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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.359 of 2012
Cuttack this the 20th day of December 2016


Subhendushree Routroy...Applicant


-VERSUS-

Union of India & Ors...Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? ✓
2. Whether it be referred to CAT, PB, New Delhi for being referred to various Benches of the Tribunal or not ? ✓


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(U)

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CUTTACK BENCH, CUTTACK

O.A.No.359 of 2012

Cuttack this the 20th day of December, 2016

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HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Subhendushree Routroy, aged about 25 years, S/o. Sri Subodh Chandra Rout at present residing at Madhab Niwas, Lakshmi Vihar, PO-Agrahat, Dist-Cuttack-754 028

...Applicant

By the Advocate(s)-M/s.B.S.Tripathy

M.K.Rath

J.Pati

Mrs.M.Bhagat

-VERSUS-

Union of India represented through:

1. The Chairman, National Technical Research Organization, Block-III, Old JNU Campus, New Delhi-110 067
2. Centre Director, Centre for Remote Sensing Applications (CRSA), National Technical Research Organization, Block-III, Old JNU Campus, New Delhi-110 067
3. The Director (Establishment-I), National Technical Research Organization, Block-III, Old JNU Campus, New Delhi-110 067
4. Asst.Director(Establishment-II), National Technical Research , Block-III, Old JUN Campus, New Delhi-110 067
5. Officer-in-Charge, Data Collection Facility, Centre for Remote Sensing Applications(CRSA), National Technical Research Organization, Doom Dooma, At/PO-Doom Dooma, Dist-Tinsukia, Assam. PIN-786 151

...Respondents

By the Advocate(s)-Mr.P.R.J.Dash



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ORDER

A.K.PANAIK, MEMBER(I):

In this Original Application under Section 19 of the A.T.Act, 1985, applicant has challenged the legality and validity of order dated 10.04.2012(A/7) by virtue of which his services as Technical Assistant-A (now re-designated as Technical Assistant) in the respondent-organization have been terminated with immediate effect and in the circumstances, applicant has prayed for quashing the impugned order of termination with direction to respondents to reinstate him in service with all consequential benefits.

2. Succinctly stated, facts of the matter are that in the year 2007, a circular was issued by the National Technical Research Organization (NTRO) Doom Dooma inviting applications for recruitment to different posts on deputation/absorption/re-employment/direct recruitment basis, restricting the same to some of the Organizations/Department in the Government of India. In response to this, applicant had made an application for the post of Technical Assistant 'A' (now re-designated as Technical Assistant) and accordingly, he was called upon to appear at the interview that was held during August, 2007. However, consequent upon his selection, applicant was issued with the offer of appointment vide Memorandum dated 20.12.2007(A/3) with certain terms and conditions and it was made clear that if the applicant would accept the same, he should report the concerned authority within one month from

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the date of receipt of the Memorandum, failing which the appointment will automatically be treated as cancelled. Applicant complied with the same and maintained all the formalities in consequence of which, he was issued with an order dated 21.1.2008(A/4) posting him as Technical Assistant 'A' in the scale of Rs.5000-150-8000(Group-C) in the National Technical Research Organization on direct recruitment basis with immediate effect from 18.01.2008(FN). Thereafter, applicant's probation period was extended upto 17.1.2012 vide Memorandum dated 18.10.2011(A/5), followed by another order dated 4.4.2012 extending the period of probation upto 17.01.2013. In the meantime, applicant applied for E.L. from 3.4.2012 to 13.4.2012 due to his domestic problem and came to his native place. Subsequently, he sent another application dated 12.04.2012 seeking extension of leave by one month. While the matter stood thus, he received a Memorandum dated 10.04.2012(A/7) issued by res.no.3 indicating therein that his services were terminated with effect from 10.04.2012.

3. Aggrieved with this, applicant has moved this Tribunal in the instant O.A. seeking relief as mentioned above.

4. It is the case of the applicant that although the period of probation as indicated in the order of appointment was for a period of two years which may be extended at the discretion of the competent authorities, but instead of extending the period of probation on completion of two years, the respondents

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extended the same after three and half years without assigning any reason thereof. It has been submitted that as per Government of India instructions issued by the Department of Personnel & Training vide Office Memorandum dated 08.09.2011(A/8), where a probationer who has completed the period of probation to the satisfaction of the Central Government is required to be confirmed, he shall be confirmed in the service/post at the end of his period of probation, having been completed satisfactorily. In such cases, where no order extending the probation period has been issued and no order of confirmation is issued within one year of completion of the prescribed period of probation, the probationer would be deemed to be confirmed in the service/post. Therefore, it is the case of the applicant that since the period of probation as stipulated in the offer of appointment was for two years from the date of his joining, in view of Government of India's instructions, cited supra, since no order extending the probation period nor the confirmation order within one year of completion of the prescribed period of probation was issued, applicant's probation should be deemed to be confirmed in the post/service and any order passed beyond thereafter extending the period of his probation is not sustainable in the eye of law.

