

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(Circuit Bench at Nainital)

This is the 24th day of October 2018.

ORIGINAL APPLICATION NO. 151 of 2012

HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. MOHD. JAMSHED, MEMBER (A)

Shailesh Kumar Pandey aged about 37 years S/o Shri Brahma Sahay
Pandey R/o V-Gohania Pure Bhulawan P-Hari Pur Jalalabad District
Faizabad. Currently residing at C/o Lt. Col. B.S. Rawat H. No. 14 Lane No.2,
Turner Road Claimant Town, Dehradun.

.....Applicant.

By Advocate: Shri Anil Kumar Singh/Shri Dharmesh Sinha

Shri D.M. Anand

VERSUS

1. Union of India, through the Principal Secretary to Prime Minister, PMO Office Raisina Hills New Delhi.
2. Chairman, National Technical Research Organization, Block-III Old JNU Campus, New Delhi 110067.
3. Director Establishment-1, National Technical Research Organization Block-III, Old JNU Campus, New Delhi-110067.
4. Director Establishment –II, National Technical Research Organization Block-III Old JNU Campus, New Delhi 110067.
5. Centre Director, Aviation Centre 9th Floor Chanakya Bhawan Chanakya Puri, New Delhi.

.....Respondents

By Advocate : Shri R.S. Bisht/Shri N.P Shukla/Shri Rajesh Sharma

ORDER

BY HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J)

1. Case of applicant Shailesh Kumar Pandey is that in pursuance to notification inviting recruitment to the post of Observer/Intelligence Interpreter, which is a Group 'A' post in the 'Unmanned Aerial Vehicle' i.e. UAV project in the Aviation Centre under the respondents, he applied for the post and after the screening and interview vide order dated 30.4.2008, applicant was appointed on the post of Observer/Intelligence Interpreter for probation period of 2 years, which was extended upto 1.5.2012 (Annexure A-5). It is the further case of

applicant that his services were terminated vide impugned order dated 20.1.2012 on the ground that his appointment was found to be irregular being ineligible for appointment to the post in terms of circular dated 21.6.2007 (Annexure A-1).

2. It is a case of applicant that the impugned order is illegal because no notice or show cause notice was given to the applicant before terminating his services. The Assistant Director Establishment-II. Applicant has further taken a plea that his services are governed by Central Civil Service (Temporary Service) Rules 1965 and since his services are deemed to be confirmed after 2 years of joining on 2.5.2008, applicant is governed by C.C.S (C.C.A) Rules.
3. Hence, the present O.A. seeking the following reliefs-
 - (i) The Hon'ble Tribunal may kindly be pleased to issue order or direction quashing/setting aside the impugned memorandum No. V(A)/19/18E-1/NTRO/2010/I-076 dated 20.01.2012 contained in Annexure A-1 to the instant O.A.
 - (ii) The Hon'ble Tribunal may kindly be pleased to issue order or direction commanding upon the respondents to allow the applicant to continue on the post of Observer/Intelligence Interpreter in consequence of quashing/setting aside of the impugned order.
 - (iii) The Hon'ble Tribunal may kindly be pleased to issue any other order or direction deemed to be just and proper in the circumstances of the case.
 - (iv) The Hon'ble Tribunal may kindly be pleased to direct the respondents to pay cost of the O.A".
4. Applicant Sailesh Kumar challenges the Order dated 20.02.2012 whereby his services have been terminated. The termination order reads as :-

No. V(A)/19/18/E-1/NTRO/2010/I-076
GOVERNMENT OF INDIA.
NATIONAL TECHNICAL RESEARCH ORGANIZATION
BLOCK III, OLD JNU CAMPUS
NEW DELHI 110067.

DATED 20TH January 2012.

Memorandum

Reference Memorandum No. A-1 12084/Estt-II/NTRO/2008-1341 dated 30th April 2008.

2. In terms of the *ibid.* Memorandum, Shri Sailesh Kumar Pandey was appointed as Observer/Intelligence Interpreter on probation in NTRO w.e.f. 02nd May 2008. The probation period of Shri Sailesh Kumar Pandey has been extended upto 01st May 2012 vide Memorandum No. V (B)/Misc. (Prob.)/12079/2007-11021 dated 18th October 2011.

3. The appointment of Shri Sailesh Kumar Pandey to the post of Observer/Intelligence Interpreter in Aviation Centre, NTRO has been found to be *ab-initio* irregular as he was not eligible for the above post in terms of circular dated 21st June 2007 issued for recruitment to the post of Observer/Intelligence Interpreter.

