

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5771 of 2015

Date of Decision:- 27.03.2015.

Gagan Sachdeva

.....Petitioner

Versus

Indian Council of Agricultural Research, New Delhi and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Shalender Mohan, Advocate for the petitioner.

P.B. BAJANTHRI, J.

The petitioner is questioning the validity of the order dated 28.01.2015 passed in OA No.289/HR/2013 vide Annexure P-5.

The second respondent issued a notification inviting applications from the eligible candidates to the post of Assistant Finance and Accounts Officer (for short AFAO) on 21/25-05-2011. It was notified in the Employment News. It was also indicated that place of work is at National Research Centre on Equines, Sirsa Road, Hisar.

The petitioner is one of the candidates for the selection to the post of AFAO. Among others he was called for interview on 15/16.02.2013. The results were declared on 19.02.2013 and a

memorandum was issued to the petitioner for furnishing certain details in respect of completing pre-appointment formalities within 15 days. Thereafter, Administrative Officer, National Research Centre on Equines, Hisar requested the District Magistrate, Ambala (Haryana) to verify the character and antecedents of the petitioner with reference to appoint him as AFAO.

In the meanwhile, on 30.01.2012 Indian Council of Agricultural Research, Krishi Bhawan, New Delhi sought options to redeployment/transfer of surplus AFAOs and JAOs to the Director CIPHET, Ludhiana and so also to the Director, NRC Equine, Hisar (dated 27.11.2012). Further list of vacancy position was also made available. In the said list, item No.21 relates to NRCE, Hisar. In pursuance of the options sought by the Indian Council of Agricultural Research, Krishi Bhawan New Delhi, the Assistant Administrative Officer, National Research Centre on Equines Hisar, Haryana informed that the vacancy of AFAO has been notified for direct recruitment on 21-27/5/2011 and the process of recruitment is in vogue. Further requested to post one AF&AO at NRCE by redeployment/transfer.

In response to the options sought by ICAR, Krishi Bhawan, New Delhi, the third respondent submitted representation/option on 16.01.2013 and 14.02.2013. It is to be noted that the third respondent who is working as AF & AO, CIRB, Hisar with additional charge of NRCE, Hisar the post which is

advertised. With reference to her representation/option, her request was approved by the Competent Authority to transfer the third respondent from the post of AFAO, CIRB to that of AFAO, NRCE, Hisar. To that extent, the third respondent submitted her reply in OA No.289/HR/2013. Respondent Nos.1 and 2 also filed their written statement before CAT, Chandigarh contending that the deputation/transfer is in accordance with the rules of recruitment governing the post of AFAO. It is also contended that there is no infirmity in their action and so also in not proceeding with the recruitment to the post of AFAO at National Research Centre on Equines, Sirsa Road, Hisar, to appoint petitioner herein.

The petitioner filed rejoinder before the CAT, Chandigarh while furnishing the information obtained under RTI stating that number of AFAOs declared surplus, orders have not been issued. He relied upon a communication issued by Indian Council of Research, Krishi Bhawan, New Delhi dated 30.07.2013 to one Sh. Navsangeet. It was also communicated in the aforesaid communication that in case wish to submit any appeal in this matter, it may be submitted to Sh. K.N. Chaudhary, Deputy Secretary (Appointment) ICAR and Appellate Authority within 30 days of the receipt of said letter, who is the concerned authority.

The petitioner's grievance was considered by the CAT, Chandigarh in detail in extract of consideration of the claim of the petitioner is reproduced herein.

“The solitary contention at the hands of the applicant is that once he has been selected by a duly constituted committee then the respondents cannot withhold his appointment or withdraw the selection itself so as to bring in a person by way of transfer. The post of AFAO is to be filled 100 % by promotion, failing which by deputation and direct recruitment. There is no dispute that the applicant was found suitable and his name was recommended for appointment. Pending issuance of appointment letter respondent no.3 was appointed to the said post. We have perused the record and we find that a conscious decision has been taken by the respondents for filling up the said post by way of re-deployment/transfer of surplus AFAO and in continuation thereto a noting was approved by the competent authority to appoint respondent no.3 on the said post as she was working with CIRB, Hisar, where there is no post of AFAO. Perusal of the note-sheet does not suggest that there is any act of arbitrariness or mala fide on the part of the respondents in filling up the above post by way of transfer by appointing respondent no.3. It is a settled proposition of law that a person who has been selected has no indefeasible right for appointment even though his name is included in the list of selected candidates. This was also held in the case of Shankarsan Dash vs. Union of India etc. (supra) that even if vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire an indefeasible right to be appointed. Ordinarily, such advertisements merely amount to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the

relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, the Hon'ble Apex Court cautioned that same does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. Identical view has been taken in the case of State of Haryana Vs. Subhash Chander Marwaha and Others, Miss Neelima Shangla Vs. State of Haryana and Others and Jitendera Kumar and Others vs. state of Punjab and others (supra). Thus, the applicant cannot be allowed to say that since he has been selected, he has a right to be appointed more so when the selection in question has been cancelled and the cancellation is for bona fide reasons. It is also not the case of the applicant that for any act of mala fide on the part of the respondents he has not been offered the appointment.

In view of the above, we do not find any reason to interfere with the decision taken by the respondents for not offering appointment to the applicant. The OA is dismissed being devoid of merit. No costs.

Having regard to the facts of the case, it is necessary to reproduce rules of recruitment governing the post of AF & AO which is as follows:-

**RECRUITMENT RULES FOR THE POST OF
ASSISTANT FINANCE & ACCOUNTS OFFICER**

<i>Sr. No.</i>	<i>Name of the post</i>	<i>Assistant Finance & Accounts Officer</i>
1.	Method of recruitment whether by Direct Recruitment or by promotion or by deputation/absorption & percentage of vacancies to be filled by various modes.	100% by <u>promotion</u> , failing which by <u>deputation</u> and <u>direct recruitment</u>
2.	In case of recruitment by promotion/deputation/absorption; grades from which promotion/deputation/absorption is to be made.	(a) <u>By promotion of Junior Accounts Officer</u> in Pay Band-2 Rs.9300-34800+ Grade Pay the grade within the Institutes/Headquarters concerned. (b) Failing (a) above by promotion of Junior Accounts Officer in the Pay Band-2 Rs.9300-34800+Grade Pay of Rs.4200/- with 5 years of regular service in the grade from other Institutes/Headquarters of the Council on <u>permanent absorption basis</u>. (c) Failing (a) & (b) above by promotion of Assistants having rendered 5 years of continuous and regular service in the grade of Pay Band of Rs.9300-34800 + Grade Pay of Rs.4200/- and have qualified ICAR Audit & Accounts Exam conducted by ICAR. (d) Failing (a), (b) & (c) above by direct recruitment as per the prescribed qualifications by Interview at the concerned Institute level.

Reading of the Rules governing the post of AFAO, the order of preference to recruit to the post of AFAO are 100% by promotion, failing which by deputation and direct recruitment. The second respondent has opted for the second tier, namely, deputation. It is to be noted that the petitioner's process of selection to the post of AFAO is by direct recruitment. In other words, if the second respondent fails to opt promotion method and deputation method, then only the direct recruitment method can be adopted. Since the second respondent has opted to fill up the post of AFAO by deputation consequently, transfer/deputation of the third respondent is in order and it is in accordance with the Rules of recruitment governing the post of AFAO. Therefore, the petitioner cannot insist

upon to adopt method of direct recruitment. No doubt, the petitioner was selected and process of appointment is in vogue. However, the second respondent is not precluded in filling up the post of AFAO through deputation/transfer mode. The petitioner has obtained information under RTI Act insofar as surplus and redeployment of AFAO officers. If at all the information furnished is contrary to the documents and factual aspects, the petitioner has to file for damages.

We have gone through the order of the CAT, Chandigarh passed in OA No.289/HR/2013. Absolutely there is no infirmity in the order. In fact, selected candidate has no right as held by the Apex Court in number of cases. Ordinarily the notification for recruitment merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant rules of recruitment so indicate, authority is under no legal duty to fill up any of the vacancies, therefore, the petitioner has not made out a case so as to interfere with the order of the CAT dated 28.01.2015.

The writ petition is dismissed.

No order as to cost.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

March 27, 2015.

sandeep sethi