



GAHC010161912022

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5323/2022

GS- 192257X MD. HASHIM ANSARI
S/O. ABDUL WAHAB,
PRESENTLY SERVING ASS LDC AT 528 SS AND TC (GREF), C/O 99 APO, PIN-
930528.

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY JOINT SECRETARY (BR), MINISTRY OF DEFENCE
(EARLIER DESIGNATED AS SECRETARY (BRDB)), ROOM NO. 418, B WING,
4TH FLOOR, SENA BHAWAN, NEW DELHI- 110011.

2:DIRECTOR GENERAL
BORDER ROADS ORGANISATION
SEEMA SADAK BHAWAN
RING ROAD
DELHI CANTT.
NEW DELHI- 110010.

3:ADDITIONAL DIRECTOR GENERAL (EAST)
BORDER ROAD ORGANISATION
HQ ADGBR (EAST)
JALUKBARI
LANKESWAR
GUWAHATI
ASSAM
PIN- 781014.

4:CHIEF ENGINEER
PROJECT ARUNANK
PIN- 931719
C/O- 99 APO.

5:COMMANDER



756 BRTF
PIN- 930756
C/O- 99 APO.

6:OFFICER COMMANDING
528 SS AND TC (GREF)
PIN- 930528
C/O- 99 APO.

7:ICAR RESEARCH COMPLEX FOR EASTERN REGION (INDIAN COUNCIL
OF AGRICULTURAL RESEARCH)
REPRESENTED BY DIRECTOR
HAVING OFFICE AT ICAR PARISAR
P.O.- BIHAR VETERINARY COLLEGE
PATNA- 800014

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocates for the petitioner : Shri D. Bora, Advocate
Advocates for respondents : Shri K.K. Parashar, C.G.C.,
Ms. R.B. Bora, Advocate.

Date of hearing : 10.10.2023
Date of judgment : 10.10.2023

Considering the issue involved and the fact that pleadings are complete, this writ petition is taken up for disposal at the admission stage itself.

2. The issue pertains to cancellation of an earlier approval for the petitioner to join the respondent no. 7 Organization namely, the Indian Centre for Agricultural Research (herein after ICAR).



3. The petitioner is presently working as a Lower Division Clerk (LDC) in the Border Roads Organization (GREF). On 06.07.2018, a Vacancy Circular was issued by the respondent no. 7 - ICAR for Transfer / Absorption etc. of LDC, pursuant to which the petitioner had applied. It is the case of the petitioner that on 10.10.2018, his application was duly forwarded by his employer. Subsequently, on 13.06.2022, ICAR had approved the said application of the petitioner. However, vide the impugned order dated 14.07.2022, the petitioner was informed that the earlier letter dated 10.10.2018 of approval by his employer was cancelled on the next date of issuance itself and the reasons for such cancellation was cited that the Forwarding was issued erroneously as Rules were not followed. It is the correctness and legality of the order dated 14.07.2022 which is the subject matter of challenge in this writ petition.

4. I have heard Shri D. Bora, learned counsel for the petitioner whereas the contesting respondent nos. 1 to 6 are represented by Shri K.K. Parashar, the learned C.G.C. and the respondent no. 7 is represented by Ms. R. B. Bora, the learned counsel.

5. Shri Bora, the learned counsel for the petitioner has submitted that the matter of routing the application through proper channel and the procedure adopted are within the domain of his employer and so far as his role is concerned, he had duly made the application pursuant to the Vacancy Circular dated 06.07.2018. It is submitted that once his application was duly forwarded on 10.10.2018, the petitioner had reasons to believe that the same was done by following all the necessary procedures.

6. It is further submitted that at no earlier point of time, the petitioner was ever informed about cancellation / rescinding of the earlier approval by the



parent organization and it was only after that the ICAR - respondent no. 7 had approved vide communication dated 13.06.2022 that the impugned communication dated 14.07.2022 had been passed. It is reiterated that it was only vide the communication dated 14.07.2022 that the petitioner had come to know about such cancellation for the very first time.

7. Shri Bora, the learned counsel has also referred to an earlier litigation by the same petitioner in this Court which was by means of a writ petition being WP(C)/31/2017. In that case, a similar situation was there wherein the petitioner's attempt to move to the Coal Mines Provident Fund Organization pursuant to an advertisement which was held up due to lack of No Objection Certificate. However, this Court vide order dated 21.02.2017 had interfered with the matter and directed for issuance of NOC which was accordingly done subsequently. However, since the last date was over, the petitioner could not avail of the opportunity to join the said Organization namely the Coal Mines Provident Fund Organization.

8. Shri Bora, the learned counsel submits that since the issue involved in the present *lis* is similar to the *lis* which has already been resolved by this Court in the earlier round of litigation, necessary directions may be issued to facilitate the petitioner to join the respondent no. 7 - ICAR. He further submits that in terms of an interim direction of this Court passed in the present case, a post is kept vacant wherein the petitioner can be accommodated.

