

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 544 OF 1998
Cuttack, this the 17th day of July, 2000

Nalini Kanta Acharya ... Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

Sumnath Som
(SUMNATH SOM)
VICE-CHAIRMAN 2000

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....
Nalini Kanta Acharya, aged about 37 years, son of Nirashray Acharya, At/PO-Vani Vihar, Qr.No.B/12, Bhubaneswar-751 004, Dist.Khurda..... Applicant

Advocates for applicant - M/s S.K.Rath
R.K.Parida
B.K.Parida

Vrs.

1. Union of India, represented through the Secretary, Department of Agriculture, Krishi Bhawan, New Delhi.
2. Director General, Indian Council of Agricultural Research (ICAR), Krishi Bhawan, New Delhi.
3. Director, Central Institute of Fresh Water Aquaculture, Kausalyagang, Bhubaneswar, Dist.Khurda-751 002.
4. Advisor, Department of Biotechnology, Ministry of Science & Technology, Block-2 (7th Floor), CGO Complex, Lodhi Road, New Delhi-3.

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Respondents

Advocate for respondents-Mr.Ashok Mohanty

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application the petitioner has prayed for quashing the order dated 16.2.1998 terminating his service with effect from 31.3.1998 with consequential service benefits like arrear salary, departmental promotion, etc. with effect from 31.3.1998. The second prayer is for a direction to the respondents to absorb the applicant as Programmer under the respondents against existing vacancies due to dereservation of posts. The

respondents have filed counter opposing the prayers of the applicant, and the applicant has filed a rejoinder. For the purpose of considering this application it is not necessary to go into too many facts of this case.

2. According to the petitioner he was appointed in 1986 as Computer Assistant in Utkal University and became Assistant Programmer in Utkal University in 1990. In response to an advertisement dated 24.12.1991 (Annexure-1) issued by Central Institute of Freshwater Aquaculture (CIFA), a research institute under Indian Council of Agricultural Research (ICAR), the petitioner applied for the post of Programmer in the pay scale of Rs.2200-4000/- and was duly selected. In pursuance of the offer of appointment dated 15.6.1992 (Annexure-2) the applicant joined the post on 15.2.1993. The applicant has stated that in the vacancy notification it was mentioned that this post of Programmer was sanctioned under Bio-Technology Information System (BTIS), Ministry of Science & Technology for their user centre at the Institute. It was mentioned that the post was purely temporary. It was also mentioned that all other posts in the advertisement are sanctioned under regular establishment of the Institute. In the offer of appointment at Annexure-2 it was mentioned that the duration of the project is upto 31.3.1993 and is likely to be extended beyond that period. It was mentioned that he would be on probation for a period of two years which will be extendable at the discretion of the competent authority and failure to complete the probation period to the satisfaction of the competent authority would make him

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liable to be discharged from service. The applicant has stated in paragraph 4.4 of the OA that assuming that the post is permanent he joined the post even though initially it was mentioned that the duration of the project is upto 31.3.1993. His services were apparently extended from time to time. In order dated 1.5.1993 (Annexure-4) his services were extended till 31.3.1997. The applicant has stated that accordingly he continued to work as a Programmer and was expecting that in due course he would be absorbed as a Programmer in a regular vacancy in the Institute or in any other project. He has stated in paragraph 4.5 of the OA that he had expected absorption against a regular post in view of the fact that in the advertisement the vacancy was shown to be permanent in nature. The applicant has stated that he was granted increments and his pay was also fixed under Revised Pay Rules, 1997. While acting as Programmer he filed representations at Annexures 6 and 7 for declaring that he has successfully completed his probation and also represented that he should be absorbed against a vacant post of Programmer in the Institute. But the respondents in the impugned order dated 16.2.1998 have terminated his services with effect from 31.3.1998 and that is why he has come up in this petition with the prayers referred to earlier.

3. The respondents in their counter have stated that in the advertisement it was clearly mentioned that the post is sanctioned under Bio-Technology Information Systems Network funded by the Department of Bio-Technology and the post is purely temporary. They have

stated that the post held by the applicant is not under regular establishment of the Institute. It is also mentioned in clause 14 of the appointment order that the appointment may be terminated without assigning any reason by one month's notice on either side. It is further stated that as the post is in a scheme which is funded by an outside agency it cannot be treated as a permanent post under regular establishment of the Institute. It is stated that as the post was temporary there is no question of the applicant acquiring substantive status in the post. It is further stated that pay fixation was done on the specific instruction issued by the Department of Bio-Technology and they also provide funds to meet the expenditure. The project, according to the respondents, was closed on 31.3.1998 and the post was abolished necessitating issuing of the order of termination. In view of the above the respondents have opposed the prayers of the applicant.

