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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 325/99 199
T.A. No.

DATE OF DECISION 16/2/2000


Rup Singh Petitioner
Mr.K.L.Thawani Advocate for the Petitioner (s)
Versus
U O I & Ors. Respondent
Mr.K.N.Shrimal Advocate for the Respondent (s)


CORAM :

The Hon'ble Mr. S.K.Agarwal, Judicial Member

The Hon'ble Mr. N.P.Nawani, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(N.P.Nawani)
Member (A)


(S.K.Agarwal)
Member (J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.325/99

Date of order: 16/2/2000

Rup Singh, S/c Barain Singh, R/c Village Kamalpura, Distt.Pharatpur, working as EDEPM, Kamalpura.

...Applicant.

vs.

- 1. Union of India through Secretary to the Govt. of India, Deptt. of Posts, Mini.of Communication, New Delhi.
- 2. Director Postal Services Jaipur Region, Jaipur.
- 3. Supdt.of Post Offices, Bharatpur Division, Bharatpur.

...Respondents.

Mr.K.L.Thawani - Counsel for the applicant

Mr.K.N.Shrimel - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

This Original Application has been filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash the order issued at Annx.A1 being illegal, capricious and in violation of Articles 14 and 16 of the Constitution of India and to direct the respondents not to terminate the services of the applicant.

2. In brief, facts of the case as stated by the applicant are that he was appointed on the post of EDEPM, Kamalpura after following regular process of selection but respondent No.3 has issued a show cause notice, Annx.A1, for terminating the services of the applicant. It is stated that the show cause notice was issued after 1½ years of regular appointment of the applicant with ulterior motive, therefore, the same is bad in law, illegal, capricious and in violation of Articles 14, 21 and 311 of the Constitution of India. It is also stated that no opportunity was given to the applicant before issuing the show cause notice for termination of his services whereas he was selected after following the regular process of selection and his services cannot be terminated in this way. Therefore, the applicant filed this O.A for the relief as mentioned above.

3. Reply was filed. In the reply, it is stated that the applicant himself admitted the impugned order as show cause notice and it is not a final order, therefore, this O.A is not maintainable as no final order was issued. It is stated that the applicant has not exhausted the remedies available to him before approaching this Tribunal, therefore, this O.A is not maintainable. It is also stated that the applicant has made fraudulent/

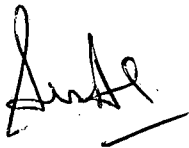
misrepresentation regarding the pendency of the criminal proceedings against him, therefore, according to the terms and conditions mentioned in the order of appointment, the services of the applicant were liable to be terminated without any prior notice/opportunity of hearing and the principles of natural justice are not applicable in the instant case. It is also stated that the services of the applicant could be terminated under Rule 6(a) of F.D Agents (Conduct & Service) Rules, 1964 and the criminal case under Sec.147, 323, 324 and 325 of IPC was pending against the applicant before the Court of Magistrate, therefore, furnishing false information and obtaining appointment on such fraudulent representation is a basis for issuance of show cause notice to the applicant and the applicant has no case for interference by this Tribunal. Therefore, this O.A is devoid of any merit and liable to be dismissed.

4. Rejoinder has been filed, reiterating the facts as stated in the O.A. It is also stated in the rejoinder that the attestation form was not filled-up by the applicant himself but was filled-up by the Sub Divisional Inspector (Postal) Nachai and the applicant only signed the attestation form, therefore, the applicant has not made any declaration regarding the pendency of the criminal case.

5. Heard the learned counsel for the parties and also perused the whole record.

6. The learned counsel for the applicant has argued that the ground on which the show cause notice was given to the applicant casts stigma, therefore, the show cause notice issued to the applicant is illegal and he is entitled to the protection of Article 311 of the Constitution. In support of his contention, he has referred to 1989(11)ATC 485, S.Murugan Vs. Sr.Personnel Officer Southern Rly, Madras & Anr. and 1996(2) SLJ, 341 Laxman Saashiv Deshmone Vs. UOI & Anr..

