

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Dated : This the 29th day of November 1996

Hon'ble Dr. R. K. Saxena JM
CORAM : Hon'ble Mr. D. S. Baweja AM

ORIGINAL APPLICATION NO. 895 Of 1994

B. C. Pant son of P. D. Pant,
resident of B-86/1, N.A.P.P.
Town Ship Narora, Distt: Bulandshahar.

----- -Applicant

C/A Sri A. B. L. Srivastava

VERSUS

1. Union of India through Secretary,
Govt. Of India, department of Atomic Energy,
C.S.M. Marg, Bombay.

2. Director (Personnel), Nuclear Power Corp.,
Vikram Sarabhai Bhawan, Bombay.

3. Chief Administrative Officer,
Narora Atomic Power Station,
Narora, District Bulandshahar

----- Respondents

C/R Sri C. S. Singh
Sri N. B. Singh

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ORDER

By Hon'ble Dr. R. K. Saxena JM

This application has come before the Tribunal to seek relief that the respondents be directed to treat the applicant exempted from appearing in the departmental examination and to regularise him as Assistant Stores Officer, and the respondents be restrained from reverting the applicant from his present post. Directions are also sought for further promotion.

2. Brief facts of the case are that the applicant was appointed as Junior Store Keeper in the department of Atomic Energy Nuclear power Board in the year 1964. He was promoted as Store Keeper in the month of July' 78. It appears that on creation of nuclear power corporation Limited, staff was required and this applicant had also applied and was sent on deputation with the said Nuclear power corpn.Ltd in the year 1987. He was appointed as Assistant Stores Officer on adhoc basis in the grade of Rs.2000-32000. The applicant had taken over charge on 25.9.1987. He earned ~~equal~~ ^{yearly} increments and was allowed to cross E.B. in the said grade. It is also claimed that he had been discharging his functions with utmost devotion and to the satisfaction of the Superior Officers. As a matter of fact, he should have been regularised and he was assured for regularisation, but no step was taken.

3. It is stated that certain circular dated 5.10.1993 came into existance, whereby the applicant was ~~asked~~ to appear in the departmental examination alongwith the juniors. The circular was opposed to the guidelines because on the expiry of period of 2 years, as was

stipulated in the guide lines, he ought to have regularised on the post. In any case, if he could not be regularised, he contends that he should have been exempted from appearing in the examination. The applicant however, did not appear in the examination and he apprehended his reversion to the post in the scale of ~~Rs.1400-2300~~, ^{Rs.1400-2300, &} This reversion, would be illegal and detrimental to the interest of the applicant, who had worked nearly for seven years on the post of Assistant Store Officer. It is also stated that the exemption from the departmental examination was necessary because he was due for superannuation in the year 1988. Since the exemption was not granted, applicant felt aggrieved and filed this O.A. with the reliefs, which were already pointed out. Respondents no. 2 and 3 have contested the case and ^{filed} counter affidavit of one Sri M.L.Verma, Administrative Officer, Nuclear atomic power corpn, Narora. It is contended by the respondents that the O.A. is barred ~~by jurisdiction~~ under section 14 of the Administrative Tribunals Act, 1985 because the Tribunal had got no jurisdiction over N.P.C.I.L., which is not a government department. Hence it is urged that on this very ground, the O. A. deserves to be dismissed.

4. As regards other paragraphs of the O.A., respondents have replied by saying that the N.P.C.I.L. was constituted as a wholly govt. owned company under the provisions of ² Company's Act, 1956. It is pointed out that at the time of formation of Nuclear Power Corpn of India Limited, some of the employees were taken on deputation from the Directorate of Purchase and Store, which was subsequently bifurcated and the other Unit ^{ty} ~~was~~ known as Contract and Material management, and accordingly the applicant was also taken. There had been some delay in finalisation of service conditions to the

deputationists. It is claimed that those terms and conditions were now finalised and according to those conditions, deputationists were required to submit their options for absorption in N.P.C.I.L. or otherwise on or before 17.9.1994. It is denied that the name of the applicant was recommended for promotion to the post of Assistant Stores Officer because respondent no. 1 was not competent to recommend the promotion of any person including the applicant to N.P.C.I.L., which was governed by its own rules and regulations. It is, however, averred that the applicant was given promotion on adhoc basis and it did not entitle him for the claim of regular promotion. Adhoc promotion of the applicant was purely a temporary arrangement. It is, therefore, urged that the cancellation of the ~~appointment of his 1st applicant~~ ^{appointment of} appointment on regular basis, was correct.

5. The contention of the respondents is that it was decided to hold departmental examination for the selection to the post of Assistant Stores Officer and Assistant Purchase Officer and accordingly a circular dated 5.10.1993 was issued. The applicant did not offer to appear in the said examination and ~~subsequently~~ ^{therefore} he was not called for interview. The claim of the applicant for the post held by him for about 6½ years has been refuted and it is also stated that the official memorandum dated 25.5.1977 was amended by regulation dated 22.6.1992. On these grounds, the O.A. has been opposed and urged to be dismissed.

6. The applicant has filed rejoinder, reiterating the facts, which were mentioned in the O.A. As regards the jurisdiction of the Tribunal, it has been stated that the controversy was already settled by the report of the Registry of the Tribunal.

