

**Central Administrative Tribunal
Principal Bench**

OA No. 2083/2012

Order reserved on: 10.05.2016
Order pronounced on: 13.07.2016

Hon'ble Mr. Justice M.S.Sullar, Member (J)
Hon'ble Mr. V. N. Gaur, Member (A)

Vinay Gautam,
S/o Sheri Nanak Chand,
R/o H.No.2, Village Munirka,
New Delhi-110067.

- Applicant

(By Advocate: Sh. A.K.Behera)

Versus

1. Union of India,
Through its Secretary,
Department of Scientific and Industrial Research,
Ministry of Science and Technology,
CSIR Building, New Delhi-110001.
2. Under Secretary,
Department of Scientific and Industrial Research,
Ministry of Science and Technology,
Technology Bhawan, New Delhi-110016.
3. Sh. S.Pradhan,
Under Secretary,
Department of Scientific and Industrial Research,
Ministry of Science and Technology,
Technology Bhawan, New Delhi-110016.

- Respondents

(By Advocate: Sh.R.V.Sinha)

ORDER

Hon'ble Mr. V.N.Gaur, Member (A)

The present OA has been filed by the applicant with the following prayer:

“(a) Summon the original records of the case;

(b) Pass an appropriate order, direction or writ in the nature of certiorari or any other appropriate writ quashing the order dated 12.06.2012 (Annexure A-1) by the Official respondents, in the interest of justice and/or consequently

(c) Pass an appropriate order, direction or writ in the nature of mandamus or any other appropriate writ directing the respondents to consider the case of absorption of the applicant in terms of the advertisement published in the Employment News dated 25-31 July 2009, (Annexure A-2), and further direct the official respondents to examine the case of the applicant by any other official, other than Respondent No.3, in the interest of justice.

(d) Pass an appropriate order, direction or writ in the nature of mandamus or any other appropriate writ directing the respondents to consider the case of absorption of the applicant in terms of the rules (Annexure A-4), instructions (Annexure A-5) and OM dated 31.05.2011 (Annexure A-9) in the interest of justice.

(e) Pass such other further order or orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case and in the interest of justice.”

2. The applicant was working as Assistant Manager (System) in the State Bank of India (SBI) in the pay scale of Rs.10,000-18,240 w.e.f. 01.06.2006. The Department of Scientific and Industrial Research (DSIR) – Respondent no.1 issued an advertisement dated 25.03.2009 inviting applications for filling up posts of Scientists ‘D’ & ‘C’ on deputation/absorption basis. The eligibility criteria of the posts of Scientist ‘C’ for which the applicant applied for reads as follows:

“Eligibility Criteria

Scientists or Technologists working in the Central or State Governments or Universities or Recognized Research Institutions or Semi Government, Statutory or Autonomous Organisations in India or abroad who possess educational qualifications and experience as specified below.

I. ESSENTIAL QUALIFICATION (for all posts):

Masters Degree in Natural/Agricultural Sciences or Bachelor’s Degree in Engineering/Technology from a recognized university or equivalent.

II. DESIRABLE QUALIFICATION (for all posts):

Doctorate Degree in Natural/Agricultural Sciences or Master's Degree in Engineering/Technology/Medicine from a recognized University.

III. **Experience:** As on the last date for receipt of the applications in the Department.

Scientist 'C': 1) holding analogous posts; or

2) with 5 years regular service in posts in the pre-revised scale of pay of Rs.8000-275-13500 (revised PB-3 of Rs.15600-39100+Grade Pay of Rs.5400/-) or equivalent.

3) Experience of four years in Research and Development in Industrial and Academic Institutions and/or Science and Technology Organisations.”

