

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH
JABALPUR

Original Application No. 485 of 2005

Jabalpur, this the 14th day of September, 2006

Hon'ble Dr. G.C. Srivastava, Vice Chairman
Hon'ble Shri A.K. Gaur, Judicial Member

Daman Kumar Mishra,
S/o. Shri Yadvansh Mishra,
Aged 31 years,
C/o. Shri Vijay Singh,
9-B, House No. 247,
Saket Nagar,
Bhopal (MP).

.....

Applicant

(By Advocate – Smt. S. Menon)

VERSUS

1. Government of India,
Through : the Secretary,
Department of Archeological Survey of India,
New Delhi.
2. Director General,
Government of India,
Archeological Survey of India,
Janpad, New Delhi.
3. Superintending Archeologist,
Government of India,
Archeological Survey of India,
Bhopal Circle,
GTB Complex, T.T. Nagar,
Bhopal (MP).

.....

Respondents

(By Advocate – Shri K.N. Pethia)

ORDER

By A.K. Gaur, Judicial Member –

By means of this Original Application the applicant has sought the following main relief:

w

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
CIRCUIT COURT SITTING AT INDOREDate 19th day of August, 2005 at Indore

Smt.S.Menon, learned counsel for applicant.

Shri K.N.Pethia, learned counsel for respondents.

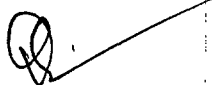
Order on interim relief

Heard learned counsel for the applicant. It is argued on behalf of the applicant the impugned order dated 28th October 2004 Annexure A7 is apparently illegal and cannot be sustained in the eyes of law. The mandatory procedure was not followed by the respondents in conducting the departmental proceedings according to rules and the impugned order passed by the authorities concerned is also not in accordance with law. The applicant is facing grave financial crisis and mental hardship. Hence the respondents be directed either to reinstate the applicant or to pay subsistence allowance for his survival in the interest of justice.

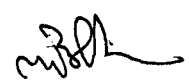
2. Respondents have filed a short reply.

3. We have perused the impugned order dated 28.10.2004 whereby the appointment of the applicant is ordered to be terminated with effect from 1st Nov. 2004 under Rule 5 (1)(a) of the CCS (Temporary Services) Rules. The applicant is now seeking an interim relief of either reinstatement or subsistence allowance. At this stage, when the services of the applicant are ordered to be terminated by the respondents no such relief can be legally given to the applicant. If he is ordered to be reinstated in service, it means that the applicant is granted the final relief.

4. After hearing both parties, we find that the interim relief prayed for by the applicant cannot be allowed. Hence it is disallowed. List the matter before the Deputy Registrar for completion of the pleadings.



(Madan Mohan)
Judicial Member



(M.P. Singh)
Vice Chairman

7-10-05

(II) to set aside the impugned order of termination dated 28.10.2004 (Annexure A-7) as also,

(II-a) to set aside the order dated 18.8.2005, passed by Director (Admin)/Annexure A-10 and hold it as mala fide and without due application of mind,

(III) to direct respondents to reinstate the applicant with all consequential service benefits including back wages,

(IV) to grant consequential relief as also arrears of salary to the applicant."

2. The applicant is aggrieved by the order dated 28.10.2004 by which his services have been terminated (Annexure A-7). The main contention of the learned counsel for the applicant is that before issuing the order dated 28.10.2004 principle of natural justice were kept at bay and no opportunity of hearing whatsoever have been granted to him.

3. In order to resolve the question in controversy the following facts are necessary to be mentioned:

3.1 The applicant was initially appointed as Monument Attendant in the scale of Rs. 2550-3200/- in the officiating capacity on the recommendations of the departmental selection committee vide office memorandum dated 23.3.1999 (Annexure A-1). Vide the order dated 29.4.1999 issued in favour of the applicant he was informed that he was selected and appointed as Monument Attendant and posted at Bija Mandal, Vidisha. In the order of appointment it was clearly mentioned that the applicant would be on probation for a period of two years (Annexure A-2). In pursuance of the order of the appointment the applicant joined the services on 30.4.1999. On 23.8.1999 the applicant was transferred on public interest from Vidisha to Ujjain Up Mandal (Annexure A-3). By office order dated 11.11.1999 (Annexure A-4) he was further transferred from Ujjain Up Mandal to Satdhara on his own request. On the day when his services were terminated he was functioning at Gyaspur, Vidisha Sub Division, as Monument

H

Attendant. According to the applicant he has been discharging his duties satisfactorily as Monument Attendant and at no point of time he has been warned, in so far as his duties are concerned and he carries unblemished service record with no adverse communication. The respondent No. 3 issued an office order dated 28.10.2004 whereby the services of the applicant have been terminated and observation has been made by the respondents to the effect that procedure for appointment on the post of Monument Attendant effected was illegal, in as much as, the names sponsored by the employment exchange revealed that the employment exchange, Sagar had never sponsored the names of the candidates including the applicant. It has further been reflected from the said office order that an enquiry was conducted behind the back of the applicant and on the basis of the report submitted, the impugned order dated 28.10.2004 has been passed. Hence, this Original Application has been filed.

