

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25090 of 2018

1. The Director Rajendra Memorial Research Institute of Medical Science (Indian Council of Medical Research), Department of Health and Family Welfare, Government of India, Agamkuan, P.O. Gulzarbagh, P.S.- Alamganj, Patna- 800007.
2. The Director General Indian Council of Medical Research (ICMR), Ansari Nagar, Post Box No. 4911, New Delhi- 110029.

... .. Petitioners

Versus

1. Kushagra Kush Son of Hira Prasad Pandey Resident of Block-1, No. 503, Paltigram Saheed Bhagat Singh Patna No. 3, Bajrangpuri, P.O. Gulzarbagh, P.S.- Alamganj, District- Patna.
2. The Union of India Through the Secretary, Ministry of Health and Family Welfare, No. 384-A, Waig Sriman Bhawan, New Delhi- 110001.

... .. Respondents

Appearance :

For the Petitioner No. 1 : Mr. P.K. Shahi, Sr. Advocate
Mr. Rohit Mishra, Advocate
For the Petitioner No. 2 : Mr. Gautam Bose, Sr. Advocate
Mr. Vikash Jha
For the Respondents : Mr. S.D Sanjay, Addl. Soc. Gen.
Mr. Bibhakar Tiwary, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 19-01-2022

Rajendra Memorial Research Institute of Medical Sciences, ('RMRIMS' for short), Patna and Indian Council of Medical Research (ICMR) have preferred this writ application through their respective Directors, assailing a judgment and order dated 04.08.2017 passed in O.A. No. 050/00111 of 2017 by a Division Bench of the Central Administrative Tribunal,



whereby the Original Application filed under Section 19 of the Administrative Tribunal Act, 1985 by the respondent No. 1 has been allowed with a direction to petitioner No. 1 to issue an appointment letter forthwith, appointing the petitioner against the post of Research Assistant/Technical Assistant.

2. A Review Application was preferred by the petitioners before the Central Administrative Tribunal seeking review of the aforesaid order dated 04.08.2017 giving rise to R.A. No. 00/50/0050 of 2017, which came to be dismissed by an order dated 30.10.2017, which is also under challenge in the present writ application filed under Article 226 of the Constitution of India.

3. We have heard, Mr. P.K. Shahi and Mr. Gautam Bose, learned Senior Counsel appearing on behalf of the petitioners assisted by Mr. Rohit Mishra and Mr. Vikas Jha, learned advocates and Mr. Bibhakar Tiwary, learned counsel appearing on behalf of the private respondent No. 1.

4. It is deemed apt to recount the admitted facts of the case first, before addressing the issues. The RMRI had invited applications for appointment against the two posts of Research Assistant (U.R.) in the employment news of 11th July, 2009. The designation of the post was subsequently changed to Technical



Assistant (Research) (U.R.).

5. Respondent No. 1 was one of the aspirants for the said post, written examination of which was held on 18.08.2012 and viva-voce test on 03.01.2013. Respondent No. 1 was placed at Sl. No. 3 of the merit list. Appointment letters were issued to two candidates out of which one joined on 11.07.2013. The other did not join and applied for extension of time. On his request, the joining time was extended for him. However, he was not allowed extension beyond 14.08.2014. The offer of appointment issued to the non-joining candidate stood cancelled.

6. The respondent, who was at Sl. No. 3 in the merit list claims that pursuant to an information sought by his father under the Right to Information Act in 2016, an information was received to the effect that the offer of appointment in favour of the candidate at Sl. No. 1 was cancelled because of non-joining; as the panel was not alive; no appointment could be made on the basis of the said panel. The name of respondent No. 1 was neither in the wait list nor in the list of selected candidates; the merit list was not published in the newspaper nor put on the website, in the absence of any practice prevalent at the said point of time.



7. Respondent No. 1 further claims to have made a representation thereafter on 17.08.2017 before the authorities for issuance of an appointment letter in his favour against the post which had remained vacant because of non-joining of the candidate at Sl. No. 1. He, thereafter, approached the Tribunal by making an application under Section 19 of the Administrative Tribunal Act, 1985 giving rise to O.A. No. 111 of 2017, seeking the following reliefs :-

(i) To issue an appropriate order commanding upon the respondent No. 3 authority to produce the recruitment cancellation order vide RMRI / ICMR / R /153 / 237 / Estt.1113 / 2014-15, dated 27.10.2014 whereby the appointment of the petitioner as Research Assistant now redesignated Technical Assistant (Research) has been cancelled and upon production to set aside the aforementioned order dated 27.10.2014 and also order to produce appointment entire file of RA to assess the malafide intention of the administration.

