

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
LUCKNOW BENCH,  
LUCKNOW.**

**Original Application No. 525 of 2010**

This the 11<sup>th</sup> day of December, 2015

**Hon'ble Mr. Justice L.N. Mittal, Member-J**  
**Hon'ble Ms. O.P.S. Malik, Member-A**

Hari Krishna Shanker Sharma, aged about 43 years, S/o late Sri Ram Manohar Sharma, R/o 551 Gha/113 Natkhera Road, Chander Nagar, Alambagh, Lucknow

.....Applicant

By Advocate : Sri Prashant Kumar Singh

Versus.


1. Union of India through the Secretary, Ministry of External Affairs, New Delhi.
2. Chief Passport Officer-cum-Joint Secretary, Government of India, Ministry of External Affairs (C.P.V. Division), Patiala House, Annexie, Tilak Marg, New Delhi.
3. Passport officer, Regional Passport Office, Government of India, Ministry of External Affairs, Gomti Nagar, Lucknow.

.....Respondents.

By Advocate : Sri S. Lal.

**ORDER (Oral)**

**By Justice L.N. Mittal, Member-J**

 This is third round of litigation by the applicant-Hari Krishna Shanker Sharma. The applicant was initially engaged as daily rated casual labourer in Passport Office, Lucknow on 3.12.1991. He was granted temporary status as casual labourer w.e.f. 1.9.1993 vide order dated 5.5.1994 (Annexure-3). On 15.12.1995, a Memorandum was issued to the applicant allegedly on false and baseless allegation of demand of bribe from one Sri Nitin Parikh (Annexure-4). The applicant submitted reply dated 20.12.1995 (Annexure-5) to the same. The applicant filed O.A. no. 123 of 1996 praying that he be allowed to work because he had been put off duty. In the Counter Reply in the said O.A. in May,

1996, copy of termination order dated 12.4.1996 (Annexure-1) was annexed. The said order was passed during the pendency of the said O.A. Vide order dated 12.9.1997, the said O.A. was partly allowed and the order whereby the applicant was put off duty w.e.f. 18.12.1995 was set-aside. Since the order dated 12.4.1996 was passed during the pendency of the said O.A. and was not assailed therein, the validity thereof was not examined in that case.

2. The applicant filed O.A. no. 523 of 1997 on 17.11.1997 to challenge the termination order dated 12.4.1996. The said O.A. was dismissed as time barred vide order dated 10.1.2003 (Annexure-10). The applicant filed Writ petition No. 433 of 2004 in Hon'ble High Court to challenge the aforesaid order dated 10.1.2003. The Writ petition was dismissed by Hon'ble High Court vide judgment dated 6.11.2006 (Annexure-11). The Review Petition no. 344 of 2006 was filed by the applicant in Hon'ble High Court for review of judgment dated 6.11.2006. The said Review Petition was dismissed vide order dated 16.11.2010 (Annexure-12) with the observation that if any fresh O.A. can be filed in law, the said order would not come in the way of the applicant. Pursuant thereto, the instant O.A. was filed alongwith an application for condonation of delay in filing the O.A. The delay stands condoned vide order dated 26.7.2012.

3. In the instant O.A., the applicant has assailed the termination order dated 12.4.1996 (Annexure-1) issued by the respondent no.3 whereby services of the applicant stand terminated. The applicant has also sought direction to the respondents to reinstate the applicant in service and to pay him salary regularly. The grounds to challenge the termination order

pleaded by the applicant and argued, during the course of hearing, shall be discussed at appropriate stage.

4. The respondents, in their Counter Reply, while admitting the factual position pleaded that the applicant had demanded bribe from one Sri Nitin Parikh for which a show cause notice dated 15.12.1995 (Annexure-4) was issued to the applicant. However, the applicant persuaded the complainant by contracting him to withdraw his complaint vide letter dated 13.1.1996 (Annexure-6). It was also pleaded that the applicant had sent somebody else to impersonate for him in the type writing test in some selection examination conducted by Staff Selection Commission (SSC). The SSC issued memorandum dated 16/17.3.1994 to the applicant, who gave reply dated 4.4.1994 and after examining the same, the SSC found it unsatisfactory and cancelled the candidature of the applicant for the said Special Qualifying Examination, 1993 through letter dated 23.5.1994 and, therefore, service of the applicant have been rightly terminated for his misconduct and malpractice. Various other pleas were also raised.

5. The applicant filed Rejoinder wherein he controverted the stand of the respondents and reiterated the version pleaded in the O.A.

