

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

13

ORDERS OF THE BENCH


Date of Order: 17.04.2012

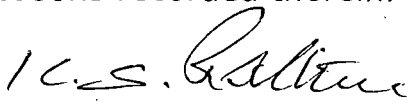
OA No. 448/2011

Mr. Anupam Agarwal, counsel for applicant.
Mr. V.S. Gurjar, counsel for respondents.

Heard learned counsel for the parties.

Original Application is disposed of by a separate order
on the separate sheets for the reasons recorded therein.


(ANIL KUMAR)
MEMBER (A)


(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 17th day of April, 2012

CORAM :

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

1. **ORIGINAL APPLICATION NO. 431/2011**
With
MISC. APPLICATIONS NOS. 283/2011 &
373/2011

Shailendra Singh Dhaked son of Shri Shiv Charan Lal
aged about 30 years, resident of 369 Kusum Vihar,
Ramnagar Road, Jagatpura Road, Jaipur now
discontinued from service from the post of E-1 (Lab
Technician), Central Sheep and Wool Research
Institute, Avikanagar, Tonk.

.... Applicant

(By Advocate: Mr. Shrey Gaharana)

Versus

1. The Indian Council of Agriculture Research
through its Secretary, Krishi Bhawan, Dr.
Rajendra Prasad Road, New Delhi.
2. The Director, Central Sheep and Wool
Research Institute, Avikanagar, Tonk.
3. The Chief Administrative Officer, Central Sheep
and Wool Research Institute, Avikanagar,
Tonk.

... Respondents

(By Advocate : Mr. V.S. Gurjar)

2. **ORIGINAL APPLICATION NO. 448/2011**

Manish Kadaiya daughter of Shri Kishan Lal aged
about 21 years, resident of Ward No. 8, Ambedkar
Nagar, Behrore, Alwar now discontinued from service
from the post of T-1 (Lab Technician), Central Sheep
and Wool Research Institute, Avikanagar, Tonk.

... Applicant

(By Advocate: Mr. Anupam Agarwal)

Versus

Anil Kumar

1. The Indian Council of Agriculture Research through its Secretary, Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi.
2. The Director, Central Sheep and Wool Research Institute, Avikanagar, Tonk (Rajasthan).
3. The Chief Administrative Officer, Central Sheep and Wool Research Institute, Avikanagar, Tonk (Rajasthan)

... Respondents

(By Advocate: Mr. V.S. Gurjar)

3. **ORIGINAL APPLICATION NO. 449/2011**

Ramkesh Meena son of Shri Ramkhiladi Meena aged about 36 years, resident of Village Khohra, Post Barabujurg, Tehsil Mahua, District Dausa, Rajasthan now discontinued from service from the post of T-1 (Field Man), Central Sheep and Wool Research Institute, Avikanagar, Tonk.

... Applicant

(By Advocate : Mr. Anupam Agarwal)

Versus

1. The Indian Council of Agriculture Research through its Secretary, Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi.
2. The Director, Central Sheep and Wool Research Institute, Avikanagar, Tonk (Rajasthan).
3. The Chief Administrative Officer, Central Sheep and Wool Research Institute, Avikanagar, Tonk (Rajasthan)

... Respondents

(By Advocate : Mr. V.S. Gurjar)

ORDER (ORAL)

The facts & circumstances and the legal position in OA No. 431/2011 (Shailendra Singh Dhaked vs. Union of India & Others), OA No. 448/2011 (Manisha Kadaiya vs. Union of India & Others) and OA No. 449/2011 (Ramkesh

Anil Kumar

Meena vs. Union of India & Others) are similar and, therefore, they are disposed of by a common order.

2. The facts of OA No. 431/2011 (Shailendra Singh Dhaked) are being taken as a lead case. The applicant has filed this OA praying for the following reliefs:-

"It is, therefore, prayed that record relating to the matter may kindly be called and after considering the same the impugned order dated 16.09.2011 discontinuing the services of the applicant be quashed and set aside. Clause 7 of the office Memorandum dated 25.03.2011 so far as it applied Rule 5 of the CCS (TS) Rules, 1965 to the employees during the period of probation may kindly be held illegal. The respondents should be directed not to apply clause 7 of office memorandum dated 25.03.2011 and Rule 5 of the CCS (TS) Rules 1965 on the applicant. The applicant should be reinstated in service with all consequential benefits including pay and allowances as admissible to him as before including arrears thereof. Any other relief which this learned Tribunal deems fit may kindly be passed in favour of the applicant.