3. The name of the applicant was considered by the Screening Committee that met on 11.12.2009 along with other candidates and was shortlisted for further consideration. Against the name of the applicant there was a handwritten remark “subject to verification of analogous post status”. The matter was then considered by the assessment body on 05.07.2010 which called all the screened in candidates for the objective assessment and thereafter selected one candidate for the post of Scientist 'D' and 3 for the posts of Scientist 'C' with the name of the applicant being at Sl. No.2 among the 3 candidates selected for the post of Scientist 'C'. The DSIR sent the offer of appointment to the applicant initially on deputation basis through his employer (SBI) on 21.07.2010. The SBI vide letter dated 15.11.2010 approved the deputation of the applicant to DSIR for a period of 2 years and the applicant joined respondent no.1 on 22.11.2010. On 27.12.2010 the applicant submitted a request to respondent no.1

for permanent absorption. In the meantime, the audit team of CAG while auditing the accounts for the year 2009-2010 issued an Audit Memo no.46 dated 18.02.2011 regarding “irregular appointment of Scientist ‘C’ flouting deputation norms & RRs”. With regard to the appointment of the applicant, the audit team made following observation:

“1. Sh. Gautam did not possess the requisite experience of four years in R&D in industrial & academic institutions and/or S&T organizations as per clause III (3) of the eligibility criteria for the post as stated above.

2. Further, the approval of Ministry was obtained only for appointment of Sh. Gautam on deputation only, however he joined the DSIR after resigning from his previous employment at SBI, as per the NOC issued by the bank at the time of application. Hence, the conditions of deputation had not been fulfilled for appointment in the instant case.

3. Sh. Gautam was holding a post in the PSU bank where the pay scales were different from Central Govt./DSIR. Therefore, holding of analogous post only on the basis of same pay scale could not be taken as holding of analogous post, which needs probe from the appropriate authorities/level.

Therefore, the appointment of Sh. Gautam for the post of Scientist ‘C’ was irregular and against the Recruitment Rules/Advertisement for the post.”

4. The respondents, [Sh. Nanak Chand, Director in DSIR (father of the applicant)] sought clarification from DOP&T, Department of Science and Technology and Department of Insurance and Banking regarding the equivalence of the pay scale of the applicant while working in SBI and the pay scales in the Government of India in terms of the weightage of experience of the candidates holding a Degree of Ph.D. and M.Tech. After further deliberations within the DSIR on the basis of the replies received

and clarification received as also the notice received from SBI, a decision was taken to curtail the term of deputation of the applicant and to repatriate him to his parent department after giving a show cause notice. The respondents issued a show cause notice on 09.03.2012 which was replied to by the applicant on 24.03.2012. After considering the reply submitted by the applicant, the respondents issued an order dated 12.06.2012 prematurely repatriating the applicant to his parent organisation.

The order dated 12.06.2012 (impugned) reads as follows:

“The President is pleased to approve premature repatriation of Shri Vinay Gautam, Assistant Manager (System), State Bank of India and presently working as Scientist ‘C’ in the Department of Scientific and Industrial Research on deputation basis, to his parent office i.e. State Bank of India (Chief General Manager (HR), Cadre Management Department, Corporate Centre, State Bank Bhawan, Mumbai with immediate effect on the observation, subsequent to his appointment, that he does not fulfil the requisite eligibility criteria (i) of having minimum experience of four years in Research and Development in industrial and academic institutions and/or in Science and Technology Organisation (ii) holding analogous/comparable post and (iii) having been found not suitable to hold the post of Scientist ‘C’ in the Department.”

5. Learned counsel for the applicant challenged the decisions of the respondents on the following grounds:

(a) The whole controversy was created by respondent no.3 because of malice towards the applicant.

(b) The applications of the candidates for the posts of Scientist ‘C’ were scrutinized by a Committee headed by a Scientist ‘G’ as Chairman and after required due diligence, the Screening Committee had short listed the candidates to

be considered by the Assessment Board. The question of eligibility conditions like experience and holding of analogous posts in the parent department etc. were duly considered. Thereafter, the Assessment Board also after considering all these aspects and the performance of the candidates in the interview made the selection in which the applicant was at S1. No.2 among the three selected candidates. Therefore, it cannot be said that two Committees consisting of senior level officers including the Secretary, DSIR and Director General, CSIR did not do its job properly.

