

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 104 of 2018

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
 Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Subhendushree Routroy, aged about 31 years, S/o Sri Subodh Chandra Rout, At-Jaibhairab(Laxmi Vihar), PO-Agrahat, Via-Charbatia, Dist-Cuttack (Odisha), Pin-754028.

.....Applicant.

VERSUS

1. Union of India, represented through the Chairman, National Technical Research Organisation, Block-III, Old JNU Campus, New Delhi-110067.
2. The Director(Estt.), National Technical Research Organisation, Block-III, Old JNU Campus, New Delhi-110067.
3. The Centre Director, National Technical Research Organisation, Data Analysis Centre(AED), Mayurvihar, Phase-1, New Delhi-110091.
4. The Deputy Director(Estt-I), National Technical Research Organisation, Block-III, Old JNU Campus, New Delhi-110067.

.....Respondents.

For the applicant : Mr. B. S. Tripathy, counsel

For the respondents: Mr. J. K. Nayak, counsel

Heard & reserved on : 08.11.2019

Order on : 24.12.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs:-

- “(a) To pass appropriate orders quashing the impugned order dated 02.02.2018 in Annexure-A/10.
- (b) To pass appropriate orders directing the Respondents, to reinstate the applicant into his services and release all the service and consequential benefits in favour of the applicant, to which he is eligible and entitled; and
- (c) To pass such further order/orders as are deemed just and proper in the facts and circumstances of the case and allow this OA with cost. .”

2. The applicant had filed the OA No. 359/2012, which was partly allowed vide order dated 20.12.2016 (Annexure-A/6) with the following directions as under:-

“20. The matter is remitted back to the respondent-authorities with a direction to take such action as deemed fit and proper only after issuing a notice to the applicant to show cause against the proposed action. In the circumstances, applicant shall be reinstated into service forthwith. However, as regards the payment of back wages from the period from termination till the

date of reinstatement, the same shall be subject to the decision to be taken by the authorities concerned in pursuance of our directions as made above.”

3. After the order dated 20.12.2016 of the Tribunal, the respondents issued the order dated 25.7.2017 (Annexure-A/2) reinstating the applicant. The order dated 22.11.2017 (Annexure-A/8) was issued asking the applicant to explain as to why he should not be removed from the service. The applicant submitted the reply in the letter dated 8.12.2017 (Annexure-A/9). Thereafter, the respondent no. 2 passed the impugned order dated 2.2.2018 (Annexure-A/10) by which the service of the applicant was terminated.

4. The Respondents issued the show cause notice dated 22.11.2017 (Annexure-A/8) after reinstating the applicant on 25.09.2017 mainly on the following grounds as under:

“6. Whereas, it is conclusively evident that Shri Subhendushree Routroy, TA had managed to apply and get selected for the said post by resorting to a restricted circular, according to which he was not eligible to apply for the post of TA in NTRO. Since, he was also not meeting the essential educational qualifications for the post, probabilities are preponderant that he grabbed the circular as an opportunity to bypass a competitive examination and thereafter also managed to get his application accepted in NTRO by some means, thereby the carefully suppressed the factual information about his candidature since otherwise, his application could not have been got accepted by the Authorities as he was very much aware that he was not possessing the requisite educational qualifications required for the post. Thus, he was not a helpless victim of circumstances, under this situation, rather he was the person in the act of perpetrating irregularity in appointment and thus cannot avoid the consequences i.e., termination from service even if this outcome had occurred after he had served 4 years in NTRO.

7. Thus, the initial appointment of Shri Subhendushree Routroy, TA suffers from gross irregularities and indicates violations of norms of lawful recruitment process blatantly, with the sole objective to avoid competition by availing the green channel i.e., the restricted circular unauthorizedly since he was consciously aware that he was neither possessing the requisite qualification for the post nor the restricted circular was meant for fresh candidates like him.

8. Therefore, Shri Subhendushree Routroy, TA is hereby directed to explain/show cause within 10 working days from the issue of this Memo, with adequate reasons and justification as to why he should not be removed from service.”

5. After considering the reply of the applicant, Respondent No.2 passed the order dated 02.02.2018 (Annexure-A.10), stating therein as under:-

“13. That the candidate viz., Shri Subhendushree Routroy replied to the show cause notice on 08.12.2017, to defend his position vis-à-vis charge levelled against him in show cause memo issued by NTRO. He sought to justify his candidature for the post of TA ‘A’ in NTRO stating that (i) the vacancy circular under reference was classified as “Restricted” and not as Top-secret or Secret or Confidential and that it was indicated therein that the posts were to be filled up by deputations/absorption/re-employment/direct recruitment and that there was no mention about whether the Circular was meant only for a particular department/organization in the Government of India and (ii) that there was no mention in the circular that the post for which application were invited were in accordance with the SRO, if any, made under the provision of Article 309 of the Constitution of India.

