

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1145/2000

New Delhi this the 5th day of July, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

Dr.M. A.Khan
Scientist
Division of Crop Production
CPRI
Simla.

.... Applicant

(By Shri S.M.Garg, Advocate)

-versus-

1. Union of India through its Secretary
Ministry of Agriculture
Krishi Bhawan
New Delhi.
 2. Indian Council of Agricultural Research
Krishi Bhawan
New Delhi through its Secretary.
 3. Agricultural Scientists Recruitment Board
Krishi Anusandhan Bhawan, PUSA
New Delhi through its Secretary.
 4. Director
Central Potato Research Institute
Simla.
- ...Respondents

(By Advocate Shri C.Badri Nath)

O R D E R (ORAL)

Shri S.A.T.Rizvi:-

Heard the learned counsel on either side at length.

2. Having been initially recruited/appointed as Field Farm Technician grade T-II-3 on 18.6.1986, the applicant was promoted to T-4 grade on 1.1.1992. Thereafter he got himself enrolled for a Ph.D degree

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on 16. 9. 1992 and was eventually awarded the said degree on 2.11.1998. Meanwhile, the respondent No.3 advertised several posts of Scientists on 26. 12.1992. Applicant was an aspirant for the post of Scientist in Agricultural Chemistry. He was not selected. The post was readvertised on 4.6.1994 and the applicant was once again an aspirant for the same post. On this occasion, he cleared the written examination as well as the interview held for the post and was finally appointed as Scientist in Agricultural Chemistry on 13.3.1997. Thereafter upon completion of the foundation course from the National Academy of Agricultural Research Management Hyderabad, he completed the two years' period of probation. He had served for another 8 months thereafter when all of a sudden, without any show cause notice, the applicant was reverted to the grade of T-4 on 17/18-11-1999. Prior to this, the Secretary, ASRB Pusa, New Delhi had received a letter dated 17/24-9-1999 from the Indian Council of Agricultural Research making a reference to a certain decision earlier conveyed by the National Commission for Scheduled Castes/Scheduled Tribes and calling for an enquiry into the matter regarding the appointment of the applicant on the post of Scientist even though he was not academically qualified. This would go to show that the respondent No.3 proceeded to enquire into the matter and ultimately decided to revert the applicant to the Grade of T-4 only after a letter had been received from the National Commission for Scheduled Castes/Scheduled Tribes providing, inter alia, that the applicant should be reverted/terminated in order to ensure equality of treatment vis-a-vis one

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Shri Ram Charan who had filed a complaint before the said Commission against the appointment of the applicant to the post of Scientist in Agricultural Chemistry and had also, at the same time, made a request for his own promotion to the post of Scientist in the relevant discipline. The learned counsel appearing on behalf of the respondents admits that action against the applicant was indeed initiated only after the receipt of the letter from the National Commission for Scheduled Castes/Scheduled Tribes but contends that action to revert the applicant was taken in accordance with the Government of India orders on the subject reproduced below FR 31A at page 165 of Swamy's Compilation and in accord with the principles laid down by the Supreme Court in the case of State of Madhya Pradesh and others v. Shyam Pardhi etc.etc. decided on 16.11.1995 and reported in 1996(1) SLR 66. The operative portion of the aforesaid decision is reproduced below:-

"It is now an admitted fact across the Bar that the respondents had not possessed the prerequisite qualification, namely, 10+2 with Physics, Chemistry and Biology for appointment to the post of ANM. Since prescribed qualifications had not been satisfied, the initial selection to undergo training is per se illegal. Later appointments thereof are in violation of the statutory rules. The Tribunal, therefore, was no right in directing the reinstatement of respondents. The question of violation of the principles of natural justice does not arise."

3. The learned counsel appearing on behalf of the applicant on the other hand placed reliance, inter alia, on the following three judgements rendered by the Supreme Court in the case of Ram Sarup v. State

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of Haryana and others decided on 28.8.1978 and reported in (1979) 1 SCC 168; J.C.Yadav and others v. State of Haryana and others, decided on 20.2.1990 and reported in (1990) SCC 189 followed by a decision rendered by the Patna High Court in the case of Smt.Jai Shree Gupta v. State of Bihar and others decided on 27.9.1995 and reported in 1996 LAB I.C.2601. Yet another decision rendered by the Supreme Court and relied upon by the learned counsel for the applicant is the case of Dr. M.S.Mudhol and another v. S.D.Halegkar and others and reported in (1993) 3 SCC 591 decided by that court on 13.7.1993.

