
(2018) 08 CAT CK 0160

In the Central Administrative Tribunal

Case No : Original Application No. 4682 Of 2014, 109 Of 2015

Dr. Bhupendra Kumar Singh And Ors

APPELLANT

Vs

Union Of India And Ors.

RESPONDENT

Date of Decision : 02-08-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2018) 08 CAT CK 0160

Hon'ble Judges : K.N. Shrivastava, Member (A); S.N. Terdal, J

Bench : Division Bench

Advocate : M.K. Bhardwaj, Sumedha Sharma, Ch. Shamsuddin Khan, S.M. Arif

Final Decision : Dismissed

Judgement

K.N. Shrivastava, Member (A)

1. As common questions of law and fact are raised and the reliefs prayed for are also common, with the consent of both the parties, we proceed to dispose of these two OAs through this common order. However, for the sake of convenience, facts in OA No.109/2015 are discussed.

2. Through the medium of this Original Application (OA) (109/2015) filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for the following reliefs:

"(i) To declare the action of the respondents in not considering the applicants for appointment to the post of APPO (Plant Pathology) by treating them as separate block in the matter of criteria prescribed for judging suitability, as illegal, arbitrary and unjustified.

(ii) To declare the action of respondents in prescribing the condition of having 80% marks in M.Sc. to appear in interview for selection to the post of APPO (Plant Pathology) as illegal, arbitrary and unjustified and issue appropriate directions for considering the applicants for appointment to the aforesaid post as

per RRs.

(iii) To declare the action of respondents in not giving age relaxation and weightage to the applicants in the matter of appointment to the post of APPO (Plant Pathology) as illegal and unjustified and issue appropriate directions for granting age relaxation and weightage for the period the applicants have served as Ras/SRFs.

(iv) To declare the action of respondents in not calling the applicants for interview as illegal and issue appropriate consequential directions."

3. The factual matrix of the case, as noticed from the records, is as under:

3.1 The Department of Agriculture & Cooperation, Ministry of Agriculture (respondent no.1) advertised posts of Research Associates (RA) and Senior Research Fellows (SRF) vide Annexure A-2 advertisement dated July, 2011. The appointments were to be made on contractual and purely temporary basis and were for National Plant Quarantine Station, Rang Puri, New Delhi. There was no written examination. The selection was to be done through Walk-in-Interview, which was to be conducted on 01.08.2011. The applicants were selected to the posts of SA/SRF. The offer of appointment of one of the applicants, i.e., applicant no.1 Dr. Bhupendra Kumar Singh dated 27.03.2013 is at Annexure A-3. The offer of appointment reads as under:

"OFFER OF APPOINTMENT

On the recommendation of the Selection Committee and with the approval of the Competent Authority Dr. Bhupendra Kumar Singh S/o Gopinath Singh is hereby offered to join as Research Associate (Plant Pathology) at Directorate of Plant Protection, Quarantine and Storage, Faridabad (P.Q. Division) on purely temporary basis with the following terms and conditions:

1. His appointment will be on contractual basis as per the provisions of ICAR.
2. The post of Research Associate is not transferable.
3. He will be entitled for consolidated remuneration of Rs.23,000+HRA as applicable up to March, 2014 from the date of resuming duty in the Directorate HQ, Faridabad.
4. The appointment shall be terminated on completion of his assignment.
5. He will not be allowed to accept or hold any other assignment during the period of this position as RA in this Directorate.
6. The assignment/appointment can be terminated by the Scheme-in-charge (PQ), Directorate of Plant Protection, Quarantine and Storage, Faridabad (DPPQS), without notice at any time, if he is found to be negligent in his work/is guilty of unbecoming conduct otherwise by giving notice of 24 hours in advance.
7. The DPPQS/DAC holds no responsibility for his regularization/absorption

against any other regular post on termination of the assignment as it is purely temporary and time bound. Service of the incumbent shall stand terminated automatically on expiry of the assignment/position.

8. He may leave the assignment by giving one month notice and with the approval of the Scheme-in-charge (PQ), Directorate of Plant Protection, Quarantine and Storage, Faridabad otherwise by depositing one month emolument.

9. He will settle his claim within one year after leaving the assignment. No claim will be entertained by the DPPQS after one year of leaving/termination of his services.

10. He will submit an undertaking that he would not approach any Court of law in case his services are terminated and also would not ask for any service benefit in the DPPQS or request for any equivalent post. He will submit a medical certificate of fitness at the time of joining from the District Medical Officer.

