

(RESERVED ON 23.10.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This is the 10th day of **JANUARY, 2019.**

ORIGINAL APPLICATION NO. 330/394/2011

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

1. Anil Kumar S/o Shri Ram Janam Singh, aged about 35 years, Postal Assistant (SBCO), Head Post Office Rampur, District-Muradabad R/o Village Alalpur, Post Office-Ark Dhibria, Police Station-Tekari, District-Gaya Bihar.

.....Applicant.

VERSUS

1. The Union of India, through the Postmaster General, Department of Posts India, Office of Chief Postmaster General U.P. Circle, Lucknow-226001.
2. The Chief Postmaster General, Department of Posts India, U.P. Circle, Lucknow-226001.
3. The Director Postal Services (HQ) The Department of Posts India, Office of the Chief Postmaster General, U.P. Circle, Lucknow-226001.
4. The Assistant Postmaster General (Staff) Department of Posts India Office of the Chief Postmaster General, U.P. Circle Lucknow-226001.
5. The Secretary, Bihar Intermediate Education Council, Budh Marg, Patna (Bihar).

.....Respondents

Advocate for the Applicant : Shri S S Sharma

Advocate for the Respondents : Shri Satish Sahu, proxy counsel for
Shri S Srivastava

O R D E R
(Delivered by Hon'ble Mr. Mohd. Jamshed, Member-A)

The present Original Application (OA) has been filed by the applicant seeking primarily the following reliefs:-

- “(i) That the Hon'ble Tribunal may graciously be pleased to set aside impugned termination order dated 28.01.2010 issued by the Director Postal Services (HQ), U.P. Circle, Lucknow, respondent no. 3 vide Memo No. Staff/1600-PA/10 dated 28.01.2010 being illegal & void ab-initio as passed in violation to Hon'ble CAT order dated 24.11.2008 and Hon'ble High Court order dated 23.07.2009 and also in violation to Article 311, 14 and 21 of Constitution of India therefore, it is sustainable in the eyes of law.
- (ii) That the Hon'ble Tribunal may graciously be pleased to set aside the appellate order dated 13.08.2010, said to have been

passed by the Chief Post Master General, U.P. Circle Lucknow Respondent No. 2 as served to the applicant by the Asstt. Postmaster General (Staff), Lucknow vide Memo No. Staff/1600-PA/10 dated 13.08.2010 under his signature informing the appeal/representation dated 08.06.2010 of the applicant has been rejected by the Chief PMG, U.P. Circle, Lucknow. The appellate order is not sustainable in the eyes of law.

- (iii) That the Hon'ble Tribunal may graciously be pleased to direct the Secretary BIEC, Patna, Respondent No. 5 to verify the Tabulation Sheet of Marks of Intermediate Science Examination held in the month of March, 1993 showing 812 marks obtained by the applicant, filed as Annexure A-14 (Compilation No. II) to this application so that the main and only controversy in this matter may be resolved. The Secretary BIEC, Patna may also be directed to produce the relevant records in original before the Hon'ble Tribunal.
- (iv) That the Hon'ble Tribunal may graciously be pleased to direct the respondent to take the applicant on duly on the Post of PA (SBCO) with all consequential benefits as the impugned order are illegal and void ab initio and are deserves to be sent aside by the Hon'ble Tribunal.
- (v) That Hon'ble Tribunal may graciously be pleased to award heavy cost in favour of the applicant.
- (vi) The Hon'ble Tribunal may graciously be pleased to pass any other order or direction as may deem fit and proper in the facts and circumstances of the case."

2. The facts of the case as given in the OA are that the applicant appeared in the selection for appointment to the post of Postal Assistance (SBCO) against direct recruitment in PA (SBCO) Cadre 1997. As per the applicant his educational qualification is Intermediate in Science with 1st Division passed in the year 1993 from BIEC, Patna. He mentioned that he secured 812 marks. Copy of the marks sheet of the intermediate examination conducted in the year 1993 issued by the BIEC is on records. After the selection, the Assistant Director (Recruitment) on behalf of the Chief Post Master General, UP Circle, Lucknow vide letter dated 27.04.1998 intimated the applicant regarding his appointment as PA (SBCO) on the basis of his selection. Thereafter, the Assistant Postmaster General (Staff) vide letter dated 12.11.1998 informed the applicant about approval of his appointment as PA (SBCO) in UP Circle and directed him to furnish some documents within two weeks of that letter including marks sheet of the Intermediate Examination. The applicant furnished all the

documents and information as directed including the mark sheet of Intermediate Science Examination of BIEC, Patna showing 812 marks.

