

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.4042/2014 with
OA No.157/2015

Order Reserved on 30.07.2015
Order Pronounced on: 11.12.2015

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

1. Dinesh Singh,
S/o Shri Laxman Singh
Flat B1/1034, Nitikhand-1, Indirapuram
Ghaziabad 201014, Uttar Pradesh.
2. Shyam Vir Sharma,
S/o Shri Ram Prakash Sharma,
C/o Sh. Gulab Singh, H. No.F-6/G-5,
Katwaria Sarai, New Delhi-110016.

-Applicants

Versus

1. Rail India Technical and Economic Service
(Rites Limited)
Through Chairman cum Managing Director,
RITES Bhawan, Plot No.1,
Sector-29, Near IFFCO Chowk,
Gurgaon-122001, Haryana.
2. Ministry of Railways
Through Secretary,
543, Rail Board, Raisina Road, Connaught Place,
Delhi-110001.

-Respondents

OA No. 157/2015

Manoj Kumar Sharma (Statistician)
S/o Shri Sheodan Singh Sharma,
R/o H. No.66, Saraswati Vihar,
Ramghat Road,
Aligarh-202001, Uttar Pradesh.

-Applicant

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(By Advocate: Mr. A.P. Singh, for applicants in OA No.4042/2014
Mr. Praveen Kumar, for applicant in OA No.157/15
Mr. Amit Sinha for Mr. R.N. Singh &
Mr. G.S. Chaturvedi, for respondents)

ORDER

Per Sudhir Kumar, Member (A):

These two similar Original Applications were heard together, reserved for orders together, and are, therefore being disposed of through a common order. However, for the sake of convenience, we will first take the facts from OA No.4042/2014, which was filed earlier in point of time, and discuss only the differences in the case of the second O.A.

OA-4042/2014

The two applicants of this OA are before this Tribunal aggrieved that when they were aspirants for regularisation of their respective jobs in the Respondent No.1 company, and even faced the regularization exam held in June 2014, they were served with letters of termination of their services dated 30.09.2014, received by them on 08.08.2014, in doing which the Respondent Company has allegedly acted in a whimsical, capricious, and in an arbitrary manner, and in derogation of their Fundamental Rights. They had, therefore, filed MA No. 3534/2014,

praying for joining together in filing this OA, which was already allowed while admitting the OA on 17.11.2014. They have prayed for the following reliefs and Interim Reliefs:-

Reliefs:

- “a) Issue a direction to the respondent to conduct whole process of regularization of exam for the vacant posts again in a transparent manner taking into consideration the academic and professional qualifications of the contractual employees.
- b) Allow the cost of litigation to the applicants which due to act of respondents petitioners have to resort to;
- c) Any other order (s) which this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the present case”.

Interim Reliefs:-

- “a) grant ex-parte direction to the respondent to permit the applicants to work for an extended period as they were engaged earlier and revoke their respective termination letters till the present application is adjudicated upon.
- b) pass such other and/or further orders as this Hon’ble Court may deem fit and proper under the circumstances of the present case”.

2. While admitting the case on 17.11.2014, the Coordinate Bench had also noted that as the contract period of the applicants had already expired, no interim relief can be granted at that stage, and thus, their prayer for Interim Relief stood disposed of. During hearing on 08.12.2014, a Coordinate Bench had recorded that the applicants of this OA had not qualified the written examination, and that their services

already stand terminated on 30.09.2014 (A/N), and had allowed time for pleadings in this case to be completed, which was finally heard and reserved for orders after completion of pleadings. For some time the case was treated to be identical to OA No.3792/2014 also, with which it was later delinked through order dated 08.12.2014.

3. The facts of this case lie in a brief compass. As per their advertisement dated 17.04.2007 (Annexure P/1), the respondents had advertised for selection of Economists, Statistics & Computer Analysts on contractual basis through a walk-in-interview. The applicants were selected and appointed on such contract basis for the period from 05.06.2007 to 04.06.2008 or completion of the project, or coming to an end of the project for any reason whatsoever, whichever is earlier, through Annexure P-2 dated 05.06.2007, and issued an I.D. Card and employee number.