5. Applicant has contended that having faced the rigor of selection process, he was selected and appointed to the post in question and having served for more than four years, the order

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of termination of his service on the ground that he was not eligible for the said post, is arbitrary, unreasonable and hence, is liable to be struck down.

6. Further, applicant has assailed the order of termination suffers from compliance of the principle of natural justice, inasmuch as, before issuing such an order to his prejudice, no notice was issued to him to show cause against such proposed termination. In this connection, applicant has also relied on the decision of the Hon'ble Supreme Court in ***K.I. Shephard vs. Union of India reported in 1988 AIR SC 686***, in which it has been held that *"before passing the order of termination, prior opportunity should have been given to the applicant and the same having not been done, the order of termination violates the principles of natural justice and as such is liable to be quashed"*.

7. With the above submissions, applicant has reiterated his prayer as made in the O.A.

8. Resisting the claim of the applicant, respondents have filed a detailed counter. It has been stated in the counter that NTRO had invited applications for filling up various categories of posts through deputation/absorption/re-employment and direct recruitment basis from limited number of Departments/Organizations viz., AIR Headquarters(DPO I & DPO II), Army Headquarters, Aviation Research Centre, Comptroller & Auditor General of India etc. etc. of the Government of India vide '**Restricted**' circular dated

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21.03.2007. Applicant had submitted his application dated 05.05.2007 for the post of Technical Assistant 'A' (Post Code XVII-14) in NTRO, which did not disclose that he was an employee in any of the Government of India Departments/Organizations, as indicated in the Restricted circular. Therefore, he being a private individual was not authorized to have access to the Restricted Circular ibid. According to respondents, since applicant had unauthorizedly procured the said restricted circular and submitted an application, his selection to the post in question was illegal. It has been submitted that as per the offer of appointment dated 20.12.2007 to the post of Technical Assistant 'A' (now Technical Assistant), applicant's probation was for a period of two years from the date of joining which might be extended at the discretion of the competent authority. During this period of probation, applicant's services are liable to be terminated without any notice or without assigning any reason thereof if his performance is found to be not satisfactory or if the Government is satisfied that he was ineligible for recruitment to this service/post in the first instance itself. Applicant having joined on 18.01.2008, his initial period of probation was two years, i.e., till 17.01.2010, which later on was extended from time to time upto 17.01.2013 vide order dated 04.04.2012.

9. It has been submitted that irregularities in the matter of selection/appointment of applicant along with others were

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pointed out by the Comptroller & Auditor General of India in its Special Audit Report(Secret), in pursuance of which an inquiry was made by a senior IPS Officer of NTRO. According to respondents, applicant does not belong to any of the organizations or departments to which restricted circular had been circulated and therefore, he having procured the same unauthoriedly, his selection was *ab initio* irregular as he was not eligible for being considered for the post in question in terms of circular dated 21.03.2007.

10. In support of their contentions, respondents have relied on the decision in District Collector, Vizinagaram vs.M.Tripura Sundari Devi (1990 (4) SLR 237) wherein the Hon'ble Supreme Court has held that a Government servant could be discharged from service where it is discovered later that the Government servant was not qualified or eligible for his initial recruitment in service and based on this decision, DOP&T have issued O.M. 19.05.1993 laying down that wherever it is found that a Government servant, who was not qualified or eligible in terms of the Recruitment Rules, etc. for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, he should not be retained in the service. If he is a probationer or a temporary Government servant, he should be discharged or his service should be terminated. Further, the respondents have relied on the decision of the Hon'ble Supreme Court in Indu Bhushan

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Dwivedi vs. State of Jharkhand and Ors. (2010) 11 SC 278, wherein it has been held that *"every violation of rules of natural justice may not be sufficient for invalidating the action taken by the competent authority/employer and the court may refuse to interfere if it is convinced that such violation has not caused prejudice to the affected person or employee"*. Based on this, it has been urged that since the applicant had been selected to the post in question in an illegal manner based on an unauthorized advertisement and that during the period of probation as his service has been terminated, there has not been violation of the principles of natural justice in any manner. However, it has been submitted by the respondents that SLP (Civil) No.21289/2011 (Shri V.K.Mittal vs. Union of India & Ors. arising out of a Public Interest Limitation having been filed, the Hon'ble Supreme Court had called for a status report and the same had been filed in a sealed cover which includes termination of the applicant also in terms of CAG's report(Secret). Thereafter, by filing additional counter-reply, it has been brought to our notice that the Hon'ble Supreme Court disposed of the said SLP vide order dated 11.12.2012 by observing that *"we are fully satisfied that the respondent organization (NTRO) is taking all the necessary steps to correct the mistakes/irregularities pointed out by the CAG in its report"*.

