

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

Original Application No. 795 of 2012

Allahabad this the o5th day of July, 2018

**Hon'ble Mr. Justice Vishnu Chandra Gupta, Member- J
Hon'ble Mr. Gokul Chandra Pati, Member - A**

Suresh Kushwaha S/o Gayasi Lal Kushwaha, R/o Chaube Colony, Khajuraho, District Chhatarpur (M.P.)

Applicant

By Advocate: Ms. Archana Srivastava

Vs.

1. Union of India through Secretary (Ministry of Culture), New Delhi.
2. Director General, Archeological Survey of India, Janpath, New Delhi.
3. Superintending Archeologist, Head of Office, Govt. of India, Archeological Survey of India, Agra Circle, 22, The Mall, Agra.

Respondents

By Advocate: Mr. R.K. Srivastava

O R D E R

Justice Vishnu Chandra Gupta, Judicial Member

This O.A. has been filed by the applicant seeking following relief(s): -

“(i) That this Hon'ble Court may graciously be pleased to quash and set-aside the impugned termination order dated 21-05-2012 passed by the respondent No 3 and impugned advertisement dated 28 April to 4 May, 2012, issued by respondent No. 3 (Annexure A7 & 8).

“(ii) That this Hon'ble Court may further be pleased to stay the effect and operation of the termination order, and further respondents may be directed not to interfere in any manner in peaceful working of the applicant and pay his salary regularly month to month.

“(iii) That this Hon'ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of the case.

“(iv) Award the cost of application to the applicant.”

2. The facts, in brief, for deciding this application are that an

advertisement had been published to fill up certain posts of Monument Cleaner and Chowkidar in November, 2011 in the Archeological Survey of India, Agra Circle, as per DOP&T guidelines. Out of these, one post of Monument Cleaner and one post of Chowkidar was required to be filled through direct recruitment, for which NOC has been issued by the DOP&T on 28.03.2011. The rest to be filled from Departmental TSCL in the ratio of 1:2. A Departmental Selection Committee (for short DSC) was constituted on 04.04.2012 for filling up the one post of Monument Cleaner and one post of Chowkidar by direct recruitment process. The DSC fixed 15.04.2012 for interview. However, the date of interview was postponed to 28.04.2012. 11 candidates appeared in the interview for the post of Chowkidar and 08 candidates appeared for the post of Monument Cleaner. The DSC selected the candidates on the basis of merit and prepared a select panel of three candidates each. In the panel, for one post of Chowkidar, at serial No. 1 one Shri Bhupal was selected and at serial No. 2 Shri Abhinav Shukla and at serial No. 3 Shri Anil Kumar Sharma were placed respectively. For the post of Monument Cleaner, on the top of select list, at serial No. 1 was Shri Satish Singh Kushwah and two others were Shri Akhilesh Kumar and Shri Suresh Kushwah-the present applicant. Thereafter, on the basis of select list, appointments were given to Shri Bhupal and Shri Satish Singh Kushwah by issuing offer of appointment on 28.04.2012 and both joined their respective posts of Chowkidar and Monument Cleaner on the same day. It appears that all other four persons, shown in the select list of Chowkidar and Monument Cleaner, were also appointed and they joined on 08.05.2012. Shri Abhinav Shukla and Shri Anil Kumar Sharma, who were shown in the select list of Chowkidar at serial Nos. 2 and 3 respectively, were appointed as Monument Attendant and Shri Akhilesh Kumar and Shri Suresh Kushwah, who were shown in the select list of

Monument Cleaner at serial Nos. 2 and 3, were appointed as Office Attendant. These appointments were noticed by the Superintending Archeologist, Archeological Survey of India, Agra Circle on 11.05.2012, as he joined Agra Circle on 01.05.2012. After examination, he found that against one post each for Chowkidar and Monument Cleaner, the appointments were already made, from the select list with candidates, who were on the top in the select list and they joined on 28.04.2012. As such, the aforesaid select lists became inoperative. It was further noticed that no advertisement was published for the post of Monument Attendant and Office Attendant nor any advertisement was issued for the post nor DSC recommended the names of candidates for Monument Attendant and Office Attendant. Therefore, they were inducted in the service unauthorisedly, contrary to the laid down procedures and with an oblique motive against the law. Consequently to avoid further complications and litigations, appointments of all the four made on the post of Monument Attendant and Office Attendant were cancelled being de horse of rules, vide order dated 21.05.2012. The order dated 21.05.2012 terminating the services of applicant, was put under challenge in this O.A.

3. Counter Affidavit has been filed by the respondents supporting the impugned order. Rejoinder Affidavit has also been filed reiterating the stands taken by the applicant in O.A.

4. So far as the factual matrix is concerned, there is no dispute in between the parties. The case of applicant is that once he has been appointed, his services cannot be dispensed with without observing the principle of natural justice and without issuing any show cause notice and without giving an opportunity of being heard. The case of respondents is that the appointments made of applicant and three others were absolutely illegal and they were not selected and they

were virtually in the wait list which ceases to exist as soon as the numbers of selected candidates, against number of posts, were appointed. It is also important that the applicant was neither recommended by the DSC nor any post of Office Attendant was ever published for recruitment nor any process was initiated to fill up the vacancies of Office Attendant hence, the appointment of applicant is illegal and without any authority of law. If any such appointment has been made, principle of natural justice will not apply.

5. We have considered the submissions raised by learned counsel for the parties and perused the record.

6. In view of the above facts and circumstances, we are of the considered opinion that this O.A. lacks merits and the same is liable to be dismissed for the following reasons: -

(i) The applicant was in the select list for Monument Cleaner, prepared by the DSC, and his name was placed at serial No. 3 in the select list. Only one post required to be filled and the person top on the select list already joined before joining the applicant. Hence, the select list of remaining candidates ceased to exist and no right is conferred to the applicant to seek appointment on the basis of select list.

(ii) The post of Office Attendant was neither published nor any process for selection for such post was ever taken place nor DSC recommended for appointment of applicant to the post of Office Attendant. The order issued offering appointment to the applicant for the post of Office Attendant is *per se*, dehors the rules and it is violative of Article 14 and 16 of the Constitution of India. The post of Monument Cleaner has already been filled by the duly selected person. Therefore, the appointment of applicant for any other post, issued by any authority, which was admittedly against the established principle of law, cannot be allowed to be sustained. There appears no illegality in the order cancelling the appointment of applicant and three others who were those in the select panel but being the candidates in the wait list which exist to be

ceased after appointment of candidate at serial No. 1 in the select list prepared on the basis of merit.

(iii) The appointment of applicant, admittedly, is against the spirit of Article 14 and 16 of the Constitution of India. The Hon'ble Supreme Court in the case of "***The Chairman, Board of Mining Examination and Chief Inspector of Mines, and another v. Ramjee 1977 (2) SCC page 256***" has held that the Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. This ratio is fully applicable in the present O.A.

7. Accordingly, the O.A. is dismissed. No order as to cost.

Member – A

Member – J

/M.M/