

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**O.A No.2455/2018 and MA No.2804/2018
With
O.A. No. 2456/2018 and MA No.2802/2018
O.A. No. 2457/2018 and MA No.2803/2018
O.A. No.2458/2018 and MA No.2805/2018**

**Reserved On:09.07.2018
Pronounced on:23.07.2018**

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. A.K. Bishnoi, Member (A)**

OA No. 2455/2018

Anshul Rakesh
(Aged 39 years)
Late Shri Rakesh Chandra
Shri Ram Colony near Sheetal Mandir
Near Holy Cross School
Rauza, Ghazipur
Uttar Pradesh-233001
Post Chemical Assistant Group 'B' ...Applicant

(By Advocate: Shri B.K. Singh with Shri P.K. Jaiswal and Shri
Sanjay Kumar Yadav)

Versus

1. The Director (RL),
Central Revenues Control Laboratory,
Hillside Road, Pusa Campus,
New Delhi-11012.
2. Union of India
Revenue Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.
3. The Chairman,
Central Board of Indirect Tax & Custom,
North Block,
New Delhi-110001. ...Respondents

(By Advocate: Shri Gyanendra Singh)

OA No.2456/2018

Satya Prakash

(Aged 41 years)

S/o Shri Jagdish Prasad

R/o Mohalla0Saklenabad

(Durga Chowk)

P.O. Head Office Ghazipur,

Uttar Pradesh-233001

Post Chemical Assistant Group 'B'

...Applicant

(By Advocate: Shri B.K. Singh with Shri P.K. Jaiswal and Shri Sanjay Kumar Yadav)

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New Delhi.
3. The Chairman,
Central Board of Indirect Tax & Custom,
North Block,
New Delhi-110001.

...Respondents

(By Advocate: Shri Gyanendra Singh)

OA No.2457/2018

Kamlesh Singh Kushwaha

(Aged 34 years)

S/o Ramjeet Singh Kushwaha

R/o Villagae Bhawri,

P.O. Srya Rasoolpur Kandhwara,

Tehsil Ghazipur, District

Ghazipur,

Uttar Pradesh-233001

Post Chemical Assistant Group 'B'

...Applicant

(By Advocate: Shri B.K. Singh with Shri P.K. Jaiswal and Shri Sanjay Kumar Yadav)

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Revenue Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.
3. The Chairman,
Central Board of Indirect Tax & Custom,
North Block,
New Delhi-110001. ...Respondents

(By Advocate: Shri Gyanendra Singh)

OA No.2458/2018

Santosh Kumar Upadhyay
(Aged 35 years)
S/o Surendra Nath Upadhyay
R/o Village RAnipur Rajmo (Pahilepur)
P.O. Bindra Bazar, Tehsil Mehnagar,
Azamgarh
Uttar Pradesh-276205
Post Chemical Assistant Group 'B' ...Applicant

(By Advocate: Shri B.K. Singh with Shri P.K. Jaiswal and Shri
Sanjay Kumar Yadav)

Versus

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Ministry of Finance,
Department of Revenue,
North Block,

New Delhi.

3. The Chairman,
Central Board of Indirect Tax & Custom,
North Block,
New Delhi-110001. ...Respondents

(By Advocate: Shri Gyanendra Singh)

ORDER

By Mr. V. Ajay Kumar, Member (J)

The facts and law involved in these batch of OAs are identical and hence are disposed of by way of this common order. However, the facts in OA No.2455/2018 are taken into consideration.

2. An advertisement No.02/2008 dated 26.01.2008 followed by Corrigendum vide advertisement No.05/2008 dated 08.03.2008 was published in the Employment News for the recruitment to 39 posts of Chemical Assistant, Grade-II (now re-designated as Chemical Assistant) and as per the relevant Recruitment Rules (RRs), the essential qualifications for the post were:-

- “(i) M.Sc. in Chemistry of an Indian University or its equivalent; and
- (ii) One year experience of chemical analysis”.