3. The applicant is aggrieved by the order dated 16.09.2011, issued by respondent no. 3, whereby in pursuance of ICAR letter dated 16.09.2011 (Annexure A/1) the respondent no. 2 has decided to discontinue his services with immediate effect under Rule 5 of CCS (TS) Rules, 1965. He is also aggrieved by Clause 7 of Office Memorandum dated 25.03.2011 whereby Rule 5 of the CCS (TS) 1965 has been made applicable on the employees of the council and on applicant during the period of probation.

4. Brief facts of the case, as stated by the applicant, are that he was initially appointed as Senior Fellow vide

Anil Kumar

office order dated 08.10.2005. He was again appointed as Research Associate on contractual basis in the NAIP Project vide office Memorandum dated 01.06.2009. That the respondents issued an advertisement No. CSWRI/7/09 calling applications for different posts from the eligible candidates. The applicant being eligible having qualification applied for the post of T-1 (Lab Technician), scale Rs.5200-20200 and grade pay Rs.2000 (PB-1). After being declared successful in the written examination as well as interview, he was offered appointment vide office Memorandum dated 25.03.2011 (Annexure A/3). That the applicant immediately after receipt of the Memorandum dated 25.03.2011 reported for duties on 04.04.2011. He was posted in the Animal Nutrition Division vide office order dated 04.04.2011 (Annexure A/4). Consequent upon his joining and thus posting, the respondents issued the order dated 05.07.2011 (Annexure A/5) appointing him w.e.f. 04.04.2011 on the terms & conditions mentioned in office memorandum dated 25.03.2011.

5. That the applicant since then continued to discharge his duties to the satisfaction of the respondents. However, to the utter surprise of the applicant, he had been served with the order dated 16.09.2011 vide which his services were discontinued with immediate effect under Rule 5 of the CCS (TS) Rules, 1965. Feeling aggrieved by the action of the respondents in dispensing his services, this OA has been filed.

Anil Kumar

6. According to the applicant, the impugned order dated 16.09.2011, discontinuing his services, as per Clause 7 of the office Memorandum dated 25.03.2011 and Rule 5 of the CCS (TS) Rules 1965 is totally illegal and unlawful. The applicant was not a temporary employee rather he was appointed in pursuance to the advertisement after due selection on probation. As such, Rules of 1965 cannot be said to be mutatis mutandis apply on him and, therefore, the impugned order deserves to be quashed and set aside. The bare perusal of the Rules, 1965 would clarify that it did not apply to the substantive employees during the period of probation. The respondents by incorporating Clause 7 tried to apply the same on the applicant. It being illegal, any consent, thereof by accepting it cannot operate upon him. An illegal condition cannot operate as estoppels contrary to the rules. Moreover, the applicant qualified the written examination as well interview held in pursuance thereof. On being selected he was offered appointment vide office Memorandum dated 25.03.2011.

6. Prior to passing of the impugned order dated 16.09.2011, the applicant had worked for about four and a half months. The respondents had fixed the period of probation for two years from the date of joining. As such, as assessment of the performance could have been made only after expiry of the period or sometimes in close proximity of it. Yet the respondents without considering

Anil Kumar

this aspect of the matter and without assigning any reason discontinued the services of the applicant vide order dated 16.09.2011 with immediate effect. The order dated 16.09.2011 being illegal and violative of the rights of the applicant deserves to be quashed and set aside. This order did not disclose any reason to discontinue the services of the applicant. The applicant during his service was never warned nor issued any memorandum. The impugned order is a non speaking and non reasoned order. It has been passed in gross violation of the principles of natural justice. On this ground also, it deserves to be quashed and set aside.

