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Central Administrative Tribunal
Principal Bench

O.A. No.1194/2002

New Delhi this the 15th day of November, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri V.K. Majotra, Member (A)

Shri Vijay Kumar Aggarwal,
Accounts Assistant
Central Pollution Control Board,
Zonal Office, Kanpur,
U.P.

-Applicant

(By Advocate: Shri L.B. Rai)

Versus

1. Union of India
Through its Secretary,
Ministry of Environment & Forest,
Parivaran Bhavan,
CGO Complex, Lodhi Road,
New Delhi.
2. Central Pollution Control Board,
Through its Chairman,
Parivesh Bhawan, East Arjun Nagar,
Sahadara, Delhi-32.
3. Member Secretary,
Central Pollution Control Board,
Through its Chairman,
Parivesh Bhawan, East Arjun Nagar,
Sahadara, Delhi-32.
4. Incharge,
Central Pollution Control Board,
Zonal Office,
Kanpur, U.P.

-Respondents

(By Advocate: Shri K.B.S. Rajan)

ORDER (Oral)

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)

In this application, the applicant has impugned the office order issued by the respondents dated 23.4.2002 by which they have stated that the competent authority has taken a decision to revert the applicant to the post of LDC (temporary status) with effect from the same date, from the post of Accounts Assistant.

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2. The relevant facts of the case are that the applicant was initially appointed as LDC for a period of 89 days by order dated 1.8.1995 w.e.f. 4.8.1995 on a consolidated salary of Rs.2000/- p.m. and his services were extended from time to time till 31.1.96. By corrigendum issued by the respondents dated 6.2.96, he was designated as Accounts Assistant and paid salary in that capacity for the period from 1.2.96 to 29.4.96.

3. The applicant had filed an earlier application (OA No.1888/2000) along with six other applicants which was disposed of by Tribunal's order dated 17.10.2001. The learned counsel for the applicant has submitted that in that case the main grievance of the applicants was for equal pay for the services rendered by them as Accounts Assistant, which claim was allowed by the Tribunal. Accordingly, the respondents have revised the applicant's pay with arrears as directed by the Tribunal. The matter has also been taken up on appeal in CM-2267/2002 in CWP No.875/2002 in the Hon'ble Delhi High Court. By this order, the learned counsel has submitted that the applicant who was in that case respondent No.6, was ordered to be entitled for pay of Rs.6850/- instead of Rs.4563/-. He has submitted that the Contempt Petition has been filed by the applicant in the Hon'ble High Court on 30.4.2000, which is still pending.

4. The learned counsel for the applicant has vehemently contended that there is a breach of the principles of natural justice and the impugned order dated

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23.4.2002 issued by the respondents should be set aside. The applicant has been victimised because he along with six others has succeeded in OA-1888/2000.

5. The averments of the learned counsel for the applicant have been controverted by Shri K.B.S. Rajan, learned counsel. We have also seen the reply filed by the respondents.

6. Shri K.B.S. Rajan, learned counsel has submitted that the impugned order has been passed after issuing a show cause notice Memorandum dated 6.12.2001 (Annexure R-8) to the applicant to which he has also filed reply dated 20.12.2001 (Annexure R-9). He has submitted that the applicant has himself admitted the various mistakes committed by him, on which a number of Memoranda have been issued to him, which has been referred to in detail in Para-2 (a and f) of the counter affidavit. In Annexure R-8, it is stated that the applicant had given in writing on 24.7.2001 that he was unable to prepare the Balance sheet, Receipt & payment, Income and Expenditure statements among other things. In Annexure A-9 dated 20.12.2001, which was his reply to the Memorandum, the applicant has accepted the allegations that he had committed mistakes due to mental strain, ill health, etc. He has also requested the authorities to consider his case sympathetically to save his family which is solely dependent on him and his salary for survival.

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7. Learned counsel for the respondents has submitted that nowhere in the reply given by the applicant he has taken the ground of victimisation which is now sought to be argued by the learned counsel for the applicant. He has submitted that based on the work and performance of the applicant and taking into account the reply filed by him, the respondents have taken a lenient view of the matter and only reverted him to the post of LDC (temporary status) in accordance with clause-9 of the terms of appointment. He has, therefore, prayed that the OA may be dismissed.

8. We have carefully considered the pleadings and other relevant documents and the submissions made by the learned counsel for the parties.

9. We do not find any merit in this application for the following reasons:-

i) With regard to the contention of the learned counsel for the applicant that the principles of natural justice have not been complied with, this cannot be accepted having regard to the facts and circumstances of this case. The Annexures to the counter affidavit filed by the respondents, particularly Annexures R-8 and R-9 show that ¹³ that the applicant has been given a reasonable opportunity to put forward his case. Apart from that, even earlier the applicant has been given a number of Memoranda or asked for explanations as to how certain accounting mistakes had occurred in the files to which he has replied that mistakes

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have occurred for which he felt sorry and promised not to repeat the same in future (Annexure R-1). Therefore, it cannot be held in the circumstances of the case that the applicant was not aware that the respondents have been finding that he has been making a number of mistakes in his work as Accounts Assistant and his work was not satisfactory. We agree with the submissions of the learned counsel for the respondents that a stricter view could have been taken in terms of Clause-9 of the appointment letter dated 6.1.1997, whereby the applicant was accorded temporary status w.e.f. 4.8.1995. In other words his services could have been dispensed with by giving one month's notice but the respondents have taken a lenient view, taking into account ~~of~~ ^{of} applicant's representation and they have reverted the applicant to the post of LDC (temporary status).

iii) The second point raised by the learned counsel for the applicant that the applicant has been victimised because he along with six other applicants had succeeded in the Tribunal in OA-1888/2000 cannot also be accepted. That order of the Tribunal which has been later upheld by the Hon'ble High Court had admittedly raised a separate issue which is not the issue raised in

the present application as submitted by applicant's counsel also. The Tribunal had vide order dated 17.10.2001 allowed the OA with certain directions relating to revision of the applicant's pay on the principles of "equal pay for equal work" and not regularisation of his services as Accounts Assistant. Therefore, the plea of victimisation also fails and is accordingly rejected.

10. Therefore, in view of the discussion and reasons given above, we do not find any justification to interfere in the matter as the impugned order cannot be held to be either arbitrary or illegal. The OA fails and is dismissed accordingly. No costs.

W.K. Majotra

(W.K. Majotra)
Member (A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

cc.