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**(2002) 03 DEL CK 0147**

**Delhi High Court**

**Case No:** CWP 125 of 2001

Munendra Kumar

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

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**Date of Decision:** March 15, 2002

**Citation:** (2002) 64 DRJ 795

**Hon'ble Judges:** S.B. Sinha, C.J; A.K. Sikri, J

**Bench:** Division Bench

**Advocate:** H.C. Sharma, for the Appellant; Manisha Dhir, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

S.B. Sinha, C.J.

The order dated 13th September 2000 passed by the Central Administration Tribunal in OA 417/2000 whereby and whereunder the application filed by the petitioner was dismissed, is the subject matter of this writ petition. A review application filed there against by the petitioner herein was also dismissed.

2. The basic fact of the matter is not in dispute. The petitioner was appointed as Lower Division Clerk on 23rd May 1997. He was put on probation. His service was terminated during the period of probation on 29th April 1999.

3. The contention of the petitioner before the learned Tribunal as also before us in short is that his services could not have been terminated as the order of termination having been passed by one D.K. Garg who was not his appointing authority but subordinate to it.

4. The relevant terms and conditions of the offer of appointment are in the following terms:

"You will be on probation for 2 years. During the probationary period and thereafter your appointment may be terminated at any time by a month's notice given by either side, viz you or the appointing authority without assigning any reasons. The

appointing authority, however, reserves the right of terminating your service forthwith before the expiry of the stipulated period of notice by making payment of you of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof."

For Direct Recruitment of LDC in DRDO the following procedure is followed:

(1) By direct recruitment 90%

(2) By promotion on the basis of seniority-cum- fitness, subject to qualifying the limited Department Examination - 5%. If more "individuals" qualify the limited Departmental Examination "than" the prescribed quota to be filled up by that method in any particular year, the excess candidates left over, shall be adjusted against vacancies in subsequent year.

(3) By promotion on the basis of seniority-cum- fitness-5%."

5. The services of petitioner had been terminated on 29th April 1999, inter alia, on the ground that the same was obtained without following the recruitment rules.

6. The petitioner, contrary to the said recruitment rules, neither applied to the Director directly nor his name was sponsored through Employment Exchange. His name had been sponsored by an SC/ST Association. The petitioner's father who was a Senior Administrative Officer was also actively involved in the recruitment process.

7. The petitioner even approached the National Commission for Scheduled Casts and Scheduled Tribes.

8. It is not in dispute that the petitioner was appointed on temporary basis. is appointment, thus, could be terminated without assigning any reasons.

9. One Month's pay and allowances in lieu of notice had also been offered to the petitioner. At no point of time, the petitioner raised the contention that his services had not been terminated by a competent authority. The said termination of service was permissible in terms of Sub-rule (1) of Rule 5 of the Recruitment Rules.

10. The respondents, in order to show that the order of termination had been passed by a competent authority has inter alia stated that the Director General, Research and Development by a notification dated 8th February 1972, delegated his powers to the Heads of the Departments of the Laboratories in the organization to impose penalties on non-industrial and industrial staff.

11. It is not in dispute that Shri D.K. Garg who had issued the order of termination at the relevant point of time, was officiating as Director. From a certificate dated 23rd October 2001 which has been appended as Annexure I to the additional affidavit by the respondents, it appears that the said Shri D.K. Garg was appointed as Officiating Director on 29th July 1998 and he was the Head of the Laboratory w.e.f. 31st July 1998 to 29th November 2000. He, as the Head of the said Laboratory, was

competent to exercise the disciplinary and financial powers.

12. In support of the said contention, two Office Orders dated 29th July 1998 and 30th November 2000 had been annexed with the said supplementary affidavit, which are in the following terms:

"29 Jul 98

OFFICE ORDER

Consequent on his superannuation w.e.f 31 Jul 98, Shri PN Sundaram, Scientist "G", Director, SAG, Delhi, will handover the charge to Shri DK Garg, Scientist "F" of SAG, Delhi.

Shri Garg will officiate as Director, SAG, Delhi, till further orders.

Necessary Handing/Taking over may please be done accordingly.

Sd/-

(Dr. Ram Kumar)

Director of Personnel

For Director General Research & Development"

13. The Office Order dated 30th November 2000 is in the following terms:

"30 November, 2000

OFFICE ORDER

Competent authority has approved the appointment of Prof. CE Veni Madhavan, Scientist "G", as Director SAG, Delhi with immediate effect.

Necessary handing/taking over may please be done accordingly.

Sd/-

(PK Shukla)

Director of Personnel

For Director General Research & Development"

14. Whenever an officer is appointed on an officiating basis, he must be held to be possessed of all powers which are necessary for effective discharge of the functions of the said post.

15. The writ petitioner was in ministerial service and as such, his services could be terminated by the Director. When a person is appointed as an Officiating Director for a long time, the court will presume that he is conferred with all the requisite powers to effectively discharge his functions. Furthermore, a vacuum is not to be

presumed.

16. The learned counsel appearing on behalf of the petitioner, however, has relied upon a decision of the apex court in Dr. R.C. Tyagi v. Union of India and Ors., 53 (1994) DLT 718. Therein a question arose as to whether the authority who had passed an order of transfer was delegated with such power or not. Therein no order of delegation was produced. The order approving the order of transfer was also not produced. In the absence of the relevant documents, the apex court held that the delegation of power cannot be presumed stating:

5. "...We are not prepared to infer delegation because there were orders on the record which indicated that subsequently the Secretary had delegated the powers. It is not delegation earlier or later which is material but whether any delegation existed on the date when the transfer order was passed. Further it is necessary to mention that the respondents having taken definite stand in the written statement that the transfer order was approved but did not produce the record in the Trial Court nor they could substantiate it even in this Court, there is no option but to hold that the order was not passed by the person who alone was competent to do so. The transfer order issued by the Director General, thus, being contrary to rules was non est in the eye of law."

17. In the instant case, not only the order of delegation of power has been produced but even the office order in relation to Shri D.K. Garg appointing him as Officiating Director has also been produced. More so, the appointment of the petitioner having been made in violation of the recruitment rules as also Articles 14 and 16 of the Constitution of India, was non-est in the eyes of law and even on that ground this court shall not exercise its discretionary jurisdiction under Article 226 of the Constitution of India.

18. For the reasons afore-mentioned, we are of the opinion that no case is made out for interfering with the impugned judgment of the Tribunal. This writ petition is Therefore dismissed without any orders as to costs.