

OA.No.170/01435/2018/CAT/BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01435/2018

DATED THIS THE 20TH DAY OF JUNE, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

Gururaj D
S/o Dalegowda,
Aged about 36 years,
Working as Resource Coordinator
All India Institute of Speech and Hearing,
Manasagangothri, Mysore 570 006
R/o # 236, Belavatha Grama
RBI Post, Mysore 570 006
(By Advocate Shri Ranganatha S. Jois)

..... Applicant

Vs.

1. The All India Institute of Speech
and Hearing,
"Naimisham" Campus,
Manasagangothri,
Mysore 570 006
Rep. by its Chief Administrative Officer.

2. The Union of India,
Rep. by its Secretary,
Ministry of Health and Family Welfare,
New Delhi 110 001

....Respondents

(By Shri Ananda K., Counsel for Respondent No. 1)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

Apparently we had disposed off a connected matter vide order in OA No. 170/00447/2018 dated 15.11.2018, which we quote:

"O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The applicant has filed the present OA seeking the following relief:

- a) *Call for the entire records relating to the impugned order bearing No.CB.17/2018-19/SH/PL/CB.17/2018-19 dtd.17.4.2018 vide Annexure-A8 passed by 1st respondent, peruse and declare non-continuation of the applicant as illegal, arbitrary and discriminatory and contrary to law as laid down by the Apex Court.*
 - b) *Issue a consequential direction to continue the services of the applicant as Electronic Engineer and until the said post is filled up as per the recruitment rules by providing age relaxation and weightage as per rules and extend him the consequential benefits.*
2. *The applicant is a holder of Degree in Engineering and also a Diploma in Engineering(Electrical and Electronics). The 1st respondent issued a notification dtd.14.10.2010(Annexure-A1) and appointed him against the post of Electronic Engineer for a consolidated salary of Rs.18,000/- against a clear vacant post. Consequent on the selection, he was appointed on 7.1.2011 as Electronic Engineer for a period of 12 months on contract basis and it was stated that the terms and conditions will be in terms of the contract as he has the required qualification for the post. Accordingly, he reported for duty and has been working on contract basis ever since his reporting for duty on 07.1.2011(Annexure-A2). Thereafter, every year re-appointment orders were issued and he was again allowed to report for duty with a notional break in service as can be seen from the appointment orders dt.20.1.2012(Annexure-A3) and subsequent orders issued on*

24.1.2013, 29.7.2013, 3.2.2014, 7.8.2014, 10.7.2015 and 15.6.2016 which were appointment orders issued from time to time. The latest order dtd.18.5.2017(Annexure-A4) by which the applicant reported for duty being appointed afresh. Thus it is evident that the applicant has been selected against a sanctioned post and after due selection, he has been appointed though on contract basis as Electronic Engineer. The Service Certificate and letter of appreciation dtd.7.2.2017 and 9.2.2017 issued by the 1st respondent are placed as Annexure-A5 & A6. The applicant has been selected to attend the Workshop on the subject of Laboratory Equipment, Operation and Maintenance for Technical Staff. The applicant is a sports-person and he is fully qualified and has rendered very good service to the Institution and also obtained Certificates for participating in the work-shops in Signal Processing, information and communication, communication disability and several other and specialised subjects. He submits that he has applied for regular appointment to the post of Junior Technical Officer in pursuance of the Advt.No.10/15 which he has separately challenged in OA.No.794/2017. He was asked to appear for Objective Test and Practical Test and he successfully attended the same and obtained the highest marks in the said test as can be seen from the details of marks. He further submits that the 1st respondent Institution issued a tender notification(Annexure-A7) which he and several others challenged in another OA.282-286/2018 and is stayed by this Tribunal. The applicant who has rendered nearly 8 years of service is unceremoniously relieved by the impugned relieving order dtd.17.4.2018(Annexure-A8) discriminating him with ulterior motive.

