

**Central Administrative Tribunal
Principal Bench**

OA No.3809/2014
MA No.3715/2014

Order Reserved on: 07.03.2017

Pronounced on: 06.04.2017.

***HON'BLE MR. JUSTICE PERMOD KOHLI, CHAIRMAN
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)***

Dr. Swati Srivastava,
W/o Shri Animesh Srivastava,
Aged 33 years,
R/o 8, Kanchanchanga Apartments,
Plot No.90, I.P. Extension,
New Delhi-110092.
New Delhi 110 021.

-Applicant

(By Advocates: Ms. Jyoti Singh, Senior Counsel with Mr. M.S. Ramalingam, Advocate)

-Versus-

1. Union of India
Through Secretary
Department of Defence, Research & Development,
Room No.531/B, Defence Research &
Development Organization, DRDO Bhawan,
Ministry of Defence, Rajaji Marg,
New Delhi-110011.

2. Director of Personnel (DOP),
Room No.217,
Defence Research and Development Organization,
DRDO Bhawan,
Ministry of Defence,

Rajaji Marg,
New Delhi-110011.

-Respondents

(By Advocate Shri Rajesh Katyal)

O R D E R

Mr. K.N. Shrivastava, Member (A):

The applicant, through the medium of this Original Application (OA) filed under Section 19 of the Administrative Tribunals Act, 1985, has prayed for the following reliefs:

“(ii) Hold and declare that the Applicant has been validly appointed to the Post of Scientist ‘B’ under the Respondents

(iii) Set aside the impugned Annulment Order No.MON.GP/120576/M/01 dated 10 Oct 2014

(iv) Direct the Respondents to treat the Applicant as continuously under service since the date of initial appointment on 30 December 2004

(v) Restrain the respondents from making any further proceedings against the Applicant in respect of the same allegations

(vi) Considering the fact that the respondents’ action smacks of mala fide, prejudice and vindictiveness, award the cost of the litigation;”

2. The brief facts of this case are as under:

2.1 The Defence Research Development Organization (DRDO)-respondent organization brought out Annexure A-2 advertisement dated 27th March-2nd April, 2004, inviting applications for various posts. One such post was Scientist ‘B’ in Biotechnology discipline. The last date for submission of the applications was 30.04.2004. The essential qualification for the post of Scientist ‘B’ was 1st class

Bachelor's Degree in Engineering or 1st class Master's Degree in Science in the relevant subject.

2.2 The applicant was pursuing her Post Graduation (M. Sc.) course in Environmental Biology. The M. Sc. Course was of two years. She had completed 1st year course in which she secured 75.6% marks. At the time of applying for the post on 23.04.2004, she had already appeared for the final year examination and her result was awaited. She had indicated this position in her Annexure A-3 application.

2.3 She was called for interview in September, 2004 vide Annexure A-4 call letter issued to her by the respondents. At the time of her appearing for the interview, her final year M. Sc. result had already been declared. She submitted copies of her provisional M. Sc. Degree, M.Sc. final year's mark-sheet, her Gold Medalist certificate for having secured the highest marks, dissertation work in biotechnology undertaken by her in the 2nd year of Post Graduation Course on 'Potential utility of Brassica Juncea cv. Varuna in Remediating the Ecological Sites Contaminated with Chromium'. She also submitted a copy of the certificate of completion of research training in the field of Biotechnology from Jawahar Lal Nehru Centre for Advanced Scientific Research (JNCASR), Bangalore.

2.4 The applicant was selected for the post of Scientist 'B' (Biotechnology). She received offer of appointment and joined the post in December, 2004. She was confirmed in the post of Scientist 'B' and later on promoted as Scientist 'C' w.e.f. 01.07.2009.

