

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.204/98

New Delhi this the 11th day of ~~September~~ ^{October}, 2000. (11)

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMNV)

Sh. J.P. Singh,
S/o Sh. Ram Pal Singh,
R/o PH-23, Pallavpuram,
Phase-II, Modipuram,
Meerut, U.P.

...Applicant

(By Advocate Mrs. Meera Chhibber)

-Versus-

1. Indian Council of Agricultural
Research through its
Director General,
Krishi Bhawan,
New Delhi.
2. Project Director,
Project Directorate for Cropping,
Systems Research,
Modipuram, Meerut.

...Respondents

(By Advocate ~~Sh.~~ S.P. Sharma)

O R D E R

By Justice V. Rajagopala Reddy, Vice-Chairman (J):

The applicant brought this OA seeking regularisation in the post of Computer Programmer T-6. The facts in brief are as under:

2.1 The applicant was appointed as Senior Computer T-II-3 in the scale of Rs.1400-2300 in 1984 in the North-West Hill Region of Indian Council of Agricultural Research (ICAR for short) at Shillong. In pursuance of an advertisement issued by the main Unit of ICAR at Modipuram, for filling up the post of Computer Programmer T-6 in the scale of Rs.2200-4000 he applied for the said post having fulfilled all the required qualifications. He was asked to appear for the interview on 12.10.89 and he accordingly appeared, but after interview he was appointed to the post of Computer Programmer T-4 in the scale of Rs.1640-2900.

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In protest he made a representation, which was, however, rejected, stating that as the applicant was not found suitable for T-6 and as he was willing to accept the post of T-4, he has been offered the said post. The applicant has submitted that he never agreed to accept T-4 post he only agreed to accept the post one step below. He accordingly requested for giving at least T-5 (Rs.2000-3500). Thereafter, by order dated 13.2.90 the offer of T-4 has been cancelled and he was offered T-5 grade. He was appointed as such but he was given the duties of T-6 while working in T-5 grade. He completed his period of probation successfully w.e.f. 27.2.92 in the grade of T-5.

2.2 Thereafter a vacancy in the post of Computer Programmer T-6 was circulated at one of the Units of the ICAR at Kanpur and he was duly appointed to the said post by order dated 12.12.94. Though he joined in the said post, his lien has been maintained at Modipuram.

2.3 In 1995 the post of T-6 has been advertised at Modipuram Directorate for being filled on deputation basis. The applicant requested for being appointed on deputation basis in the said vacancy. The DPC having considered the applications received, appointed/promoted the applicant as Computer Programmer T-6 by an order dated 6.9.95. The Kanpur Unit, however, did not relieve him on the ground of administrative exigencies. By order dated 23.9.95 the Modipuram Directorate, however, gave a telegram to the applicant for not proceeding to join at Modipuram as the order dated 6.9.95 was kept in abeyance (Annexure P-13). His representation against the telegram was

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rejected. After his deputation period was over he was allowed to be repatriated in T-5 grade at Modipuram in June, 1996. He was informed on 7.10.97 that his selection to the post of T-6 was incorrect. The present OA is filed seeking appointment as Computer Programmer T-6 w.e.f. 1990 itself or to regularise the applicant in the said post from 1995, in terms of his appointment order.

3. The stand of the respondents is that as the applicant was not found competent to be appointed in the post of T-6 Computer Programmer he was offered the post in the grade of T-5 and having accepted the same the applicant is estopped from claiming the T-6 post again from 1990. His claim is also barred by limitation. It is also averred that as the post was advertised to be filled on deputation, appointment by promotion of the applicant in 1995 was erroneous. After realising the mistake the appointment of the applicant to T-6 has been rightly cancelled. He was not even eligible under the rules for promotion, as a candidate in the grade T-5 could be promoted to T-6 after completion of 12 years of service. Further, as he was on deputation to another wing of ICAR he cannot be appointed once again on deputation to his parent institution.