4. In view of the above, the services of Shri Sailesh Kumar Pandey as Observer/Intelligence Interpreter in Aviation Centre, NATRO are hereby terminated with immediate effect.

5. This issues with the approval of the competent authority.

Sd.

(Deepak Pater Gabriel)

Director (Estt.-I).

5. In the counter affidavit, respondents have averred that a letter dated 21.6.2007 (Annexure CA-1) was circulated by National Technical Research Organization (NTRO) for filling up the vacancies of Observer/Intelligence Interpreter (Equivalent to Scientist 'D') and Observer/Intelligence Interpreter (Equivalent to Scientist 'C') to be filled up on deputation/re-employment basis and that the Circular was "restricted" and sent to the Armed Forces Headquarters along with the request that the applications of willing persons along with disciplinary/vigilance clearance/integrity certificate and copies of ACRs for the last 5 years be sent to the NTRO. The eligibility condition for appointment of Scientist 'D' and 'C' was by way of deputation/re-employment as well as Graduate from recognized University with certificate of Aviation/Sensor Operation/PI experience.

6. It has also been averred in the counter affidavit that :—

“(C) The application of Shri Sailesh Kumar Pandey (who was not employed in any of the above mentioned Central Government offices and was thus a private person for the post of 'Observer/Intelligence Interpreter (Equivalent to Scientist 'B') Code VII-08 (OB/II) in NTRO on direct recruitment basis referring NTRO circular dated 21st June 200, was forwarded by his father Shri B.S. Pandey Officially to the Establishment Division of NTRO by misusing his official position as he was working as Technical Officer 'B' in Aviation Centre in NTRO. It is pertinent to

point out that the above post of Observer/Intelligence Interpreter (Equivalent to Scientist 'B') Code VII-08 (OB/II) was not even circulated for recruitment by NTRO. It is further mentioned that the post of Observer/Intelligence Interpreter (Equivalent to Scientist 'D' & 'C') was circulated for deputation/re-employment only and the Post Code VII-08- (OB) was nowhere mentioned in the Circular. The Post Code VII-08-(OB) was wilfully created by the applicant on his own and mentioned in his application dated 15.10.2007. The same post Code was also mentioned by his father in the letter dated 17.11.2007 while forwarding his son's application i.e. the application of Shri Sailesh Kumar Pandey to the Establishment Division. It is also mentioned that against the column of details of present employment Shri Sailash Kumar Pandey wrote NIL and his application was also not countersigned by anyone, i.e. there was no counter signature of any employer. His application also did not contain mandatory vigilance clearance, ACRs of last five years as desired vide *ibid.* circular. A true copy of the letter dated 17.11.2007 along with application dated 15.10.2007 of the applicant being filed herewith and marked as Annexure No.CA-2.

- (D) Shri Sailesh Kumar Pandey was not authorized to have access to the 'Restricted' circular but he submitted application to NTRO which establishes the fact that he had unauthorizedly obtained the restricted document. It is mentioned that Shri Sailesh Kumar Pandey (DOB-2.12.1975, aged about 31 years & 8 months at the time of submission of application), who did his B. Tech in Agricultural Engineering as per his own application dated 15.10.2007, was also not meeting the laid down QRs of the circular (including vigilance clearance, ACRs etc).
- (E) It is emphasized that in the circular, no post for Observer/Intelligence Interpreter equivalent to Scientist 'B' (Rs. 8000-13500) was ever circulated. Hence, appointment of Shri Sailesh Kumar Pandey as Observer/Intelligence Interpreter (Equivalent to Scientist 'B') in NTRO was ab-initio irregular".

7. The stand taken by respondents in the counter affidavit in support of the termination order of the applicant is that (i) he was not possessing

the qualifications mentioned in the Circular; (ii) being a probationer, his services could be terminated without notice or assigning any reason; (iii) applicant was appointed to a post equivalent to Scientist 'B' which was never advertised and, therefore, his appointment was void ab-initio and this was pointed out by the Audit; (iv) he was not employed in Government service since the circular was meant for appointment of a official on deputation/re-employment; (v) his application did not contain the mandatory vigilance clearance and ACR etc.; (vi) the Post Code VII-08 (OB) was created by the applicant as mentioned in his application dated 15.10.2007 and the same Post Code was mentioned by his father in letter dated 17.11.2007 while forwarding applicant's application to the Establishment Division and in the employment column, he wrote his present employment as Nil and there was no counter signature of any employer (through proper channel authority).

