

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

**OA/291/00322/2015
with MA No. 291/00342/2015**

Order Reserved on: 11.05.2016

Date of Order: 30

Coram

31st May 2016

Hon'ble Ms. Meenakshi Hooja, Member (A)

Nitesh Kumar Sharma son of Sh. Y.K. Sharma, aged around 34 years, by caste Brahmin, resident of A-15, Janta Colony, Jaipur presently working as Assistant Director (Entomology), in the office of Respondent No. 4

.....Applicant
(By Advocate Mr. Amit Mathur)

VERSUS

1. The Union of India through its Secretary, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.
2. The Directorate General, Health Services, Nirman Bhawan, New Delhi.
3. The Director, National Vector Borne Disease Control Programme, 22 Shamnath Marg, Delhi 110054.
4. The Senior Regional Director, Regional Office for Health and Family Welfare, Kendriya Sadan, Block-B, Sector 10, Vidhyadhar Nagar, Jaipur 302023
5. Dr. R.K. Gupta, Senior Regional Director, Regional Office for Health and Family Welfare, Kendriya Sadan, Block-B, Sector 10, Vidhyadhar Nagar, Jaipur 302023

.....Respondents
(By Advocate Mr.N.C. Goyal)

ORDER

This OA has been filed by the applicant u/s 19 of the Administrative Tribunals Act, 1985 aggrieved from contents of Certificate

dated 01.05.2015 (Annexure A/1) issued by Respondent No. 4 and communication letter dated 19.05.2015 (Annexure A/2) issued by Respondent No. 4 to Respondent No. 2 & 3 regarding extension of contractual service of Assistant Director (Entomology), seeking the following reliefs:

- (i) The present Original Application may kindly be allowed and order Annexure-A/1 and Annexure-A/2 may kindly be quashed and set aside.
- (ii) The Respondents may kindly be directed to allow the applicant to continue in the services till regular recruitment is made.
- (iii) The Respondent No.4 may be restrained from evaluating, supervising the work of the applicant.
- (iv) The Respondent No.4 may kindly be restrained from raising any obstructions, hindrance and from taking any coercive action against the applicant.
- (v) Any other order or direction which deem fit and proper in the facts and circumstances of the case may also be passed in favour of the applicant.
- (vi) Cost of this original application also may be awarded in favour of the applicant.

2. The matter was heard on 18.04.2016, 21.04.2016 and the hearing was continued on 11.05.2016 in view of certain queries made by this Tribunal on 21.04.2016. During the course of hearing, letter dated 17th December, 1015 from Imphal which is the information obtained under RTI by the applicant submitted by the counsel for applicant and letter dated 12.05.2016 sent by the office of National Vector Borne Disease Control Programme, Ministry of Health & Family Welfare, addressed to the Sr. Regional Directors/Regional Directors submitted by counsel for respondents, were taken on record.

3. In this case apart from the OA and reply to the OA, and the rejoinder, various MAs were filed and they were decided/disposal of during the course of proceedings except MA No. 291/342/2015. The said MA has been filed by the Respondents for deleting the name of the Respondent No. 5, and in this regard counsel for respondents submitted that Respondent No. 5 has taken all action in a bonafide manner in his official capacity as Senior Regional Director, Regional Office for Health and Family Welfare, Jaipur, Rajasthan (i.e. Respondent No. 4) and therefore question of mala fide does not arise and impleading him in personal capacity as Respondent No. 5 has no justification whatsoever and prayed for deletion of Respondent No. 5 from the array of Respondents. Per contra, Counsel for applicant contended that Respondent No. 5 has been made Respondent in personal capacity because there are allegations of mala fide and making him Respondent in personal capacity is proper and fully justified. In view of the aforesaid contentions and after perusal of MA and its reply, Respondent No. 5 is retained as a Respondent and the MA No. 291/00342/2015 is disposed of as above.

4. When the matter came up for hearing and consideration, Ld. Counsel for the applicant submitted that there are mainly two prayers in the OA (i) that Annexure A/1 dated 01.05.2015 is recast especially wherein it has been stated that the conduct of the applicant is unsatisfactory and (ii) letter dated 19.05.2015 (Annexure A/2) be quashed and set aside and the applicant be allowed to continue in the service as Assistant Director (Entomology) till a regular appointment is made on this post.

