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

+ W.P.(C) 13815/2024 and CM APPL. 57886/2024

KAMAL NAIN

.....Petitioner

Through: Ms. Kittoo Bajaj, Advocate.

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Mr. Ashok Kumar Kashyap, SPC
with Mr. Kabir Kumar Hazarika, GP and
Mr. Anshul Bhadouriya, Advocate for R-1.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

01.10.2024

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1. This writ petition has been preferred by the Petitioner under Articles 226/227 of Constitution of India seeking a direction to Respondent No.2/North East Centre for Technology Application and Research ('NECTAR') to treat the Petitioner as a regular employee on the post of Stenographer w.e.f. 27.07.2005 and as Private Secretary from the date he became eligible for promotion to the said post. Direction is also sought to Respondent No.2 to release all payments due to the Petitioner which have been withheld by Respondent No.2 from the date of his appointment as Stenographer, with interest.

2. Case of the Petitioner as pleaded in the writ petition is that he was appointed by National Mission on Bamboo Applications ('NMBA'), a Government initiative on 27.07.2005, after due process of selection, i.e. Shorthand, Typing Test and Interview. *Albeit* Petitioner was initially



appointed as a Stenographer on temporary basis for a period of three months, employment being perennial in nature, Petitioner has continued to work uninterrupted till date.

3. Learned counsel for the Petitioner contends that though the Petitioner was initially appointed on a temporary basis for three months, he has worked from 27.07.2005 till date as a regular employee performing all duties of perennial nature such as taking dictation, typing, drafting notings, letters etc., maintaining files, booking tickets of officers and staff etc. Petitioner's extension from time to time was with the approval of the Governing Council, NECTAR, which is evident from letter dated 28.06.2019. Petitioner was promoted on 01.01.2021 as Personal Associate and was granted all allowances such as TA/DA, LTA as per Recruitment Rules. Petitioner was thereafter promoted as Private Secretary on 01.04.2023 and has been performing all duties of a Private Secretary, as a matter of official record till date. In a nut-shell, the argument is that Petitioner was selected and worked as a regular employee but no formal order is being issued by Respondent No.2, which is illegal and arbitrary. To add to the agony of the Petitioner and the unfair treatment meted out to him, Respondent No.2 has now issued an Advertisement bearing F. No. A-37018/2/2024 for appointment to 01 post of Private Secretary on deputation failing which by direct recruitment, despite the fact that Petitioner has been working with Respondent No.2 since 2005 and performing all duties of a regular employee. It is urged that if the regular vacancy is filled up, great prejudice will be caused to the Petitioner who is consistently representing to regularize him.

4. In this backdrop, Ms. Kittoo Bajaj, learned counsel for Petitioner submits that while on one hand representation of the Petitioner dated



31.05.2024 seeking regularization is pending consideration and no decision is being taken, on the other hand by the impugned advertisement, Respondent No.2 is proceeding to fill up 01 regular vacancy of Private Secretary and therefore, the selection process initiated pursuant to Advertisement bearing F. No. A-37018/2/2024 be stayed till consideration of the representation or in the alternative, Petitioner be permitted to apply without prejudice to his claim for regularization and direction be issued to Respondent No.2 to grant him age relaxation.

5. Issue notice.

6. Mr. Ashok Kumar Kashyap, learned SPC accepts notice on behalf of Respondent No.1.

7. Broadly understood, case of the Petitioner is that he was appointed by NMBA on 27.07.2005 as a Stenographer on temporary basis for three months having been selected after successfully clearing shorthand and typing test as well as the interview. NMBA and Mission on Geospatial Applications ('MGA') were merged, resulting in creation of a new entity, i.e. NECTAR under the Department of Science and Technology, Government of India. This new entity commenced operations on 01.01.2014. Petitioner was thereafter promoted as Personal Associate from 01.01.2021 and Private Secretary from 01.04.2023 but his services have not been regularized till date. Petitioner urges that he has been continuously and uninterruptedly working without a break from 27.07.2005 till date since the job is of a perennial nature. It is also urged that he has been performing duties on all posts as a regular employee and his work has been applauded and appreciated during the entire tenure. Petitioner states that he has been consistently representing for regularizing his services and a written



representation was made on 31.05.2024 followed by a reminder on 05.06.2024. However, instead of regularizing Petitioner's services, Respondent No.2 has illegally issued an Advertisement bearing F. No. A-37018/2/2024 inviting application for filling up regular vacancies on various posts including 01 post of Private Secretary, on which Petitioner is currently working, through the mode of deputation failing which by direct recruitment, which compelled the Petitioner to approach this Court.

8. Having heard learned counsels and considering that representation of the Petitioner seeking regularization is pending, without entering into the merits of the case at this stage, I deem it appropriate to dispose of the writ petition with a direction to Respondent No.2 to consider the representation dated 31.05.2024 and take a decision thereon. Additionally, Respondent No.2 will also treat the present writ petition as a representation and look into the facts and legal issues flagged by the Petitioner. Needless to state that the decision on the representation seeking regularization will be taken by the Competent Authority keeping in backdrop the facts that Petitioner was appointed on 27.07.2005 and has worked till date without a break as also that he has been given promotions *albeit* on temporary basis to the post of Personal Associate and Private Secretary over the years and as averred in the writ petition he has been performing all duties of a regular employee. The decision shall be taken within two weeks from date of receipt of this order and a reasoned and speaking order shall be passed. The order shall be communicated to the Petitioner as soon as the decision is taken and Petitioner will be at liberty to take recourse to legal remedies, in case of any surviving grievance.

9. As prayed, it is open to the Petitioner to apply against the



Advertisement bearing F.No. A-37018/2/2024, if so advised, without prejudice to his right to seek regularization and in case the Petitioner applies, Respondent No.2 will take a decision on whether he can be granted age relaxation considering that Petitioner has rendered continuous service of nearly 20 years with the Organization.

10. Petition stands disposed of in the aforesaid terms, along with pending application.

JYOTI SINGH, J

OCTOBER 01, 2024

B.S. Rohella