

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.806/95

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Hon'ble Shri Justice S.C.Mathur, Chairman
Hon'ble Shri P.T.Thiruvengadam, Member(A)

New Delhi, this 2nd day of May, 1995

Shri S.B.Kaushik
s/o late Shri Bharat Singh
r/o B-6, Raksha Kunj
Paschim Vihar
New Delhi. Applicant

(By Shri R.Doraiswamy & Shri Sant Singh, Advocates)

Versus

Union of India - through

1. The Secretary,
Dept. of Agricultural Research
and Education
Ministry of Agriculture
Krishi Bhawan
New Delhi - 110 001.
2. Director General
Indian Council of Agricultural
Research (ICAR)
Krishi Bhawan
New Delhi - 110 001.
3. The Secretary
I.C.A.R
Krishi Bhawan
New Delhi - 110 001.
4. Shri A.P.Saxena
Project Director (NARP)
Indian Council of Research
Krishi Bhawan
New Delhi - 110 001. Respondents

O R D E R (Oral)

Hon'ble Shri Justice S.C.Mathur, Chairman

The applicant is aggrieved by the order dated 27.3.1995 reverting him from the post of Desk Officer to the post of Section Officer.

2. The applicant was Section Officer in the Indian Council of Agricultural Research. By order dated 31.12.1991 he was posted as Desk Officer (NARP). By virtue of this

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posting he became entitled to a Special Pay of Rs.150/- p.m. in addition to the grade pay of Section Officer. On 17.11.1994 the respondents issued a circular calling volunteers for filling the post of Desk Officer. Apprehending reversion the applicant filed O.A.No.2371/94 seeking directions to the respondent to forbear from filling up the post. The OA was contested by the respondents on the ground that the post of Desk Officer was a tenure post and normally the incumbent remains posted for three years only and the applicant had no right to continue after the expiry of the period of three years from the date of his appointment. In support of the plea the respondents relied upon O.M. dated 11.12.1975 issued from the Department of Personnel and Administrative Reforms. A Division Bench of the Tribunal accepted the above defence by order dated 27.1.1995 observing therein "Further continuance cannot be claimed as a matter of right and it would depend upon the performance of the Desk Officer concerned. In view of the filing of the OA, possibly the respondents could not apply their mind with regard to the extension of the applicant in his functioning as Desk Officer." With this observation the following direction was issued:

"In the circumstances, we direct that the respondents should consider the case for extention of the applicant to continue as Desk Officer beyond the period of 3 years. It is unnecessary to add that the same norms that are being followed in other cases for such extension should be followed in this case also. Decision taken should be intimated to the applicant within a period of 3 months from the date of receipt of a copy of this order. Till the decision is conveyed, the applicant shall be kept in the post of Desk Officer."

3. It is in pursuance of the above directions that the impugned order has been pased, which reads as follows:

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"In pursuance of the directions given by the Hon'ble Principal Bench of Central Administrative Tribunal, New Delhi in its' order dated 27.1.1995 in case of O.A. No.2371/94, the competent Authority has considered the case for extention of Shri S.B.Kaushik as Desk Officer beyond the period of three years. As his performance as Desk Officer was not found satisfactory and therefore, his tenure as Desk Officer could not be extended any further. Shri Kaushik has now been reverted back to the post of Section Officer in the grade of Rs.2000-3500 with immediate effect."

4. The above order has been challenged by the applicant on two grounds (1) It is stigmatic, and it has been passed without bringing the adverse material to the notice of the applicant and (2) It is the result of the malafides of Shri A.P.Saxena, respondent No.4.

5. So far as the plea of malafide is concerned relevant averments have been made in paragraphs 4.20 and 4.21 which read as follows:

"4.20. That the (impugned) order is ex-facie malafide in as much as (i) it has been issued immediately on receipt of Tribunal's order dated 27.1.1995 without any objective consideration or application of mind;

(ii) it states that the applicant's performance as Desk Officer was not found Satisfactory, without in fact there being anything adverse against applicant's performance as Desk Officer ever being communicated to the applicant by the competent authority in the last three years;

(iii) the order instead of being graded confidential has been given wide circulation deliberately with a view to malign the applicant and bring him down in the eyes of his colleagues, who had elected him as a member of the Grievance Committee from the 'administrative category' of ICAR, HQrs office of Respondents.

