

(Reserved on 24.08.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Original Application No. 330/01650/2010

This the *06th* day of *September, 2018*

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

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

1. Smt. Neelam Kushwaha, widow of Late Vimal Kumar
2. Master Pranjal Kushwaha, S/o late Vimal Kumar

R/o 113, Sanjay Gandhi Nagar, Naubasta, Kanpur Nagar.

.....**Applicants**

By Advocate: Shri Y.S. Sachan

Versus

1. Union of India through the Secretary, Ministry of Labour and Employment, Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. Director, Ministry of Labour and Employment, CLS-11 Section, New Delhi.
3. Presiding Officer / Head of Department, Central Government Industrial Tribunal Cum Labour Court, Shram Bhawan, ATI Campus, Udyog Nagar, Kanpur Nagar.

.....**Respondents**

By Advocate : Shri R.K. Srivastava

O R D E R

DELIVERED BY:-

HON'BLE MR. GOKUL CHANDRA PATI, (MEMBER-A)

By way of the instant original application (in short OA) following reliefs have been prayed for :-

"I. An order or direction to quash the order dated 04.10.2010 (contained Annexure No. A-1 to Compilation No. 1) passed by the respondent no. 3.

II. An order or direction to the respondents to treat the applicant active in service and to pay the salary".

2. The facts of the case, in brief, are that pursuant to the letter dated 22.04.2008 (Annexure A-2) issued by the Secretary, Central Government Industrial Tribunal and Labour Court, Kanpur Nagar regarding appointment on the post of Peon in the office of respondent No. 3, the husband of the applicant No. 1 Late Vimal Kumar (referred to as the applicant hereinafter) was directed to appear for interview on 28.04.2008 alongwith requisite documents. He appeared in the interview on scheduled date and vide Memorandum date 28.04.2008 (Annexure A-3), he was offered appointment on the post of Peon in pay scale of Rs. 2550-3200 and joined the post on 01.05.2008. The applicant's services were confirmed vide order dated 07/21.05.2009 (Annexure A-5). It is stated that vide letter dated 05.06.2009 (Annexure A-6), the respondent No. 2 informed the respondent No. 2 that the appointment of the applicant may be cancelled being irregular on the ground that the post of Peon is a direct recruit post and no approval of Screening Committee was obtained, which was necessary to be obtained for appointment of Group 'B', 'C' and 'D' as per provisions of Annual direct Recruitment Plan (ADRP) Scheme. Vide the said letter dated 05.06.2009, it was also informed that the competent authority has approved the filling up the post and, therefore, the CGIT-Cum-LC, Kanpur is allowed to fill up the post of Peon. Thereafter, the respondent No. 3 wrote a letter dated 09.06.2009 (Annexure A-7) to the respondent No. 2 stating that the appointment of the applicant has been made after following recruitment procedure as prescribed under the Recruitment Rules known as Central Government Industrial Tribunal –cum- Labour Court Class III and IV Post Recruitment Rules, 1976 (Annexure A-8) and the scheme of ADRP is different and distinguishable from these Rules.

3. Subsequently in pursuance of the letter dated 31.08.2009 (Annexure A-9) issued by respondent No. 1 to comply with the directions of the Ministry vide letter dated 05.06.2009, the respondent

No. 3 issued the memorandum dated 31.03.2010 (Annexure A-10) declaring the order dated 21.05.2009 (Annexure A-5) to be null and void. Thereafter, the respondent No. 3 passed the impugned order dated 04.10.2010 terminating the services of the applicant. Aggrieved, the applicant filed the instant O.A. on the ground that the order dated 04.10.2010 is illegal and against the principles of natural justice because the applicant had already completed the probation period and was also confirmed, hence before passing the impugned order, a show cause notice or opportunity of hearing was required to be given to him, which had not been done. It is stated in the OA that the appointment of the applicant is neither irregular nor against the Recruitment Rules 1976. It is further stated that the ADRP Scheme is separate and distinct from the Central Government Industrial Tribunal –cum- Labour Court Class III and Class IV Post Recruitment Rules, 1976.

4. The respondents have filed Counter Affidavit (in short CA). It is stated that while examining the case of the applicant for ex-post facto approval by the Ministry of Labour & Employment, it was found that the post of Peon in Central Government Industrial Tribunal –cum- Labour Courts (in short CGIT) is a direct recruitment post and as per provisions of the then prevailing Annual Direct Recruitment Plan (in short ADRPO) Scheme (Annexure CA-1), approval of the Screening Committee was required before making such appointment. It is stated that no such approval of the Screening Committee was obtained before appointment of the applicant. Accordingly, vide order dated 05.06.2009, the Presiding Officer, CGIT was directed to cancel the appointment of the applicant being irregular. It was also found that the appointment of the applicant as Peon was made against the vacant post of Daftry, which was also violative of Recruitment Rules (Annexure CA-2). Further, as per the recruitment rules (Annexure CA-3), a probation of two years is required before final confirmation, but the then Presiding Officer did not follow this provision and confirmed the applicant to the post of Peon after completion of only one year vide order dated 21.05.2009.

