

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

136

ORIGINAL APPLICATION-NO.431-OF-1995

DATE-OF-ORDER:-19th August, -1997

BETWEEN:

SHRI AHMED MOHIUDDIN

.. APPLICANT

AND

1. The Council of Scientific and Industrial Research,
represented by the Director General,
Rafi Marg, New Delhi,
 2. The National Geophysical Research Institute,
represented by the Regional Director,
Uppal, Hyderabad.
- .. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.V.V.AFZULPURKAR

COUNSEL FOR THE RESPONDENTS:Mr.C.B.DESAI

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

ORDER

ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.V.V.Afzulpurkar, learned counsel for the applicant and Mr.C.B.Desai, learned standing counsel for the respondents.

2. The brief facts of this case are as follows:-

The applicant while working as UDC Special Grade in the National Geophysical Research Institute (NGRI for short) under R-2 had applied against an open Advertisement

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NO.1/81 for the post of Project Assistant which was to be executed under the control of NGRI. The project was named as Deep Seismic Sounding Studies (in short DSSP). It was first taken up at the instance of the Geological Survey of India (GSI for short) financed wholly by GSI. Subsequently it was re-sponsored by the Oil India Limited, Oil & Natural Gas Commission, Department of Science and Technology, Oil Industry Development Board etc. from time to time. The Advertisement was for filling up four posts of Project Assistant. The applicant applied for the same and he was selected by a regularly constituted Selection Committee and was issued the appointment order as Project Assistant for the sponsored project undertaken in NGRI, Hyderabad as per the Office Memorandum No.NGRI-7/6/81-Rectt. dated 1.1.1982 (Annexure I at page 13 to the OA). In the above said order, the applicant was "appointed as Project Assistant in the scale of pay of Rs.550-900 for their sponsored project upto 28.2.1982 or till the duration of the project whichever is earlier". It was also stated in para 4 of that order that "the Project Assistants will have no claim for their appointment as Project Assistant in the regular establishment on termination of their appointment in the project". The applicant joined on that post. But as the project was continued subsequently, his posting as Project Assistant was also extended from time to time by the various orders. Those orders were shown to us.

3. The second order after the issue of the appointment order was dated 23.3.82. This Office Memorandum bearing No.NGRI-6/1/81-Rectt. dated 23.3.1982 states that posting of the Project Assistant was further

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(138)

extended for a period of six months with effect from 1.3.1982 to 31.8.1982. It also states that the expenditure involved may be debited to the DSSP (GSI) and Airborne Surveys (GSI, Cuddapah basin) funds. Subsequently also, the posts were extended by the various OMs and the last one is dated 17/28.3.1994 and by that order dated 17/28.3.94 the project was extended upto 31.3.95. Because of the extension of the post, the applicant was also continued in that post. It is stated that even for extension beyond 31.3.95, the Chief of the Project in his note dated 25.1.95 applied for approval for extension for a further period of two years from 1.4.95 to 31.3.97 and continuation of the staff including the applicant for the said further period and the expenditure and the budget approval for the same has been made by the sponsoring cell. But no proceedings were issued for extension, presumably extension of all the posts was not agreed to. By the Office Memorandum No.NGRI-6/1/89-Rectt. dated 24.4.1995, continuation of the temporary posts for the above said sponsored project was not fully agreed to and only two posts of Project Assistant were sanctioned against that sponsored project. Hence the applicant was not continued beyond 31.3.95.

4. This OA is filed praying for a direction to regularise his services in the post of Project Assistant in the regular cadre of NGRI in terms of the Circular No.16(150)68-EII(PTII) dated 13.1.1981 (Annexure II to the OA) and for a consequential declaration that the applicant as having been regularised for the said post with effect from the date of his initial appointment dated 1.1.1982 with all consequential benefits including his consideration

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in the recruitment and assessment scheme, increments, arrears of pay, revision of pay etc.

5. This OA was filed on 28.3.95. The applicant was relieved of his position as Project Assistant in the above said NGRI project with effect from 1.4.95 and was posted in his parent department viz, NGRI, Hyderabad as Assistant (General). The applicant retired from service on 30.4.95.

6. A technical staff in NGRI is to be superannuated only after attaining 60 years of age whereas non-technical staff is to retire after 58 years of age. As the applicant was posted as Assistant (General) in a non-technical post, he retired after completion of 58 years of age i.e, on 30.4.95.

