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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH: MUMBAI

ORIGINAL APPLICATIONS NO. 299, 300 & 301/1998

THIS THE 26th DAY OF SEPTEMBER, 2006

CORAM: HON'BLE SHRI A.K. AGARWAL. VICE CHAIRMAN
HON'BLE SHRI MUZARAFFAR HUSAIN. MEMBER (J)

Ravi Uddhao Bhilawe,
Aged about 30 years,
working as Plane Tabler, Gr.IV,
No. 85 Party (SCC),
Survey of India,
R/o 135, Misal Layout,
Post Jaripatka, Nagpur-14. .. Applicant in OA 299/98

Anant Dashrath Waghmare,
Aged about 31 years,
working as Plane Tabler, Gr.IV,
No. 85 Party (SCC),
Survey of India,
R/o 135, Misal Layout,
Post Jaripatka, Nagpur-14. .. Applicant in OA 300/98

Roshan Ishwardas Patil,
Aged about 29 years,
working as Plane Tabler, Gr.IV,
No. 85 Party (SCC),
Survey of India,
R/o 135, Misal Layout,
Post Jaripatka, Nagpur-14. .. Applicant in OA 301/98

By Advocate Shri S.V. Marne,

Versus

1. Union of India, through Secretary,
Ministry of Science & Technology,
New Delhi.
2. Surveyor General of India,
PO Box No.37,
Hathi Barkala Estate,
Dehradun.

3. Additional Surveyor General,
South Zone, Survey of India,
Koramangala IInd Block,
Sarjapur Road,
Bangalore-34.
4. Director (SCC),
Survey of India,
No.3-04-526/38, Barkat Pura,
PO Box 1275, Hyderabad.
5. Superintending Surveyor,
O.C. No.85 Party (SCC)
Survey of India, CGO Complex,
Block "C" 1st Floor,
Seminary Hills,
Nagpur.

.. Respondents

By Advocate Shri R.K. Shetty.

O R D E R
Per: Shri Muzaffar Husain. Member (J)

Common question of law and facts are involved in these three OAs and therefore, it will be convenient to dispose of these OAs by common judgment. OA 299/98 shall be treated as leading file and the facts mentioned in succeeding paragraphs of this judgment will have reference to this OA.

2. The applicants herein are challenging the order of termination of their service by different orders of some date namely 06.3.1998.
3. The facts of the case in brief are that the applicant belongs to Scheduled Caste / Other Backward Caste and he has passed High Secondary School Certificate Examination

conducted by Maharashtra Secondary and High Secondary Education Board, Nagpur. The applicant being unemployed, registered his name with Employment Exchange, Nagpur and also with All India Scheduled Castes, Scheduled Tribes and Backward Classes Reservation Action Committee, which is recognized by Government of India. Respondent NO.4 requested names of eligible candidates belonging to SC/OBC community from All India Scheduled Castes / Scheduled Tribes and Backward Classes Reservation Action Committee on or about 08.6.1994 and the applicant being eligible as per eligibility condition mentioned in the requisition, his name was duly forwarded for purpose of appointment on the post of Topo Trainee Type 'B' on or about 08.7.1994. Thereafter, the applicant was called for written test followed by interview and he was declared qualified and selected for the post of Topo Trainee Type 'B' in the pay scale of Rs.950-1400. The applicant was communicated that he was selected and his appointment was subject to verification of caste, character and antecedents and employment exchange card. It was also communicated that on appointment he will be trained for two years in the post of Topo Trainee Type 'B' at Hyderabad as well as in the field camps and upon successful completion of training, applicant will be classified as Plane Table Grade-IV and

his pay will be fixed in the scale of Rs.975-1540 plus and DA and other allowances. The applicant thereafter, submitted all original documents and certificates and he was directed to report in the office of Respondent No.5, Pune / Nagpur on or before 29.12.1995. The applicant accepted the appointment and reported accordingly. Thereafter, he was given training and instructions at Survey Training Institute, Uppal, Hyderabad from 18.01.1995 to 17.12.1996. The applicant completed the training successfully and awarded a certificate of successful completion of Survey Technician's Course. On successful completion of training the applicant was posted as Plate Tabler Grade-IV. The services of the applicant were terminated by respondents vide order dated 06.3.1998 issued under proviso to Sub-rule (i) of Rule 5 of CCS (Temporary Service) Rules, 1965.

