

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2097/1997

New Delhi, this 10th day of August, 2000

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

Niraj Srivastava
211, DDA Flats (RPS)
Mansarovar Park, Shahdara
Delhi-32 .. Applicant

(By Shri Mukul Talwar, Advocate, not present)
(Applicant present in person)

versus

Union of India, through
Secretary
Ministry of Rural Areas & Employment
Krishi Bhavan, New Delhi .. Respondent

(By Shri K.C.Diwan, Advocate, not present)

ORDER

Smt. Shanta Shastry

The applicant, while working as Senior Assistant in the Tribal Cooperative Marketing Development Federation of India Limited (TRIFED, for short) under the then Ministry of Welfare, Government of India, was deputed to the Ministry of Rural Development in the post of Economic Investigator Grade I (EIG-I, for short) on temporary ad hoc basis for a period of six months vide letter dated 19/20.9.95. The applicant joined on 20.9.95 and was posted in the office of Secretary (RE&PA) vide order dated 29.10.95. Subsequently, vide order dated 1.11.95 he was allowed his grade pay along with 5% deputation (duty) allowance. His deputation period was extended further by another six months upto 20.9.1996 by order dated 24.4.96. // In March, 96, the respondent advertised the post of EIG-I. Applicant applied for the said post. After being recommended by the Selection Committee which met on 14.8.96, the applicant was selected and was offered appointment.

After seeking no objection from his parent department i.e. TRIFED and after the applicant had tendered resignation, the same being accepted by his parent organisation, the applicant finally joined the post of EIG-I on 25.9.96. Subsequently, the applicant was transferred vide order dated 24.10.96 to DPAP. The applicant joined the said department on the same day. Thereafter, respondent issued the impugned order dated 2.9.97 relieving the applicant from the post. Aggrieved by the sudden termination of his service, the applicant has approached this Tribunal, seeking to quash the order dated 2.9.97 and to direct the respondent not to terminate the services of the applicant and to award costs.

(B)

2. As per his prayer for interim relief, the impugned order dated 2.9.97 was stayed by this Tribunal by order dated 5.9.1997.

3. The applicant appearing in person sought to give written submissions and the same having been allowed has now submitted them.

4. According to the respondent, earlier selection had to be scrapped because of irregularities committed during the course of the selection. These irregularities were that the selection should have been within the purview of the UPSC or some outside agency like Staff Selection Board. Applicant does not possess a Degree in Economics, he is only B.Com with Economics as a subject and there were other candidates better qualified possessing Masters degree but they were ignored. Also the applicant did not have two years

(b)

experience as required. Further, the selection committee was to be chaired by the Secretary of the Department but the Secretary was not present at the selection. Nor was the selection ratified by the Secretary of the department concerned. Applicant also is overaged and there was no question of relaxation in his age because he was not a government servant. He was only on deputation from TRIFED, which is a cooperative society.

(A)

5. It is stated by the respondent that the applicant was given only an offer of appointment and not actually the appointment letter appointing him on regular basis for the direct recruitment. Therefore the respondent had to withdraw the offer of appointment after having detected the irregularities in selection and ^{having} scrapped the same. The applicant was not taken on regular basis. Even after the selection he was continued to be working on ad hoc foreign service deputation basis and was posted from one division to another within the Ministry. Respondent also did not ask the applicant to resign from his parent department. Applicant on his own resigned even before firm appointment letter was issued to him. Respondent is not responsible for this act of the applicant. Applicant is not entitled for any relief. It is for him to approach his parent office namely TRIFED to continue there.

It has been submitted that vacancies available at the relevant time together with fresh vacancies which arose subsequently had been recirculated by the respondent on 13.8.97.

(L)

6. The applicant has contended in his OA that his selection cannot be said to be irregular as due process was followed. He had been given regular appointment as EIG-I. He insists that letter dated 10.9.96 whereby he was offered the appointment to the post of EIG-I was not merely an offer of appointment but it was a firm appointment letter. Respondent did not inform him that it was merely an offer of appointment. He has completed all the formalities and he had resigned from his parent office. He also communicated his acceptance of the offer of appointment to the respondent and only after resigning he joined the new post. The respondent did not give any indication that he was being treated as on deputation. Had he been said to be on deputation, the deputation period should have been extended in consultation with his parent organisation. But that was not done though his deputation had expired on 20th September, 1996. He was allowed to continue there till the impugned order dated 2.9.97 was issued relieving him from the post. In the absence of any order extending the deputation, it had to be treated that his appointment to EIG-I as direct recruit had been confirmed.

7. The applicant in his written submission has tried to show that his selection was not irregular. According to him, UPSC themselves had asked the respondent to conduct recruitment by itself. Though the Secretary who is the Chairman of the Selection Committee was not present in person at the interview, he later on ratified the selection. In fact it has been a common practice in the Ministry that when the Secretary does not have time to be present to interview the candidates, he either

(b)

accepts the recommendations of the rest of the members of the selection committee or if he desires to interview the candidates himself, he would do so. The rule only requires the selection committee to be headed by the Secretary and nor that the candidates should be interviewed by him in person. In regard to the educational qualification, the applicant submits that he possesses the requisite essential qualification i.e. Degree with Economics as a subject. Higher degree is only a desirable qualification and not an essential qualification. Further, the applicant refutes the contention of the respondent that though there were several other highly qualified candidates with Master's degree available for selection, they were overlooked as against the applicant who possessed only a bachelor's degree. Applicant has pointed out that even earlier in the year 1993 when direct recruitment to the post of EIG-II took place, one Shri P.S.Dalodia was selected. He too had only B.Com degree and not degree in Economics. In his case also Secretary had not chaired the meeting of the selection committee.