7. On the other hand, the learned counsel for the respondents has argued that the applicant made fraudulent representation to the effect that no criminal proceedings are pending against him which on verification found that a criminal case was pending before the Court against the applicant for the offences under Sec.147, 323, 324 and 325 IPC, therefore, the show cause notice was correctly issued to the applicant for terminating his services and the applicant is not entitled to any protection under Article 311 of the Constitution of India. In support of his contention, he has referred to Nirbhay Singh Vs. State of Rajasthan & Ors, 1999 WLC (Raj) U.C, 20 and Delhi Administration & Ors Vs. Sushil Kumar, (1996) 11 SCC 605.



(11)

8. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record and judgments.

9. Law on this subject has come for consideration before Hon'ble Supreme Court, High Courts and Tribunals from time to time and the ratio laid down by Hon'ble Supreme Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances, the Court should not perpetuate the fraud by entertaining into petitions on their behalf.

10. In UOI Vs. M.Bhaskaran, 1995 (Suppl) 4 SCC 100, the Apex Court has observed as under:

If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a Court of Law as the employment secured by fraud renders it voidable at the option of the employer.

11. In District Collector & Chairman, USW School Society Vs. M.Thirupura Sankari Devi, 1990(3) SCC 655, it was held that employment obtained by misrepresentation cannot be permitted to be continued.

12. In Delhi Administration & Ors Vs. Sushil Kumar, (1996) 11 SCC 605, the Hon'ble Supreme Court held that verification of character antecedents is one of the important criteria to test whether the selected candidates is suitable to a post under the State. It was further held that although the applicant was discharged/acquitted of the criminal proceedings but the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences.

13. In Ratan Lal Vs. UOI & Ors, 1998(2) WLC (Raj) 608, the Rajasthan High Court has held that employment obtained by fraud or misrepresentation, if cancelled by the employer, should not be interfered by the Court while exercising its writ jurisdiction.

14. In (1998) 9 SCC 225, Supdt. of Post Offices & Ors Vs. Kunhiraman Nair Muliya, it was held that termination of the services of the employee on administrative ground is an order of termination simpliciter and it does not cast stigma, therefore principles of natural justice are not attracted in such cases.

15. In D.B.Civil Special Appeal No.1219/97, considered the law on the subject and held that appointment obtained on misrepresentation can be cancelled and no protection Article 311 of the Constitution is available in such cases.

(12)

16. Admittedly, the applicant was appointed on regular basis as EDEPM vide order of appointment dated 8.6.98 and before issuing this order of appointment, the applicant was required to fill-up the attestation form. In this Attestation form column No.12 was filled in by the applicant as under:

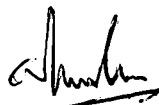
"12. Have you ever been prosecuted, kept under detention or bound down/fined/convicted by a court of law of any offence or debarred or disqualified by any public service commission from appearing at its examination/selection ... No"

17. In the order of appointment it was clearly mentioned that

"he should also clearly understand that on receiving adverse remark of Police report, he will be removed from service at once. In case these conditions are acceptable to him, he should communicate his acceptance in the attached proforma."

18. It is an admitted fact that on verification it was revealed from the letter dated 10.7.98 (Annx.R4) issued by the Collector and Distt.Magistrate, Bharatpur that Case No.363/97 under Sec.147, 323, 324 and 325 IPC was registered at Police Station Kumher against the applicant others and charge sheet was filed before the Court of AMJM, Bharatpur on 26.9.97. The learned counsel for the applicant submitted that Attestation form was not filled-up by the applicant but by the Inspector Post Offices, Nadbai but admitted the signatures of the applicant on the attestation form and declaration. By signing on an important document there is a presumption that the person who signed the document after declaration he has read the contents/information as given. Therefore, the applicant is not allowed to plead the fact that he has not filled-up the attestation form. The applicant has also failed to mention the name of the person concerned who has filled-up the attestation form. No affidavit of the person concerned was produced before the Tribunal which could mention the fact that the contents mentioned in the attestation form were not read or explained to the applicant and he signed without reading the contents.

19. In view of the peculiar facts and circumstances of this case and legal proposition as discussed above, we do not find no reason to quash the impugned show cause notice at Annx.A1. Therefore, this O.A is dismissed having no merit with no order as to costs.



(N.P. Newari)
Member (A).



(S.K. Agarwal)
Member (J).