2.5 The applicant was issued Annexure A-5 Show Cause Notice (SCN) dated 06.05.2014. The SCN reads as under:

"To,

Ms. Swati Srivastava, Sc 'C'
DIPAS, Delhi.
(Through Director, DIPAS)

SHOW CAUSE NOTICE

1. You were recruited as Sc 'B' in DRDO against Advertisement No.66 Item No.34 (Bio-Technology).
2. On scrutiny of application submitted by you for recruitment to the post of Sc 'B' mentioned above, it is noticed that you were not possessing the minimum essential qualifications as advertised and prescribed in the DRDS Recruitment Rules, 1979 (SRO 8 of 1978).
3. Further, the post was advertised for recruitment as Scientist 'B' in the Subject/Discipline/Specialization in 'Bio-Technology'. It has been found that you were pursuing MSc '(Environmental Biology)'.
4. Thus you were ab initio ineligible for appointment as Sc 'B' in DRDO against the advertised post mentioned in para 1 above.
5. Accordingly, you are hereby directed to state why action should not be initiated against you in terms of Department of Personnel and Training OM No.11012/7/91-Estt.(A) dated 19.05.1993 (copy enclosed).
6. Your reply to this 'Show Cause Notice' should reach the undersigned within 10 days of receipt of the same failing which it will be presumed that you have nothing to state in the matter and the case will be processed accordingly. It is made explicitly clear that no request for additional time for submitting your reply will be entertained."

2.6 The SCN contemplated action against the applicant in terms of Annexure A-6 DOP&T OM No.11012/7/91-Estt.(A) dated 19.05.1993, a copy of which was also enclosed with the SCN.

2.7 The applicant replied to the SCN vide her Annexure A-7 letter dated 15.05.2014 denying the charges/allegations. She also demanded copies of some documents so as to submit a detailed reply to the SCN.

2.8 The respondents without initiating action under Rule 14 of the CCS (CCA) Rules, 1965, vide the impugned Annexure A-1 order dated 10.10.2014 annulled her appointment. The main grounds mentioned in the impugned order annulling the appointment of the applicant are as under:

- i) The certificate issued on 05.08.2004 could neither have been submitted along with the application on 23.04.2004 nor was she having M.Sc. Degree at the time of submission of the application for the post in question.
- ii) The applicant had not completed her M.Sc. Degree at the time of submission of her application nor even on the closing date of submission of the applications.
- iii) Without her having the required qualification, the applicant was called for interview due to manipulation of her father Dr. Arun Kumar, who was then working as an Additional Director of RAC, DRDO for which disciplinary proceedings under Rule 14 of the CCS

(CCA) Rules, 1965 had already been initiated against him and a charge-sheet had been issued by the Ministry of Defence vide OM dated 17.12.2012. The advertisement No.66/04 had prescribed the qualification of M.Sc. in Biotechnology, whereas the applicant has got M. Sc. in Environmental Biology with specialization in Biotechnology.

2.9. Aggrieved by the impugned Annexure A-1 order of the respondents, the applicant has filed the instant OA praying for the reliefs as indicated in para-1 supra. The applicant has pleaded the following important grounds in the OA:

- i) The action of the respondents is contrary to the instructions of DoP&T contained in their Annexure A-6 OM dated 19.05.1993, which mandates initiation of disciplinary proceedings under Rule 14 of the CCS (CCA) Rules, 1965.
- ii) The principles of natural justice have been violated by the respondents since the applicant's appointment has been annulled without any enquiry.
- iii) The action of the respondents is hit by the doctrine of estoppels inasmuch as that the respondents have selected the applicant, confirmed her and allowed her to work for nine years during which she was granted promotion as well.
- iv) The documents sought from the respondents by the applicant have not been made available to her for no valid reasons. For want

of these documents, she could not reply to the SCN comprehensively.

v) The annulment of the appointment of the applicant after she had worked for about 10 years has resulted in her becoming over-age for any further recruitment.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The applicant thereafter filed her rejoinder. The respondents in their reply have broadly pleaded as under:

a) The advertisement No.66/2004 had clearly stipulated that the qualification required for the post of Scientist 'B' in Biotechnology was M. Sc. (Biotechnology) or BE (Biotechnology) and no corrigendum has been issued to it.

b) The applicant, who is daughter of Dr. Arun Kumar, the then Additional Director, RAC, submitted her application on 23.04.2004 for the post. She had not completed M. Sc. Degree at the time of submission of her application nor even on the closing date of applications, which was 30.04.2004.

c) The applicant was called for interview due to manipulation under the influence of her father Dr. Arun Kumar, the then Additional Director, RAC. The doctrine of estoppels is not applicable in this case since the appointment of applicant was not on the basis of mutually acceptable contract. The statutory DRDS

Rules, 1979 were notified in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. Hence, there cannot be any estoppel against the Constitution of India or SRO derived under its provisions as such provisions are conceived in public interest.

d) The appointment of the applicant was *ab initio* illegal and against the public policy.