3. It is stated in the OA that before issuing appointment letter to the applicant, the Assistant Postmaster General (Vigilance) Bihar Circle, Patna vide letter dated 27.06.2003 got the marks sheet of the Intermediate Examination containing 812 marks of the applicant, verified from the Secretary Bihar Intermediate Education Council, Patna and the Secretary, BIEC, Patna vide letter dated 28.01.2004 verified the Marks Sheet of Intermediate Examination of the applicant showing 812 marks. This verification report dated 26.01.2004 of BIEC, Patna was forwarded by the Chief Postmaster General, Bihar Circle, Patna to the Chief Postmaster General, UP Circle, Lucknow vide letter dated 30.04.2004. After completing all the formalities and verification of certificates as submitted by the applicant, the Director, Postal Services (HQ), Office of the Chief PMG, UP Circle, Lucknow vide Memo dated 06.05.2005 appointed the applicant as Temporary Postal Assistant (SBCO) and allotted Bareilly Region to him. The Senior Superintendent of Post Office Moradabad Division issued order in this respect vide letter dated 25.05.2005. On 26.05.2005, the applicant joined the duty as Postal Assistant (SBCO) under the Postmaster, Rampur.

4. While the applicant was working on the said post, the Assistant Superintendent, Sub Division, Rampur delivered a "Notice of Termination of Service issued under Rule 5 (1) of Central Civil Services (Temporary Services) Rules 1965" dated 18.10.2005 to the applicant on 22.10.2005. This notice was signed and issued by Director of Postal Services (HQ), Office of the CPMG, UP Circle Lucknow, along with an Annexure stating that services of the applicant will stand terminated w.e.f., the date of

expiry of one month from the date on which this notice is served. It has been mentioned in the OA that as per the Annexure with the termination order dated 18.10.2005, it is evident that service of the applicant has been terminated on the allegation that the applicant has submitted a forged mark sheet of Bihar Intermediate Shiksha Parishad (BISP) Patna for his appointment and also managed the forged verification certificate. The applicant has stated that this termination order was not termination simpliciter but was punitive with stigma based on misconduct as mentioned in Annexure to the termination order. Further, in terms of Rule 5 (1) of the Central Civil Services (Temporary Services) Rules 1965, it should have been passed after holding disciplinary proceedings against the applicant by giving fullest opportunity to him under Rule 14 of the CCS-CCA Rules. Therefore, the termination order dated 18.10.2005 was illegal and is not sustainable in the eyes of law.

5. The applicant furnished a representation dated 18.11.2005 to the Principal Chief Postmaster General, UP Circle Lucknow against the termination order explaining therein that the Intermediate Marks Sheet showing 812 marks is genuine. At the same time, the applicant filed OA No. 1387 of 2005 – Anil Kumar Vs Union of India and others in this Tribunal against the termination order dated 18.10.2005 with prayer to set aside/to quash the impugned termination order and also prayed to summon/call for the original records pertaining to the verification/re-verification of Mark Sheet of Intermediate Examination 1993 of the applicant as issued by the BIEC, Patna, showing 812 marks. The applicant had also prayed before this Tribunal to direct the respondents to give a reasonable opportunity to the applicant by holding disciplinary/enquiry proceedings in his case. This Tribunal in its final order dated 24.11.2008 decided as under:-

“5. We are of the opinion that the applicant should be given an opportunity to defend himself against the ‘charge’ levelled against him, which cast stigma apart from constituting a criminal offence. Natural justice requires that applicant be afforded an opportunity of hearing before passing the impugned order.

6. In view of the above, impugned notice dated 16.10.2005 (Annexure A-1 to the OA) and all other consequential order/s of termination in lieu thereof, are set aside. It is made clear that it is open to the respondents to hold an inquiry in accordance with law, if so advised.”

