

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No-1696/2014

Order Reserved on 03.07.2015
Order Pronounced on: 06.10.2015

**Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)**

Dr. Ajay Kumar Saxena
S/o Shri Ved Prakash Saxena
Aged about 37 years-Scientist-D
R/o D-148, West Vinod Nagar,
Near Technology Apartments,
New Delhi-110092.

-Applicant

(By Advocate: Shri D.V.S. Yadav with
Shri Pankaj Yadav)

Versus

1. The Secretary,
Ministry of Environment and Forest
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi-110003.
2. Director General-ICFRE/
Director General of Forests and
Special Scretary (DGF & SS)
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi-110003.
3. The Secretary,
ICFRE P.O. New Forest, Dehradun-248006
Uttarakhand.
4. The Chairman
Recruitment Board, ICFRE
P.O. New Forest, Dehradun-248006
Uttarakhand.

-Respondents

(By Advocate: Shri Sanjay Katyal and
Shri K.M. Singh for Shri R.N. Singh)

ORDER

Per Sudhir Kumar, Member (A):

The applicant of this case was appointed by the Indian Council of Forestry Research and Education (ICFRE, in short), Dehradun, as

‘Scientist-D (Bio-diversity)’. He has claimed that even though the appointment was made after a thorough scrutiny of his educational and experience certificates by the respondents, and it was also confirmed by them that he has more than 7 years of research experience, and also has degrees of Ph.D and M.Sc., which were required for the post, still, three months after his appointment with the respondents, his service was terminated on 05.09.2013, with immediate effect, without giving him any opportunity of being heard, and to present his case. The applicant preferred an appeal before the Respondent No.1, which was also rejected vide the impugned order (Annexure A-1) passed in February 2014 (date not indicated). Hence the O.A.

2. The applicant has alleged that both the impugned orders of the Appellate Authority of February 2014, and of the Appointing Authority dated 05.09.2013 passed by Respondent No.2, are not only arbitrary but illegal , and bad in law and facts, and have been passed against the principles of natural justice, and he has assailed them by making the following prayers:-

- “a) Pass an appropriate order for setting aside/ quashing/ cancellation of the impugned order no.35-937/2013-ICFRE dated 5th September 2013 of Respondent no.2 and order no.2-23/2013 FE of Respondent no.1 dated February 2014 with immediate effect.
- b) Pass an appropriate order directing the Respondent No.1 and 2 for re-instatating the services of the Applicant with all the consequential benefits as if the Applicant has served with the Respondent Authority from 05.09.2013.
- c) Grant any other order or direction in favor of the Applicant and against the respondents as this Hon’ble Tribunal may deem fit and proper in the larger interest of justice and equity”.

2. The applicant had also made a request that pending final decision in the OA, the respondents should be restrained from filling up the post of 'Scientist-D (Biodiversity)', but that interim prayer was never granted.

3. The counter reply was filed on 09.12.2014 on behalf of all the respondents, and rejoinder was filed by the applicant on 20.01.2015. The respondents then chose to file a sur-rejoinder on behalf of Respondents No. R-2 to R-4 on 01.07.2015. Thereafter, the case was argued on merits and reserved for orders.

4. The applicant's case is that he had applied for appointment to the post of Scientist-D in ICFRE in response to the respondents' advertisement issued in the month of October 2012. After due process of screening of the applications received by the Respondent No.4 was undertaken by the Screening Committee, a list of 29 candidates was prepared, which included the applicant, and the Screening Committee of the Recruitment Board of ICFRE had made a remark against his name that he is eligible for the post, as he has both the M.Sc. and Ph.D degrees, as well as more than 7 years' research experience after M.Sc. The applicant has submitted that the detailed summary sheets prepared also showed that he had a research experience of a total of 10 years and 04 months, and he, thus, fulfilled all the requirements for the posts as advertised. He was interviewed on 19.12.2012 and recommended for appointment, and an offer letter dated 05.03.2013 was sent to him, asking him to submit the attestation form for verification of his character and antecedents. After that a formal offer of appointment letter was issued to him on 14.05.2013, and upon his acceptance of the same, the appointment letter dated 23.05.2013 was issued, after following the due

process of law. However, the applicant has submitted that he had already joined the post of Scientist-D (Bio-diversity) in ICFRE at Dehradun on 14.05.2013 itself, the date of issuance of the offer of appointment letter to him.

