

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH: LUCKNOW

OA No. 525 of 1992

Lucknow this the 12th day of April, 2001.

HON'BLE MR. A.K. MISRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

H.R. Mishra,
S/o Shri R.K. Mishra,
R/o E VI/107,
Section 'B',
Aliganj Housing Scheme,
Lucknow-20.

...Applicant

(By Advocate Shri H.K. Mishra)

-Versus-

1. The Council of Scietific and Industrial Research through its Director General, Anusandhan Bhawan, Rafi Marg, New Delhi.
2. The Central Drug Research Institute, through its Director, Chattar Manzil Palace, Lucknow.

(By Advocate Shri A.K. Chaturvedi)

O R D E R

Mr. Shanker Raju, Member (J):

The applicant has sought for quashing of communication dated 29.4.92 sent to him by the Secretary Grievance Committee, CDRI, Luckow, rejecting his request for appointment to the post of Grade III (1) in the pay scale of Rs.425-700 with consequential benefits and further to treat the report of MANAS applied to the applicant and his further entitlement for being selected and appointed to the post of Group III (2) in the pay scale of Rs.550-900 alongwith arrears and other benefit of seniority and promotion.

2. The applicant is a M.Sc. and in pursuance of advertisement No.1/86 submitted is candidature for the post of Technician Grade II and was subjected to a selection by a Committee on 29.5.86. Vide memorandum dated 19.8.86 the selection of the applicant was approved as Technician Grade II at CDRI, Lucknow in the pay scale of Rs.260-350. He was placed on probation and completed the same on 7.9.87. On expiry of the Scheme, the Director CDRI vide approval dated 29.4.91 accorded payment of salary and allowances for Project sponsored by Government of India, Mahasagar Vikas Vibhag, Department of Ocean Development. Later on steps were taken to implement Varadarajan/Valluri Committee recommendation as approved by the Governing Body of C.S.I.R. for recruitment and assessment of Scientific and Technical staff. Later on rectification of the anomalies MANAS Scheme was introduced where the minimum qualification for entering Group II was SSLC + two years experience or I.T.I. certificate and for entering in Group III the qualification was B.Sc. or diploma in Engineering of three years duration. According to the applicant advertisement No.1/86 should have been issued in accordance with the recommendations of the Committee and should have been for Group III as the qualification was prescribed as B.Sc. Another advertisement No.2/87 was published where the minimum qualification for the same post was SSLC and was in accordance with the Valluri Committee. According to the applicant advertisement No.4/88 was also issued for the post of Junior Technical Assistant (JTA) having the revised scale of Rs.1400-2300 with B.Sc. qualification. The post of JTA is designated as Group III (i) of MANAS for technical staff. The contention of the applicant is that the entry level post of Group II as per the Governing Body of CSIR was having a minimum qualification

of ITI certificate whereas for entry in Group III the minimum qualification is B.Sc. and as in advertisement No.1/86 the qualification was B.Sc. it should have been treated as Group III post. The applicant contended that he is deemed to be appointed in Group III (ii) post. The applicant made representations to the authorities and raised his grievance before the Grievance Committee. He contends that his representation has not been replied in accordance with the rules and rather on filmsy grounds the request has been rejected. The contention of the applicant is that the prescribed qualification is not restricted to the regular vacancies of CDRI as this is not supported by the recommendations of Vallri Committee and MANAS. The applicant further contended that is job requirements are more than to be done by a matriculate, if it is so, the minimum qualification should have been matriculation. The applicant contended that he is seeking appointment on higher posts not only on the basis of higher qualification but on the basis of performance of duties. The applicant by referring to the work done during the relevant periods from 1986 to 1992 has contended that the nature of work could not have been performed by a person possessing the qualification as prescribed for Group II. It is further contended that there cannot be a question of any discrimination in the matter of scale of pay between the regular staff and casual staff restricted to project or scheme and the scale of pay is directly proportionate to the work performed and nature of duties. The applicant assails the order on the ground that in the advertisement No.1/86 the qualification prescribed for Group III is in accordance with the job required and could not be performed by the candidate having the qualification for the Technician Group-II and as such there is no erroneous mention to Technician Grade II to which the applicant was appointed. The applicant contended that on the principle

of 'equal pay for equal work' he is to be treated as Group III staff with all consequential benefits.

2. The respondents in their reply contended that the applicant in pursuance of an advertisement applied for the post of Technician Grade I and was later on joined the post on 8.9.86 in the pay scale of Rs.260-350 later on revised to Rs.950-1400 and is entitled for promotion in accordance with the rules to the post of Technician Grade II (3) and upto Technician Grade II (5). The grade II staff is the supporting staff whereas the Grade III staff is the technical staff. There is no channel of promotion from Grade II to Grade III. However, keeping in view the educational qualification and other requirements, a person can apply directly for Grade III posts. The applicant had never applied for the post of JTA III (1) in response to any advertisement as such merely on the basis of possessing qualification for a particular post he cannot stake his claim for appointment to that post. It is further contended that it is after five years that the applicant raised his grievance through his representation dated 19.2.92 which was duly considered by the Grievance Committee and not acceded to. The learned counsel of the respondents drawn our attention to a judgement of this Bench dated 4.8.99 in OA-94/92, titling N.P. Misra v. The Council of Scietific & Industrial Research through its Director & Aother, wherein on the similar grounds the advertisement No.1/86 was assailed and the applicant therein raised an identical grievance for his deemed appointment as JTA II (1). The Tribunal in its order observed as follows:

"On the basis of the factual position discussed above in detail, we are inclined to take the view that the claim of the applicant canot succeed, because the same is not acceptable. There is no dsipute that the applicant was M.Sc in Chemistry. There is also no dispute that as per advertisement No.1/86 of 11.1.86 published in Times of India, the post advertised was for Technicaina Grade II (1) for which the minimum qualification given in the advertisement

was B.Sc Chemistry as one of the subjects. The applicant applied in response to this advertisement fully knowing that he was applying for the post of Technician Grade II (I), which was lower in grade and status than the post of J.T.A. III (I). In response to his application, the applicant was selected and appointed as Technician Grade II (I). He accepted the appointment and joined. Later on merely on the ground that he possessed higher qualifications than the qualifications ordinarily prescribed for Technician Grade-II (I), he cannot stake his claim for appointment to a higher post of J.T.A. III(I) especially when the applicant had not applied for any such post at the relevant time. No vacancy of J.T.A. III(I) might also have existed at the time when the applicant applied for the post of Technician Grade-II(I), in response to the advertisement No.1/86 dated 11.1.86. Even if it is accepted that the minimum prescribed qualification for Technician Grade II (I), was matriculation with science and two years experience in the relevant field, there is nothing to show that higher qualifications cannot be prescribed in order to achieve the goals and objections of time bound projects for which recruitment is especially made. There can also be no quarrel with the general proposition that while persons with lower qualifications cannot be recruited to jobs requiring higher qualifications, the same is not true in so far as the recruitment of persons with higher qualifications to lower jobs is concerned. Persons possessing higher qualifications can always be recruited and appointed on lower posts. In view of these facts, the O.A. is liable to be dismissed."

In this background it is contended that persons having lower qualifications cannot be recruited to job requiring higher qualifications but a person having higher qualification can be appointed to a lower post. The respondents have further resisted the OA by contending that the same is barred by limitation as the applicant is claiming relief from 1986 and filed this OA in 1992. The application is also resisted on the ground that the same is bad for non-joinder of necessary parties as the sponsored of the scheme has not been impleaded. The respondents have further contended that the channel of promotion of the applicant is different from the JTA Grade III (I) and merely on the basis of possessing qualification for the same post against which the applicant has never been selected, cannot bestow him a right for the said post. It is lastly contended that no

post of Junior Technician Grade I exists where the applicant could be accommodated.

3. The applicant in his rejoinder has re-iterated the pleas taken by him in the OA.

4. We agree with the contentions of the learned counsel of the respondents and are in respectful agreement with the ratio laid down by this Bench in OA-94/92 (supra). The facts of the case in OA-94-92 are identical to the facts of the present case. Therein also the applicant had challenged the advertisement and on the basis of higher qualification he prayed for deemed appointment to JTA III (I) by contending that the work performed and the qualification prescribed clearly demonstrate the fact that it was the job of JTA III (I).

5. Having regarding to the discussion made therein the Tribunal was of the view that a person having higher qualification can always be recruited and appointed on a lower post. We also subscribe to the view taken by the Tribunal in OA-94/92 and hold that a person haing higher qualification can always be recruited and appointed to a lower post. Merely on the basis of higher qualification one cannot stake his claim to a post to wich he never applied and even in pursuance of advertisement no.1/86. The applicant was selected and offered an appointment which was readily accepted by him and joined duties. The cardinal principles of promissory estoppel bars the applicant from claiming deemed appointment to higher post of JTA III (I) having accepted the post and worked on it for a number of years, it is impermissible for him to go back and stake a claim to JTA III (I) for wich no advertisement was issued and the applicant has not applied for the same.

6. As regards the fact that the MANAS Scheme/Valluri Committee have not taken into consideration by the respondents, we are in full agreement with the contentions taken by the respondents. The Valluri Committee's recommendations have been made applicable only for the recruitment of Scientific staff of CSIR and its units and is not to be made applicable to the Scheme/Project sponsored by an outside agency. The applicant was initially appointed in a Scheme and later on had continued on another project w.e.f. 1.4.91 and was not holding any post under the respondents as Technician Grade II (I). The applicant was paid from the funds provided by the sponsor and had been performing the work of providing assistance to the experts engaged in the particular project. As the applicant was not working independently but under the supervision of the Scientists he cannot challenge the same after a period of five years which makes his claim as belated. It is further pertinent to mention here that the applicant for the first time has raised his grievance in the year 1991 whereby he preferred a representation to the Grievance Committee also shows that he slept over his rights and accepted appointment to which he had been working for a long period. The Technician Grade II (I) has a different channel for promotion and cannot claim any promotional avenue as a feeder cadre for JTA III (I). Had the applicant been unsatisfied with the post he was offered he could have applied for JTA Grade III (I) which was advertised. By not making any efforts to apply for the said post he cannot equate the post offered with JTA III (I) which had different duties and qualification. Mere possessing a qualification for the higher post would not give any claim to the applicant to be appointed on that post against the rules.