6. Thereafter, the respondents filed a Writ Petition No. 36332 of 2009 before the Hon’ble High Court of Allahabad against the order dated 24.11.2008 passed by this Tribunal in OA No. 1387 of 2005. The Hon’ble High Court vide order dated 23.07.2009 disposed of the Writ Petition with the following orders:-

“Therefore, we clarify the position herein above and also direct the authority concerned to hold and complete the Inquiry upon giving fullest opportunity of hearing within the period of one month from the date of communication of this order”.

7. Thereafter, the applicant was issued another show cause notice dated 23.09.2009 by the respondents. This show cause notice was totally non speaking, however, the applicant vide letter dated 02.11.2009 sought copy of some relevant documents. Thereafter, the applicant vide letter dated 31.10.2010 submitted before the Chief Postmaster General UP Circle, Lucknow that the authority concerned failed to comply with the order of Hon’ble High Court dated 23.07.2009 to hold and complete the inquiry within a period of one month. The Director Postal Services (HQ), UP Circle, Lucknow, without considering any of the submission as made by the applicant in his representation dated 02.11.2009 and 31.01.2010 and without application of mind, vide memo dated 28.01.2010 terminated the services of the applicant on the grounds that document submitted by the applicant on the basis of which he was selected was found forged therefore, he cannot be permitted to be retained in services.

8. It is evident from the termination order dated 28.01.2010, that services of the applicant have been terminated only on the basis of show cause notice and no statutory inquiry as per Rule 14 or 16 of CCS-CCA Rules has been conducted. In the termination order, it is mentioned that in the marks sheet submitted by the applicant and first verification report dated 28.01.2004, total 812 marks were indicated but as per report dated 28.07.2005 from the Secretary BIEC, Patna he obtained 473 marks and therefore, marks sheet and previous verification report was forged. Thereafter, the applicant also filed an appeal before the Postmaster General UP, Circle, Lucknow vide letter dated 08.06.2010, however, the same was rejected vide order dated 13.08.2010.

9. Aggrieved by the action of the respondents, the applicant approached this Tribunal by filing this OA with the prayer to set aside the termination order dated 28.01.2010 and appellate order dated 13.08.2010 as the same have been passed in violation of order dated 24.11.2008 passed by this Tribunal and order dated 23.07.2009 passed by the Hon'ble High Court.

10. In the counter reply filed by the respondent no. 1 to 4, it is stated that the applicant was appointed as PA (SBCO) vide memo dated 06.05.2005 on the basis of marks sheet produced by him and on the receipt of verification report dated 28.01.2004 from Secretary, BIEC, Patna. He joined as PA (SBCO) Rampur on 26.05.2005. The marks sheet submitted by him indicated that he got 812 marks in his intermediate examination. Subsequently, APMG (Vigilance and Investigation), Office of Chief PMG, Bihar vide letter dated 07.09.2005 along with report of the Inquiry Committee, from Secretary, BIEC, Patna vide letter dated 28.07.2005 provided details of the marks obtained by the applicant .

According to this report, the applicant got 473 marks (2nd Division) in his intermediate examination. On the basis of the report of this Inquiry Committee indicating that the documents submitted earlier by applicant were found to be forged, a notice of termination was served under Rule 5 (1) of CCS (Temporary Service) Rules, 1965 on 08.10.2005 by DPS (HQ) Office of CPMG, Lucknow which was delivered to him on 21.10.2005. He preferred a petition to Chief PMG, UP Circle Lucknow on 18.11.2005 which was also rejected by Chief PMG on 23.12.2005. Aggrieved with the above decision, the applicant filed OA No. 1387 of 2005 before this Tribunal and this Tribunal vide order dated 24.11.2008 passed the following orders:-

“We are of the opinion that the applicant should be given an opportunity to defend himself against the ‘charge’ levelled against him, which cast stigma apart from constituting a criminal offence. Natural justice requires that applicant be afforded an opportunity of hearing before passing the impugned order.

In view of the above, impugned notice dated 16.10.2005 (Annexure A-1 to the OA) and all other consequential order/s of termination in lieu thereof, are set aside. It is made clear that it is open to the respondents to hold an inquiry in accordance with law, if so advised.”

11. Thereafter, the respondents filed a Writ Petition No. 36332 of 2009 before the Hon’ble High Court of Allahabad which was decided on 23.07.2009 with following order:-

“However, for the sake of convenience of both the parties, we clarify the order of Tribunal by saying that when the court is silent in respect of reinstatement after setting aside the order of termination, it cannot be construed that the reinstatement is obvious particularly when the court made it clear the respondents to hold the inquiry in accordance with law. Therefore, we clarify the position herein above and also direct the authority concerned to hold and complete the inquiry upon giving fullest opportunity of hearing within a period of one month from the date of communication of this order.”