7. The respondents have filed their reply. In the reply, they have admitted the issuance of the office memorandum dated 16.09.2011 (Annexure A/1). They have further stated that a complaint was received against Dr. S.A. Kareem, Director, Central Sheep and Wool Research Institute (CSWRI) Avikanagar, against the illegalities and irregularities committed in recruitment to the post of T-1 (Lab Technician) at CSWRI, Avikanagar. The matter was investigated by a committee constituted in the Indian Council for Agricultural Research (ICAR) and the Committee did observe irregularities in the recruitment process. The matter was considered by the competent authority and it was decided to cancel the recruitment process conducted by CSWRI on the post of T-1 (Lab Technician) and take action against responsible officers of

Anil Kumar

CSWRI for the alleged irregularities. Accordingly the services of the applicants, Shailendra Singh Dhaked, Manisha Kadaiya and Ramesh Meena have been terminated by the Director, CSWRI, Avikanagar.

8. They have further stated that in the instant case at hand, there has been gross irregularity in the selection for the three posts of T-1 (Lab Technician) at CSWRI, Avikanagar during the year 2011 in so much so that the selection of the candidates to the post of T-1 (Lab Technician) was done purely on the basis of interview, completely ignoring the marks obtained by the candidates in the written examination. No criteria for awarding marks for interview was fixed. The candidates who got less marks in the written examination were selected ignoring the candidates who got high marks in the written examination. The Director, CSWRI, Avikanagar, considered only the interview marks for selecting the candidates. This process is against the established law in the country. The Hon'ble Apex Court of the land in a catena of judgments has held in unequivocal terms that the interview marks cannot exceed 15%. Thus there is gross irregularity and illegality apparent on the face of record and, therefore, there is no element of any illegality in the action of the respondents and hence, the claim of the applicant and the OA merits rejection in limini.

Anil Kumar

9. The averments made by the applicants with reference to their performance are irrelevant in the present case because they have not been terminated from service on account of their unsatisfactory performance but they have been terminated from service invoking the provisions of Rule 5 of CCS (TS) Rules, 1965. Thus the action of the respondents is perfectly legal and valid. Since the selection of the applicants has been made contrary to the established recruitment rules and the law declared by the Hon'ble Apex Court of the land, therefore, the action of the respondents cannot be faulted.

10. The mere fact that the applicants reported for duty and were appointed to the temporary post of T-1 (Lab Technician) does not confer any indefensible right in favour of the applicants. A bare perusal of the office order 16.09.2011 (Annexure A/1) would reveal that offer of appointment issued vide office order dated 25.03.2011 has been withdrawn by the competent authority in exercise of power under Rule 5 of the CCS (TS) Rules, 1965 as well as in view of Clause 7 of the offer of appointment dated 25.03.2011 and there is no element of any illegality in the action of the respondents.

11. The respondents have further stated that the applicants are trying to twist the fact that they were not temporary employees. The applicants were informed in unequivocal terms vide CSWRI Memorandum dated

Anil Kumar

25.03.2011 that the post of T-1 (Lab Technician) being offered to them is a temporary post. Thus the applicants were appointed to the temporary post of T-1 (Lab Technician) and were on probation. As per CCS (TS) Rules, 1965 and as per terms & conditions of the Memorandum dated 25.03.2011, the services of the applicants were liable to be terminated at any point of time during the period of probation without giving any reason. Thus, there is no element of any illegality in the action of the respondents in issuing the impugned order dated 16.09.2011. There has been gross illegality in the selection process adopted by the appointing authority while making appointments of the applicants to the post of T-1 (Lab Technician). Therefore, if an appointment is made illegally/irregularly, then the same cannot be basis for continuation of that appointment and thus the action of the respondents in terminating the services of the applicants vide office order dated 16.09.2011 is absolutely legal. Thus the OAs have no merit and need to be dismissed.

12. The respondents have also filed an additional affidavit in compliance of the directions issued by this Tribunal dated 06.01.2012.

13. Heard the learned counsel for the parties and perused the relevant documents on record. Learned counsel for the applicant argued that the applicants applied for the post of T-1 (Lab Technician) against the

Anil Kumar

advertisement issued by the respondents. They appeared in the written examination as well as interview and on being duly selected, they were given appointment. He further argued that there is no specific rule of recruitment in CSWRI and in absence of any specific rule, there was no violation of any recruitment rules. The Appointing Authority has not committed any illegality in selecting the applicants. They have not got the appointment on the basis of any wrong information or malafide on their part. If any irregularity has been committed; then persons responsible for that irregularity should be held responsible and not the applicants. Learned counsel for the applicant relied upon the following judgments:-