(c) It was noteworthy that the applicant was given offer of appointment on 21.07.2010 while the CAG audit was done for the year 2009-10. Therefore, the appointment of the applicant could not have been considered by the audit team, being outside the scope of the audit.

(d) The respondents are raking up the issue of inadequate experience by saying that he mentioned experience of 3 years 2 months on the date of his application for the post of Scientist 'C' against the requirement of 4 years experience. According to the learned counsel since the applicant was holding an analogous post, it was not necessary for him to have 4 years experience.

(e) The observation of the audit that the applicant was not holding analogous post was also incorrect. The learned counsel referred to extracts based on record from Swamy's Handbook to the effect that the existing instructions stipulated that while determining the question of analogous posts, the selection authority may have to be guided more by the nature of duties performed by the candidates in their parent organisation vis-à-vis those in the posts under the Central Government for making selection for appointment by absorption/deputation including short term contract or outside the service and not by comparing the pay scales. The Screening Committee and Assessment Boards had rightly considered the candidature of the applicant by applying this principle and comparing the duties of the applicant in his parent organisation with the duties associated with the post of Scientist 'C'.

(f) Counsel for the applicant further refuted the submissions made on behalf of the respondents that the task performed by the applicant in his parent department could not be categorised as related to research and development. According to the learned counsel, the applicant has submitted complete details of the tasks performed by him in SBI which shows that his task could fall in the category of research and development. He also

referred to the case of one Sh. Ramanuj Banerjee, Scientist 'D', who was in the pay scale of Rs.15600-39100, has been absorbed by the department even before completion of two years. One Sh. P.K. Aggarwal, who was lower in merit list of selection than the applicant has also been absorbed. In some other cases also, it could not be rightly said that the candidates, who were absorbed as Scientist 'C', have any research and development work in their organisation.

(g) The applicant is M.Tech, and therefore, as compared to practice followed in the department in the past it should be considered equivalent to 2 years of experience. If that is counted the experience of the applicant on the reference date would be more than 9 years.

(h) It was further submitted that notwithstanding the objections raised by the audit and pursued by the respondents, the work of the applicant in the department has been appreciated by the superiors and his performance for the last 3 years has been excellent.

6. Learned counsel for the respondents strongly refuted the submissions made by the learned counsel for the applicant and stated that the applicant has not placed a single fact in support of his allegation of malafide against respondent no.3. There has been no reference to the motive that could possibly lead

respondent no.3 to act in a manner prejudicial to the applicant. Even if it is presumed that it was the applicant who pointed out the alleged irregularity in his own appointment to the audit, it cannot be considered as malafide against him. With regard to the other issues raised by the applicant, learned counsel submitted that the applicant has not referred to the observation made by the Screening Committee on the body of the minutes dated 11.12.2009 wherein in his own hand the Chairman of the Committee had written against the name of the applicant "subject to verification of analogous post status". In the copy of the minutes submitted by the applicant, deliberately that portion has been made illegible. He further submitted that at that time the person handling the recruitment of Scientist 'C' and 'D' was not other than the father of the applicant.

7. Sh. Nanak Chand, father of the applicant manipulated the advertisement for filling the posts of Scientists 'C' & 'D' by deleting the condition that the selected candidate would be put on probation/trial for two years before absorption. He also did not follow up on the remark given by the Chairman of the Screening Committee for verification of the analogous post status and compared the grade of pay in SBI with the advertised pre-revised pay scale of Scientist 'C' in the department. He further wrote a letter to DOP&T on 16.05.2011 without authorisation from the Joint Secretary In-charge of the Division. However, DOP&T vide

