

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 95/2000

FRIDAY, THIS THE 19th DAY OF APRIL, 2002.

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

M.S. Ravi
Small Industry Promotion Officer
Small Industries Service Institute
Kanjani road, Ayyanthole
Thrissur-680 003.

Applicant

By Advocate M/s Sukumarean & Usha

Vs.

1. The Development Commissioner
Office of the Development Commissioner
(Small Scale Industries), Ministry of Industry
Government of India, Nirman Bhavan,
7th Floor, New Delhi-110 011.
- 2., The Secretary
Union Public Service Commission
Dholpur House, Shajahan Road
New Delhi-110 011.
3. The Secretary
Department of Economic Affairs
Ministry of Finance, Govt. of India
North Block, New Delhi-110 001.
4. The Secretary
Department of Statistics
Sardar Patel Bhavan
Central Statistical Organisation
New Delhi-110 001.
5. The Director
Small Industry Service Institute
Ministry of Industry, Kanjani road
Ayyanthole, Thrissur-680 003.
6. Union of India represented by
the Secretary to Government
Ministry of Industry,
New Delhi.

Respondents

Respondents

By Advocate Ms Rajeswari A., ACGSC

The Application having been heard on 20.3.2002 this Tribunal
delivered the following on 19.4.2002.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant has filed this Original Application aggrieved by A-6 reply dated 5.11.98 issued from the office of the first respondent rejecting his representation dated 31.3.98 and A-8 order dated 20.1.99 issued by the 1st respondent in partial modification of the office order dated 27.11.95 by which the designation of the applicant has been changed to as Small Industry Promotion Officer (Statistics) instead of Small Industry Promotion Officer (Economic Investigation) shown on 27.11.95. He sought the following reliefs through this O.A.:

- (i) to set aside annexure A-6 and A-8 orders issued by the 1st respondent since the same is issued against Annexure A-1 and A2 orders as also in violation of the Applicant's fundamental rights under Article 14 and 21 of the Constitution
- (ii) to set aside Annexure A-6 and A-8 orders since the same is issued against the principles of natural justice
- (iii) to declare that the applicant is entitled to be treated as SIPO(EI) with effect from 25.10.95 in the light of Annexure A1 and A2 orders and also to be considered for induction to Indian Economic Service.
- (iv) to direct the respondents to treat the applicant as SIPO(EI) with effect from 25.10.1995 in the light of Annexure A1 and A2 orders and also to be consider the name of the applicant for induction to the Indian Economic Service.

2. According to the averments of the applicant his main subject in Graduation and Post Graduation studies was Economics, he was initially selected as Research Assistant in the Doordarsan Kendra, Nagpur. While thus working he applied for the post of Small Industry Promotion Officer (Economic Investigation) (SIPO (EI) for short. He appeared for the interview and selected for the post under the first respondent as per A1 provisional offer of appointment dated 24.11.92. Applicant was appointed as SIPO(EI) w.e.f. 25.10.95 in the office of the 5th respondent as per A2 order

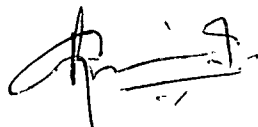


dated 27.11.95. The applicant claimed that since he was appointed as SIPO(EI) he became within the jurisdiction of the 3rd respondent who was the cadre controlling authority of the posts in the discipline of Economics. While so the 1st respondent by letter dated 17.3.98 circulated the tentative seniority list of SIPO(EI&S) as on 5.3.1998 asking the individual officers to check the same and bring to the notice of the 1st respondent any factual errors or omissions within 20 days from the date of issue of the letter. The applicant submitted A-3 representation dated 31.3.98 as, in the seniority list the applicant was shown as SIPO(Statistics) instead of SIPO(EI). But in the final seniority list, in which the applicant was ranked as Sl. NO. 43, the mistake committed in the tentative seniority list was not rectified. The applicant again filed A-5 representation dated 30.7.98 requesting the first respondent to assign him the Economics discipline taking into consideration his academic background allotment of discipline by the 2nd respondent at the time of his appointment. Applicant received A-6 reply dated 5.11.98 issued by the first respondent. Applicant filed A-7 representation dated 9.12.98 for which he received A-8 reply dated 20.1.99 (in partial modification of A2 order). A-9 is the nature of duties allotted to the applicant. Applicant submitted that the applications were invited for the post of SIPO(EI) and A1 offer was given to him as SIPO(EI). If the post advertised was of SIPO(Statistics) he would not have applied for the same and joined the post. The action of the respondents in issuing A-8 modifying A-2 appointment order of the applicant was illegal, arbitrary and violative of the Fundamental Rights of the applicant under Article 14 and 21 of the Constitution of India. The designation of the applicant was wrongly shown as SIPO(Statistics) for the first time in the tentative seniority list issued by the first



