

Central Administrative Tribunal, Allahabad Bench,

Allahabad

Original Application No. 213 of 2004

This the 51st day of October, 2007

Hon'ble shri Justice Khem Karan, V.C.
Hon'ble Shri Shailendra Pandey, Member (A)

Kanhaiya Lal aged about 36 years son of late Shyam Deo R/o Gram & Post Fatehpur Ghat, Manuri District-Allahabad-212213.

Applicant

By Advocate: Shri Alok Dave

Versus

1. Union of India through Secretary, Ministry of Agriculture Krishi Bhawan, New Delhi.
2. Union of India through Secretary, Ministry of Finance, Department of Expenditure, New Delhi.
3. Indian Council of Agriculture Research through its Secretary, Krishi Bhawan, New Delhi.
4. Under Secretary, Vigilance, Indian Council of Agricultural Research, Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi.
5. Agriculture Scientist Recruitment Board, through its Secretary, Krishi Anushandhan Bhawan, Pusha, New Delhi.

Respondents

By Advocate: Shri B.B. Sirohi

ORDER

By Hon'ble Shri Shailendra Pandey, Member (A)

Vide this O.A., the applicant has requested this Tribunal to direct the respondents namely the ICAR, Pusa, Ministry of Agriculture, New Delhi to consider the appointment of the applicant as Assistant Production Officer (APO) (T-6) in pursuance of the selection held under notification dated 20.1.2000.

2. The applicant has stated that the Agriculture Scientist Recruitment Board (ASRB) vide

notification dated 20.1.2000 had invited applications for the post of APO (T-6), that the applicant fulfilled all the eligibility conditions, that he received a call letter to attend the interview and he actually attended the interview on 20.8.2001. When the ASRB failed to notify the result of the selection, the applicant submitted representation dated 20.5.2002 to the ICAR, in response to which, he received a letter dated 29th May, 2003 from the ICAR that since the post was lying vacant for more than one year, it was not to be filled up and was treated as abolished as per the instructions of the Ministry of Finance and that the matter be considered as closed. The applicant counsel has argued that ICAR has wrongly interpreted the Ministry of Finance instructions as in terms of Ministry of Finance circular dated 31.10.2001 [in respect of the] posts in which recruitment action had been initiated within one year of falling vacant could be filled up after taking their approval. The applicant counsel has argued that since the recruitment process for filling up the post of APO (T-6) had already been initiated vide advertisement published on 29.1.2000 and the selection / interview had taken place on 20.8.2001, and ^{was} finalized, the post of APO (T-6) would not come under deemed abolition. The applicant counsel also argued that as the current charge of the said post was assigned to another officer, namely

Sri Guliani, till he superannuated on 31.7.2002, the post in question was, in fact, not abolished. Applicant counsel also mentioned that 22 Technical post were lying vacant between 1999 to 2002 against OBC quota

3. The counsel for the respondents has contested the above averments of the counsel for the applicant and has stated that the post in question was vacant from 1988 and that recruitment action for filling up the post was initiated only on 17.5.1999, and hence the recruitment action cannot be said to have been initiated within one year and so the post would be deemed as abolished in terms of the instructions of the Ministry of Finance. As regards the assigning of the charge of post of APO to Sri Guliani, respondent counsel has clarified that Sri Guliani was not appointed against this post but was only given additional charge of the duties assigned to the post without any additional remuneration and that Shri Guliani continued to draw his pay and allowances against the post of Technical Assistant (Production) in T-7-8 grade, and that, on his superannuation on 31.7.2002, he vacated his own post of Technical Assistant (Production) and not the post of APO (T-6) as alleged. Counsel for respondents also mentioned that the ICAR made sincere efforts to revive the post of APO but

revival of the post could not be taken up a) because of in-adequate functional justification for the revival and b) the condition of surrender of another similar level post to provide matching savings. Thus it is clear that recruitment could not be processed after the initial interview was held in view of the Govt. orders and in view of the ban on filling up of posts vacant for more than a year.

4. The applicant counsel in his response has argued that Finance Ministry's circular was not absolutely prohibitive and it was wrong for the ICAR not to obtain Finance Ministry order's for its revival as the duties of the post were regularly discharged by Sri J.L. Guliani till his superannuation.

5. For the reasons stated hereafter, we think the respondents cannot be directed to consider appointment or offer appointment on the post of Asstt. Production Officer (T-6). Firstly, the result of selection, held pursuant to notification dated 20.1.2000, was not declared according to averments made in para 4.6 of the O.A. There were also more than one candidate in the fray. It cannot, therefore, be said that the applicant has been selected. Secondly, even if, it is accepted for the sake of arguments that the applicant stands selected, there is no law that can compel the Govt.

to necessarily give appointment to the selected persons. There is a Constitution Bench decision of the Apex Court in **Shankarsaran Desh Vs. U.O.I. & Ors.** reported in AIR 1991 SC 1612, to the effect that unless recruitment Rules so indicate, the State is under no legal obligation to fill up all or any of the vacancies and a successful candidate does not acquire an indefeasible right to be appointed. Of course, the court appended a rider to this, that the State cannot act in any arbitrary manner and the decision~~s~~ not to fill up the vacancy has to be taken bonadide for good reasons and if it decides to fill up the same later on, the merit list ~~is~~ already in existence has to be respected. Thirdly, in the case, in hand, there is sufficient material to say that ^{the} post was abolished or kept in abeyance, under the orders, referred to in the reply. Even if we accept the argument of Sri A.K. Dave that the post, in question, was alive, till the filing of the O.A. or thereafter, the respondents cannot be commanded to fill up ^{the} same necessarily.

6. In the result, the O.A. being devoid of merit, is dismissed, but without any order as to costs.

Chander
Member (A)

J. D. W.
05-10-07
Vice Chairman