5. In this context, counsel for applicant submitted that the applicant was engaged in the year 2013 as Assistant Director (Entomology) after a due process of selection and he joined his duties on 11.06.2013 in the office of Respondent No. 4. He also signed the contract agreement executed between the applicant and the Respondents (Annexure R/3) which was initially for a period of one year or till the appointment of regular Assistant Director (Entomology) whichever is earlier. At this stage, counsel for applicant also alleged that the word 'whichever is earlier' were actually added by Respondent No. 5, though they were not mentioned in the draft sent by the higher authorities. Counsel for applicant further submitted that the term of the applicant was to end on 11.06.2014 but in view of the job requirement with regard to prevention of Vector Borne Diseases, he was asked to continue working and in this regard he referred to certificate/documents of visits made to Sikar and Dausa (Annexure A/27). Subsequently vide Annexure A/8 which is a letter dated 11.09.2014 of the Ministry of Health & Family Welfare to Director General of Health Services, New Delhi the contractual services of the Assistant Directors (Entomology) appointed on contract basis including the applicant were extended for a period of one year or till such time these posts are filled up by regular appointment whichever is earlier. In this letter the term of appointment of the applicant was extended w.e.f. 12.06.2014. In pursuance of E-mail of 15.09.2014 (also sent to the Respondent No. 4) contents of Annexure A/8 were received by the applicant but when the applicant submitted his joining report on 17.09.2014, the Respondent No. 5 did not allow to him to join and therefore, the applicant filed MA No. 291/00373/2014 in another OA No. 433/2014 (already filed by the applicant) and vide this Tribunal order dated 29.09.2014 (Annexure A/9) as an interim measure the applicant

was allowed to join in office of Respondent No. 4 at Jaipur in compliance of the directions issued by the Ministry of Health and Family Welfare, New Delhi letter dated 11th September, 2014 and it was directed that for the time being his joining may be treated from 17.09.2014 i.e. the date on which he submitted his joining report to the Senior Regional Director, Jaipur. It was further directed in the order of 29.09.2014 (Annexure A/9) that with regard to the issue of joining to be effective from 12.06.2014, it would be decided by the Respondents as per the instructions of the Director General of Health Services, New Delhi. This issue was later decided by the Ministry vide its letter dated 31.12.2014 (Annexure A/26) in which the extension of the contractual services of Assistant Director (Entomology) were made effective from the date of their joining at Regional Office and after signing the contract with the Sr. RD of concerned office for a further period of one year or till these posts are filled up on regular basis, whichever is earlier.

6. Counsel for applicant submitted that thereafter the applicant made a request for payment of salary for the period from 12th June 2014 to September, 2014 as also for TA/DA for the visits made by him including those to Dausa and Sikar but to this Respondent No. 5 got annoyed and prejudiced. Counsel for applicant further submitted that vide letter dated 26.12.2014 (Annexure A/20), the applicant requested Respondent No. 5 for an experience certificate before 05.01.2015 as he had to attend written test/personal discussion on 05.01.2015 for the post of Scientist – C at Model Rural Health Service Unit, but the Respondent No. 5 did not issue the certificate at that time and only belatedly issued Annexure A/1 dated 01.05.2015 i.e. after 5 months and in a mala fide manner reported in the certificate dated 01.05.2015 (Annexure A/1) that " his conduct has been adjudged as unsatisfactory" much to the damage of the applicant

and his career prospects. Counsel for applicant contended that just because the applicant stood up for his rights and asked for salary and TA/DA for a certain period where he had worked as may be clearly seen from letter dated 28.11.2014 (page 181 annexed with Annexure A/27) of Dr. M.L. Bansal addressed to Respondent No. 5, this annoyed the Respondent No. 5 and he acted in a malafide manner. Counsel for applicant in this regard submitted that in a similar case of Dr. K.L. Vaiphei, Regional Office of Health & Family Welfare, Imphal whose term was also extended w.e.f.03.07.2014 by same order dated 11th September, 2014 for Imphal, he was paid enumeration from 3rd July itself as per RTI information dated 17th December, 2015 (submitted during the course of hearing and taken on record), but the same has been denied in the case of applicant. Counsel for applicant reiterated that only out of mala fide his conduct has been adjudged as unsatisfactory in Certificate Annexure A/1 dated 01.05.2015 and the line in this regard is required to be deleted and prayed for the same.