5. On 06.09.2013 (evening), the applicant was served with the order of termination of his services through Annexure A-2, the reason cited being that he did not fulfil the requisite criteria of possessing research experience of 7 years, which was an essential qualification for recruitment to the said post, and that this essential qualification could not have been relaxed. The applicant has alleged malafide intention on the part of the respondent authorities, as they did not let him know in advance that they were about to terminate his services, nor did they give him an opportunity of personal hearing. The applicant has further submitted that the only reason cited in the termination order mentioned that some complaints had been received, based upon which Respondent No.1 had examined the records afresh, and found that the applicant did not fulfill the required essential criteria of 7 years of research experience. However, when the applicant asked for a copy of the said complaint on the basis of which his services were terminated, he was informed that no specific complaint had been received by the respondents regarding his case alone. As already mentioned earlier, the applicant thereafter filed his appeal, followed by a few reminders. However, the said appeal was rejected, holding his appointment as having been irregular, because some of the approvals in the process of his appointment had been granted by the then Director General, ICFRE, who did not actually have the authority to do so.

6. The applicant has further submitted that he has an excellent academic record, with 1st Class M.Sc. degree in Forestry, and a Ph.D. degree in Forest Ecology and Environment. He has submitted that he has also passed the National Eligibility Test (NET, in short) in two separate subjects, namely, "Life Sciences", in the Test conducted by Council of Scientific and Industrial Research-University Grants Commission, and in the subject of "Forestry", in the Test conducted by the Indian Council of Agricultural Research. The applicant has submitted that he has many specialised and rare qualifications from Spain, USA, and Germany also, and has had a very good exposure, and received many awards, honours, fellowships, training and has many research publications etc. to his credit.

7. He has assailed the action of the respondents in ordering his termination as being illegal, unjust, arbitrary and unreasonable, even though his appointment itself had been made by them after a thorough screening of his education and experience certificates, and he has more than 7 years of research experience, which had been verified. He has alleged that no opportunity of hearing had been given to him before the impugned order dated 05.09.2013 was passed, and that the decision is bad in law, because the applicant fulfills all requirement of the post to which he had been appointed. He has taken the further ground that he not only fulfills the criteria of having more than 7 years of research experience, excluding the research work done for the Ph.D Degree, but as the advertisement's clause itself had a provision that 'Qualifications and other requirements for any post may be relaxed at the discretion of the

Council, in respect of candidates otherwise well qualified', he had, therefore, prayed for the OA to be allowed.

8. In their counter reply, the respondents submitted that ICFRE is an autonomous body, and the assessment promotion of Scientists in ICFRE are governed under the FCS Rules, as modified/amended from time to time, according to the guidelines issued by Respondent No.1, and approved by the Board of Governors of ICFRE. It was submitted that it is a 100% Government funded Council, with 9 Research Institutes and 3 Research Centres coming under it, situated in various parts of the Country.

9. The Recruitments and Promotions of all the Scientists' Group A' posts in ICFRE are governed as per the provisions of the ICFRE Group-A (Scientific Posts) Rules, 2011. The respondents admitted that they had advertised for filling up one post of "Scientist-D (Bio-diversity)" on 19.07.2012 on direct recruitment basis. The qualifications prescribed for filling up that post were as under:-

"First class M.Sc. degree in Botany/Zoology/Forestry/Bio-Sciences/Wild Life/Life Sciences with Ph.D degree in Bio-Science/life Science from a recognized university and having minimum 07 years research experience of working in one of the Forest Biodiversity Hot Spots/Field."

(Emphasis supplied)

10. It was further pointed out that General Condition No.(iii) of that advertisement prescribed as follows:-

"(iii) The period of experience of a candidate in a discipline/area of work shall be counted after the date of acquiring the minimum prescribed educational qualifications for that post. Qualifications and other requirements for any post may be relaxed, at the discretion of Council, in respect of candidates otherwise well qualified. The time spent in obtaining Ph.D degree shall not be counted towards minimum required research experience".