letter dated 02.06.2011 clarified that while deciding the analogous status of any post to that in Government of India, DOP&T OM dated 03.10.1989 explained the criteria for such comparison like pay scale of two group of posts whether Group 'A' or 'B', Gazetted or non-Gazetted levels of duties and responsibilities involved and especially the data sheet signed by the candidates and by their employers indicating their qualification, experience, assignments held in the past, contribution made by them in the field of research, publications in their credit and any information for the purpose of determining analogous status of the post. The DOP&T further remarked that it was not clear as to how candidates working as Assistant Manager (Systems) in SBI was considered as Scientist or Technologist. Sh. Nanak Chand has also written to Department of Science & Technology seeking clarification whether additional weightage for the candidates having Ph.D. or M.Tech degree was to be considered while counting R&D experience. Sh. Nanak Chand has also prepared draft reply to the audit with a request for dropping the same which was not approved by Joint Secretary, DSIR. According to the learned counsel for the respondents, the applicant right in the beginning did not fulfil the required eligibility criteria. According to his own statement in the application form submitted by him, he had experience of 3 years 2 months only. His application was also manipulated as the Part-II of the application form which is annexed to the OA and the Part-II

of the application form that was forwarded by the SBI are different. When the respondents sought clarification from SBI regarding the equivalence of the posts of R&D experience, the SBI informed that they had not given any certificate for eligibility to the applicant for appointment as Scientist 'C'. They also did not have any record of research and development work undertaken by the applicant in his service in the IT department of SBI. The Assistant Managers post in which the applicant was working was in Junior Management Grade Scale 1 and the SBI was not aware of the duties and responsibilities attached to the post of Scientist 'C' in the Government of India. According to learned counsel, it was a clear case of securing appointment by manipulating the records and misrepresentation in the application form. The respondents, therefore, have right to terminate the appointment of the applicant who was not eligible for the post and his appointment was void *ab initio*.

8. We have heard the learned counsels and perused the record. The main argument put forward by the applicant is that he had fulfilled the criteria of holding the analogous post in SBI and possessing experience of 4 years in R&D at the time of applying for the post of Scientist 'C'. His case was considered and cleared by a high level Screening Committee headed by Scientist 'G' level officer and thereafter he was interviewed by Assessment Board headed by the Secretary, DSIR/DG, CSIR. When such high level

Committees have gone into this issue and have accorded approval by selecting him for the post of Scientist 'C', the matter cannot now be reopened at this stage.

9. It is trite that once certain conditions have been prescribed in the statutory Recruitment Rules (RRs) the same have to be complied with. The RRs cannot be relaxed or diluted or ignored by any committee involved in the recruitment process irrespective of the status of its Chairman or Members, unless the Rules give them authority to do so and a conscious decision is taken and reasons are recorded. Thus, the main issue to be considered is whether the applicant while working in SBI, held a post analogous to Scientist 'C' in Government of India, and whether he possessed 4 years experience as mentioned in the advertisement issued by the department. With regard to the equivalence of posts, it is an admitted fact that the scales in SBI and Government of India are different and merely equivalence of two scales may not lead to the equivalence of corresponding posts. The post of Scientist 'C' is in the scale of Rs.10000-325-15200, pre-revised (revised Rs.15600-39100 + GP of Rs.6600) and the pay scale attached to the post of Assistant Manager in SBI was Rs.10000-18240. The SBI scales were also revised on 01.11.2007 and the grade corresponding to Rs.10000-18240 became Rs.14500-25700. The DOP&T instructions with regard to determination of equivalence of two posts, provide that, apart from the pay scale, the nature of duties