4. The case of the applicants is that Chapter-III of the Respondent Corporation's Recruitment Rules for entry grade into that organization provides for regularization of contract staff, subject to availability of vacancies, and on fulfilment of certain conditions, as given in Para-9 (a), (b), (c) & (d) of the Recruitment Rules, which state as follows:-

“ 9. **Regularization of Contract Staff:**

Subject to availability of vacancies, Contract employees are considered for regularisation on fulfilment of following conditions:-

- a) He has been inducted on contract by selection through advertisement.

- b) He must possess the qualification of Degree in Engineering or Professional qualification in the relevant discipline.
- c) He should have completed four years' service as on 31st August of the year in which regularization process is taken in hand.
- d) Such of the candidates fulfilling the above criteria, will be required to appear for selection as per the procedure prescribed for regular recruitment".

5. The applicants' claim is that though they had completed four years of contract service in 2011-12, but no regularization exam was ever held that year, or even soon thereafter, and the applicants continued to work on the basis of regular extensions of their contracts. On 13.12.2013, a fresh Office Order No. PP/73/2013 (Annexure P-4) was issued by the respondents, and was titled "Review of Policy on Regularization of Contract Employees", by which the four years' experience, as required in the HR Manual for regularization of contract staff, was reduced to three years, but a detailed process for regularization examination etc. was prescribed through this Office Order. The very first condition [Chapter-III Para-9 (a)] of their HR Manual stating that contract employees concerned should have been inducted against the advertisements was nowhere mentioned, and, as a result, the new policy covered all contract employees in general.

6. The applicants are further aggrieved that the new policy did not mention any specific academic qualifications required for sitting in the regularization examinations notified through Annexure P-4. Later on, through Annexure P-5 dated 30.05.2014, a separate procedure for regularization of contractual Economists & Statisticians of E&S

discipline, who had completed 3 years of service in the Respondent No.1 organization as on 30.06.2013, was also announced, which concerned the applicants' discipline, and the list of eligible candidates under that process for regularization was also declared, including the names of the applicant No.1 at Sl. No. 5, and of applicant No.2 at Sl. No.10 thereof.

7. The regularization examination was thereafter held on 28.06.2014, as mentioned above also, in which the two applicants before us also appeared, but did not succeed, as was already noted by the Coordinate Bench in its daily order on 08.12.2014.

8. The applicants are aggrieved that the respondents had introduced a new qualification "Master in Economics/Business Economics/Operation Research/Statistics/MBA with specialization in Finance/Marketing", about which eligibility criteria there had been no mention earlier, either in the HR Manual, or the Promotion Policy and Rules, or in the 'Reviewed Policy' (Annexure P-4), and the details of this Policy could actually be obtained by the applicants only in reply to their RTI application dated 24.06.2014 (Annexure P-6).

9. The applicants are aggrieved by the trend of marks also, inasmuch as the applicant No.1 had obtained 39/100 marks in the written examination, and the applicant No.2 had obtained 53/100 marks, while the other UR candidates, who had qualified, had got only 60 or 61 out of 100 marks, and an employee who belonged to OBC category had secured just 50 marks out of 100. The applicants are aggrieved that the selected

candidates also did not possess the mentioned qualification, but their complaint made against the process of selection had not elicited any favourable response, even from the CMD of the Respondent-company. Shocked by their sudden termination order, they gave a representation to the CMD of Respondent No.1 Company on 10.10.2014, but then filed this OA on 11.11.2014, without waiting for a response.

10. In assailing the actions of the respondents, the applicants have taken the ground that the actions of the Respondent-organization have been in favour of some of the contractual employees, and that even though they were eligible for the last 4 years, no such examination for regularization had been conducted in that period by the respondents.

