

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD

O.A. No. 722/95

T.A. No.

DATE OF DECISION 109-7-1998Ch. Janardhan Rao

Petitioner

Mr. R. Brijmohan SinghAdvocate for the
Petitioner(s)

Versus

Union of India, rep. by its
Secretary, Ministry of Agri.
and others.

Respondent

Mr. N.R. Devaraj, Sr. CGSCAdvocate for the
Respondent(s)

CORAM

The Hon'ble Mr. R. RANGARAJAN, MEMBER(ADMN.)

The Hon'ble Mr. B.S. JAI PARAMESHWAR, MEMBER(Judl.)

1. Whether Reporters of local papers may be allowed to see the Judgment ? No
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgment ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No
5. Remarks of Vice-Chairman on columns 1,2,4 (To be submitted to Hon'ble Vice-Chairman where he is not on the Bench)

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CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD.

O.A.NO.722/95.

DATE OF ORDER : 09-7-1998

BETWEEN :

Ch. Janardhan Rao,
Son of Sampath Rao,
aged 32 years, working as
T.A.(Video Cameraman) V.I.P.Lab.,
(NAARM, ICAR), Rajendranagar,
Hyderabad-30.

... APPLICANT

A N D

1. Union of India, rep. by its
Secretary, Ministry of Agriculture,
Krishi Anusandhan Bhavan, PUSA,
New Delhi-110 001.
2. The Secretary,
Research, Krishi Anusandhan Bhavan,
PUSA, New Delhi-1.
3. The Director,
National Academy of Agricultural
Research Management (NAARM), ICAR,
Rajendranagar, Hyderabad-500030.
4. The Director General,
Indian Council of Agricultural
Research, Krishna Anusandhan
Bhavan, PUSA, New Delhi-110 001. ... RESPONDENTS

Counsel for Applicant : Mr. R. Brijmohan Singh

Counsel for Respondents : Mr. N. R. Devaraj, SrCGSC

CORAM :

HONOURABLE MR. R. RANGARAJAN, MEMBER (ADMINISTRATIVE)

HONOURABLE MR. B. S. JAI PARAMESHWAR, MEMBER (JUDICIAL)

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O R D E R .

(Per Hon.B.S.Jai Parameshwar, Member (Judl))

1. Heard Mr. R. Brijmohan Singh, learned counsel for the applicant and Mr. N.R.Devaraj, learned Standing Counsel for the respondents.
2. This is an application under Section 19 of the Administrative Tribunals Act. The application was filed on 9.5.1995.
3. In response to the notification issued by the respondent No.3. the applicant herein submitted his candidature for the post of ^{T-6} Video Cameraman in the scale of pay of Rs.2200-4000. The said post was reserved for the reserved category candidates. The applicant appeared before the Selection Committee and for a trade test held on 17.10.1989.
4. The applicant was selected and offered the post of T.4 Video Cameraman in the scale of pay of Rs.1640-2900. The applicant accepted the offer and reported for duty with effect from 2.7.1989.
5. The applicant being aggrieved for having offered him a post in a lower scale of pay submitted a representation dated 11.2.1992 requesting the respondent No.3 to restore his original scale of pay of Rs.2200-4000 as indicated in the advertisement. His representation was, however, considered by the respondent No.3 and the applicant was informed that his request for restoration to the scale of pay as indicated in the advertisement could not be acceded to as he was not even suitable for the post of T.6 Video Cameraman.
6. The applicant has filed this O.A. for a declaration that he is entitled to be fixed in the scale of

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pay of Rs.2200-4000 in the post of T.6 Video Cameraman under the 3rd respondent and that the action; of the respondents while appointing him to the lower scale of pay of Rs.1640-2900 is illegal, arbitrary, discriminatory and also beyond the power or jurisdiction of the respondent No.3 and for a consequential direction to the respondents to fix his pay in the scale of pay of Rs.2200-4000 instead of Rs.1640-2900.

