any right in favour of the applicant. He further contended that the applicant was also equally responsible as in the

application form he wrongly mentioned that I am eligible in all respect, which is incorrect. Therefore, termination of services of the applicant is just and proper and the OA deserves to be dismissed.

6. Considered the rival contention of the parties and perused the material available on record. It is admitted case between the parties that the applicant has not attained the minimum age of 18 years required for the post on the closing date i.e. 29th February, 2012, but he has been selected and appointed to the post, de hors the rules. If the applicant was not having the minimum age, he was not entitled at the very beginning of the process but he was wrongly selected and was also issued an appointment letter. Thereafter when the above mistake came to the knowledge of the respondents, the procedure for termination of services during probation was adopted and the applicant was issued a show-cause notice on 7th August, 2013 for termination of his services and thereafter vide order dated 7th September, 2013 his services were terminated. When the applicant was not even eligible to be considered for the post, he was considered de hors the rules, therefore, in my considered view, such appointment was ab-initio illegal. Therefore, no interference is required in the matter and the OA being devoid of merit deserves to be dismissed.

7. Accordingly, the OA is dismissed with no order as to costs.



(JUSTICE K.C. JOSHI)
Judicial Member

R/

copy Recd.

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12/11/17