

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 2417/2000

New Delhi this the 14th day of September, 2001

Hon'ble Mr. V.K. Majotra, Member (A)
Hon'ble Mr. Shanker Raju, Member (J)

Shri Chandra Pal Singh
S/o Shri L.P. Singh
R/o WA-103 A, Shakarpur,
Delhi.

-Applicant

(By Advocate: Dr. Aparna Bhardwaj)

Versus

1. Union of India
Through its Secretary
Ministry of Agriculture
Govt. of India Krishi Bhawan
New Delhi
2. Indian Council of Agricultural Research
Through its Director
Krishi Bhawan, New Delhi.
3. Indian Agricultural Research Institute
Through its Director
Pusa, New Delhi.
4. Head, Division of Environmental Sciences
Indian Agricultural Research Institute
Pusa, New Delhi.
5. Asstt. Admn. Officer
Division of Environmental Sciences
Indian Agricultural Research Institute
Pusa, New Delhi.
6. Dr. Upendra Kumar
7. Mr. Suresh Kumar

(Both working as Research Associates)
Division of Environmental Sciences
IARI; PUSA; New Delhi

-Respondents

(By Advocate: Shri V.K. Rao)

O R D E R

By Mr. V.K. Majotra, Member (A)

The applicant has assailed order dated 17.10.2000 (Annexure A-11) whereby respondent Nos. 6 & 7 Dr. Upendra Kumar and Mr. Suresh Kumar, respectively, have been appointed as Research

Associates allegedly in ~~dis~~regard of the directions of this Tribunal which were further upheld by the Hon'ble High Court of Delhi. The applicant had earlier on filed OA No. 2095/97 in which directions have been issued to extend whatever benefits flow from the Delhi High Court's decision to be made in CWP No. 3417/97 in IARI Vs. Dr. D.S. Rana & Ors. (Annexure A-4). The Hon'ble High Court directed the respondents ^{on 1.4.1998} u not to dispense with the services of the applicant without leave of the High Court (Annexure A-5). The applicant has stated that though the project allocated to him was completed on 31.12.1998, he was neither served a notice as per direction of the order dated 31.5.97 passed by the Tribunal nor the leave of the Hon'ble High Court had been taken as per order dated 1.4.1998. The applicant has not been assigned any specific project or duty nor he has been paid any salary since 1.1.99. He appeared in more than ten interviews conducted by respondent No.4 for the post of Research Associate in various projects. However, whereas various freshers were appointed against such posts, the applicant has not been accommodated. According to the applicant, as per the judgment dated 9.7.99 in Writ Petition No. 3417/97 (Annexure A-6) as amended vide order dated 20.10.2000 (Annexure A-7), the Research Associates have to be accommodated, absorbed and regularised in the various schemes for continuation of their services. However, the respondents have not implemented the orders of the courts and advertised the post of Research Associates once again on 14-20.10.2000 (Annexure A-12). Representations of the applicant made

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to Respondent No.3 (Annexure A-13), have not been given any response. According to the applicant, whereas he has an experience of Research Associate since 6.9.1993, respondent No.6 having an experience of six months only and respondent No.7 who is a fresher have been appointed as Research Associates. Being entitled for consideration for another project for absorption and continuation of work, the applicant has sought appointment/accommodation/absorption/continuation as Research Associate in pursuance of Circular dated 31.7.2000 and/or advertisement dated 14-20.10.2000. He has also sought a direction to respondent No.3 to pay salary to the applicant since 1.1.99 till date.

2. In their counter, the respondents have stated that the courts have not issued any direction to the respondents to formulate a scheme for regularisation. According to them, whereas the applicant was appointed in a project for one year vide order dated 31.3.98 and the project was completed on 31.12.98, the applicant has been given opportunity for appearing in interview as and when he applied but he was not found suitable by the Selection Committee for specific type of job to be carried out under the related projects.

3. The applicant has filed a rejoinder as well.

4. We have heard the learned counsel of both sides and considered the material on record.



5. The relevant portion of order dated 31.3.97 in OA-438/97 is re-produced below:-

"The following conclusions emerge out of the above findings:

- 1) The appointment of the applicants under the so called scheme in accordance with a contract, does not permit the respondents who have a duty to act fairly as a model employer, to terminate the services of applicants without giving an opportunity to the applicants to show cause why they should not be terminated. As such, the applicants are entitled to notice.
- 2) The applicants are also entitled to consideration against available vacancies both for continuation of the service in another scheme or if vacancies arise, for absorption or regularisation. The services of the applicants cannot be done away with without considering them against all the three possibilities stated above.
- 3) We do not propose to pass a restraint order against the respondents to continue services of the applicants, nor to compel them to continue to pay until suitable scheme is made available to absorb/regularise except for a reasonable period of notice. We would like to leave it to the respondents who are expected to be a model employer and who are also expected not to act arbitrarily to public authority in the right manner and in it goes without saying that absence of a restrain order does not negate all the rights the applicants are entitled to. The respondents shall consider them for appropriate placement including appointment against a scheme or consideration for absorption or regularisation within two months from today, taking into consideration the past service the applicants have rendered and also granting relaxation of age, which are otherwise normally applicable to such situation, and we must make it clear, that they shall not be made to stand in queue along with the fresh entrants and make them compete as equals among unequals".