12. Thereafter, the applicant submitted another representation dated 02.09.2009 along with copy of the order of this Tribunal as well as of the Hon’ble High Court mentioning that he obtained 812 marks and that the allegations made are totally false and requested to take a decision within one month after giving fullest opportunity of hearing to him.

13. As per the mark sheet submitted by the applicant, he had obtained 812 marks but the report dated 28.07.2005 submitted by the Secretary, BIEC, Patna indicated that the total marks obtained by the applicant was 473. This fact was again confirmed by BIEC vide letter dated 10.08.2009. A show cause notice was again issued on 23.09.2009 to the applicant on the address given by him but the same could not be delivered as he had left the place of residence 3 years ago. Thereafter, another letter dated 30.09.2009 was sent to his permanent address. The applicant demanded copy of the documents vide letter dated 17.11.2009 to examine the available record by attending the office on any working day. He also requested vide his application dated 03.12.2009 for personal hearing. He was accordingly, advised to present his case vide letter dated 17.12.2009. The applicant attended the office on 06.01.2010 and examined the documents and submitted his representation dated 08.01.2010. However, keeping in view the verification report dated 28.07.2005 and letter dated 10.08.2009, it was established that he had only obtained 473 marks in the intermediate examination and therefore, the applicant was not found suitable to be retained in service and therefore, the order for termination was issued on 28.01.2010 by the appointing authority.

14. The applicant again submitted a representation dated 08.06.2010 to the Chief PMG, UP Circle, Lucknow against the termination order passed by the Director Postal Services (HQ). After due consideration, the CPMG, UP Circle, Lucknow did not find any reason for interfering in the order passed by the DPS (HQ), therefore, his representation was rejected by Chief PMG vide order dated 03.08.2010. The applicant demanded an inquiry which was not found feasible by the Postal Department because the marks sheet produced by him to get the appointment was not found genuine by the authority who issued the marks sheet. The applicant got

appointment by producing bogus documents, therefore, his services were terminated under Rule 5 of CCS (Temporary) Service Rules 1965 and there was no need for further inquiry under Rule 14 of CCS (CCA) Rules, 1965. It is also stated that as per the direction of the Hon'ble High Court, adequate opportunity was given to the applicant. He attended the office and examined the records and made representation. Since, the applicant was a temporary Government Servant, therefore, his services were terminated under Temporary Service Rules.

15. In the counter affidavit filed by respondent no. 5 i.e., Bihar School Examination Board, earlier known as Bihar Intermediate Education Council, it is mentioned that as per computerised RTR, the applicant had passed the Intermediate Examination, 1993 Faculty of Science in Second Division and has obtained a total of 473 marks. It is also submitted that the copy of the mark sheet annexed as Annexure No A-3 to the Original Application is a forged and fabricated document. It is further mentioned that in pursuance of the letter of the Assistant Postmaster General (Vigilance), Patna, for verification of the original documents of the applicant, an inquiry was conducted by the answering respondent. Report regarding the same was also sought from the Principal, Mirza Ghalib College, Gaya from where the applicant had studied and passed Intermediate Examination, 1993 and on the basis of the records available in the office of the answering respondent and of the concerned college and also on the basis of the report of the inquiry committee, a verification report dated 02.11.2006 was sent to the concerned Postal Department stating therein that the applicant has passed the Intermediate Exams in Second Division and has obtained 473 marks in total and the marks sheet which shows the total marks of 812 (first division) is a forged and fabricated document. It is further stated that the applicant was rightly

served a Show cause notice as he was appointed on the basis of forged mark sheet and the verification letter dated 28.01.2004 alleged to have been issued by the Secretary, BIEC, Patna is also a forged document.

16. In the rejoinder affidavit and the supplementary counter affidavit, the parties have basically reiterated the contentions made in the OA and counter affidavit.