and responsibilities are also to be considered. However, even before we get into the dimension of duties and responsibilities, a comparison of the scales of the two posts would show that the entry level pay of Assistant Manager in SBI in the revised scale was Rs.15100 on 01.11.2007 while a Scientist 'C' in Government of India would get Rs.15600 + GP Rs.5400 equal to Rs.21000 with effect from 01.01.2006. Thus, the starting of the pay scale of the SBI post was lower than the post of Scientist 'C'. The responsibilities of the applicant while holding the post of Assistant Manager has been detailed in the reply submitted by the applicant dated 14.07.2012 to a show cause notice dated 09.03.2012. If the duties attached to the post of Assistant Manager (Systems) annexed to the OA from page 113 to 120 is to be taken at its face value then any work done by the applicant in the organisation was nothing but 'R & D' as all items of work listed under the heading R&D experience has been prefixed with the words 'research and development'. It is obvious that the applicant has tried to project that he did not do anything else except research and development with some odd jobs thrown in like maintenance of DB programme, developing of operation menu, rectification of error and daily support to branches shown in his non-R&D work. However, the important point to note is that the Applicant's Bio-data Proforma (Annexure A-3 colly. of the application for the post of Scientist 'C' – page 40) has a part-II

which is to be filled by the authority forwarding the application. Apparently, the copy annexed to the OA by the applicant is the advance copy, and therefore, the Part-II of the form has not been filled up by the forwarding authority but the columns that are to be filled up by the authority are listed below:

“Part-II

(To be filled by the Authority forwarding the Application)

1. Certified that the particulars furnished by the candidate have been checked from the available records and found correct.
2. Certified that it has been verified that the candidate is eligible as per conditions mentioned in Annexure-I attached to the Department of Scientific and Industrial Research vacancy circular No.....
3. No vigilance case is either pending or being contemplated against the candidate. There is nothing in the ACR Dossier of the candidate which makes him eligible for consideration for appointment to the post of Scientistin DSIR.
4. His integrity is beyond doubt.
5. No Major/Minor penalties have been imposed during the last ten years.
6. Copies of the last five years ACRs (with each page attested by an officer not below the rank of Under Secretary) are enclosed.
7. Clearance of the cadre controlling authority is conveyed.”

10. The respondents have annexed a copy of the application form as received by them through proper channel (forwarded by the SBI) and Part-II of that form reads as follows:

“Part-II

1. Certified that the particulars furnished by the candidate have been checked from the available records and found correct.
2. No vigilance case is either pending or being contemplated against the candidate. The relative ACRs from the date of his appointment to date is enclosed.
3. His integrity is beyond doubt.

4. No Major/Minor penalties have been imposed since the date of his appointment i.e. 01.06.2006.
5. Clearance of the cadre controlling authority is conveyed.”

11. It is obvious that in the application submitted by the applicant to the SBI for forwarding it to the respondents, some crucial clauses have been left out and the most important being clause-II of Part-II whereby the forwarding authority, i.e., SBI was to certify that it had verified the eligibility as per the conditions mentioned in the vacancy circular issued by DSIR. Such verification would have included both the questions, i.e., whether the two posts were analogous and whether the applicant had R&D experience of 4 years while working in SBI. The applicant has thus misled both the departments by submitting the application in two different forms to the respondents and the parent department, SBI. The father of the applicant did not compare even the scales attached to the two posts, which though not conclusive, was definitely the starting point for examining the question of analogousness of the two posts.

12. It has been argued by the applicant that M.Tech degree is considered to be equivalent to 2 years of such experience. The learned counsel for the respondents during the arguments referred to the stipulation in the Department of Science and Technology as per the letter given by DSIR that the benefit of 2 years experience to M.Tech degree holder can be given only to the