The applicant states that there was not even a single candidate in the general category who possessed Doctorate degree. In fact, out of 7 candidates in the general category who appeared in the interview, five of them were personnel already working in the Ministry on a lower grade and none of them had a doctorate degree. Moreover, the applicant was selected on the basis of his performance in the interview and due weightage was also given for his possessing computer knowledge and computer literacy. Therefore he had an edge over other candidates. Also he was the only candidate who was

working on a post in the pay scale of Rs.1640-2900. The applicant also argues that he was overaged only by 7 months and 17 days and age relaxation had been granted to him after due consultation with the DoP&T. He has maximum amount of experience out of the candidates who appeared in the general category. Thus, there was really no irregularity in the selection of the applicant.

(7)

8. The applicant has also made an issue that while terminating his services no notice has been served on him nor has he been given an opportunity to show cause. The impugned order does not specify the provisions under which it has been passed. Applicant has advanced his argument that had he been on deputation as claimed by the respondent the Ministry would have made formal deduction from his provident fund etc. from his salary and would have remitted the same to his parent organisation as was being done while he was on deputation. This shows that his appointment was on regular basis. The applicant has therefore pleaded that it was not proper to have relieved him, that his services should not have been terminated, and therefore his selection should be upheld.

9. We have perused the pleadings and the written submissions made by the applicant. Apparently, it cannot be denied that some irregularities had occurred in the selection process. In order to appreciate the irregularities pointed out, we would like to refer to the Recruitment Rules for the post of EIG-I. According to these R/Rules, it is clear that this post is not within the purview of UPSC. It is stated in Col.7 that

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no consultation with UPSC is necessary. The objection that selection should have been left to UPSC does not hold good. The minimum essential educational qualification prescribed for the post is degree with economics or agriculture economics as a subject and not degree in economics. Therefore, it cannot be said that the selection committee had erred in considering the applicant who has B.Com. degree with economics as one of the subjects. We are also aware that age relaxation is meant only for government employees. It is true that the applicant is not a government employee but at the time of selection, he was on deputation with the respondent and the DoP&T had also agreed to age relaxation in his case. It cannot be said that the DoP&T had blindly granted age relaxation. It is not the fault of the applicant. The only irregularity seems to be that the committee should have been chaired by the Secretary of the concerned department but he was not present. We do not accept the argument of the applicant that it was the practice in the department for Secretary not to be present. Even in the selection in 1993 of Shri Dalodia the Secretary had chaired the meeting as stated by the respondent. Therefore the selection is vitiated.

We also do not agree with the respondent's objection about the higher educational qualification being possessed by other candidates. The higher degree was only desirable. The best course of action should have been to hold review selection with the Secretary of the Department heading the selection committee in person. However, the respondent thought it fit to scrap the entire selection. We cannot find fault with the

(b)

action of the respondent in scrapping the selection. At the same time, the fact remains that the applicant is thrown out on the road with nowhere to go for no fault of his. It is to be seen that it is not the fault of the applicant if the irregularities were committed in the selection process. He himself did not suppress any fact including his being overaged. Also while technically speaking there was no formal appointment letter appointing the applicant on regular basis, we find that there is ample evidence to show that the respondent intended to appoint the applicant on regular basis, which is revealed from the letter of 1.8.96, addressed by the respondent to the applicant's parent department. It is clearly stated therein that the applicant was being considered for appointment on regular basis. It is only when irregularities were detected after one year that respondent has tried to cover up their wrong ~~its~~ action by raising the question of technicality about the appointment letter. The applicant was allowed to work in the post of EIG-I without raising any objection till the detection of the irregularities. Had the selection not been scrapped, the question of the letter not being the appointment letter would not have arisen at all and the applicant would have been appointed on regular basis. There was no word at all that during the period from the date of selection till the issue of impugned order ⁴ that he was on deputation. There is no letter addressed to applicant's parent organisation about either extending the period of deputation or otherwise. We, therefore, feel that the applicant should not have been punished for no fault of his. It is true that the applicant had submitted his resignation in an hasty manner. He could

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have been advised properly about the repercussions but throughout the period of almost one year after his selection also nothing was said about this. The applicant cannot be summarily treated like this. Natural justice demands that show cause notice should have been given to him before relieving him. Respondent could have continued the applicant against one of the ad hoc vacancies till the matter is sorted out. In fact, as per the advertisement, 3 posts were to be filled up on regular basis and four on ad hoc basis. Also the respondent should have prevailed upon the parent organisation of the applicant to allow the applicant to withdraw his resignation so as to enable him to be repatriated. This action on the part of the respondent to relieve the applicant without nowhere to go is certainly not justified.

10. In view of the above discussions, we set aside the impugned order dated 2.9.97 and direct the respondent to allow the applicant to continue against one of the ad-hoc vacancies till the post is filled on regular basis and adjust and accommodate the applicant against any equivalent post in the same Ministry and consider absorbing him on regular basis.

12. The OA is allowed as aforementioned. No costs..

Shanta Shastray
(Smt. Shanta Shastray)
Member(A)

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

/gtv/