

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1425/2004

New Delhi, this the 7th day of April, 2005

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mr. S.K. Malhotra, Member (A)

B.P. Sharma
Technical Assistant
Food Research and Standardization
Laboratory, Gaziabad

...Applicant

(By Advocate Shri M.K. Bhardwaj)

Versus

Union of India & Ors. through :

1. Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi.
2. Secretary,
Ministry of Agriculture
Department of AJ & Dairing,
Krishi Bhawan,
New Delhi.
3. General Manager,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi.
4. Director General
Health Services,
Directorate General of Health Services,
Nirman Bhawan,
New Delhi.
5. Director,
Food Research & Standardization
Laboratory, Gaziabad

...Respondents.

(By Advocate Shri S.M. Arif for respondents nos.2-3 and Shri Parvinder Chauhan
for respondents nos.1, 4 & 5)

ORDER

By Shri S.K. Malhotra, Member (A) :

The applicant in this OA has made a prayer to quash and set aside the
impugned order dated 30.1.2004 (Annexure-1) whereby his claim for

regularization of his ad-hoc service w.e.f. 26.1.1982 has been denied. He has also prayed to quash and set aside letter dated 9.12.2003 (Annexure-2) wherein it has been stated that the Screening Committee did not find him fit for financial upgradation as he did not meet the bench mark.

2. The applicant was initially appointed as Assistant Manager/Dairy Supervisor in DMS, Ministry of Agriculture on ad-hoc basis on 17.10.1974. He was regularized w.e.f. 25.1.1982. It is claimed that at the time of his initial appointment, he was fulfilling all the requisite conditions required for appointment as envisaged under the statutory Rules, but still the ad-hoc period was not taken into consideration in his case at the time of regularization, while other similarly situated persons were given this benefit. He was thus discriminated against. Later, he was declared surplus in DMS and joined as Technical Assistant in Food Research & Standardization Laboratory under the Ministry of Health and Family Welfare w.e.f. 26.9.1990.

3. The DOP&T introduced the scheme of Assured Career Progression (ACP) w.e.f. 9.8.1999 under which two financial upgradations could be given to the employees after completion of 24 years of service. However, inspite of the fact that the applicant has completed more than 28 years of service, no benefit under this Scheme has been granted to him. He, therefore, filed an OA No.2655/2003 in reply to which the respondents informed that the applicant was considered for grant of ACP, but the same could not be given since he was not meeting the required bench mark i.e. Good. According to the applicant, after joining the new Department in the year 1990, no adverse entry in his ACR has been communicated to him and his performance has been outstanding in comparison to other employees. Later the above OA was dismissed as withdrawn. The applicant has stated that since he has completed more than 24 years of service and has been stagnating on the same post for many years, he is eligible for grant of benefit under the ACP Scheme and his service from the date of initial

appointment is required to be taken into consideration for grant of above benefit. Hence this OA.

4. Respondents Nos. 2 and 3 (Ministry of Agriculture and DMS) have filed their written reply in which they have stated that the applicant was appointed in DMS in 1974 purely on ad-hoc basis for a period of 3 years. It was clearly specified at that time that the ad-hoc appointment would not confer upon him any right or claim for regular appointment or seniority to the post of Dairy Supervisor. His services were regularized w.e.f. 26.1.1982 vide order dated 21.7.1986 (Annexure A-4). The applicant had not made any representation to the DMS or Ministry of Agriculture at that time that his services should have been regularized since 1974 instead of w.e.f. 26.1.1982. The applicant cannot, therefore, seek regularization at this belated stage. He was declared surplus in DMS w.e.f. 26.9.1990 on which date he joined in Food Research and Standardization Laboratory as Technical Assistant.

5. A separate counter reply has been filed on behalf of respondents 1, 4 and 5 (Ministry of Health & Family Welfare, Director General Health Services and Food Research & Standardization Laboratory). It is stated that the applicant has challenged the order dated 21.7.1986 whereby his services were regularized in DMS w.e.f. 26.1.1982 by filing the present OA in June, 2004. Thus there has been a delay of more than 18 years. No explanation for such an inordinate delay has been tendered by the applicant. The application is, therefore, barred by limitation under the provisions of Section 21 of the Administrative Tribunals Act, 1985. Even no application for condonation of delay has been filed.