(ii) To issue an appropriate order commanding upon the respondent No. 3, authority to appoint the petitioner as Research Assistant now redesignated Technical Assistant/ Research (unreserved) for filling one remaining non joining vacant post as yet with all consequential benefits as well as back wages and compensation for mental agony and frustration.



8. A written statement was filed on behalf of the petitioners wherein they relied on an Office Memorandum dated 30.07.2007 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training which contemplated that a panel recommended by a selection committee for appointment could remain valid for one year from the date of its preparation. Accordingly, a specific plea was taken before the Tribunal that as life of the panel automatically expired after one year, no candidate could be appointed from the waiting list or reserved list. A specific statement was made in the written statement that, as a matter of fact, life of the panel had expired in February 2014 itself. In any event, the life of the panel could not be treated to be surviving beyond 14.08.2014, to which joining of the non-joining candidate was extended, they pleaded. The respondents also pleaded in the written statement that whereas the panel expired in 2014, the application of respondent No. 1 before the Administrative Tribunal filed in 2016 was hopelessly barred by limitation and that the information gathered under the Right to Information Act could not be treated to be extending the period of



limitation.

9. The Central Administrative Tribunal, in its impugned judgement and order refused to accept the plea of the RMRI of expiry of the life of panel and allowed the O.A., relevant portion of the impugned judgement and order reads thus :-

“The ground reality is that since a candidate is selected under a recruitment process and has come in the merit list, may be 3rd and when a person at Sl. No. 1 does not join, he acquires a right to the post. This process should have been completed within one year and when the person who is at Sl. No. 1 did not join within one year, on the very moment, the said post should have been extended to the present applicant, he being at Sl. No. 1 of the waiting list. Since the Department did not take appropriate action at appropriate time, they cannot be permitted to take a defence that the applicant is approaching this Tribunal after a lapse of panel period. Had the respondents published the result at any point of time, in that event the applicant would have been duty bound to approach if not the Tribunal but to the appointing authority before one year of the expiry of the panel in the event of non joining of the selected candidate. On technical ground a person duly selected cannot be denied his job, that too on flimsy ground. Extension of time granted to the selected candidate for more than one and half year was certainly illegal and rather the department has



allowed time to drift only to deprive the next eligible candidate to get the job. We have every reason to believe that there has been injustice to the applicant in not extending the appointment soon after non joining of the selected candidate and in the larger interest of justice, equity and good conscience, the applicant deserves the post.

Learned counsel for both the parties have filed plethora of decisions but since there is no dispute about the legal proposition, the same are not reflected, as there is no law that persons in the waiting list would not be offered the job if the selected candidate does not join. Had it been so there would not have been any occasion to prepare a wait list. Preparation of wait list candidates gives an impression that the Selection Committee wanted them to be appointed in case of selected candidates do not turn up as filling up of the post is the paramount consideration of the Department and the department does not gain by keeping the post vacant, that too depriving a genuine candidate of the merit list. Hence ordered.

The OA is allowed. Respondent No. 3 is directed to issue appointment letter to the applicant forthwith as the post is lying vacant till date and has not yet been advertised for filling up of the said vacancy. We would have imposed heavy cost on the respondents for unnecessarily breeding litigation and harassing a genuine candidate but by way of judicial restraint, we refrain from doing so. No costs.”

10. An application was thereafter filed before



the Tribunal by the petitioners under Section 22(3) of the Administrative Tribunal Act, 1985 read with Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 seeking review of the said order dated 04.08.2017 which has been rejected by the Tribunal by the impugned order dated 30.10.2017, holding that there was no arithmetical, typographical or apparent error on the face of the record, justifying exercise of review jurisdiction.

11. Aggrieved by the said judgements and orders dated 04.08.2017 passed in O.A. No. 050/00111 of 2017 and 30.10.2017 passed in R.A. No. 00/50/0050 of 2017 by the Central Administrative Tribunal, Patna Bench, present application has been filed.

12. Learned Senior Counsel appearing on behalf of the petitioners have argued that the judgement and order passed by the Tribunal dated 04.08.2017 is not sustainable for two main reasons. They have firstly contended that the Tribunal could not have issued a direction for appointment of respondent No. 1 on the basis of a panel, life of which had already expired. They have secondly submitted that in any view of the matter, inclusion of the respondent's name in the panel cannot be



said to be conferring any right on him to be appointed against the post. They have placed reliance on Supreme Court's decision in case of *Kulwinder Pal Singh and Another vs. State of Punjab and Ors.* reported in **2016 (6) SCC 532** in support of their contention.

13. Mr. Bibhakar Tiwary, learned counsel appearing on behalf of the respondent No. 1 has submitted that the decision of the RMRI to extend joining time in respect of one of the selected candidates was in breach of guideline contained in office memorandum dated 09.08.1995, issued by the Department of Personnel and Training, Government of India. He submits that said candidate was illegally granted extension for joining for a period of one year nine months, contrary to the guidelines as contained in the office memorandum dated 09.08.1995.

