
(2010) 03 RAJ CK 0001
In the Rajasthan High Court

Narendra Kumar Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 311
Government of India Act, 1935 — Section 240

Citation : (2010) 3 RLW 2415 : (2010) 2 WLN 513

Hon'ble Judges : Gopal Krishan Vyas, J;A.M. Kapadia, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—In this writ petition filed under Article 226 & 227 of the Constitution of India, petitioner has challenged the judgment dated 23rd March 2001 passed in OA No. 185 of 1996 by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur by which the learned Tribunal dismissed the OA filed by petitioner challenging the impugned order/notice dated 10th May 1996 issued by respondent No. 2 with the prayer that respondents be restrained from terminating the services of the applicant and treat the applicant as an employee having permanent status.

2. As per the facts of the case, petitioner was appointed after due selection and having been satisfied with the eligibility by the competent authority vide order dated 28th June 1982 on the post of Senior Translator (Hindi), a civilian job. At the time of appointment, method prescribed for regular appointment was taken into consideration and petitioner was directed to appear in written test as well as for interview and thereafter, he was appointed on probation for a period of two years with certain conditions, which is obvious from appointment order dated 28th June 1982.

3. The services of the petitioner were terminated earlier vide order dated 29th February 1984 on the ground that he was not possessing qualification for the post of Senior Translator to which he was appointed, against that order,

petitioner preferred writ petition before this Court but same was transferred to the Central Administrative Tribunal when Central Administrative Tribunal Act, 1985 was promulgated.

4. The learned Tribunal while deciding the said 1984 and ordered that the applicant will be deemed to be in service in terms of appointment letter dated 28th June 1982. Further, it was held that this would not further preclude the respondents from proceeding against applicant in accordance with law but without taking into account Para 3 inserted in the appointment letter. In compliance of the said judgment rendered by the Central Administrative Tribunal, the respondents passed an order directing the petitioner to report on duty on the post of Senior Translator (Hindi). In pursuance of the said order, petitioner resumed his duties on 17th September 1986 itself.

5. After taking the petitioner on duty in pursuance of the judgment of the Central Administrative Tribunal dated 29th May 1986, a seniority list of Translators (Hindi) employed in the Air Force was issued vide Notification dated 12th February 1990 in which the name of the petitioner found placed at Serial No. 4. The case of the petitioner is that he has rendered services in the office of respondent department efficiently, effectively and with dedication but inspite of excellent services on the part of the petitioner, the respondent denied promotion to the petitioner for no reason. It appears that promotion was denied to the petitioner for the reason that he preferred writ petition assailing validity of his termination.

6. After reinstatement in pursuance of the judgment of the Tribunal dated 29th of May 1986, the respondent No. 2 again issued a notice under Sub-rule (1) of Rule 5 of the Central Civil Services Temporary Service Rules, 1965 to the petitioner stating therein that his services shall stand terminated with effect from the date of expiry of period of two months from the date the notice is served. The petitioner being aggrieved with the said notice dated 18th June 1991, preferred an Original Application before the learned Central Administrative Tribunal and same was registered as OA No. 289/1991.

7. In the OA filed by the petitioner against notice dated 18th June 1991, the Tribunal passed an order on 17th July 1991 whereby learned Tribunal granted interim order staying operation of the impugned order dated 18th June 1991, which reads as under:

Heard. Admit.

Issue notice to the respondent, returnable on 30.07.91. Notices be given "dasti" to learned Counsel for the applicant.

Meanwhile operation of the order Annx.A-1 filed in the O.A. Is hereby stayed till that date.

8. The petitioner remained in service in pursuance of the said order and finally the OA No. 289/1991 came up for hearing before the Tribunal on 5th August

1991. The Tribunal disposed of the same by directing the respondents to consider the representation of the petitioner and to dispose of the same by speaking order on merit within reasonable time. Further, it was also observed by the Tribunal that in case the respondents decide again to terminate the services of the petitioner then they will issue fresh notice to the petitioner in this behalf. The respondent No. 2 decided the representation made by the petitioner by order dated 2nd November 1993 and being aggrieved and dissatisfied with the order dated 2nd November 1993, the petitioner preferred an Original Application before the learned Tribunal again and the said OA was registered as OA No. 482/1993. The said OA was disposed of being premature because learned Counsel appearing for the respondents specifically stated that services of petitioner were not liable to be terminated on account of order dated 2nd November 1993.

