

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1238/98

(B)

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

New Delhi, this the 24th day of May, 2000

Chaitanya Prakash Sharma
s/o Shri O.P.Sharma
Junior Technical Assistant
Ministry of Science & Technology
Department of Scientific &
Industrial Research
Technology Bhawan
New Mehrauli Road
New Delhi - 110 016.
r/o Plot No.101
Janakpuri - II
Imli Wala Phatak
Jaipur
Rajasthan - 302 005. Applicant

(By Shri Vinod Kumar, Advocate)

Vs.

1. Union of India
Ministry of Science & Technology
Department of Scientific & Industrial
Research
Anusandhan Bhawan
Rafi Marg
New Delhi.
2. Director (Admn.)
Department of Scientific &
Industrial Research
Ministry of Science & Technology
Technology Bhawan
New Mehrauli Road
New Delhi. Respondents

(By Shri N.S.Mehta, Advocate)

O R D E R (Oral)

By Reddy. J.

The applicant was appointed as Junior Technical Assistant (JTA) on regular basis after undergoing the written test and interview in the Department of Scientific and Industrial Research in the Ministry of Science & Technology and he joined in service on 29.1.1998. He was, however, issued the impugned notice dated 8.6.1998 terminating his

(Signature)

services under Rule 5 of the CCS (Temporary Service) Rules. The present application is, therefore, filed questioning his removal.

2. The respondents in their counter brought out the following facts showing that an administrative error had crept into the appointment of the applicant.

3. Out of 8 total posts four had been filled up by deputation, when it was decided to frame separate recruitment rules in 1997. By the time the rules were notified and action to fill up the vacancies was started, two deputationists were repatriated to their parent department. Six names were approved by the competent authority for appointment and two names were kept in the waiting panel and the applicant was the second of the two. When there is an extreme urgency to fill up the vacancies, keeping in view the fact that some of the selected candidates may not actually join the posts, in order to save time, action for verification of character and antecedents in respect of all the eight candidates, including two in the waiting list, was taken. However, by mistake the offer of appointment was sent to the applicant without referring to the merit list only on the ground that his verification of character and antecedents were completed. Hence to put the record straight, in order to give the appointments to candidates who have been actually selected and empanelled against six vacancies and the applicant ^{was} ~~were~~ appointed. The impugned order was, therefore, cancelled, terminating his services invoking the Rule 5 of the said Rules. It is,

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therefore, contended by the Senior Standing Counsel for the Government, Shri N.S.Mehta that the impugned order was in order and that applicant would be accommodated/appointed positively in the next available vacancy.

4. We have given our anxious consideration to the question that is involved in this case. Though arguments have been centred round the issue, whether the respondents were right in invoking Rule 5 of the Rules as the applicant was regularly appointed against the regular vacancy and after selection, we are of the view that this question has to be looked into in its proper perspective. Considering the averments made in the counter and the arguments advanced by the learned counsel for the respondents, we are satisfied that the applicant's appointment was made due ^{to} _{an} administrative error. It is not in dispute that the applicant's name was placed in the waiting list. Hence, he could not justifiably claim the appointment in preference to the candidates already selected and ~~and~~ empanelled for appointment against the six regular vacancies. The learned counsel for the applicant, however, submits that there are total 8 vacancies, the respondents are filling up only six posts and hence the applicant could be accommodated in one of the two vacancies. In reply, the learned counsel for the respondents produced the proceedings dated 2.5.1997 which clearly shows that out of 8, two posts have been filled up by the deputationists by their absorption in DSIR w.e.f. 28.2.1997. Thus, there are only six vacant posts and the respondents had initiated the process for selection for six vacancies. Against these vacancies



the applicant's name was put in waiting list hence he could not have been appointed. Thus, the appointment of the applicant is totally a result of the administrative error. By way of the impugned order, the error is sought to be rectified. In what manner it should be done is not an important issue in this case as the applicant cannot occupy a post to which he was not selected or appointed.

5. Furthermore, the appointment letter makes it clear that the appointment of the applicant was purely temporary and was liable to be terminated at any time with one month's notice. Admittedly, in this case, one month's notice was given to the applicant. The mere fact that the applicant was to be on probation would not give him any right, to continuance in a vacancy which does not exist. He may get a right to be applied only in the next vacancy as it is stated that the number one in the waiting list is gone abroad and is not making any claim for the said post for the next vacancy. Merely putting him on probation would not confer any right to continue permanently contrary to the terms of the appointment order. In Union of India & Others Vs. Arun Kumar Roy, AIR 1986(Vol.78) SC P-737, it was clearly held as under:

"The mere fact that he was put on probation does not ipso facto make the appointment any the less temporary and for that reason his extended probation also. Unless the respondent makes out a case based on some rule which requires confirmation to a post on the expiry of the period of probation, he cannot succeed on the mere ground of his being put on probation for a period of two years or by the fact that his probation was extended."

6. This is a case, though hardship was involved for the applicant, where he was appointed by clear mistake only on the ground that his character

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and antecedents were verified. In the circumstances, we do not find any infirmity in the impugned order. The OA is, therefore, liable to be dismissed.

7. We lastly record the undertaking given by the learned counsel for the respondents that the applicant would be and can be appointed in the immediate next available vacancy of Junior Technical Assistant whenever the vacancy arises. It is an apprehension by the learned counsel for the applicant that as the applicant already has become overaged for appointment to the post, as per rules, he may not have a chance of consideration in the next vacancy. We agree with the learned counsel for the applicant. The applicant should not be made to suffer because of the wrong committed by the Government and thus depriving him of being ^{applying} applied for any other post in the Government, thinking that he was happily appointed in this post, he may not have applied for any other post before he was overaged. In the circumstances, we direct the respondents to relax the condition of age in case ^{of} the applicant and consider him to appoint in the next available vacancy whenever it arises. The OA is accordingly disposed of. No costs.

Shanta Shastray

(SMT. SHANTA SHASTRY)
MEMBER(A)

V.Rajagopala Reddy
(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

/RAO/