5. The applicant has filed Rejoinder Affidavit reiterating the facts stated in the O.A. However, It is stated that the respondent No. 3 being appointing authority considering his satisfactory service, confirmed the applicant vide letter dated 21.05.2009. It is further stated that vide letter dated 09.06.2009, the appointing authority has clarified that appointment of the applicant was made under the provisions of Recruitment Rules of 1976 meant for appointment of Group 'C' and 'D' post in the CGIT. It is further stated that the appointment of the applicant was made against the post of Shri Praveen Tripathi (temporary Peon), after his regularization.

6. We have heard Shri M.K. Yadav, proxy for Shri Y.S. Sachan, learned counsel for the applicants and Shri R.K. Srivastava, learned counsel for respondents and also considered the pleadings on record

7. The main averments of the respondents relating to the irregularity in appointment of the applicant in para 19 of their counter affidavit are as under:-

- The appointment of the applicant was done by the then Presiding Officer of the CGIT, Kanpur vide order dated 28.4.2008 after calling names from District Employment Exchange, Kanpur and then submitted the proposal to the Ministry of Labour for ex-post facto approval of the appointment vide his letter dated 3.10.2008.
- The Ministry examined the proposal and found that it was a direct recruitment post of peon against which the applicant was appointed and for that the approval of the screening committee should have been obtained. Accordingly, the Ministry informed the CGIT that since approval of the screening committee was not taken, the appointment of the applicant was irregular and it may be cancelled immediately.
- It was later learnt by the Ministry that the post against which the applicant was appointed was the post of Daftry, against which the applicant could not have been appointed. The then Presiding Officer of the CGIT had appointed the applicant hastily against the post of a Daftry, which was not permissible as per the Recruitment

Rules, copy of which has been attached at Annexure CA-3 to the counter affidavit.

- These facts were informed to the Registrar General of the High Court. The present Presiding Officer, CGIT then issued a Memorandum dated 31.3.2010 (Annexure A-10 to the OA), cancelling the applicant's confirmation order dated 21.5.2009 by which the then Presiding Officer had confirmed the applicant's services irregularly after one year of service instead of two years as per the rules.
- Thereafter, vide the order dated 4.10.2010 (Annexure A-1), the services of the applicant were terminated by the Presiding Officer of CGIT.

8. After termination of service, the applicant had filed this OA and the Tribunal, vide order dated 3.11.2010, directed the respondents as under:-

"In view of the above, the respondents are directed not to give effect to the impugned order dated 4.10.2010. If the applicant has already been relieved, he shall be reinstated back on the strength of this interim order. This order shall continue till the next date of hearing when the respondents may address the Court about continuance or otherwise interim order."

Vide order dated 12.2.2015, it was noted that the applicant had expired on 24.5.2014 and the legal heirs of the applicant were substituted in the OA.

9. We heard the learned counsels for the applicants and the respondents and have carefully considered the pleadings of the parties. The order dated 31.3.2010 by which the confirmation of the applicant was cancelled states as under:-

"Whereas a memorandum of even number dated 07/21.05.09 was issued in respect of Sri Vimal Kumar, peon whereby the services of the official were confirmed upon completion of one year successfully. The matter regarding confirmation of the service of Shri Vimal Kumar was reconsidered by the

undersigned being Head of Department in respect of group 'D' employee of CGIT, Kanpur, in the light of the contents of letters no. A-12011/3/2008 CLS-II dated 31.08.2009 written by MOL, New Delhi. Upon a careful consideration of the case of Sri Vimal Kumar it is found that the confirmation of the service of the official vide memorandum of even number dated 21.05.09 is not in conformity with the recruitment rules, 1976, which clearly provide that an employee appointed in CGIT in Group "D" can be confirmed in service only after completing probation period which is of two years. In view of it, memorandum dated 21.05.09 stands null and void and is recalled and set aside with immediate effect."

10. After cancellation of the confirmation order, the applicant's status of employment will be as per his original appointment order dated 28.4.2008 (Annexure A-3), by which the terms of appointment are, as stated in para 2 of the said order, which is as under:-

"2. The terms of appointment are as follows:-

- (i) The appointment may be terminated by giving one month notice or one month's pay in lieu of notice.
- (ii) Other conditions of service will be governed by the relevant rules and orders in force from time to time."

It is clear from above, that the status of employment of the applicant was like that of a temporary government servant and as stated in the order dated 31.3.2010, the applicant was treated to be under probation for a period of two years from the date of his appointment on 28.4.2008. Hence, on the date on which the services of the applicant were terminated, he was a temporary employee on probation after cancellation of his confirmation order vide the order dated 31.3.2010.