(Emphasis supplied)

11. It was submitted by the respondents that the qualifications of the applicant are M.Sc. (Forestry Economics & Management), and Ph.D (Forest Ecology and Environment-awarded in August, 2007), as per a copy of his application dated 04.10.2012 (Annexure R-1). It was submitted that the ICFRE was allowed to fill up the vacant posts of Scientists at the level of Scientist-D “on case to case basis, subject to the approval of the Chairman, Board of Governors” through the process of direct recruitment. A meeting of the Direct Recruitment Committee was held, and in all 29 candidates were called for interview on 18.12.2012 and 19.12.2012, when out of 29 only 24 candidates appeared for the interview. The Committee interviewed the candidates and assessed them individually based on their personality, personal presentation, qualifications and experience. In accordance with merit, the Committee recommended the following three candidates for appointment to the post of “Scientist-D, (Bio-diversity)” (Unreserved):-

- “1. Dr. Hilaluddin
- 2. Dr. Ajay Kumar Saxena (Applicant)
- 3. Dr. Praveen Kumar Verma”.

12. Based on the panel prepared on merit, the Committee recommended the name of Dr. Hilaluddin, being first in the order of merit for appointment to the post of Scientist-D, and he was appointed to the post. Thereafter, the Additional Director General of the Recruitment Board of ICFRE vide his letter dated 01.03.2013 addressed to the Secretary, ICFRE, Respondent No.3, informed that out of 04 Nos. of posts advertised (in the same advertisement) for 04 different disciplines against the post of Scientist-C, the written examination for only one discipline,

i.e., SBD, or Scientist-C (Bio-diversity) was carried out, as there were insufficient number of eligible candidates in the other three disciplines namely, SFE, or Scientist-C (Forest Ecology), SBP or Scientist-C (Bio-prospecting) and SCC or Scientist-C (Climate Change). Thus, it was found that three posts of Scientist-C in these three disciplines were still lying vacant.

13. When the matter was submitted by the Respondent No.3 to Respondent No.2, the latter directed as follows:-

“We have held recruitment of scientist ‘D’ Bio-diversity. The second candidate in panel need to be offered the post of Bio-prospecting. Put up”.

14. It was explained that in this manner, the post of Scientist-D (Bio-prospecting) was to be offered to the second candidate in the panel of Scientist-D (Bio-diversity) (applicant before us) by Respondent No.3 Secretary, ICFRE. But, for doing so, the vacant lower post of Scientist-C (Bio-prospecting) was upgraded to the higher post of Scientist-D (Bio-diversity) after conversion of the post of Scientist-D (Hydrology), which was also lying vacant. Thus, in a roundabout manner, the applicant came to be appointed in the post of Scientist-D (Bio-diversity), vide order dated 23.05.2013, on probation for a period of one year from 14.05.2013.

15. It was further pointed out that even though the applicant had submitted that he has 7 years’ research experience, which was an essential qualification for the said post, it is evident that at the time of his furnishing his application for the post of Scientist-D (Bio-diversity) on 04.10.2012, he had only 5 years’ experience, as he had completed his

Ph.D in August, 2007 only, and he could claim to have completed 7 years' research experience only in August 2014, or thereafter.

16. It was further submitted that when Respondent No.1 received complaints regarding administrative irregularities, and directed ICFRE to take corrective measures through letter dated 22.08.2013 (Annexure R-5), one of the administrative irregularity pointed out was that two Scientists, namely Dr. Hilaluddin and the applicant, both of whom were appointed as Scientist-D, though both of them did not fulfil the essential qualifications in terms of 7 years' research experience. It was submitted that on the verification of these complaints, Dr. Hilaluddin has already resigned, and the applicant's appointment also being irregular, it needed to be scrapped.

17. It was submitted that under the directions of the Respondent No.1 to take corrective measures, the services of the applicant were terminated in pursuance of the proviso to sub-rule (1) of Rule-5 of the Central Civil Services (Temporary Service) Rules, 1965, and while so terminating the services of the applicant under the said proviso, it was further directed that the applicant shall be paid a sum equivalent to the amount of pay and allowances for the period of one month calculated at the same rates at which he was drawing his emoluments immediately before the date of issuance of the order.

18. It was further submitted that the applicant had misrepresented his case and claimed that he had worked as Senior Project Officer with the Foundation for Ecological Security from April 2007 to August 2009, and as Project Coordinator with the United Nations Development Programme

(UNDP, in short), Govt. of India, from February 2010 to the present, but this experience, which the applicant had shown to have been gained by him after acquiring the essential qualification of Ph.D are details of his employment, and not research experience, and even if they were to be counted, the period of his research experience would still be less than the mandatory 7 years, as he had completed his Ph.D only in August 2007.