4. For the sake of convenience and in order to appreciate the ratio of the aforesaid judgements on which reliance has been placed by the learned counsel for the applicant, we reproduce the relevant extracts taken from them in the following:-

(1) Ram Sarup v. State of Haryana & others

"3. The question then arises as to what was the effect of breach of clause (1) of Rule 4 of the Rules. Did it have the effect for rendering the appointment wholly void so as to be completely ineffective or merely irregular, so that it could be regularised as and when the appellant acquired the necessary qualifications to hold the post of Labour-cum-Conciliation Officer. We are of the view that the appointment of the appellant was irregular since he did not possess one of the the three requisite qualifications but as soon as he acquired the necessary qualification of five years' experience of the working of Labour Laws in any of the three capacities mentioned in clause (1) of Rule 4 or in any higher capacity, his appointment must be regarded as having been regularised. The appellant worked as Labour-cum-Conciliation Officer from January 1, 1968 and that being a post higher than that of Labour Inspector, or Deputy Chief Inspector of Shops or Wage Inspector, the experience gained by him in the working of Labour Laws in

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the post of Labour-cum-Conciliation Officer must be regarded as sufficient to constitute fulfilment of the requirement of five years' experience provided in clause (1) of Rule 4. The appointment of the appellant to the post of Labour-cum-Conciliation Officer, therefore, became regular from the date when he completed five years after taking into account the period of about ten months during which he worked as Chief Inspector of Shops. Once his appointment became regular on the expiry of this period of five years on his fulfilling the requirements for appointment as Labour-cum-Conciliation Officer and becoming eligible for that purpose, he could not thereafter be reverted to the post of Statistical Officer. The order of reversion passed against the appellant was, therefore, clearly illegal and it must be set aside.

4. We accordingly allow the appeal, set aside the judgement of the Division Bench as well as of the Single Judge of the High Court and quash the order of reversion passed against the appellant reverting him from the post of Labour-cum-Conciliation Officer to that of Statistical Officer. We further make it clear that the appointment of the appellant as Labour-cum-Conciliation Officer must be deemed to have become regular and he must be deemed to have been appointed to that post only on the expiry of a period of five years calculated from the date when he was appointed Chief Inspector of Shops."

(2) J.C.Yadav & ors. v. State of Haryana & ors.

"12. On behalf of the appellants an alternative submission was made that since the appellants had already completed eight years' of service in Class II service during the pendency of the writ petition their appointment stood regularised. To support this submission reliance was placed on the decision of this Court in Ram Sarup v. State of Haryana. In that case appointment to the post of Labour-cum-Conciliation Officer was made in breach of Rule 4 clause (I) of the Punjab Labour Service Class I and II Rules, 1955 as Ram Sarup did not possess five years' experience, required by sub-clause (I) of Rule 4. In spite of that he had been appointed to the post of Labour-cum-Conciliation Officer. Subsequently, Ram Sarup was reverted on the ground that he was not qualified to be appointed as a Labour-cum-Conciliation Officer as he did not possess the minimum qualification of length of service. This Court held that the appointment of Ram Sarup made in breach of Rules was irregular, but, not wholly void and since Ram Sarup had completed five years of experience of working of labour laws before his reversion, his

appointment to the post of Labour-cum-Conciliation Officer stood regularised with effect from the date he completed five years of service. On these findings order of reversion was set aside by this Court. Undisputably, the appellants completed eight years of service before January 15, 1980, the date on which the Division Bench of the High Court set aside their promotions. In view of the principles laid down in Ram Sarup's case the appellants' appointment, even if irregular, stood regularised on the date they completed eight years of their service and thereafter their promotions could not be set aside."

State.

(3). Smt. Jai Shree Gupta v. State of Bihar & Ors.

"17. Learned counsel for the respondents has also relied upon a decision of the Supreme Court in the case of Ram Sarup v. State of Haryana reported in AIR 1978 SC 1536 : (1978 Lab IC 1535). The said judgment was cited for the proposition that where a person, initially recruited, did not have the experience or the qualification but the said person while working for a number of years had acquired the qualification during the course of his working in the post, the initial appointment becomes regular. This judgment was cited for the purpose of contending that after the petitioner qualified herself as graduate trained teacher in the year 1984 then even if it is assumed that her initial appointment was regular, but as a result of her acquiring the qualification, the said appointment has become regularised. This Court is of the view that those principles enunciated in the said case are attracted to the facts of the instant case inasmuch as the petitioner has subsequently acquired the qualification of a B.A. trained teacher and the respondents authorities must take into account that fact before passing the order of reversion."

(4) Dr. M.S. Mudhol & Anr. v. S.D. Halegkar & Ors.

"6. Since we find that it was the default on the part of the 2nd respondent, Director of Education in illegally approving the appointment of the 1st respondent in 1981 although he did not have the requisite academic qualifications as a result of which the 1st has continued to hold the said post for the last 12 years now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There is nothing on record to show that he had at that time projected his qualifications other than what he possessed. If, therefore, in spite of placing all his cards before the

selection committee, the selection committee for some reason or the other had thought it fit to choose him for the post and the 2nd respondent had chosen to acquiesce in the appointment, it would be inequitable to make him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd respondent. They are alone to be blamed for the same."

