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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1945/2000

New Delhi, this the 16th day of February, 2001

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

Natwar Rai
S/O J.N.Rai
R/O G-152, Nanakpura
New Delhi.
(By Advocate: Shri L.B.Rai)

..Applicant.

VERSUS

1. Union of India
Through its Secretary,
M/O Environment & Forest,
CGO Complex, Lodi Road,
Parvayaran Bhawan,
New Delhi.
2. The Secretary,
Central Pollution Control Board,
Parveen Bhawan,
CBD-cum-Office Complex,
East Arjun Nagar,
Delhi-32.

..Respondents.

(By Advocate:-Shri P.N.Puri for respondent No.2)

~~Shri S.M. Arif, respondent No.1~~

O R D E R

The applicant in this OA has been working as Data Entry Operator Grade-II (for short DEO Gr.II) almost continuously from 3.10.96 on which date he was first appointed vide copy of the office order of the same date placed at Annexure A-1. His appointment by the aforesaid letter was for a period of 89 days only and was to stand cancelled automatically on 30.12.98. However, the appointment given to him as above was renewed after one days' break for another period of 89 days. This process has gone on from time to time with changes some times in the number of days for which appointments were made on each occasion. On a few occasions, the break between two spells of appointments was even more than one day. On the last occasion, his appointment was to end on

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25.9.2000. Before that could happen, the applicant has filed this OA on 18.9.2000 and has succeeded in obtaining an ad-interim order of stay on 22.9.2000. He has been working without break ever since as the aforesaid interim order has been continued.

2. The contention raised by the applicant is that the respondents have enough work on hand against which his services can be continued in-definitely and that, as a matter of fact, his services should be regularised. At another level, the applicant has also contended that for all the work he has been doing, even though on 89 days basis at one time, he is entitled to receive payments in accordance with the scale of pay prescribed for the DEO Gr. II together with DA, HRA, CCA and other allowances admissible to regular employees. In support of his contention, the applicant has placed reliance on certain judgements of this Tribunal and of the Hon'ble Supreme Court. The one relating to this Tribunal, on which the learned counsel for the applicant has placed heavy reliance, is the order passed on 17.8.98 in OA-2985/97 (along with two other connected OAs).

3. Furthermore, the learned counsel for the applicant has drawn my attention to the office order dated 16.12.97 passed by the respondents in respect of one Sh. Ajay Raghava, Project Engineer (Annexure E-I). Shri Ajay Raghava was also engaged by the respondents in connection with a project though different from the project on which the applicant has been engaged. The services of the said Shri Raghava were also extended,

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according to the applicant, from time to time. According to the aforesaid office order, his services were extended by one year w.e.f. 15.11.97. The aforesaid order reveals that though on par with the applicant in the matter of appointment on a project, the said Shri Raghava was granted one increment in the scale prescribed for Project Engineer and was paid consolidated monthly emoluments which included basic pay, DA, CCA, HRA and also medical benefits in accordance with the rules. Being similarly placed, the applicant seeks payment of DA, CCA, etc. in addition to the consolidated payment currently being received by him.

4. The learned counsel for the respondents has contented that a regular appointment in the respondent No.2's organization is possible only in accordance with the Central Pollution Control Board (Method of Recruitment, Terms and Conditions of the Service of Officers and other employees (other than the Member Secretary) Regulations) 1995 (hereinafter called Regulations, 1995). According to him, the applicant's name was, in accordance with the said regulations, neither sponsored by the Employment Exchange nor has he applied against any advertisement issued by the respondent No.2. He has also not been interviewed by a properly constituted selection committee. Thus, the applicant is not entitled to regularisation straightaway in the manner prayed by him. The learned counsel for the respondents has also referred to Govt. of India's latest instructions imposing a complete ban on the creation of new posts. From the OM issued by the Govt. of India and