respondent. The first respondent had not considered the representation filed against the same and even though A-7 representation was submitted immediately after receipt of A-6 order the same was not properly considered by the first respondent while issuing A-8 order. The first respondent's action in changing the designation of the applicant without giving notice to him especially when he was actually working as SIPO(EI) and non-consideration of the representation submitted by the applicant against the final seniority list were arbitrary and illegal. The action of the respondents in rejecting his A-7 representation, by A-8 order, without properly considering the A-7 was illegal, arbitrary and hence A-8 was liable to be quashed. Since A-8 order was issued against the rule and in violation of the fundamental Rules enshrined in Article 14 and 21 of the Constitution and against the principles of natural justice, A-8 was liable to be quashed and the OA was liable to be allowed.

3. Respondents filed reply statement resisting the claim of the applicant. There is no dispute regarding the factual aspects. According to the respondents though the cadre for Economics and Statistics disciplines was common, the candidates for Economics and Statistics disciplines were recommended distinctly by the UPSC as there were separate qualifications for the two disciplines and these disciplines formed feeder cadre to the Indian Economics Service and Indian Statistics Service respectively. Since the cadre of Economics and Statistics disciplines was common the applicant indicating that he was selected in the Economics discipline as indicated in his appointment order was not relevant. According to them the test for deciding the case lay with the recommendation of the UPSC. True copies of the Recruitment Rules were produced as R-II and R-II-A. The words "Economic



Investigation" mentioned in the appointment order of the applicant was erroneous and it was subsequently amended as Statistics was corrected vide R-III order dated 20.1.99. The applicant's grievance that he belonged to Economics Discipline was examined by the first respondent in consultation with the UPSC and the UPSC confirmed that the applicant belonged to the Statistics discipline in accordance with R-IV, R-V and R-VI While functioning in the Department, the applicant was bound to work in any type of duties and it was not his vested right to claim promotion in a particular service on the basis of the duties. His induction into Indian Economics Service or Indian Statistical Service was dependent on whether he belonged to Economics discipline or Statistics discipline as recommended by the UPSC at the time of his initial appointment. The applicant was appointed in the cadre of Small Industry Promotion Officer (EI&S) which comprises both the disciplines Economics as well as Statistics. Since the UPSC selected the applicant in the Statistics discipline as such he had no claim for being considered for Economics discipline and became eligible for induction into Indian Economics Service.

4. Applicant filed rejoinder reiterating the points raised in the Original Application.

5. Heard the learned counsel for the parties.

6. The learned counsel counsel for the applicant took us through the factual matrix as brought out in the Original Application. It was submitted that in the reply statement the respondents had admitted the fact that though the cadre of Economics and Statistics disciplines were common, the candidates of Economics and Statistics discipline were



recommended distinctly by the UPSC as separate qualifications for the disciplines were there and these disciplines formed feeder cadre to the IES and ISS respectively. He referred to R-II and R-IIA Recruitment Rules and submitted that the qualification for holding the post of SIPO in the disciplines of Statistics and Economics were distinct and on the basis of the Recruitment Rules he was entitled to be designated as SIPO(EI). The amendment of the designation of the applicant as SIPO(S) instead of SIPO(EI) by order dated 20.1.99 was violative of the applicant's Fundamental Rights and Article 14 and 21 of the Constitution.

7. We have given careful consideration to the submissions made by the learned counsel for the parties, rival pleadings and have perused the documents brought on record.

8. There is no dispute that the applicant on being selected as SIPO was appointed as SIPO(EI) (Annexure A-1). We find that the applicant applied for the post in question in response to UPSC advertisement No. 9 published on 4.3.89. A photo copy of the notification was given by the ^{learned counsel for the} applicant during the course of the argument. From this advertisement we find that the educational qualifications for the post of SIPO(EI) and SIPO (Statistics) are given as follows. At the same time except for the SC/ST vacancies the break-up of SIPO(Economic Investigation) and SIPO (Statistics) were not given.
Educational Qualifications prescribed

For SIPO(EI)

- (i) Master's Degree in Economics or Commerce or eqv.
- (ii) About 2 yrs exp. of conducting & guiding economic Investigations, Industrial Surveys and/or res.