- (i) Anuragh Kumar Johri vs. Union of India & Others decided by the CAT, Allahabad Bench (OA No. 1250/2006 dated 13.04.20007).
- (ii) Shri Arun Kumar Singhal vs. Indian Council of Agricultural Research & Others decided by CAT, PB, New Delhi (OA No. 2937/2009 dated 26.11.2010).
- (iii) Punish vs. Government of NCT of Delhi decided by CAT, PB, New Delhi (OA No. 3433/2010 dated 16.11.2011).
- (iv) Purshotam Lal Dhingra vs. Union of India AIR 1958 SC 36 (1)
- (v) R.S. Sial vs. The State of U.P. & Others AIR 1974 SC 1317
- (vi) Man Singh vs. State of Haryana & Others 2008 INDLAW SC 750
- (vii) Sanjay Singh & Another vs. Public Service Commission, Allahabad & Another AIR 2007 SC 950
- (viii) Rakhi Ray & Others vs. High Court of Delhi & Others with Navin Kumar Jha vs. Lt. Governor & Others, AIR 2010 SC 932.

Anil Kumar

(ix) Ramesh Kumar vs. High Court of Delhi & Another, AIR 2010 SC 3714

14. Learned counsel for applicant in OA No. 448/2011 (Manisha Kadaiya) further argued that as per Clause 6 & 7 of the office Memorandum dated 25.03.2011 shows that the applicants have been placed on probation for two years from the date of his/her joining the post which may be extended at the discretion of the competent authority. Failure to complete the period of trial to the satisfaction of the competent authority will render him/her liable to be discharged from service. He argued that there is no charge against the applicants. The applicants did discharge their functions to the satisfaction of the respondents. There cannot be termination during the period of probation. He further argued that Clause 7 of the Memorandum states that his/her appointment can be terminated without assigning any reason by one month's notice on either side under Rule 5 of the CCS (TS) Rules, 1965, as applicable, Mutatis-Mutandis to the employees of the Council during the period of probation, however, the appointing authority may terminate the service of appointee without notice and without the payment of salary in lieu thereof. He argued that this clause No. 7 is in contradiction of Clause No. 6. An employee cannot be on probation as well as he cannot be simultaneously covered under Rule 5 of the CCS (TS) Rules, 1965. Therefore, Clause No. 7 of the Memorandum is illegal and contrary to the law and termination of services of the applicants under this Clause is also illegal

Anil Kumar

and should be set aside. In support of his arguments, he referred to the judgment of the Hon'ble Supreme Court in the case of **K.H. Siraj vs. High Court of Kerala & Others**, 2006 SCC (L&S) 1345.

15. On the contrary, learned counsel for the respondents argued that selection process to the post of T-1 (Lab Technician) at CSWRI, Avikanagar was against the rules and illegalities were committed by the Director of CSWRI. During the selection process, the competent authority did not consider the marks obtained by the candidates in the written examination and only the marks of the interview were considered for selecting the candidates, which is against the established law in the country. Even the Selection Committee did not prescribe the basis on which the marks for interview were given. He produced the original record of the selection. From perusal of the original record, it is evident that candidate securing 87 marks has been ignored while four candidates have secured 74 marks and it not clear as to how one of them was picked up for appointment. To support his arguments, he referred to the following judgments of the Hon'ble Supreme Court:-

- (i) Union of India & Others vs. Arun Kumar Roy
1986 (1) SCC 675
- (ii) State of Bihar vs. Upendra Narayan Singh & Others, 2009 (5) SCC 65.
- (iii) Director General, Indian Council for Agricultural Research and Others vs. D. Sundara Raju
2011 (6) SCC 605.

Anil Kumar

16. He further argued that there may be cases when there is no written examination and the selection are made purely on the basis of interview but in these particular cases, written examination was held and thereafter interview was held. In such a situation, Hon'ble Supreme Court has held that not more than 15% marks should be ear marked for the interview. He further argued that in the case of Director General, Indian Council for Agricultural Research and Others vs. D. Sundara Raju (supra), the Hon'ble Supreme Court has held that 50% marks allocated for interview were highly excessive for the post of a Principal Scientist and contrary to the settled legal position crystallized from a series of the judgments of this Court. He further argued that appointment must be made on the basis of overall merit. In these cases in hand, an inquiry was conducted on a complaint received against Dr. S.A. Kareem, Director, CSWRI, Avikanagar. The committee pointed out irregularities in the selection process, thus the selection process is itself vitiated. The applicants cannot claim the right of their appointment based on irregular selection.