5. We will first take up the judgment rendered by the Supreme Court in the case of State of M.P. & Ors. v. Shyama Pardhi (supra) relied upon by the learned counsel for the respondents. We find that on facts that case is distinguished from the present one. The peculiar circumstance obtaining in the present case is that during the period of his appointment in the higher post of Scientist in Agriculture Chemistry, the applicant acquired the essential qualification for the post which he did not fulfil at the time of his appointment. A similar circumstance did not exist in the aforesaid case and, therefore, placing reliance on the judgment rendered by the Apex Court in that case will not assist the respondents.

6. The combined ratio of the judgments rendered by the Courts on which reliance has been placed by the learned counsel for the applicant is to the effect that once a person is appointed to a post even though without fulfilling the qualifications laid down for the post and has served in that post for a number of years and was not in any way responsible for his appointment incorrectly made by the respondents and had also at the same time not hidden any material facts or information about his qualifications at the stage of initial appointment to the post, it will be unfair and inequitable to revert him to a lower post.

Of the four judgments relied upon by the learned counsel for the applicant, the one delivered by the Patna High Court as also the one rendered by the Supreme Court in Dr. M.S. Mudhol (supra) will find complete application in the present case having regard to the facts and circumstances of the present case and the facts and circumstances which were found to exist in those other cases.

7. After a careful consideration of the judgments rendered by the Courts in the aforesaid cases, we also find that the ratio established and which must be followed in the present case is that appointments irregularly made for want of qualifications, experience etc. and continued over a period of time are required to be regularised in the circumstances which have existed in the present case and which have found mention in the preceding paragraphs. For this very reason, we find ourselves unable to place reliance on the Government of India's orders to which a reference has been made by the learned counsel for the respondents.

8. We have further considered the matter in the light of the pleadings of the learned counsel for the applicant referring to certain aspects of the practice followed by the respondents in similar cases. We find that respondents are often faced with situations in which persons get appointed incorrectly to posts for want of qualifications etc. and have subsequently to be shifted to posts in conformity with the qualifications actually possessed by the appointees.

The learned counsel has drawn our attention to the aforesaid practice by bringing to our notice names of five persons (Annexure A-2 to the rejoinder) who were initially incorrectly appointed to certain posts as they did not possess the prescribed qualifications and experience but who were retained in the same posts despite the said difficulty. He has also drawn our attention to persons, 13 in number, at Annexure A-3 to the rejoinder who were, to begin with, correctly recruited to fill certain posts but were subsequently shifted to posts in different disciplines for which also they possessed the prescribed qualifications. Thus we note that the respondents were in a position to consider the case of the applicant and also to make an effort at least to try to retain him in the post of Scientist in Agriculture Chemistry. However, no such effort seems to have been made in the present case.

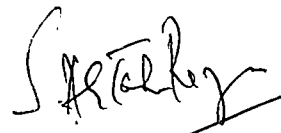
9. Our attention has also been drawn to the relaxation clause, being clause 23 of the relevant recruitment rules, at Annexure A-1 to the counter, which provides that the controlling authority may relax the provisions of these rules to such extent as may be necessary to ensure satisfactory working or for removing inequitable results. Here we find that the respondent-authorities did have the necessary power to consider the case of the applicant on the ground of inequity being writ large on the face of the facts and circumstances of the case. We find, however, that the authorities concerned made no effort to invoke the said clause to dispense justice even though they have

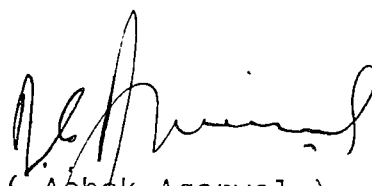
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proceeded to revert the applicant without a show cause notice thereby committing a serious breach of the principles of natural justice.

10. We also note with a degree of disappointment that the respondents have proceeded to comply with the letter that had been issued by the National Commission for Scheduled Castes/Scheduled Tribes without examining the propriety of securing compliance to the wishes conveyed by the said Commission in their letter. They have not bothered either to find out for themselves whether the said Commission at all had the power to order the reversion of the applicant merely on the ground that a stray applicant went up before them asking for similar treatment without any basis whatsoever and without possessing qualifications laid down for the post. Be that as it may, we will not like to comment any further on this issue.

11. For the reasons outlined in the preceding paragraphs the OA is allowed and the impugned order of reversion is quashed and set aside with a direction to the respondents to regularise the applicant in the post of Scientist in Agriculture Chemistry from the date on which he was initially appointed to the said post, namely, from 22.3.1997, within a period of two months from the date of receipt of a copy of this order. While passing the aforesaid order, we have noted that the post of Scientist in Agriculture Chemistry from which the applicant has been reverted is still lying vacant. No costs.


(S.A.T. Rizvi)
Member (A)


(Ashok Agarwal)
Chairman