

(2025) 07 RAJ CK 0637
In the Rajasthan High Court, Jaipur Bench
Case No : Civil Writ Petition No.6592 Of 2022

Shailendra Singh Dhaked

APPELLANT

Vs

Indian Council of Agriculture Research

RESPONDENT

Date of Decision : 30-07-2025

Acts Referred:

Indian Penal Code, 1860 — Section 300, 302, 304
Bhartiya Nagrik Suraksha Sanhita, 2023 — Section 481

Citation : (2025) 07 RAJ CK 0637

Hon'ble Judges : Avneesh Jhingan, J; Baljinder Singh Sandhu, J

Bench : Division Bench

Advocate : Hemant Gupta, Jitendra Singh Rathore

Final Decision : Allowed

Judgement

Avneesh Jhingan, J

1. This petition is filed aggrieved of order dated 17.11.2021 passed by the Central Administrative Tribunal, Jaipur Bench, Jaipur (for brevity 'the tribunal') dismissing Original Application ('OA') No.431/2011 filed by the petitioner.

2. The brief facts are that the petitioner in pursuance to advertisement inviting applications for temporary post at Central Sheep & Wool Research Institute, (CSWRI), Avika Nagar, Tonk applied for post T-1 Lab Technician and was appointed vide office order dated 05.07.2011. The petitioner was removed from service under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 (for short 'the Rules') vide order dated 16.09.2011. The petitioner was given one month salary in lieu of notice period. The OA filed by the petitioner aggrieved of the removal order was dismissed by the tribunal vide order dated 17.04.2012. The order of the tribunal was set-aside by this Court on 23.10.2017 in DBCWP No.9303/2012 (Shailendra Singh Dhaked Vs. Indian Council for Agriculture & Ors.) and the matter was remanded to the Tribunal. The OA was again dismissed vide impugned order dated 17.11.2021, hence, the present

petition.

3.1 Learned counsel for the petitioner submits that termination of the petitioner under Rule 5 of the Rules is stigmatic being consequent to irregularity in the selection process. The contention is that petitioner was beneficiary of the selection process and should have been given opportunity to defend the case before passing the order of removal from service.

3.2 Reliance is placed upon the decision of Central Administrative Tribunal, Hyderabad Bench in Original Application No.908/2011 titled as P. Phani Kumar Vs. The Director,

National Research Centre on Meat & Ors. dated 07.08.2013 to contend that similarly situated candidates were allowed to continue holding that there is stigma attached for removing an employee for reason of irregularity in selection process. It is emphasized that decision of the tribunal, Hyderabad Bench was upheld by the High Court and the Supreme Court.

3.3 Reliance is placed upon the following decisions:-(i) Dr.Vijayakumaran C.P.V. Vs. Central University of Kerala and Ors. reported in [(2020)12 SCC 426], (ii) Abhay Jain Vs. High Court of Judicature for Rajasthan & Anr. reported in [2022 SCC Online SC 319], (iii) Rajasthan State Road Transport Corporation & Ors. Vs. Poornendu Sharma & Anr.

and other connected matters decided by this Court in D.B. Special Appeal (Writ) No.403/2018 on 23.08.2018 and (iv) Punjab State Electricity Board & Ors. Vs. Leela Singh reported in [(2007)12 SCC 146] to contend that enquiry should have been held prior to passing the impugned order.

4. Learned counsel for the respondents defends the impugned order and submits that selection process was vitiated by gross irregularities. The candidates securing higher marks in written examination were neither considered nor called for interview and no marks were given for interview.

4.1 It is contended that on enquiry the complaints of irregularities in selection process were found to be veracious and the entire selection for the post of Lab Technician was cancelled.

4.2 The submission is that in the disciplinary proceedings initiated for irregularities in selection process penalties were imposed against the then Director and the Chief Administrative Officer. The decision of the tribunal, Hyderabad Bench is distinguished by stating that in the present case no marks for interview were given.