4. Respondents have filed reply contesting the claim of the applicant wherein it is stated that the applicant had obtained the employment through fraudulent means and consequently, the contract of employment between the applicant and the respondents is non-est and ab-initio void. Consequently the question of holding any departmental inquiry against the applicant does not arise. Therefore, termination of service of the applicant is valid

in law. The applicant was governed by departmental Circular Order No. 435 (Admn) as well as Government of India order regarding service matter. The said circular, which are statuary rules relating to recruitment and promotion of Topographical and Map Publication personnel in Group-C Division II service of Service of India. The applicant being Topographical person, governed by this rule. The entire terms and condition regarding service are not mentioned in the offer of appointment regarding selection, training and probation period etc. The probation period is not specifically mentioned, but implies till the individual is recommended fit to be transferred to permanent establishment by DPC. It is also stated that the applicant registered his name with Sub Regional Employment Exchange, Nagpur, but his name was not sponsored by the said Employment Exchange. The applicant had also registered his name with All India SC/ST and OBC Reservation Action Committee (RAC for short) Nagpur which is a private agency recognized by Government of India with its function being limited to notifying vacancies reserved for SC/ST candidates about recruitment purpose and not to recommend or to sponsor the names of candidates as per Government of India, Ministry of Labour Order. The above mentioned private agency sponsored the name of applicant

along with 30 others to the Director, South Central circle, Hyderabad for purpose of recruitment vide letter dated 08.7.1994. The Employment Exchange had sent the list of 42 candidates with seniority upto 30.8.1987; whereas the applicant had registered his name in 1994. He was very much junior in the seniority list of Employment Exchange of Nagpur and thus, his name was not sponsored. Whereas the list of candidates sponsored by RAC Nagpur covers the seniority of candidates upto 1994. Thus, the applicant could managed to get his name included at the in the list of private agency at the moment instead of routing through employment Exchange as per Government guidelines for recruitment. It is further stated that the recruitment of applicant was found defective on investigation by CBI and accordingly on instructions from the Ministry of Science & Technology, New Delhi to Surveyor General of India and thereby to the Director, SCC, Hyderabad, the applicant was served with the termination order under Rule 5 of CCS (Temporary Services) Rules being a temporary Government servant. It is further stated that the termination order was issued in accordance with the instruction of Surveyor General of India, Dehradun who is also Head of Department on receipt of advice from Secretary, Department of Science & Technology, New Delhi.

5. Learned counsel for the applicants advanced contention that there is absolutely no reason for termination of the applicants, neither any reason is disclosed nor any such reason exists. The impugned order has been passed malafidely and in colourable exercise of power. It is evident from the facts that about 12 persons were selected by earlier appointing authority, but only the applicants' services have been terminated. It is also contended that the applicants were selected on the basis of their positive selection. After completion of all procedure, they were appointed. They have also completed the prescribed training course of Survey of India. Learned counsel further contended that on the date of passing of termination order dated 06.3.1998 the applicants were no longer temporary employees and had attained the status of permanent Government servant. The appointment orders nowhere mention that the appointment of the applicants is temporary. The applicants underwent the training from 18.01.1995 to 17.12.1996 and after completion of training, they were posted as Plane Tabler Grade-IV on 03.02.1997 in grade Rs.975-1540. During the training period they were in the pay scale of Rs.950-1400. Thus, the status of the applicants as trainee came to an end on 02.02.1997 and became regular Plane Tabler with effect from 03.02.1997 and

they attained the status of permanent Government servant. There was no probation for the applicants mentioned in appointment order. The confirmation of the applicants was subject to satisfactory completion of the training. Therefore, there is no requirement of formal order of confirmation. It is also contended that in termination order dated 06.3.1998 the designation of the applicants is shown as Topo Trainee Type 'B' (now Plane Tabler Grade IV). Thus, even in the order of termination, it is acknowledged that the status of applicants as Topo Trainee Type 'B' came to an end and he was classified as Plane Tabler Grade IV. Even if it is assumed for the sake of argument the applicants continued to be Government servants on the date of passing of termination order, still the termination order is bad in law, since the same has been passed in violation of principles of natural justice. Under Section 4 (4) of Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, it is not obligatory upon the employer to recruit any person through Employment Exchange to fill up any vacancy, merely because the vacancy was notified to the Employment Exchange. The respondents were always at liberty to select and appoint any person, who were not sponsored by Employment Exchange. The applicants were sponsored by All India SC/ST and Backward Classes

Reservation Action Committee which is recognized by Government of India for recruitment against reserved vacancies. It is not that the applicants have secured the appointment through back-door. The said Committee had recommended the names of 31 candidates, out of which, only five candidates came to be selected. Therefore, there is absolutely nothing illegal or irregular in selection of applicants, though not sponsored by Employment Exchange.