3.2 The main ground of passing the termination order is that list signed by the employment officer has been found to be forged and fabricated and the name of the applicant with the alleged registration number 10 is also not registered with the employment exchange, Sagar. It has also been alleged by the applicant that the respondent No. 3 on receipt of the aforesaid letter conducted enquiry by the Deputy Director Accounts, Archeological Survey of India, New Delhi who submitted his report on 11.10.2004. On the basis of the said report impugned action was advised and respondent No. 3 unilaterally came to the conclusion that the appointment of the applicant is illegal ab initio void and against rules and procedure. It is also alleged on behalf of the applicant that the answering respondents taking rescue of the conditions stipulated in the appointment order and holding it to be as wholly temporary and in officiating capacity terminated the services of the applicant under the garb of Rule 5(1)(a) of Central Civil Services (Temporary Service) Rules, 1965 by paying advance notice pay. Aggrieved with the order of termination the applicant

preferred an appeal to the Director General. In this statutory appeal it has been clearly mentioned by the applicant that he had joined on 30.4.1999 and has completed the probation period on 29.4.2000. As a probationer there was no adverse report against him and therefore in the eye of law he was deemed to be a quasi permanent government servant. No opportunity of hearing have been granted to him before passing the impugned notice and the same was passed in utter violation of principles of natural justice and fair play. According to the applicant the order of termination is punitive and is not a case of termination simplicitor. The applicant has also stated in the Original Application that the appointment was effected after the departmental selection committee recommended his name and therefore in appointing the applicant there was no fault on his part, and his services could not have been terminated in the manner in which it has been done. It is also submitted on behalf of the applicant that during the pendency of the instant case the respondent No. 2 has decided the appeal of the applicant and rejected the same vide order dated 18.8.2005, whereby affirming the order passed by the disciplinary authority. Photo copies of the said order along with covering letter dated 31.8.2005 have been filed as Annexure A-9 and Annexure A-10 respectively. The respondents have violated the ratio of law rendered by the Hon'ble Supreme Court reported in 1999 (3) SCC 60. The Hon'ble Supreme Court has clearly spelt out that where the foundation for discharge is production of fake list of persons from employment exchange for recruitment and if that is accepted, then it would cause a stigma on the incumbent concerned for future recruitment, in as much as, it has alleged that the said incumbent has produced fictitious record to secure employment. Principles of natural justice requires that they should be given reasonable opportunity of representation in the enquiry to be conducted and appropriate orders with reasons in support thereof needs to be passed. According to the applicant the said procedure has not been followed in his case and

therefore the order of termination as well as the appellate order are liable to be quashed and set aside.

4. By filing detailed counter reply the respondents have pleaded that the applicant in collusion with certain persons managed to get his name sponsored for employment from employment exchange, Sagar and on the basis and strength of forged and fabricated documents he got the employment in the respondent department as Monument Attendant. It has been submitted on behalf of the respondents that for appointment on the post of Monument Attendant the names are to be sponsored by the employment exchange on the request of the department. But in the present case the name of the applicant had never been sponsored by the employment exchange. The applicant got a letter from the employment exchange addressed to the department for his interview on the post of Monument Attendant and on perusal of the record it was found that the employment exchange had never sponsored the name of the applicant as shown in the alleged list said to have been sent by the employment exchange to the department. In enquiry from the employment exchange, Sagar it has come to the notice of the respondents that the employment exchange had never sponsored the name of the applicant on the post of Monument Attendant. More so, the said list does not contain the original signature of the employment exchange officer and it bears a forged signature and the dispatch number and the names of the candidates. It has clearly been mentioned on behalf of the respondents that the applicant through assistance and indulgence of some racket involved in making forged and fabricated documents and by illegal way got the employment. Respondents have also stated that the applicant got his appointment against the rules and on the basis of forged and fabricated documents and thereby committed fraud with the department and therefore he does not deserve any judicial protection. Moreover the applicant has been appointed in a temporary and officiating capacity, his services have been terminated under Central Civil Service (Temporary Service) Rules, 1965 by paying advance notice pay. The respondents have placed reliance on the decision of the Hon'ble Supreme Court