7. The respondents have filed their counter. In the counter they have submitted that the applicant had no eligibility when the post in question i.e. T.6 Video Cameraman was advertised, as per the advertisement. The clarification and experience required for the post of T.6 Video Cameraman and the qualification and experience of the applicant have been detailed in Annexure-R.1 to the reply. They admit that the post of T.6 Video Cameraman was advertised in the advertisement; that the post was reserved for the Scheduled Caste candidates. It is submitted that the candidates after screening were called for the trade test and interview on 17.10.1989. The applicant was one of the three candidates. His application was received from the State Institute of Educational Technology i.e. through proper channel. They deny that the applicant possessed the essential qualification prescribed for T.6 Video Cameraman. They deny the circumstances under which the applicant accepted the offer of the respondent No.3 to join the post of T.4 Vedio Cameraman in the scale of pay of Rs.1640-2900. They submit that at the time of acceptance of the offer, the applicant was working as a Photographer in the lower scale of pay of Rs.1230-2330 in the State Institute of Educational Technology - a State Government organisation. The reasons for offering him the post of T.4 Video Cameraman was in accordance with the recommendations of the Selection

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Committee. The Selection Committee considered the merits of the candidates without any cognizance of the community. The Selection Committee considered the applicant fit for the post of T-4 Video Cameraman and therefore, offer was made to him and he was given 15 days time to take a decision either to accept or to reject the post offered. They further submit that the panel was drawn on the basis of the suitability to the post and not on comparison of individual merits among the candidates. The case of the applicant was considered for appointment since his performance was better than the other two candidates in relation to job requirement and specifications (Annexure-R IV). The Selection Committee considered the applicant for the lower scale of pay and accordingly, necessary clause was incorporated in the letter of appointment given to the applicant.

8. They submit that the applicant had even approached the National Commission for Scheduled Castes and Scheduled Tribes, New Delhi for redressal. The Commission after prolonged correspondence gave its recommendations as under:-

- (1). The pay scale of applicant may be restored to Rs.2200-4000 with retrospective effect from the date of joining.
- (2). To mention in future advertisements about the provisions of relaxing experience for SC/ST candidates.
- (3). To keep the interests of SC/ST while framing/amending the Rules for future recruitments.

They further submit that the respondent No.3 had concluded the issue by offering the following course of action to the above mentioned recommendations :



(1) Reduction of scale is fully justified and therefore the recommendation of the Hon'ble Commission to restore the original scale is not possible at this juncture.

(2) The guidelines to make a mention of provision of relaxation of minimum standards for SC/ST candidates in the advertisement shall be taken care of in future.

They submit that even though in the advertisement No.3 of 1989 it was not mentioned about the relaxation of the essential qualification and experience for the reserved candidates, the applicant was called for the interview despite the fact that he did not possess the requisite qualification and experience. They further submit that

had there been no relaxation of the essential qualification and experience for the SC/ST community, the selection would not have been possible because relaxation of essential qualification and experience was not permissible to the candidates belonging to the General category. They submit that the applicant was selected to the lower grade post on merits. That a member belonging to S.C. Community was included in the Selection Board and therefore, it was believed that the interests of the reserved category candidates were taken care of (Annexure-R VI) and that the applicant had accepted the post offered to him and thus they submit that there are no merits in this O.A. and the same is liable to be dismissed with costs.

9. Learned counsel for the applicant during the course of his arguments relied upon the following citations in support of the contention that the applicant is entitled to the scale of pay as indicated in the advertisement and that he was under some circumstances compelled to accept the post in the lower scale of pay offered to him by the respondent No.3.

