

(2023) 03 CAT CK 0003

In the Central Administrative Tribunal

Case No : Original Application No. 3304 Of 2016

Sandeep Kumar

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 03-03-2023

Acts Referred:

Central Civil Services (Classification Control And Appeal) Rules, 1965 — Rule 29(A)

Citation : (2023) 03 CAT CK 0003

Hon'ble Judges : Ashish Kalia, Member (J); Dr. Anand S. Khati, Member (A)

Bench : Division Bench

Advocate : Shrigopal Aggarwal, Hanu Bhaskar

Final Decision : Dismissed

Judgement

Ashish Kalia, Member (J)

1. The applicant has filed this OA seeking the following reliefs :-

“(i) To set aside the impugned orders (i.e. annexure A-1).

(ii) To direct the respondents to re-instate the applicant in service in terms of Appellate Authority Orders dated 20.07.2012.

(iii) To order the respondents that the applicant re-instatement would be w.e.f. the date of his termination with all consequential reliefs i.e., back wages and salary plus interest @12 p.a. on the arrears of pay with all consequential reliefs including back wages from the date of termination.

(iv) To pass any such orders which this Hon'ble Tribunal deem fit under the fact and circumstances of the case.

(v) To direct the respondents to pay costs.”

2. The applicant joined as Chemical Assistant Grade II. He was on probation for two years i.e., from 20.12.2008. On 25.11.2009, the respondents terminated the services of the applicant without any show cause notice. Aggrieved by this order,

the applicant filed OA 3533/2009 wherein the Tribunal directed to restore back him in service vide order dated 25.11.2009. Relevant portion of the said order reads as under :-

"6. It is not considered necessary, at this stage, to examine the grounds raised by the applicant in his OA in view of the fact that the applicant has not exhausted the alternate remedy of appeal stated to be available under the rules. We, therefore, deem it appropriate to dispose of the OA, without expressing of our opinion on the merits of the case, directing the applicant to avail of this available remedy by making an appeal against his termination order to the appropriate authority, who is directed to take a decision on his appeal within two months of receipt of the same and pass a written and speaking order. Thereafter, in case if he has any grievances, the applicant may approach this Tribunal in accordance with rules within the period of limitation. Ordered accordingly. No costs."

3. The order was reviewed by this Tribunal and directed the applicant to let him exhaust all the remedies such as appeal against the termination order to the appropriate authority who in turn was directed to take decision in the said appeal within two months. Order of termination was upheld by subsequent order of termination dated 21.09.2010. The applicant again challenged this order by filing OA No. 3920/2010. The OA was disposed of with a direction to treat this as a supplementary appeal by the said authority who may dispose it of within two months. The applicant filed review application questioning certain mistake in the order. The appellate authority on 20.07.2012 had set-aside the termination order passed against the applicant. He requested to join and wrote a letter on 30.07.2012 in this behalf. He was informed that this matter is under consideration. He in the meantime, filed execution petition for implementation of the order. The order passed by the Tribunal in the review application No. 9/2016 filed by the respondents quoted at paras 4, 5 and 6 reads as under:-

" 4. From the perusal of the order, we find that the Reviewing Authority had set aside the orders dated 20.07.2012 passed by the Appellate Authority, we pace on record our displeasure on the approach of the Respondent on account of lack of vigilance on tier part in not bringing the factum of passing of the order dated 4.12.2015 to the notice of this Tribunal for effective adjudication of the controversy.

5. Be that it may be, the fact remains that vide order dated 4.12.2015, the order of the Appellate Authority, which was sought to be implemented in O.A No. 3075/2014, has ceased to exist. This is sufficient ground to accept this R.A.

6. The Review Application is accordingly allowed. Orders dated 08.12.2015 passed in OA No. 3075/2014 is hereby recalled and the OA is dismissed. The non-Applicant in the Review Application, who was the original Applicant in OA, is at liberty to seek remedial measures in respect of order dated 4.2.2015 passed by the Reviewing Authority."

4. Thus, the applicant was left with no other remedy but to approach this

Tribunal for redressal of his grievance.

5. Notices were issued to the respondents who filed counter through Mr. Hanu Bhaskar, advocate. He relied upon Rule 29 (A) of CCS (CCA) Rules, 1965 which clearly stipulates as under :-

"The President may, at any time, either on his own motion or otherwise review any order passed under these rules, when any new material or evidence at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought to his notice." Therefore, there is no illegality and infirmity in the order dated 04.12.215 and the same has been passed by the competent authority in accordance with relevant rules, instructions and law on the subject and therefore, cannot be challenged."

