

Central Administrative Tribunal

Allahabad Bench
Allahabad

Original Application No. 843 of 1993

Allahabad this the _____ day of _____ 1993

Hon'ble Mr.S.L. Jain, Member (J)
Hon'ble Mr.G. Ramakrishnan, Member (A)Narendra Kumar Shah, Son of Shri C.L. Shah, resident
of 94, Dharampur, Dehradun.

Applicant

By Advocates Shri Ajeet Kumar
Shri Anand Kumar

Versus

1. Administrative Officer for Admiral Superintendent,
Naval Dockyard, Vishakhapatnam.
2. Rear Admiral Naval Hydrographic Office, 107, Rajpur,
Dehradun.
3. Chief Hydrographer, Naval Hydrographic Office, 107
Rajpur, Dehradun.
4. The Union of India through:
 - (a) The Secretary, Ministry of Labour, New Delhi
 - (b) The Secretary, Ministry of Defence, N. Delhi.
5. Sri P.B. Nandi, Rear Admiral Naval Hydrographic Office,
107, Rajpur, Dehradun.
6. M.A.N. Murthy, Administrative Officer for Admiral Superintendent,
Naval Dockyard, Vishakhapatnam.

Respondents

By Advocate Km. Sadhna Srivastava

O R D E R

By Hon'ble Mr. S.L. Jain, Member (J)

This is an application under Section 19 of the Administrative Tribunal Act, 1985 for a direction to quash the order dated 14.5.1993 annexure-1, with a direction to the respondents to give the seniority to the applicant w.e.f. 12.4.1992, place him before his juniors after regularisation of his services and absorb him on the post of Camera Man in the office of the Chief Hydrographer, Naval Hydrographic Office, Dehradund along with costs.

2. The applicant has filed O.A.No.116 of 1991 ⁱⁿ which is pending for disposal ~~of~~ the Tribunal.

3. The applicant's case in brief is that he has already served the respondents for near about 12 years, the policy of giving fictional and artificial breaks by issuing termination order and again issuing appointment order has been condemned by Assistant Labour Commissioner(Central), Dehradun, the policy of 'adhocim' has been condemned by the Apex Court also, the Assistant Labour Commissioner(Central), Dehradun recommended for regularisation of the services of the applicant with a preferential claim vide letter dated 07th October, 1988, the applicant has also been representing the matter for his regularisation vide letter dated 17.10.1989 and 19/22.11.90, the Army Headquarters have also been issuing circulars for regularisation of the services like that of petitioner. The services of the persons who are junior to the applicant have already been regularised and he has been discriminated, violating article 14 and 16 of the Constitution of India without any cause.

4. The applicant was appointed as Assistant Artist Retoucher and has already worked for 12 years, the post of Camera Man is lying vacant at Dehradun in the Office of Chief Hydrographic, Dehradun, he had all requisite qualification for the same. The post of Assistant Artist Retoucher and Camera Man are of same scale, and of equal grade. He moved an application on 30.6.92 before the respondents for his regularisation on the post of Camera Man as it is of the same scale, and he possess the requisite qualification for the same. The respondents did not listen to it. The applicant moved an application in O.A. 116 of 1991 for interim orders and the order passed on 16.10.1992 is to the effect that "continuance of the petitioner as Assistant Artist Retoucher or Camera Man, the right of the petitioner as Artist Retoucher or Camera Man cannot be denied and he cannot be deprived of the said post". After receipt of the order, the order was served upon the respondents, they become annoyed, resulting another application for implementation of the order dated 16.10.1992 with a prayer for contempt proceeding against the respondents no. 5, who has manipulated the case placing incorrect facts before the respondents no. 6 and caused the issuance of the order dated 14.5.1993. The said order is detrimental to the applicant for the reason that it is a fresh appointment thereby the applicant loses the seniority of 12 years, appointment being temporary are liable to be terminated by one month's notice or payment of sum equal to pay and allowance for the notice period or the unexpired portion thereof, it dose not speak of preferential claim of the applicant while juniors to the applicant have been regularised. He acquires the status of the regularised employee by operation of the law, nobody in last 12 years in Class IV post has been transferred

from Dehradun to outside while by the impugned order, he is transferred to Vishakhapatnam, the order is malafide and arbitrary one on account of filing of O.A. No. 116 of 1991. He was appreciated vide annexure A-3 on 10th June, 1988. On 19.1.1985, Smt. Sharda Rani and Shri Girish Chandra, who were junior to the applicant, have been ~~etc~~ recommended alongwith the applicant for regularisation of their services. Vide annexure A-5 dated 15.12.1985 his annexure A-15 and A-16 for regularisation dated 17.10.89 and 19.11.1990 pending with the respondents, also annexure A-18 dated 30th June, 1982, he was asked to withdraw the O.A. but he did not agree to it causing annoyance which resulted in order passed on 06.7.92 (annexure-23) and 16.10.1992 (annexure-24), implementation of the order dated 16.10.1992, further caused annoyance and after service of the notice upon the respondent no.5, the impugned order dated 14.5.93. Hence, this O.A. FOR the above said reliefs.