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4. In his rejoinder the applicant has stated that he has been selected through rigorous process of selection and even though the period of probation was fixed as two years he was not confirmed after completion of two years. He has also contributed to GPF and GIS as a regular employee. He has also stated that the post of Programmer was never funded by the Department of Bio-Technology or Central Government. He has also stated that if the project was really upto 31.3.1993 then in the appointment order issued on 15.6.1992 there was no reason to fix his period of probation as two years. It is also stated that his services have been terminated without giving

him reasonable opportunity and therefore the order of termination is bad in law.

5. We have heard Shri S.K.Rath, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned Senior Panel Counsel appearing for the respondents and have also perused the records. The learned counsel for the petitioner has filed copy of decision of the Hon'ble High Court of Orissa in OJC Nos.6637 to 6647 of 1992, decided on 28.4.1995 (Pravati Tripathy, etc. v. Orissa University of Agriculture & Technology and another) as also the decision of the Hon'ble Supreme Court in the case of Rajendra v. State of Rajasthan, AIR 1999 SC 923. These have also been taken note of.

6. From the averments of the applicant, as noted by us earlier, it is clear that two of the averments are factually incorrect. In the notice of advertisement it was clearly mentioned in paragraph 7 that the post is purely temporary and therefore the applicant's statement that thinking that the post is permanent, he joined the post cannot be accepted. Secondly, he has stated that he expected permanent absorption in the Institute on the ground that the vacancy was shown to be permanent in the advertisement. Apart from the advertisement where it has been clearly mentioned that the post is temporary, in the offer of appointment also it has been mentioned clearly that it is a temporary post and has been sanctioned under Bio-Technology Information System. In the appointment order also it has been mentioned that the duration of the project is upto 31.3.1993 but it is likely to be extended beyond that period. As the project was likely to be extended

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there was nothing wrong on the part of the Institute authorities to fix his period of probation for two years. The applicant has stated that as he has continued from 1993 to 1998 he must be taken to have been made permanent. This is not correct. A probationer on successful completion of his probation period does not ipso facto become permanent. It is only ordered that his probation is satisfactorily concluded. He can be made permanent only when the vacancy against a permanent post is available. In this case the applicant was appointed under a project funded by an external agency and the project continued so long as the external agency funded the project. The applicant hasstated that the project was not funded by the Department of Bio-Technology. In the absence of any evidence in support of this and in view of the fact that in the advertisement itself it has been mentioned that the post is sanctioned under Bio-Technology Information System Network of the Department of Bio-Technology for their User Centre in the Institute, this contention of the applicant that the fund for the project was not coming from the Department of Bio-Technology cannot be accepted. The research institutes under ICAR do take up projects for the use and at the instance of outside agencies and such projects are funded by those outside agencies. Once funding is stopped and the project is closed, the posts automatically stand abolished. In this case, the applicant has been appointed to a post and in the appointment order it has been clearly mentioned that the post is temporary and sanctioned under the User Centre of Bio-Technology Information System. In view of this, the applicant cannot

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claim that even after completion of the project and abolition of the post, he should be allowed to continue. In **Rajendra's case (supra)** the Hon'ble Supreme Court have held that when a project is sanctioned under schemes funded by the State Government and posts are temporarily created for fulfilling the need of the particular project and when the need for work is partially over and the posts are abolished for want of funds, the employer cannot be directed to continue the displaced persons. In view of this, the applicant's prayer for quashing the order of termination at Annexure-8 is held to be without any merit and is rejected.

7. The second prayer of the applicant is for a direction to the respondents to absorb him in any other comparable post in the Institute. The applicant has been selected for a particular post. The vacant posts, if any, are to be filled up according to the Recruitment Rules. The applicant cannot claim that he should be absorbed in a vacant post of the Institute. In **Pravati Tripathy's case (supra)** the applicants were ad hoc lecturers in different subjects under Orissa University of Agriculture & Technology. They had worked for eight years and in view of this, as under the University Statute appointments had to be made by a process of selection through a Committee, their Lordships of the Hon'ble High Court directed that the Standing Selection Committee should consider the case of the petitioners before them for the vacant posts. In line with the above decision and also as per observation of the Hon'ble Supreme Court in **Rajendra's case (supra)** the applicant's case has to be considered according to rules if a post of Programmer falls vacant and if the petitioner applied for the same. He will also be entitled to

preference in view of his past experience and to the extent of service rendered in the research centre he will also be entitled to age relaxation if required. In view of the above, the claim of the petitioner for his straighaway absorption in a vacant post of the Institute is held to be without any merit and is rejected. We, however, direct that in case the petitioner applies for a post in the Institute when the same is advertised and in case he has the necessary qualification and eligibility, then his case should be considered along with others and he should be given preference because of his past experience if the post applied for is similar in nature to the post held by the applicant under the project. The applicant will also be entitled to age relaxation if the same is required to the extent of service rendered by him under the project.

8. The Original Application is disposed of interms of the observation and direction above. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

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(SOMNATH SOM)
17.7.2000
VICE-CHAIRMAN

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