

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL No.254/1998@@  
EE

U.O.I. & Ors.

Appellant (s)

VERSUS

Bidhata Negi

Respondent (s)

Date : 30.01.2001 This appeal was called on for hearing today.@@  
AA

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAIAK  
HON'BLE MRS. JUSTICE RUMA PAL  
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant (s) Mr. Mukul Rohtagi,ASG  
Mr. P.P. Malhotra,Sr.Adv.  
Ms.B.Sunita Rao,Mr.Ajay Sharma and  
Mr. C.Radha Krishna,Advs.

For the Respondent(s) Mr. Shailendra Bhardwaj,Adv.for  
Mr. C.S.Ashri,Adv.

UPON hearing counsel, the Court made the following  
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....J.  
.SP2

The appeal is dismissed

.SP1

(Y.P.Dhamija) (Suneet Bala Sharma)@@  
AA  
COURT MASTER Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.254/1998@@  
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Union of India & Anr. ..Appellants

Vs.

KM. Bidhata Negi & Anr. ..Respondents

O R D E R@@  
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.....L.....I.....T.....T.....T.....T.....J.  
.SP2

An order of termination, in exercise of power under sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965 read with condition No.3 of the appointment letter of the respondent, was assailed before the Administrative Tribunal. The Tribunal initially dismissed the application on a finding that the order of termination is innocuous and the appointee has no right to the post. The matter being carried to this Court in Civil Appeal, this Court interfered with the order of the Tribunal and remitted the matter to the Tribunal for re-consideration further directing that the allegation of malice against the superior officials should be examined and the officer concerned should be impleaded as a party. Pursuance to the observation and direction of this Court, the respondent impleaded the concerned officer against whom allegation of malice had been made and amended the application. The concerned officer against whom allegation had been made as well as the superior officer had filed affidavit denying the allegation in question. The Tribunal by the impugned order, no doubt, came to a conclusion that it is difficult to hold

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that a firm foundation has been established by the applicant to infer express malice on the part of the respondents in the manner alleged by the applicant. Notwithstanding the said allegation, the Tribunal examined various other materials and then ultimately came to the conclusion that the order of termination is not a discharge simplicitor but was founded on materials generated in the manner, as discussed in the foregoing paragraphs. The discussions have been made from paragraphs 25 to 31 of the impugned order of the Tribunal. The Tribunal having set aside the order of termination with the aforesaid conclusion, the Union of India is in appeal.

Learned Additional Solicitor General appearing for the Union of India strenuously urged that in view of the conclusion of the Tribunal that the employee has failed to establish allegation of malice it was not open for the Tribunal to fish out the materials and come to the conclusion that the order of termination is founded on those allegations of malice and not otherwise. It is undoubtedly true that allegation of malice has to be established beyond reasonable doubt by the person, who alleges malice. But in the case in hand, in the facts and circumstances under which the services of an employee stood terminated, the Tribunal having examined

several documents including the comments of the superior officers and having found that the affidavit filed before the Tribunal to be untrue and then having come to the conclusion that the said order of termination was really not an order of

discharge simplicitor but on account of some other reasons, as indicated earlier, the impugned order cannot be found fault with. In that view of the matter, we see no justification for our interference with the impugned order of the Tribunal. The appeal accordingly fails and is dismissed. Needless to mention that by dismissal of this appeal, it may not be understood that the allegations made by the respondent against the concerned officer have been found to be true by us.

.SP1

.....J.  
(G.B. PATTANAİK)

.....J.  
( RUMA PAL)

New Delhi,  
January 30, 2001

.....J.  
( B.N. AGRAWAL)