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- (1) 1969 S.L.R. page 715.
Shri Sudarshan Sood v. State of Punjab.
- (2) 1978(2) SLR Page 836
Ram Sarup v. State of Haryana and others.
- (3) AIR 1986 S.C. Page 1571
Central Land Water Transport Corporation Ltd.
and another v. Brojo Nath Ganguly and another.
- (4) AIR 1991 S.C. Page 101
Delhi Transport Corporation v. D.T.C. Mazdoor
Congress and others.

10. On the other hand, learned counsel for the respondents stated that the applicant was selected to the lower post on merits; that the Selection Committee offered him the post in a lower scale of pay; that the Selection Committee consisted of a Member belonging to S.C. Community; that the respondent No.3 felt that the recommendation of the Selection Committee was on the basis of the consideration of the qualification and experience of the applicant; that after screening the applications received for the post of T-6 Video Cameraman, only three candidates were selected and called for the trade test and interview; that the Selection Committee after considering the educational qualifications, experience and other relevant factors recommended the case of the applicant for appointment to a post in the lower scale of pay; that accordingly the respondent No.3 issued the offer of appointment to the applicant in a post in the lower scale of pay and left to the decision of the applicant either to accept such an offer or not by giving him 15 days time; that the circumstances explained by the applicant to accept the post in the lower scale of pay was not correct; that at the time of selection to a post in the anlower scale of pay, the applicant was already employed in an organisation of the State Government; that the post offered to him had given some monetary benefit and considering the said factor, the applicant himself accepted the post offered to him; that there was no dominance as such

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compelling the applicant to accept the post in the lower scale of pay; that the applicant as on the date of advertisement had not possessed the requisite qualification for the post of T-6 Video Cameraman and that having regard to the educational qualification and experience, the Selection Committee recommended to offer the applicant a post in the lower scale of pay and the applicant accepted the order without any murmur. The applicant joined the post on 2.7.1989. He submitted his representation on 11.2.1992. Therefore, in this background it is not reasonable to accept the contentions of the applicant. It is submitted that having considered the community of the applicant and also his qualification and experience, the Selection Committee recommended to offer him a post in the lower scale of pay.

11. No doubt, the advertisement was for the post of T-6 Video Cameraman in the scale of pay of Rs.2200-4000. The said post was a post reserved for S.C. Community. Annexure-I to the reply clearly indicates the qualification as indicated in the advertisement and the qualifications of the applicant on the date of his candidature are as follows :

Essential.

- i) Sound General Education
- ii) 5 years experience in handling video equipments in an organization/educational institution of repute.

Essential.

- i) B.A.Passed.
- ii) only 3 years 7 months experience in reputed organization.

Desirable.

- i) 3 years Degree/Diploma in Cinematography from a reputed film institute.
- ii) 3-5 years experience of handling 3/4" U-matic Video camera, VCRs etc.

Desirable.

- i) 2 years Diploma in Photography
- ii) No experience of handling U-matic Video camera, VCR etc; but having 4 months Radio & TV Certificate Course from a private institution.

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12. Thus the respondents submitted that the applicant was not in fact eligible for consideration to the post of T-6 Video Cameraman. It is their further submission that since the applicant was a reserved category candidate, certain relaxation was shown and he was selected for the trade test. They further submit that had the applicant not been a reserved category candidate, his candidature would have been rejected outright. The applicant has not disputed the Annexure-R.I. When that is so, it must be taken that the applicant was not eligible for consideration for the post of T-6 Video Cameraman.

13. Learned counsel for the respondents relied upon the IICAR Hand Book of Technical Services which came into force with effect from 1.10.1975. As per Para-3(1) of the said Handbook, categories and grades of Technical Services are grouped as Category-I, Category-II and Category-III.

14. The post offered to the applicant comes under Category-II. The post advertised in the advertisement i.e. T-6 Video Cameraman comes under Category-III.