11. While leaving the job, he will have to hand over the charge to Unit In-charge and obtain NOC from the competent authority.

12. Emoluments drawn by him will be subject to the Income Tax rules applicable from time to time.

In case, Dr. Bhupendra Kumar Singh accepts the offer on the terms and conditions mentioned as above, he should communicate his acceptance to the undersigned and report for duty within 15 days of issue of this Memorandum, failing which this offer will stand cancelled/withdrawn automatically and no correspondence in this regard will be made further."

3.2 In November, 2013, the SSC, North Western Region, Chandigarh issued Annexure A-4 advertisement No.SSC/NWR/ 4/2013 inviting applications for 85 posts of APPO in the Directorate of Plant Protection, Quarantine and Storage [UR-46, OBC-24, SC-11 & ST-04]. No reservation was prescribed for Physically Handicapped (PH) candidates. The applicants also applied for the post. They also requested for age relaxation on the ground that they are already working in the said Department as RAs/SRFs on contract basis. Their applications were forwarded by the Chief Administrative Officer (CAO) of the Directorate vide Annexure A-6 letter dated 26.05.2014 to respondent no.1. The contents of this letter would read as under:

"Subject: - Eligibility of RAs/SRFs working in the Directorate for the post of APPO=reg.

Sir,

I am directed to forward herewith a proposal received from APPA (PQ) on the subject mentioned above. APPA (PQ) has proposed to consider the case for age relaxation as per the guidelines of ICAR communication No.19(25)/2011- E.IV, dated 12 th Dec.,2011 (copy enclosed).

2. RAs/SRFs have been engaged in the Directorate under the scheme Strengthening & Modernisation of Plant Quarantine Facilities in India on contractual basis due to deficient regular manpower. These RAs/SRFs are well qualified and have gained experience of working in the Directorate for various technical works. Though some of these Ras/SRFs have applied for the post of APPO in this Directorate advertised through SSC most of them may be ineligible to apply due to being overage. APPA (PO) has therefore proposed that RAs/SRFs engaged on contractual basis may be considered for

age relaxation for technical posts of the Directorate at least for the period they have been engaged in the Directorate subject to maximum of 5 years.

3. It is pertinent to mention that ICAR considers such age relaxation of the RAs/SRFs working on contractual basis and the engagement of these RAs/SRFs in the Directorate is as per the guidelines of the ICAR. As RAs/SRFs deployed in this Dte. Are well qualified and have gained experience of working in the Directorate for various technical works. Their case for grant of age relaxation seems worthy of support.

4. DAC is accordingly requested to consider the representation of RAs/SRFs working in the Dte. On contractual basis in light of the recommendation of APPA(PQ) and in line with the guidelines of the ICAR."

3.3 The Staff Selection Commission (SSC)-respondent no.3 vide its Annexure A-1 OM dated 30.10.2014 published the list of ineligible candidates who had applied for the posts of Assistant Plant Protection Officer (APPO) (Entomology/ Nematology) in the Directorate of Plant Protection, Quarantine & Storage-respondent no.2 pursuant to Annexure A-4 advertisement. It also provided opportunity to such candidates to represent against declaring them ineligible, not later than 10.11.2014.

3.4 Three applicants, namely applicant no.1, Dr. Bhupendra Kumar Singh, Dr. Basanta Kumar Das and Shri Umesh Kumar Shukla had crossed the prescribed age limit of 30 years. In this regard they submitted their Annexure A-7 representation dated 21.10.2014 to the Joint Secretary (Plant Protection) of respondent no.1 and sought age relaxation.

3.5 The candidature of the applicants was not considered for the reason that they have not secured more than 80% marks (cut off) in their M.Sc. course and some of them had crossed the maximum age limit prescribed.

3.6 The SSC vide its Annexure A-1 letter dated 30.10.2014 published a list of ineligible candidates. In its Remarks column, it was also indicated as to why a particular candidate has been declared ineligible. The contents of this order are extracted below:

"Subject: Recruitment to the post of Assistant Plant Protection Officer (Entomology Nematology) in the Dte. Of Plant Protection, Quarantine & Storage, M/o Agriculture, Cat. No.NWR-1 of Advt. No.SSC/NWR-04/2013 Regarding.

On scrutiny of applications, candidate whose name appear below have been found to be ineligible for the reason(s) mentioned in the "Remarks" column against their names.

Essential Qualifications for the post are given below. If any candidate whose name appears in the List claims to be eligible, he/she may contact this office immediately and not later than 10th November, 2014. No claims, whatsoever, will be entertained thereafter. Helpline Numbers of this office are 0-9483862020 and 080-25502520. The list of candidates is given in Alphabetical Order.