7. This OA was called for consideration in regard to the interim order on 28.4.95 and on that date the following order was passed:-

"If such of the technical staff who are engaged for these projects on tenure basis are allowed to work till completion of 60 years and if it is necessary to engage any in the place of the applicant in the project work in which he worked, then the case of the applicant also has to be considered for the said post, until further orders".

However, the applicant was not engaged as Project Assistant after he had retired on 30.4.95.

8. The main contention of the applicant in this OA is that in terms of the letter No.16(15)/68-E.II(Pt.II) dated



140

13.1.1981 (Annexure II to the OA), "the existing persons who have rendered three years' continuous service in a scheme should be absorbed either against existing regular vacancies in identical posts or by creating additional posts". As the applicant fulfills the conditions laid down as above by having put in more than 12 years of service as Project Assistant, he should have been continued in that post by posting him in an identical post in the NGRI or by creating an additional post. This para reads as below:-

"The Existing persons who have rendered three years continuous service in a scheme should be absorbed either against existing regular vacancies in identical following ~~by creating additional posts~~ (by prescribed procedure, ~~if the~~ work in the laboratory/institute so demands. The supernumerary posts could be created to absorb the staff employed in such projects/schemes, initially being a one time effort only. the Laboratories/Institutes should not recruit further staff until all such staff is absorbed."

The above instructions should be followed in his case strictly as he has^d been posted as a Project Assistant after having been selected by a properly constituted Selection Committee and fulfilled all the conditions. In this connection, the applicant also relied on the Office Memorandum No. NGRI-7/34/82-Rectt. dated 15.12.1982 (Annexure III at page 18 to the OA) wherein two of the staff namely S/Shri Nirmal Charan and D.V. Subba Rao who were working in the PL-480 project were absorbed in the



NGRI in an identical post on completion of the period of their working in the said project. The case of the applicant is similar to the case of S/Shri Nirmal Charan and D.V.Subba Rao and hence if he is not treated in the same fashion, it will be a case of discrimination.

9. The second contention of the applicant in this OA is that the project authorities applied for approval and continuation of the said project for a further period of two years from 1.4.95 to 31.3.97 and also continuation of the staff including the applicant in the above said project for a further period of two years. Without examining that proposal, the applicant was discharged from that post and posted to NGRI which ^{was} ~~is~~ incorrect especially when there ^{was} ~~is~~ work, there ^{was} ~~is~~ no need to repatriate the staff working in the post against that project back to the parent department.

10. The applicant further submits that he had submitted a representation to R-2 by his representation dated 17.11.1994 (Annexure IV at page 20 to the OA) for conversion of the post in which he is working as one time measure till his retirement. But that representation was not considered as the tenure of the Grievance Committee constituted by the NGRI had expired by then and hence the representation received from the applicant herein was returned as can be seen from Note dated 21.3.95 (Annexure IV at page 26 to the OA).

11. The learned counsel for the applicant ^e ~~st~~renuously argued that the applicant had put in more than 13 years of

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service as Project Assistant. Hence that long period of his working in that project should be considered and on that basis he should have been absorbed in that post or alternatively he should have been absorbed in an similar/ identical post in NGRI on his reversion to his parent department. For this, the learned counsel for the applicant relied on the judgement of the Delhi High Court reported in 1994(8) SLR 168 (Municipal Corporation of Delhi v. P.L.Singh).

12. A reply has been filed in this OA. The main points brought out in this reply are that the project in which the applicant was posted as Project Assistant is called DSSP (Deep Seismic Sounding Project) and later it was renamed as CSSP (Central Seismic Sounding Project). That project was a sponsored project sponsored by the different organisations from time to time. To start with, it was sponsored by the Geological Survey of India and subsequently it was sponsored and fully financed by the other organisations such as Oil India Limited, Oil and Natural Gas Commission, Department of Science and Technology, Oil Industry Development Board etc. At no time the project was undertaken by the NGRI. NGRI executed the project because of its expertise in the running of those projects. The expenditure all along was met by the sponsoring organisations and it was never debited to the expenditure of the NGRI. When the applicant was posted as Project Assistant initially as per the order dated 1.1.82, in that order itself it was made clear that on completion of that project the employees posted from NGRI will be reverted back to their parent organisations and they will