6. The relevant portion of order dated 9.7.99 in Writ Petition No. 3417/97 against the aforesaid order of the Tribunal is extracted below:-

"Since all the respondents are as of today working in one or the other project of the petitioner ordinarily this petition would have become infructuous. But counsel for the petitioner contends that main grievance of the petitioner still subsists i.e. with regard to the direction given by the Central Administrative Tribunal as direction No.3 of the impugned order. By this direction the petitioner is bound to regularise the services of all the respondents within a period of two months. To this the counsel for the respondents state that the respondents have no objection if this direction is suitably modified.

Accordingly after hearing counsel for the parties, we modify direction No.3 of the impugned order, it will read "that as and when regular vacancy or post occurs, the respondents shall be considered against the same in accordance with the rules and guidelines of the petitioner".

7. We find that whereas there is no direction for formulation of a scheme for regularisation of the applicants in the concerned matters, the directions are that the applicants ~~has~~ to be considered against available vacancies both for continuation of ~~the~~ service in another scheme or if vacancies arise, for absorption or regularisation in accordance with the rules and guidelines. According to the respondents, the applicant has not been continued beyond 31.12.98. It is also admitted that the applicant was not served with any notice. Basically, as per the aforesaid orders of the Court, the applicants' services were not to be terminated without giving an opportunity of showing cause why his services should not be terminated. As

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per order dated 27.4.98 in CM No. 2620/98 & 2621/98 in CWP No. 3417/97, the High Court had ordered that the services of the applicants were not to be dispensed with without leave of the High Court. In the present case, the applicant's services were dispensed with without issuing any show cause notice nor was leave of the High Court obtained before dispensing with his services.

8. The learned counsel of the respondents stated that since as per guidelines for recruitment of Research Associates, their appointment has to be co-terminus with the respective Projects/Schemes. There was no need for issuing any show cause notice for dispensing with their services. Although, the appointment of Research Associates etc. is co-terminus with the respective Projects/Schemes as per the guidelines for recruitment of Research Associates etc., the respondents cannot dispense with the services of the applicant, a Research Associate, without a show cause notice or without obtaining leave of the Hon'ble High Court as directed in the aforesaid judgments. As a matter of fact, the respondents are also required to consider the applicant for absorption or regularisation as and when regular vacancy or post occurs in accordance with the rules and guidelines. According to the applicant, he had superior qualifications and greater relevant experience than respondent Nos. 6 & 7 but respondent Nos. 6 & 7 were given preference for appointment as Research Associates and the applicant was not selected. Referring to the list of interviews for which the applicant applied/attended, ^{it} was

stated on behalf of the applicant that applicant was called for interview on 9 occasions out of 11, whereas interview for National Centre of Cons. and Utilization of Blue Green Algae, he ~~was the only~~^b candidate to apply. He was not called for interview. For interview on 24.6.99, for Division of Environmental Sciences, a fresh candidate was selected in preference to the applicant. Similarly, in interview dated 28.9.2000 for Division of Environmental Sciences IARI, Respondent Nos. 6 & 7 were appointed in preference to the applicant though these respondents were freshers.

9. We have called upon the respondents to produce original records of the Interview Committees to make and to find out whether the applicant had superior qualifications and greater relevant experience than the freshers who were selected. The respondents have failed to furnish them. We have no other course except to draw the adverse inference against the respondents to find that the applicant had superior qualifications and greater relevant experience than respondent Nos. 6 & 7 who were selected in the Division of Environmental Sciences, IARI, in the interview dated 28.9.2000. We further find that the respondents have failed to follow the directions of the Courts referred to above in letter and spirit. Restraining ourselves from quashing the order of appointment dated 17.10.2000 issued by Respondent No.5 favouring respondent Nos. 6 & 7 for appointment as Research Associates, we consider that ends of justice will be duly met if the respondents are directed to accommodate the applicant as a Research Associate in a

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suitable Project/Scheme of theirs and also consider him for absorption thereafter as per rules and guidelines. We direct accordingly. The above directions shall be implemented expeditiously and within a period of three months in any case.

10. The OA is disposed of in the above terms. No costs.

S.Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Member (A)

cc.