9. The petitioner remained in continuous employment of the respondents from the date of his initial appointment and during employment petitioner came to know from reliable sources that by an order dated 18th December 1995 the AIR Headquarter ordered to promote the petitioner as Translator Officer (Hindi) but this order was not served upon the petitioner, therefore, petitioner submitted a representation on 19th March 1996 requesting the respondents to give effect to the promotion order but while deciding the representation of the petitioner, the Administrative Officer of the respondent department passed an order on 19th March 1996 mentioning therein that he was appointed as Senior Translator (Hindi) against the reserved vacancies of handicapped quota and the said appointment was temporary in nature, therefore, he promotion has been kept in abeyance under the instructions of higher authorities.

10. As per petitioner, an order dated 10th May Central Civil Services (Temporary Service) Rules, 1965 intimating the petitioner that his services shall stand terminated on expiry of period of one month from the date on which this notice is served on or, as the case may be, tendered to him, due to fraudulent appointment and non-fulfilling of the recruitment Rules, therefore, being aggrieved with the order dated 10th May 1996 again petitioner preferred Original Application before the Central Administrative Tribunal, Jodhpur and same was registered as OA No. 185/1996 and learned Tribunal pleased to admit the Original Application and also granted an interim order staying operation of the impugned order dated 10th May 1996.

11. In the OA filed by the petitioner against order dated 10th May 1996, it was contended that Rules of 1965 meant for temporary employment are having no application in the present controversy as petitioner has acquired the status of quasi permanent employee on completion of 3 years of service, therefore, his services cannot be terminated without holding regular disciplinary proceedings under the Rules if any misconduct is committed by the petitioner because order dated 10th May 1996 is stigmatic order. In the OA filed by the petitioner, reply on behalf of respondents was filed and thereafter rejoinder was also filed by the

petitioner-applicant. The Tribunal after hearing both the parties, finally dismissed the OA filed by the petitioner vide impugned order dated 23.03.2001 against which this writ petition has been preferred under Article 226 and 227 of the Constitution of India.

12. We have heard learned Counsel appearing on behalf of both the parties.

13. The learned Counsel for the petitioner has vehemently argued that right from initial entry in the service, the respondents are unnecessarily harassing the petitioner by way of issuing notice for termination on unfounded ground and for redressal of his grievance he has approached the court of law time and again. For the first time, the order dated 28.02.1984 was issued for termination on the ground that the petitioner was not possessing qualification at the time of appointment as Senior Translator (Hindi) but learned Tribunal quashed the said order vide judgment dated 29.05.1986.

14. In compliance of the order, the petitioner was reinstated in service and his name was included in the seniority list notified on 12.02.1990 wherein name of petitioner is at Serial No. 4 but without providing opportunity of promotion his services were again ordered to be terminated vide order dated 18.06.1991, this order was again challenged before Tribunal. In Original Application filed by the petitioner, the operation of the order dated 18.06.1991 was stayed. Before Tribunal, for the first time reply was filed on the ground that applicant has obtained appointment against vacancy for Deaf fraudulently and without fulfillment of the recruitment Rules at the time of appointment. In rejoinder, the allegation of respondents for obtaining appointment fraudulently was refuted with cogent reasons. The Tribunal after considering the reply, decided OA No. 289/91 vide order dated 05.08.1993 whereby respondents were directed to decide the representation by speaking order. It was also directed in the same order that in case respondents decide again to terminate the services of the applicant then afresh notice should be issued. After decision, again a notice/order dated 10.05.1996 was issued under Rule 5(1) of Central Civil Services (Temporary Service) Rules, 1965.

15. As per learned Counsel for the petitioner, the notice dated 10th May 1996 was per-se illegal because it was issued under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965 in which it was specifically mentioned that as per said Rule, his services shall stand terminated with effect from the date of expiry of period of two months from the date on which the notice is served on or as the case may be tendered to him due to fraudulent enrollment and non-fulfilling of the recruitment rules. Further, as per learned Counsel for the petitioner, taking decision for terminating the services of the petitioner was that he obtained appointment fraudulently, meaning thereby, it is alleged that petitioner has committed a misconduct while obtaining appointment against the vacancy for Deaf. It is also pointed out that Rules of 1965 which are meant for temporary employees, do not apply in the case of petitioner because he was appointed in the year 1982 after due process of law provided for substantive

appointment. Upon perusal of his appointment order (Annex.2) it will reveal that appointment was of permanent nature but subject to the availability of the vacancies, and therefore, it was observed that the appointment was on probation and admittedly the services of the petitioner have not been terminated on the ground that there is no vacancy but has been ordered to be terminated on the ground that petitioner has committed misconduct in obtaining appointment fraudulently, therefore, it is obvious that order dated 10.05.1996 (Annex.4) is contrary to the Rules.