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placed by the respondents at page 56 of the paper book. I find that by the aforesaid OM, the existing ban on creation of non-plan posts has been continued and the same is required to be strictly enforced. It also provides that if for unavoidable reasons, a plan post is to be created, the matter will be referred to the Ministry of Finance (Deptt. of Expenditure). Similarly, by the said OM, it has been ordained that until the matter has been reviewed, no vacant posts shall be filled, except with the approval of the Ministry of Finance (Deptt. of Expenditure). According to the learned counsel for the respondents, in keeping with the said OM, the appointment of the applicant on a regular basis is just not possible at any rate at present. The matter will be reviewed, according to him, as and when the aforesaid ban is lifted and the relevant conditions are relaxed. At that stage also, the applicant will have to seek appointment against a regular post only in accordance with the procedure laid down in the afore-said Regulations of 1995. Another contention raised by the learned counsel for the respondents is that at the time of his first appointment, the applicant did not have to undergo any written or skill test and, to this extent, the applicant's corresponding contention has been denied. At a subsequent stage, however, i.e., late in July, 2000, the applicant has of course been tested in respect of data entry work for which a norm of 8000 key depressions per hour has been fixed. It is not disputed that the applicant has come out successful in the aforesaid test.

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5. The applicant has not placed on record any document in support of his claim that he was duly tested both by way of a written test as well as in terms of skill before he was inducted for the first time in October, 1996. He has also not claimed that his name was sponsored by the employment exchange nor has he contended that he had applied for appointment as DEO Gr.II in October, 1996 in response to any advertisement issued by the respondents. Further, as already stated, he was not even tested for his skills at the time of first appointment. In view of these factors, according to the learned counsel for the respondents, the applicant cannot be considered for regularisation even if he has passed the skill test in July, 2000. Regular appointment, learned counsel has reiterated, will become a possibility only when the aforesaid ban on filling of vacancies and for creation of posts is lifted and the applicant comes up for consideration for appointment on a regular basis in accordance with the procedure laid down in the aforesaid Regulations of 1995.

6. At the instance of the learned counsel appearing in support of the OA, I have gone through the order of this Tribunal on 17.8.98 (supra). One of the applicants in that case was initially appointed as Medical Officer on contract basis and on a consolidated salary in response to an advertisement released by the respondents and after interview/verification of the applicant's record, qualifications etc. The other two applicants in that case were aggrieved by the inaction on the part of the respondents to grant continuity of service though

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vacancies against which they were appointed had been continuing. The Tribunal in that case relied on an order passed in the case of Dr. (Mrs.) Sangeeta Narang & Ors. Vs. Delhi Admn. & Ors. ATR 1988 (1) CAT 556. This is what has been observed by the Tribunal in the case decided on 17.8.98:-

"8... In Sangeeta Narang's case it was held that Government can make short term appointment but the critical question was whether once having made such an appointment, was it open to the concerned authority to dispense with the services of the temporary/ad hoc employee at any time suiting to its sweet will, even if the need for filling up the post on temporary/ad-hoc/contract basis still persists. In other words, will it be just and fair on the part of the Government to terminate the services of a contractual employee who may have been appointed for a specified period even though the post has not been filled up by a regular incumbent and there is still need for manning such post uptill the time it is occupied by a regular appointee. On a careful consideration of the matter, the Tribunal in that case ventured to reply in the negative. We respectfully hold the same views.....

9. We also find similar views have been taken by the apex court recently in the case of International Airports Authority Employees Union Vs. Airport Authority of India, JT 1997 (4) SC 757 and also in Union of India & Ors. Vs. Subir Mukherjee, JT 1998 (3) SC 340 decided by the apex court on 29.4.98.."

7. The facts and circumstances of the present OA are not identical to the facts and the circumstances that obtained in the case decided on 17.8.98 and in the other three cases cited in the same order dated 17.8.98, but the applicant in the present OA is placed similarly to the applicants in those OAs and, on this basis, it can well be argued, subject to the work available being of a

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perennial nature, that the service of the applicant cannot be terminated until a regular incumbent joins the post.