8. It is specifically averred in the counter affidavit that no post of Observer/Intelligence Interpreter equivalent to Scientist 'B' was circulated by the department and that it was the father of applicant who forwarded the application for the post of Scientist 'B' on direct recruitment misusing his official position working as Technical Officer 'B' in the Aviation Centre in NTRO. It has been further averred in the counter affidavit that applicant was under probation till 1.5.2012 and, therefore, his services were rightly terminated in view of O.M. dated 19.5.1993 issued by D.O.P.T.
9. In the rejoinder affidavit filed by the applicant, it has been averred therein that in the year 2007 notification for selection of Observer/Intelligence Interpreter equivalent to Scientist 'B' was issued but since the requirement of personnel was not fulfilled in the post of Scientist 'B' category which is a post under Direct Recruitment quota, the application for the post of Scientist 'B' category were being entertained from open market and that some more persons along with applicant were appointed from the open market. He has denied the role of his father B.S. Pandey who is a Technical Officer 'B' posted in the Centre, Delhi as alleged by the respondents in their counter affidavit.
10. In the written arguments filed by the learned counsel for applicant, it has been averred that applicant possesses the necessary qualification

required for the post Observer/Intelligence Interpreter which is a group post. Applicant further averments are identical to the averments in the O.A. as to screening, interview, appointment, probation, deputation. Applicant has also referred to the contents of the counter affidavit i.e. issuance of circular, eligibility conditions, his application for post equivalent to Scientist 'B' forwarded by his father Sh. B.S. Pandey, no mandatory vigilance clearance, judgment of Hon'ble Apex Court in District Collector v/s M.Tripura, 1990 (4) SLR 237, appointment letter, probation period, appointment was irregular as applicant was not eligible for the post, post equivalent to Scientist 'B' was not circulated by NTRO for recruitment.

11. We have heard and considered the arguments of learned counsels for the parties and gone through the material on record as well as the written arguments filed by learned counsel for applicant.
12. It has been argued by learned counsel for the applicant that a circular dated 21.6.2007 was issued by the respondents seeking applications for post of Scientist 'B' by way of Direct Recruitment and which circular has not been deliberately produced by the respondents, to jettison the applicant's case.
13. However respondent's case is that on 21.6.2007, a restricted circular was only issued by the respondents calling for applications to fill up posts of Observer/Intelligence Interpreter equivalent to Scientist 'C' & 'D' by way of deputation/ re-employment.
14. We are of the opinion that the arguments of the applicant regarding existence of circular/letter seeking applications by way of Direct Recruitment and which contained the eligibility condition does not hold good. If the circular relied upon by the applicant was of 'General' nature i.e. it was given a wide circulation for public consumption in contradistinction to 'restrictive' nature, then the said circular ought to be in public domain. So, there would have been no reason for the applicant to produce the circular relied upon by him, which after all was in his interest to place on record so as to give substance to his case that he had submitted his application for appointment in accordance

with the said circular, since the entire edifice of his case is dependent upon the 'general' circular.

15. In these circumstances, we are of the view that the circular allegedly relied upon by the applicant is non-existence. We hold that there was no circular inviting application by way of recruitment from the public at large, as sought to be set up by the applicant.
16. Learned counsel for the applicant has challenged the termination order on the ground that it was passed without affording any opportunity of hearing being given to the applicant. No reasons were given in the impugned order for terminating his service which reasons now the respondents are giving in their counter affidavit which cannot be permitted under law. It was also argued by applicant that the termination order is stigmatic in nature and therefore, violative of Article 311 of the Constitution of India.
17. Taking the question of termination order being stigmatic in nature and in absence of holding of regular enquiry, the same is violative of the right of applicant under Article 311 of Constitution of India.
18. Undoubtedly, the applicant was a probationer on the date of termination order i.e. 20.1.2012 and therefore, it has been argued by the learned counsel for respondents that in the light of law laid down by the Hon'ble Apex Court, the order terminating his services is not stigmatic and in accordance with law.
19. The question in the present case is whether termination of the service of the applicant being probationer can be treated as punitive and stigmatic or not. Before proceeding further, reference may be made to the law laid down by the Hon'ble Apex Court in regard to termination of probationer as under:-
 - (i) The earliest case law is Parshotam Lal Dhingra v. Union of India, 1958 SCR 828, wherein the Hon'ble Constitution Bench observed: "...In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311

is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with....”