11. Besides the above, respondents have relied on the decision of CAT, Principal Bench, New Delhi in

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O.A.No.1334/2012 disposed of on 22.8.2012 in which order of termination as has been issued in the instant case, has been held to be valid and legal and therefore, in the similar analogy, this Tribunal should also decide the lis.

12. We have perused the pleadings and heard the learned counsel for the respective parties. We have also gone through the rejoinder to the counter and the written notes of submission.

13. Admittedly, applicant was not an employee of any of the Organizations or Departments of the Government of India to which restricted circular dated 21.3.2007(A/2) had been referred to inviting applications for filling up various categories of posts in National Technical Research Organization, Doom Dooma. It is also an admitted position that for filling up those posts, there were different sources of recruitments prescribed therein, which *inter alia*, includes, direct recruitment basis. Applicant, no doubt, was an aspiring candidate for the post of Technical Assistant 'A' which falls [Code No.XVII-14] and essential qualifications prescribed are as under:

- (a) Bachelor's Degree or three years diploma in Electronics & Communication

Age Limit: 18-30 years (relaxable for reserved categories, ex-servicemen, Government employees and other categories for whom, relaxations are provided in the Instructions issued by Government from time to time).

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Note: In case of re-employment of Ex-serviceman, qualifications are relaxable provided they possess the technical trade proficiency certificates issued by Army or Navy or Air Force, and have at least ten years of experience in the relevant trade.

In specialized areas or fields like GIS mapping, remote sensing, imagery analysis UAV etc. those who possess professional or technical qualification, equivalent to graduate degree or diploma in Engineering, along with experience of at least five years in the relevant field, will be treated as eligible".

14. Attainment of aforementioned essential qualifications by the applicant thus making him eligible for the post of Technical Assistant-A is not in dispute. It is also not in dispute that applicant having been selected was appointed to the post of Technical Assistant-A on direct recruitment basis. Appointment of applicant on direct recruitment basis implies that candidates belonging to ex-servicemen, Government employees or other categories where relaxation is admissible as per the instructions issued by the Government of India from time to time were not within the zone of consideration along with the applicant. It is of significance to note that in A/2 restricted circular, bottom note to the Age Limit in respect of all categories of posts has been prescribed. It is mentioned therein that ***"for deputation/absorption/re-employment the age limit is 56 years"*** whereas no such stipulation is there under the Age Limit in so far as Technical Assistant 'A' is concerned.

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Conversely, as quoted above, it has been mentioned that the *"Age Limit: 18-30 years (relaxable for reserved categories, ex-servicemen, Government employees and other categories for whom, relaxations are provided in the Instructions issued by Government from time to time)"*. From this the corollary is that as the applicant's selection and appointment to the post in question is not as a reserved category candidate or ex-serviceman or the Government employee, as the case may be, it goes without saying that the source of his selection to the post of Technical Assistant 'A' was through direct recruitment basis.

15. In view of the above factual position, the sole point that emerges for determination is whether applicant could be held ineligible and thus, his appointment to the post of Technical Assistant 'A' could be terminated without complying with the principles of natural justice on the ground that he does not belong to any of the organizations or departments to which restricted circular had been circulated inviting applications for filling up the post in question, and therefore, he was not eligible to be considered in terms of circular dated 21.03.2007.

16. The word 'eligible' in service jurisprudence refers to fulfillment of prescribed norms or standards for appointment, promotion of certain benefits, as the case may be, and if one does not fulfill any of the eligibility conditions, he/she cannot attain the objects sought to be achieved. Similarly, in the instant

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case, applicant's eligibility has not been questioned by the respondents in so far as educational attainments are concerned. The only point which they have canvassed to justify their action for termination of service of the applicant is that he did not belong to any of the organizations/departments from which applications had been invited. In this connection, we would like to reiterate that applicant's appointment to the post of Technical Assistant 'A' was on direct recruitment basis and not through any source or mode of recruitment so as to encourage inservice personnel from the restricted organizations/departments to submit their applications. We are also not in agreement with the submissions of the respondents that for direct recruitment, the organizations/departments which had been circulated with the restricted circular could have sponsored or recommended candidates for the purpose.

