

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-1478/2016

Reserved on : 18.07.2016.

Pronounced on :22.07.2016.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Sh. Kaushal Kumar Mishra,
Aged about 42 years
S/o Sh. Raj Deo Mishra,
R/o H-243, Gali No.8,
Raj Nagar-II, Palam Colony,
New Delhi-110045.

(Presently working as Asstt. Accounts Officer in the office of Chief
Controller
of Chief Controller of Accounts, Ministry of Industry)

..... Applicant

(through Sh. S.K. Gupta, Advocate)

Versus

Union of India through

1. Secretary,
Ministry of Finance,
Department of Expenditure,
North Block, New Delhi.
2. Controller General of Accounts,
Department of Expenditure,
Ministry of Finance,
Lok Nayak Bhawan,
Khan Market, New Delhi.
3. Sr. Personnel Officer,
Punatsangchhu-I,
Bjimehangkha, Bhutan,
Through Liasion Officer,
6th Floor, Kailash Building,
K.G. Marg, New Delhi.

4. Chief Controller of Accounts,
Ministry of Industry,
Udhyog Bhawan,
New Delhi. Respondents

(through Sh. Subhash Gosain, Advocate)

ORDER

The applicant was working as Asstt. Accounts Officer with the respondents. Vide letter dated 27.02.2015 the respondents recommended his name for the post of Accounts Officer in Punatsangchhu-I & II Hydroelectric Project Authorities (PHPA), Bhutan. The applicant was selected for this post as is evident from communication dated 19.11.2015 (Annexure A-4). The applicant was, however, not relieved by the respondents to join this project. Through RTI application, he came to know that he was not being relieved on the ground that certain complaints were pending against him. Vide impugned communication dated 07.12.2015 the respondents wrote to the Project Authorities in Bhutan informing them that the applicant cannot be relieved due to administrative exigencies and requested them to make a fresh selection out of the panel already furnished. The applicant made a representation on 02.03.2016 (A-9). Vide impugned communication dated 17.03.2016 the Office of the Controller General of Accounts informed Chief Controller of Accounts, Ministry of Industry that the applicant's candidature for the deputation post had already been cancelled.

This was communicated to the applicant by the Office of Principal Accounts Office vide their letter dated 23.03.2016 (A-3). Hence, the applicant has filed this O.A. before us seeking the following relief:-

- “(i) quash and set aside the impugned communication dated 07.12.2015 (Annexure-A-1) and 17.03.2016 (Annexure-A-2) and direct the respondent no.2 to relieve the applicant forthwith to enable the applicant to join the office of respondent no. 3 with all consequential benefits.
- (ii) May also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice.”

2. The contention of the applicant is that the action of the respondents was in total violation of the Government of India Instructions issued vide DoP&T O.M. No. 11012/11/2007-Estt.(A) dated 14.12.2007. The relevant paras No. 2(a) and 2(b) of the aforesaid O.M. read as follows:-

“2. The circumstances under which vigilance clearance shall not be withheld shall be as under:-

- a) Vigilance clearance shall not be withheld due to the filing of a complaint, unless it is established on the basis of at least a preliminary inquiry or on the basis of any information that the concerned Department may already have in its possession, that there is, prima facie, substance to verifiable allegations regarding (i) corruption (ii) possession of assets disproportionate to known sources of income (iii) moral turpitude (iv) violation of the Central Civil Services (Conduct) Rules, 1964.
- b) Vigilance clearance shall not be withheld if a preliminary inquiry mentioned in 2(a) above takes more than three months to be completed.”

2.1 The applicant has submitted that no charge sheet has been served on him and as far as he knows no inquiry regarding corruption, possession of assets disproportionate to known sources of income, moral turpitude or violation of the Central Civil Services (Conduct) Rules, 1964 was pending against him. Hence, the respondents could not have denied vigilance clearance to him and should have relieved him for deputation post.

3. In their reply, the respondents have stated that while it was true that the applicant's name had been sponsored for the deputation post in question, the applicant could not be relieved as a lot of complaints were pending against him regarding transfer and postings. The respondents have further stated that as the integrity of the applicant was doubtful, he could not be allowed to proceed on deputation. Accordingly, PHPA authorities were intimated in this regard and were asked to select a suitable AAO in place of the applicant. The respondents have further submitted that PHPA authorities vide their letter dated 09.06.2016 have informed that they have already selected a substitute for this post.

4. I have heard both sides and have perused the material placed on record. In order to ascertain as to what complaints were pending against the applicant, I summoned the original records of the respondents. In compliance of my order, the respondents have

made available File No. 22014/1/2015/MFCGA/AAO/Mine (Part file). On going through this file, I find that two complaints were received by the respondents from the Ministry of Finance along with DO letter from Joint Secretary dated 22.06.2015. Both these complaints had been examined in this file by the respondents themselves. They did not find any actionable material in the same. One of the complainants was also said to be of questionable repute. After examining the complaints, the respondents sent a reply to Joint Secretary of the Department of Expenditure, Ministry of Finance vide their letter dated 22.07.2015. The respondents had not found the complaints worthy of proceeding with any further. In any case, the conduct of the applicant herein was not found to be blameworthy in the examination of the complaints done by the respondents. No other complaint or material against the applicant has been furnished by the respondents.

5. From the above, it is clear that no inquiry was pending against the applicant. Therefore, the conclusion drawn by the respondents that the applicant cannot be allowed to proceed on deputation as complaints were pending against him and his integrity was doubtful was totally baseless.

5.1 Government of India have issued comprehensive Instructions dealing with the subject of granting vigilance clearance. The

relevant paras of these Instructions have been quoted in the earlier part of this judgment. It is seen that the applicant was not covered under by any of the circumstances mentioned in these Instructions. Hence, the respondents had no right to withhold his vigilance clearance and deny proceeding on deputation to him. By doing so, they have acted in a manner grossly unfair to the applicant.

5.2 Learned counsel for the respondents argued that it is laid down in O.M. No. 22034/4/2012-Estt.(D) dated 02.11.2012 that while consideration for promotion was a right of an employee, empanelment, deputation, appointment to sensitive post and assignments for training programmes was not a right of an employee and such matters can be decided keeping in view the suitability of the officer and administrative exigencies. Therefore, the respondents were well within their rights not to relieve the applicant for deputation post.

6. In my opinion, the stand taken by the respondents is unacceptable. The respondents themselves had sponsored his name for deputation. Once, he was selected, the respondents were duty bound to relieve him barring any administrative exigencies that might have arisen in the meanwhile. The grounds on which they did not relieve him were not covered by the Instructions of DoP&T. Hence, the action of the respondents cannot be sustained.

7. During the course of arguments, both sides agreed that a substitute had been selected in place of the applicant. Learned counsel for the applicant, however, mentioned that there were other vacancies in this project against which the applicant can still be considered. This contention was not disputed by learned counsel for the respondents.

8. Accordingly, I allow this O.A. and direct the respondents to make a reference to the authorities in Bhutan to consider the applicant for any other existing vacancy of Finance Officer within four weeks from the date of receipt of a certified copy of this order. In case the applicant is selected, the respondents shall relieve him without delay if there is no other administrative exigency. No costs.

(Shekhar Agarwal)
Member (A)

/Vinita/