

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.168/2021

This the 02nd day of June, 2021

Shri Shivkumar
Son of Srinarayan Prajapati
Age : 36 years,
Serving as Research Officer (Occupational Hygiene)
in the office of the respondents.
Residing at : 59 Tata Nagar Society,
Meghaninagar, Asarwa,
Ahmedabad 380 016. Applicant

(By Advocate : Shri M.S.Trivedi)

VERSUS

1. Union of India, through
The Secretary, Government of India,
Department of Health Research,
Ministry of Health & Family Welfare,
New Delhi – 110 001.
2. The Director General
O/o. DG, Indian Council of Medical Research
V. Ramalingaswami Bhavan,
P.B. No.4911, Ansari Nagar
New Delhi 110 001.
3. The Director
O/o. Director
Indian Council of Medical Research
Meghaninagar, Asarwa,
Ahmedabad 380 016. Respondents

ORDER (ORAL)

Per : Hon'ble Shri J.V. Bhairavia, Member (J)

In the instant OA, the applicant being aggrieved with the impugned order
dated 27.5.2021 (Annexure A/1) whereby his engagement as Research

Officer (Occupational Hygiene) on contract basis has been discontinued, has filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 and seeks the following reliefs :

- “(A) That the Hon’ble Tribunal be pleased to allow this petition*
- (B) That the Hon’ble Tribunal further be pleased to hold/declare that the impugned ex-facie, illegal, arbitrary, unjust and unconstitutional action/ decision and office order No.NIOH/SSP/2021-22/217 dated 27.05.2021 (Annexure A-1) issued by the respondent No.2 regarding discontinuation of the services of the applicant as Research Officer, is non- est in the eyes of law.*
- (c) That the Hon’ble Tribunal further be pleased to quash and set aside the impugned ex-facie, illegal, arbitrary, unjust and unconstitutional action/ decision and office order No.NIOH/SSP/2021-22/217 dated 27.05.2021 (Annexure A-1) issued by the respondent No.2 regarding discontinuation of the services of the applicant as Research Officer.*
- (d) such other and further relief/s as may be deemed just and proper in view of the facts and circumstances of the case may be granted.*

2. The facts of the case, in brief, are as under:

- 2.1 The applicant herein was initially engaged in National Institutes of Miners’ Health (NIMH) vide order dated 12.10.2015 as Research Officer (Occupational Hygiene) on contract basis for a period of five years w.e.f. 20.10.2015. As per the terms and conditions of the said engagement, the tenure of the contractual service was upto 19.10.2020.
- 2.2 In the meantime, consequent upon the merger of NIMH, Nagpur with Indian Council of Medical Research- National Institute of Occupational Health (referred as ICMR-NIOH) as per O.M. dated 10.6.2020, the staff / employee including the applicant working in NIMH were transferred to the

Ahmedabad office of ICMR-NIOH vide order dated 23.6.2020 (Annexure A/2).

- 2.3** It is contended that after the transfer of the applicant, the respondent No.2 i.e. the Assistant Director General (Admn.) ICMR vide his order dated 21.08.2020 (Annexure A/3) included the name of the applicant on the Pay Roll of ICMR-NIOH, Ahmedabad and re-designated as Scientist-B alongwith other officers who were also working with erstwhile NIMH. The said order was passed with the approval of the competent authority of the Council. It is contended that initially the applicant was engaged as Research Officer. Subsequently, as per the order dated 21.8.2020, he was absorbed with re-designated position i.e. Scientist-B by the respondent Nos.2 & 3. Accordingly, he became employee of NIOH-Ahmedabad.
- 2.4** It is further contended that while the applicant was working with the NIMH, vide its order dated 19.10.2016 the respondent No.2 terminated the engagement/ service of the applicant with a notice period of one month. Aggrieved by it, he had filed OA No.735/2016 before the Mumbai Bench of this Tribunal and sought relief for quashing and setting aside the said termination order dated 19.10.2016. However, said OA was dismissed by the CAT Mumbai Bench, camp at Nagpur vide its order dated 25.01.2019. Aggrieved by the said decision, the applicant had filed a writ petition No.957/2019 before the Hon'ble High Court of Bombay of Nagpur Bench at Nagpur.
- 2.5** Learned counsel for the applicant submits that interim relief maintaining the status quo was granted by the Hon'ble High Court of Bombay of

Nagpur Bench and he continued in service. During the pendency of the said writ petition, the respondents had filed one application before the Hon'ble High Court of Bombay at Nagpur (Annexure A/4) wherein it was stated that since the contract period of appointment of the petitioner (applicant herein) was over on 19.10.2020, the petition filed by the applicant became infructuous. Therefore, the same is required to be dismissed. The Hon'ble High Court vide its order dated 04.05.2021 dismissed the said petition of the applicant with the following observation :

“The contract period of service of the petitioner (Shri Shiv Kumar S. Prajapati) expired on 19.10.2020 during pendency of the petition and there being no renewal of appointment of the petitioner, which was no necessary, this petition has also been rendered infructuous.

For the reasons stated above, we find no merit in the petition. This petition stands dismissed. Rule is discharged No costs.”

2.6 It is contended that now, based on the order passed by the Hon'ble High Court, the respondent No.3 vide impugned order dated 27.5.2021 (Annexure A-1) discontinued the service of the applicant with immediate effect. Hence, this OA.