15. In the case of Ram Sarup v. State of Haryana and others, reported in 1978(2) SLR page 836, the Hon'ble Supreme Court set aside the reversal of the appellant therein. The appellant therein was appointed as the Labour cum Conciliation Officer by the Government of Haryana since it had taken a decision that the posts of Statistical Officer and Labour-cum-Conciliation Officer should be treated as inter-changeable. However, necessary amendments were not made to the Punjab Labour Service (Class I & II) Rules 1955 which were statutory rules made in exercise of the powers conferred under the proviso to Article 309 of the Constitution of India. It is to be noted that at the time

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when the appellant was appointed as Labour-cum-Conciliation Officer, he had not possessed the necessary qualification. In view of the fact that there was no amendment to the Rules, 1955 and in view of the fact that the appellant therein was not having the necessary qualification at the time when he was appointed as Labour-cum-Conciliation Officer, he was reverted from that post. He challenged the said reversal. In para-2 of the judgment, the Hon'ble Supreme Court clearly stated that the conditions of appointment indicated in the recruitment rules should be followed. However, in that case, the reversion was set aside on the ground that the appellant had gained necessary experience during the interregnum period.

16. In our humble view, the said decision is not applicable to the facts of this case. The case cited above was a case of appointment by promotion. It was not a case of appointment by direct recruitment. In the present case, the applicant had offered his candidature for the post of T-6 Video Cameraman. However, the Selection Committee recommended him for the post in a lower scale of pay.

17. In the case of Sudarshan Sood v. State of Punjab, reported in 1969 SLR page 715, the Hon'ble High Court of Punjab and Haryana considered the promotion of Sectional Officers who were not ordinarily intended to be posted at the Subdivisional charge. They relied upon para-11(4) of the Public Works Department, Irrigation Branch Manual and considered the scope of the said para. The Hon'ble High Court held that the unqualified persons should not be allowed to hold the Subdivisional charge as long as qualified persons are available subject to the right of the Government to relax the qualifications under the proviso to Rule 5 of the Rules, 1941.

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18. This case is also not applicable to the facts of the present case. As already observed, the applicant submitted his candidature for the post of T-6 Video Cameraman; that as on the date of application, he was not possessing the necessary qualification for the post of T-6 Video Cameraman. However, the Selection Committee considered him fit for an alternative post in lower scale of pay i.e. for the post of T-4 Video Cameraman.

19. Learned Counsel for the applicant contended that there was no such condition in the advertisement and that therefore, offering him a post in a lower scale of pay is contrary to the terms and conditions indicated in the advertisement. For this, the learned counsel for the respondents submits that if we accept the above proposition then the appointment of the applicant to the post of T-4 Video Cameraman has to be set aside.

20. When the offer of appointment has been made for a particular post, the conditions in the advertisement do not become significant. It is only the conditions mentioned in the offer of appointment which are binding on the parties. Our above view receives the support from the decision of the Hon'ble High Court of Delhi in the case of H.C. Widhani v. Union of India, reported in 1969 S.L.R. page 812 wherein the Hon'ble High Court has observed in para-6 as follows :

"6. ... Be that as it may, the letter of appointment, which was issued to the petitioner, clearly stated that the post to which he was being appointed, would be neither in Class I nor in Class II service. The petitioner, as per letter dated February 5, 1957 accepted the offer contained in the letter of appointment dated February 2, 1957. As the conditions stipulated in the letter of appointment were accepted by the petitioner, it is manifest that it is those conditions which would be binding upon the parties and not those which were mentioned in the advertisement...."

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21. In the case of Delhi Transport Corporation v. D.T.C. Mazdoor Congress and others, reported in AIR 1991 S.C. page 101, the Hon'ble Supreme Court considered the Regulation 9 of the Delhi Road Transport Authority(Conditions of Appointment and Service) Regulations,1952. Regulation 9(b) of the said Regulations provides for dismissal of an employee without conducting an inquiry. The Hon'ble Supreme Court held that such a regulation is opposed to public policy, arbitrary and unfair. We feel this decision is of no assistance to the applicant.