6. Learned counsel for the respondents submitted that Respondent No.4 had initiated action to terminate the applicants from service only under the instructions from authority as a result of investigation conducted by CBI. So far as the other selected candidates are concerned, their names were sponsored by Employment Exchange and their recruitment was within the frame work of recruitment rules. Names of applicants were sponsored by RAC Nagpur, a private organization, which is recognized by Government of India only for the purpose of notifying the vacancies reserved for SC/ST candidates and not to recommend or sponsor the names of candidates to the recruiting authority. The names of applicants were not included in the list forwarded by local Employment Exchange as they had registered their names with local Sub Regional Employment Exchange only in the year 1994. It is also submitted that till such time

Government servants are declared by competent authority, they shall remain as temporary Government servants for a minimum period of five years in accordance with para 14 of CO No.435. The necessary stipulation to bring an employee to permanent establishment is that the individual should complete five years and DPC should recommend the candidate as fit to be brought to permanent establishment. The transfer of temporary Government servant to permanent establishment is not automatic as has been claimed by the applicants. Therefore, the applicants cannot be treated as permanent. Since the post held by the applicants was of temporary in nature till the date of termination and hence Article 311 of the Constitution is not attracted. It is further submitted that the applicants managed their names to be forwarded by RAC Nagpur as their names were not sponsored by Employment Exchange having not registered their names before 30.8.1987 (the cut off date) in the list of candidates sponsored by Employment Exchange. It is further submitted that as per Sub-Rule 2 of Rule 3 of Employment Exchange (Compulsory Notification of Vacancies) Rules, 1960 vacancies in posts other than technical and scientific in nature carrying a basic pay of Rs.1400 or more shall be notified to the local Employment Exchange concerned. The posts were not advertised in the Newspaper,

it was not the practice at that time. Had the vacancies been advertised in the Newspaper it would have been open to several eligible candidates. In this case, recruitment was open only to candidates who were sponsored by Employment Exchange.

7. We have considered the rival contentions raised, arguments advanced and case law cited by learned counsel for the parties and perused the pleadings and other material placed on record.

8. Five applicants including the three applicants herein have filed separate OAs before this Tribunal. These OAs were dismissed in limine by order dated 08th December, 1998. The said order was challenged before Nagpur Bench of Hon'ble High Court of Judicature, Bombay by filing writ petition and the said writ petition was dismissed by Hon'ble High Court by order dated 05th January, 2001 and the Review Application was also dismissed by order dated 20th December, 2002. The same was challenged before Hon'ble Apex Court in SLP (c) No.15437-154442 of 2003 and the Hon'ble Apex Court vide order dated 22nd November, 2004 remitted the matter to the High Court for fresh consideration of writ petition filed by the petitioners. Hon'ble High Court in Writ Petition No.1045/99, 1046/99 and 1047/99 remanded the matter to this Tribunal for fresh

decision in accordance with law vide order dated 13th December, 2005.

9. The applicants were appointed by respondents as Topo Training Type-B. Their services were thereafter terminated by order dated 06.3.1998 in exercise of power under sub-rule (1) of Rule 5 of CCS (Temporary Services) Rules, 1965 without giving any reason. The applicants by way of OA 299/98, 300/98 and 301/98 have challenged their termination order. It is the case of the applicants that they were selected in pay scale of Rs.950-1400 subject to the conditions stipulated in the appointment order which included interalia successful completion of training. According to them they successfully completed the training and they were posted as Plane Tabler Grade-IV in the pay scale of rs.975-1540 as contemplated by appointment order (Exhibit A-1).

10. The first point for our consideration is whether the status of the applicants is temporary and whether they were liable to be governed by CCS (Temporary Services) Rules 1965. Learned counsel for the applicant contended that having regard to the nature of appointment offered and accepted by the applicants, the provision of CCS (Temporary Services) Rules, 1965 are not attracted. Learned counsel has drawn our attention to the appointment order dated

05.12.1994 and submitted that the appointment order of the applicants nowhere mentioned that the appointment of applicants is temporary. The relevant part of appointment order reads as under -

You have been selected provisionally for appointment to the post of Topo Trainee Type 'B' (Plane Tabler) subject to the following conditions:-

1. Verification of your character and antecedents.
2. You will have to take oath of allegiance to the constitution of India and furnish a security Bond on the prescribed form at the time of reporting for duty.
3. On appointment you will be trained for two years in the trade of T.T.T.'B' (P/Tr) at Hyderabad as well as in the field camps which will be away from Hyderabad.
4. During the training your pay will be fixed at rs.950/- p.m. In the revised pay scale of Rs.950-20-1150-EB-25-1400. You will be eligible for Dearness allowance and other allowance as admissible to Central Government Employees.
5. On successful completion of the training you will be classified as Planetabler Grade-IV and initially posted in one of the office at Nagpur.
6. You are liable to serve any where in India including active military service with mobilized survey units whenever necessary."