rendered in the case of Notified Area Vs. Vishnu C. Bhoi & Ors., reported in 2001 (10) SCC 636, wherein the Hon'ble Supreme Court has held that principles of natural justice are not at all required to be followed and no relief can be granted to a person who has obtained appointment by committing fraud. The applicant has obtained the order of appointment by committing fraud. After receiving the letter from the employment exchange, Sagar the matter was reported to the Archeological Survey of India for carrying out a detailed enquiry in the matter at high level. Thereafter the Deputy Director, Accounts Archeological Survey of India, New Delhi made enquiry and submitted his report and on the basis of the said report the Assistant Superintendent of Archeological Survey of India had directed his office to take immediate action and therefore the order dated 28.10.2004 came to be passed. The respondents have also stated in their reply that since the appointment of the applicant was illegal and was obtained by way of committing fraud with the department by making forged and fabricated list of the employment exchange, Sagar the services of the applicant have been terminated and in these circumstances the principle of natural justice are not at all required to be followed. Since the initial appointment of the applicant was void ab initio, no opportunity of hearing is required to be granted and in such situation following the principles of natural justice would be an empty formality. The services of the applicant has been terminated in accordance with rules.

5. The respondents have filed additional return along with certain documents in support of their case. By means of additional return it has been stated on behalf of the respondents that in the instant case the then Superintendent Archeologist, Bhopal circle, Bhopal Dr. P.K. Mishra, has committed irregularities and given illegal appointments to many candidates on 28 Group-D posts and 2 Group-C posts. According to the respondents a complaint has been received from one Shri Satya Narayan Singh pointing out illegal appointment given to one Shri Shravan Kumar Mishra and the copy of the said complaint has been filed as Annexure R-2 to the additional return. The Superintendent Archeologist, Shri S.B.

Ota took cognizance of the said complaint and wrote letter to the employment officer, employment exchange, Sagar and also sent a copy of letter dated 7.4.1999 received in the office of Superintendent Archeologist, Bhopal along with a list of candidates to be interviewed. The copy of letter dated 30.7.2002 had been filed as Annexure R-3. The copy of letter dated 7.4.1999 received in the office of Superintendent Archeologist from the District Employment Officer, Sagar has been annexed as Annexure R-4 to the additional reply. The employment officer, District Sagar informed the Superintendent Archeologist that neither such letter has ever been sent from his office and nor such a list of 16 candidates along with the said letter was issued from his office. He also confirmed that the names appearing at serial Nos. 2, 3, 8, 10 and 11 are also not registered with the employment exchange, Sagar. The respondents have also stated that these documents could not be filed along with the return as CVC enquiry is pending against Dr. P.K. Mishra, the then Superintendent Archeologist for the grave financial and administrative irregularities committed by him. The entire matter has been reported by the then Superintendent Archeologist Shri Ota to the Director General, Archeologist Survey of India by his letter dated 2.7.2003. A perusal of this letter shows that the appointment made by Dr. P.K. Mishra were in utter violation of the rules and procedures that are required to be followed in respect of the said appointment. A copy of the letter dated 3.7.2003 has been filed as Annexure R-5 to the additional reply. Hence, the applicant is not entitled to any relief as claimed by him.

6. ~~Head~~ the learned senior counsel for the applicant Smt. S. Menon and Shri K.N. Pethia representing the respondents and also perused the pleadings and records.

7. The learned counsel for the applicant has cited certain decisions in support of the case; i) AIR 1997 SC 249 - Director General of

✓

Police & Ors. Vs. Mrityunjoy Sarkar, ii) 1999 (3) SCC 60 – Deepti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences, iii) 2002 (1) SCC 520 – Pavendra Narayan Verma Vs. Sanjay Gandhi Post Graduate Institute of Medical Sciences and Ors. iv) 2002 MPLJ (3) 112 – Mahendra Kumar Chaurasiya s. State of Madhya Pradesh & Ors. According to the senior counsel for the applicant, substance of the order of termination is vindictive, based on report culminating in finding of guilt, and if no enquiry held, despite the incumbent functioning as a probationer, the order of termination is bad. She also argued that in the present case the termination is founded on the allegations and when no enquiry has been conducted it is violation of principles of natural justice and fair play. She also submitted that in a case of invalid appointment, principles of natural justice are to be followed before terminating the services of the individual.