6. Besides the above, according to the instructions issued by the DOP&T vide OM dated 15.6.1992, the surplus staff, who were redeployed, are not entitled for the benefit of past services rendered in the previous Organization for the purpose of seniority in the new Organization. Such employees are to be treated as fresh entrants in the matter of seniority, promotion, etc. In the said OM it is also mentioned that the Hon'ble Supreme Court has categorically held

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that such service does not count for determining seniority of the redeployed officials in the recipient Organization (Annexure R-5/3). In so far as benefit under the ACP Scheme is concerned, according to the clarification issued by the DOP&T on the subject against point No.11, it has been specified that in terms of para 3.2 of the OM dated 9.8.1999, only regular service which counts for the purpose of regular promotion in terms of relevant Recruitment/Service Rules shall count for the purpose of upgradation under ACP Scheme. In other words, ad-hoc service is not to be counted for granting benefit under this Scheme.

7. The case of the applicant was considered by the Departmental Screening Committee in its meeting held on 11.7.2003 for the grant of financial upgradation under ACP Scheme, but the Screening Committee did not find him suitable as he did not meet the required bench mark i.e. Good. The conditions for grant of benefits under the ACP Scheme contained in Annexure-I very specifically stipulate that fulfillment of normal promotion norms including benchmark have to be ensured for grant of financial upgradations under the Scheme. Since this condition was not fulfilled in the case of the applicant, the financial upgradations cannot be granted to him.

8. We have heard both the learned counsel for the parties and have also gone through the pleadings on record.

9. The main argument advanced by the learned counsel for the applicant is that his services should have been regularized with effect from the date of his initial appointment in DMS i.e. w.e.f. 17.10.1974 and not w.e.f. 26.1.1982. He stated that such a benefit has been given to another similarly situated employee, namely, Shri Richpal Singh, who had been regularized w.e.f. 16.11.1978, which was the date of his initial posting in DMS. He has, therefore, been discriminated against. His past service w.e.f. 1974 is, therefore, required to be taken into consideration for grant of financial upgradation under the Scheme. On the other hand, the learned counsel for the respondents submitted that the applicant could not be regularized with effect from the date of his initial appointment as there was

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a vigilance case pending against him upto 25.1.1982 and as such his services could be regularized only w.e.f. 26.1.1982. An averment to this effect has also been made in para 4.12 of the counter filed by them. He cannot, therefore, compare himself with Shri Richpal Singh.

10. It is not disputed that the order of confirmation was issued on 21.7.1986 but the same was not challenged at that time. Raising the issue at this belated stage, after about 18 years, attracts the law of limitation. No explanation for such an inordinate delay has been given by the applicant. The law on the subject is well settled. In this connection, we are relying on the judgement in the case of Union of India vs. Harnam Singh {1993 SCC (L&S) 375} in which the Hon'ble Supreme Court has held that the law of limitation may operate harshly but it has to be applied with all its vigor, and the Courts or Tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire.

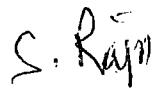
11. In so far as the applicant's claim for financial benefits under the ACP Scheme is concerned, his case has already been considered by the Screening Committee which has not found him suitable as he could not achieve the required bench mark of 'Good'. He has thus failed to fulfill the condition 6 of Annexure-I to the DOP&T OM dated 9.8.1999. In fact, in terms of DOP&T's instructions as contained in OM dated 15.6.1992, the past service rendered by him in DMS as a result of his being declared surplus and his redeployment in Food Research & Standardization Laboratory cannot be counted for the purpose of seniority/promotion and he will have to be treated as a fresh entrant in the present Organization w.e.f. 26.9.1990 and his past service in DMS will have to be counted as per provisions contained in the OM dated 15.6.1992, referred to above.

12. Taking into consideration all the above aspects of the case, we do not find any illegality committed by the respondents in not granting him the benefit of

financial upgradation under the ACP Scheme. The OA thus turns out to be bereft of any merit and the same is accordingly dismissed. No order as to costs.


(S.K. Malhotra)

Member (A)


(Shanker Raju)

Member (J)

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