11. The applicants have taken the further ground that amending the requisite academic qualifications suddenly and randomly, which goes only against some of the contractual employees, was explicitly against the principles of equality enshrined under Article 14 & 16 of the Constitution of India. They have also submitted that the examination did not provide for option of Hindi medium for the competitive departmental examination, and that no affirmative action has been taken by the respondents to ensure that un-equals are not treated as equals. They had, therefore, assailed the actions of the respondents in having regularized the services of some persons, without following the procedure laid down under Articles 14, 16 and 309 of the Constitution, and hence this OA.

12. The respondent No.1 filed their counter reply on 24.03.2015 stating that Respondent No.2 has been unnecessarily impleaded as a party, and there is no allegation against Respondent No.2, nor did Respondent No.2 have any role in the matter which is the subject matter of adjudication before this Tribunal, and it was prayed that Respondent No.2 may be deleted from the array of parties. Taking certain preliminary objections, the respondent No.1 submitted that the applicants appeared in the regularization written test, but have not secured the qualifying marks, and knowing well its requirements, but having failed to secure the qualifying marks, they have adopted a different method to challenge the same, which they could not have done. It was further submitted that the background of the engagement of the two applicants and other contractual employees with the Respondent No.1 was that it had been assigned a study by the Planning Commission, which was scheduled to be completed within 18 months, and since some other projects in the meanwhile came to be assigned to Respondent No.1 before the earlier project closed, they kept on extending the terms of contractual employment, after receipt of unconditional willingness for extension of the contract from the concerned employees. It was submitted that later on despite the fact that the T&E Division of Respondent-organization was struggling in getting any new projects, and was not able to meet the internal targets of revenue generation and operating ratio, still somehow the respondents had managed to continue the applicants' employment under contracts under various different projects, as a special case, sometimes on 3-3 months' basis.

13. It was submitted that the requirement of regular posts on regularization of contractual employees was reviewed due to reduced workload division-wise, as certain divisions were not having enough business in hand, and since the answering respondent/ Respondent No.1 is a self sustaining PSU, and is operating on the basis of the self generated revenue & profits, without any grants from the administrative Ministry, it has to keep into account each and every aspect, including the operating ratio of each business unit, and the amount of contribution being done by each business unit to the profits of the company.

14. It was thereafter submitted that in terms of the settled law in **Rajya Sabha Secretariat & Ors. vs. Subhash Baloda, AIR (2013) SC 2193**, in Para-28, this Tribunal can neither sit in appeal over the selection process, nor it can supervise the selection process, and, therefore, the reliefs as prayed for by the applicant cannot be granted.

15. The respondents thereafter placed reliance upon the judgment of the Supreme Court in **K.A. Nagamani vs. Indian Airlines & Ors., (2009) 5 SCC 515** in which, in Para-54, it has been held that after having participated in the selection process, without any demur or protest, the applicants cannot be allowed to question and find fault with the process of selection itself, after having failed to qualify for their regularization in the examination conducted. It was, therefore, prayed that the OA is not maintainable, and is liable to be dismissed, as no legal

rights of the applicants have been infringed by the answering respondents.

16. It was explained that the applicants were engaged purely on contractual basis, for a specified period, and the conditions stipulated in Para 6 & 7 of their contractual employment clearly stated that such contractual employment will not confer upon them any lien or right for regularization of their services in the Respondent company. It was also submitted that the applicants cannot be allowed to raise the issue of the eligibility criteria of other candidates, whom they have not made a party in his OA, and they cannot also be allowed to rake up now the issue of non-conduct of written examination in Hindi, when they had not raised this objection before taking the examination.

17. It was further submitted that the answering respondent was not required to carry out regularization examination each year, as there was no right of regularization available to the contractual employees. Thereafter the details of the regularization policy, as revised on 13.12.2013, were explained, and it was further submitted that the Competent Authority had, on review of the business outlook of the concerned unit, decided to abolish even the sanctioned Cadre posts in those units, and since the sanctioned Cadre posts themselves stood abolished, there was no question of filling up those posts. It was also submitted that the applicants had not expressed any apprehension before the commencement of the examination, as they have expressed

now. It was further submitted that no specific educational qualification had been laid down earlier for the post of Economist and Statistician when recruitments were being made on contract basis, but when those posts came to be required to be filled up on substantive basis, the qualifications were reviewed in June 2012 by the Competent Authority, and the following educational qualifications for substantive recruitments were laid down:-

“Master in Economics/Business Economics/Operation
Research/Statistics/MBA with specialization in
Finance/Marketing”.