candidate who has obtained M.Tech degree not while being in service. Learned counsel for the applicant has submitted that this was applicable in the case of the applicant as he has already obtained M.Tech degree prior to joining SBI. Learned counsel for the applicant has further stated that in the advertisement issued for filling up the post of Scientist 'C' in other years had clearly stipulated that M.Tech degree holders will get 2 years weightage for calculating the research experience. However, for the purpose of present OA, we have to consider what was advertised by the respondents in the advertisement dated 06-12.06.2009 in response to which applicant had applied. In that advertisement, a copy of which has been placed on record by the applicant himself, there is no such mention and the applicant has not challenged that advertisement either, on this ground. In such a situation no extra element can be introduced by the applicant at this stage that may prejudice many of those candidates who would also be eligible if such a dispensation to M.Tech degree holders was allowed in the advertisement. The rules of the game cannot be changed now. We also do not agree with the argument put forward by the applicant that the audit inspection for the year 2009-10 could not have looked into the appointment of the applicant as the applicant had joined the department on 22.11.2010. It is undisputed that the advertisement for the post was issued on 06.06.2009. The Screening Committee had met on

11.12.2009 and the Assessment Board had met on 05.07.2010. Thus, irrespective of the fact that the interview and final selection of the candidate were held in July 2010, the process had started and screening had been done during the year 2009-10 which was within the scope of audit for the year 2009-10. The applicant apparently was the beneficiary of a benevolent administration when his appointment was processed as the father of the applicant was holding a key position and handled the matter of recruitment. Instead of disassociating himself, he actively dealt with the correspondence for obtaining clarifications from the DOP&T, Department of Disinvestment and Department of Science and Technology. Further, the Screening Committee had remarked against the name of the applicant in the list of shortlisted candidates that the analogous post status of the applicant should be verified. It is not clear from the records placed before us as to what recommendation was placed before the Assessment Board in this regard. Nonetheless, the fact remains that the applicant did not have experience of 4 years and his application with the required certificate with regard to eligibility condition was not forwarded by SBI. In **State of M.P. & ors. Vs. Lalit Kumar Verma** (2007) 1 SCC 575, the Hon'ble Supreme Court took a view that an appointment done against the provisions of the RRs will fall in the category of illegal appointment:

“The question which, thus, arises for consideration, would be : Is there any distinction between 'irregular appointment' and 'illegal appointment'? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is State within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance of the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to.”

13. In **Pankaj Gupta and Ors., etc. Vs. State of Jammu and Kashmir and Ors.** (2004) 8 SCC 353 the Hon'ble Supreme Court observed thus:

“No person illegally appointed or appointed without following the procedure prescribed under the law, is entitled to claim that he should be continued in service. In this situation, we see no reason to interfere with the impugned order. The appointees have no right for regularisation in the service because of the erroneous procedure adopted by the concerned authority in appointing such persons.”

14. We have no doubt that in such circumstances, the respondents have taken the right decision to repatriate him to his parent department.

15. The applicant has relied on **Mohinder Singh Gill** (supra) wherein it has been laid down that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. In the context of the facts of the present case, we do not find this judgment to be relevant in this case.

16. With regard to the allegation of malafide, the applicant has not placed on record a single fact that could establish the animus or motive that propelled the respondent no.3 to act against the applicant. In fact, we notice a general tendency in the OAs to implead officials as respondents by name, making some unsubstantiated allegation of harassment etc. and accusing them of malafide, or sometimes without taking the trouble of even making any specific allegation, as in this case. It is obvious that if such an officer has done his duty by pointing out certain irregularities and he has been made party in his personal capacity it is nothing but a reverse malafide and deliberately causing harassment, either out of vengeance or to put undue pressure on the official to desist from opposing the applicant's case. Such a tendency and effort on the part of the applicant needs to be deprecated. If an official has informed the audit of certain wrong doings in the department against the rules, his action would fall in the category of a whistle blower, and such a person needs to be protected from harassment and outside pressure in the larger interest of probity in public life. We, therefore, impose a cost of Rs.5000/- on the applicant to be paid to respondent no.3 for making unsubstantiated allegation of malafide.

17. In the light of the foregoing and for the reasons stated in the preceding paras, the OA is dismissed being devoid of merit.

(V.N. Gaur)
Member (A)

(Justice M.S.Sullar)
Member (J)

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