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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.1729 /1997 Date of Decision: 30 - 4 -1998

Shri Fayyaz Ahmed .. APPLICANT

(By Advocate Shri A. K. Bhardwaj)

versus

Union of India & Ors. .. RESPONDENTS

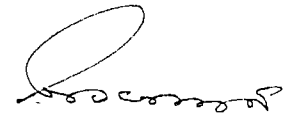
(By Advocate Shri K. C. D. Gangwani)

CORAM:

THE HON'BLE SHRI T. N. Bhat, Member (J)

THE HON'BLE SHRI S. P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES
2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?



(S.P. Biswas)
Member(A)

Cases referred:

1. Inder Pal Yadav V. UOI & Ors. 1985 (2) SCC 648
2. Govind Prasad V. R. G. Prasad 1994 SCC (L&S) 579
3. S. M. Mukherjee V. UOI 1990 (5) SLR 8

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1729/97

New Delhi this the 30th day of April, 1998.

Hon'ble Sh. T.N. Bhat, Member(J)
Hon'ble Sh. S.P. Biswas, Member(A)

Sh. Fayyaz Ahmad,
R/o 569, Ali Ganj,
New Delhi-3. Applicant

(through Sh. A.K. Bhardwaj, advocate)

versus

Union of India through

1. The Secretary,
Government of India,
Ministry of Science & Technology,
Deptt. of Biotechnology,
Block-2(7-8th Floor)
CGO Complex, Lodhi Road,
New Delhi-3.
2. The Director,
Govt. of India,
Ministry of Science & Technology,
Deptt. of Biotechnology,
Block-2(7-8 Floor),
CGO Complex, Lodhi Road,
New Delhi-3.
3. Under Secretary,
Govt. of India,
Ministry of Science & Technology,
Deptt. of Biotechnology,
Block-2, 7th Floor, CGO Complex,
Lodhi Road, New Delhi-3.
4. Sh. B.N. Majhi,
Staff Car Driver,
Ministry of Science & Technology,
Block-2, 7th floor,
CGO Complex, Lodhi Road,
New Delhi. Respondents

(through Sh. KCD Gangwani, advocate)

ORDER(ORAL) -

Hon'ble Sh. S.P. Biswas, Member(A)

The applicant, a staff car driver, is aggrieved by A-1 order dated 17.4.97 by which it has been decided that he will be treated as surplus staff w.e.f. 20.2.97

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in place of Sh. B.N. Manjhi (R-4), another such staff car driver and that he will be under posting to "Central Surplus Cell" under Department of Personnel & Training, Government of India. He also alleges discrimination in that respondent No.4, an official junior to him in the same category, has been favoured by retaining him (R-4) under Department of Biotechnology (DBT for short).

2. The short questions that fall for determination are:-

(a) Whether the grounds taken by the respondents in placing the applicant in "Central Surplus Staff" under Department of Personnel & Training (DOP&T for short) are sustainable in terms of law? and

(b) Whether A-1 executive order can have legal validity?

3. The respondents seek to justify A-1 order dt. 17.4.97 on the basis of the following:-

(A) It has been submitted that Respondent No. 4 was initially declared as surplus w.e.f. 28.2.97 (Annexure-B) but the said order having been issued erroneously had to be corrected. Following a representation from Respondent No.4 that he was wrongly declared surplus since his appointment was made against the non-plan post in Department of Biotechnology, not against the ICGEB plan post and that he continues to work

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against DBT post, the respondents carried out a scrutiny of records and found that an error had crept in respect of Respondent No.4. A modified order vide O.M. dated 17.4.97 (A-1 impugned order) was accordingly issued.

(B) Yet another ground for issuing the order dated 17.4.97 was that the applicant was appointed and confirmed as staff car driver in ICGEB project. This is more than evident in the communication of the respondents dated 15.3.93 (A-D). The fact that he was working against a project post was known to him and he never made a representation against the said order dated 15.3.93. Therefore, there was nothing wrong in taking the applicant as an employee of ICGEB when the same project was wound up on 28.2.97. Since the applicant was an official working in the project of ICGEB, it was nothing but natural that he was to be declared surplus on the completion of the ICGEB project, the respondents contended.

(C) The third reason for declaring the applicant as a surplus staff relates to respondents' submission that "there are no question of surplus declaration of drivers based on reverse seniority, as there is no combined seniority among drivers". There are only two ex-cadre posts of Staff Car Driver in ICGEB project against which the applicant and one Shri Jaipal Singh have been working.

4. As regards question No.1, we have perused the records and gone through the pleadings and find that the letter of appointment of the applicant indicates that he was initially appointed on 16.11.88 against a temporary

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post in the Department of Biotechnology. The said appointment was preceded by a formal interview held on 23.9.88. The offer of appointment letter as at A-6 dated 6.10.88 makes it abundantly clear that the applicant was required to work as a Staff Car Driver (Group-C) in the Department of Biotechnology. In any of these communications i.e. letter dated 13.9.88 asking the applicant to appear in the interview, the selection held as well as the offer of appointment etc., there is no whisper, ~~nothing~~ what to speak of ^{any mention} that the applicant will be required to work against a ^{post} project. We do not know the date when the ICGEB project started but the materials placed before us indicate that the applicant was appointed only against a temporary post under DBT. The fact that the applicant was utilised against a project post under ICGEB was only a matter of coincidence and of administrative convenience. The communication of the respondents dated 15.3.83 declares two staff car drivers and two despatch riders as having been confirmed. Obviously, they could not have been confirmed against project post of ICGEB which are normally of temporary nature. The applicant, therefore, could not be expected to oppose/object to the position in 15.3.93 communication. This is particularly so when the said letter offers him "temporary status" following confirmation. The communication of 15.3.93 does not establish conclusively that applicant's first appointment in DBT was against ~~any~~ project. It only declares the applicant having completed the probation period satisfactorily.

