

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.3948 of 2013

This the 8th day of October, 2015

HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J)
HON'BLE MR. SHEKHAR AGARWAL, MEMBER (A)

1. Shri Surender Kumar aged about 41 years S/o late Shri Harpal Singh R/o Arpit Vihar Colony, Dehradun Road, Behind Irrigation Department Office, Saharanpur. (U.P.).
2. Shri Isham Singh aged about 42 years S/o Late Shri Shiv Lal R/o Village Ghoghariki Post Sadak Dudhli Saharanpur (U.P.).

(Both the Applicants are presently terminated while functioning as TSCL (Temporary Status Casual Labourer in Remount Training School & Depot Saharanpur under Dte General of RVS (RV-1) QMG's Branch AHQ Ministry of Defence as Defence Civilian in Gp 'D' post)

... Applicants

(By Advocate: Shri V.P.S. Tyagi)

Versus

1. The Union of India
(Through Secretary)
Ministry of Defence,
South Block, New Delhi.
2. The Director General of RVS (RV-1)
QMG's Branch AHQ
(ST-12 Civ)
IHQ of MOD (Army)
West Block-III,
R.K. Puram, New Delhi-110066.
3. Col. P.P. Rana,
Commandant
Remount Training School & Depot,
(in Short RTS & Depot)
Saharanpur (U.P.)

... Respondents

⌘ (By Advocate : Shri Hilal Haider)

ORDER (ORAL)**MR. JUSTICE L.N. MITTAL, MEMBER (J) :**

Surender Kumar and Isham Singh – the applicants have filed this OA impugning their termination orders dated 12.11.2012 (Annexures A-1 and A-2) and seeking direction to reinstate them with backwages.

2. It is not disputed that the applicants, who were initially engaged as Daily Wagers, were conferred Temporary Status as Casual Labourers. The applicants were arrested in a case under the Narcotic Drugs and Psychotropic Substances Act, 1985 and were sent to judicial custody on 6.11.2012 as informed by the Police vide letter dated 9.11.2012. Thereupon the services of the applicants were terminated vide orders dated 12.11.2012 and they were disengaged with immediate effect. The applicants have, *inter alia*, alleged that the impugned termination orders were passed in violation of principles of natural justice without affording an opportunity of hearing, and the orders are stigmatic and based on malice and malafide.

3. The respondents in their counter affidavit justified the impugned orders on the ground that the applicants were purely casual labourers and were not regular employees and they were disengaged from duty due to their absence from duty and criminal case was not the foundation of the impugned orders.

4. We have heard the learned counsel for the parties and perused the case file with their assistance.

5. Counsel for the parties reiterated their respective versions noticed hereinabove.

6. Termination order of the applicant no.1 is reproduced hereunder:-

“1. Wherein Shri Surinder Kumar, TSCL, son of Shri Harpal Singh resident of Aprit Vihar Colony, Dehradun Road, Saharanpur (UP) has been arrested by the Police Station, Janakpuri offence under IPC 18/20 NDPS Act and is in judicial custody at District Jail, Saharanpur wef 06 Nov 2012 as informed vide their letter No.Memo/UT/12 dated 09 Nov 2012.

2. The services of Shri Surender Kumar, son of Shri Harpal Singh as TSCL is hereby disengaged with immediate effect. The entire premises of RTS & Depot, Saharanpur is placed out of bound for the ibid individual and entry to this Depot is hereby banned.”

Identical termination order was passed qua the applicant no.2.

7. A bare perusal of the impugned orders reveals that the applicants were disengaged only on account of their arrest in the aforesaid criminal case. There is no mention in the impugned orders that the applicants were disengaged due to their absence from duty. However, the applicants could not be disengaged either on the ground of involvement in the criminal case or on the ground of their absence from duty, without affording them an opportunity of hearing by issuing at least show cause notices. Admittedly, this was not done.

Consequently, the impugned orders having been passed in violation of the principles of natural justice are liable to be quashed.

8. As regards backwages, the applicants have not worked in the interregnum. They also remained in judicial custody for some period during which they could not have attended their duty and could not have got any wages for the said period. Counsel for the applicants, however, pointed out that the applicant have since been acquitted in the criminal case vide judgment dated 4.4.2014 passed by Additional Session Judge, Saharanpur. Undoubtedly, the applicants were involved in the aforesaid criminal case, although it is a different matter that they have since been acquitted. Besides it they have not worked during the intervening period. Keeping in view of these circumstances, we are of the considered opinion that the ends of justice would be met if the applicants are granted 50% backwages for the intervening period (excluding the period during which they remained in judicial custody).

8. Resultantly, the instant OA is allowed. The impugned termination orders dated 12.11.2012 (Annexures A-1 and A-2) are set aside. The respondents are directed to reinstate the applicants to the same post within eight weeks from the receipt of certified copy of this Order. For the period from the date of disengagement till their reinstatement, the applicants shall be entitled to 50% backwages (excluding the period

during which the applicants remained in judicial custody). However, the respondents shall be at liberty to take fresh action in accordance with law, if so advised. There is no order as to cost.

(SHEKHAR AGARWAL)
MEMBER (A)

(JUSTICE L.N. MITTAL)
MEMBER (J)

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