Along with the necessary certificates with regard to the educational qualification and all the experience, the applicant had also submitted an attestation form affirming the details mentioned in his application form. On his selection, the applicant had been, vide Memorandum dated 19.12.2008, offered with the appointment to the post of Chemical Assistant Grade-II (now re-designated as

Chemical Assistant). In pursuance of the same and having accepted the terms of the said offer of appointment, he joined the post of Chemical Assistant on 24.12.2008. He was placed under probation for 2 years from the date of his appointment. However, his probation was extended vide Memorandum dated 27.09.2012, until further orders.

2A. An enquiry was conducted by the Directorate General of Vigilance, Customs & Central Excise with regard to the experience claimed by the applicant and it was found that:-

I. As chemist in S.M.M. Town Post-Graduate College, Ballia-277001: The Organisation vide letter No.518/2009 dated 20.06.2009 [RUD-10] has confirmed issuing the certificates but has stated that the candidate had himself sought their permission to learn certain techniques of chemical analysis in the said laboratory and that it was not an employment and no remuneration was paid to him.

II. As Seasonal Lab. Asstt. in Govt. Opium and Alkaloid Works Ghazipur, U.P. 233001: Organisation has vide letter F.No.1/10/11/Conf./2009/1990 dated 04.08.2009 [RUD-11] confirmed issuing experience certificate as seasonal laboratory assistant for giving assistance to Chemical Assistant of the organization.

III. As chemist in Sagun Udyog Pvt. Ltd. Rajdepur Dehati, P.O.Rauza, Ghazipur, U.P.-233001: Organisation has vide letter dated 30.06.2009 [RUD-12] confirmed issuing certificate and has stated that candidate desired to join them for getting self experience, so no formal order/offer of employment had been issued and was asked verbally to join as Assistant Chemist for getting experience. He drew payments through payment vouchers and his appointment/engagement was purely temporary/ad hoc in nature”.

3. In view of the aforesaid enquiry report, the respondents vide the impugned Anneuxre A-1 dated 12.06.2018, issued the notice of

termination of service under Rule 5 (1) of the Central Civil Services (Temporary Service) Rules, 1965 [CCS(TS) Rules, 1965] and the relevant para of the same reads as under:-

“9. Whereas, in view of the above, it appears that Shri Anshul Rakesh, Chemical Assistant did not hold one year experience of chemical analysis as per the Recruitment Rules and he suppressed factual information in this regard and, therefore, his appointment to the post of Chemical Assistant Gr.II (now re-designated as ‘Chemical Assistant’) is ab-initio illegal.

10. Now, therefore, in pursuance of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, notice is hereby given to Shri Anshul Rakesh, Chemical Assistant that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or, as the case may be, tendered to him. If he so desires, he may furnish an explanation in writing to the undersigned, within 10 (Ten) days of receipt of this notice, as to why the action so proposed should not be taken. In case no explanation is received within 10 (Ten) days, it shall be presumed that Shri Anshul Prakash, Chemical Assistant has no explanation to offer and the matter shall be processed accordingly without any further reference to him. The copies of documents relied upon (RUD 1 to 12) are enclosed”.

4. Though the respondents stated that on the expiry of a period of one month from the date of receipt of the impugned notice dated 12.06.2018 (Annexure A-1), the services of the applicant shall stand terminated, however, as it was also stated that the applicant may furnish an explanation in writing, if he so desires, the applicant has submitted a representation on 02.07.2018 and was also heard in person on the same date, but in spite of the same, the respondents have not passed any orders withdrawing the impugned notice of termination.

5. Aggrieved by the impugned Annexure A-1 notice of termination dated 12.06.2018, the applicant filed the OA.

6. Heard Shri B.K. Singh with Shri P.K. Jaiswal and Shri Sanjay Kumar Yadav, learned counsel for the applicants and Shri Gyanendra Singh, learned counsel for the respondents and perused the pleadings on record.