5. Heard learned counsel for the parties and perused the pleadings.

6. The advertisement and appointment order clearly specified that appointment to the post of T-1 Lab Technician was on the temporary basis.

7. The relevant portion of Rule 5 of the Rules is reproduced below:-

"5. Termination of temporary service:-

(1) (a) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;

(b) the period of such notice shall be one month.

Provided that the services of any such Government servant may be terminated forthwith and on such termination, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or as the case may be, for the period by which such notice falls short of one month."

8. Rule 5 provides termination of temporary service by serving a notice of one month either by the employee or the appointing authority. The proviso provides that in case a shortfall of notice period, the employee is entitled to claim a sum equivalent to his pay plus allowances.

9. Under Rule 5 the services of the petitioner were discontinued vide office order dated 16.09.2011 and salary of one month was paid in lieu of the notice period.

The office order is reproduced below:-

CENTRAL SHEEP & WOOL RESEARCH INSTITUTE

AVIKANAGAR (VIA: JAIPUR)

RAJASTHAN- 304 501

F.No.1(11) Rectt./2011/Admn.1/6101

Dated: 16.09.2011

OFFICE ORDER

In pursuance of ICAR letter No.17-1/10-IA-I dated 15.09.2011 and the terms & conditions of offer of appointment Memorandum No.1(3)Rectt./2007/Admn.I/2039 dated 25.03.2011 under clause No.7, it has been decided by the Director CSWRI to discontinue the services of Shailendra Singh Dhakad, T-1 (Lab Technician) with immediate effect under rule 5 of CCS (TS) rules, 1965. Further one month salary will be paid to him in lieu of one month notice as per rules.

Sd/-

K.L. Meena

Chief Administrative Officer

10. From perusal of the office order, it is forthcoming that it is a case of simple discontinuation of service under Rule 5.

11. There is no challenge to the following factual findings recorded by the tribunal:-

(i) The petitioner had secured lowest marks in written examination against the candidates selected and eight persons were getting higher marks than the petitioner.

(ii) As per the record produced, no marks for interview were allotted.

(iii) The other two candidates appointed on the post of T1-Lab Technician also had significantly lower marks than the other candidates who were neither considered nor called for interview.

(iv) Lastly from the record produced and from advertisement no condition was shown that the written examination shall be only for screening purposes and the selection shall be made on the marks secured in interview alone.

12. The committee constituted to look into the complaint against the irregularities in recruitment on the post of T-1 Lab Technician and T-3 Lab Technician found gross irregularities in recruitment and the entire selection was cancelled.

13. The order of discontinuation of service of petitioner under Rule 5 does not make a mention of irregularity in the selection and cannot be stated to be stigmatic.

14. Be that as it may, the law is well settled that where the selection process itself is bad, illegal, suffers from gross irregularity, the individual innocence has no place.

15. The Supreme Court in the case of M.P. State Coop. Bank Ltd. Bhopal Vs. Nanuram Yadav & Ors. reported in [(2007)8 SCC 264] held that:-

"20. It is clear that in the matter of public appointments, the following principles are to be followed:-

(1) The appointments made without following the appropriate procedure under the Rules/Government Circulars and without advertisement or inviting applications from the open market would amount to breach of Articles 14 & 16 of the Constitution of India.

(2) Regularisation cannot be a mode of appointment.

(3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularization.

(4) Those who come by back door should go through that door.

(5) No regularization is permissible in exercise of the statutory power conferred

under Article 162 of the Constitution of India if the appointments have been made in contravention of the statutory Rules.

(6) The Court should not exercise its jurisdiction on misplaced sympathy.

(7) If the mischief played so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection.

8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside."

