

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 211/2016

Reserved on : 11.11.2019
Pronounced on: 18.11.2019

Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)

Hitesh Kumar Son of Shri Jagdish Prasad Soni, aged 28 years, Resident of 86-A, Sriram Nagar-A, Kalwar Road, Jhotwara, Jaipur-302012, Resigned from the post of Geologist, State Unit, Punjab and H.P. G.S.I. Chandigarh.

...Applicant.

(By Advocate: Shri V.K.Pareek)

Versus

1. Union of India through Secretary, Ministry of Mines, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi – 110001.
2. Director General, Geological Survey of India, CHQ, 27, J.L.Nehru, Kolkata, 700016.
3. Deputy Director General, Geological Survey of India, Training Institute, G.S.I. Complex, Bandlaguda, Hyderabad-500068.
4. Principal, Pay and Accounts Officer, Ministry of Mines, IInd Floor, Lok Nayak Bhawan, Khan Market, New Delhi – 110001.
5. The Deputy Director General, Geological Survey of India, State Unit, Punjab and Himachal Pradesh, Plot No.3, Daksheen Marg, Sector 33B, Chandigarh.

...Respondents.

(By Advocate: Shri Lalit Mohan Bhardwaj)

ORDER

Per: A.Mukhopadhaya, Member (A):

The brief facts of this Original Application, (OA), are that the applicant who was employed by the respondent organisation,

(2)

(Geological Survey of India – GSI), as Geologist vide their Office Memorandum of 17.10.2012, (Annexure A/2), later sought permission, (Annexure A/4), to apply for the post of Geologist in the Department of Mines and Geology, (DMG), of the State Government of Rajasthan on 10.05.2013. The requisite permission/No Objection Certificate, (NOC), was issued to the applicant vide respondents' communication dated 19.09.2013, (Annexure A/5), subject to the condition that in the event of selection to the post under the State Government, the applicant would have to resign from the GSI and would be required to make **“partial payment of training cost incurred by GSITI, Hyderabad”**; (Annexure A/5 refers). Accordingly, consequent upon selection as aforementioned by the State Government of Rajasthan, the applicant tendered his resignation from the GSI on 31.12.2014, (Annexure A/6), and subsequently after payment of Rs.4,88,505/- to the GSI, (Annexure A/9 refers), was relieved/released from the respondent organisation with effect from 30.01.2015; (Annexure A/11).

2. Later, through an application under Right to Information, (RTI), Act 2005, the applicant avers that he became aware of an Office Memorandum No.28021/1/84-Estt(C), Department of Personnel & Administrative Reforms, (DoP&AR), dated 14.11.1984, (Annexure A/12), which stipulated that the training cost recovered from him were recoverable from **“those**

(3)

Government Servants only, who leave Government service in order to secure private employment.....” and in particular was not to be recovered **“in the case of Government servants, who leave Government service to secure employment, under a State Government.....”**. The applicant contends that although the aforementioned OM of 14.11.1984, (Annexure A/12), clearly stipulates that no sum should have been recovered from him at the time of his resignation from the respondent organisation – GSI, he was nevertheless compelled to deposit an amount of Rs.4,88,505/- towards expenses incurred in his training before he was relieved by the GSI in order to join service with the State Government of Rajasthan. On this, he represented to the GSI on 07.09.2015 requesting the refund of the sum of Rs.4,88,505/- deposited/paid by him at the time of being relieved from the GSI. However, this was refused by the respondents vide their letter dated 04.11.2015 and 16.11.2015, (Annexure A/1), on the ground that the offer of appointment to the applicant clearly mentioned that the said training cost would be recoverable from him in case he resigned from service in the manner that he had done. Aggrieved by this, he has sought the following relief from this Tribunal:-

(a) By an appropriate order or direction the order Annex.A/1 dated 16.11.2015 and 4.11.2015 be quashed and set aside.

(b) The respondents be directed to refund the amount which he has deposited under the compulsion of no objection certificate

(4)

amounting Rs.4,88,505/- along with 18% interest.