7. Shri B.K. Singh with Shri P.K. Jaiswal and Shri Sanjay Kumar Yadav, learned counsel appearing for the applicants raised the following grounds in support of the OA averments:-

(i) The applicants were appointed against regular vacancies, on regular basis after following the procedure required to be followed in respect of regular recruitment for the post of Chemical Assistant. Hence, though the applicants are under extended probation, the CCS (TS) Rules, 1965 have no application to them. Their service conditions are governed by the terms of their appointment and as per the CCS (CCA) Rules, 1965, and hence terminating their services by invoking the Rule 5 (1) of the CCS (TS) Rules, 1965 and hence is illegal, arbitrary and beyond power and authority;

(ii) The applicants were regular Chemical Assistants and since the respondents levelled charges of suppression and misrepresentation on them, the impugned termination order casts stigma on them and hence they cannot be terminated without following the rules, and that a regular departmental enquiry under CCS (CCA) Rules, 1965

is to be conducted before passing any adverse orders against the applicants; and

(iii) The applicants were appointed after due process of selection way back on 24.12.2008 (in OA No.2455/2018 – Anshul Rakesh), on 19.01.2009 (in OA No.2456/2009 – Satya Prakash), on 26.12.2008 (in OA No. 2457/2018 – Kamlesh Singh Kushwaha) and on 31.12.2008 (in OA No. 2458/2018 – Santosh Kumar Upadhyay) on permanent basis and terminating their services after 10 years is illegal and arbitrary. Admittedly, even as per the respondents, the applicants were possessing the essential educational qualification and the dispute is of only one year experience of chemical Analysis and that the applicants, in fact, were working on the posts of Chemical Assistant for the last 10 years and that there were no allegations of any inefficiency or misconduct in the discharge of their duties and hence after the applicants accrued about 10 years experience in the posts, terminating their services on the ground that they were not having the required experience of one year prior to appointment is totally illegal and arbitrary.

8. The learned counsel placed reliance on the following decisions:-

(i) **The State of Madhya Pradesh Vs. Bani Singh and Another, AIR 1990 SC 1308.**

(ii) **Commissioner of Police and Others Vs. Regional Secretary Board of Secondary Education, Regional Office, Meerut and Another, 2005 (117) DLT 659.**

(iii) **Nehru Yuva Kendra Sangathan Vs. Mehbub Alam Laskar, (2008) 1 SCR 1069.**

9. Per contra, Shri Gyanendra Singh, learned counsel appearing for the respondents would submit that the CCS (TS) Rules, 1965 are very much applicable even to the probationers, if they obtained the employment itself, by furnishing false information or false documents. The enquiry conducted by the Directorate General of Vigilance, Customs and Central Excise with regard to the experience claimed by the applicants clearly reveals that the applicants were not possessing the required one year experience of chemical analysis and that the certificates furnished by them at the time of appointment were not fulfilling the requirements as per rules, and hence their appointments itself are void ab initio and their services can be terminated by invoking Rule 5(1) of the CCS (TS) Rules, 1965. As per the settled principles of law, a probationer can be discharged from service by way of termination simpliciter, i.e., without conducting the regular departmental enquiry, however, by issuing a month prior notice, which was very much followed by the respondents. Further, the applicants were terminated only on the ground that they were not possessing the required experience and hence the termination orders do not cast any stigma on them

and hence there is no illegality in terminating their services by issuing the impugned notice.

10. The learned counsel placed reliance on a judgment of the Hon'ble Supreme Court of India in **The District Collector & Chairman Vizianagaram and Another Vs. M. Tripura Sundari Devi, 1990 SCC (3) 655.**

11. In the backdrop of the above referred facts and submissions made on either side, the question fell for our consideration is that whether the services of the applicants can be terminated without conducting the regular departmental enquiry?

12. The issue of termination simpliciter of a probationer is not a res integra. The said question was considered and explained by the Hon'ble Apex Court in number of decisions and it is relevant to note some of the said decisions. **Constitution Bench judgment in Shamsher Singh & Another Vs. State of Punjab, AIR 1974 SC 2192; Pavanendra Narayan Verma Vs. Sanjay Gandhi P. G. I. OF Medical Sciences and Another, (2002) 1 SCC 520; State of Punjab & Others Vs. Sukhwinder Singh, 2005 (5) SCALE 451; Union of India and Others Vs. Mahaveer C. Singhvi (2010) 7 SCALE 623; State Bank of India Vs. Palak Modi (2012) 5 SCALE 242; Chaitanya Prakash and Another Vs. H. Omkarappa (2010) 2 SCC 623; Rajesh Kohli Vs. High Court of J & K, (2010) 12 SC 783; Rajesh Kumar Srivastava Vs. State of Jharkhand, (2011) 4**

SCC 447; and Daya Shankar Yadav Vs. Union of India & Ors., (2010) 14 SCC 103.