6. According to the learned counsel for the respondents, that post is temporary which applicant was holding. Before confirmation the respondents have investigated in order to confirm the authenticity of the documents submitted by the applicant for the post and it was found that he was not eligible. Consequent upon deficiency in authenticity of the documents submitted by the applicant such as experience certificate, his services were terminated vide order dated 25.11.2009. It is further submitted in para 4.9 as under :-

"4.9 : The para as stated in wrong and denied and the reply as stated in earlier paras may kindly be read as part of this para. It is submitted that the applicant had submitted a false certificate from M/s. Ind-Swift Limited, Village-Malku Majra. Tehsil Nalagarh, Distt. Solan, Himachal Pradesh showing his experience as Jr. Executive from May, 2007 to till date (04.02.2008), the issuance of this certificate has been categorically denied by M/s. Ind-Swift Limited vide their letter Ref:ISL/781/CHD/5150 dated 26.06.2009 issued by Shri O.P. Thapliyal, V.P. HR (P&A), that their organization has not issued any service certificate to Mr. Sandeep Kumar S/o. Shri Mahipal Singh, however Shri Sandeep Kumar has worked with their organization from 28.05.2007 to 31.12.2007 only. The applicant had furnished false information in the column 11(a) of Attestation Form (page 4) showing his experience as Jr. Executive from May 2007 to till 24.09.2008, (the date of filling the Attestation Form) at M/s Ind Swift Limited, Village Malku Majra, Tehsil Nalagarh, Distt. Solan, (H.P.)- Even on giving sufficient time (further two months) by the Appellate Authority, the applicant could not provide any documentary evidence in support of his claim that he had worked as Jr. Executive from May, 2007 to 24.09.2008 at M/s. Ind Swift Limited. Village Maku Majra, Tehsil Nalagarh, Distt. Solan (HP). By way of above the applicant has violated the terms and conditions of the offer of appointment issued vide Office Memorandum C.No.919 Adm/Per/2008 dated 25.11.2009. The Appellate Authority has not taken into consideration while deciding the matter that the applicant has submitted his experience upto 24.09.2008, the date of filling the Attestation Form, wherein he has taken into account from 28.5.2007 to 31.12.2007 only and also not taken into consideration that the applicant has furnished wrong information in the Attestation Form, which is subsequently

proved by vigilance authority. Statement of Shri Sandeep Kumar which was recorded by the Appellate Authority while hearing him in person on 16.07.2012 which read as that the company used to maintain his employment, provident fund, salary, attendance sheets, records etc on loose sheets, and moreover, as he was not belonging to Himachal Pradesh, they were asked to remain absent when labour inspector would come. So this is the manner in which the private company employed their staff and the reason of discrepancy of record of employment for which he as a mere employee had no say or control cannot be relied upon as he could not produce any evidence that he had actually worked in M/s Ind. Swift Limited Village-Malku Majra, Tehsil Nalagarh, Distt. Solan, Himachal Pradesh till 24.09.2008 and if so then how he got the experience certificate dated 04.02.2008 from the company. Here, it is not the issue that the applicant had requisite experience as per requirement of RRs, but the important issue is that he has falsely claimed that period for experience for which he actually has not worked. In a similar matter, the Govt of India's decision vide DOP&T OM. No 11012/7/91-Estt.(A) dated 19.05.1993 may be referred which reads as "wherever it is found that a Government servant had furnished false information or produced a false certificate in order to secure appointment, he should not be retained in service. If he is a probationer or a temporary Government servant, he should be discharged or his service should be terminated (Annexure R-2)."

7. The rejoinder thereto has been filed. Learned counsel for the applicant has relied upon the judgment in A. Kraipak vs. UOI 1969 (2) SCC 262 wherein it has been held as under :-

"Held : That under our Constitution the Rules of law would lose its vitality if the instrumentalities of the state are not charged with the equity of discharging their functions in a fair & just manner the requirements of acting judicially in essence is nothing but a requirements to act justly and fairly and not arbitrarily or capriciously."

8. The short question raised before this Tribunal is whether filing up the vacancies on the basis of experience certificate and termination thereafter is just or not?

9. In order to decide the question, while the applicant claim to be eligible for the said post by having two certificates which is a proved mandate for the requirement of this post i.e., one year experience, apart from educational qualification, the applicant produced a letter from M/s. Ind Swift Limited as experience certificate which is later on denied that no such certificate had been issued by the said company. But, the applicant did work from 28.05.2007 to 31.12.2007 and on that basis, the applicant's information and eligibility for the said post had been found to be deficient. It is found that in the instant case the applicant had applied for the post of Chemical Assistant Grade-II in response to CRCL's advertisement dated 26.01.2008 and subsequent corrigendum dated 08.03.2008 published in the Employment News. The essential qualification for the

post was "one year experience of chemical analysis." The applicant in his application to the said post submitted two certificates regarding his experience. One of these certificates was dated 04.02.2008 issued by one M/s. Ind-Swift Limited, Village Malku Majra, Tehsil Nalagarh, District Sonal (H.P). The allegation against him is that he produced a fake certificate, as on inquiry by the Directorate General of Vigilance, CBEC, the said certificate dated 04.02.2008 was reported to be found fake.

10. The applicant has obtained job on the basis of forged experience certificate, the copies of the same has been supplied to the department. He was well aware of the above factum of non issuance of certificate by the private company where he has claimed to have worked.

11. The appointment given by the respondents to the applicant was purely on temporary basis subject to verification of his antecedent and certificates.

12. The respondents have relied upon Annexure R/2 where it is stated in para 2 that the question now has arisen as to whether a Government servant can be discharged from service where it is discovered later that the Government servant was not qualified or eligible for his initial recruitment in service. The Hon?ble Supreme Court in the judgment of District Collector Vizianagaram vs. M. Tripura Sundari Devi 1990 (4) SLR 237 wherein the Hon?ble Apex Court has taken a categorical decision that if a false information is furnished by employee concerned while getting the employment, he can be discharged or terminated from services.

13. In view of the above, the OA is devoid of any merits. Hence, the same is dismissed. There shall be no order as to costs.