19. The respondents had relied upon the ratio laid down by the Supreme Court in **District Collector Vizianagaram vs. M. Tripura Sundari Devi 1990 (4) SLR 237**, to submit that it amounts to a fraud on public to appoint a person with inferior qualifications, and no Court should be party to the perpetuation of a fraudulent practice. It was further submitted that even the Govt. of India, Department of Personnel & Training OM dated 19.05.2003 provides that a Government servant, who was not qualified or eligible in terms of Recruitment Rules, etc., for initial recruitment in service, or had furnished false information, or produced a false certificate in order to secure appointment, he should be discharged forthwith, or his service should be terminated. It was further clarified that as has been made clear in the order of the Appellate Authority, the relaxation of essential qualifications, the up-gradation of a post, and the diversion of a vacant post to somehow accommodate the applicant, were all illegal actions, and against the Rules, thus rendering the applicant's appointment as irregular, and, therefore, no legal right vests in the applicant in view of the Rules and the law on the subject.

20. The respondents had denied any wrong doing on their part, and had submitted that since the applicant did not fulfil the essential

qualifications in terms of 7 years' research experience, which was required for the post of Scientist-D (Bio-diversity), as provided in the Advertisement published for filling up of the post of Scientists 'D', the service of the applicant was rightly terminated in pursuance of the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. It was, therefore, submitted that since the applicant was not at all eligible for the post of Scientist-D (Bio-diversity) in ICFRE while applying for the post, and the termination of his services under the provisions of Rule 5(1) (supra) was justified, the OA was liable to be dismissed, as being devoid of any merits.

21. The applicant's rejoinder more or less reiterated his contentions as already raised in his OA. He denied that the Recruitments & Promotions of all the Scientific Group-A posts in ICFRE are governed by the ICFRE Group-A (Scientific Posts) Rules, 2011, and submitted that the essential qualifications criteria in the above cited Rules, and the requirements as mentioned in the Advertisement dated 19.07.2012, are different from each other. It was further submitted that the respondents had not complied with Clause 13 of the said Rules, 2011, while changing the criteria of 4 years' research experience to 7 years' research experience in the Advertisement published on 19.07.2012 for recruitments to the posts of Scientist-D. He had reiterated that he had submitted all the correct information and certificates to the ICFRE much prior to the issuance of the offer letter of appointment to him, and that he fulfils the criteria of 7 years of research experience, even after excluding the period of research done by him for obtaining his Ph.D. He further contended that nowhere in the Advertisement for the concerned Scientist-D post it was mentioned

that 7 years' research experience would be counted only after the date of award of Ph.D degree, and, therefore, the directions issued by Respondent No.1 are illegal, and against the principles of natural justice. He had denied the applicability of the Supreme Court's judgment in **M. Tripura Sundari Devi** (supra), and the applicability of the DoP&T OM dated 19.05.2003 in his case, as he was fully qualified for the post in terms of the Recruitment Rules, and there was no fraud by producing any false certificate in order to secure his appointment.

22. It was further submitted that even the ratio of the Supreme Court's judgment had taken notice of qualifications being relaxable, and the applicant had pointed out that in Para (iii) of General Instructions of the Advertisement (supra) also provided for relaxation of qualifications. He had denied that he had, in any manner, been favoured by the previous incumbent in the post of Respondent No.2. He submitted that he not only possessed the qualification as per the Advertisement dated 19.07.2012, but also as per the ICFRE Group-A (Scientific Posts) Rules, 2011 (supra). It was, therefore, submitted by the applicant that the decision of the respondents in terminating his services on flimsy grounds is liable to be set aside, as per the prayers contained in the OA.

23. Heard. We have given our anxious consideration to the facts of the case. Rule-5(1) (a) of the Central Civil Services (Temporary Service) Rules, 1965 reads thus:-

"Rule 5(1) (a) of the Central Civil Services (Temporary Service) Rules, 1965:-

"(a) Services of a temporary Government servant 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 the 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 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".

24. It is seen that for the post of Scientist-D (Bio-diversity), the essential qualification had been prescribed in the Advertisement as follows:-

Sl. No.	Post Code	No. of Post (s)	Category	Minimum Essential and Desirable Qualifications
1.	Not reproduced here			
2.	SBD (Biodiversity)	01	UR-01	<p><u>Essential Qualification</u></p> <p>First class M.Sc. degree in Botany/ Zoology/ Forestry/ Bio-Science/ Wild Life/ Life Sciences with Ph.D. degree in Bio-Science/ Life Science from a recognized University and having minimum 07 years research experience of working in one of the Forest Biodiversity Hot spots/Field.</p>

25. This essential qualification has been cited by the respondents as not being possessed by him, while terminating the services of the applicant. On a closer perusal of the Advertisement dated 19.07.2012, as produced by the applicant at Annexure A-3, it is seen that General

Instructions (iii), already reproduced in para 10/above also, stated as follows:-

“-> The period of experience of candidate in a discipline/area of work shall be counted after the date of acquiring the minimum prescribed educational qualifications for that post.