3. Learned counsel for the applicant Shri M.S.Trivedi mainly submits that consequent upon the merger of NIMH with ICMR, NIOH, Ahmedabad, the employees of NIMH were transferred to NIOH, Ahmedabad vide order dated 23.6.2020. The name of the applicant was listed at Serial No.5 of the said order with remarks that the transfer of the applicant in NIOH Ahmedabad was subject to the decision of the Hon'ble High Court of Mumbai of Nagpur Bench at Nagpur.

It is submitted that while issuing the impugned decision the respondents had totally ignored the order dated 21.8.2020 whereby the applicant had been taken on the Pay Roll of ICMR-NIOH, Ahmedabad and his engagement as Research Officer was re-designated as Scientist-B. In fact, the applicant was absorbed by ICMR-NIOH, Ahmedabad, his service cannot be terminated or his engagement cannot be discontinued by the respondent No.3 without there being any cancellation or withdrawal of the order dated 21.8.2020. Since the said order was issued after the approval of the competent authority; the respondent No.3 is not competent authority to nullify the order of engagement of the applicant as Scientist-B. Therefore, the impugned order dated 27.5.2021 is nullity and required to quash and set aside.

4. Learned counsel for the applicant placed reliance on the interim order dated 05.11.2020 (Annexure A/5) passed by this Tribunal in OA No.433/2020, in case of one Mr. Yashwant Meshram, Driver cum Lab Attendant of the same department. It is further stated that the fact of the case of the applicant is identical to the same and is entitled for some protection by way of interim relief. It is submitted that the impugned order dated 27.5.2021 is passed arbitrarily and illegally discontinued the service of the applicant.
5. Heard Shri M.S.Trivedi, learned counsel for the applicant and perused the materials available on record.
6. It is notice that while the applicant was working as Research Officer (Occupational Hygiene) on contract basis with NIMH at Nagpur, his

engagement was terminated vide order dated 19.10.2016. The OA filed against the said termination order, the Mumbai Bench of this Tribunal was dismissed vide order dated 25.01.2019. Aggreived by it, the applicant had filed writ petition before the Hon'ble High Court of Mumbai at Nagpur bench wherein interim relief of status was granted. Accordingly, applicant continued as Scientist-B at NIOH, Ahmedabad. Subsequently, the Hon'ble High Court dismissed the writ petition of the applicant vide order dated 4.5.2021 with following observation :

“The contract period of service of the petitioner (Shri Shiv Kumar S. Prajapati) expired on 19.10.2020 during pendency of the petition and there being no renewal of appointment of the petitioner, which was no necessary, this petition has also been rendered infructuous. For the reasons stated above, we find no merit in the petition. This petition stands dismissed. Rule is discharged No costs.”

7. It can be seen that the Hon'ble High Court of Mumbai had categorically observed that “during the pendency of the petition and there being no renewal of appointment/ engagement of the petitioner, which was so necessary, the petition rendered infructuous.”

At this stage, it is appropriate to mention that consequent upon merger of NIMH with ICMR-NIOH, the officer working with designation of ‘Research Officer’ under NIMH, Nagpur where transferred to ICMR-NIOH, Ahmedabad and Bangalore vide order dated 23.6.2020 (Annexure A/2) on equivalent designation i.e. Scientist-B under ICMR-NIOH. The name of the applicant was also placed at Sl.No. 5 of the said order and he was transferred to ICMR, NIOH, Ahmedabad with equivalent designation i.e. Scientist-B”, that too with condition that his transfer is subject to

decision of the Hon'ble High in W.P. No.957/2019. It is noticed that only because of interim relief granted to the applicant he continued on contractual arrangement with ICMR.

So far, the submission of the learned counsel for the applicant that as per the order dated 21.8.2020 needs to be treated as his regular appointment as Scientist-B and his name was included on the Pay Roll with ICMR-NIOH, Ahmedabad, the respondents cannot discontinued his service is concerned, the said submission is not tenable in the facts and circumstances of the present case. As noted hereinabove, the applicant engagement as Research Officer was actually terminated on 19.10.2016 with a notice period of one month as per terms of his engagement letter dated 12.10.2015. However, due to interim protection granted by the Court, he was continuing with the said contractual arrangement. Further, in Office Memorandum dated 21.8.2020 (Annexure A/3) it is mentioned that *"consequent upon the merger of the NIMH, Nagpur with ICMR-NIOH, Ahmedabad, the following staff members of erstwhile NIOH have been taken on Pay Roll of ICMR-NIOH, Ahmedabad and redesignated as Scientist-B"*. The said Office Memorandum cannot be termed as order of regular appointment or permanent absorption of the applicant in ICMR. In otherwords, in absence of any material on record about regular selection for approved vacancy for the post of Scientist-B, the applicant cannot be treated as permanent or regular appointee. His engagement as Research Officer and subsequently as Scientist-B was purely temporary and on contract basis. The Hon'ble High Court of Mumbai had dismissed the petition of the applicant with the

observation that contract period came to an end and there was no renewal of appointment or engagement of the applicant. Hence, the submission of the applicant is misconceived. The interim order dated 5.11.2020 (Annexure A/5) passed by this Tribunal in OA No.433/2020 as relied upon by the learned counsel for the applicant is also not helpful to him in the facts and circumstances of the present case.

8. In view of the above discussion, the OA lacks merits. Accordingly, the same is dismissed. No order as to costs.
9. Registry is directed to send a copy of this order to the counsel for the applicant through email.

(J.V.Bhairavia)
Member (J)

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