4. On completion of the pleadings, the case was taken up for hearing the arguments of the parties on 07.03.2017. Arguments of Ms. Jyoti Singh, learned senior counsel along with Sh. M.S. Ramalingam, learned counsel for the applicant and that of Sh. Rajesh Katyal, learned counsel for the respondents were heard on 07.03.2017.

5. Ms. Jyoti Singh, learned senior counsel for the applicant stated that the respondents have not levied any allegation of fraud or misrepresentation on the applicant. The two reasons cited in the SCN are that the applicant did not possess the minimum essential qualifications as advertised and prescribed in the Recruitment Rules (RRs) and that the post relates to Biotechnology whereas the applicant was pursuing Post Graduation in Environmental Biology. She further submitted that the SCN has been issued to the applicant regarding her appointment after she has rendered about 10 years of regular service. The applicant's appointment has been

annulled by the respondents in terms of Annexure A-6 DoP&T OM dated 19.05.1993. The respondents have, however ignored that the denial of enquiry as prescribed in the DoP&T OM dated 19.05.1993 is hit by estoppels besides being in violation of the principles of natural justice.

5.1 Ms. Jyoti Singh further submitted that under Rule 19 (2) of the CCS (CCA) Rules, 1965 enquiry can be dispensed with by the Disciplinary Authority (DA) only if the DA is satisfied, for the reasons to be recorded in writing, that it is not reasonably practicable to hold an enquiry. In the instant case, no such ground has been made out nor has any reasoning been recorded. Regarding the educational qualification of the applicant at the time of applying for the post, Ms. Jyoti Singh drew our attention to Note-2 of the DRDO Rules, which stipulates that the closing date shall be considered for determining the age limit and that there is no stipulation in the rules as to the educational qualifications at the time of submission of the application. She vehemently argued that one of the two modes followed by the DRDO for recruiting candidates for the post of Scientist 'B' is by way of Campus interview of the final year students and that more than 100 candidates awaiting results were called for interview. Some of such candidates have also been finally selected by DRDO whose names are given at para-4.22 of the rejoinder filed by the applicant.

5.2 The credentials of the applicants were thoroughly verified by the department before calling her for interview as well as before issuing the appointment letters. The applicant is being victimized due to some personal enmity against her father.

5.3 The applicant has been confirmed in the service in the year 2006 and later promoted as Scientist 'C' in the year 2009. She had neither concealed nor misrepresented any information in her application. As such, her appointment cannot be annulled. In this regard, the learned counsel placed reliance on the judgment of the Hon'ble High Court of Delhi in **Geeta Mahadevan v. Union of India**, [94 (2001)DLT 102], in which it has been held as under:

“13. Therefore, even if it was accepted that petitioner was ineligible on the last date of receipt of application though she became eligible few months later on the date of interview/written test, her appointment would be at best irregular and would be deemed regularised given regard to conduct of respondents who had selected her, appointed her, confirmed her on the post with eyes open over a period of time. They could not be now allowed to turn round and whip up a dead horse by invoking a condition of an advertisement which they had failed to enforce at relevant time and that too by reference to a legal precedent which had evolved in different fact situation. They are to be held estopped from doing so because possession of requisite essential qualification on the last date of receipt of applications in this case was not prescribed by any statute or recruitment rule.”

5.4 Concluding her arguments, Ms. Jyoti Singh submitted that the applicant's appointment could not have been annulled without conducting a proper enquiry under the CCS (CCA) Rules, 1965 and hence the impugned Annexure A-1 order dated 10.10.2014 is bad in law and it may be quashed and set aside.

6. Per contra, Shri Rajesh Katyal, learned counsel for the respondents, reiterating the averments made in the reply filed on behalf of the respondents submitted that the applicant did not possess the requisite educational qualifications while applying for the post. The post pertains to Biotechnology discipline whereas the applicant was pursuing M.Sc. degree course in Environmental Biology with specialization in Biotechnology and more so she had not completed the course at the time of applying for the post. He further submitted that the applicant should not have been called for the interview but for her father Dr. Arun Kumar, who was then working as Additional Director, RAC in DRDO, manipulating the short-listing criteria in flagrant contravention of the DRDS Rules, 1978 and for this mala fide conduct of the Dr. Arun Kumar, DE proceedings under the CCS (CCA) Rules, 1965 have been started against him.

