

**Central Administrative Tribunal
Madras Bench**

OA/310/01490/2016

Dated the 6th day of February Two Thousand Twenty

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

V.Vinish,
S/o Vasudevan,
6, JG Nagar, 1st Street,
Kumaranthapuram,
Tirupur 641 602. .. Applicant
By Advocate **M/s.Raj & Raj Associates**

Vs.

1. Union of India, rep. by
The Chief Postmaster General,
O/o the Chief Postmaster General,
Tamilnadu Circle,
Chennai 600 002.
2. Union of India, rep. by
The Postmaster General,
Western Region,
O/o The Postmaster General,
Coimbatore 641 002.
3. Union of India, rep. by
The Superintendent of Post Offices,
O/o The Superintendent of Post Offices,
Tirupur Division,
Tirupur 641 601. .. Respondents

By Adovacte **Mr.K.Ramasamy**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OA is filed seeking the following relief:-

“To call for the records the order of the 3rd respondent made in his Proceedings No.B2/DRPA/2012 dated 14.2.2014 on the erroneous ground that the applicant studied his plus two course under vocational stream when he was finally selected for the appointment to the post of “Postal Assistant” in the 3rd respondent's Tirupur Division and set aside the same and direct the respondents to appoint him to the post of “Postal Assistant” and pass such other or further order or orders in the circumstances of the case and in the interest of justice.”

2. The applicant's case is as follows:-

The applicant has appeared for the examination of Postal Assistant conducted by the respondents and he came up successful in the said examination. He had also participated in the medical test for the same. But after verification of the documents the respondents had issued a letter dt. 14.2.14 stating that he had studied 12th standard in Vocational Stream and hence he cannot be selected. He disputed the said argument of the respondents and submits that he has passed +2 course and thereafter he has passed B.Com from the Bharathiar University and had also taken MBA from the same university in April 2008. He is having higher qualification in the same line. So, the rejection of the candidature by the respondents is highly illegal and arbitrary.

3. The respondents appeared before the Tribunal and submitted that during the verification of certificates held on 22.11.2013 they found that the applicant Vinish has studied and completed Vocational Stream in +2 and this was not mentioned in the

application. As per the Recruitment Rules, +2 in Vocational Stream is not eligible for appointment. So, they have rejected the candidature of the applicant.

4. When the matter came up for consideration, the counsel for the applicant would submit that the applicant in this case has passed +2 and had also taken a degree in B.Com from Bharathiar University in the year 2006 itself. He had appeared for the examination in the year 2013. So, he was having higher qualification in the same line and even if his +2 certificate in the Vocational Stream is taken he is having higher qualification in the same stream prescribed for the post and hence he is entitled to get appointment. He mainly rely upon the decision of the co-ordinate bench of this Tribunal in **OA 126/2015 dt. 10.3.16 Manish v. Union of India** wherein the CAT, Chandigarh Bench had taken a decision that if the applicant is having higher qualification of B.A. in the same line as essential qualification of 10+2, the applicant is eligible for the post. The said case arose out of rejection of candidature on the ground that the applicant had got +2 through Vocational Stream. The relevant paragraphs-11, 15 & 16 of OA 126/15 are extracted below:-

“11....the contention of counsel for the applicant based on higher qualification of B.A. possessed by the applicant has considerable force and is supported by various judgments cited by the counsel and has to be accepted. All the said judgments fully support the case of the applicant and are not distinguishable on any count. In the case of Parvaiz Ahmad Parry (supra),* eligibility qualification for the post of Range Officer Grade-I was B.Sc. (Forestry) or equivalent. Appellant of that case had qualification of B.Sc. with (Forestry) as one of the major subjects, but was not having qualification of B.Sc. (Forestry) as per advertisement. However, he was having qualification of M.Sc. (Forestry). He was held to be eligible for the post because he was possessing higher qualification in the same line as the essential

qualification for the post.

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15. In the instant case, the applicant is Graduate having passed B.A. Examination with English and Hindi subjects also vide certificate (Annexure A-8). He is thus having higher qualification in the same line as the eligibility qualification of 10+2. Consequently, in view of the aforesaid four judgments, there is no escape from the conclusion that the applicant is eligible for the post in question.

16. Judgment in the cases of Jaswinder Kaur (supra)** and Suman Kumar (supra) did not deal with the issue of higher qualification as is involved in the instant case. In view of the said judgments the applicant cannot claim eligibility on the basis of having passed +2 examination from Vocational Stream. However, the applicant is eligible on account of having higher qualification of B.A. in the same line, in view of the judgments cited by counsel for the applicant as noticed hereinbefore in detail.”

*[2011 (1) SLR 583]

**OA 1419/11 of Principal Bench, Delhi.

The applicant mainly relies on the above decision for claiming his right to be considered for appointment to the post of Postal Assistant. The respondents even though contended that RR clearly excludes Vocational Studies, he also concede that the Chandigarh Bench in OA 126/15 has decided in favour of the applicant.

5. We have carefully gone through the decision of the Chandigarh Bench and the facts and situation in the present OA 1490/2016. But we are unable to follow the decisions referred above, since the Hon'ble Supreme Court has already held that the applicant's eligibility and qualifications fixed by Recruitment Rules cannot be tinkered with by Tribunals and Courts. We had come across the decision of the

Hon'ble Supreme Court in ***Rakesh Kumar Sharma v. Government of NCT of Delhi & Ors. [Civil Appeal No.6116 of 2013]*** wherein the Court referred the earlier decision in ***Prit Singh v. S.K.Mangal [1993 Supp (1) SCC 714]*** and ***Pramod Kumar v. U.P.Secondary Education Services Commission [(2008) 7 SCC 153]*** and held that-

“14.A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegality and not mere irregularity. Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court.”

In para 17 of the same judgment the Hon'ble Apex Court observed as follows:-

“17.....Granting any benefit to the appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement.”

In this case the rules and notification issued preclude persons passing +2 under vocational stream, from applying to the post of Postal Assistant. In ***The Maharashtra Public Service Commission Through its Secretary v. Sandeep Shriram Warade & Others [Civil Appeal No(s). 4597 of 2019 dt. 03.5.19]*** the Hon'ble Apex Court observed as follows:-

“10. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of

eligibility, much less can it delve into the issue with regard to desirable qualifications being at par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the Court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate order, to proceed in accordance with law. In no case can the Court, in the grab of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.”

6. From the above principles laid down by the Hon'ble Supreme Court, we find that this Tribunal has no authority to interpret that higher qualification in the same stream can give eligibility to the applicant by adopting an interpretation. So, we are of the view that there is no merit in the contentions raised by the applicant. There is nothing illegal or arbitrary in the impugned order dt. 14.2.14 passed by the 3rd respondent.

7. Accordingly, we hereby dismiss the OA. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

06.02.2020

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