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143

have no claim for appointment as Project Assistant in the regular establishment. Thus the applicant was made to understand even at the time of his posting as Project Assistant in the said project that in case he had ² to be ~~in~~ ^{could} his parent department, he cannot claim posting as Project Assistant in his parent Department. Subsequently also when the post was extended from time to time by the various OMs starting from the OM dated 23.3.82, the applicant was continued in that project with the initially prescribed conditions. When the post of Project Assistant was discontinued in the project, the applicant was posted back ~~in~~ ^{to} NGRI as Assistant (General), the legitimate position he can expect in his parent cadre, by the Office Memorandum No. NGRI-6/1/89-Rectt. dated 31.3.1995. Hence the applicant can have no grouse in his posting. Further the Office Memorandum dated 13.1.81 which the applicant is relying for his continuation as Project Assistant or in a similar capacity in NGRI, will apply only to those who were working in the sponsored project of PL-480. Even that circular dated 13.1.81 is applicable only to the existing persons. That means it is applicable only in regard to those who were working on 13.1.81 and it is not applicable to the others. This was also clarified in the letter No.14(28)/Misc./85-E-II dated 11.3.1986 addressed to R-2 by the CSIR. The present project in which the applicant is working is not covered by the OM dated 13.1.81 and hence the applicant cannot demand for regular absorption. Even in the letter dated 13.1.81 it was made clear that those who were not in the service on that date if repatriated back to their parent department earlier to that date, they should revert to their substantive

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144

(regular) post on completion of that project. Hence the applicant cannot have any relief on the basis of the letter dated 13.1.81.

13. It is further stated by the respondents that as the applicant was borne in the NGRI he was only sent on deputation to the NGRI. He was considered for the post of Assistant (General) and he was posted as Assistant (General) from a date his juniors reported for duty as Assistant (General) in NGRI by the Office Memorandum No. NGRI-7/10/78-Rectt. dated 16.12.86. The applicant was asked to submit his willingness to join in his parent department. But the applicant did not give any satisfactory reply. In any case, he was posted as Assistant (General) in NGRI. He was reverted back to his parent department. Thus the applicant had not lost anything in his parent cadre and he progressed in his parent cadre in accordance with his seniority till he had retired from service.

14. The Office Memorandum No. NGRI-1/3/81-Rectt.(I) dated 19.9.1991 (Page 5 to the reply) was issued inducting the applicant who was in the non-technical (non-gazetted) staff in the technical cadre in Group II as he had successfully completed six months' in-house training course in computerisation conducted by the NGRI, Hyderabad in terms of the letter No. 17(85)/(P-42)90-PPS dated 22.6.1990 (Page 8 to the reply). By that letter dated 19.9.91 the applicant was required to give his consent in writing for considering his case for induction into the technical cadre by 23.9.91. Instead of giving his consent, the applicant

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raised certain queries by his letter dated 23.9.91 (Page 6 to the reply). That was also replied by the Office Memorandum No. NGRI-1/3/81-Rectt.(1) dated 28.10.1991 (Page 7 to the reply). But he had not given his consent in this connection and thus he failed to avail the opportunity. As per the rule available in 1991, for a technical post, a 50 years can be considered and hence his case was considered and he was offered the technical post. The applicant though applied for posting in a technical post in NGRI in the end of December 1994 his case could not be considered in 1994 as the rules by then had changed and the option can be exercised only by a person who had not completed 50 years of age. As the applicant by then completed 50 years of age, his case was not considered in view of the Merit and Normal Assessment Scheme (MANAS scheme) which is in force on that date vide letter No.17(65)/P-42/90-PPS dated 6.4.94 (Page 11 to the reply).

15. The case of S/Shri Nirmal Charan and D.V.Subba Rao ~~was~~ ^{were} entirely different as they were appointed in the PL-480 Project and hence the letter dated 13.1.81 was applicable and hence he cannot compare his case with the above officials.

16. In a similar case viz, T.A.No.25/88 (Writ Petition No.15157/86) (B.Hanumantha Reddy v. The Director, NGRI, Hyderabad), a similar prayer was made when the applicant in that T.A. was reverted back to his parent department from the post of Project Assistant and he claimed for posting in a post identical to the post of Project Assistant. But

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that prayer was dismissed by the Bench in its judgement dated 30.6.1989 (Page 15 to the reply). As the applicant herein is also placed in a similar position, the contention of the applicant that his case also has to be considered for technical post, cannot be acceded to.