7. Counsel for applicant further contended that the applicant is entitled to continue in the service beyond the period of 2014-15 i.e. after 15.09.2015 because vide letter dated 20th May, 2015 (Annexure A/25) Ministry of Health & Family Welfare, Directorate General of Health Services, New Delhi again sought performance report of the applicant along with specific recommendation for further extension for the period 2015-2016. However, no recommendation was sent by the Respondent No. 5 in response to letter dated 20th May, 2015. Had the recommendation been sent, the case of the applicant could have been considered by the Directorate General of Health Services, Ministry of Health & Family Welfare. The Respondent No. 5 sent letter dated 19.05.2015 as at Annexure A/2 regarding sending a fresh contractual

service agreement and even therein mentioning that the tenure is ending on 11th June 2015, even though it was already extended for one year from date of joining (which in case of the applicant was 17.09.2014) vide letter dated 31.12.2014 (Annexure A/26), and therefore, there was no question of his tenure coming to an end on 11th June, 2015. Counsel for applicant further contended that even though contract for 2014-15 was not signed the term of his services were ended on 15.09.2015 and he was relieved vide order dated 16.09.2015 (Annexure MA/1 filed with MA 338/2015). Counsel for applicant also contended that the services of the applicant are required to be continued because no regular appointment has been made against the post (as admitted by the Respondents) and in view of his selection through due process, his services cannot be ended. In support of his contentions, counsel for applicant also relied upon the followings decisions/judgements :

- (i) Commissioner, Kendriya Vidyalaya Sangathan & Others Versus Anil Kumar Singh and Others, Civil Appeals No. 11785 of 1996 with No. 11786 of 1996 and SLP (C) No. 5184 of 1997, decided on December 6, 2000 - Hon'ble Supreme Court of India.
- (ii) Mahendra Singh & Ors Vs. State of Rajasthan & Ors., SB Civil Writ Petition No. 5753/2010, decided on 05th August , 2010 - Hon'ble Rajasthan High Court, Jodhpur Bench.
- (iii) Sarita and Ors Vs State of Rajasthan and Ors, decided on 08.05.2009 - 2010(1)ILR (Raj) 379, RLW 2010(1)Raj 275, 2009(3) WLN 342 - Hon'ble Rajasthan High Court, Jaipur Bench
- (iv) Dilip Bhatanagar and Ors Vs Rajasthan Agriculture University, SB Civil Writ Petition No. 2922 of 1990, 5286, 5385, 5451, 5568, 5654 of 1991 and 30 of 1992 decided on 04.04.1994 - Hon'ble Rajasthan High Court.
- (v) Krishan Kumar Vs Union Territory of Chandigarh and Ors. decided on 2 December, 2002 : 2004 (3) SLJ 229 CAT
- (vi) Savita Samriya Vs State and Ors, decided on 22.05.2009 (SB Civil Writ Petition Nos. 2333, 2524, 2677, 2711, 2807, 2790, 2808, 2812, 2859, 2902, 2919, 2616, 2926, 2951, 3139, 3169, 3292, 3293, 3877, 5162, 5217-5223, 5237, 5238, 5239, 5240 and 6134 of 2009 Hon'ble Rajasthan High Court Rajasthan

The counsel for applicant thus prayed for the OA to be allowed.

