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**(1984) 08 RAJ CK 0036**  
**In the Rajasthan High Court**  
**Case No : Civil Special Appeal No. 227 of 1984**

State of Rajasthan

APPELLANT

Vs

S.O. Kohali

RESPONDENT

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**Date of Decision :** 21-08-1984

**Acts Referred:**

**Citation :** (1984) WLN 310

**Hon'ble Judges :** S.S. Byas, J;M.C. Jain, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

M.C. Jain, J.—This Special Appeal arises from the order of the learned Single Judge dated March 28, 1984 whereby the respondent's writ petition was allowed and the order of termination of his service was set aside. It was further directed that he will be entitled to all the benefits etc. as if his service has never been terminated.

2. We may notice the brief facts relevant for the purpose of this appeal. The respondent was appointed as Excise Inspector Gr. II on April 28, 1960 on temporary basis in accordance with the Rajasthan Excise Sub-ordinate Service Rules, 1960. He was confirmed on the said post in the year 1969 but subsequently, the confirmation order was withdrawn on November 13, 1973. Thereafter, the Rajasthan Subordinate Service (General Branch) Rules, 1974 came into force with, effect from May 30, 1974 and in accordance with the Rule 5(iii) a, Screening Committee was constituted for adjudging the suitability of the persons appointed on Ad hoc/temporary basis before January 1, 1972. Some departmental enquiry was pending against the respondent which was finalised and thereafter the respondent's services were terminated with effect from March 31, 1976. Aggrieved against the order of the termination, the petitioner filed the writ petition on number of grounds. The learned Single Judge set aside the order of his termination on the ground that the respondent was not afforded any opportunity of hearing before adjudging his suitability. Reliance was placed by

the learned Single Judge on a decision of this Court in *Yaswant Kumar v. State of Rajasthan* 1980 WLN (UC) 114.

3. It may be stated that the State went in appeal against the decision of the learned Single Judge in *Yaswant Kumar's* case (supra). The State appeal was dismissed in limine on September 8, 1980 vide D.B. Civil Special Appeal No. 211 of 1980 *State v. Yaswant Kumar Somani*. There was another case of *Narain Swroop Mathur v. State of Rajasthan* S.B. Civil Writ Petition. No. 3085 of 1974 dismissed on October 28, 1974. However, the petitioner preferred an appeal and the Division Bench of this Court allowed the appeal on March 21, 1983 in D.B. Civil Special Appeal No. 750 of 1974 *Narain Swiroop Mathur v. State and Anr. Jaipur Bench*. The Division Bench hearing the appeal of *Narain Swroop Mathur*, placed reliance on the decision of *Yaswant Kumar's* case (supra) and it was noticed by the Division Bench that *Yaswant Kumar's* decision has been upheld by the Division Bench of this Court. It is also pertinent to observe that in *Yaswant Kumar's* case (supra), reliance has been placed by the learned Single Judge on the decision of the Supreme Court in *Mohd. Rashid Ahmad Vs. State of U.P. and Another*, . After extracting the relevant portion from the judgment of the Supreme Court, the learned Single Judge observed that from the decision of the Supreme Court in *Mohd. Rashid Ahmed v. State of U.P.* (supra) it follows that the determination of suitability of a Government Servant for the purpose of absorption in service implies a duty to act in a judicial manner and for a proper and effective discharge of the said duty, it is necessary that the authority which has been entrusted with the said duty must afford to the employee concerned PI, opportunity to appear before it, so that it may clear off the regard to any adverse material existing against him in the service record.

4. Above observations have been made after taking into consideration from the law laid down in *Mohd. Rashid Ahmed's* case (supra) Thus, the principal controversy, which arises for determination is as to whether the respondent should have been given an opportunity of hearing by the Screening Committee before being adjudged unsuitable So far as this Court is concerned, the point in our opinion ceases to be *res integra*, as the two Division Benches of this Court has consistently taken the view that an opportunity of hearing should be afforded by the Screening Committee before a Government Servant is adjudged and found unsuitable Both the cases were the cases arising under the aforesaid rules relating to the Excise Inspector Gr. II. The case in hand is also a case of absorption in service under 1974 Rules p be screened by the same Screening Committee under Rule 6(111).

5. Mr. H.N. Calla, learned Government Advocate submitted that adjudging of suitability was to be done by the Screening Committee on the basis of the service record of the respondent and it was not necessary for the Screening Committee to have given an opportunity of hearing to the respondent. Mr. Calla tried to support by placing reliance on the SC 1495. We have perused the aforesaid decision of the Supreme Court and in our opinion, the said decision is

distinguishable In that case, the direct recruits challenged the absorption of deputationists on number of grounds and one the contentions advanced was that it was incumbent on the Screening committee before it took its final decision regarding the absorption of personnel the various grades to give an opportunity to the petitioners to represent their case and in as much as, this procedure was not followed, the decisions taken by the Screening Committee were in clear violation of the principles of natural justice. This contention was negated by the Supreme Court and it was observed that "the function entrusted to the Committee was to adjudge the suitability of persons who were holding posts in the different grades in the temporary Aviation Research Centre Organisation for permanent appointment in the newly constituted Aviation Research Centre (Technical) Service on the basis of the records relating to their past performance in the Aviation Research Centre Organisation etc. We do not see how the principles of natural justice can get attracted in such a context. The law does not impose any obligation on a Committee discharging such a function to invite representations from the persons in the eligible categories and consider those representations while adjudging their suitability for appointment into the new service. It is noteworthy that it is not a case of an employee whose case has been considered by the Screening Committee. A right of representation was claimed against the deputationists, who were taken on deputation in temporary ARC Organisation.

6. In the present case, it would appear that the respondent was appointed as back as 1960 and continued to serve till March 1976. The consequences are grave if the Government Servant, who has served the Government for 16 years, is put out of employment after being adjudged unsuitable for service on the post which he was holding since his appointment. As already stated that this Court has taken the definite view that it was obligatory for the Screening Committee that the Government Servant should have been afforded an opportunity of hearing before being adjudged unsuitable. It was imperative for the Screening Committee in this situation, like the present one, considering the nature of the duty enjoined upon it that an opportunity of being heard should have been afforded to the respondent before adjudging him unsuitable.

7. In this view of the matter, in our opinion, the appeal is devoid of any force and so, it is hereby dismissed. The parties are left to bear their own costs.