16. Further, the learned Counsel for the petitioner submits that in this case, the learned Tribunal has committed a serious error while dismissing his OA against the impugned order dated 10th May 1996 because admittedly before passing the stigmatic order impugned, no enquiry was conducted to prove the misconduct but whatever said in reply to the OA with regard to the medical Certificate of Deaf has been accepted, meaning thereby, the learned Tribunal has exercised the jurisdiction of enquiry officer and gave finding that presumption can be drawn upon facts given in reply by the respondents that had the applicant being a deaf he would not have been avoided appearing before the medical board for such examination. Therefore, the judgment of Tribunal deserves to be quashed only on the ground that instead of assessing the validity of impugned order/notice dated 10th May 1996, the Tribunal has gone further to assess whether the Certificate of Deaf, submitted by the petitioner issued by Medical Board, was not competent to accept that petitioner was a handicapped person. Therefore, the judgment of learned Tribunal deserves to be quashed firstly on the ground that order impugned dated 10th May 1996 (Annex.4) which was under challenge before the Tribunal was wrongly issued under Rule 5(1) of Temporary Service Rules, 1965 and secondly the said order imposes stigma upon the petitioner for which enquiry was necessary before terminating his services and thirdly in view of various pronouncements of Hon''ble Apex Court if the termination order is stigmatic even for temporary employee then also a disciplinary enquiry is required to be held as required under the principles of natural justice. Lastly, learned Counsel for the petitioner vehemently argued that since 1982 the day on which he was appointed till today for one or other reason respondents want to get out the petitioner from service, therefore, first of all petitioner''s services were terminated on the ground that he was not possessing qualification for appointment and second time on the ground that he has obtained appointment by fraud by submitting forged certificate of disability. The learned Counsel for the petitioner has invited our attention towards the following judgments in support of his contentions:

- (1) Jagdish Mitter Vs. The Union of India (UOI),
- (2) Om Prakash Goel Vs. The Himachal Pradesh Tourism Development Corporation Ltd., Shimla and another,
- (3) Union of India (UOI) and Others Vs. Jayakumar Parida,

(4) AIR 2000 1706 (SC)

(5) Lakhanlal Tripathi v. Commandant General and Anr., 2000 (10) SCC 184

(6) 2001 AIR SCW 2287 Prithipal Singh v. State of Punjab and Ors.

(7) (2002) 10 SCC U.P. SRTC through its Managing Director and Anr. v. Jeewan Prasad and Anr.

17. While citing the above judgments, it is pointed out that the Hon'ble Apex Court has time and again held that even services of temporary employees cannot be terminated on the ground of misconduct without holding an enquiry so also if the order of discharge of temporary servant is stigmatic then regular enquiry is necessary so as to give an opportunity to the effected party to prove his innocence. In this case, upon perusal of impugned notice dated 10th May 1996, it will reveal that the order impugned cannot be defined as an order simplicitor but it is an order which casted stigma on the petitioner's conduct, therefore, the order which was impugned before the Central Administrative Tribunal so also the judgment of the learned Tribunal impugned in this writ petition deserves to be quashed and the petitioner is entitled for reinstatement in service with declaration that he is permanent employee of the respondents.