- (ii) In *State of Punjab and another v. Sukh Raj Bahadur* (1968) 3 SCR 234, Mitter, J. considered several precedents and culled out the following propositions:

“1. The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution.

2. The circumstances preceding or attendant on the order of termination have to be examined in each case, the motive behind it being immaterial.

3. If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.

4. An order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service does not attract the operation of Article 311 of the Constitution.

5. If there be a full-scale departmental enquiry envisaged by Article 311 i.e. an Enquiry Officer is appointed, a charge-sheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said article.”

(iii) In *Dipti Prakash Banerjee v. Satyendra Nath Bose* National Centre for Basic Sciences (1999) 3 SCC 60,

“If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as “founded” on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.”

20. On the question of ‘stigma’, the Hon’ ble Apex Court has held that the effect which an order of termination may have on a person's future prospects of employment is a matter of relevant consideration. In the seven Judge case in *Samsher Singh vs. State of Punjab* [1974 (2) SCC 831], it was observed that if a simple order of termination was passed, that would enable the officer to “make good in other walks of life without a stigma the termination order would not be bad. “It was also stated in *Bishan Lal Gupta vs. State of Haryana* [1978 (1) SCC 202] that if the order contained a stigma, the termination would be bad for “the individual concerned must suffer a substantial loss of reputation which may affect his future prospects”.
21. The law is well settled by the Hon’ble Apex Court that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. If the competent authority

holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice.

22. In the present case, looking to the impugned order it cannot be said that the order is punitive in nature and attaches a stigma to the applicant. The impugned order by no means can be said to attach a stigma to the applicant since misconduct etc. were not a foundation for issuance of the termination order but rather the termination order was based on the appointment being made in violation of service rules.
23. The order of termination of services of applicant is based on the ground that the applicant was not eligible for the above post in terms of circular dated 21.06.2007. So, the termination was not based on allegation of misconduct etc which would cast a stigma on the applicant affecting his future prospects but was on the ground that he was not eligible for the post. Therefore, it cannot be said that the order of discharge of applicant is stigmatic and to be set aside.
24. Insofar as contention of applicant regarding the termination order dated 20.1.2012 being unreasoned, the said argument is to be rejected. Even so, perusal of the order dated 20.1.2012 would show that the applicant was informed the reason for issuance of termination order i.e. the appointment of the applicant was irregular as he was not eligible for the post of Observer/Intelligence Interpreter since he was not eligible in terms of circular dated 21.6.2007. As discussed above, there was no advertisement/circular for appointment to the post of Observer/Intelligence Interpreter equivalent to Scientist 'B' issued by the department. The only circular issued by the respondents for appointment of Observer/Intelligence Interpreter equivalent to Scientist 'C' and 'D' and which circular laid down the condition of eligibility that the applicant should be a Graduate from a recognized University with certificate of Aviation/Sensor Operation/PI experience whereas

applicant was holding a degree pertaining to Agricultural Engineering and there was no circular for appointment by way of direct recruitment from public but the appointments were by way of deputation/re-employment. Therefore, the contention of applicant is to fail on this ground also.

25. The third contention of applicant was that no opportunity of being heard was given to the applicant before terminating his services. However, applicant being a probationer, the simplicitor order of termination in the present case was sufficient and accordingly, there was no requirement to give the applicant a notice of being heard before issuance of termination order.
26. Further argument of learned counsel for applicant is that the circular dated 21.6.2007 was not a circular meant for restricted circulation is clear from the fact that the circular mentions that it be given wide circulation. This contention of the applicant is meaningless since he had not applied in terms of the said circular dated 21.07.2007 which invited applications for the posts of Observer/Intelligence Interpreter equivalent to Scientist 'C' and 'D' and even so, the wide circulation is to be given a restricted meaning that it would be widely circulated in the offices from where the man power for the said posts were to be taken.
27. Applicant has relied upon judgments attached with his written arguments. He relied upon Virendra Prasad Singh v/s State of U.P., (1999) 1 UPLBEC (Sum.) 6 and Shitla Prasad Nagendra v/s Gorakpur University, (1999) 1 UPLBEC (Sum.) 6. Both the judgments are the summary of the case and cannot be gone into in the absence of the full judgment.
28. Applicant relied upon Basudeo Tiwary v/s Sido Kanhu University, 1998 S.C. Services Law Judgments 358 to submit that an enquiry should have been held and notice given to him before terminating his services. In the said case, in light of Section 35 (3) of Bihar Universities Act, the act of termination of service was held to be bad. In the present case, the services of applicant were terminated during the period of probation and which order as held above is in accordance with law being non-stigmatic.