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In the background of the aforesaid facts and circumstances, we do not find any good ground, much less convincing one's, to conclude that the applicant was appointed against a project post under ICGEB.

5. There is yet another serious legal infirmity in the respondents approach in the matter. This relates to violation of the norms laid down by the DOP&T in respect of re-deployment of surplus staff. As per the O.M. dated 28.2.90 issued by the DOP&T, such re-deployment has to be in terms of para 3.4.1 which reads as under:-

"Determine the number of persons yet to be declared surplus. Prepare a list of junior most persons equal to such number by following the reverse list of seniority."

6. It is evident that the respondents have not initiated action in terms of the instructions issued under the aforesaid O.M. of DOP&T. The record show that the applicant is senior to Respondent No.4 having been appointed under the respondents on 16.11.88 vis-a-vis date of appointment of the Respondent No.4 being 7.9.89. This has not been disputed by the respondents. The order of 17.4.97, in modification of the earlier order dated 27.2.97, is clearly in violation of the law laid down by the Hon'ble Supreme Court in the case of Inderpal Yadav & Ors. Vs. U.O.I. & Ors. (1985(2) SCC 648). It was held therein that any disengagement of casual and ad-hoc employees has to be on the principle of "first to come last to go or last to come first to go." The O.M. of the DOP&T seeks to achieve that objective and by disobeying that the respondents have indulged in an arbitrary action so far as the applicant is concerned.

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There is yet another contradiction in the stand of the respondents. This relates to their submission that "there is no combined seniority among the drivers". This seems contrary to their own statement in the letter of Annexure-A2 (letter dated 27.2.97) wherein it has been mentioned that "Sh. C.L. Joshi in Annexure-II who although senior as Staff Car Driver has opted for being declared surplus". In the light of this submission, it does not lie in the mouth of the respondents to say that they are not required to obey the principles of seniority in handling the problems of Staff Car Driver. Based on this, the modification of the order dated 27.2.97 is questionable. Grounds taken by the respondents in support of the A-1 order are, therefore, legally untenable.

7. Para 1 of the Office Memorandum dated 17.4.97 mentions as under:-

"In continuation and Partial modification of this Office O.M. of even number dated 27/2/1997, Shri Fayyaz Ahmad, Staff Car Driver may be treated as Surplus w.e.f. 20/2/97 (AN) in place of Shri B.N. Manjhi, Staff Car Driver."

The applicant accordingly will be treated as surplus with effect from 27.2.97. As per law laid down by the Hon'ble Supreme Court in the case of Govind Prasad Vs. R.G. Prasad (1994 SCC (L&S) 579), administrative orders cannot have retrospective effect. This answers the second question.

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8. We also find that the applicant had made a representation dated 9.5.97 setting out his grievances in details. In their reply dated 6.6.97, the respondents have indicated the following:-

"Sub: Winding up of ICGEB Plan Scheme.

With reference to the representation dated 9.5.1997 of Shri Fayyaz Ahmad, Staff Car Driver is informed that his representation on the subject mentioned above was considered carefully and rejected."

9. The aforesaid communication looks like head of a sphinx. It does not convey any reasons for rejection of the applicant's representation. Any administrative authority involved in a process of adjudication is required to state reasons for his/her conclusion. In this case, as in many other cases of Government of India, the orders contain conclusions and not reasons. Such non-speaking, if not dump orders, cannot do service for the requirements of law. The requirement to record reasons for decisions was examined by the 5 Member Constitution Bench of the Apex Court in the case of S.M. Mukherjee Vs. U.O.I. (1990(5) SLR 8). In this case, their Lordships concluded that "except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi judicial functions is required to record the reasons for its decision.

10. Because of the reasons at paras 3 to 8, the O.A. merits consideration and is accordingly allowed with

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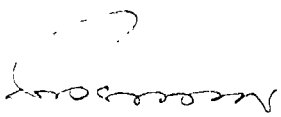
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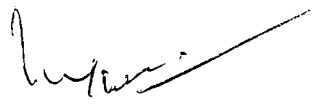
the following directions:-

(i) The A-1 order and memorandum dated 17.4.97 and 6.9.97 respectively shall stand quashed.

(ii) Respondents shall adhere to the principles of seniority in redeployment of surplus staff strictly in terms of instructions under the DOP&T O.M. dated 28.2.90 and issue necessary orders setting right the illegality in the manner of applicant's redeployment. This shall be done within a period of 2 months from the date of receipt of a copy of this order.

(iii) There shall be no order as to costs.


(S.P. Biswas)
Member (A)


(T.N. Bhat)
Member (J)

/WA/