3. The applicant contends that he has been working as Electronic Engineer from 2011 though fresh orders of appointment have been issued from time to time with notional breaks. The fact remains that he has gained experience in the institution and has been appreciated for his work and has attended several workshops and is also having the qualification of Graduation in Engineer. The applicant cannot be denied the selection on regular basis. At least to continue in the post of Electronic Engineer, his relieving order and any attempt to replace him by other contract employee is illegal. Thus he is entitled to continue in service until the regular recruitment is made by the UPSC or any other statutory agency and he has to be provided with necessary weightage and age relaxation as per law.
4. The respondents have filed reply statement wherein they submit that the 1st respondent i.e. All India Institute of Speech and Hearing(AIISH), Mysore is an autonomous body under the Administrative control of Ministry of Health and Family Welfare and is wholly funded by the Govt. of India. The Director of the Institute carries out the functions under the guidance of the Executive Council and Bye-laws and Rules and Regulations framed by the Executive Council of the Institute.

5. *The applicant was working as Electronic Engineer on contract basis and has been relieved of his duties on completion of the tenure of contract on 17.04.2018. The recruitment in the 1st respondent Institute for regular sanctioned posts is done as per the Recruitment Rules approved by the Executive Council of the Institute and there is no role for UPSC/SSC in the recruitments made by the Institute. They submit that as on the date of filing of the OA i.e. on 26.4.2018, the applicant did not hold of any position in the 1st respondent Institute i.e. the applicant was not even in the status of contract employee and therefore he has no right to approach the Tribunal.*

6. *They submit that the applicant was appointed as Electronic Engineer which is a contract post approved by the Executive Council of 1st respondent Institute. Appointments to contract posts are not made as per the Recruitment Rules of the Institute. A separate set of Rules were made exclusively for such contract appointments to ensure fairness in selection of the contract employees. The contract appointments are made only on consolidated salary and for limited duration depending on the exigencies of service and requirement of the Institute. Therefore, the contention that he has been selected against the sanctioned post is not correct and there is no sanctioned vacant regular post in the Institute with the designation of Electronic Engineer. The certificates issued by the Institute and allocation of duties assigned to the individual and the fact that he has been active in sports and other activities do not entitle him for regular appointment in the Institute. The regular appointments are governed by Recruitment Rules which needs to be fulfilled if one has to be considered for selection. The contention of the applicant that he obtained highest marks in the Skill Test makes him eligible for selection is not in line with the Govt. of India orders on the subject of selection to Gr.B & C posts. The orders of Govt. of India conveyed vide OM dtd.15.02.2016 clearly stipulates that Skill Test is conducted only to evaluate the candidates and the marks in the Skill Test cannot be considered for selection. Selection is based on merit in the Essential Qualification prescribed for the post and in this regard guidelines have already been formulated by the Institute based on the Govt. of India orders vide OMs dtd.29.12.2015(Annexure-R1), 15.02.2016(Annexure-R2) and 15.03.2016(Annexure-R3). Based on the above OMs and guidelines, the applicant was not eligible to be selected to the said post and therefore he has not been selected. The apprehension of the applicant that the 1st respondent Institute is trying to bring a private agency to disturb him is unfounded and is denied. The tender notification is for the institutional activities such as maintenance in House Keeping, Civil & Electronic Maintenance, Guest House Maintenance etc. and therefore, the said tender notification is nothing to do with the very contract appointment of the applicant. Further he was appointed on contract basis as per the order dtd.18.5.2017 for a period of 11 months and as the said term of the contract appointment was completed on 17.04.2018, he was relieved from service on that day and therefore, the allegation that he was unceremoniously*