14. However, NTRO considers that Shri Routroy's above contentions are an attempt to divert and dilute the material facts of the case as the issue did not just involve one outside candidate mistakenly applying for a post in public service against a restricted circular, for which he was not authorised to apply;; rather, the gravity of the case lies in the fact that Shri Routroy was consciously aware about his ineligibility for the post as he was not meeting the essential qualification(EQ) for the post of TA 'A' advertised as per the circular. In this case, the restricted circular had been used by him to hedge his ineligibility from rigorous scrutiny and thereupon its immediate disclosure was pre-empted as his candidature remained secure by virtue of the restricted circular, against which only eligible departmental candidates were expected to respond through proper channel. The fact is that at the time of applying for the post of TA 'A', no one other than him could have known for certain that he was not meeting the EQ for the post. In spite of this, he went on to apply for the post, got himself selected, and joined the service but nevertheless he knew it goes to be a perilous venture yet he rode the uncertain.

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16. NTRO categorically disagrees with reference to the above contentions of Shri Routroy. That he was not meeting the essential educational criteria determined for the post which required Bachelor's Degree or 3 years Diploma in Electronics and Communication whereas, he was possessing B.Sc. Degree in Information Science and Communication. Thus, there is no reason to accept the argument forwarded by Shri Routroy in the above context too. Though, at the time of applying, he was fully aware that the Degree in Electronic and Communications is not equivalent to the Degree in Information Science and Communication, yet he failed to gauge the long term implication of the deficiency. Hence, NTRO opines that since the basic condition of eligibility was not met by Shri Routray, all the subsequent formalities from selection to appointment had been rendered null and void automatically. There is , thus, no means available with NTRO at present to regularise his appointment as anything done in this regard will be violative of the prescribed EQ and is legally untenable.

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19. He has further indicated that the show cause memo had been issued with an intention and motive to remove him from service after his reinstatement. He has further stated that if mala fide intentions of NTRO to remove him from service was earlier know, he might not have resigned his post in Corporation Bank. In this regard NTRO is of the view that the action viz., the issue of show cause memo to him was taken to honour the verdict of CAT, Cuttack and not with any mala fide intention. The show cause offered him an opportunity to defend his case of irregular entry in NTRO. However, in spite of this he has made every attempt to by pass the real and substantive question involved in the suit i.e. his not meeting the eligibility for the post, for obvious reason; he has no locus standi to defend his actions as it is firmly established not that he was the only person definitely knowing at the time of applying for the Post of TA 'A' in NTRO that he was not meeting the EQs strictly as per the circular and had hidden the fact which amounts to immoral conduct and unbecoming of a Government servant. Moreover, while an error of omission can be amended, there is no means to regularise actions committed contrary to the laid down norms of public appointment by any individual. Since participation in such acts is committed consciously by an individual, these are considered immoral acts as these tend to shatter the collective conscience of the society."

6. In the counter, respondents have referred to the objections/ irregularities pointed out by the CAG in its report of NTRO on which appropriate follow of action was required to be taken. In the counter, the following contentions have also been taken:-

“(i) NTRO of circular dated 21.03.2007 was issued limited Government Department/agency as per list (Annexure-R/1) and it was not open for persons outside the Government department/agencies to apply. Therefore, the applicant could not have applied in pursuance to such restricted circular. However, he concealed the relevant fact that he did not belong to any Government Organisation and submitted his application.

(ii) The example of Shri Brij Mohan Singh, Ex-Scientist-B was cited in counter. He had also applied for appointment in pursuance to a restricted circular. When Shri Singh's service was terminated, he challenged it in OA No.530/12 before Allahabad Bench. The case was similar to the applicant's case. It was held by Allahabad Bench vide order dated 1.8.2016(Annexure-R/6) that the action of the respondents to terminate the service of the applicant did not result in violation of principle of natural justice and the OA was dismissed. Similarly another irregular appointment were also upheld in OA No. 1334/12 of Allahabad Bench vide the order at Annexure-R/7. This order of the Tribunal has been upheld by Hon'ble Delhi High Court in the case of Nitin Srivastava Vs UOI in W.P. No. 753/13, which was also dismissed vide order at Annexure-A/8 of the counter. Therefore, it has been averred that the applicant's case being on a similar footing as he was not working in any Government Department or agency to which the vacancy circular dated 21.03.2007 addressed, was not eligible for applying for the post in question. .

(iii) The respondents have also relied on the judgments in the following cases:-

- (a) Madan Gopal Vs. State of Punjab, AIR 1963(3) of SCR 716;
- (b) State of U.P Vs. Akbar Ali Khan, AIR 1966 SC 1842;
- (c) Sukhbans Singh Vs. State of Punjab (AIR 1962 SC 1711);
- (d) Ramaswamy GS Vs. I.G. P., (AIR 1966 SC 175(179); and
- (e) Union of India Vs. Arun Kumar Roy, (1986) 1 SCC 675.”

7. The respondents have also relied upon the DOPT OM dated 19.5.1993 to aver that a government servant who is not qualified or eligible for appointment as per the Recruitment Rules or has furnished false information or certificate, is liable to be removed from service. Regarding the DOPT OM dated 08.09.2011 (Annexure-R/9) cited by the applicant, it is stated in the Counter that it is a draft circular which has not been finalized as the same has been circulated for views/comments.