8. During the course of the arguments, the learned counsel appearing for the applicant has stressed that on par with the regular employees working as DEO Gr.- II the applicant is fully entitled, in accordance with the principle of equal pay for equal work, to receive payments in accordance with the scale of pay prescribed for the post of DEO Gr.-II together with allowances and other service benefits, including annual increments etc. He has also emphasized the need for relaxation in age in the case of the applicant who might seek regular appointment in the respondents' set up in due course in accordance with the aforesaid Regulations of 1995. According to him, in the aforesaid case, decided by this Tribunal on 17.8.98, wherein the applicants working under conditions similar to the conditions under which the applicant has been working, the Tribunal had inter alia granted the following reliefs:-

"(a) The respondents shall grant the applicants in OA No.161/98 and 178/98 the same pay scale and allowances and other service benefits like leave, annual increment and other benefits of service conditions as are admissible to MOs who are appointed on regular basis in the corresponding pay scale.

(b) XX XX XX XX XX XX

(c) In the circumstances of the case, respondents shall consider giving age relaxation, if needed, to all the applicants in these three OAs in accordance with the rules, if they are candidates before the UPSC for regular appointment to the extent of number of

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years of service they have rendered on
contract basis."

On careful consideration, I find that the aforesaid plea advanced by the learned counsel is well-conceived and is in order.

9. The learned counsel appearing for the respondents has fairly conceded that the work on the project against which the applicant has been appointed, has been continuing and is likely to continue in future, and, therefore, ordinarily there will be no question of terminating the services of the applicant until a regular incumbent is found in accordance with the aforesaid Regulations of 1995. The project on which the applicant has been working is titled "Water Quality of River Yamuna, NRCD". By the nature of the project also, it is clear that the same is most likely to continue indefinitely, very much like, a temporary department of the Govt. Having regard to this aspect, the learned counsel for the respondents further conceded that there would be no need to terminate the services of the applicant at any rate until 31.3.2001, although the project might well continue beyond that date. In view of the strong likelihood of the aforesaid project continuing beyond 31.3.2001, the learned counsel for the respondents also fairly conceded that the applicant's services will be continued until 31.3.2001 or until the project continues whichever is later.

10. The applicant has been working in the respondents' set up for over four years and his performance as DEO Gr. II has been satisfactory. He has

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also cleared the main skill test in July, 2000. His services, as stated, are likely to continue further on an indefinite basis. In the circumstances, the worry of the applicant about his future is legitimate, and the learned counsel for the applicant has in the peculiar circumstances of this case, pressed for the grant of relief so as to enable the applicant to prefer an application for regular appointment as and when a vacancy arises in the respondents' set up with requirement of age suitably relaxed for the purpose. The learned counsel for the respondents has, I find, conceded that in and when the occasion for a regular appointment is reached, the applicant will be given suitable age relaxation to enable him to prefer an application for the consideration of the respondents in accordance with the aforesaid Regulations of 1995.

11. In the background of the above discussions, I find that it would be just, fair and proper to dispose of this OA with the following directions to the respondents for compliance by them fairly and carefully and as expeditiously as possible.

i) The services of the applicant will be continued until 31.3.2001 or until the project "Water Quality of River Yamuna, NRCD" continues whichever is later.

ii) The applicant will be entitled to receive payments taking into account the basic pay, OA, HRA, CC& etc. as applicable to regular employees working as DEO

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Gr.- II following the principles of equal pay for equal work. The applicant will also be entitled to all consequential benefits from the date of his first appointment on 3.10.96 ignoring the breaks in service which could be treated as leave of the kind due.

iii) As and when a regular vacancy in the rank of DEO Gr.II is required to be filled up in the respondents' establishment, the applicant will be allowed to prefer an application notwithstanding the fact that he may have in the meantime crossed the upper age limit fixed for such recruitment. The respondents will, in the case of the applicant, grant suitable age relaxation to enable him to apply and be considered in accordance with the aforesaid Regulations of 1995.

It is clarified that the payments which have become due to the applicant by virtue of the directions contained in No.(ii) above, will be paid over to the applicant in a maximum period of three months from the date of receipt of a copy of this order.

12. Present OA is disposed of in the aforestated terms without any orders as to costs.

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S.A.T. Rizvi

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

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