7. We heard the learned counsel for the applicant and the respondents and have perused the records.

8. In this case the objection, which has been raised on behalf of the respondents requires to be answered first. It has been urged on behalf of the respondents that N.P.C.I.L. is registered under the Companies Act and thus it is not a government department. It has been pointed out that ~~govt.~~ ^{the Tribunal} can exercise jurisdiction under section 14 of the Act only in relation to the matters concerning the govt. servant. It is clear that the applicant has not brought any notification on record to point out that N.P.C.I.L. had been brought under the jurisdiction of the Tribunal. The Tribunal can exercise jurisdiction only when it is established that particular Corporation and the Society ^{has} ~~has~~ been notified for the jurisdiction of the Tribunal. The respondents have clearly stated that N.P.C.I.L. is registered under the Companies Act. Thus the employees, who work under the company, cannot be brought within the jurisdiction of the Tribunal. The reply which has been given by the applicant in his rejoinder is that controversy was resolved by the Registrar of this Tribunal. Even if the office of the Tribunal entertains the application or does not raise the objection about the jurisdiction of the Tribunal, it will not mean that such objection cannot be raised and decided subsequently. The objection about the jurisdiction can be raised at any time. Moreover, the Registrar is not the competent authority to decide the ^{dispute of} jurisdiction. It was the duty of the applicant to have shown the notification, if there

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was any doubt about the jurisdiction of the Tribunal having been extended over N.P.C.I.L. It was all the more necessary particularly when this point was raised by the respondents in the counter reply. We have gone through the book of "Administrative Tribunal Act" written by Justice K.N.Goel, who has given the list of those Corporations or Societies, which have been brought under the jurisdiction of the Tribunal but we do not find any mention of N.P.C.I.L. therein. Consequently, we come to the conclusion that the Tribunal has no jurisdiction over the employees, who were working with the N.P.C.I.L.

9. Even if we consider the case of the applicant on merits, we do not find any merit therein. The reason is that the applicant had gone on deputation with N.P.C.I.L. It was his option to get himself absorbed or to come out of N.P.C.I.L. to his parent department. It appears that the N.P.C.I.L. could formulate the terms and conditions for the absorption of deputationists and for its own employees after a long gap. According to the applicant, it was period of seven years and he continued on the job of Asstt: Stores Officer for the said period. The contention of the learned counsel for the respondents is that the terms and conditions were finalised and it was decided that those deputationists, who wanted to be absorbed in N.P.C.I.L., they would undergo the test and if found suitable, they would be taken into service on permanent basis. The applicant opted not to appear in the said examination. The contention of the learned counsel for the applicant is that there was provision of exemption from the departmental examination and the applicant should have been exempted from the written test for absorption. The learned counsel for the res-

pondents on the other hand argues that the rules on which reliance was placed were subsequently amended and it was laid down that the absorption should be governed by the rules framed by the Corporation. In our opinion, the deputationist does not acquire the right to continue with the department or Corporation or the Company where he has gone on deputation, if the said department, Corporation or the Company did not want him. If the deputationist was willing to be absorbed, naturally the department, Corpn., or the Company cannot be restricted in formulating the rules for the purpose. In the present case, if N.P.C.I.L. had formulated rules and required the deputationist to undergo the departmental examination before absorption, the authority of the Company cannot be disputed. When the applicant opted not to appear in the departmental examination, he was not entitled to be considered for absorption.

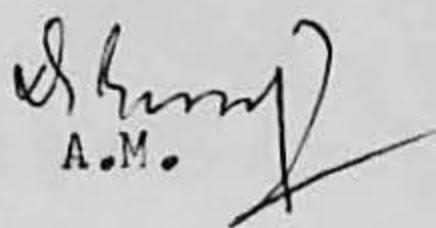
10. Learned counsel for the applicant and for the respondents have cited a number of rulings. The reliance has been placed on the decision of Kunaram Marmdy and others Versus Union of India and others (1987) 3 ATC 617, Uma Shanker Prasad Versus Union of India (1992)(2)ATJ 298 and S.K.Nair and others V/s Union of India and others (1992) 21 ATC 695 by the applicant in his support. This question deals with a ^{situation} ~~station~~ where the employee had been promoted in the same department on a ~~dhoc~~ basis, his regularisation was considered. The position in the present case before ^{is} ~~is~~ not of the same department. The applicant had gone from the government department to a Company and thus the case law which has been cited is not applicable.

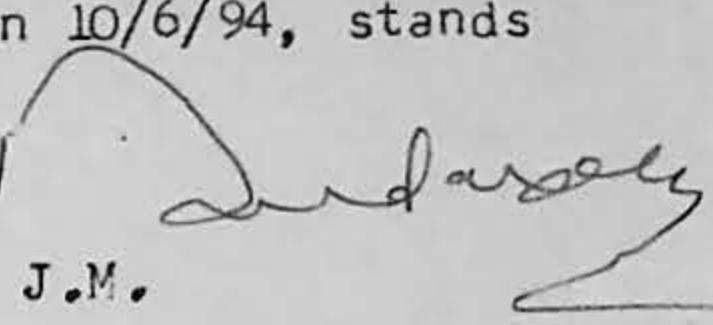
11. The learned counsel for the respondents also relied on the decision State of Orissa and others Versus Dr. P.M.Misra (1995) (70) FLR 821, State of Madhya Pradesh

and others V/s Raghubir Singh Yadav and others (1994)

(6) SCC 151, which dealt with the issue that adhoc appointee does not get a right to continue on the post even if he worked for 5 years. We have already discussed the matter and we find that there is sufficient weight in the arguments² advanced by the learned Counsel for the respondents.

12. On the discussions made above, we come to the conclusion that there is no merit in the case of the applicant. The Tribunal also lacks jurisdiction. O. A. is, therefore, dismissed. No order as to costs. The stay order which was granted on 10/6/94, stands vacated.


A.M.


J.M.

SOI