

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 03.07.2003

OA No.251/2003

Kedar Mal Jat s/o Shri Ramray Jat r/o village Abhayapura,
post Parana, Tehsil Niwai, Distt. Tonk.

.. Applicant

Versus

1. Union of India through the Secretary, Defence Ministry, Secretariat, New Delhi.
2. Director General, Border Roads Organisation, Gen. Resrve. Engg. Force, Govt. of India, Seema Sadak Bhawan, Ring Road, Naryana, New Delhi.

.. Respondents

Mr. Rajendra Vaish, counsel for the applicant

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

O R D E R (ORAL)

Per Hon'ble Mr. M.L.Chauhan

The applicant is aggrieved of the order dated 29.1.03 (Ann.A4) whereby his services have been terminated with immediate effect and has filed this OA thereby praying for the following reliefs:-

- "i) That the illegal and punitive termination order dated 29.1.2003 (Annex.A/4) may be declared illegal and null and void and be quashed and set aside and the applicant may be continued in service with all consequential benefits;
- ii) That any other beneficial orders or directions which this Hon'ble Tribunal deems just and proper in the facts and circumstances of the case be kindly passed in favour of the applicant.
- iii) Costs be quantified in favour of the applicant."

2. Pursuant to the advertisement No.1/2001 for recruitment to the post of Driver, last date of submission of application of which was 29.7.01, the applicant submitted an application for the post of Driver and consequently he was appointed in August, 2001. It may be stated here that the applicant has not placed the order of appointment on record. Subsequently, the services of the applicant were terminated vide the impugned order dated 29th January, 2003 (Ann.A4) with immediate effect. As can be seen from the representation/appeal submitted by the applicant to the Director General, Border Roads Organisation, New Delhi (Ann.A5), the services of the applicant were terminated as he did not disclose the conviction regarding his involvement in a criminal case. In order to appreciate the controversy in question, Para 2 of the said representation/appeal is hereby reproduced:-

"Sir, I was appointed in GRPF as MT Dvr. with no. GS 184153F on 28th Feb. 2002 and posted to 534 SS and TC (GREF) 752 BRTF (P) Uddayak. At the time of my application for recruitment a Police Case was registered against my father and uncles in the village and since I was also present on the site, my name was also included as accused in the FIR but I was never arrested by the police. Even after my name was included in the case I was never summoned in the Court and I never attended the Court. Due to this reason, I was not aware that I am involved in a case and as such I did not disclose this fact in the application form. The above case was decided on 20th Jan. 2001 and all the accuseds including me were discharged on probation for 2 years by the court and no punishment was awarded to any one of the accuseds."

2.1 The main grounds taken by the applicant in this application are that his services have been terminated

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without assigning any reason and no opportunity of hearing has been given to the applicant and as such the order of termination is in violation of the principles of natural justice and is void ab initio. The order has been passed by the authority subordinate to the appointing authority and provisions of Article 311 of the Constitution of India has not been complied with.

3. I have heard the learned counsel for the applicant at the admission stage and gone through the material placed on record.

3.1 As can be seen from the pleadings made in this case, the applicant was appointed as Driver by the respondents in August, 2001 and his services were terminated with immediate effect vide order dated 29.1.03 within the probation period. Further, as can be seen from the portion as quoted above, the applicant was convicted by the Trial Court vide order dated 20th January, 2001 alongwith other co-accused and they were released on probation. Thus, when the applicant applied for the post of Driver, the fact remains that the applicant was convicted and he was undergoing probationary period of 2 years, which was not over by that time. It can also be seen from the portion quoted above that the applicant did not disclose this fact in the application form. The explanation given by the applicant that he was never arrested by the police nor summoned by the Court for conviction, cannot be accepted. The applicant on his own saying was aware that his name figures in the FIR and as such was accused in a case. It cannot be accepted that the applicant was not aware of the court proceedings and he was not summoned by the court and the order of the

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conviction was passed by the trial court in his absence. This is an after thought which cannot be accepted. The fact remains that the applicant suppressed the material fact while securing appointment to the post of Driver by fraudulent means. If once such fraud is detected, the appointment order itself which was found to be tainted and vitiated by fraud and cheating on the part of the employee, was liable to be recalled and was atleast voidable at the option of the employer concerned. This was the view taken by the Hon'ble Apex Court in the case of Union of India vs. M.Bhaskaran, 1995 Supp (4) SCC 100, where the respondents therein produced bogus and forged casual labour service cards and obtained employment in railway service.

3.2 Similarly, in the case of Jammu and Kashmir Public Service Commission vs. Farhat Rasool and Ors., 1996 (1) ATJ 280, the Hon'ble Apex Court has held that wherein employment was obtained by playing fraud by the respondent by giving wrong information as to his eligibility, benefit of which fraud cannot be allowed to the respondent and the appeal of the appellant was allowed.

3.3 At this stage it will also be useful to note another decision of the Punjab and Haryana High Court in the case of Naveen Kumar Vs. State of Punjab and Ors., 2002 (3) ATJ 550, whereby the petitioner who was less than 18 years of age at the time of appointment was terminated from service even without following the principles of natural justice. The High Court held that the very appointment of public servant is void, ab initio, in such a situation the principle of natural justice are not required to be fulfilled. In this way, the petitioner virtually becomes a usurper and order of termination was

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upheld. Applying the ratio of the law laid down by the Hon'ble Apex Court as well as by the Hon'ble Punjab and Haryana High Court, I am of the view that there is no infirmity in cancelling the appointment of the applicant vide order Ann.A4 dated 29.1.2003. Fact remains that the applicant was convicted by the competent court. His conviction has not been set-aside when he applied for the post. He was incurring this disability and the period of probation of 2 years was not over as the conduct of the applicant was under examination. In such a situation it was incumbent upon the applicant to disclose this fact in his application. The applicant admittedly has not disclosed this fact and by suppressing this fact has fraudulently obtained appointment. Thus, no infirmity can be found in the order of termination Ann.A4 where the services of the applicant were terminated during the period of probation.

3.4 The contention of the applicant that his services have been terminated in violation of Article 311 and the principles of natural justice have not been adhered to, cannot be accepted. The applicant being on probation having no right to the post and the order of termination being discharge simplicitor and no stigma attaches to the applicant, Article 311 is not attracted in this case. Further, in view of the ratio as laid down by the Hon'ble Apex Court whereby it has been held that where the appointment has been obtained by applying fraud, the order of appointment can be recalled and is voidable at the option of the employer concerned. Merely because the employee had continued in service for few years on the basis of such fraudulently obtained appointment order, cannot create any equity in his favour especially against the employment.

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3.5 Further contention of the applicant that the order of termination has been passed by the authority subordinate to the appointing authority, is not supported by any contemporaneous record and the applicant has not annexed a copy of the appointment order alongwith this OA. Perusal of the impugned order Ann.A4 makes it clear that the termination order has been passed by the authority in exercise of powers conferred to him under rule relating to appointment and discharge of temporary government servants. Thus, this contention of the learned counsel for the applicant is also without any substance.

4. In view of what has been stated above, this OA is dismissed at the admission stage with no order as to costs.



(M.L.CHAUHAN)

Member (Judicial)