17. Learned counsel for the applicant has argued that the applicant was appointed as PA (SBCO) and he had submitted his intermediate marks sheet indicating 812 marks (1st Division), which was verified by the BIEC, Patna vide verification report dated 28.01.2004 and the same was found to be correct. After that vide letter dated 06.05.2005, the applicant was posted as PA (SBCO) on temporary basis. A notice of termination of service was issued under Rule 5 (1) of Central Civil Services (Temporary Services) Rules 1965 dated 18.10.2005 by the Director of Postal Services (HQ) and in the annexure attached with the said notice, it was mentioned that the applicant had submitted a forged mark sheet of BISP, Patna for his appointment. Learned counsel for the applicant has reiterated that Rule 5 (1) of the CCS (Temporary Services) Rules, 1965 is not applicable in this matter. It appears that the termination order dated 18.10.2005 is based on misconduct and is punitive in nature and therefore, before issuance of such order, an inquiry under Rule 14 is to be conducted. He has relied on the order dated 24.11.2008 passed by this Tribunal in OA No. 1387 of 2005 and the order dated 23.07.2009 passed by the Hon'ble Allahabad High Court. He has also mentioned that as per the orders of this Tribunal and the Hon'ble High Court, another show cause notice dated 23.09.2009 was issued to the applicant, which was replied by him and his reply has been rejected by the competent authority. Learned counsel for

the applicant in support of his argument has relied upon the following judgements of the Apex Court:-

- (a) Dipti Prakash Banerjee Vs. Sateyendra Nath Bose National Centre for Basic Sciences Calcutta and others (1999) SCC (L&S) 596.
- (b) Indra Pal Gupta Vs Managing Committee, Model Iner College, Thora (1999) SCC (L&S)555.
- (c) Anoop Kumar Vs Government of India (1999) SCC (L&S)256
- (d) Ramachandra Keshar Adke Vs Govind Joti Chave (1975) AIR (SC) 915
- (e) Deepaly Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and others.
- (f) Jasmeer Singh Vs State of Haryana and another (2015) 4 SCC 458

The above quoted judgments furnished by the learned counsel for the applicant have been perused and it is observed that these are not related with facts of the present case.

18. Learned counsel for the respondents has reiterated that the applicant was appointed as PA (SBCO) on 06.05.2005 on temporary basis. After receiving information that the applicant had submitted forged mark sheet, he was rightly issued show cause notice for termination of his services on 18.10.2005 giving him period of one month. The representation preferred by the applicant was considered and rejected by the competent authority vide letter dated 23.12.2005. Thereafter, the applicant approached this Tribunal by filing OA No. 1387 of 2005 and this Tribunal vide order dated 24.11.2008 allowed the OA. Thereafter, the respondents filed Writ Petition No. 36332 of 2009 before the Hon'ble Allahabad High Court, however, the same was dismissed vide order dated 23.07.2009 and the respondents were directed to hold and complete the inquiry after giving full opportunity of hearing to the applicant within one month. The applicant was therefore once again served with another show cause notice dated 23.09.2009 for termination of his services and he was given full opportunity to examine the relevant documents and make representation. The applicant submitted his representation to the respondents and the

same was rejected by the competent authority by a reasoned and speaking order.

19. The applicant submitted an appeal dated 08.06.2010 to the CPMG, UP Circle, Lucknow which was rejected vide order dated 03.08.2010. While passing of the orders dated 28.01.2010 and 03.08.2010, the orders of this Tribunal and Hon'ble High Court were considered by the Disciplinary Authority and the Appellate Authority. Learned counsel of the respondents has also reiterated that the applicant got appointment by producing forged mark sheets, therefore his services were terminated under Rule 5 of the CCS (Temporary) Service Rules, 1965 and hence, there was no need for further inquiry under Rule 14 of the CCS (CCA) Rules, 1965. It has also been stated that the DoPT circular dated 19.05.1993 prescribes the action against employees who are later found ineligible/unqualified for their initial recruitment. As per the aforesaid DoPT circular, wherever it is found that a Government Servant, who was not qualified or eligible in terms of the Recruitment Rules, etc., for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, he should not be retained in service. If he is a probationer or a temporary Government servant, he should be discharged or his service should be terminated. If he has become permanent Government servant, an inquiry as prescribed in Rule 14 of the CCS (CCA) Rules, 1965, may be held and if the charges are proved, the Government servant should be removed or dismissed from service.