18. Per contra, learned Counsel appearing on behalf of Union of India vehemently argued that the judgment given by the learned Tribunal does not require any interference because petitioner was appointed on temporary basis on 28th June 1982 which is obvious from the language of the order and initially it was found that he was lacking qualification, therefore, his services were dispensed with but on the basis of judgment of the Tribunal in the earlier OA dated 29th May 1986 passed in OA No. 549/1985, he was taken back on duty and in that order it was directed by the Tribunal that respondents are not precluded from proceeding against the applicant in accordance with law but without taking into account Para 3 inserted in the appointment letter vide Ex.9. Again vide notice dated 18.06.1991, the services of petitioner were ordered to be terminated on expiry of one month's notice and against that order dated 18.06.1991 an OA No. 289/91 was filed in which the operation of the order was stayed and OA came to be decided on 05.08. 1993 in which respondents were directed to decide the representation filed by the applicant and if again it is decided to terminate the services then fresh notice should be issued to the applicant, therefore, the subsequent notice which was impugned before the Tribunal in OA No. 185/1986 dated 10th May 1996 was well within the jurisdiction of the respondents to terminate the services of the applicant. Therefore, no allegation can be leveled by the petitioner that respondent department is harassing him while terminating his services time and again.

19. The learned Counsel for the respondents further argued that admittedly the petitioner was appointed against the post of handicapped quota while treating the Certificate of Deaf but upon scrutiny of service record, it was found that the said certificate was not valid, therefore, petitioner was directed to appear before

the Medical Board but he failed to appear before the Medical Board and this fact was brought to the notice of the Tribunal, upon which Tribunal opined that excuse of the petitioner avoiding for medical test relating to his hearing impairment is not accepted and presumption can be drawn that had the applicant been a deaf, he would not have avoided appearing before the Medical Board for such examination, therefore, it is obvious that the Tribunal has rightly arrived at the finding that certificate filed by the petitioner to treat him in the category of handicapped was illegal and he has obtained appointment by playing fraud and in this view of the matter, there is no illegality in the order impugned, hence this writ petition deserves to be dismissed.

20. Learned Counsel for the respondents has also invited our attention toward certain judgments reported in Bank of India and Another Vs. Avinash D. Mandivikar and Others, AIR 1998 SC 111 L.I.C. of India Vs. Sushil, (2006) 2 SCC 471 LIC of India v. Sushil and submits that the judgment of Tribunal does not require any interference and this writ petition deserves to be dismissed.

21. We have heard arguments advanced on behalf of both the sides so also perused the pleadings as well as judgments cited by learned Counsel for the parties. In this case, it is obvious from the facts that petitioner was initially appointed on 28th June 1982 and in the appointment order following assertions were made:

Telephone : 22016/201

Air Force Station,

Jodhpur

32W/C. 1000/NYA/PC

28 Jun 82

Shri Narendra Kumar Sharma

House No. 95

Malion Ka Bas, Subhash Chowk,

Ratanada, Jodhpur

APPOINTMENT: CIVILIANS

1. Air Officer Commanding, Air Force Station, Jodhpur hereby appoint Shri Narendra Kumar Sharma S/o Shri Ghanshyam Sharma as Senior Translator in the temporary capacity with effect from 28th Jun 82, in the pay scale of Rs. 550-20-650-25-2800.

2. The post is temporary i.e. upto 18 Sep 82, likely to be permanent or to continue indefinitely subject to review/extension by the Govt. before expiry of the date. He will be on probation for a period of two years with effect from the

date of appointment.

-sd/

(R.N. Pillai)

Air Commodore

Air Officer Commanding

22. Upon perusal of above order dated 28th June 1982 it is obvious that there is no assertion that appointment has been made against the post of handicapped quota. More so, it is mentioned in the order that Shri Narendra Kumar Sharma s/o Shri Ghanshyam Sharma is hereby appointed as Senior Translator in a temporary capacity w.e.f. 28th June 1982 and in second para it is observed that the post is temporary upto 18th September 1982 but is likely to be permanent or to continue indefinitely subject to review/extension by the Government before expiry of date. Further, the appointment was made on probation for a period of two years, meaning thereby, if termination was to be given effect as per this appointment order, then only course open for the respondents was to terminate his services in the event of non-availability of the vacancy. The order does not speak that the petitioner was appointed against the post of handicapped quota in the category of deaf but before the Tribunal when impugned notice dated 10th May 1996 was challenged, it was brought to the notice of the Court that his appointment was against the post of handicapped quota, meaning thereby, before the Tribunal, nowhere it was stated by the respondents that the post was temporary in nature. More so, the reasons for terminating the services of the petitioner was based upon two grounds; first, he was not possessing eligibility and second, he obtained appointment by submitting false medical certificate. If reply is based upon these two facts then obviously the post upon which the petitioner was appointed no more remain temporary and become permanent as per terms and conditions incorporated in the order of appointment dated 28.06.1982. Therefore, in our opinion, the status of the petitioner was of permanent nature in pursuance of order dated 28th June 1982 and if the petitioner was permanent employee then of course the Central Civil Services (Temporary Service) Rules, 1965 shall not apply in case of petitioner because his status was permanent in nature and on this count alone it can be said that notice Annex.4 dated 10th May 1996 was patently illegal and contrary to basic principles of law because at the time of issuance of the said notice after continuance of service for 14 years, respondents were treating the petitioner as temporary employee knowingly well that his name was included in the seniority list issued on 12th February 1990 in which the name of the petitioner appeared at Serial No. 4. The learned Tribunal has miserably failed to consider this aspect of the matter and straightway jumped upon the plea taken by the respondents in the reply that medical certificate was not in accordance with law and petitioner did not appear before the Medical Board when he was directed to appear for the purpose of assessing validity of the certificate of deaf. In this view of the matter,