13. In **M. Tripura Sundari Devi** (supra), the qualification prescribed in the advertisement for the posts of Grade-I and Grade-II teachers (Post Graduate Teacher and Trained Graduate Teacher respectively) was a second class degree in MA and though the respondent held a third class degree in MA, she was selected and accordingly, issued with an appointment order as Post Graduate Teacher in Hindi. However, after she produced the certificate, on noticing that the respondent was not qualified for the post, she was not allowed to join the service and was sent back. When an OA was filed before the Andhra Pradesh Administrative Tribunal at Hyderabad, the same was allowed. The Hon'ble Supreme Court held that the view of the Tribunal is clearly an error, however, in the circumstances of the case even after setting aside the order of the Tribunal, directed that the respondent should be appointed in the post with prospective effect.

14. The Hon'ble Apex Court in **Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and Others JT 2015 (9) 363**, wherein having considered the previous judgments of Hon'ble Supreme Court in cases **Samsher Singh v. State of Punjab (1974) 2 SCC 831**, **Radhey Shyam Gupta vs. U.P. State Agro Industries Corporation Ltd. and Another (1999) 2 SCC 21**, **State of U.P. vs. Kaushal Kishore Shukla (1991) 1**

SCC 691, *Triveni Shankar Saxena vs. State of U.P.*(1992) Supp (1) SCC 524, *State of U.P. vs. Prem Lata Misra* (1994) 4 SCC 189, *Samsher Singh (supra)*, *Parshotam Lal Dhingra vs. Union of India* AIR 1958 SC 36, *State of Bihar vs. Gopi Kishore Prasad* AIR 1960 SC 689, *State of Orissa vs. Ram Narayan Das* AIR 1961 SC 177, *Gujarat Steel Tubes Ltd. vs. Gujarat Steel Tubes Mazdoor Sabha* (1980) 2 SCC 593, *Gujarat Steel Tubes Ltd. vs. Gujarat Steel Tubes Mazdoor Sabha* (1980) 2 SCC 593, *Anoop Jaiswal vs. Govt. of India* (1984) 2 SCC 369, *Nepal Singh vs. State of U.P.* (1980) 3 SCC 288, *Commissioner, Food & Civil Supplies vs. Prakash Chandra Saxena* (1994) 5 SCC 177, *Commissioner, Food & Civil Supplies vs. Prakash Chandra Saxena* (1994) 5 SCC 177, *Chandra Prakash Shahi vs. State of U.P. and Others* (2000) 5 SCC 152, *Union of India and Others vs. Mahaveer C. Singhvi* (2010) 8 SCC 220, *Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences* (1999) 3 SCC 60, *Pavanendra Narayan Verma vs. Sanjay Gandhi P.G.I. of Medical Sciences and Another* (2002) 1 SCC 520] and *State Bank of India and Others vs. Palak Modi and Another* (2013) 3 SCC 607, ruled that if the termination order is stigmatic and based or founded upon misconduct, would be a punitive order and court can lift the veil and declare that in the garb of termination simpliciter, the employer has punished an employee, for an act of misconduct. It was also

held that if a probationer is discharged on the ground of misconduct or inefficiency or for similar reason, without a proper enquiry and without his getting a reasonable opportunity of showing cause against the termination, it may amount to removal from service within the meaning of Article 311 (2). Hence, departmental enquiry was required to be conducted before passing any adverse order. In the absence of which, the termination order would be inoperative and non-est in the eyes of law.

15. In the instant OA, the respondents conducted an enquiry, behind the back of the applicants, and findings of the said ex-parte enquiry constituted the foundation for the impugned action of termination and hence, as held by the Hon'ble Apex Court, the impugned orders of termination are held to be violative of the rules of natural justice.

16. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

17. In the circumstances and for the aforesaid reasons, the impugned orders are quashed and set aside. If the respondents have passed any further orders in continuation of the impugned termination orders, those orders are also stand quashed. The respondents shall reinstate the applicants into service forthwith.

Accordingly, all the OAs are allowed, with all consequential benefits.

Pending MAs, if any, stand disposed of. No costs.

Let a copy of this order be placed in all the OA files.

(A.K. BISHNOI)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

RKS