6.1. Shri Katyal further submitted that DRDO had constituted a High Level Committee to enquire into the matter of appointment of the applicant, who, *prima facie*, found that the irregularities were committed in her recruitment and thus recommended for reconsideration of her appointment. Additionally, the Inquiring Authority appointed to conduct the enquiry against the father of the applicant Dr. Arun Kumar in regard to his role in the illegal appointment of the applicant, has firmly established the charges

against him and the manipulation done by him by misusing his official position and exercising undue influence. Under the circumstances, the competent authority decided to dispense with the enquiry proceedings under Rule 19 (2) of the CCS (CCA) Rules, 1965 and to annul the applicant's appointment in the organizational interest.

6.2 Replying to the arguments of the learned senior counsel of the applicant that there were several candidates who have been called for interview without them having completed their educational courses, Shri Katyal stated that in three cases it has been observed from the personal records of the candidates that they indeed acquired the prescribed degrees after the closing date of the application. These candidates are:

- i) Sh. V.F. Saji (Naval Architecture)
- ii) Sh. Shan Victor Perei (Ceramic Technology)
- iii) Ms. Dolly Bansal (Psychology).

Shri Katyal submitted that in the case of Ms. Dolly Bansal, a SCN has been issued to her.

6.3 Shri Katyal vehemently argued that the applicant was not qualified for the post since the post relates to Biotechnology whereas she has done M.Sc. in Environmental Biology with specialization in Biotechnology. He contended that Environmental Biology and Biotechnology are entirely two different fields and

hence a person like the applicant holding M.Sc. degree in Environmental Biology cannot occupy a position meant for a person with post graduation degree in Biotechnology. Regarding the argument put-forth on behalf of the applicant that several candidates who too had not completed their degree courses at the time of applying for the Scientist 'B' position against item No.34 of advertisement No.66 of 2004, Shri Katyal submitted that records of only selected candidates have been retained by DRDO and those of non-selected ones have since been weeded out.

6.4 To support his arguments, Shri Katyal relied upon the following judgments of the Hon'ble Supreme Courts:

i) **Rakesh Kumar Sharma v. Govt. of NCT of Delhi**, [(2013) 11 SCC 58], wherein it has been held as under:

"There is no obligation on the court to protect an illegal appointment. Extraordinary power of the court should be used only in an appropriate case to advance the cause of justice and not to defeat the rights of others or create arbitrariness. Usurpation of a post by an ineligible candidate in any circumstance is impermissible. The process of verification and notice of termination in the instant case followed within a very short proximity of the appointment and was not delayed at all so as to even remotely give rise to an expectancy of continuance."

ii) **R. Vishwanatha Pillai v. State of Kerala**, [(2004) 2 SCC 105], where the Hon'ble Supreme Court has held as under:

"If the very appointment to civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 can possible flow from such a tainted force. In such a situation, the question is whether the person concerned is at all a civil servant of the Union or the State and if he is not validly so, then the issue remains outside the purview of Article 311. If the very entry or the crossing of threshold into the area of the civil service of the State or the Union is put in issue and door is barred against him, the cloak of protection under Article 311 is not attracted."

iii) **Union of India v. M.K. Sarkar**, [(2010) 2 SCC 59], wherein it was held as under:

“A claim on the basis of guarantee of equality, by reference to someone similarly placed, is permissible only when the person similarly placed has been lawfully granted a relief and the person claiming relief is also lawfully entitled for the same. On the other hand, where a benefit was illegally or irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach a court for extension of a similar illegal benefit. If such a request is accepted, it would amount to perpetuating the irregularity. When a person is refused a benefit to which he is not entitled, he cannot approach the court and claim that benefit on the ground that someone else has been illegally extended such benefit. If he wants, he can challenge the benefit illegally granted to others. The fact that someone who may be not entitled to the relief has been given relief illegally is not a ground to grant relief to a person who is not entitled to the relief.”

6.5 Concluding his arguments the learned counsel for the respondents submitted that the applicant's appointment was palpably irregular and hence the respondents were justified in annulling her appointment and thus the OA is liable for dismissal.