8. The learned counsel for the respondents on the other hand has placed reliance on the decisions reported in Vishnu C. Bhoi (supra) and in the case of Praveen Singh, 2000 (8) SCC 633. In both these cases the Hon'ble Supreme Court has clearly observed that if the appointment is made in an irregular and illegal manner the High Court cannot grant any relief to such appointee, in exercise of Article 226 of the Constitution of India. Since the applicant had been appointed without following the due procedure of selection provided under the rules, principle of natural justice are not required to be followed and it would be a mere formality. In the case of Praveen Singh Vs. State of Punjab (supra), the petitioner was appointed without following the procedure of selection provided under the rules. The Hon'ble Supreme Court has clearly observed that arbitrariness being opposed to reasonableness is an antithesis of law. It has been emphasized that there should be fair play in action and that is the requirement of Articles 14 and 16 of the Constitution of India. The manner in which the applicant has been appointed is in violation of Constitution of

India. In view of several decisions rendered by the Hon'ble Supreme Court such appointment does not deserve judicial protection. The appointment of the applicant is also not proper and hence he is not entitled to any relief on the basis of such appointment. The services of the applicant has been terminated on the ground that in the appointment order it is provided that his services can be terminated at any point of time without assigning any reason.

9. The Division Bench of the Hon'ble Allahabad High Court in the case of Kuldeep Singh Vs. Principal Secretary – 2004(1) U.P. Local Bodies and Educational Cases 173 has clearly observed that if initial appointment is irregular and illegal no opportunity of hearing is required to be given to the applicant. Further the Hon'ble Supreme Court in the case of 2006 (5) Scale 169 – Navdeep Vs. State of Punjab, has held that in the case of tampering with the mark sheet for the purpose of taking advantage for selection and appointment in government job, the applicant is liable to be terminated without holding any enquiry.

9.1 The Hon'ble Supreme Court in its decision rendered in 2005 SCC (L&S) 1011 – Bank of India & Anr. Vs. Avinash D. Mandivikar & Ors., very specifically held that if the very foundation of the appointment collapses, the appointment of the petitioner is no appointment in the eye of law. There is absolutely no justification for his claim in respect of the post he usurped, as the same was meant for a reserved candidate. The Hon'ble Supreme Court has also observed that "the rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary

benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate". "No sympathy and equitable consideration can come to his rescue". The Hon'ble Judges of the Supreme Court were firmly of the view that "equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practicing fraud". The Hon'ble Supreme Court has also relied upon the decision rendered in 2001 SCC (L&S) 117.

9.2 The principles of natural justice are not rigid or immutable and hence, they cannot be imprisoned in a straitjacket. They must yield to and change with exigencies of situations. They must be confined within their limits and cannot be allowed to run wild. While interpreting legal provisions, a court of law cannot be unmindful of the hard realities of life. The approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than "precedential". In certain circumstances, application of the principles of natural justice can be modified and even excluded. It is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct in the taking of prompt action, such a right can be excluded. It can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion. The maxim audi alteram partem cannot be invoked if import of such maxim would have the effect of paralyzing the administrative process or where the need for promptitude or the urgency so demands.


9.3 In 2006 SCC (L&S) 513 – Anjan Kumar Vs. Union of India & Ors., the Hon'ble Supreme Court after considering series of decisions observed as follows:

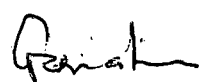
"14.....

A person not belonging to the Scheduled Castes or Scheduled Tribes claiming himself to be a member of such caste by procuring a bogus caste certificate is a fraud under the Constitution of India. The impact of procuring fake/bogus caste certificate and obtaining appointment/admission from the reserved quota will have far reaching grave consequences. A meritorious reserved candidate may be deprived of reserved category for whom the post is reserved. The reserved post will go into the hands of non-deserving candidate and in such cases it would be violative of the mandate of Articles 14 and 21 of the Constitution."

10. In view of our aforesaid discussion, we are of the considered view that the argument advanced by Mrs. Menon, learned senior advocate appearing for the applicant is based on wholly distinguishable facts and are not at all applicable to the present case. In the present case the applicant has been appointed on the basis of forged document and the Hon'ble Supreme Court has clearly held that in a case of appointment obtained on the basis of forged documents principle of natural justice are not to be strictly adhered to. In the present case the applicant has been appointed on the basis of forged document. His name was not even sponsored by the employment exchange, Sagar. He came from back door entry and equity is also not in favour of such a person. In the present case fair play in action is totally lacking and which is the basic requirement of Articles 14 and 16 of the Constitution of India. Moreover, since the applicant has been appointed against temporary and officiating post, he has rightly been terminated under CCS (Temporary Service) Rules, 1965 by paying advance notice pay.

11. In our considered view the appointment of the applicant is clearly in violation of Articles 14 and 16 of the Constitution of India and in view of the aforesaid discussion the Original Application deserves to be dismissed as having no merits. The O.A. is accordingly, dismissed. No costs.


(A.K. Gaur)
Judicial Member


(Dr. G.C. Srivastava)
Vice Chairman

"SA"