Learned counsel has also drawn our attention to para (ii), (iii) & (iv) of offer of appointment letter dated 16.9.1994, the same is reproduced below -

(i) On appointment you will be trained for two years in the trade of T.T.T. 'B' (P/Tf) at Hyderabad as well as field camps which will be away from Hyderabad.

(ii) On successful completion of the training you will be classified as 'PLANETABLER GRADE IV' and your pay will be fixed in the scale of Rs.975-25-1150-EB-30-1540 plus D.A. And other allowances as admissible to Central Govt. employees and initially posted in one of the offices Nagpur.

(iii) You are liable to serve any where in India including active Military Service with mobilised Survey Units whenever necessary;

Learned counsel for applicants has also drawn our attention to copy of Service Book of the applicants and submitted that on 19.12.1994 the officiating pay of the applicants has been mentioned as Rs. 950/- in the pay scale of Rs.950-1400 and on 01.01.1997 they have been placed in the scale of Rs.975-1540 with substantive pay of Rs.1025/-. Learned counsel further argued that in terms of Sub-Rule 28 of Rule 9 of FR SR substantive pay means the pay other than special pay, personal pay or emoluments classed as pay by the President under Rule 9 (21) (a) (iii), to which a Government servant is entitled on account of a post to which he has been appointed substantively or by reason of his substantive position in a cadre. Learned counsel for the respondents argued that the letter dated 16.9.1994 and 05.12.1994 issued to the applicants were not appointment

order nor did they constitute an offer of appointment. These are merely letters intimating about their selection in the recruitment which were received fraudulently by the applicants as held by CBI after thorough investigation by them. To transfer a temporary Government servant to Permanent Establishment, he should have completed five years of service as per CO 435 and the DPC has to consider his case from all angles and declare that he is fit to be brought to Permanent Establishment. Thereafter the order of transfer from temporary service to Permanent Establishment will be issued. Till such time his services are temporary only. Since in the case of the applicants no such order was issued and hence the service of the applicants remained temporary until they were terminated. Learned counsel has drawn our attention to circular order No. 435 (Admn) dated 01st August, 1950 corrected upto 31st March, 1983 on the subject-Rules relating to recruitment and promotion of Topographical and Map Reproduction personnel in Division II of Group 'C' Service of the Survey of India. Learned counsel has also drawn our attention to para 8, 14 and Note (i) below para 20 of the said circular. The relevant parts are reproduced below -

"8. Classification. - At any time during or after the completion of the stipulated course of training a trainee may be trade tested where necessary and

classified for the purpose of fixing his trade and grade. He will be transferred to the quasi-permanent establishment only after completion of 3 years service if his work and conduct are found satisfactory. A trainee who is not transferred to the quasi-permanent service after three years will be retained for a further period of two years. If at the end of 5 years service, he is not considered fit for classification or quasi-permanency, he will normally be discharged unless his services can be usefully employed on a purely temporary basis. In the latter case, he will be given notice in writing that he is not fit for classification or quasi-permanency and has no hope of more than purely temporary employment. His signature will be obtained on a statement to this effect.

14. Transfer of permanent establishment:-

Personnel will normally be eligible for transfer to permanent establishment after the minimum period of years of service depending on their grades as follows:-

Grade II 3 years

Grade III 4 years

Grade IV 5 years

This period will include quasi-permanent service and service as trainee.

20. Service counting for
Pension. -

Note:- (i) Nothing in this Circular Order shall restrict the powers of the Surveyor General, Directors and other competent authorities which they can otherwise exercise in accordance with the F & S.R. C.S.R., G.F.R. And general orders of the Government of India affecting service conditions of Central Government employees that may be issued from time to time."

