

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2332/2001

Monday, this the 16th day of April, 2001

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (Admn)

Sh. P.C.Saini
S/O Shri Ram Chand Saini
R/O SH-255 A, Shastri Nagar,
Ghaziabad-201002 (UP)

..Applicant

(By Advocate: Shri M.K.Gupta)

Versus

1. Union of India
through its Secretary
Deptt. of Agriculture & Cooperation
Krishi Bhawan
New Delhi-1.
2. The Director
National Biofertilizers Development Centre
Kamla Nehru Nagar,
Ghaziabad-201002.
3. Indian Grain Storage Management &
Research Institute
through its Director,
Ministry of Food & Consumer Affairs
Deptt. of Food & Civil Supplies,
Post Box No.10, Hapur-245101.

...Respondents

(By Advocate: Shri R.N.Singh for Shri R.V.Sinha)

O R D E R (ORAL)

By Hon'ble Shri S.A.T. Rizvi, M (A):-

The applicant in this OA impugns a National Biofertilizers Development Centre (NBDC)'s office order dated 30.10.2000 by which he has been ordered to be relieved w.e.f. 31.10.2000 and to be repatriated to his parent organization, namely, Indian Grain Storage Management & Research Institute, respondent No.3 herein. The respondents seek to contest the OA and separate counter replies have been filed by respondent Nos. 1 & 2 on the one hand and the respondent No.3 on the other.

d

(12)

(2)

2. We have heard the learned counsel on either side and have perused the material placed on record.

3. Briefly stated the facts of the case are that the applicant while working as Assistant Superintendent/ Accountant in the office of the respondent No.3 applied for the post of Accountant in the office of the respondent No.2 on deputation basis. The relevant recruitment rules provided for appointment on deputation. He was selected by following the procedure laid down for appointment on deputation and finally joined the office of the respondent No.2 on 18.10.1995. Considering his satisfactory performance, the applicant was given a chance for permanent absorption. The respondent No.3 had no objection in the matter and, consequently, the applicant was absorbed in the office of respondent No.2 on 28.9.1998. Following this, the applicant's lien in the office of the respondent No.3 was also terminated with effect from the date of his absorption in the office of respondent No.2, w.e.f. 28.9.1998. On 30.10.2000, the office of the respondent No.2 has, without prior notice to the applicant, issued the impugned office order repatriating the applicant as well as another to their respective parent organizations. In both the cases, the respondent No.2 had, as per the impugned order, found that their absorption in the NBDC was made irregularly.

4. The contentions raised by and on behalf of the applicant are that following his absorption in the office of the respondent No.2, he had acquired a vested right in law to continue in the post of Accountant in that office

(3)

and that the respondent Nos. 1 & 2 are barred by the principle of estoppel from passing the impugned order. Furthermore, his lien having been terminated by the respondent No.3, the applicant has nowhere to go. The applicant was taken on deputation and finally absorbed in the office of the respondent No.2 after observing the prescribed formalities and, therefore, the impugned order is bad and deserves to be thrown out. The impugned order has also been passed, according to the learned counsel, without observing the principles of natural justice and on this ground also, the same can be successfully assailed.

5. The learned counsel appearing in support of the respondent Nos. 1 and 2 has drawn our attention to the details supplied by the respondents in their counter reply. We have perused the same and find that it would be correct to say that several irregularities were committed by the Director, NBDC during the course of appointment of the applicant on deputation and thereafter at the time of his absorption in the office of the respondent No.2. For instance, the advertisement in question did not reveal that the deputationists were likely to be absorbed. The Selection Committee constituted by the Director, NBDC for the appointment of the applicant on deputation was not constituted properly in accordance with the relevant rules, and, therefore, the applicant's appointment as Accountant on deputation was abinitio, illegal and irregular. The DOPT's instructions dated 3.10.1989 clearly provide that in such cases the original circular calling for nomination on

(4)

deputation should clearly mention the possibility of permanent absorption. The Director, NBDC had acted in contravention of the aforesaid instructions. A no objection certificate from the Central (Surplus Staff) Cell was also required before final absorption was resorted to. The respondent Nos. 1 & 2 have alleged malafide on the part of the Director, NBDC by further contending that the Director, NBDC had also earlier worked in the same organization in which the applicant had been working prior to his appointment on deputation in respondent No.2's organization, and having known each other from before, the Director proceeded to commit irregularities one after the other in securing permanent absorption in favour of the applicant. We have considered the aforesaid pleas taken by the respondent Nos. 1 and 2 and conclude that there is nothing wrong if, in the circumstances, the respondent No.2 has proceeded to relieve the applicant and ordered his repatriation to his parent organization, namely, the office of the respondent No.3. The various contentions raised on behalf of the applicant mentioned in the preceding paragraph 4 cannot be sustained in the face of the facts and circumstances brought out by the respondent Nos. 1 & 2 in their reply. The principle of estoppel invoked by the applicant cannot find application in relation to matters which are illegal and ab-initio void.

6. The respondent No.3, being the original employer of the applicant, has come out in support of the applicant and has submitted that since the lien of the applicant has been terminated, it would not be possible

dr

(5)

for them to take back the applicant in their organization. We do not agree with the aforesaid contention inasmuch as the applicant's absorption having been found to be illegal and ab-initio void, he has to find a berth in the office of the respondent No.3 and there can be no escape from this position. Upon reaching such a conclusion, this Tribunal had during the course of hearing in this case on 12.2.2001 enquired from the learned counsel for the respondent No.3 whether a post of Assistant Superintendent, which the applicant had occupied prior to his appointment on deputation in the office of respondent No.2, was vacant. On 28.2.2001, the learned counsel filed a memo dated 23.2.2001 issued by the respondent No.3 wherein it had been stated that such a post of Assistant Superintendent was indeed vacant in the office of respondent No.3. The learned counsel had then proceeded to submit that it would not be possible for the respondent No.3 to fill that vacant post on account of the instructions dated 5.8.1999 circulated by the Department of Expenditure (Ministry of Finance) whereby a ban had been imposed on filling up of vacant posts. We have perused the aforesaid instructions issued by the Deptt. of Expenditure and find that even though the same clearly discourages filling up of vacant posts, the possibility of making appointments against vacant posts in certain situations had been kept open by laying down that vacant posts could be filled up with the approval of the Ministry of Finance (Deptt. of Expenditure).

7. We are, in this case, confronted with a situation which is rather unusual and calls for a prompt remedy


2

76

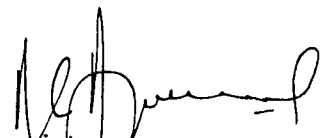
(6)

even if an exception is required to be made to the general rule laid down in the aforesaid instructions dated 5.8.999 issued by the Deptt. of Expenditure. We accordingly direct the respondent No.3 to take back the applicant by re-appointing him in the vacant post of Asstt. Superintendent with effect from the date of coming into existence of the aforesaid vacancy or November 1, 2000, whichever is later. Upon such reappointment as Asstt. Superintendent, the applicant will be entitled to consequential benefits in accordance with the law, rules and the instructions on the subject. We further direct that the applicant be reappointed as above within a period of one month from the date of receipt of a copy of this order.

8. The OA is disposed of in the aforestated terms without any order as to costs.


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

/sunil/


(Ashok Agarwal)
Chairman