

Central Administrative Tribunal
Principal Bench: New Delhi

OA No:1607/95

New Delhi this the 13th day of October 1995

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)
Hon'ble Mr R.K.Ahooja, Member (A)

Ashok Kumar Vaishya
409, Krihi Kunj, IARI
New Delhi- 110 012.

...Applicant

(By Advocate: Shri Prabir Chaudhary)

Versus

Union of India through

1. The Secretary
Ministry of Agriculture
Krishi Bhavan
New Delhi-1

2. Indian Council of Agricultural Research
through its Director General
Krishi Bhavan
New Delhi-1.

3. Indian Agricultural Research Institute
through its Director
New Delhi-110012.

...Respondents.

(By Advocate: Shri Vijay Chaudhary)

O R D E R (Oral)

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

The applicant, a post-graduate in Botany and Doctor in Algae was appointed as a Research Associate in connection with a project under the ad-hoc scheme on "Biological Nitrogen Fixation" by BGA (Cyanobacteria) and Azolla in the Indian Agricultural Research Institute, New Delhi under the ICAR initially for the period from 20.4.87 to 30.6.87, but his service was extended on a year to year basis till the termination of the project on 30th September 1991. The period of the project was further extended and the applicant continued upto 31st August 1995. Thereafter as the project was over, the applicant is out of service.

2. The grievance of the applicant is that while there are vacancies and avenues where he can be accommodated taking into account his long service, qualifications and experience, the respondents did not consider him for further engagements or absorption in service and therefore he has filed this application before his tenure service came to an end, seeking quashing of the impugned order at Annexure 1, and for a direction to the

respondents to regularise the applicant in service as a Research Associate.

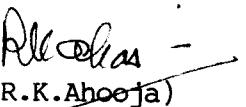
After filing the OA, finding that the respondents have issued a notification calling for applicants for the post of Research Associates by notification dated 29th September 1995, the applicant filed a miscellaneous application No.2528/95 praying that the respondents may be directed to accommodate the applicant in the existing vacancy till disposal of the OA.

3. Shri Vijay Chaudhary appeared on behalf of the respondents. A reply statement has been filed by the respondents. We have gone through the pleadings, the reply as also connected materials on record. Learned counsel of the applicant, seeking support from an order of the Jodhpur Bench of this Tribunal in OA 439/90 in an almost similar circumstances, argued that as the applicant had been rendering services under the third respondents for a considerably long time, he is also entitled for a direction similar to what was given by the Jodhpur Bench of this Tribunal in the aforesaid case. It is seen that the Jodhpur Bench had directed the respondents to evolve some scheme/project for re-employment of the applicant and that the applicant's services should not be terminated. The respondents had taken up the matter before the Supreme Court and four cases including the one relied on by the learned counsel were considered by the Supreme Court in SLP,Nos. 9743, 9744, 9312 & 9978 of 94. It was held by the Supreme Court that such a direction to an employer to evolve a scheme for the sake of re-employment of those who have been working in specific projects should not have been granted and the matter was remitted to the Tribunal for a fresh disposal in accordance with law. So the rule relied on by the learned counsel of the applicant has now been set aside and the matter has come before the Tribunal to pass appropriate orders. Though the supreme Court set aside the judgement in the aforesaid four cases, it is obvious that the court did not find that the application had to be rejected outright, for, if that be the case, the case would not have been remitted to the Tribunal for proper disposal.

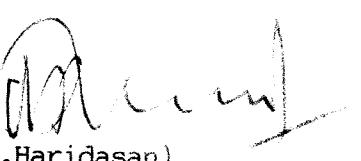
4. After hearing the counsel on either side, we have to consider now what relief ~~at all~~ can be granted to the applicant in this case. Since the applicant has not been admittedly working against a post though for a long time but was employed only under a project, it would not be appropriate to give a direction to the respondents to regularise him in service on a post. However, the fact that the applicant has done ~~research~~ service under the respondents for a long period and that he has now become ~~overaged~~ for employment also cannot be lost sight of. Another aspect which has to be taken note of is that the respondents have advertised vacancies of research associate by notification dated 29th Sept. 1995 wherein the qualifications prescribed appear to be those possessed by the applicant. Taking into account the totality of the facts and circumstances, we are of the considered view that the interest of justice will be met if the respondents are directed to consider the applicant also for engagement as Research Associate against a vacancy notified on 29th Sept. 1995, if he is found eligible and suitable for the post on the basis of his qualifications and experience by giving him relaxation in age because he has been rendering services under the third respondents for the last 8 years.

5. In the result, the application is disposed of as agreed to by the counsel on either side at the admission stage itself with the aforesaid directions.

There is no order as to costs.


(R.K. Ahuja)
Member (A)

aa.


(A.V. Haridasan)
Vice Chairman (J)