Learned counsel argued that Circular Order No.435 dated 01st August, 1950 are statutory rules relating to Recruitment & Promotion of Topographical and Map Publication Personnel in Group 'C' Division II Service of Survey of India and the applicants were governed by these rules. A perusal of the record indicates that the applicants were initially appointed as Topo Trainee Type 'B' / Plane Tabler in temporary Group-C with effect from 19.12.1994 to 28.02.1995 vide order dated 31.01.1995 (Exhibit R6). It was necessary stipulation in that order that they will be governed by the terms and conditions laid down in the Circular Order No.435 (Admn) dated 01.8.1950 as amended from time to time. Temporary service from 01.3.1995 to 29.02.1996 were extended vide SCC RO No.3 dated 09.3.1995 (Exhibit R7) and from 01.,3.1996 to 28.02.1997 vide SCC RO No.5 dated 14.3.1996 (Exhibit R8) and from 01.3.1997 to 28.02.1998 vide SCC RO No.02 dated 28.02.1997 (Exhibit R9) extended year to year. It is evident from the above documents that the appointment of the applicants was purely temporary and fortuitous and their services were extended periodically as per requirement of the department. In order to transfer a temporary Government servant to Permanent Establishment, he should have completed 5 years service in accordance with para 14 of CO No.435 (Admn) dated 01.8.1950 and DPC has to

consider his case from all angle. Until the Government servants are declared as permanent by competent authority, they shall remain as temporary for a minimum period of five years qualifying service in accordance with para 14 of CO No.435 (Admn). It is the contention of the learned counsel for applicant that Circular Order No.435 (Admn) dated 01.8.1950 has no statutory force after Constitution of India came into force on 16.11.1949. the contention of the learned counsel has no merit as the said circular is protected by Article 372 (2) of Constitution of India read with Adaptation of Laws dated 26th January, 1950, Gazette of India Extraordinary page 449. (See the Adaption of Laws Order, 1959, dated 26th January, 1950, Gazette of India, Extra., p. 449 as amended by Notification S.R.O. 115, dated the 5th June, 1950, Gazette of India, Extra., Pt. II, Sec. 3, p.51, Notification S.R.O. 870, dated the 4th November, 1950, Gazette of India Extra., Pt.II, Sec.3, p. 903, Notification S.R.O. 508, dated the 4th April, 1951, Gazette of India, Extra., Pt.II, Sec.3, p.287, Notification S.R.O. 1140 B, dated 2nd July, 1952, Gazette of India, Extra., Pt. II, Sec.3, p.661/I; and the Adaption of the Travancore-Cochin Land Acquisition Laws Order, 1952, dated the 20th November, 1952, Gazette of India, Extra., Pt.II, Sec.3, p.923.)¹ Page 317 of Constitution of India 2004 Edition by

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P.M. Bakshi published by Universal Law Publishing Company.

The relevant portion of Constitution is quoted below:-

Article 372 :-

Continuance in force of existing laws and their adaption. - (1) Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority.

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law."

Moreover, the essential stipulation in the order dated 31.1.1995 is that they will be governed by the terms and conditions laid down in Circular Order No.435 (Admn) dated 01.8.1950. So far as the entries of Officiating / Substantive pay in the Service Book of the applicants are concerned, we find that the DPC has not considered and recommended the names of applicants for permanency nor the

department issued any order regarding their permanency till they were terminated on 06.3.1998. The claim of officiating pay cannot be read independently, it has to be supported with relevant routine order mentioned generally along with that. Since the applicants were not under permanent establishment, the recording of pay in the column of substantive pay by mistake, cannot create a right in favour of the applicants. Admittedly, the applicants, after training, have not completed minimum period of five years qualifying service in accordance with para 14 of Circular Order No.435 (Admn) dated 01.8.1950. The necessary stipulation to bring an employee to permanent establishment is that the individual should complete five years and the DPC should recommend after considering all aspect that the candidate is fit to be brought under permanent establishment. Thus, it is established that the post held by the applicants was temporary in nature and the applicants are bound by CCS (Temporary Services) Rules, 1965 as well as CO No.435 (Admn) till they are considered to be absorbed in permanent establishment. They cannot be treated permanent employees in the absence of regular order passed by competent authority. Thus, it is evident that the service of the applicants was temporary from the date of recruitment till the date of termination, hence the

provisions of Article 311 of Constitution are not attracted.

11. The second point for our consideration is that whether there was any irregularity in the appointment of applicants on the ground that their names were not sponsored by Employment Exchange, but sponsored by All India SC/ST & OBC Reservation Action Committee. Learned counsel for applicant argued that the sponsorship from employment exchange is not a precondition for appointment of the applicants. Under Section sub-clause 4 of Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 is not obligatory on the employer to recruit any employee through employment exchange to fill up any vacancy. Merely because the vacancies were notified to the employment exchange and therefore, respondents were at liberty to select and appoint even those persons who were not sponsored by employment exchange. Learned counsel has placed reliance on the following decisions:-

(a) **Mrityunjay Sarkar and Others vs. the Director General of Police and Others 1988 LAB.I.C. 1053.** In this case Hon'ble Calcutta High Court held,

"even though there was any irregularity in sending names of petitioners, once they were selected and got appointment, their services could not be terminated. If services were terminated on ground of

misconduct in procuring job, there should have been proper enquiry."