17. Secondly, as indicated above, a candidate could be considered eligible or otherwise subject to the provisions of the recruitment rules for the post in question and it is not in dispute that the applicant did not possess the requisite educational qualification as prescribed in the circular while making his application. Be that as it may, it is an admitted position that applicant's joining as Technical Assistant "A" being dated 18.1.2008, his two years' probation period came to an end on 17.1.2010. For the sake of clarity, Paragraph-5 of

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Memorandum dated 20.12.2007(A/3)/offer of appointment reads as under.

"Shri Subhendushree Routroy will be on probation for a period of two year from the date of joining which may be extended at the discretion of the competent authority. The terms & conditions of service during this period will be governed as per Central Civil Service (Temporary Service) Rules, 1965 in force from time to time. During this period of probation his service are liable to be terminated without notice or without assigning any reason thereof if his performance is found to be not satisfactory of if the Govt. is satisfied that he was ineligible for recruitment to this service/post in the first instance itself".

18. It is not in dispute that in terms of the offer of appointment, probation period being two years of the date of his joining, could be extended at the discretion of the competent authority. But that does not mean that on completion of the period of probation of two years, the competent authorities at their whims and fancies will issue order extending the period of probation. It reveals from the record that although applicant's probation of two years was over on 17.1.2010, there was no order either extending the period of probation or confirming/absorbing the applicant in service was passed. However, the respondents vide Office Memorandum dated 18.10.2011 extended the period of probation of the applicant upto 17.1.2012, followed by another order dated 4.4.2012 extending the period of probation upto 17.01.2013. These points have not been satisfactorily explained

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by the respondents. However, in support of their stand point, they have relied on the decision in District Collector, Vizinagaram vs. M.Tripura Sundari Devi (1990 (4) SLR 237), wherein the Hon'ble Supreme Court has held that a Government servant could be discharged from service where it is discovered later that the Government servant was not qualified or eligible for his initial recruitment in service and based on this decision, DOP&T have issued O.M. 19.05.1993 laying down that wherever it is found that a Government servant, who was not qualified or eligible in terms of the Recruitment Rules, etc. for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, he should not be retained in the service. If he is a probationer or a temporary Government servant, he should be discharged or his service should be terminated. In addition to this they have relied on the decision of C.A.T., Principal Bench, New Delhi in O.A.No.1334/2012 disposed of on 22.8.2012 in which order of termination as has been issued in the instant case, has been held to be valid and legal.

19. We have perused the decision of CAT, Principal Bench, cited supra. In that case the applicant was a candidate for the post of Linguist (French) in NTRO and in the footnote of Sl.No.12 of the application form he was required to mention his educational qualification, i.e., exam passed, code,

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faculty/discipline code and specialization/subject code. However, applicant in his application form dated 30.04.2007 for the post of Linguist (French) in NTRO [against Code 12(a)] had stated "**result awaited**" which, implied that applicant therein had not possessed bachelor degree with diploma at the time of submission of his application, which necessitated termination of his service.

20. From the above analysis, we are of the opinion that the facts decided by the CAT, Principal Bench in O.A.No.1334/2012 being distinguishable to the facts of the case in hand cannot be of any assistance.

21. Now, the point to be decided is whether before the termination of service of the applicant, he was to be issued with notice or in other words, termination order suffers from violation of the principles of natural justice. In this connection, we would like to note that in the decision cited by the respondents in Indu Bhushan Dwivedi vs. State of Jharkhand and Ors. (2010) 11 SC 278, the Hon'ble Supreme Court has been held that "**every violation of rules of natural justice may not be sufficient for invalidating the action taken by the competent authority/employer and the court may refuse to interfere if it is convinced that such violation has not caused prejudice to the affected person or employee**".

20. As discussed above, there being no extension of probation on completion of two years, which was issued after

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one year vide OM dated 128.10.2011 extending the period of deputation upto 17.1.2012 followed by another dated 4.4.2012 extending the period of deputation upto 17.1.2013, it cannot be said that no prejudice has been caused to the applicant by the termination of his service. Since the point boils down to ineligibility of the applicant on the ground that he was not a candidate by any of the sponsored departments of the Government of India to which restricted circular had been circulated, in our considered view, before orders of termination could be issued to the applicant, he should have been asked to show cause against the proposed termination. In view of this, the order of termination suffers from violation of the principles of natural justice and hence, the same is quashed. The matter is remitted back to the respondent-authorities with a direction to take such action as deemed fit and proper only after issuing a notice to the applicant to show cause against the proposed action. In the circumstances, applicant shall be reinstated into service forthwith. However, as regards the payment of back wages from the period from termination till the date of reinstatement, the same shall be subject to the decision to be taken by the authorities concerned in pursuance of our direction as made above.

In the result, the O.A. is allowed in part. No costs.


(R.C.MISRA)
MEMBER(A)

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(A.K.PATNAIK)
MEMBER(J)