

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4397 of 2016

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Rupesh Kumar S/o Sri Arvind Rajak, Resident of Patel Nagar, Post - Hilsa, Police Station - Hilsa, District - Nalanda.

.... Petitioner

Versus

1. The Union of India the Director General Employees State Insurance Corporation Panchdeep Bhawan, C.I. G. Road, New Delhi.
2. The Joint Director (Recruitment) Employees State Insurance Corporation Panchdeep Bhawan, C.I.G. Marg, New Delhi - 110002.
3. The Additional Commissioner and The Regional Director Employees State Insurance Corporation Regional Office, Panchdeep Bhawan Ashram Road, Ahmedabad - 380014.
4. The Regional Director, Employees State Insurance Corporation Regional Office, Panchdeep Bhawan, Ashram Road, Ahmedabad - 380014. null null
5. The Regional Director Employees State Insurance Corporation, Regional Office, Panchdeep Bhawan Ashram Road, Ahmadabad, 380014.
6. The Joint Director I/C Employees State Insurance Corporation, Sub - Regional Office, Vadadara, ESI, Corporation Vadodara (Gujrat).

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Kumar Ranjit Ranjan, Advocate

For the Respondent/s : Mr. Sudhir Kumar Bijpuria, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 19-01-2017

The petitioner has filed the writ application under Articles 226 and 227 of the Constitution of India against the order dated 9.12.2015 passed by the Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 891 of 2014. The Central Administrative Tribunal after hearing the parties to the dispute has dismissed the O.A. and refused to interfere with the order of



termination which is an order simplicitor in exercise of power under Rule 6(3) of the ESI Corporation (Staff and Conditions of Service) Regulations, 1959.

The short facts which are relevant for consideration in the present writ application is that an examination was held by the respondent-authorities against Employment Notice No. 7 date 13.01.2012 for recruitment to the post of Upper Division Clerk. Based on the outcome of the said examination certain people including the petitioner came to be appointed but were working as probationers. The period of probation was two years.

In the meantime, an enquiry was also initiated as it transpired that many candidates had used imposters to sit in the examination and impersonation was practiced in the written examination. The evidence like the handwriting, signature and the palm impression, etc. were matched. The matter was referred to the Central Forensic Science Laboratory, New Delhi and based on the opinion of the Forensic Science Laboratory, decision was taken to issue an order of termination simplicitor in exercise of power under Rule 6(3) of the Regulations, 1959. The Regulations empower the ESI authorities to pass an order of termination with regard to temporary employee without assigning any reason thereof at any time by giving a month's notice. The petitioner fell in the above



category.

The background under which the respondent-authorities decided to invoke the power of termination was case of impersonation.

After the evidence was obtained against the petitioner, he was confronted with the materials and given liberty to rebutt but in absence of any contrary opinion or evidence which could absolve him of the allegation of impersonation, specially when such material was scientific in nature and provided by the Central Forensic Laboratory, the guilt of the petitioner with regard to use of impersonator to sit in the written examination remained no longer a matter of dispute.

It was in this background that the order of termination was passed and came to be challenged before the Central Administrative Tribunal.

Having heard the counsel for the petitioner and the respondents extensively as well as perused the order of the tribunal, the Court is satisfied that the Tribunal has dealt with the matter in quite a detail both with regard to the materials and evidence which had come against the petitioner, which formed the basis of issuance of letter of termination. The admitted position was that the thumb impression, signature, etc. in the written examination did not match



with that of the petitioner with the preponderance of evidence alleged against him with strong evidence of impersonation emerging from the report of the Central Forensic Science Laboratory, the Tribunal refused to interfere with the order of termination.

Since the order of termination was a termination simplicitor and issued while the petitioner was still in probation and well within two years, no infirmity was committed by issuing such an order or decision by the respondent-authorities.

Facts and evidence being such, no interference is warranted with the finding or the reason for dismissal of the O.A. application by the Tribunal.

The writ application has no merit and is dismissed.

(Ajay Kumar Tripathi, J)

S.Pandey/-

(Nilu Agrawal, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.01.2017
Transmission Date	