relieved is false and incorrect. He has been working on contract basis with intermittent breaks and there is no continuity of service as claimed by him. On the contention of the applicant that he had appeared for the Skill Test and secured highest marks and in spite of it, he was not selected, the respondents submit that as per the prevailing instructions of Govt. of India regarding selection of candidates for Gr.B & C posts, the marks secured in the Skill Test is considered only to ascertain as to whether he has necessary skill or otherwise. Only after passing in the Skill Test, the candidate will be eligible to be considered for the selection to the respective post. As per the Guidelines, the merit list will be prepared based on the marks secured in qualifying examination among the candidates who have passed the Skill Test. Admittedly, though the applicant secured more marks in the Skill Test, in view of him securing less marks in the qualifying examination which is less than the cut off percentage, he was not selected to the said post. The contention that several other contract employees are being continued and only he has been relieved is not correct. Several other contract employees also have been relieved on completion of the tenure due to filling up of regular positions based on the Recruitment Rules of the Institute. The orders of relieving the other candidates who had completed their contract period are annexed as Annexures-R6 to R19.

7. *They further submit that the applicant was engaged on contract basis as Electronic Engineer for the temporary period against the contract post and not against the sanctioned vacant post. The applicant joined the Institute after having accepted the terms and conditions of contract appointment. Hence, his claim that he has experience and needs to be offered regular position is not tenable. At no point of time, the Institute has indicated that he will be replaced by another contract employee. His services were not required by the Institute after completion of his tenure as the Institute filled up 2 posts of Technicians on regular basis w.e.f.31.1.2018(Annexure-R20) and 12.2.2018(Annexure-R21). Though the said 2 technicians have been regularly appointed on 31.1.2018 and 12.2.2018, the applicant was not relieved immediately by the 1st respondent Institute and he was continued on humanitarian ground and only relieved on completion of the tenure of his contract appointment. Therefore, the applicant is not entitled for any relief and the OA is liable to be dismissed.*
8. *The applicant has filed rejoinder reiterating the submissions already made in the OA. He submits that even before his relieving order dt.17.4.2018, he had challenged the tender notification in OA.282-286/2018. Thereafter, the present OA is filed in view of the relieving order dtd.17.4.2018 served on the applicant on 23.4.2018 and the applicant was allowed to work even for the said date as can be seen from the Attendance Extract(Annexure-A23). It was duly signed by the Office Head. It is a normal procedure that a Contract*

employee, though his term ends on a particular date, he is allowed to work for 3 more days on earlier occasions till the issue of fresh appointments from 2011-2018. Similarly, the applicant was allowed to work up to 23.4.2018 and in the meanwhile he had already filed the present OA seeking for stay. Though the Tribunal has passed an order on 9.5.2018 continuing the services of the applicant, the same has not been continued even though it was well within the knowledge of the respondents. He has submitted a representation on 10.5.2018(Annexure-A24) through post to the respondents. The contention of the respondents that the tender notification is for institutional activities and house-keeping and maintenance and there is no provision for the applicant is not well taken. In the said notification, the work now to be discharged as Electronics Engineer is also shown. In fact, for having challenged the said tender notification, the impugned relieving order has been issued against the applicant which is malafide and arbitrary. On the contention that two posts of Technician have been filled up by regular candidates, applicant submits that the said posts are in no way connected to the post of Electrical Engineer held by the applicant. Those are the posts created under the Cadre and Recruitment Rules within the cadre which are governed by the Recruitment Rules of the Institute. In fact the Electronic Engineer is a promotional post to that of a Junior Technical Officer. Therefore, the reference to the appointment to the post of Technician is in no way connected to the post held by the applicant. Even the said appointments have been made in the Month of January 2018, the fact that the applicant has been continued, normally indicates that the post held by the applicant is in no way relatable to the post of Technical Officer through the said notification. He further submits that he has no means of livelihood. If his appointment is taken away, he will lose his livelihood and now that he applied for the post of Junior Technical Officer on regular basis, though he performed well in the Skill Test and scored higher marks and had experience of 7 years, his case was not considered. Therefore, he may be allowed with the benefits as stated above.