20. Heard the arguments of counsels for both the parties and perused the records.

21. From the facts of the case, it is evident that the applicant was appointed on the post of PA (SBCO) vide letter dated 27.04.1998 issued by the CPMG, Lucknow which clearly stated the condition that “you clearly understand that your selection is subject to satisfactory verification of testimonials, PVR etc” and “Formal appointment orders will be issued by the competent authority in due course after observing usual formalities.” In the subsequent letter dated 12.11.1998, issued by the CPMG also, it was clearly mentioned that “It is to inform you that you have been approved provisionally for appointment as PA (SBCO) in UP Cadre and have been allotted to the Office of Chief Postmaster General U.P. Circle Lucknow. In order to enable this office to appoint you to the above post, you are requested to please furnish the following documents and information immediately.” In the letter issued on 06.05.2005 by the APMG, it was mentioned that “The Director Postal Services (HQ), Office of the Chief PMG, U.P. Circle, Lucknow has appointed the following approved candidates as temporary Postal Assistant SBCO in the pay scale of Rs. 4000-100-6000 plus usual allowances and allotted them to the Region as indicated against them”. This letter contained the name of the applicant also. In this letter, it was also mentioned that “The candidates should clearly understand that their appointment as PA SBCO is purely temporary and will not confer on them any right for continued officiation or permanent absorption in the cadre and their services can be terminated at any time without giving notice and assigning any reason thereof.” In another letter dated 12.05.2005 also, issued by the Postmaster General, Bareilly Region, it was mentioned that “The candidates should clearly understand that their appointment as PA SBCO is purely temporary and will not confer on them any right for continued officiation or permanent absorption in the cadre and their services can be terminated at any time without giving notice and assigning any reason thereof.” In the letter dated

25.05.2005 issued by the Senior Superintendent of Post Offices, Moradabad Division regarding applicant's posting at Rampur, the same condition was mentioned.

22. It is thus very clear that the appointment of the applicant was on temporary basis without conferring any right on him for continued officiation or permanent absorption and his services could be terminated at any time without giving notice and assigning any reason thereof. During the process of document verification, the applicant had submitted marks sheet of Intermediate Examination showing 812 marks (1st Division). Subsequently, vide letter dated 07.09.2005 issued by the APMG (Vigilance and Investigation), Office of the CPMG, Bihar along with report of Inquiry Committee from Secretary, BIEC, Patna vide letter dated 28.07.2005, it was confirmed that the applicant had obtained 473 marks (2nd Division) instead of 812 marks and that the earlier report submitted by him was forged. After receipt of this report, the competent authority i.e., Director of Postal Services (HQ) Chief PMG, UP Circle, Lucknow issued show cause under Sub Rule (1) of Rule 5 of the CCS (Temporary Service) Rules, 1965, with effect from the date of expiry of a period of one month from the date and all the details were mentioned in the Annexure attached with the show cause. The applicant submitted a representation dated 18.11.2005 against the show cause notice. The applicant thereafter filed OA No. 1387 of 2005 before this Tribunal against the termination order dated 18.10.2005 and this Tribunal vide order dated 24.11.2008 allowed the OA with directions. Thereafter, the respondents filed Writ Petition No. 36332 of 2009 before the Hon'ble High Court of Allahabad. The Hon'ble High Court vide order dated 23.07.2009 upheld the order of the Tribunal.

23. In terms of the aforesaid orders & directives given by the Tribunal and Hon'ble High Court, the respondents issued another show cause

noticed dated 23.09.2009 to the applicant. However, the show cause notice took some time to be delivered as the applicant was not available at the address given by him. Another letter dated 30.09.2009 was sent to his permanent address. The applicant vide letter dated 17.11.2009 demanded copy of some documents and permission to examine records by attending office. He also requested for personal hearing. The respondents vide letter dated 17.12.2009 directed the applicant to present his case. The applicant attended the office on 06.01.2010 and examined the documents. Thereafter, the applicant was directed to submit his representation within 10 days and the applicant submitted his representation dated 08.01.2010. The representation was considered and rejected by the competent authority vide order dated 28.01.2010. Thereafter, the applicant submitted another representation dated 08.06.2010 against the termination order dated 28.01.2010. The same was also considered and rejected vide order dated 03.8.2010

24. It is also observed that the applicant has continuously emphasised that marks sheet submitted by him indicating 812 marks is correct and the subsequent mark sheet submitted by the Secretary, BIEC to the Department of Post indicating 473 marks is not correct. In this connection, an affidavit has been filed by the BIEC, enclosing the certificate issued by the Principal of Mirza Ghalib College, Gaya from where the applicant studied indicating the breakup of 473 marks and also inquiry report signed by the Secretary, BIEC and four others clearly indicating that the applicant had obtained 473 marks. It has also been mentioned by the BIEC that earlier letter indicating 812 marks is also forged document. With this, the position is clear and settled that the applicant secured only 473 marks and submitted a bogus marks sheet.