8. Per contra, Id.counsel for Respondents submitted that as brought out in the reply, the basic facts of the case are that the applicant was initially appointed to the post of Assistant Director (Entomology) on purely contract basis for a period of one year w.e.f. 11.06.2013 or till regular appointment is made, whichever is earlier, and after signing of the contract agreement, he joined as Assistant Director (Entomology) on 11th June, 2013 and on expiry of contractual period, the services of the applicant were disengaged w.e.f. 10.06.2014. He further submitted that vide letter dated 11th September, 2014 (Annexure A/8), extension of contractual services of the Assistant Directors (Entomology), appointed on contract basis in 2013 at various Regional Offices of Health & Family Welfare including at Jaipur were approved to be extended by the Ministry of Health & Family Welfare, and by which the extension of the applicant was made effective w.e.f. 12.06.2014. In this regard when the applicant submitted his joining report on 17.09.2014 w.e.f. 11.06.2014 then Respondent No. 4 (Sr. Regional Director, Regional Office for Health and Family Welfare, Jaipur) sought clarification from the higher authorities regarding joining of the applicant that whether joining shall be accepted from 12.06.2014 as extension is granted w.e.f. 12.06.2014 but the applicant is actually not joining from 12.06.2014, but in the meantime, the applicant filed OA No. 433/2014 before this Tribunal and this Tribunal vide order dated 29.09.2014 (Annexure A/9) allowed joining to the applicant w.e.f. 17.09.2014 i.e. the date on which the applicant submitted his joining report and it was left for the

Ministry to decide about the period from June to September, 2014. The Ministry of Health & Family Welfare vide letter dated 31.12.2014 (Annexure A/26) decided that the extension of the contractual services of the ADs (Entomology) will be effective for one year from the date of their actual joining at the ROH&FW or till the posts are filled up on regular basis whichever is earlier. Counsel for Respondents strongly contended that seeking of clarifications on administrative matters and legal issues such as at Annexure A/10 dated 07.10.2014 from the higher authorities cannot in any way said to be mala fide.

9. Counsel for applicant also further contended that being a Government organization, it has well laid down procedures and it is not correct that the applicant was verbally asked to work between the period from 11th June to September, 2014. Counsel for Respondents also vehemently denied that Respondent No. 5 had ever issued verbal instructions as brought out in the letter of Dr. M.L. Bansal dated 28.11.2014 (filed with Annexure A/27) regarding taking of work from the applicant during the period in which no orders regarding the extension of the applicant had been issued. The Respondents have a proper procedure for assigning duties, including that of tours and all orders are given in writing and referred to such instructions being issued on a regular basis as at Annexure R/6. Therefore, the question of the applicant or for that matter any other person going on official tour without written orders does not arise. He further submitted that with regard to the

tours as claimed by the applicant to have been made officially to Dausa and Sikar, later on reports were called from the concerned authorities and have been placed at MA-R/1, and MA- R/2 filed with MA No. 40/2016 by which such tours, as being made officially by the applicant have been denied by CMHO, Dausa and in the case of Sikar, the certificate was issued by another officer in the absence of regular CMHO. Counsel for Respondents also referred to letters of various staff members of the office filed as R/2 with the reply which clearly bring out that the applicant was not really seen in the office between June-September, 2014 except to occasionally find out about his extension. Thus question of performing duties during June to September 2014 does not arise and the letter dated 28.11.2014 filed by the applicant as part of Annexure A/27, has no validity and perhaps some action has been taken against the issuing authority.

10. He further referred to letter dated 30th May, 2013 (Annexure R/2) filed with MA No. 322/2015 in which the Ministry of Health and Family Welfare itself directed that the contract period is one year or till the appointment of regular Entomology whichever is earlier and the words "whichever is earlier" has not been added by Respondent No. 5 out of mala fide but as per aforesaid direction in the first contract agreement (Annexure A/3) signed by the applicant. Counsel for Respondents thus submitted that there is no mala fide on the part of Respondent No. 5 and certificate Annexure A/1 dated 01.05.2015 has been issued after duly adjudging the

conduct of the applicant and this was also informed to the higher authorities vide letter dated 20.05.2015 (Annexure MA/4 annexed with MA No. 263/2015 filed by the applicant himself).