5. The respondents have resisted the claim of the applicant by alleging that the applicant was appointed as Assistant Artist Retoucher purely on casual basis w.e.f. 01st April, 1982 for a specified period under the contract of respondent no.3 under the powers of Vice Chief of Naval Staff ~~as~~ sanction in Temporary Establishment, there was no sanctioned post or permanent post at Dehradun and his appointment was on casual basis only in the project of the Chief Hydrographer for a specific period and after expiry of the said period, he was again engaged for a further period after a break of 3 to 4 days on the requirement of the services of A.A.R. There was no government sanction in the Billet against the said post in the Naval Hydrographic Office at Dehradun. However, keeping in view the length of casual service rendered by the app. *bicarb*

he has offered a regular sanctioned post of A.A.R. in Naval Dockyard at Vishakhapatnam which is part of the Indian Naval Organisation, the services of a casual employee can only be regularised ~~against~~ against a regular sanctioned post, due to non-availability of the sanctioned post his services at Dehradun cannot be regularised. It is further alleged that the applicant failed to join at Vishakhapatnam even inspite of the service of the order on 20th May, 1993. He ~~has~~ ^{is in} not possessed with the qualification of Camera Man as he does not possess 3 years experience in operating process camera which an essential requirement for the recruitment on the ~~post~~ of Camera Man, he has never worked as Camera Man hence, his services cannot be regularised as such, the work of a Camera Man and A.A.R. are altogether different, order of the Tribunal dated 16.10.1992 is not being violated, his seniority is counted for the casual service rendered, the conditions of service in ~~part of~~ ^{The impugned} the order of A.A.R. at Vishakhapatnam are as per existing orders, no junior to the applicant as casual A.A.R. has been regularised. Smt. Sharda Rani and Shri Girish Chandra were appointed as L.D.C. on temporary basis which is altogether a different cadre. The recommendations of the Assistant Labour Commissioner are not applicable in case of the applicant. He was never asked to withdraw the O.A. Hence, prayed for dismissal of the O.A. along- with cost.

6. In rejoinder-affidavit, the applicant claimed that he possess the requisite qualification for the post of Camera Man, there is only one paper prescribed for theory as well practical to pass the above diploma ~~post~~ and there is no separate course/diploma for A.A.R. or

Camera Man, he has passed the diploma course in Printing Technology from Board of Technical Education, U.P., Allahabad in the year 1981 and is also possessed with an experience certificate from the concerned authority regarding preparation of negatives for publications lay out of forms and colour separation of names for printing with an experience of operation on the latest computerised photo composing machine COMP/SET 500. - Annexure R-A. Shri Ashok Kumar and Shri Raj Kumar Saxena who passed there diploma course in Printing and Technology in 1971 were appointed as Camera Man. He further reiterated the contents of the O.A. which are denied by the respondents.

7. By perusal of the record, we do not find that there was any sanctioned post of A.A.R. at Dehradun. The appointment order dated 01st April, 1982 specifically mentions "the post is purely temporary for the period upto 30th September, 1982" thus, the applicant was appointed as A.A.R. on purely temporary posts for a specified period.

8. As there is no post of A.A.R. at Dehradun, the applicant cannot claim regularisation of his services. The case of Sharda Rami and Girish Chandra who were appointed as temporary L.D.C., cannot be equated with the case of the applicant as the cadre being entirely different one.

9. Two posts of different cadres may carry the same scales but having different eligibility conditions. Vide annexure C.A.-2, Assistant Artist Retoucher different pay scales are prescribed. The pay scale,

qualification, age, etc. are as under;

1.	2	3	4	5	6 £
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Asstt. Artist Retoucher	do	Rs. 250- 0-290-15- 380.	Not applicable	35 years	
					(1) Matriculation or equivalent qualifi- cation.
					(2) (i) Diploma or Cer- tificate in Commercial Art, Printing Tech- nology. Lithography or Litho Art work awarded or training from a recognised Institute.
					(ii) 2 years experie- nce as a Retoucher
					Or
					7 years practical ex- perience as a Retoucher in Military Survey, Survey of India or o other Photolitho est- ablishment of repute [Ex-serviceman only]

Camera Man	Do	Rs. 210-10 -290-15- 320-EB-15- 425	3 years	
				1) Matriculation or equivalent qualifi- cation.
				2) (i) Diploma or Certi- ficate in Printing & Technology awarded after atleast 2 years course or training from recognised Inst- itute.
				(ii) 5 years experienc of Operating Process Cameras
				Or
				10 years experience as Camera Man or Photographer, Survey of India or other Photolitho establish- ment of repute. (Ex-serviceman only.)

10. Thus, on perusal, we find that there are

different pay scales and 5 years experience as operating

process cameras is required for the post of Camera Man while for A.A.R. 2 years experience as a Retoucher. These are entirely different eligible conditions. We do not agree with the contention of the learned counsel for the applicant that as eligible conditions mention 2(1) are similar hence, experience as A.A.R. for 5 years can be equated as experience operating process cameras regarding eligible conditions. It is to be mentioned that it is entirely a job of the concerned department and Tribunals cannot substitute its opinion in this respect.

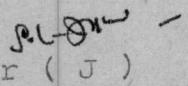
11. In absence of a post as A.A.R. at Dehradun if the applicant desires of being appointed as temporary instead of casual, it is for him to accept the appointment or not. If the casual vacancy continues at Dehradun and he is willing to continue in casual vacancy not against the sanctioned post, the respondents may consider his case looking to his earlier services.

12. Question of malafides does not arise on account of filing of the O.A. as the applicant has failed to establish that he was appointed against the sanctioned post and respondents failed to regularise his services, there is no regularisation scheme for the post of A.A.R. also at Dehradun.

13. In the result, the O.A. is liable to be dismissed and is accordingly dismissed. No order as to costs.


Member (A)

/M.M./

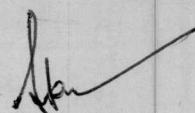

Member (J)

contd....9/p

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Date : 1-11-99Coram : Hon'ble Mr.S.Dayal, Member (A)
Hon'ble Mr.Rafiq Uddin, Member (J)

The judgement prepared & signed by Hon'ble
Mr.S.L.Jain, JM and Hon'ble Mr.G.Ramakrishnan, AM
pronounced by us today as authorised by Hon'ble Vice
Chairman vide order dated 22-10-99.

Rafiq Uddin
Member (J)
Member (A)