29. Applicant relied upon Pradip Kumar v/s Union of India, 2012 (13) SCC 182 to submit that the order of discharge of his service was bad. However, in the said case, the order of discharge was held to be stigmatic in nature which is the not case in the present O.A.
30. Applicant has further relied upon Mohinder Singh Gill v/s The Chief Election Commissioner, AIR 1978 SC 851 and submitted that the termination order dated does not mention the reasons/grounds so, that its validity could be judged and reasons cannot be given afterwards in support of its issuance, as has been done in the present case. This case is also of no avail to the applicant since in the present case the termination makes a clear reference to the fact that the appointment of the applicant has been found to be ab-initio, irregular as he was not eligible for the said post in terms of circular dated 21.6.2007 issued for recruitment to the post of Observer/Intelligence Interpreter and, therefore, gives reasons for the termination of the services of applicant.
31. Learned counsel for applicant also placed reliance upon Union of India v/s Mahaveer C Singhvi, 2010 (8) SCC 220 wherein the termination of petitioner was held to be bad in law. However, as per, the said judgment, order of termination was set aside on the ground "28. From the facts as disclosed and submissions made on behalf of the respective parties, there is little doubt in our mind that the order dated 13th June, 2002 by which the Respondent was discharged from service, was punitive in character and had been motivated by considerations which are not reflected in the said order."
32. In the present case, it cannot be said that the order terminating the service of applicant were punitive in nature, it was an irregular appointment of an ineligible candidate which was set right by the respondents. In this regard, reference may be made to the law laid down by the Hon'ble Apex Court wherein it has been held that an appointment made under a mistake or by fraud practiced upon the appointing authority, the said authority is at liberty to set right the mistake of making an irregular/illegal appointment as under:-
- (i) Amol v/s State of Maharashtra, (2018) 1 SCC (L&S) 12 wherein an appointment offered on mistake of fact was corrected on verification of records was upheld by the Hon'ble Apex Court

which observed that :”The issues raised in these appeals have been dealt with by this Court vide judgment dated 07.11.2017 rendered in Civil Appeal No.7938/2010 titled Amol v. The State of Maharashtra and Ors., wherein this Court has upheld the stand taken by the High Court on verification of records that the candidates are not otherwise eligible to be appointed in terms of their merit. The appointment already offered to them was on a mistake of fact, which has only been corrected on verification of the records”.

- (ii) Pratap Kishore Panda v/s Agni Charan Das, (2018) 1 SCC (L&S) 371 wherein “The Umadevi doctrine is that if employment of persons is contrary to or *de hors* the statutory provisions and/or Rules and Regulations, then equities will not have any play even if such persons have been rendering services for several years.
- (iii) District Collector vs M. Tripura Sundari Devi, 1990 SCC (3) 655 “It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact.”
- (iv) State of M.P. v/s Shyama Pardhi, (1996) 7 SCC 118 “It is now an admitted fact across the Bar that the respondents had not possessed the prerequisite qualification, namely, 10+2 with Physics, Chemistry and Biology as subjects. The Rules specifically provide that qualification as a condition for appointment to the post of ANM. Since prescribed qualifications had not been satisfied, the initial selection to undergo training is per se illegal. Later appointments thereof are in violation of the statutory rules. The Tribunal, therefore, was not right in directing the reinstatement of the respondents. The question or violation of the principles of natural justice does not arise.”

33. In the instant case, the appointment of applicant to the post of Observer/Intelligence Interpreter was made in complete violation of law. In view of the settled law as laid down by the Hon’ble Apex Court it is clear that if employment of person is contrary to or *de hors* the statutory provisions and/or Rules and Regulations, then equities will not have any

play even if such persons have been rendering services for several years. The situation in the present case is even worse than that of the case Amol (Supra). In the present case, the appointment of applicant is an act which has been committed by some government official with a pre-concerted meeting of mind to commit a fraud upon the Government. It is settled law that fraud vitiates all subsequent acts.

34. Taking into account the entire facts of the case, we hold that the appointment of the applicant was irregular and without sanction of law and therefore is non est and void ab initio from the day one.
35. In view of the facts and circumstances of the case, we are of the opinion that there is no merit in the O.A. and accordingly it is dismissed. No order as to costs.

(Mohd. Jamshed)
Member (A)

(Rakesh Sagar Jain)
Member (J)

Manish/-