(b) A Constitutional Bench of Hon'ble Calcutta High Court in case of **Rabindra Nath Mahata Vs. The State of West Bengal & Ors.** 2005 (2) CLJ (Cal) 161 it was held -

"No bar or illegality in considering the candidates applying from outside whose name not sponsored by Employment Exchange."

(c) **In case of Excise Superintendent Malkapatnam, Krishna District, A.P Vs. K.B.N. Visweshwara Rao & Others** (1996) 6 SCC 216 Hon'ble Apex Court observed -

"Restricting the selection only to the candidates sponsored by employment exchange - Held, not proper - In addition to requisitioning the names from employment exchange, names should also be called for by publication in newspapers, having wide circulation, and display on office notice boards or announcement on radio, television and employment news bulletins."

(d) **In case of Kishore K. Pati Vs. District Inspector of Schools, Midnapore & Others** (2000) 9 SCC 405 Hon'ble Apex Court held

"It was a wrong view that a candidate not sponsored by employment exchange could not be interviewed."

(12) Learned counsel for the respondents submitted that as per sub-rule (2) of Rule 3 of Employment Exchange (compulsory Notification of Vacancies) Act, 1960, vacancies in the post other than technical and scientific in nature

carrying basic pay of Rs.1400/- or more per month shall be notified to local employment exchange concerned. Rule 3 of Employment Exchange (compulsory Notification of Vacancies) Act, 1960 provides -

"3. Employment Exchanges to which vacancies are to be notified.- (1) The following vacancies, namely -

(a) vacancies in posts of a technical and scientific nature carrying a basic pay of Rs.1400 or more per month occurring in establishment in respect of which the Central Government is the appropriate Government under the Act, and

(b) vacancies which an employer may desire to be circulated to the Employment Exchanges outside the State or Union Territory in which the establishment is situated,

shall be notified to such Central Employment Exchange as may be specified by the Central government, by notification in the Official Gazette, in this behalf.

(2) Vacancies other than those specified in sub-rule (1) shall be notified to the local Employment Exchange concerned."

The scheme of Employment Exchange procedure came under judicial scrutiny of Supreme Court in case of Excise Superintendent (supra) the Hon'ble apex Court in para 6 observed -

"6. Better view appears to be that it should be mandatory for the requisitioning authority / establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning

departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the case of all the candidates who have applied. If this procedure is adopted, fair play would be sub-served. The equality of opportunity in the matter of employment would be available to all eligible candidates."

In the present case the vacancies were notified to Employment Exchange and candidates who registered their names upto 30.8.19887 were sponsored. The applicants registered their name in the year 1994 and were junior in the seniority list of Employment Exchange, Nagpur. Their names were sponsored by RAC vide letter dated 08.7.1994 and the list of candidates sponsored by RAC, Nagpur covers the seniority of candidates upto 08.7.1994 i.e. the date of sending the list. Learned counsel for the respondents argued that the said RAC has no authority to sponsor the names of candidates, only the vacancies will be notified by the department concerned to this agency. Learned counsel has relied on the instructions contained in para 7.1 (iii) of Brochure on Reservation for SC/ST (7th Edition 1987). It provides -

"Simultaneously with the advertisement the vacancies should be brought to the

B/S/

notice of the Scheduled Castes / Scheduled Tribes organisations as the case may be, listed in appendix 11. When doing so, it should be made clear to such organisations that their function is limited to advising the Scheduled Castes / Scheduled Tribes candidates about the recruitment proposed and that it will not be for them to recommend or press the names of any individuals. The candidates should apply to the appointing authority either direct or through the Employment Exchanges as the case may be."