25. It is also clear that the nature of the appointment of the applicant was temporary and till the time his services were terminated he remained temporary. After his termination, he continued to pursue his case before this Tribunal by filing OA No. 1387 of 2005 and this Tribunal vide order dated 24.11.2008 allowed the OA. Against the order dated 24.11.2008 passed by this Tribunal, the respondents filed Writ Petition No. 36332 of 2009 before the Hon'ble Allahabad High Court and the same was dismissed vide order dated 23.07.2009.

26. As far as the primary issue of holding of inquiry is concerned, the Apex Court in two relevant judgements has settled the same. In the case of **Union of India and Ors V. Bikash Kuanar (2006) 8 SCC 192**, the Apex Court has held as under:-

“12. The matter relating to appointment or recruitment of EDDA is not governed by any statute but by departmental instructions. It is now trite that if a mistake is committed in passing an administrative order, the same may be rectified. Rectification of a mistake, however, may in a given situation require compliance with the principles of natural justice. It is only in a case where the mistake is apparent on the face of the record, a rectification thereof is permissible without giving any hearing to the aggrieved party.

.....
14. *When a Selection Committee recommends selection of a person, the same cannot be presumed to have been done in a mechanical manner in absence of any allegation of favouritism or bias. A presumption arises in regard to the correctness of the official act. The party who makes any allegation of bias or favouritism is required to prove the same. In the instant case, no such allegation was made. The selection process was not found to be vitiated. No illegality was brought to our notice.”*

In the case of **State of Bihar and Ors Vs Kirti Narayan Prasad (2018) SCC OnLine SC 2615**, the Apex Court held as under:-

“17. In the instant cases the writ petitioners have filed the petitions before the High Court with a specific prayer to regularize their service and to set aside the order of termination of their services. They have also challenged the report submitted by the State Committee. The real controversy is whether the writ petitioners were legally and validly appointed. The finding of the State Committee is that many writ petitioners had secured appointment by producing fake or forged appointment letter or had been inducted in Government service surreptitiously by concerned Civil Surgeon-cum-Chief Medical Officer by issuing a posting order. The writ petitioners are the beneficiaries of

illegal orders made by the Civil Surgeon-cum-Chief Medical Officer. They were given notice to establish the genuineness of their appointment and to show cause. None of them could establish the genuineness or legality of their appointment before the State Committee. The State Committee on appreciation of the materials on record has opined that their appointment was illegal and void ab initio. We do not find any ground to disagree with the finding of the State Committee. In the circumstances, the question of regularisation of their services by invoking para 53 of the judgment in Umadevi (supra) does not arise. Since the appointment of the petitioners is ab initio void, they cannot be said to be the civil servants of the State. Therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution or under any other disciplinary rules shall not arise.”

27. The respondents have also clearly mentioned that the applicant's case is totally covered under Rule 5 (1) of the CCS (Temporary Service) Rules, 1965 and therefore, it is not necessary to hold any inquiry. At the same time, number of opportunities have been given to the applicant by issuing show cause notice and representations have also been considered not once but twice by the Disciplinary Authority as well as the Appellate Authority. In terms of the order passed by this Tribunal as well as the Hon'ble High Court, his representation was considered again and he was shown all the relevant records and was asked to come forward for personal hearing. It is therefore, obvious that the action of the disciplinary authority is fully covered under the Rule 5 (1) of the CCS (Temporary Service) Rules, 1965.

28. In view of the above and numerous opportunities having been given to the applicant in the interest of justice by the respondents, there is no merit in the present OA. Accordingly, the same is dismissed. No order as to cost.

(MOHD JAMSHED)
MEMBER-A

(RAKESH SAGAR JAIN)
MEMBER-J

Arun..