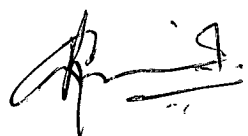
For SIPO(Statistics)



(i) Master's degree in Statistics or Maths/Commerce/Economics with Statistics or eqv.

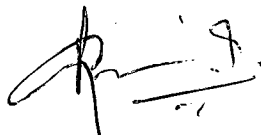
(ii) About 2 yrs' exp. of Statistical work involving collection, compilation and interpretation of statistical data.

9. From the above qualifications we find that the qualification for the post of SIPO(EI) and SIPO(Statistics) are separate. For the SIPO(EI) a person with Masters Degree in Economics or Commerce or eqv. with about 2 years experience in conducting economic investigation or survey and or research would be eligible. But for the SIPO(Statistics) Master's degree in economics is just not sufficient, the same has to be with Statistics as a subject and the person should have two years experience of Statistical work involving collection and compilation of investigation of statistical data. The applicant has averred in the OA that his qualification is Post Graduation in Economics. He has also averred in the rejoinder that in his earlier employment he worked as a Research Assistant and was mainly engaged in conducting field surveys of the television rating point for fixation of advertisement tariff. From the materials placed before us as above we find that the applicant is not qualified for the post of SIPO (Statistics). Regarding the contention of the respondents that the UPSC under Article 320 of the Constitution has the power of recommending candidates for recruitment, we hold that the UPSC cannot but follow the educational qualifications for the posts advertised. Those candidates who do not possess the qualification had to be rejected at the threshold itself. On the basis of the materials placed before us we find that the applicant, from the educational qualification point of view, was eligible only for the post of SIPO (EI). There is no averments by the respondents that the applicant has the qualification of Post Graduation in Economics with Statistics as a subject.



10. Apart from the above, there is no dispute that the applicant was issued with A1 offer dated 24.11.92. In the said offer it had been clearly stated that he had been nominated by the UPSC for the post of SIPO(EI). According to the applicant if he was aware that he was being offered the post of SIPO(Statistics) he would not have accepted the same. Having offered him the post of SIPO(EI) in 1992 and having appointed him as SIPO(EI) in 1995, we are of the view that the respondents cannot in 1998 without giving any opportunity to the applicant, show him in the seniority list of SIPO(Statistics). Thus we find substance in applicant's contention that the respondents have acted unilaterally without notice.

11. From the pleadings and the submissions it is evident that it was due to the mistake committed by the respondents that the applicant was appointed as SIPO(EI) and UPSC had recommended him for SIPO(Statistics). As already held by us if the applicant did not have Statistics as a subject in his Post Graduation Course ab initio the applicant was not eligible for being selected as SIPO(Statistics) Even assuming that UPSC has checked this point and have selected him as SPIO(Statistics) as the applicant has been allowed to believe that he had been selected for SPIO (EI) and he had been continuing as such till 1999. When the applicant came to know that he had been shown as SIPO(Statistics) in the provisional seniority list of SIPOs he represented . Without giving any reply to him the respondents finalised the seniority list and in the final seniority list also the applicant was shown as SIPO(Statistics). Subsequently his representation was replied to by the respondents by A-8 letter which reads as under:



No.A-20025/30/95-A(NG)
Government of India
Ministry of Industry
Office of the Development Commissioner
(Small Scale Industries)

705 "A" Wing, Maulana Azad road
New Delhi-110 011

Dated 20.01.1999

O R D E R

In partial modification of this Office Order of even number dated 27.11.1995, the designation of Shri M.S. Ravi may be read as Small Industry Promotion Officer (Statistics) instead of Small Industry Promotion Officer (E.I.) as inadvertently indicated in the Order. The correction is made as per recommendations of the UPSC vide commission's letter NO. F.1/722/88-R.III dated 12.9.1991. The other particulars in the Order remain unchanged.

Sd/- D.K. Gautam
Deputy Director (Admn)

To

1. Director,, Small Industries Service Institute, Trichur with a spare copy for Shri M.S. Ravi, SIPO (Statistics)
2. Accounts Officer, Pay & Accounts Office (SIDCO), Chennai.".