7. Replying to the arguments of the learned counsel for the respondents, Ms. Jyoti Singh stated that the judgment of the Hon'ble Supreme Court in **R. Vishwanatha Pillai** (supra) is not applicable to the instant case, as in that case, the appellant had entered the service against a reserved post meant for SC/ST on the basis of a false caste certificate.

8. We have considered the arguments of the learned counsel for the parties and have perused the pleadings and the documents annexed thereto. Admittedly, the applicant had furnished correct

information in regard to her educational qualifications in the application form. She had clearly indicated that she had completed M. Sc. previous year course in which she had secured 75.6% marks and that she had appeared for the 2nd and final year examination for the M. Sc. degree course and the results were awaited. She has neither concealed nor misrepresented any information. She had also indicated that her M. Sc. degree course was in Environmental Biology with specialization in Biotechnology. The respondents after scrutinizing her application, decided to call her for the interview. At the time of appearing for the interview her M.Sc. Final Year results were out and she had secured highest marks for which she was awarded a Gold Medal. The respondents based on the performance of the applicant in the interview ultimately selected her for the post of Scientist 'B' (Biotechnology).

9. It is also on record that the respondents had called several other candidates who too had not completed their Post Graduation degree courses. Furthermore, there were candidates whose degree courses are not exactly matching with the educational requirement for the post for which they applied vis-a-vis advertisement No.66, item No.34. Like the applicant, they too have been called for the interview. The respondents have admitted that three such candidates are still in the service of the DRDO and hence the applicant's case cannot be viewed as an isolated one.

10. The respondents have annulled the appointment of the applicant vide impugned Annexure A-1 order placing reliance on the Annexure A-6 OM of DoP&T dated 19.05.1993. The respondents have, however, failed to note that the said OM also stipulates that in case of a permanent government servant, an enquiry as prescribed under Rule 14 of the CCS (CCA) Rules, 1965 may be held. Admittedly, the applicant was appointed as Scientist 'B' in the year 2004 and confirmed as such and later on promoted as Scientist 'C' w.e.f. 01.07.2009 and thus had rendered about 10 years service in the DRDO. She had become a permanent employee of DRDO. Hence, an enquiry under Rule 14 of the CCS (CCA) Rules, 1965 was a mandatory requirement, which the respondents have failed to follow. For clarity, the relevant portion of the *ibid* OM of DoP&T is extracted below:

"If he has become a permanent Government servant, an inquiry as prescribed in Rule 14 of CCS (CCA) Rules, 1965 may be held and if the charges are proved, the Government servant should be removed or dismissed from service. In no circumstances should any other penalty be imposed."

11. In this view of the matter, without going into other grounds urged by the applicant, on this ground alone, the impugned Annexure A-1 order dated 10.10.2014 does not survive. We have no doubt in our mind that the respondents were obliged to conduct a proper enquiry against the applicant in accordance with Rule 14

of the CCS (CCA) Rules, 1965 in the prescribed manner before deciding the fate of her appointment.

12. As per our direction the respondents had submitted a list of candidates who were called for interview for the post of Scientist 'B' in the subject/discipline/specialization of Biotechnology against item No.34 of advertisement No.66 for which the applicant had also applied, which has been taken on record. From the perusal of the said list, we find that some candidates had been called for interview who did not have M.Sc. in Biotechnology but were having Post-Graduation in the related fields viz. Microbiology, Genetics & Plant Breeding, Environmental Biotechnology, Life Science, Environmental Science, Microbiology & Cells, Industrial Chemistry at B. Tech level, and Biotechnology at M. Tech level. Thus the action of the respondents of annulling the appointment of the applicant on the ground of not having M.Sc. degree in Biotechnology smacks of arbitrariness and vindictive attitude.

13. In the conspectus of the discussions in the foregoing paras, the impugned Annexure A-1 order dated 10.10.2014 is quashed and set aside. The respondents are directed to re-instate the applicant in her earlier position of Scientist 'C' within four weeks from the date of receipt of a certified copy of this order with all consequential benefits. The respondents are, however, given liberty to conduct a regular enquiry against the applicant under Rule 14 of

the CCS (CCA) Rules, 1965 for the charges/allegations made against her and take appropriate action as per law.

14. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

‘San.’