in our opinion, the judgment of Central Administrative Tribunal deserves to be quashed only on the ground that instead of assessing validity of order dated 10th May 1996 issued under the Central Civil Services (Temporary Service) Rules, 1965 on legal ground, the learned Tribunal has proceeded to assess the reason for termination. In this view of the matter, the order dated 10th May 1996 by which it was ordered that services of the petitioner shall stand terminated with effect from the date of expiry of the period of one month from the date on which the notice is served on or as the case may be tendered to him due to fraudulent enrollment and non-fulfilling of recruitment rules deserves to be quashed and set aside because petitioner has acquired permanent status as per terms and conditions of the appointment order dated 28.06.1982, therefore, Rules of 1965 meant for temporary employees were not applicable upon petitioner.

23. We are in agreement with the arguments advanced by the learned Counsel for the petitioner that respondents are illegally treating him as temporary employee even though he has rendered 14 years of service since 1982 to 1996 because as per appointment order itself selection was made for post which was temporary at the time of selection but was likely to be made permanent, and admittedly order of terminating services is not based upon the reason that there was no vacancy. Further, after 14 years of service, it cannot be said that petitioner was temporary employee, therefore, notice has wrongly been issued under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965 because petitioner was not temporary employee of the respondent department.

24. Now for considering the adjudication made by the learned Tribunal that services of the applicant rightly terminated because he obtained appointment fraudulently by submitting forged certificate, we have taken into consideration the fact that in the impugned notice/order dated 10.05.1996 allegation of obtaining appointment fraudulently has been leveled. For such type of allegation against an employee, a regular enquiry in accordance with the Rules is necessary and services cannot be dispensed with without holding regular enquiry.

25. In the judgments cited by learned Counsel for the parties, we find that the Constitution Bench of Hon"ble Apex Court has held in judgment reported in Jagdish Mitter Vs. The Union of India (UOI), that Article 311 also applies to temporary servants or probationers so that if it is shown that instead of terminating their services by one month's notice under the terms of the contract or the relevant rules, the authority proceeds to dismiss them, it is incumbent on the authority to afford to the said temporary servants or probationers the protection guaranteed by Article 311(2). In the present case, the order dated 10th May 1996 itself shows that it casts stigma upon the petitioner and the said order cannot be defined as an order simplicitor but this order is penal in nature. Para 21 of the said judgment is as follows:

21. However, the appellant's contention that the order of discharge passed against him on the face of it shows that it is not discharge but dismissal, cannot be rejected. We have already observed that Article 311 applies to temporary

servants or probationers, so that if it is shown that instead of terminating their services by one month's notice under the terms of the contract or the relevant rules, the authority proceeds to dismiss them, it is incumbent on the authority to afford to the said temporary servants or probationers the protection guaranteed by Article 311(2). The appellant's contention is that in the present case, the order itself shows that it is not a discharge but a dismissal, and that naturally involves the question as to the construction of the order. The order reads thus:

Shri Jagdish Mitter, a temporary 2nd Division Clerk of this office having been found undesirable to be retained in Government service is hereby served with a month's notice of discharge with effect from November 1, 1949.

