
(1993) 02 SC CK 0086

Supreme Court of India

Case No: Civil Appeal No. 1710 of 1993 (Arising out of SLP (C) No. 12320 of 1992)

Indian Council of
Agricultural Research
and Another

APPELLANT

Vs

Smt. Shashi Gupta

RESPONDENT

Date of Decision: Feb. 15, 1993

Acts Referred:

- Agricultural Research Service Rules, 1975 - Rule 10, 6

Citation: AIR 1994 SC 1241 : (1994) 2 LLJ 737

Hon'ble Judges: Kuldeep Singh, J; B.P. Jeevan Reddy, J

Bench: Division Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. Special leave granted.

2. Shashi Gupta was offered an appointment in the Agricultural Research Service (the Service) as Scientist Grade S in the Indian Council of Agricultural Research (ICAR). She was required to produce medical certificate of fitness from the medical board.

Unfortunately she was declared unfit by the medical board and also by the appellate medical board. She challenged the medical reports by way of a civil writ petition before the Delhi High Court. The writ petition was transferred to the Central Administrative Tribunal, New Delhi (the Tribunal). The Principal Bench of the tribunal by its judgment dated February 13, 1992 quashed the medical reports and directed the ICAR to appoint Shashi Gupta to the Service as Scientist Grade S. This appeal by ICAR is against the judgment of the tribunal.

3. Shashi Gupta joined Service as Senior Computer Assistant in the Indian Agricultural Statistics Research Institute (IASRI) with effect from February 10, 1975. The said post

was redesignated as Technical Assistant with effect from October 1, 1975. The ICAR constituted the Service with effect from October 1, 1975 under the Rules called The Agricultural Research Service Rules, 1975 (the Rules). Under Rule 6 of the Rules Service consists of four grades called Scientist S, Scientist I(S-1), Scientist 2(S-2) and Scientist 3(S-3). Rule 10 of the Rules provides for initial Constitution of the Service. A selection committee is required to assess the suitability of the "council"s candidates" for appointment to the various grades of the Service at the initial Constitution of the Service. Rule 2(1) defines "council"s candidates" to mean persons specified in Schedule I to the Rules. It is not disputed that Shashi Gupta qualified to be a "council"s candidate" and as such was eligible to be considered by the selection committee for appointment to the Service as initially constituted.

4. Shashi Gupta was selected for appointment to the Service as Scientist Grade S and an offer of appointment dated October 27, 1980 was made to her Para 7 of the letter of appointment is reproduced hereunder:

He/she will be required to produce medical certificate of fitness from the Medical Board if he/she has not been already examined by such a Board while serving in his/her present post or in any other post held earlier under the Council or the Government.

Shashi Gupta offered herself for medical examination by the Central Standing Medical Board at Dr. Ram Manohar Lohia Hospital, New Delhi. She was medically examined on February 21, 1981 but was declared unfit. On her request an Appellate Medical Board for reconstituting her medical examination was constituted. She was examined at the Safdurjung hospital by the Appellate Medical Board on December 16, 1982 but she was again found medically unfit for the job. Shashi Gupta submitted number of representations to the ICAR and also to the Government of India asking for third medical board and even took up the plea that she was not required to undergo any medical examination. Her representations were finally rejected by the memorandum dated July 5/8, 1986 and she was informed that it was not possible to induct her in the Service as she was declared medically unfit by the two medical boards.

5. Shashi Gupta challenged the medical reports before the tribunal on the following grounds:

- i. She had already been examined by a medical expert at the time of her appointment as Senior Computer/ Technical Assistant and as such she could not be subjected to a further medical examination at the time of her appointment to the Service.
- ii. The rules governing the initial Constitution of the Service did not provide for medical examination of the "council"s candidates" appointed to the Service.
- iii. She was declared quasi-permanent as Technical Assistant with effect from February 10, 1978 by the Order dated August 9, 1983. According to her she would be deemed to be quasi-permanent on October 27, 1980 and as such was not required to undergo the

medical examination by the board as the permanent "council"s candidates" were exempt from the medical examination.

6. The tribunal accepted the contentions raised by Shashi Gupta before it and quashed the medical reports and directed her appointment as Scientist Grade S. The tribunal reached its conclusions on the following reasoning:

therefore, on the ground that the Rules and the instructions did not clearly prescribe a medical test for the quasi-permanent or permanent employees on induction to Grade "S" of the Service and on account of the fact that the Regulations under which she was examined would not apply to her as she acquired quasi-permanent status by February, 1978, we do not think that she was required to undergo the test and qualify for induction in Grade "S".

7. We do not agree with the reasoning and the conclusions reached by the tribunal. We are of the view that once the medical board and the Appellate Medical Board found the respondent medically unfit for the post of Scientist Grade S the tribunal had no jurisdiction whatsoever to have got over the medical opinions and directed her appointment to the Service. The Tribunal out-stepped its jurisdiction and acted with an utter perversity. Medical fitness is the sine qua non for appointment to public services. It is the inherent right of an employer to be satisfied about the medical fitness of a person before offering employment to him/her.

8. It is not disputed that at the time of respondent"s appointment as Senior Computer/Technical Assistant she was medically examined by the civil surgeon. She was not examined by the medical board. It is no doubt correct that the rules do not specifically provide for medical examination of the candidates selected for appointments to Grade S posts in the Service at its initial constitution, but the instructions issued by the ICAR supplementing the rules specifically provide for such medical examination. The respondent, however, claimed exemption from medical examination under the ICAR instructions dated May 12, 1977 which are reproduced hereunder:

In continuation of this Council"s letter No. 4-104/76-Per-II, dated the 27th October, 1976 on the subject cited above, I am directed to say that it has been decided that Council"s permanent/quasi-permanent employees, on their appointment/induction into grade "S" of the Agricultural Research Services, may also be exempted from undergoing medical examination by a Medical Board. However, the Council"s temporary employees when appointed/ inducted to grade "S" will be required to appear before a duly constituted Medical Board and to produce a medical certificate from them.

The respondent was declared as quasi-permanent with effect from February 10,1978 by the Order dated August 9, 1983. It is thus obvious that on October 27, 1980 when she was offered Grade S post in the Service she was working as a temporary employee. The respondent cannot as such claim that she was entitled to exemption in terms of the ICAR

instructions reproduced above. The contention of the respondent, that having been declared quasi-permanent by the Order dated August 9, 1983 with effect from February 10, 1978 she would be deemed to be quasi-permanent on October 27, 1980, has apparently no force because much before August 9, 1983 she had been declared unfit by the medical boards.

9. In any case the question as to whether the respondent was entitled to exemption from medical examination or not is of no relevance because she has actually been medically examined by the two boards and she has been found unfit for the post of Scientist Grade S. She is being confronted with fait accompli. The Tribunal, in the facts of this case, had no jurisdiction to quash the medical reports.

10. We allow the appeal, set aside the Order of the Principal Bench Central Administrative Tribunal, New Delhi dated February 13, 1992 and dismiss the transfer application No. 4/88 before the tribunal. No costs.