11. With regard to further extension of the applicant and right to continue in service beyond 15.09.2015 i.e. for 2015-2016, counsel for Respondents submitted that report on the working of the applicant, as asked for vide letter dated 27th April, 2015 (Annexure- MA/2 in MA No. 263/2015), was sent by Respondent No. 5 (Annexure-MA/3 in aforesaid MA No. 263/2015) and letter dated 20.05.2015 (Annexure A/25) was merely a reminder of letter dated 27th April, 2015 to which had a report and reply had already been sent therefore, no further report was required to be sent. Counsel for Respondents further submitted that citations referred to counsel for applicants are all related to ad-hoc, temporary and casual employees which is not the case of the applicant as he was initially appointed to the post of Assistant Director (Entomologist) on purely contractual basis for a period of one year w.e.f. 11.06.2013 and further continued from 17.09.2014 to 15.09.2015. Counsel for Respondents also submitted that the reply and other pleadings have been filed by the Respondents on behalf of all the Respondents and not just Respondent No. 4 & 5. Counsel for Respondents also contended that in the contract agreement itself, all disputes are to be settled by arbitration but the applicant has approached the Tribunal directly and has no right to relief and on all the aforesaid grounds prayed for the dismissal of the OA.

12. Considered the aforesaid contentions and perused the voluminous records. It is seen in the first place that the applicant was initially engaged as Assistant Director (Entomologist) on contract basis for a period of one year from 11.06.2013 or till the appointment on regular basis, whichever is earlier and he signed the contractual Service Agreement as at Annexure-A/3. There does not appear to be any force in the contentions of counsel for applicant that word "which was earlier" was added in a mala fide manner by Respondent No. 5 because as per letter dated 30th May, 2013 (Annexure R/2 page 234) the Ministry of Health and Family Welfare has itself given such directions that the contract period is for one year or till the appointment of regular Entomology whichever is earlier. As far as the question of salary for the period from June 2014 to September, 2014 (i.e. joining of the applicant to be treated as effective from 17.09.2014 as per direction of this Tribunal at Annexure A/9 dated 29.09.2014), though the applicant has claimed to have worked during this period as per the verbal directions of Respondent No. 4 and even performed official tours to Sikar and Dausa, also with Shri M.L. Bansal, officer next senior to Senior Regional Director, but it is noted that these tours have been controverter by the concerned authorities of Dausa and Sikar when verification was sought by the Respondents and further there are no written orders of the competent authority for the applicant to proceed on such tours. There is force in the contentions of counsel for Respondents that without official orders and following laid down

procedures in a Government Organization, these tours and duties cannot be accepted as having been performed officially. Anyhow the service of the applicant were extended vide Ministry letter dated 13.12.2014 from one year from date of joining (Annexure A/26). In view of the above position, it cannot be said that the Respondent No. 5 got prejudiced or acted in a mala fide manner when the applicant sought his salary and TA/DA or that various letters and communications sent to higher authorities by Respondent No. 5 were just to create difficulties for the applicant. Therefore while no mala fide is established/proven on the part of Respondent No. 5, at the same time it cannot be said that merely because the applicant sought salary or TA/DA, that it can be considered a misconduct or that his conduct can be adjudged as unsatisfactory.

13. As far as the second issue regarding continuing in service by the applicant beyond 15.09.2015 is concerned, it is noted that in the first place, no further extension/renewal of the contract beyond this date after he was relieved vide order dated 16.09.2015 (Annexure MA/1 in MA No. 338/2015) has been made by the concerned authorities and further merely because no regular appointment has been made does not as a matter of right entitle the applicant to continue in service on contract basis. The citations referred to by the counsel for applicant, do not come to the rescue of the applicant because neither his services have been extended, nor they have been substituted by another contractual engagement for the same work or any procedure for recruitment initiated in

which the applicant has not been given a due chance. Further, as brought out in letter dated 02.05.2016 of National Vector Borne Disease Control Programme , Ministry of Health & Family Welfare addressed to Sr.Regional Directors/Regional Directors that proposal of extension/engagement of Assistant Director(Entomologist) is presently stuck in the stalemate. In view of the above analysis the prayer of the applicant to continue in the services as the matter of right beyond 15.09.2015 is not acceptable.

14. Therefore considering the above analysis and the entire facts and circumstances of the case, it is deemed just and proper to direct Respondent No. 5 to revise Annexure A/1, certificate dated 01.05.2015 and delete the words 'but his conduct has been adjudged as unsatisfactory'.

Accordingly, the OA is partly allowed with no order as to costs. MA No. 291/00342/2015 also stands disposed of as at Para 3 above.


(Ms. Meenakshi Hooja)
Administrative Member

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