(c) Any other order which is deemed just and proper in the facts and circumstances of the case be also passed in favour of the applicant.

3. In their reply, the respondents aver that the applicant's appointment order dated 17.10.2012, (Annexure A/2), clearly stipulated that if he resigned from the post of Geologist in GSI/service of GSI before rendering three years of service, the cost of the training was liable to be recovered from him. They aver that the applicant accepted these terms and conditions when he accepted the appointment in question and voluntarily executed a personal bond and surety bond in this regard; (reply at para 1 refers). The respondents deny that the recovery in question was forced upon the applicant and aver that the NOC given to him for applying for the post under a State Government was issued as per the terms and conditions of his appointment, (reply to para 4.d of OA refers), and that since the applicant's resignation was of his own volition, (reply to para 4.f of OA refers), the recovery has been correctly made. The respondents further aver that the personal bond and surety bond executed by the applicant, (as referred to para 1 of the reply), do not directly relate to the standard guidelines given in the DoP&AR OM dated 14.11.1984, (Annexure A/12), since **"no bond was signed between Shri Hitesh Kumar and GSI as per conditions of DoP&AR OM**

(5)

dated 14.11.1984"; (reply to para 4.k of OA refers).

Accordingly, the respondents pray for dismissal of the OA.

4. Learned counsels for the parties were heard and the material available on record was perused.

5. While reiterating the grounds pleaded in the OA, learned counsel for the applicant also drew this court's attention to a document dated 08.07.2015 issued by the respondents, (GSI), and marked as Annexure A/13 in which it has been stated as regards recovery of training cost at the time of his resignation was governed by the rule of recovery stipulated vide DoP&AR OM dated 14.11.1984; (Annexure A/12). Learned counsel for the applicant pointed out that while claiming to proceed as per OM of 14.11.1984, (Annexure A/12), the respondents had in fact utterly violated the basic provisions of the OM in that while recognising that the applicant was resigning from GSI in order to join service with a State Government, (Item No.21 of Annexure A/13 refers), they had nevertheless admittedly recovered the sum of Rs.4,88,505/- from him. He further argued that there could be no doubt that the amount had been wrongly recovered in this case and therefore the same should be refunded with interest as sought by the applicant.

(6)

6. Per contra, learned counsel for the respondents reiterated the pleadings made in the reply to the OA and argued that since the applicant had accepted the terms and conditions with the GSI voluntarily, he was estopped from now seeking a refund of training cost also paid by him voluntarily in admission of the legal commitment made by him in this regard.

7. A perusal of the record in this case clearly shows that Ministry of Home Affairs/DoP&AR OM of 14.11.1984; (Annexure A/12), clearly stipulates that where an employee like the applicant resigns from service in order to join service with a State Government, then no part of the cost of training incurred on the applicant is to be recovered from him. This OM and its mandatory applicability to the respondent organisation GSI has not been challenged by the respondents in any way. Not only this, the respondents have themselves stated vide their document dated 08.07.2015, (Annexure A/13 refers), that they are following the rule of recovery of training cost as mandated by the Ministry of Home Affairs/DoP&AR OM of 14.11.1984; (Annexure A/12). However, it is seen that in the case of applicant, while recognising that he has resigned from the respondent organisation GSI in order to join service with the State Government, (Item No.21 of Annexure A/13 refers), the respondents have admittedly recovered a sum of Rs.4,88,505/- from the applicant before relieving him from their service on

(7)

30.01.2015; (Annexure A/11). Clearly this recovery is violative of the express provisions of the Ministry of Home Affairs/DoP&AR OM of 14.11.1984, (Annexure A/12), which the respondents at Annexure A/13 profess to follow in such matters. Thus, the recovery in question is completely unjustified.

8. In the result, the OA succeeds and the respondents are directed to immediately refund the sum of Rs.4,88,505/- paid by the applicant to them. Simple interest shall also be payable on this amount at the rate of 8% per annum for the entire period commencing from the date on which the recovery was made and ending on the date on which repayment/refund as directed above is made to the applicant.

9. There shall be no order on costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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