No doubt the order purports to be one of discharge and as such, can be referred to the power of the authority to terminate the temporary appointment with one month's notice. But it seems to us that when the order refers to the fact that the appellant was found undesirable to be retained in government service, it expressly casts a stigma on the appellant and in that sense, must be held to be an order of dismissal and not a mere order of discharge. The learned Additional Solicitor-General attempted to argue that what the order really meant was that Government did not think it desirable or necessary to continue the appellant in its employment. He fairly conceded that the words used in the order were somewhat unfortunate, but he urged that the order should be liberally construed and should be held to have been passed by the authority by virtue of its power to terminate the services of the appellant on one month's notice. We are not prepared to accept this argument. It is obvious that to say that it is undesirable to continue a temporary servant is very much different from saying that it is unnecessary to continue him. In the first case, a stigma attaches to the servant, while in the second case, termination of service is due to the consideration that a temporary servant need not be continued, and in that sense, no stigma attaches to him. It seems that anyone who reads the order in a reasonable way, would naturally conclude that the appellant was found to be undesirable, and that must necessarily import an element of punishment which is the basis of the order and is its integral part. When an authority wants to terminate the services of a temporary servant, it can pass a simple order of discharge without casting any aspersion against the temporary servant or attaching any stigma to his character. As soon as it is shown that the order purports to cast an aspersion on the temporary servant, it would be idle to suggest that the order is a simple order of discharge. The test in such cases must be : does the order cast aspersion or attach stigma to the officer when it purports to discharge him? If the answer to this question is in the affirmative, then notwithstanding the form of the order, the termination of service must be held, in substance, to amount to dismissal. That being so, we are satisfied that the High Court was in error in coming to the conclusion that the appellant had not been dismissed, but had been merely discharged. It is conceded that if the impugned order is construed as one of dismissal the appellant has been denied the protection guaranteed to temporary

servants u/s 240(3) of the Government of India Act, 1935, or Article 311(2) of the Constitution, and so, the order cannot be sustained.

26. The said proposition of law has been reiterated by the Hon"ble Apex Court in case of Chandra Prakash Shahi v. State of U.P. and Ors. reported in 2000(5) SCC 125 in which large number of judgments of Hon"ble Apex Court were considered and finally it has been held that temporary Government servants or probationers are as much entitled to protection of Article 311(2) of Constitution as the permanent employees despite the fact that Government servants have no right to hold the post and their services are liable to be terminated at any time by giving them a month's notice without assigning any reason either in terms of the contract of service or under the relevant statutory rules regulating the terms and conditions of such service. Para 12 of the said judgment is as follows:

Now, it is well settled that the temporary government servants or probationers are as much entitled to the protection of Article 311(2) of the Constitution as the permanent employees despite the fact that temporary government servants have no right to hold the post and their services are liable to be terminated at any time by giving them a month's notice without assigning any reasons either in terms of the contract of service or under the relevant statutory rules regulating the terms and conditions of such service. The courts can, therefore, lift the veil of an innocuously-worded order to look at the real face of the order and to find out whether it is an innocent as worded (See: Parshotam Lal Dhingra v. Union of India). It was explained in this decision that inefficiency, negligence or misconduct may have been the factors for inducing the Government to terminate the services of a temporary employee under the terms of the contract or under the statutory Service Rules regulating the terms and conditions of service which, to put it differently, may have been the motive for terminating the services but the motive by itself does not make the order punitive unless the order was "founded" on those factors or other disqualifications.

27. In the instant case, after perusing the judgment rendered by the Tribunal as well as the impugned order, we are of the opinion that as and when permanent vacancy was made available, petitioner became permanent employee in view of the terms and conditions of the appointment order and if he was to be discharged from service on the ground of ineligibility or obtaining appointment fraudulently then regular enquiry in accordance with the rules prescribed for permanent employees was to be taken into account but the Tribunal has ignored the said important aspect of the matter and has committed an error in dismissing the OA filed by the petitioner on presumption that he has not chosen to appear before Medical Board, therefore, his Medical Certificate was not valid and he had obtained appointment by fraud.

28. In this view of the matter, writ petition is allowed, the order dated 10th May 1996 impugned in the Original Application so also the judgment of learned Tribunal dated 23.03.2001 is hereby quashed and set aside. The petitioner shall be reinstated in service forthwith with all consequential benefits and respondents

are further directed to treat the petitioner as permanent employee. However, respondents are not precluded to take fresh disciplinary action against the petitioner in accordance with the Rules meant for permanent employees if still they are of the opinion that petitioner has committed serious misconduct.