17. With regard to clause 6 & 7 of the Memorandum dated 25.03.2011; he argued that the applicants were given appointment under Rule 5 of the CCS (TS) 1965. According to clause 7 of Memorandum dated 25.03.2011, their termination is according to the rules. Even if for arguments sake, it is agreed that applicants were

Anil Kumar

appointed on probation even then their services can be terminated if the selection process itself is based on irregular procedure. Therefore, termination order dated 16.09.2011 is according to the rules and the present OAs have no merit.

18. Having heard the rival submissions of the parties and after careful perusal of the documents on record, we are of the opinion that the applicants have failed to make out any case for the interference by this Tribunal. It is not disputed that an advertisement was issued for recruitment to the post of TS-1 (Lab Technician) and the applicants applied for that post. They appeared in the written examination and they were also called for interview. They were given offer of appointment vide Memorandum dated 25.03.2011 and they joined their duties. However, a complaint was made against the Director, CSWRI, Avikanagar against the irregularities committed in the selection process for the post of T-1 (Lab Technician). The matter was investigated by a committee constituted in the Indian Council for Agricultural Research and the Committee did observe irregularities and illegalities in the recruitment process. The matter was duly considered by the competent authority and it was decided to cancel the recruitment process conducted by the CSWRI on the post of T-1 (Lab-Technician) and to take action against the responsible officers of CSWRI for the alleged irregularities and illegalities. We have also perused the original record

Anil Kumar

produced by the learned counsel for the respondents during the argument which point out towards the irregularities committed during the course of selection as the candidate securing 87% marks in the written examination has been ignored while the persons securing less marks have been given appointment. We are inclined to agree with the arguments of the learned counsel for the respondents that when there is written examination as well as interview then the selection cannot be held merely on the basis of marks obtained in the interview. The Hon'ble Supreme Court has held in catena of judgments that interview marks should not generally exceed 15%. The ratio decided in the cases referred to by the learned counsel for the applicant is not applicable in the facts & circumstances of the present cases. On the contrary the ratio decided by the Hon'ble Supreme Court in the cases, referred to by the learned counsel for the respondents, is squarely applicable in the facts & circumstances of the present cases. Thus we are of the view that no irregularity has been committed by the respondents while issuing the office order dated 16.09.2011 (Annexure A/1) to discontinue the services of the applicants with immediate effect. Since the services of the applicants have been discontinued on the basis of irregular appointment, in our opinion it will not make any difference whether the applicants were on probation or were recruited under CCS (TS) Rules, 1965. Moreover a bare perusal of Advertisement No. CSWRI/7/2009 (Annexure A/2) makes

Anil Kumar

it clear that the posts of T-1 (Lab Technician) were temporary posts. Therefore, the applicants were recruited against the temporary post. Therefore, their services were rightly terminated under CCS (TS) Rules, 1965. Rule 5 of CCS (TS) Rules read as follows:-

"5. Termination of Temporary Service

(1)(a) The services of temporary Government shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by appointing authority to the Government servant.

(b) the period of such notice shall be one month

Provided that the service of any such Government servant may be terminated forthwith and on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services or, as the case may be, for the period by which such notice falls short of one month."

Office order dated 16.09.2011 (Annexure A/6) complies with the requirement of Rule 5 of CCS (TS) Rules, 1965. Thus, there is no infirmity in office order dated 16.09.2011. Moreover, under this Rule, there is no condition that service of a temporary employee can be terminated only when his services are unsatisfactory. We find no force in the arguments of the learned counsel for the applicant that the services of the applicants could not have been terminated under Rule 5 of CCS (TS) Rules, 1965. Therefore in our opinion, there is no merit in the present OAs.

Amal Kumar

19. Consequently, the OAs being devoid of merit are dismissed with no order as to costs.

20. In view of the order passed in the OA, MA nos. 283/2011 & 373/2011 filed alongwith OA No. 431/2011 are disposed of accordingly.

(Anil Kumar)
Member (A)

(Justice K.S.Rathore)
Member (J)

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