(iv) The alleged reversion has been ordered without giving a show cause notice.

4.21. That the Respondent's calculated move to malign the applicant's performance and to revert the applicant started after the applicant by his notings on file on or about Sept. 1993 brought to the notice of the higher authorities the grave irregularities which resulted in wrongful gain to certain officers of ICAR who dealt with the ISNAR

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Contract including Respondent No.4 - Dr. A.P.Saxena, Project Director (NARP), under whom the applicant worked as 'Desk Officer'."

The averment in paragraph 4.20(1) appears to suggest that the impugned order has been hastily passed. We are unable to accept this plea. The process of applicants replacement had been started prior to 27.1.1995 and it was that process which resulted in the applicant approaching the Tribunal on the earlier occasion. The judgment of the Tribunal was rendered on 27.1.1995 while the impugned order was passed on 27.3.1995. In between there were two months. This period was quite sufficient for objective consideration.

6. The averments in paragraph 4.21 appear to suggest that the applicant had made notings in the office file adverse to the Project Director, Dr.A.P.Saxena under whom he worked. This noting, according to him, was done in or about September, 1993. The earlier OA was filed in the year 1994. If the allegation is correct, it should have found mention in that OA. It was only when in paragraph 5.5 of their reply in that OA the respondents stated that "there were adverse comments from the Project Director about the poor performance of the applicant" that the applicant came out with allegation of malafide against Dr.Saxena in his rejoinder". That allegation made in the rejoinder has been reproduced in paragraph 4.28 of the present OA relevant portion of which reads as follows:

"Respondent issued the order dated 17.11.1994 malafide and only with an intention to revert back to the post of Section Officer to the applicant. It is further submitted that the applicant made a representation to the Secretary, Indian Council of Agricultural Research, Krishi Bhavan, New Delhi on 27th June, 1994 annexed as Annexure VI to the application. In this representation the applicant alleged against Dr.A.P.Saxena, ADG(NARP) for misuse of his official position for his personal gains resulting in a heavy loss of foreign exchange to

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the ICAR/Govt. of India. This fact thrilled the whole of the department and instead of taking any action against the erring officials, the applicant is being tried to push out from the post of the Desk Officer because it is only the applicant who is the bone of contention and who is the person who has brought the several irregularities being conducted by the higher officials and on account of which Govt. of India has suffered heavy monetary loss. Such a representation and the notings made by the applicant annoyed the High Officials and only with a view to save themselves they have planned to oust from the post of Desk Officer."

In this paragraph there is no reference to September, 1993. Further the nature of allegations made by the applicant against Dr. Saxena are vague. From the material on record we are satisfied that the allegation of malafide against Dr. Saxena is a concocted one.

7. So far as the stigma in the impugned order is concerned, the same has been invited by the applicant himself by filing the earlier OA. The Tribunal had directed the respondents to consider applicant for continuance as Desk Officer on the basis of the norms followed in cases of such nature. In view of this direction, it appears, the respondents felt obliged to record reason for denying continuance to the applicant. Further what they have said in ~~been said~~ the impugned order had already ~~been said~~ by the respondents in their reply to the earlier OA.

8. In support of his plea that the stigmatic order of reversion is bad in law. The learned counsel has cited ~~the~~ case of Shri Satish Chandra Mital Versus State of Uttar Pradesh and Others, 1975(1)SLR(Allahabad High Court). This was a case in which the applicant was sought to be reverted from a higher post to which he had been earlier promoted, to

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the lower post. The post of Desk Officer was not a promotion post. This authority has no application to the facts of the present case.

9. In view of the above, the application is dismissed in limine.

P. J. *[Signature]*

(P.T. THIRUVENGADAM)

MEMBER(A)

[Signature]

(S.C. MATHUR)

CHAIRMAN

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