11. The impugned order dated 4.10.2010, terminating the service of the applicant, which was stayed vide the order dated 3.11.2010 in this OA states as under:-

"In compliance of Ministry of Labour & Employment New Delhi letter No. A-12011/03/2008/CLS-II dated 05.06.2009 and letter No. A-12011/03/2008/CLS-II dated 31.07.2009, wherein the Ministry has held your appointment as irregular / illegal. The Ministry has not approved the

appointment to Shri Vimal Kumar, Peon, CGIT-cum-Labour Court, Kanpur. Inspite of best efforts made to the Ministry, but has not agreed and not approved the appointment to Shri Vimal Kumar appointed as Peon. The services of Shri Vimal Kumar, Peon is hereby terminated with immediate effect in compliance of Ministry of Labour & Employment, New Delhi instructions.”

12. It is seen from the order dated 31.3.2010, by which the confirmation of the applicant was cancelled (this order dated 31.3.2010 has not been impugned in this OA) clearly recognized that the applicant was a Group “D” employee and as per the rule, his probation period should have been 2 years. It means, the respondents have accepted the fact that the applicant was appointed as a Group D employee on probation, only his confirmation was found to be wrongly done, for which, his confirmation order was cancelled. There was no whisper in the order dated 31.3.2010 that the appointment itself of the applicant was irregular or not as per the rules. In fact, the wording of the order dated 31.3.2010 was such that it accepted the appointment of the applicant as a Group D employee on probation, since his confirmation was not as per the rules.

13. The impugned order dated 4.10.2010 was issued terminating the services of the applicant without issuing any show cause notice to him. There is no letter or order including the impugned order, which state that the appointment of the applicant was not as per the rules. The impugned order states that the applicant's appointment was irregular/illegal as held by the Ministry and the reasons for such finding of the Ministry were not disclosed in the order, except for stating that the Ministry had not approved the appointment of the applicant, ‘in spite of best efforts made to the Ministry.’ It is clear from these averments, that the appointment of the applicant was terminated due to absence of approval of the Ministry, for the reasons not disclosed in the impugned order.

14. The pleadings of the respondents also do not reveal any violation of the rules in appointment of the applicant. The Ministry's objection is mainly on the ground that prior approval of the screening committee was not obtained by the respondent no. 3 before appointing the applicant against a direct recruitment vacancy. Another defect pointed out by the Ministry was that the applicant was appointed against the post of a Daftry, not a peon. But there was a regular vacant post of Daftry, which is to be filled up by promotion from the peons as per the recruitment rules. Even if it is correct, then a vacant post was available, which was to be filled up by promotion from among the eligible peons as per the rule and it would have resulted in a vacant post of peon. Further, for prior approval screening committee, there is no provision in the recruitment rules (Annexure CA-3) which requires such prior approval. The respondents have not furnished any circular or order in support of the stand that prior approval of the screening committee was required. Hence, there was violation of the executive instructions of the Ministry, for which, the then appointing authority who had appointed the applicant without complying these instructions, was liable, not the applicant.

15. From the above discussions, it is obvious that in the appointment of the applicant, there is violation of the executive instructions of the Ministry of Labour and no violation of the statutory rules has been established. There is nothing on record to show that the applicant's performance was not found to be satisfactory. The impugned order is also not as per the terms of appointment as quoted, for which one month notice period or salary in lieu thereof, is necessary for termination. Hence, the impugned order dated 4.10.2010 is not as per the terms of the appointment. It is also noted that the termination of the applicant's service by the impugned order does not indicate about the performance of the applicant and there is nothing adverse about his performance in the pleadings of the respondents. Clearly, the applicant's performance was not an issue. Being on probation, his service was liable to be

terminated through a discharge simpliciter on the ground of unsatisfactory performance, which is not the case here.

16. In this factual background, we note that this Tribunal had observed the following vide order dated 3.11.2010 while granting the interim relief to the applicant:-

“We have considered the case. Termination without following the terms of appointments *ex-facie*, is illegal.....”

The respondents, through their pleadings and submissions have not been able to bring any document/evidence to show that the termination order which is issued as per instructions of the Ministry of Labour for violation of some internal executive instructions of the Ministry on the part of the appointing authority, is in accordance with the terms of the appointment order dated 28.04.2008 of the applicant or the applicable rules.

17. In the circumstances, we set aside and quash the impugned order dated 4.10.2010 and make the interim order dated 3.11.2010 absolute. The respondents are also directed to extend all service benefits as per the rules to Late Vijay Kumar, including payment of unpaid salary, if any, for the period he was in service and consideration of his case for confirmation, in view of the fact that there is nothing adverse on record about his performance.

18. The OA is allowed as above. No costs.

(RAKESH SAGAR JAIN) (GOKUL CHANDRA PATI)
MEMBER-J MEMBER-A

Anand...