The the only reason given by them in the above letter is that he had been recommended by the UPSC for appointment to the post of SIPO(Statistics). As already held by us this fact has never been brought to the notice of the applicant. Having not done so the respondents are estopped from adopting this attitude ^{at} / this point of time. The respondents have also not explained as to why it would not be possible for the applicant to be treated as SIPO(EI) when the cadre of SIPO(EI) and SIPO(Statistics) are treated as one and the applicant had been working as SIPO (EI) all these years.

12. In the result A-6 letter dated 5.11.98 and A-8 letter dated 20.1.99 cannot be sustained. We hold that the same have been issued without following the principles of natural justice and without proper application of mind. Accordingly,



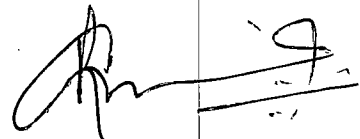
we set aside and quash A-6 and A-8 letters Since A-8 and A-6 orders have been set aside and quashed, the applicant is entitled to be treated as belonging to the SIPO(EI) right from the date of his appointment viz. 25.10.95 in accordance with A-1 and A2 orders. As SIPO(EI) is the feeder cadre for Indian Economics Service, the respondents are directed to consider him for induction to the said service.

13. The Original Application stands allowed to the extent indicated above with no order as to costs.

Dated the 19th April, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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A P P E N D I X

Applicant's Annexures :

1. A-1 : True copy of provisional offer of appointment issued by the 1st respondent to the applicant dated 24.11.92.
2. A-2 : True copy of order No.A-20025/30/95-A(NG) dated 27.11.98 issued by the 1st respondent.
3. A-3 : True copy of representation dated 31.3.98 submitted by the applicant before the 1st respondent.
4. A-4 : True copy of relevant pages of final and approved seniority list No.A-23020/3/98-A (NG) dated 3.7.98 issued by the 1st respondent.
5. A-5 : True copy of representation dated 30.7.98 submitted by the applicant before the 1st respondent.
6. A-6 : True copy of the order dated 5.11.98 issued by the 1st respondent.
7. A-7 : True copy of representation dated 9.12.98 submitted by the applicant before the 1st respondent.
8. A-8 : True copy of order No.A-20025/30-95-A(NG) dated 20.1.99 issued by the 1st respondent.
9. A-9 : True copy of certificate dated 11.6.99 issued by the 5th respondent to the applicant.
10. A-10: True copy of the relevant pages of the Tentative Seniority list of SIPO (E.I&S) in SIDO as 24.3.2000.

Respondents' Annexures:

1. R-I : Photostat copy of the Letter No.F.1/722/88-R.III dated 12.9.91, issued by C.S.Prasad Deputy Secretary, Union Public Service Commission, New Delhi- 110 011.
2. R-II : Photostat copy of the Recruitment Rule No.Nil dated 7.9.68, issued by Department of Industrial Development, New Delhi.
3. R-II(A): Photostat copy of the Recruitment Rule appeared in Gazette of India Part-II, dated 1.11.75.
4. R-III : Photostat copy of the order No.A-20025/30/95-A(NG) dated 20.01.99, issued by D.K.Gautam, Deputy Director (ADMN) Government of India, Ministry of Industry, Office of the Development Commissioner (Small Scale Industries) New Delhi.
5. R-IV : Photostat copy of the letter No.Nil dated 12.8.98 issued by D.K.Gautam, Deputy Director (ADMN), Government of India, Ministry of Industry, Office of the Development Commissioner (Small Scale Industries) New Delhi.
6. R-V : Photostat copy of the Letter No.F1/722/88-R III dated 21st day of October 1998, issued by MR.T.Logun, Under Secretary, Union Public Service Commission, New Delhi-110 011.
7. R-VI : Photostat copy of the Letter No.A-20025/21/91-A(NG) dated 5.11.98, issued Mr.D.K.Gautam, Deputy Director (ADMN), Government of India, Ministry of Industry, Office of the Development Commissioner, (Small Scale Industries), New Delhi-110 011.
8. R-VII : Photostat copy of the Memorandum No.A-12825/13/88-A (NG) dated 12.6.95 issued by O.A.Chakravathy, Deputy Director (Admn), for Development Commissioner, (SSI), Government of India, Ministry of Industry, Office of the Development Commissioner (Small Scale Industries) Nirman Bhavan, New Delhi-110 011.
9. R-VIII : Photostat copy of the Application for Recruitment by Selection No.Nil dated 30.3.89 submitted by the Applicant to the Union Public Service Commission.

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