4. We have given careful consideration to the contentions advanced on either side. We have also perused the records. It is no doubt true that the applicant had applied for the post of T-6 Computer Programmer, but as he was not found suitable for that post, after his willingness was taken he was appointed as Computer Programmer T-4. It is, however, disputed by the applicant that he did not give any willingness. However, by order dated 13.2.90 the

Director cancelled the offer of T-4 and issued him a fresh offer of appointment to T-5 Computer Programmer in the pay scale of Rs.2000-3500 and he accepted the said post and his probation also was completed in the said post. Hence, the question of appointing him in the grade of T-6 does not now arise. The plea is also barred by limitation. Learned counsel, however, submits that the applicant was asked to perform the duties of T-6 Computer Programmer and he accordingly performed and in spite of his several representations he was not paid the pay and allowances of T-6 Computer Programmer. Hence, the applicant is entitled for the pay and allowances in the post of T-6 Computer Programmer. But no such relief is claimed in the OA. ^{in the pleadings} ~~Unless~~ a clear foundation is made and the respondents are given an opportunity to meet the allegations, ~~the~~ [✓] ~~applicant's claim cannot be allowed.~~

5. We find that the applicant has not made [✓] ~~clear~~ ^{out} a case for seeking higher emoluments. It is stated by the applicant that he was given the duties of T-6 but it appears that he has not made any grievance of the same, nor made any representation in that behalf. It is, therefore, not permissible for the applicant to raise this objection at this late stage and [✓] ~~for~~ ^{we hold that} seeking payment of emoluments of T-6. Without going into the plea of limitation, the claim of the applicant is not ~~found~~ [✓] acceptable.

6. The learned counsel for the applicant Mrs. Meera Chhibber, however, vehemently contends that as the applicant has been appointed by the DPC on considering his application for appointment by way of deputation, the impugned telegram staying the operation of the said order

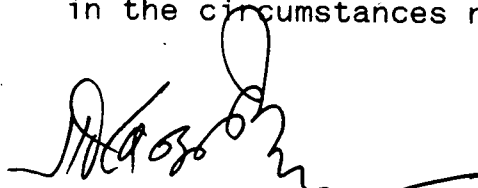
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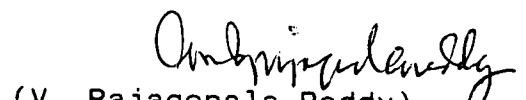
is wholly illegal. It is seen that the advertisement has been published for filling up the posts of T-6 at the Modipuram Directorate on deputation basis for a period of two years. At that time the applicant was working on deputation in the post of T-6 in the Kanpur Unit of the ICAR. He applied for the said post and was considered by the DPC and was duly selected and appointed. The question that remains to be seen is whether his appointment was contrary to the rules. We have perused the records produced, as directed. In the proceedings of the DPC held on 5.9.95 three applicants were considered for filling up the post on deputation and the applicant was one of them. The Committee noticed that the applicant had been working on deputation at the unit at Kanpur. His service record was also considered. He was found suitable and hence he was recommended for the post of T-6 Computer Programmer "either on deputation or appointment as per rules". On the basis of this recommendation he has been appointed as Computer Programmer T-6 w.e.f. 5.9.95 by the order dated 6/7.9.95 and the applicant was advised to report for his duties within 15 days of the receipt of the order. Thus, it is seen that the recommendation made by the DPC has been accepted by the appointing authority. Since Kanpur Directorate did not relieve the applicant, Modipuram Directorate was requested to grant some more time to the applicant for joining. Immediately thereafter the impugned telegram has been issued keeping the order of appointment in abeyance. We do not find any infirmity in the recommendation made by the DPC for his appointment on deputation basis and ⁱⁿ his appointment as such. The applicant had fulfilled all the qualifications for such appointment. There is no warrant to hold that the order is

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an order of appointment by way of promotion. It may be that he was not eligible for promotion as per the rules. There is nothing on record to show that he was appointed only by way of promotion to say that he was ineligible for promotion. No reason is also given in the impugned order dated 7.10.97, rejecting the representation of the applicant. In the interest of justice and in the facts and circumstances of the case we have to hold that there is no reason for not implementing the order of appointment.

7. In the circumstances, the OA partly succeeds and the respondents are directed to give immediate effect to the order of appointment dated 6/7.9.95 for a period of at least 2 years or any extended period, treating the same as an appointment on deputation basis ⁱⁿ to the post of T-6 Computer Programmer. The OA is accordingly ^a ~~partly~~ allowed, in the circumstances no costs.


(Govindan S. Zampi)
Member (Admnv)


(V. Rajagopala Reddy)
Vice-Chairman (J)

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