17. A rejoinder has been filed by the applicant in this OA. The contents of the rejoinder are more or less same as indicated above. The only point made by the applicant is that his case cannot be equated to that of Mr.B.Hanumantha Reddy, the applicant in T.A.No.25/88, as he had put in only a few years of service in the project whereas the applicant herein had completed more than 12 years of service and hence that judgement is not relevant to the present issue.

18. The project in which the applicant was working was sponsored from time to time by the different authorities. This fact is evident from the Office Memorandums wherein the posts were extended after induction of the applicant in the post of Project Assistant till 31.3.95. In all these OMs, the sponsoring agencies have been indicated. Hence it is clear that the NGRI was executing that project as per the request of the other sponsoring agencies who were bearing the bill for running that project. Nowhere it has been brought out that the expenditure involved in the project was debited to NGRI account. Though the applicant submits that the expenditure was borne by the NGRI, there is no documentary proof to that effect. Whereas the document produced by the respondents lead us to believe that the expenditure incurred in the DSSP/CSSP project was

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by the sponsoring authorities namely GSI, ONGC etc. and at no time the expenditure was borne by the NGRI directly. Hence the staff working in those projects on deputation from NGRI cannot claim for posting in an identical capacity when reverted back to their parent organisation. It is a fact that the applicant was considered for further promotion in his parent department in NGRI on par with his juniors. As a matter of fact, he was further promoted as Assistant (General) in which capacity he appeared to have retired also. Hence it cannot be stated that the applicant had lost his promotion in his parent department when it was due, due to his working in the project. As a matter of fact he chose to go to the project because he was posted in the higher grade than what he was holding in his parent department. That posting had benefited him. He was also promoted as Assistant (General) in his parent department when he was due and hence the applicant had not lost anything in his parent organisation because of his working in the project. Further his final dues also should have been better because he had worked in his parent department only for a month before his retirement.

19. Though the applicant prays that his case should be considered for absorption as Project Assistant or in an identical post when he was posted back to his parent department in view of the letter dated 13.1.81 (Page 15 to the OA), we do not consider that this request is a proper one. The letter dated 13.1.81 is very clear in that it is applicable only to those who were working in the PL-480 and UNDP and other bilateral projects and it does not indicate

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148

that it is applicable to the other projects similar to the one in which the applicant was posted as Project Assistant. Further, in para 8 of the said letter it has been made clear that the said letter is applicable for the existing persons. It means that it is applicable only in regard to those who were working by 13.1.81. The applicant was not working in the project on 13.1.81 and he joined the project only on 1.1.82. Hence that letter cannot be made

the applicant herein. Hence the clarification given in the letter No.14(28)/Misc.785-D.I.I dated 11.3.1986 (Page 14 to the reply) has to be upheld. This is the view we have taken while passing the interim order dated 28.4.95. The cases of the staff as contained in the Office Memorandum dated 15.12.82 (Annexure III at page 18 to the OA) cannot be held as same as the applicant herein as they were the existing staff as on 13.1.81 and they were also borne on the PL-480 project. Hence the applicant cannot compare his case with those of the employees mentioned in that OM dated 15.12.82. When the respondents submit that the case of the officials in the OM dated 15.12.82 is different to that of the case of the applicant, that submission has to be upheld.

20. The applicant submits that his case cannot be compared with that of the applicant in T.A.No.25/88 and hence that case cannot be a precedence to reject his request.

21. We have gone through the judgment in T.A.No.25/88. We do not think that this case is different from that of the facts of the said case viz. TA 25/88. The facts of

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this case are more or less same except that the applicant in that OA had put in only less number of years of service as compared to the applicant herein. That does not mean that the ratio of the judgement cannot apply in the present case.