14. He has submitted that an offer of appointment lapses automatically after expiry of six months from the date of issue of the original offer of appointment. The original offer of appointment having been made on 05.02.2013, he could have been allowed to join latest by August 2013. He has placed reliance on Supreme Court's decision passed in *Gujarat State Dy.*



Executive Engineers' Association vs. State of Gujarat and Ors. reported in *1994 Supp. (2) SCC 591* to contend that a candidate in the waiting list in order of merit has a right to claim that he may be appointed, if one or other selected candidates does not join.

15. He has argued that the life of the panel cannot be said to have lapsed since the panel was never published either in the newspaper or was put on the website of the RMRI. He has further submitted that since merit list was not published, it cannot be said to have expired after lapse of time for denying the petitioner's rightful claim to be appointed against the said post.

16. We have carefully perused the pleadings and other materials on record and have considered the rival submission advanced on behalf of the parties. It is not in dispute that on the basis of the merit list in which the petitioner's name figures, two candidates were offered appointment letters, one of them had joined as back as on 11.07.2013. The petitioner admittedly did not have any better right to be considered for appointment when one of the candidates had submitted his joining on 11.07.2013. The petitioner's assertion that he was unaware of



preparation of panel because of its non-publication in the newspaper or not having been placed on the website of the RMRI and, therefore, the life of the panel should not be treated to have lapsed till he learnt about it through information furnished to his father under the Right to Information Act is not acceptable to this Court.

17. It is an admitted fact that the petitioner had participated in the interview on 03.01.2013. It is not his case that at any point of time thereafter he made any attempt to inquire about the publication of result.

18. From the party position as disclosed in the writ petition, it can be easily inferred that the office of petitioner No. 1 is located under the same Police Station and Post Office where the respondent resides. More than 3 years after the respondent had participated in the viva-voce test, the respondent's father made an application under the Right to Information Act. Evidently, the information supplied to the respondents's father to the effect that the result was not published in the newspaper nor the same was placed on the website is the foundation of the petitioner's case that the life of the panel cannot be said to have expired.



19. We find substance in submission on behalf of the respondents that in any case the panel could not be said to be alive after the last date given to the other candidate to join the post, who had not joined.

20. The office memorandum dated 09.08.1995 (supra), much reliance on which has been placed by the respondent No. 1, in our opinion, does not improve his case for two reasons. Firstly, the said office memorandum is confined to the candidates recommended by the Union Public Service Commission/Staff Selection Commission for appointment to Central Civil Services. On careful reading of the said office memorandum, it cannot be said that it refers to selection processes/appointments other than the selection process undertaken by the Union Public Service Commission/Staff Selection Commission. Secondly, in any view of the matter, life of the panel having expired, the petitioner could not be appointed on the basis of a lifeless panel.

21. It has been repeatedly held that Court cannot direct a non-existent panel to continue ones its life has expired.

22. The finding recorded by the Tribunal, in



view of the given facts and circumstances of the case, that life of the panel had not expired is patently erroneous and unsustainable.

23. Further, we are convinced that the submission made on behalf of the petitioners that mere inclusion in the select list does not give any person a right to be appointed [See. **1991(6) SCC 462, 1991(3) SCC 47, 1994 Supp. (2) SCC 541, 1974(3) SCC 220, 1997(6) SCC 584, 2002(4) SCC 726, 1985(1) SCC 122, AIR 1987 SC 1889, 2005(3) SCC 618, 2013(12) SCC 171**].

24. Learned Senior Counsels for the petitioner have rightly placed reliance on the Supreme Court's decision in case of ***Kulwinder Pal Singh*** (supra), wherein it has been clearly reiterated that merely because name of a candidate finds place in the select list, it would not give him indefeasible right to get appointment as well.

25. For the reasons noted above, in our considered opinion, the impugned order of the Tribunal is unsustainable and requires this Court's interference. Accordingly, the impugned order dated 04.08.2017 passed by Central Administrative Tribunal Patna Bench,



Patna in O.A. No. 050/00111 of 2017 is hereby set aside.

26. Since the order dated 04.08.2017 passed by the Tribunal has been set aside, there is no requirement of entering into the correctness or otherwise of the order passed by the Tribunal in R.A. No. 00/50/0050 of 2017 dated 30.10.2017.

27. This application is accordingly allowed.

28. There shall be no order as to costs.

29. All the Interlocutory Applications stand disposed of.

(Chakradhari Sharan Singh, J)

Madhuresh Prasad, J :- I agree.

(Madhuresh Prasad, J)

K.K.RAO/-

AFR/NAFR	NAFR
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