Essential Qualifications

M.Sc. degree in Entomology or Nematology

Or

M.Sc. degree in Agriculture with specialization in Entomology or Nematology

Or

M.Sc. degree in Zoology with specialization in Entomology Or Nematology from a recognized University or Institution.

2. Please note that the candidates whose names are not displayed in the list given below need not necessarily be called for interview. Only those candidates who have marks in the EQ above the cut-off that the Commission may decide the details of the same will be placed on this website as and when approved by the Commission.

Abbreviations used in the "Remarks" Column

AGE

OVERAGE/UNDERAGE

DOC

NECESSARY DOCUMENTS NOT ENCLOSED

DUP APP

MULTIPLE APPLICATIONS

EQ/SUBJECT

NO ESSENTIAL QUALIFICATION (RELEVANT SUBJECT)

PHOTO

NO PHOTOGRAPH ON APPLICATION

PH/VH

POST NOT SUITABLE FOR PHYSICALLY HANDICAPPED

SIGN

NO SIGNATURE ON THE APPLICATION

Sd/-

Paul Chiramel

Assistant Director"

3.7 Aggrieved by rejection of their candidature for the post of APPO (Entomology/Nematology), the applicants have approached this Tribunal in the instant OA, praying for the reliefs, as indicated in praa-2 (supra).

4. The applicants have pleaded the following grounds in support of the reliefs claimed:

4.1 The applicants were appointed against the post of APPO (Entomology/Nematology) after examining their eligibility and suitability as per the statutory Recruitment Rules (RRs) for the post of APPO (Entomology/Nematology).

4.2 In an organization like ICAR, RAs/SRFs appointed like the applicants are granted not only age relaxation but also weightage for the service rendered in that capacity.

4.3 The applicants have been discharging the duties and responsibilities of APPO (Entomology/Nematology) although their post is called RA/SRF.

4.4 The action of the respondents in not granting age relaxation to the applicants and applying additional condition of minimum 80% marks in M. Sc. as cut off in the guise of short listing criteria is unfair, unreasonable and unconstitutional. The applicants being RA/SRF have gained three years experience in the field and hence were entitled for the weightage and age relaxation.

4.5 The applicants were appointed as RAs/SRFs against clear vacancies and in consonance with the Recruitment Rules. They have worked continuously for a long period of time which not only proves their requirement for the organization but their competency as well. The respondents have failed to notice that the applicants have acquired sufficient experience by way of working in the Department which would be more beneficial to it in comparison to the new entrants.

4.6 The respondents have not given any justification as to why the condition of 80% marks in M. Sc. has been imposed in violation of the RRs.

4.7 The applicants' claim is supported by a judgment of this Hon'ble Tribunal in OA No.438/1997, in the context of ICAR, which was duly upheld by the Hon'ble High Court of Delhi in W.P. (C) No.3417/1997 in which it has been held that when regular vacancies are available, the RAs/SRFs shall be considered as a separate block and not as fresh entrants. After the aforesaid decision of the Tribunal, the ICAR issued letter dated 12.12.2011 wherein it has been clearly mentioned that

RAs/SRFs shall be considered for regular vacancies to be filled up by direct recruitment by granting age relaxation in the upper age limit. A copy of the letter dated 12.12.2011 issued in this regard by ICAR is at Annexure A-10.

5. Pursuant to the notices issued, the respondents entered appearance and filed their reply in which they have broadly made the following important averments:

5.1 The SSC, North Western Region advertised 67 vacancies of APPO (Plant Pathology/Virology/Bacteriology) vide advertisement no.SSC/NWR/04/2013. The recruitment process was subsequently transferred to SSC Kerala-Karnataka region for administrative reasons. The age limit prescribed was 30 years and the essential qualification mentioned was M.Sc. degree in Entomology/ Nematology or M.Sc. degree in Agriculture with specialization in Entomology/Nematology or M.Sc. degree in Zoology with specialization in Entomology/Nematology from a recognized University or Institution.

5.2 After scrutiny of the applications, 469 candidates were short-listed for interview as per the laid down guidelines. The short-listing criteria applied by the SSC was as under:

For General candidates

80% marks in M. Sc.

For OBC candidates

75% marks in M. Sc

For SC/ST candidates

70% marks in M. Sc.

