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

+ **W.P.(C) 13816/2024 and CM APPL. 57890/2024**

BIRENDRA KUMAR SHARMAPetitioner

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 posts of Accountant/Accounts Associate/Senior Executive (Accounts) and Accounts Manager/Accounts Officer forthwith, with a further direction to release all payments due to the Petitioner which have been withheld by Respondent No.2 from the date of his appointment on 01.06.2017, with interest.

2. Case of the Petitioner as pleaded in the writ petition is that National Mission on Bamboo Applications ('NMBA') and Mission on Geospatial Applications ('MGA') were merged in 2013, 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 appointed as Accountant in 2017 after undergoing regular process of selection but for a period of 6 months initially. He has continued to work with NECTAR without any break till date and has been performing all duties like a regular employee.

3. It is further averred that Petitioner's employment has been extended from time to time without any break and on 31.12.2020 he was appointed as Accounts Associate and was granted all allowances such as TA/DA, LTA etc. Petitioner was further promoted to the post of Accounts Manager/Accounts Officer on 31.03.2023 and was made Head of Accounts Department with all other employees reporting to him. Petitioner has been consistently representing for regularization and made a comprehensive representation dated 31.05.2024 to Respondent No.2 to look into his long and continuous service and regularize him, which is pending consideration. It is stated that Petitioner has approached this Court compelled by the fact that instead of regularizing the Petitioner, Respondent No.2 has issued an Advertisement bearing F. No. A-37018/2/2024 advertising 01 post of Accounts Officer, which if filled will adversely affect the Petitioner.

4. Learned counsel for the Petitioner contends that though the Petitioner was initially appointed on a temporary basis for 6 months, he has worked from 2017 till date as a regular employee performing all duties of perennial nature including duties of the posts of Accounts Manager such as enabling banking transactions, online financial transactions, documenting funding reports and grants, preparation, finalization and signing of annual accounts etc. Petitioner's extension from time to time was with the approval of the Competent Authority in NECTAR. Petitioner was promoted on 31.12.2020 as Accounts Associate and thereafter to the post of Accounts Manager on



31.03.2023. He was granted all allowances such as TA/DA, LTA as per Recruitment Rules. 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 for appointment to 01 post of Accounts Officer on deputation failing which by direct recruitment, despite the fact that Petitioner has been working with Respondent No.2 since 2017 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.

5. 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 Accounts Officer 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.

6. Issue notice.

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

8. Broadly understood, case of the Petitioner is that he was appointed by NMBA in 2017 through a regular process of selection for 6 months as an



Accountant. Petitioner has been promoted as Accounts Associate and Accounts Manager/Accounts Officer and is currently working as an Accounts Manager. Despite his dedicated service for nearly 7 years, Petitioner's services have not been regularized till date. Petitioner urges that he has been continuously and uninterruptedly working without a break from 2017 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. 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 Accounts Officer, on which Petitioner is currently working, through the mode of deputation failing which by direct recruitment, which compelled the Petitioner to approach this Court.

9. 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 in 2017 and has worked till date without a break as also that he



has been given promotions *albeit* on temporary basis to the posts of Accounts Associate and Accounts Manager/Accounts Officer 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.

10. 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 for 07 years with the Organization.

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

JYOTI SINGH, J

OCTOBER 01, 2024

B.S. Rohella