9. Shri Parashar, the learned C.G.C. appearing for the contesting respondent nos. 1 to 6 however submits that in the offer of appointment made by the ICAR vide communication dated 13.06.2022 which has been annexed to the affidavit-in-opposition filed on 16.03.2023, the conditions have been laid down and in the instant case, the conditions were not fulfilled and therefore on the very next



date of forwarding of the application of the petitioner on 10.10.2018, the same was withdrawn. He submits that since the application of the petitioner was not approved by the prescribed higher authority, the letter dated 10.10.2018 could not have been issued and there was a jurisdictional error and therefore, in the impugned order dated 14.07.2022, it has been stated that the forwarding letter dated 10.10.2018 was erroneously signed.

10. The learned C.G.C. has also drawn the attention of this Court to the guidelines of the DoPT more particularly those concerning "Forwarding of Applications for Outside Employment". By referring to Clause 5 of the said guidelines, the learned C.G.C. has submitted that the procedures have been laid down in details and unless those are meticulously followed, an employee working with the parent organization will not be allowed to leave and join some other organization.

11. Ms. R.B. Bora, the learned counsel representing the respondent no. 7 while endorsing the submission of Shri Parashar, has however submitted that the Offer Letter dated 13.06.2022 was given on the assumption that the approval was duly given. She however submits that in terms of the interim direction of this Court, a post has been kept vacant and if due approval is given by the parent department, there would be no difficulty to absorb the petitioner.

12. The rival contentions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

13. In determining the issue which has arisen, this Court is benefitted by the earlier order passed by this Court on 21.02.2017 in WP(C)/31/2017 instituted by the same petitioner. This Court was dealing with an identical situation wherein

the petitioner wanted absorption in another organization namely, the Coal Mines Provident Fund Organisation and the matter was held up for non-grant of NOC. This Court in paragraph 25 of the said judgment has observed as follows:

“25. The matter would, however, be entirely different if the petitioners choose to resign from their jobs and join the new employment. In such cases, In the absence of any departmental proceeding pending against the petitioners or any penalty imposed upon them, the authorities would be obliged to issue them the NOC unless there is any contrary provision in the service Rules. If the dissatisfied employees want to leave the organization due to lack of career advancement opportunities, it would be a matter entirely for the department to address. But the BRO cannot compel any unwilling employee to continue in service against the wishes.

26. In view of the pleaded stand of the respondents that the writ petitioners are at liberty to leave the organization by submitting their resignation, the respondents would be obliged to issue the Vigilance Clearance Certificate and the NOC to the writ petitioners if they resign from their present jobs. In any event, in view of clause-8 of the circular dated 24.10.2016, the petitioners would not be entitled to any credit for their past service except for pensionary benefit applicable in cases of those employees not covered under NPC.”

Shri Bora, the learned counsel for the petitioner has however informed this Court that though subsequently the NOC was issued in the said case, the same was rendered otiose as the last date for such absorption was already over.

14. In the instant case, this Court has also noticed that the application of the petitioner was forwarded on 10.10.2018 and the petitioner could not have any role in the procedure adopted while issuing such forwarding letter and this Court finds force in the argument that the petitioner had reasons to believe that the due process of law was fulfilled. This Court has also noticed that in the Offer



Letter by the ICAR dated 13.06.2022 where certain conditions have been laid down, the said letter was addressed to the present employer of the petitioner and only copy thereof was marked to him. The conditions stated for such absorption which were required to be fulfilled could be reasonably assumed to have been done when the forwarding letter dated 10.10.2018 was issued. Shri Bora, the learned counsel for the petitioner has also informed that at no earlier point of time, the petitioner was informed that the initial letter of approval dated 10.10.2018 was cancelled on the very next date. This Court has also noticed that if such forwarding was cancelled on the very next date, how could an approval be issued by the ICAR as late as on 13.06.2022 ?

15. Be that as it may, without even going to that aspect of the matter, this Court has come to the conclusion that fulfillment of the conditions would require certain acts to be done by the present employer which would also require the clearance and approval from the appropriate authority as mentioned in the Offer Letter dated 13.06.2022. This Court in the earlier occasion while adjudicating WP(C)/31/2017 has already laid down the principles.

16. In view of the aforesaid facts and circumstances and following the order passed in the earlier writ petition, this Court directs that the respondent nos. 1 to 6 would take up the matter earnestly and complete all necessary formalities of fulfilling the conditions for facilitating the petitioner's absorption in the respondent no. 7 - ICAR. This Court has already noted that one post of LDC has been kept vacant in the ICAR pursuant to the interim direction of this Court and Ms. Bora, the learned counsel for the ICAR has also submitted that in case the application of the petitioner is properly routed, the respondent no. 7 would not have any difficulty, in principle, to absorb the petitioner. Consequently, the



impugned order dated 14.07.2022 is accordingly set aside.

17. The aforesaid exercise be completed expeditiously and within an outer limit of 6 (six) weeks from today.

18. In view of the above, the instant petition stands allowed. Interim order stands merged with the final orders passed today.

19. No order as to cost.

JUDGE

Comparing Assistant