5.3 The applicant no.1 was not short-listed as he was over-age as well as he had secured only 72.66% marks in M. Sc. against the cut off of 80%. The other applicants were not short listed as they did not fulfil the above mentioned short-listing criteria.

5.4 The request of the applicants for grant of age relaxation could not be acceded to as they are not regular Central Government employees. Further, there is no provision for considering candidates with marks lesser than the cut off marks arrived at for each category.

5.5 The short-listing exercise had become necessary, as number of applications received were very large.

5.6 At the time when applicants were engaged as RAs/SRFs, in their offer of appointment, it was made very clear that their engagement was on contractual basis.

6. The applicants have also filed rejoinder to the reply filed on behalf of the respondents in which they have, more or less, reiterated their averments made

in the OA.

7. On completion of the pleadings, the case was taken up for hearing the arguments of the parties on 12.07.2018. Arguments of Shri M.K. Bhardwaj, learned counsel for the applicants and that of Smt. Sumedha Sharma, Dr. Ch. Shamsuddin Khan and Shri S.M. Arif, learned counsel for the respondents were heard, who by and large, stuck to the respective pleadings of their clients.

8. We have considered the arguments of the learned counsel for the parties and have also perused the pleadings. Admittedly, the applicants were appointed as RAs/SRFs on contractual basis and have worked in that capacity for more than three years. Their basic qualification of M.Sc. (Entomology/Nematology) conforms to the qualification prescribed for the post of APPO. But that does not mean that they have been appointed to the post of APPO as such. The applicants can have a grouse if any term of the contractual engagement is breached by the respondents. They would be entitled to seek judicial intervention for enforcement of the contractual terms. Beyond this, they do not have any additional right, as laid down by the Hon'ble Supreme Court in the case of Nandganj Sihori Sugar Co. Ltd. V. Badri Nath Dixit, (1991) 3 SCC 54, as under:-

"11..... Even if there was a contract in terms of which the plaintiff was entitled to seek relief, the only relief which was available in law was damages and not specific performance. Breach of contract must ordinarily sound in damages, and particularly so in the case of personal contracts..."

9. The applicants were definitely entitled for applying to the post of APPO since they possess the requisite essential qualification of M. Sc. in the concerned discipline. In fact, they had applied for the post of APPO pursuant to Annexure A-4 advertisement. Although there was no stipulation in the advertisement as such that candidates who have secured more than 80% marks in their M. Sc. course can only be considered but then in the event of a large number of applications having been received for limited number of posts, the recruiting agency was well within its right to apply short-listing criteria. In the instant case, as noticed hereinabove, the recruiting agency, i.e., SSC decided to prescribe cut off marks of 80% for general category, 75% for OBC and 70% for SC&ST categories. We do not find any flaw in the short-listing criteria adopted by the SSC.

10. As regards other claim of the applicants that they were eligible for age relaxation, considering them as in-service candidates, we are in agreement with the contention of the respondents that since they are contractual employees they cannot be given the benefit of age relaxation, as stipulated in consolidated instructions regarding relaxation in upper age limit allowed to various categories of Government servants issued by DoP&T on 27.03.2012 vide their O.M. No. 15012/2/2010-Estt.(D). The Department of Personnel & Training, in its O.M. dated 27.3.2012, has issued consolidated orders on relaxation in upper age limit allowed to Central Government servants for recruitment to various categories of

posts under the Central Government. In the tabular statement contained in the O.M. dated 27.3.2012, vide Sl. No.12, referring to the earlier O.Ms. dated 15.10.1987 and 24.10.1985, it is reiterated that for Groups A and B posts filled through UPSC (other than those filled on the basis of competitive examination) and posts which are exempted from purview of UPSC (where recruitment is made by organizations themselves), age relaxation up to 5 years is admissible for posts which are in the same line or allied cadres and where a relationship could be established that the service already rendered in a particular post will be useful for the efficient discharge of the duties of post.

11. It has been argued on behalf of the applicants that in an identical situation of ICAR, the RAs/SRFs working therein have been granted age relaxation on the basis of this Tribunal's order in OA No.438/1997, which has been duly affirmed by the Hon'ble High Court of Delhi in W.P. (C) No.3417/1997. It would be prudent to note that even if such age relaxation was granted to them, they could not have still qualified on the ground of other criteria of not securing more than the cut-off marks in their M.Sc. course in their respective categories.

12. In the conspectus, we do not find any flaw in the recruitment process carried out by the SSC in recruitment of APPOs. Accordingly, we dismiss these two OAs as they are found devoid of merit.

13. There shall be no order as to costs.