18. It was submitted that the Management of Respondent Corporation is fully competent to review the qualification required for any posts at any point of time, and revise them as per the work requirements, on the specific recommendation of the Division or the Unit concerned. It was submitted that the applicants had failed in the written examination, and, therefore, they were not eligible for consideration for the next stage of process of regularization. In any case, when the concerned cadre posts themselves stood abolished, the process of regularization was cancelled, even before the declaration of the final result of the selection process for regularizations.

19. It was further submitted that applicants were fully aware that their sanctioned contractual term was till 30.09.2014 only, which they had accepted without any protest or demur, and that they cannot now turn around.

20. Replying to the grounds taken in the OA, the respondents submitted that when the Cadre posts themselves stood abolished, there was no need for the Respondent-organization to regularize the contractual employees who had been working against those posts purely on contractual basis. It was again submitted that since the unit concerned was not generating sufficient profit and there was no sufficient business flow, the contract period of the applicants had to come to an end, as the respondents were fully competent to abolish the earlier sanctioned posts, and to relieve the applicants on expiry of their term of contract, which had been made very clear to the applicants during their initial engagement itself.

21. The respondents had further relied upon the judgment and order dated 30.03.2015 in OA No.3792/2014 in respect of another organization, in which in Para 6,7 & 8, a Coordinate Bench of this Tribunal had concluded as follows:-

“6. We have heard Shri Yogesh Sharma, learned counsel for the applicant and Shri G.S. Chaturvedi, learned counsel for the respondents. We have also perused the original documents made available by the learned counsel for the respondents. It is seen that even though there is a provision for regularization of contractual employees as per the guidelines issued by the respondents RITES, such regularizations are only subject to availability of vacancies. As per the detailed analysis made by the respondents in the matter which has been reproduced above, **the CMD who is the head of the respondents RITES has taken a conscious decision to permanently abolish the positions against which regularization has been initiated and not to make any new appointments on promotion/recruitment/regularization in the cadre.**

7. **In view of the above position, we do not find any merit in the contention of the applicants that the respondents RITES is duty bound to regularize their service as they have been successful in the selection process.** However, we make it clear that since the applicants have put in for long years of service with them, if they initiate any process for engagement of officials on contract basis against the posts in which the applicants were working, they shall give the first preference to the applicants and the applicants shall also be informed about it in advance so that they will be able to apply in time.

8. With the aforesaid direction, this OA is disposed of. There shall be no order as to costs.”

(Emphasis supplied).

22. Applicants filed their rejoinder on 27.07.2015, and submitted that irregularities in the process of regularization were brought to the notice of the respondents even before the regularization examination was held. It was accepted that consistent extensions were being awarded to the applicants on regular basis in the past, but the applicants questioned the procedure adopted by the respondents in having abolished the sanctioned Cadre posts against which they had been appointed on a contract basis. It was once again alleged that the rights of the applicants under the Constitution stand infringed, though the applicants had never questioned their appointment as contractual employees, and the conditions attached to those contracts. Thereafter the applicants had relied upon the very same judgment in OA No.3792/2015, which was relied upon by the respondents also. The applicants submitted that when the respondents had considered conducting the examination for regularization without considering their final status, they should have gone ahead and filled up the posts in accordance with the norms and

procedure cited in their HR Manual. It was again alleged that the educational qualifications prescribed for the post had never been revealed before the regularization examination, nor mentioned in the HR Manual etc. It was, therefore, prayed that the OA be allowed, since the respondents had failed to complete the process of regularization of contractual employees initiated by them.