22. In the case of Central Inland Water Transport Corporation Ltd. and another v. Brojo Nath Ganguly and another, reported in AIR 1986 S.C. page 1571, the Hon'ble Supreme Court considered the Memorandum of Association of the Corporation and the Rules,1979 framed by the Corporation. The question for our determination in the present case is whether the applicant was liable to be appointed as T-6 Video Cameraman as indicated in the advertisement or whether the action of the respondents in giving him a lower post of T-4 Video Cameraman was proper or not. In our opinion, the decision cited by the learned counsel for the applicant has no application to the facts and circumstances of the case.

23. When the applicant was given the offer of appointment he was free to decide either to accept the post or to reject it. There was no compulsion for him to accept the post offered. No doubt, the department had advertised for the post of T-6 Video Cameraman. As on the date of advertisement, the applicant was not qualified for the post of T-6 Video Cameraman and that he had no requisite experience. Considering the qualification and experience of the applicant, the Selection Committee recommended to offer

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him the lower post of T-4 Video Cameraman. Therefore, he was offered the said post and given 15 days time either to accept it or to reject. When that is so, we cannot find fault with the decision of the Selection Committee or action of the respondent No.3 in offering him a lower post of T-4 Video Cameraman. We cannot sit in judgment over the decision of the Selection Committee. The applicant was at liberty either to accept or reject the post offered to him.

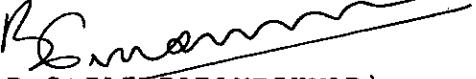
24. The applicant having accepted the post and worked nearly for 3 years submitted a representation on 11.2.1992 i.e. about 2 years and 7 months after he accepted the post. The respondents rightly rejected his representation.

24. The applicant even submitted a representation to the National Commission for Scheduled Castes and Scheduled Tribes, New Delhi. The respondents have also offered their comments on the representation of the applicant.

25. The learned counsel for the applicant submitted that the applicant be granted higher scale of pay as advertised having regard to the fact that the applicant has gained experience and knowledge while working under the respondents. This needs ~~sympathetic~~ consideration. The applicant joined the services of the respondent on 2.7.1989. He has put in 9 years of service. His next promotion is to the post of T-5 Video Cameraman (Cat.III).

26. The respondents may, taking into consideration his experience under them, take a suitable decision to give him higher scale of pay. They shall take decision within 3(three) months from the date of receipt of a copy of this order.

27. Accordingly, the O.A. is disposed of. Parties to bear their own costs.

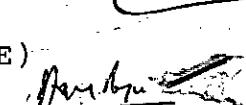

(B.S.JAI PARAMESHWAR)
MEMBER (JUDICIAL)

9.7.98


(R. RANGARAJAN)
MEMBER (ADMINISTRATIVE)

DATED THE 9TH JULY, 1998.

DJ/


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10-7-98

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Copy to:

1. The Secretary, Min. of Agriculture, Krishi Anusandhan Bhavan, PUSA, New Delhi-
2. The Secretary, Indian Council of Agricultural Research, Krishi Anusandhan Bhavan, PUSA, New Delhi.
3. The Director, National Academy of Agricultural Research Management (NAARM), ICAR, Rajendranagar, Hyderabad.
4. The Director General, Indian Council of Agricultural Research, Krishna Anusandhan Bhavan, PUSA, New Delhi.
5. One copy to Mr.R.Brizmohan Singh, Advocate,CAT,Hyderabad.
6. One copy to Mr.N.R.Devraj,Sr.CCSC,CAT,Hyderabad.
7. One copy to HBSJP,M(J),CAT,Hyderabad.
8. One duplicate copy.

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17/7/98
(B)

II COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :
M (J)

DATED: 9/7/98

ORDER/JUDGMENT

M.A/R.A/C.P.NO.

in

O.A.NO. 722/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH

16 JUL 1998

हैदराबाद न्यायपीठ
HYDERABAD BENCH