22. The applicant was given a chance to come on the technical side way back in 1991 when he was eligible to be considered as per the Office Memorandum dated 22.8.90 (page 8 to the reply). But for the reasons best known to him, the applicant did not give his consent to join in the technical cadre in 1991. Had he given his consent, then it would have been to his advantage as being an employee in the technical cadre his date of superannuation would have been at the age of 60 years. For the reasons best known to him, he did not accept that offer. When in 1994 he opted to come on the technical cadre, his case could not be considered in view of the rules as contained in the MANAS Scheme (as per the letter dated 6.4.94 at page 11 to the reply). Hence in 1994, probably the applicant had opted to come to the technical cadre as it ^{was} possible that he could have apprehended that he would not have been continued as Project Assistant and repatriated back to his parent department and posted in a non-technical cadre and that posting would have resulted in his retirement at the age of 58 years. But it is unfortunate that by then the rule has been changed and he could not be inducted in the technical cadre in NGRI. We are of the opinion that the applicant is responsible for not accepting earlier offer made to him to come to the technical cadre in 1991 in which case he would have been benefited. But that being a past history, no

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23. The learned counsel for the respondents relied on the judgement of the A.P.High Court reported in 1997(2) APLJ 78 (SN) (K.Sadanandam v. A.P.State Coop. Bank Ltd, Hyderabad and others) to substantiate their case. But we ~~do not rely on this citation and we feel~~ that it is not relevant citation as far as this case is concerned.

25. We have considered the above submission of the learned counsel for the applicant critically. The expenditure on this project is not borne by the NGRI. It

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is a project executed on behalf of the other agencies and the expenditure on that project is also borne by the other agencies. If so, how far the applicant can claim that he should be borne on the cadre of the Project Assistant or on an identical post in his parent department because of his long service as Project Assistant? If the staff in the project is to be curtailed, then such a decision cannot be termed as irregular or incorrect. The request of the Director of that project for extending this post in his note dated 25.1.95 was considered by R-2. But it was decided that the expenditure on the project has to be curtailed and that the staff strength also should be brought down. Accordingly the OM No. NGRI-6/1/89-Rectt. dated 24.4.95 was issued sanctioning only two posts of Project Assistant and because of that the applicant has to be sent back to his parent department. Hence a decision was taken on the basis of the various considerations to curtail the expenditure on the project. When the applicant because of that decision had to be repatriated back to his parent cadre, he cannot object to the same. The two Project Assistants retained as such are not shown junior to the applicant or they cannot be retained compared to the applicant. In any case no consideration can be given even if such submission is made as both the two candidates are not parties ^{to} ~~in~~ this OA. When he was posted to his parent cadre, he was posted in a post which he is entitled legitimately on the basis of his seniority in the NGRI. His posting in that post led to his early retirement and that cannot be questioned. The applicant though put in more than 12 years of service as Project Assistant, that cannot help him to get an identical post in his parent

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152

cadre. He was correctly posted according to the rules and hence that posting cannot be questioned.

26. We have gone through the citation referred to above [1994/0, ...]. ... were asked to work as Steno-typists (Stenographer Gr.III) against vacant posts. But those Stenographers Gr.III posts were regularly sanctioned posts in the department itself. When they worked there for a long time and when they were reverted as ... held that the experience gained by the workmen is considerable and hence after that considerable years of service as Stenographers Gr.III, their reversion back as LDCs is hard and harsh. It has to be noted here that in that case the posts were in the Department in which they were initially posted as LDCs. Those posts are regular posts debitable to that organisation itself. In the present case, the Project Assistant posts are not borne in the cadre of NGRI. Those posts are created against the sponsored projects. The expenditure on the staff of the project was borne not by the NGRI but by the sponsored agencies. Hence comparing that case of Stenographers Gr.III with that of the applicant herein cannot be called as correct and a reasonable comparison. The citation quoted in our opinion is not a parallel case which can be relied upon to grant the relief in this OA.


27. Though a case was tried to be made out to the effect that surrendering the post of Project Assistant and the reversion of the applicant to his parent cadre at the fag end of his service is to reduce his final settlement benefits, no documentary evidence or any other reliable

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proof is available to prove that the post of Project Assistant was surrendered intentionally thereby reverting the applicant back to his parent department. Hence this ~~decision~~ ^{also} be taken note of to grant any relief to the applicant.


28. In view of what is stated above, we are of the opinion that the applicant has no case. Hence the OA is dismissed. No order as to costs.


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


(R. RANGARAJAN)
MEMBER (ADMN.)

19/8/97
DATED: 19th August, 1997

vsn


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Reportable case

TYPED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

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

AND

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

Dated: 19/8/97

ORDER/JUDGEMENT

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

in

C.A.NO. 431/95

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

II Court