OA No.157/2015

23. Exactly similar averments had been made in this OA also, and in the counter affidavits, and no rejoinder had been filed in this case.

24. Heard. We have given our anxious consideration to the facts of the case. One thing is clear that the Paragraph 6 & 7 of the terms and conditions of the contractual appointment of the applicants clearly stipulated that such contractual appointments would not provide to them any right to get absorbed, or get a lien against the posts on which they were working, and the applicants were through-out aware till the date of 30.09.2014, when their contract came to an end, about their legal status.

25. The respondents, in the meanwhile, sought to regularize the services of the numerous contractual employees working with them, and advertised for filling up the posts which were occupied by the applicants also.

26. Three things happened thereafter. Firstly, the applicants failed in the qualifying examination, secondly they did not meet the educational qualifications which had in the meanwhile come to be prescribed for filling up the relevant post, and thirdly the Respondent-Corporation undertook a review of its profit centre units, and decided to abolish certain posts, and, as a result, the posts against which the applicants were seeking regularization themselves ceased to exist.

27. It is trite law that an employer is fully competent to prescribe the qualifications which he expects his employees to possess, before entering into with him a relationship of master and servant, either on temporary, or contract, or a permanent basis. When the respondents have now prescribed the qualifications relevant to the post, which had not been prescribed in detail earlier, they cannot be faulted on that ground, as they have acted within their rights as an employer.

28. It is also trite law that an applicant who has appeared in the written examination, but failed the same, cannot thereafter question the process of selection and examination. The law in this regard has been laid down in many cases, including in the following cases:-

- “i) **Madan Lal and Ors. v. State of J & K and Ors., [1995] 3 SCC 486,**
- ii) **Dhananjay Malik & Ors. vs. State of Uttaranchal & Ors.: AIR 2008 SC 1913: (2008) 4 SCC 171;**
- iii) **National Institute of Mental Health & Neuro Sciences vs. Dr. K.Kalyana Raman & Ors. AIR 1992 SC 1806;**

- iv) **Osmania University Represented by its Registrar, Hyderabad, Andhra Pradesh vs. Abdul Rayees Khan: (1997) 3 SCC 124;**
- v) **K.H. Siraj vs. High Court of Kerala & Ors. (2006) 6 SCC 395;**
- vi) **University of Cochin Rep., by its Registrar vs. N. S. Kanjoonjamma and Others, AIR 1997 SC 2083;**
- vii) **K.A. Nagamani vs. Indian Airlines & Ors., (2009) 5 SCC 515;**
- viii) **Amlan Jyoti Borooah vs. State of Assam & Ors., (2009) 3 SCC 227;**
- ix) **Manish Kumar Shashi vs. State of Bihar & Ors. (2010) 12 SCC 576;**
- x) **Union of India & Another vs. N. Chandrasekharan & Ors. (1998) 3 SCC 694.**

29. Therefore, the applicants, who had failed in the regularization examination, cannot now assail the process of that examination for regularization of contractual employees as had been undertaken by the respondents. Lastly, it is trite law that it is the prerogative of an employer to fill up a post, or keep a post unfilled, or to abolish a post, or to change the cadre strength, or merge cadres and posts. The law in this regard has been laid down by the Apex Court in **P.U. Joshi & Ors. vs. The Accountant General, Ahmedabad & Ors., 2003 (2) SCC 632**, and many other cases.

30. We are also bound by the orders of the Coordinate Bench, cited by the respondents as well as by the applicants, passed on 30.03.2015 in OA No.3792/2014, as reproduced above. The Respondent-organization

being a profit making organization, is fully empowered to review from time to time the activities of each of their profit making units, and if a particular unit or division is not having enough business in hand, the Corporation concerned is fully competent to abolish that loss making limb of their organization, in the absence of any substantive work to pay for the salaries of the people employed therein.

31. Therefore, based upon the reasons as discussed above, we find no merit in the O.As., and the O.As are, therefore, dismissed, but there shall be no order as to costs.

32. Let a copy of this order be placed in OA No.157/2015.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.