Similar instructions have been issued by DOPT vide letter dated 07.8.1991. Thus, it appears that the applicants names were not sponsored by Employment Exchange. It is also an admitted fact that no advertisement was given for notifying the vacancies in the newspaper or other relevant modes. Thus, it appears that the applicants managed to get their names sponsored by RAC which was not authorised to sponsor the names of the applicants. Since the name of applicants could not be sponsored by Employment Exchange and they were junior in seniority list of employment Exchange, Nagpur and thus their names were not sent, whereas the list of candidates sponsored by RAC covers the seniority upto 08.7.1994. It shows that the applicants fraudulently managed to get their names sponsored by RAC, Nagpur, whereas their names were not sponsored by Employment Exchange, not having been registered before ³⁰ 1.8.1987 (the cut off date) in the list of candidates

sponsored by Employment Exchange. The applicants' inclusion in the list of candidates for recruitment deprived legitimate right of candidates, who registered their names with Employment Exchange long back. Therefore, the rulings cited by learned counsel for applicants are not helpful to the applicants.

13. The third point for our consideration is whether the services of the applicants were liable to be terminated under the provisions of Rule 5(1) of CCS (Temporary Services) Rules, 1965. Learned counsel for the applicants argued that even if it is assumed for the sake of arguments that the applicants continued to be temporary Government servants on the date of passing of order of termination, still the termination order is bad in law, since the same is passed in violation of principles of natural justice. Learned counsel for the applicants has placed reliance on the following decisions in support of his contentions.

(a) Nepal Singh Vs. State of U.P. & Others AIR 1985 SC 84;
wherein it was held by Hon'ble Apex court that -

"Where the services of a government servant on temporary appointment are terminated on the ground that his reputation for corruption makes him unsuitable for retention in the service, the reputation for corrupt behaviour must be based on something more than a mere allegation."

(b) **Basudeo Tiwary Vs. Sido Kanhu University & Others AIR 1998 SC 3261**; wherein Hon'ble Apex Court held -

"If notice is not given to him then it is like playing Hamlet without the Prince of Denmark, that is, if the employee concerned whose rights are affected, is not given notice of such a proceeding and a conclusion is drawn in his absence, such a conclusion would not be just, fair or reasonable. Thus in the provision there is an implied requirement of hearing for the purpose of arriving at a conclusion that an appointment had been made contrary to the Act, Statute, Rule or Regulation etc. and it is only on such an conclusion being drawn, the services of the person could be terminated without further notice. In the instant case notice has not been given to the appellant before holding that his appointment is irregular or unauthorised and ordering termination of his service. Hence the impugned order terminating the services of the appellant would be liable to set aside."

(c) **Jarnail Singh & Others Vs. State of Punjab & Others (1986) 3 SCC 277**. In this case Hon'ble Apex Court held -

"court can go behind an ex facie innocuous order of termination to find real basis of termination. Termination orders apparently made in accordance with terms of ad hoc appointments on ground that posts no longer required. But allegations of misconduct and adverse entries in fact forming the basis for departmental Selection Committee for considering the employees as unfit for regularisation resulting in their termination - Held, termination orders punitive and violative of Article 311 (2) of Constitution of India.

(d) **Dipti Praakash Banajerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & Others**

(1999) 3 SCC 60 wherein Hon'ble Apex Court observed -

"Service Law - Termination of service - Punitive or simpliciter - allegations against a probationer, whether 'foundation' or 'motive' for his termination - Criterion for differentiating between 'foundation' and 'motive' indicated - allegations against appellant, held, were the foundation and not mere motive for his termination - No enquiry conducted and therefore termination held bad."

14. Learned counsel for the respondents argued that the names of applicants were not forwarded by Employment Exchange and the applicants fraudulently managed to get their names forwarded by RAC, Nagpur, which was not authorised agency to sponsor names of candidates, which has caused prejudice to the legitimate right of candidates, who got their names registered with Employment Exchange before applicants. Moreover, it is simplicitor termination of service without any stigma.

Learned counsel has placed reliance on the following decisions:-

(a) **L.V. Garchar Vs. Union of India & Others 2005 (2)**

(CAT) AISLJ 154. In this case it has been held by CAT Ahmedabad Bench -

"One who uses fraud, forgery, crime or illegal letter to get job, is not entitled to protection of Article 311."

(b) **S.R. Shevale Vs. Union of India & Others 1999 (2)**

(CAT) AISLJ 410 CAT, Bombay Bench, it was held herein -

"Service obtained by fraud can be terminated without enquiry."

(c) Bank of India & another Vs. Avinash d. Mandivikar & Others 2006 (1) AISLJ 47. In this case, Hon'ble Apex Court held -

"When the foundation of consideration for giving a job is invalid the job cannot be allowed to continue."

(d) Union of India & Others Vs. M. Bhaskaran AIR 1996 SC 686. It was held in this case -

"Employment snatched by workman on basis of bogus and forged casual labour service cards - Liable to be recalled and was voidable at option of employer."

