

Central Administrative Tribunal, Mumbai Bench

Original Application No.856 of 2000

Mumbai, this the 25th day of June, 2001

Hon'ble Mr.Kuldip Singh,Member (J)
Hon'ble Mrs.Shanta Shastry,Member(A)

Shri Manoj P.Mandavia
B.E.(Civil)
C/o Office of Dr.B.B.A.
Govt. Polytechnic
P.O. Karad D.P.
Pin Code No.396 240

- Applicant

(By Advocate: Shri I.J.Naik)

Versus

1. Union of India, through
The Secretary
Ministry of Home Affairs
Central Secretariat
New Delhi
2. The Administrator
Union Territory of Daman and Diu
and Dadra & Nagar Haveli
Silvassa Pin Code-396 230
3. The Collector and Secretary
(Education)
Union Territory of Dadra &
Nagar Haveli,
Silvassa Pin Code-396 230
4. Shri Vinay Kumar
Head of Office in
Dr.B.B.A. Govt. Polytechnic
Karad D.P.
Pin Code - 396 240

- Respondents

(By Advocate - Shri V.S.Masurkar)

O R D E R

By Hon'ble Mr.Kuldip Singh,Member(J)

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act as he is aggrieved of an order dated 8.12.2000 (Anneuxre A-1). Applicant is also aggrieved of in-action on the part of respondents in the matter of payment of regular salary to him. He has prayed for the following reliefs:

"(i) to hold and declare that the impugned order dated 8.12.2000 - Anneuxre A-1 - as illegal, null, void and ineffective;

km

and

(ii) to declare the applicant as having continued all along as the Head of the Department."

2. Facts in brief are that in response to an advertisement (Annexure A-2) whereby the respondents had invited applications for the post of Head of the Department (in short 'HOD') in the pay-scale of Rs.3000-4500 on ad-hoc basis for Polytechnic at Karad, the applicant had applied for the same and was given appointment vide Annexure A-3 wherein the terms and conditions of appointment were also contained. The ad-hoc appointment of the applicant as HOD was continued from time to time and last extension was made in December,2000 whereby the ad-hoc appointment of the applicant was extended from 1.1.2000 to 30.6.2000. By the impugned order (Annexure A-1), the Administrator, Daman & Diu was pleased to discontinue the ad-hoc appointment of the applicant to the post of HOD in Government Polytechnic at Karad. In the same letter, the applicant was appointed to the post of Lecturer in Civil Engineering on contract basis for a period of six months or till the regular candidate joins, whichever is earlier.

3. To challenge the impugned order at Annexure A-1, the applicant has submitted that this order is illegal and null and void because when the services of the applicant were terminated, he was not paid a sum equivalent to the pay and allowances for the period of notice. Second ground taken by the applicant is that his initial recruitment was for the post of HOD, so he

h
m

could not have been reverted to the lower post of Lecturer. Third ground taken by him is that he was initially appointed on probation and the probation period was of only one year which was never extended and therefore, it should be deemed that he had successfully completed the probation period and was thus entitled to be confirmed in the said higher post. It is pleaded that the impugned order has been issued by way of punishment and it is based on certain irregularities mentioned in the FIR and that this punishment has been awarded without holding a departmental inquiry and a stigma has been attached to the career of the applicant.

4. The OA is being contested by respondents. They have pleaded that the appointment of the applicant vide order dated 19.8.94 was only as a stop gap arrangement. The post of HOD is group 'A' post and all the appointments in group 'A' posts are made as per statutory rules on regular basis after a candidate is nominated by the Union Public Service Commission (in short 'UPSC'). Pending finalisation of recruitment rules at Annexure R-1, the department was allowed to recruit persons on ad-hoc basis and, therefore, the appointment of the applicant being de-hors the rules, he has no cause of action and the OA deserves to be dismissed in limine. It is pleaded that applicant is ineligible according to rules and he has also not been selected through the UPSC, therefore, he has no right to claim regularisation. Respondents have submitted that the appointment of the

km

applicant was for a stipulated period and it came to an end by efflux of time. Since applicant has no right to hold the post of HOD, OA should be dismissed.

5. We have heard learned counsel for the parties and gone through the records.

6. Learned counsel for the applicant submitted that since by the impugned order, the services of the applicant have been terminated for the post of HOD without holding an inquiry and without even being replaced by a regularly selected person, so the impugned order of termination of his services is illegal and void. Applicant claims that he is entitled to be regularised on the post of HOD. In support of his contention, he has referred to a judgement reported in 1992 SCC (L&S) 825, State of Haryana & ors. vs. Piara Singh & ors., wherein the Hon'ble Supreme Court observed as under:

"Regularisation - Ad hoc/Temporary govt. employees - Principles laid down - Those eligible and qualified and continuing in service satisfactorily for long period have a right to be considered for regularisation - Long continuance in service gives rise to a presumption about need for a regular post-But mere continuance for one year or so does not in every case raise such a presumption-Govt. should consider feasibility of regularisation having regard to the particular circumstances with a positive approach and an empathy for the concerned person - Statutory/public corporations should also follow suit-Where Govt. issuing order for regularisation from time to time on conditions which are not unreasonable, arbitrary or discriminatory, courts should be cautious in issuing directions to the Govt. substituting its own conditions-Govt. orders issued from time to time prescribing eligibility conditions for regularisation by fixing date by which specified period of service should

be completed and requiring that the candidate must be sponsored by Employment Exchange and that he must possess the prescribed qualification for the post at the time of his ad hoc or temporary appointment, held, not unreasonable or arbitrary - Hence High Court not justified in issuing blanket direction to the Govt. for regularisation of service of all those completing one year's service, without taking into account availability of vacancy, record of service and other factors - Constitution of India, Arts.14 & 16 and 226 & 136."

7. Learned counsel for the applicant referred to another judgement of the Allahabad High Court in Civil Writ No.4863/81 reported in 1983 (1) AISLJ 459, Shri Ram vs. District Inspector of Schools, Azamgarh & ors., wherein it was held as under:

"Natural Justice-Cancellation of appointment without giving an opportunity of being heard-This being violative of the principle of natural justice vitiates the order of cancellation of appointment.

Held that the principle of natural justice has not been complied with. The Inspector should have afforded the petitioner an opportunity of hearing before he could validity rescind or cancel his appointment. Admittedly no opportunity of hearing was accorded. This by itself vitiates the order."

8. Shri Naik submitted that the applicant is being reduced in rank which is not permissible under the rules as he was initially appointed as HOD. To that extent, he referred to a judgement reported in 1988 SCC (L&S) 934, Nyadar Singh vs. UOI & ors., wherein the Hon'ble Supreme Court held as under:

"Service Law-Reduction in rank - To a post lower than the post which direct recruit initially holding - Held, not permissible under - Rule 11(vi) of Central Civil Services (Classification, Control and Appeal) Rules, 1965 - Constitution of India, Article 311(1)"

9. In reply to this, learned counsel for the respondents submitted that as far as regularisation of the applicant is concerned, judgements referred to by the applicant are not applicable in the present case since the applicant was appointed only on ad-hoc basis. It is submitted that applicant is not eligible to be appointed as HOD on regular basis. Even otherwise, the appointment on the post of HOD is done only on the nomination of UPSC. Since the applicant had not been nominated by the UPSC, so he could not be regularised de-hors the rules. As regards claim of cancellation of appointment, learned counsel for the respondents submitted that it is not a case of cancellation of appointment rather it is a case where further extension of ad-hoc appointment had not been granted to the applicant. The applicant had been disengaged because his tenure of ad-hoc appointment had elapsed.

10. Learned counsel for respondents further submitted that by the impugned order, applicant is not being retrenched by way of any punishment or penalty rather on humanitarian grounds, he has been offered the post for which he was eligible. Therefore, neither it is a case of reduction in rank nor it can be said that any penalty has been inflicted upon the applicant.

11. We have given our thoughtful consideration to the matter. We find that the applicant had been appointed purely as a stop gap arrangement and his term of ad-hoc appointment had been extended from time

km

to time on fixed tenure basis. It cannot be said that service rendered by the applicant was in a continuous manner as the concept of 'continuity' of service has been applied in the case of Piara Singh (supra). Since the respondents had come to a conclusion that applicant was not eligible to hold the post of HOD, therefore, they were justified to refuse to extend appointment of the applicant on the said post. We are, therefore, of the opinion that the case of Piara Singh from which the applicant is trying to derive support, does not apply to the facts of the present case.

12. Similarly as regards judgement of the Allahabad High Court in the case of Shri Ram, we may mention that it is not a case of cancellation of appointment without giving an opportunity to the applicant of being heard but it is a case where appointment of the applicant which was on ad-hoc basis, had not been extended. Therefore, the question of giving any notice to the applicant does not arise. The contract of service of the applicant had come to end which was purely as a stop gap arrangement.

13. Reliance placed upon by the applicant on the case of Nyadar Singh (supra) is also misplaced because vide impugned order, the applicant is not being reduced in rank rather it appears from the perusal of the impugned order, that it is in two parts. In one part, the term of ad-hoc appointment of the applicant as HOD was terminated and in the second part, instead of throwing the applicant out of job, the department

fr

had offered him the post of Lecturer for which he was eligible. Therefore, it cannot be said by any stretch of imagination that applicant was reduced in rank by way of imposing any penalty etc. So the judgement in the case of Nyadar Singh also does not apply in the present case.

14. In the result, we are of the considered opinion that this OA has no merits and it is liable to be dismissed. It is, therefore, dismissed. No costs.

Shanta Shastray
(Mrs. Shanta Shastray)
Member(A)

Kuldeep Singh
(Kuldeep Singh)
Member(J)

/dinesh/