16. The Supreme Court in the case of Amrit Yadav Vs. State of Jharkhand reported in [2025 INSC 176] considering the judgment of M.P. State Coop. Bank Ltd. Bhopal Vs. Nanuram Yadav & Ors. (supra) held that the power of the Courts on setting aside of appointments being nullity in law are not curtailed by creation of a third party right. The relevant para is quoted:-

"35. Thus, it is clear that once the appointment process is declared to be a nullity in law, every action taken in furtherance of such appointment process is also illegal, and, therefore, the constitutional courts have jurisdiction to set aside such appointments wholly and ab-initio. This power of the Court is not curtailed even in a situation where a third party right has been created in those who have been offered appointment or have even joined the service."

17. In the decision of Ranbir Singh Vs. S.K. Roy and Ors. reported in [(2023)17 SCC 196] the Court held that:-

"72. xxxxxxxxxxxx As a public employer, the recruitment process of the corporation must meet the constitutional standard of a fair and open process. Allowing for back-door entries into service is an anathema to public service."

18. In decision of Abdul Ahad & Ors. Vs. Union of India & Ors reported in [(2022)18 SCC 108] the Court held that the back door entrants are not entitled to equitable relief.

19. The discontinuance of service of the petitioner was under Rule 5 of the Rules and order of removal had no stigmatic contents in it. It was revealed during the litigation that the selection process marked by gross irregularities and the entire selection process of T-1 Lab Technician was cancelled. The revelation of this fact cannot be allowed to be encashed by the petitioner to continue in service by stressing that the removal in the case of cancellation of the recruitment shall be presumed to be stigmatic.

20. The contention that the petitioner was beneficiary of the recruitment process and should have been granted an opportunity to defend before passing the order dated 16.09.2011, is noted to be rejected. The petitioner a candidate in selection

process had no locus standi to defend the irregularities in the selection process, moreso, in absence of laying challenge to cancellation of recruitment.

21. Another aspect is that neither before the tribunal nor in the writ petition it is disputed that the petitioner secured lowest marks amongst the listed candidates and there were eight candidates securing more marks than the petitioner. Further that no marks for interview were awarded. In other words, no criteria was followed for selecting the candidates including the petitioner.

22. Reliance of counsel for the petitioner on decision of tribunal, Hyderabad Bench in P. Phani Kumar (supra), is of no avail. The tribunal in that very case recorded a finding that the facts of the present case are not similar to that case. In case before the Hyderabad Bench, there was only difference of two marks in the written test and separate marks were allotted for interview. There was no material produced to show disproportionate preference given to the selected candidates on the basis of interview. Whereas in the present case the marks secured in written test were not considered and no marks were awarded in interview. The tribunal rightly distinguished the decision.

23. The submission of learned counsel for the petitioner that decision of the tribunal was upheld by the High Court and the Supreme Court is factually misconceived. The High Court had not dealt with the case on merits and considering that the respondents had already reinstated the employees, the order of the tribunal was not interfered with. The SLP against the order of the High Court was dismissed on the ground of delay.

24. In all fairness, the decisions relied upon by the counsel for the petitioner are being dealt with.

25. In case of Dr.Vijayakumaran C.P.V. (supra) termination order itself mentioned that the decision to terminate the employee was taken after scrutiny of report by Internal Complaints Committee, other documents and the academic performance. However, in the present case the discontinuation of service was under Rule 5 of the Rules of a probationer who was appointed on a temporary post. The case relied upon is factually different.

26. The decision of Abhay Jain (supra) is not applicable in the facts of the present case. The discharge of the petitioner in that case was not simpliciter. The uncommunicated ACRs were relied upon for discharging the service. There was no verifiable complaint against the appellant therein to form the basis for the disciplinary proceedings.

27. In the case of Rajasthan State Road Transport Corporation (supra) the termination was on the ground of doubtful integrity and was held to be stigmatic.

28. In case of Punjab State Electricity Board (supra) the Court held that services of the employee were terminated for obtaining appointment by producing forged experience certificate and the allegation was required to be proved in the departmental proceedings. The case is not applicable in the set of facts in the

present case.

29. The detailed and well reasoned order of the tribunal suffers from no factual or legal error calling no interference, the petition is dismissed.