(e) Pramod Lahudas Meshram Vs. State of Maharashtra & Others 1997 (1) AISLJ 118. In this case it was held by Hon'ble Supreme Court that "appointees on unauthorised letters can be terminated without any notice."

(f) R. Viswanatha Pillai Vs. State of Kerala & Others 2004 SCC (L&S) 350; wherein Hon'ble Apex Court held that "A person illegally appointed, is not a person holding a civil post."

15. Learned counsel further argued that CBI conducted inquiry in the matter and revealed serious misconduct and recommended action against concerned officers including the applicants herein. Learned counsel has also drawn our

attention to the affidavit dated 04.8.2006 sworn in by Shri P.K. Choudhury. In para 3 of the said affidavit, it has been stated "that at the material time the Head of Office at Hyderabad was Brigadier V.S. Jagannath and the Superintendent Surveyor was Major C. Chatterjee both of whom were recommended charge sheeting by the CBI as is evident from Exhibit R30 and R31. The contents of Exhibits R24 to R28 are a continuous story of narration of fraud committed by the applicants and also illegal gratification resorted to by them in order to secure employment illegally. Major C. Chatterjee, who was recommended charge sheet by CBI had countersigned the entry in Service Book showing the applicants as "substantive". A perusal of letter dated 23.11.1996 indicates that there were recommendations for regular departmental action for major penalty against Brig V.S. Jagannath, Director, Major C. Chatterjee, Superintending Surveyor and Shri Damodhar Ramrao Bokde, Storekeeper. Also regular departmental action for minor penalty was recommended against four other persons. In para 4 of the letter, an action for removal from service in respect of applicants herein and two others was also recommended.

16. As we have stated earlier, the applicants were temporary servants and their services were terminated by

simplicitor order under sub rule (1) of Rule 5 of CCS (Temporary Services) Rules, 1965 and no stigma is attached to the applicants. As per rules, respondents are not required to give any reason while terminating the services of employee, who is in temporary service. CBI inquiry revealed serious misconduct on the part of the concerned officers and also recommended for major penalty action against the concerned officers who were involved in the recruitment process. Therefore, it cannot be said that the action of the respondents is arbitrary or malafide in terminating the services of the applicants. In case of State of U.P. & Others Vs. Rajendra Kumar Singh & another 1998 SCC (L&S) 1536 it was held by Hon'ble Apex Court that the authority if receives complaint and if on consideration of adverse service record, a decision to terminate the temporary service of the employee was taken and the order passed without attaching any stigma, such order is not illegal, merely because of being passed without holding departmental inquiry. In the case of the applicants, the order has been passed under Rule 5 (1) of CCS (Temporary Services) Rules, 1965. Since it is a case of simplicitor termination as it will not carry any stigma on the termination of applicants and will will not affect the career of the applicants in any way. In the present case,

we also notice that the action has been taken having regard to CBI inquiry, which discloses a serious misconduct and mal-practice adopted by concerned officers involved in the process of appointment of the applicants and other candidates. This involvement of the applicants cannot be ruled out. The Hon'ble Apex court in case of Bhaurao Dagdu Paralkar Vs. State of Maharashtra & Others JT 2005 (7) SC 530 dealt with the effect of fraud. It was held in the said judgment -

"14. ... Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false.

15. This aspect of the matter has been considered by this Court in Roshan Deen v. Preeti Lal, (2002 (1) SCC 100) Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education, 2003 (8) SCC 311, Ram Chandra Singh's case (supra) and Ashok Leyland Ltd. v. State of T.N. And Another 2004 (3) SCC 1.

16. Supression of a material document would also amount to a fraud on the court. (see Gowrishankar v. Joshi Amba Shankar Family Trust (1996 (3) SCC 310) and S.P. Chengalvaraya Naidu's case (supra).

17. "Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is no fraud but it can be evidence on fraud; as observed in Ram Preeti Yadav case (supra).

(A.S.E)

18. In Lazarus Estate Ltd v. Beasley, (1956) 1 QB 702, Lord Denning observed at pages 712 and 713, "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything." In the same judgment Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree solemnity. (page 722)

19. These aspects were recently highlighted in the State of Andhra Pradesh and Anr. v. T. Suryachandra Rao, 2005 (5) SCALE 621."

17. In the facts and circumstances of the present case, we are of the considered view that there is no infirmity in the order passed by the respondents.

18. These OAs have no merit, same are dismissed without any order as to costs.

(MUZAFFAR HUSAIN)
MEMBER (J)

(A.K. AGARWAL)
VICE CHAIRMAN

Gajan