9. *We have heard the Learned Counsel for both the parties who have filed their written arguments note. The Learned Counsels for the applicant and the respondents have made submissions reiterating the factual position and their points as highlighted by them in the OA, reply statement and rejoinder.*
10. *We have gone through the main contentions of the applicant and reply of the respondents and their written arguments note in detail. The main prayer of the applicant relates to declaring his non-continuation to the post of Electronic Engineer vide impugned order dtd.17.4.2018(Annexure-A8) as illegal, arbitrary and discriminatory and contrary to law as laid down by the Apex Court. The fact that the applicant was a contract employee and appointed from 07.01.2011 for a period of 12 months on contract basis and subsequently renewed thereafter vide various orders is not in dispute. The*

last order of contract was dtd.18.05.2017 and the period of contract ended on 17.04.2018. It is clear from the various orders cited that the applicant has been appointed purely on a contractual basis and the respondents institute has every right to terminate his employment at the end of the period of contract. The recruitment rules for the post of Electronic Engineer are stated to be in place and the avenue for promotion is from the cadre of Junior Technical Officer. In the meantime, the respondents have also appointed two Technicians on a regular basis at the institute in January and February 2018. The applicant's plea against his non-selection for the post of Technician challenged before this Tribunal in OA.No.793/2017 has also been dismissed vide the Tribunal's order dtd.17.01.2018. As has been submitted by the respondents, the applicant did not hold of any position in the 1st respondent institution as on the date of filing of the OA i.e. on 26.4.2018 and he was not even in the status of contract employee. Therefore, the applicant has no right to challenge the impugned order dtd.17.4.2018 in this OA.

11. *The second relief sought for relates to the direction to the respondents to continue the services of the applicant as Electronic Engineer until the said post is filled up as per the recruitment rules by providing age relaxation/weightage as per rules and extend him the consequential benefits. As has been submitted by the respondents the recruitment rules have been framed for various posts and the respondents have also been issuing regular advertisements for the same. That process cannot be interfered with by this Tribunal. The interim order given in OA.No.282-286/2018 relating to the applicant being reinstated into the post of Electronic Engineer was challenged before the Hon'ble High Court of Karnataka and the Hon'ble High Court in its order dtd.20.6.2018 in WP.No.21799/2018(S-CAT)(Annexure-R25 in OA.No.282-286/2018 before this Tribunal) has set aside the portion of the order relating to the reinstatement. Hence, there is no question of continuation of service of the applicant as Electronic Engineer. As already discussed above, since the prayer of the applicant for appointment to the post of Technician has been dismissed by this Tribunal in OA.No.793/2017 vide order dtd.17.1.2018 as the Tribunal has not found merit in his being appointed to the post of Technician over more meritorious candidates, the applicant does not have any right to claim regularisation and the various cases cited by him do not support his contention inasmuch as the post he was occupying was a contract appointment that ceased to exist after 17.4.2018 and RRs have been framed for filling up that post. The OA is therefore dismissed. No costs."*

2. This matter is also in the same line. Therefore, we hold that being similar this OA is also not meritorious.

3. Therefore, the OA is dismissed. No order as to costs.

(C.V. SANKAR)

MEMBER (A)

(DR.K.B.SURESH)

MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/01435/2018

Annexure-A1: Copy of the appointment order dated 12.10.2011
Annexure-A2: Copy of the subsequent appointment order dated 29.10.2012
Annexure-A3: Copy of the subsequent appointment order dated 29.09.2013
Annexure-A4: Copy of the subsequent appointment order dated 07.08.2015
Annexure-A5: Copy of the subsequent appointment order dated 12.08.2015
Annexure-A6: Copy of the subsequent appointment order dated 15.07.2016
Annexure-A7: Copy of the subsequent appointment order dated 19.06.2017
Annexure-A8: Copy of the subsequent appointment order dated 14.06.2018
Annexure-A9: Copy of the experience certificate dated 06.09.2016
Annexure-A10: Copy of the representation dated 06.08.2018

Annexures referred in reply statement

Annexure-R1: Copy of the appointment order dated 19.06.2017
Annexure-R2: Copy of the OM dated 15.06.2018

Annexures referred in rejoinder

Annexure-A11: Copy of the notification dated 15.09.2011

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