6. We have heard the learned counsel for the parties and perused the case file with their assistance.

7. Counsel for the applicant, at the outset, submitted that the instant O.A. is not barred by res-judicata because previous O.A. no. 523 of 1997 filed by the applicant was dismissed on technical

ground of being time barred and the matter was not adjudicated on merits in that O.A. Reliance in support of this contention has been placed on judgment of Hon'ble Supreme Court in the case of **State of Maharashtra & Another Vs. M/s National Construction Company, Bombay & Another (AIR 1996 SC 2367)**. There is considerable merit in the contention. If the previous lis is decided on merit, only then bar of res-judicata would apply to the second lis and if the previous lis is decided only on technical grounds e.g. want of jurisdiction, non-joinder of parties or bar of limitation etc; then bar of res-judicata would not come in the way of second lis because the previous lis was not adjudicated on merit. Consequently the instant O.A. is maintainable and is not barred by res-judicata.

8. Counsel for the applicant vehemently contended that the impugned termination order is stigmatic and is based on alleged misconduct of the applicant on twin grounds i.e. demand of bribe from one Sri Nitin Parikh and influencing him to withdraw his complaint, and violation of rules in the Special Qualifying Examination, 1993 ~~the Rules~~ conducted by the SSC. It was contended that although the impugned termination order is stigmatic and based on alleged misconduct of the applicant, yet the said order has been passed without holding regular enquiry and, therefore, the impugned order is completely illegal. It was contended that the applicant even as casual labourer with temporary status is entitled to constitutional protection of Article 311 of the Constitution of India as held by Hon'ble Supreme Court in the case of **Nar Singh Pal Vs. Union of India & Others (AIR 2000 SC 1401)** and by Madras High Court in the case of **Divisional Railway Manager, Southern Railway, Chennai Vs.**

**Presiding Officer, Central Government Industrial Tribunal, Chennai and Another (W.P. Nos. 23844 and 244473 of 2006 decided on 12.1.2011).** In the instant case, however, no regular inquiry was held before terminating the services of the applicant and, therefore, the impugned order is bad, it was so argued.

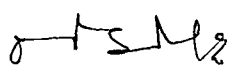
9. On the other hand, counsel for the respondents contended that regarding demand of bribe from one Sri Nitin Parikh, show cause notice dated 15.12.1995 was issued and thereafter the applicant contacted the complainant Sri Nitin Parikh and thereupon Sri Nitin Parikh withdrew his complaint vide letter dated 13.1.1996 (Annexure-6) wherein the complainant has himself mentioned that the applicant had contacted him and thus, the applicant influenced the said complainant to withdraw the said complaint. It was also pointed out that SSC had intimated the respondents that the applicant had violated the rules in the Special Qualifying Examination, 1993 and, therefore, his candidature for the same was cancelled after issuing show cause notice and after considering his reply and, therefore, the said misconduct was rightly mentioned in the termination order.


10. We have carefully considered the matter. Admittedly, no regular enquiry was held before terminating the services of the applicant. Un-disputedly, the applicant was casual labourer with temporary status. In view of judgment of Hon'ble Supreme Court in the case of Nar Singh Pal (supra), the applicant as casual labour with temporary status, was entitled to the protection of Article 311 of the Constitution of India. In view of the said constitutional provision, the services of the applicant on the ground of alleged misconduct could not have been terminated

without holding regular enquiry. However, in the instant case, the impugned termination order has been passed on the ground of alleged misconduct of the applicant, but without holding regular enquiry. Consequently, the impugned order is completely illegal and is not sustainable.

11. Counsel for the applicant also submitted that one month's notice was also not issued before terminating the services of the applicant, although so required by the order (Annexure-3) conferring temporary status on the applicant. However, this defect could be cured by directing the respondents to pay one month's salary to the applicant in lieu of notice. This defect does not make the impugned order illegal and unsustainable.

12. For the reasons aforesaid, we allow this O.A. and quash and set-aside the impugned termination order dated 12.4.1996 (Annexure-1) and direct the respondents to reinstate the applicant in service as he was on the date of termination of his services, with all consequential benefits, but without back wages. The back wages are being denied to the applicant because he himself filed the instant O.A. 14 years and 08 months after the impugned order had been passed and secondly he has not worked with the respondents during the interregnum. He is, therefore, not entitled to back wages. The instant directions shall be complied with by the respondents within four months from the date of receipt of certified copy of this order. However, the respondents shall be at liberty to proceed afresh against the applicant in accordance with law, if so advised. There shall be no order as to costs.

  
**(O.P.S. Malik)**  
**Member (A)**  
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**(Justice L.N. Mittal)**  
**Member (J)**