-> Qualifications and other requirements for any post may be relaxed, at the discretion of the Council, in respect of candidates otherwise well qualified.

-> The time spent in obtaining Ph.D. degree shall not be counted towards minimum required research experience”.

(Emphasis supplied)

26. From a reading of the General Instructions (iii) as reproduced in para 10 and above, it is clear that the research experience of a candidate in a discipline/area of work was to be counted only after the date of his acquiring the minimum prescribed educational qualification for that post. In turn, the minimum prescribed essential qualifications consisted of two parts, firstly, First class M.Sc. degree in the disciplines as mentioned, with Ph.D degree in Bio-Science/Life Sciences from a recognized University, and, secondly, having a minimum 07 years' research experience of working in respect of one of the Forest Biodiversity Hot-spots/Field. Therefore, the claim of the applicant, as made in his rejoinder, that he had worked for a period of 7 years and one month in various capacities and in various organizations in the Country, including the jobs as Project Coordinator, Programme Manager, and Senior Project Officer, cannot be held to be directly related to acquiring research experience. Only his experience as a field researches in a Bio-diversity Hot-spot would count towards the qualifying research experience. We have very carefully perused the table on his work experience as has been claimed by the applicant in his rejoinder from that Table also, it is clear that on the date of submission of his application, the applicant did not

possess the required research experience of 7 years, and only his research experience after August 2007, after award of his Ph.D Degree, could have been counted towards the qualifying period of research experience. But that Research Experience of his also was only in the Laboratories, and not in any Bio-Diversity Hot-spots, or in the Field, as was required in the Advertisement for the post concerned, as reproduced above. Since the applicant did not fulfil the complete required research experience, it is clear that he did not have the required research experience as on the cut-off date.

27. During his arguments, learned counsel for the applicant relied upon the Supreme Court's judgment in **Union of India and Others vs. Mahaveer C. Singhvi (2010) 8 SCC 220**, and, in particular, Paragraphs-45 & 46 thereof, in which the Supreme Court has held as follows:-

“45. Since the High Court has gone into the matter in depth after perusing the relevant records and the learned Additional Solicitor General has not been able to persuade us to take a different view, we see no reason to interfere with the judgment and order of the High Court impugned in the Special Leave Petition. Not only is it clear from the materials on record, but even in their pleadings the Petitioners have themselves admitted that the order of 13th June, 2002, had been issued on account of the Respondent's misconduct and that misconduct was the very basis of the said order. That being so, having regard to the consistent view taken by this Court that if an order of discharge of a probationer is passed as a punitive measure, without giving him an opportunity of defending himself, the same would be invalid and liable to be quashed, and the same finding would also apply to the Respondent's case.

46. As has also been held in some of the cases cited before us, if a finding against a probationer is arrived at behind his back on the basis of the enquiry conducted into the allegations made against him/her and if the same formed the foundation of the order of discharge, the same would be bad and liable to be set aside. On the other hand, if no enquiry was held or contemplated and the allegations were merely a motive for the passing of an order of discharge of a probationer without giving him a hearing, the same would be valid. However, the latter view is not attracted to the facts of this case”.

28. In their reply, the respondents had relied upon the judgment in the case of **M. Tripura Sundari Devi** (supra), and in particular Paragraph-6 of that judgment, which has already been reproduced in part above. Having weighed the absence of the applicant having the full qualifications as per the Advertisement on the date of his submitting his application, and the administrative jugglery and roundabout manner in which vacant posts were upgraded and shifted from one department to another by the then incumbent of the post of Respondent No.2, in order to be able to somehow accommodate him for appointment against the post for which he had applied, we tend to agree with the conclusion of the respondents that the applicant's appointment itself was irregular, as he was not at all qualified for being appointed as Scientist-D (Bio-diversity) on the date of submission of his application.

29. Therefore, we find no merit in the OA, and the OA is, therefore, rejected, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.