

\$~10

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 11284/2015 & CM No.29503/2015**

Date of decision : 24th May, 2016

DR. AJAY KUMAR SAXENA

..... Petitioner

Through: Mr. Mahabir Singh, Senior
Advocate with Mr. Pankaj Yadav,
Mr. D.V.S. Yadav & Mr. Nikhil
Jain, Advocates

versus

**THE SECRETARY, MINISTRY OF ENVIRONMENT AND
FORESTS & ORS.**

..... Respondents

Through: Mr. Kirtiman Singh, CGSC with
Mr. Waize Ali Noor, Advocate for
respondent No.1
Mr. Sanjay Katyal, Advocate for
respondent Nos. 2, 3 and 4

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

Dr. Ajay Kumar Saxena, by this writ petition, impugns the order dated 6th October, 2015, whereby his OA No.1696/2014 has been dismissed by the Principal Bench of the Central Administrative Tribunal, New Delhi.

2. On the last date of hearing, we had directed the respondents to produce the original records as the contention raised was that an order of relaxation of eligibility requirement was passed and thereafter Dr. Ajay Kumar Saxena was placed at Sl. No.2 in the Select List for appointment as Scientist 'D'(Biodiversity).

3. Indian Council of Forestry Research & Education ('ICFRE'), vide advertisement No.2/DSD/CFRI-20112, had invited applications from Indian Nationals for one post of Scientist 'D'(Biodiversity) with the following essential qualification:

"First class M.Sc. degree in Botany/Zoology/Forestry/Bio-Sciences/Wild Life/Life Sciences with Ph.D. degree in Bio-Science/Life Science from a recognized University and having minimum 07 years research experience of working in one of the Forest Biodiversity Hot spots/Field."

Note No. iii of the General Instructions is also relevant and reads as under:

"The period of experience of a candidate in a discipline/area of work shall be counted after the date of acquiring the minimum prescribed educational qualification for that post. Qualifications and other requirements for any post may be relaxed at the discretion of the Council, in respect of candidates otherwise well qualified. The time spent in obtaining Ph.D. degree shall not be counted towards minimum required research experience."

4. Twenty nine candidates had applied and were called for interview before the Screening Committee on 18-19/12.2012. Twenty four candidates had appeared. The Screening Committee was constituted by the Director-General of the ICFRE and consisted of three members. They had to interview, examine eligibility and select the best candidate.

5. The Screening Committee, vide noting dated 20th November, 2012, held that the petitioner was not eligible as he did not have research experience of 7 years after acquiring the Ph.D. degree. It is an admitted case that the Ph.D. degree was issued on August, 2007. The last date for receipt of the application was 15th October, 2012. The petitioner had more than five years of experience, post the grant of Ph.D. degree.

6. The original file produced before us has the noting dated 25th November, 2012 recorded by Additional Director General (Recruitment Board). He has referred to condition No.(iii) of the General Instructions to

the advertisement, which mandates that period of experience of a candidate in a discipline/area of work shall be counted after the date of acquiring the minimum qualification for the post. The time spent for obtaining Ph.D. degree shall not be counted towards minimum required research experience. However, the qualification and requirement could be relaxed at the discretion of the Council in respect of candidates otherwise qualified. This note by the Additional Director General thereafter records that in case any relaxation was granted by the competent authority, the Screening Committee would have to again examine the applications so as to find out the exact number of eligible candidates based on the relaxed criteria. This file was marked to the Chairman, Recruitment Board, i.e., the Director-General, who had then recorded the following note:

“The objective of recruiting Scientist ‘D’ level is to broaden the choice of experience and bring those candidates who have worked in field in the forests for a considerable period of time in the field of Biodiversity, climate change and Hydrology. We should relax those qualifications which disqualify the meritorious candidates who have genuine filed experience. For example, to gauge the suitability of candidates for a particular discipline, his or her actual field work, published and authenticated research work after obtaining M.Sc. degree should be the basis to find best candidates for the discipline. Pl. examine and put up. For future we need to rationalize the qualification/experience for filing up the post. We should also seek scientists for many disciplines on deputation. Recruitment board may put in due course.”

The original file notings dated 25th November, 2012 of the Additional Director General (Recruitment Board) and the Director General are not available in the file. What is available before us is a photocopy of the said noting. The photocopy is not disputed as the petitioner has also obtained a copy of the same under the Right to Information Act, 2005.

7. A reading of the aforesaid noting would indicate that the Director

General had expressed his opinion on certain aspects and had also asked for examination and putting up. He had made recommendations for future. We do not read and understand that the note had directly accorded grant of relaxation. Indeed, the Director General could not have granted relaxation, for the power of relaxation, as was noted in the advertisement and also recorded in the noting dated 25th November, 2012 of the Additional Director General (Recruitment Board), vests and is with the Council. Rule 13 of the Indian Council of Forestry Research & Education and Education Group 'A' (Scientific Posts) Rules 2001 ('Rules' for short) reads:-

“Power to relax

Where the Board of Governors is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons with the prior approval of MoEF, Govt. of India as and when required.”

The rule is specific and lucid that the Board of Governors can relax any of the provisions of the Rules with respect of any class or category of persons. Reasons have to be recorded in writing. Lastly, such relaxation requires prior approval of the Ministry of Environment & Forests, Government of India. It is obvious and it is not the case of the petitioner that power of relaxation was ever exercised by the Board of Directors as per the procedure prescribed in Rule 13. The noting of the Director General, dated 25th November, 2012, if relied as an order granting relaxation, would be null and void.

8. Learned counsel for the petitioner refers to sub-rule (viii) of Rule 16 of the Rules under the heading “General Conditions”, which reads:-

“(viii) In all service matters, the decision of the Director General and/or Board Governors, as the case may be, shall be final. For posts/vacancies connected with scientific disciplines not covered so far under these rules, suitable qualification would be

prescribed by Director General at the time advertisement and selection to the posts would accordingly be made.”

The said rule, according to us, is not of relaxation. It stipulates that in all service matters, the decision of the Director General and/or Board Governors, as the case may be, would be final. In the present case, we have recorded that the Board of Governors has the power to relax and requires prior approval of the Ministry of Environment & Forests. The Director General does not have this power and discretion. The stand of the petitioner, therefore, is fallacious and wrong.

9. The Tribunal has noticed and recorded other allegations made against the Director General. It is also observed that a new post of Scientist Grade ‘D’ was created, for which no advertisement was issued and the petitioner, who was in the Select List at Sl. No.2, was appointed at the non advertised post, though Dr. Hilauddin, who was selected, was functioning and holding the advertised post. We are not commenting on the said aspects as the writ petition is liable to be dismissed on the first ground itself.

10. Learned counsel for the petitioner had submitted that in this case, once the petitioner was appointed, he could not have been removed without following principles of natural justice. The respondents had passed the order of termination dated 5th September, 2013 in exercise of power under sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, which Act was not applicable. In the present case, we are clearly of the opinion that the petitioner was not eligible. The power of relaxation was never exercised and granted in terms of Rule 13 of the applicable Rules. Hence, regardless of whether or not the right procedure was followed, no relief should be granted to the petitioner in exercise of discretionary powers under Article 226 of the Constitution of India. If a candidate does not meet the minimum eligibility qualification as advertised

WP(C) No.11284/2015 Page 5 of 6

and stipulated in the Recruitment Rules, he has no right to occupy the said post. The appointment *ex facie* was illegal and contrary to law.

11. For the aforesaid reasons, the writ petition is dismissed. CM No.29503/2015 is also dismissed.

SANJIV KHANNA, J

NAJMI WAZIRI, J

MAY 24, 2016
tp