8. The applicant, in his Rejoinder, has denied the averments made in the Counter. In Para 10 and 11 of the Rejoinder, it is stated as under:-

“10. That in response to the averments made in Para-13 of the counter, the applicant humbly submits that the case cited by the Respondents is against the NTRO, but not against the applicant and for the mistakes committed by some personnel of the NTRO, the applicant should not be made to suffer. The applicant is suffering due to no fault on his part and the order of termination is just like taking away his livelihood as he is age barred for any other employment.

11. That in response to para-18 of the counter, the applicant humbly submits that the applicant is qualified and eligible in terms recruitment rules and has not furnished any false information or produced any false certificate in order to get an employment. As it appears from the impugned order dated 02.02.2018, the Respondents have against raised the question of eligibility, restricted circular, which show that the Respondents have over reached the order passed by this Hon'ble Tribunal in OA No. 359/12.”

The respondents have also filed a reply to the Rejoinder, raising no new points.

9. Heard learned counsel for the applicant. He submitted that the applicant's qualification and other particulars furnished in his application to the respondents for employment in pursuance to the notice dated 21.3.2007 (Annexure-A/1) of the NTRO and the eligibility of the applicant for the said post was not questioned. It was further submitted that after the applicant's service was terminated earlier, the decision was challenged by the applicant by filing the OA No. 359/2012 and vide the Tribunal's order dated 20.12.2016 (Annexure-A/6), the said OA was allowed in part with direction to the respondents to reinstate the applicant, while remitting the matter to the respondents to pass an order in this regard after issuing a show cause notice. It was also submitted by learned counsel for the applicant that the issues of essential qualification required for appointment of the applicant and of the issue of the vacancy circular being restricted, have been decided in paragraph 13 and 14 of the Tribunal's order dated 20.12.2016 (Annexure-A/6) in OA No. 359/2012.

10. Heard learned counsel for the respondents, who reiterated the stand taken in the Counter and submitted that the applicant had applied in response to a restricted vacancy circular and qualification as stated in the impugned order dated 2.2.2018 (Annexure-A/10).

11. Learned counsel for the applicant has filed the written note of arguments stating that the issue of qualification has been decided by the Tribunal in OA No. 395/2012. Regarding the OA No. 530/12 decided by Allahabad Bench of this Tribunal, it is held that the said order of the Tribunal is under challenge before Hon'ble Allahabad High Court and it is pending. It is further stated that the judgment in the case of Nitin Srivastava (supra) in OA No. 1334/12 will not be applicable as in that case, the employee did not have the minimum qualifications as discussed in Para 20 of the order dated 20.12.2016 (A/6).

12. Learned counsel for the respondents has submitted a written note stating the judgments which have been relied upon by the respondents to justify the action. The judgments were in the case of District Collector and Chairman Vizianagaram Social Welfare Residential School Society, Vizianagaram Vs. M. Tripura Sundari Devi, reported in 1990 SCC Vol. 3 page-655 and in the case of Mohd. Salman vs. Committee of Management, reported in 2011 SCC Vol-12, 308. It is submitted that unless the terms of appointment provide for automatic confirmation after completion of probation period, termination will follow.

13. We have given our due consideration to the pleadings as well as the submissions by learned counsels for both the parties. Considering the facts

and the dispute in this case, the following issues need to be decided in this OA as under:-

(i) Whether the applicant was eligible for appointment as Technical Assistant (in short TA) in NTRO since the vacancy circular in question was a restricted circular and since the applicant admittedly was not an employee of the government or government agency prior to his appointment in NTRO.

(ii) Whether the applicant had requisite qualification for the post for which he was appointed.

(iii) Whether termination of the applicant's service by the respondents treating him to be on probation is legally sustainable.

14. The respondents in their pleadings have mentioned that it was not open for the applicant to apply for the post of TA in pursuance of the circular dated 21.3.2007 of the NTRO (Annexure-A/1 of the OA) which was a restricted circular. The applicant in Para-11 of the Rejoinder has averred that the respondents have raised the issue again. It is seen that the order dated 20.12.2016 (A/6), passed by the Tribunal in OA No. 359/12, it was held by this Tribunal as under:-

"13. Admittedly, applicant was not an employee of any of the Organisation or Departments of the Government of India to which restricted circular dated 21.03.2007(A/2) had been referred to inviting applications for filling up various categories of posts in National Technical Research Organisation, Doom Dooma. It is also an admitted position that for filling up those posts, there were different sources of recruitments prescribed therein, which inter alia, includes, direct recruitment basis. Applicant, no doubt, was an aspiring candidate for the post of Technical Assistant 'A' which falls [code No. XVII-1] and essential qualifications prescribed are as under:

(a) Bachelor's Degree or three years Diploma in Electronics & Communication.

Age limit: 18-30 years(relaxable for reserved categories, ex-servicemen, Government employees, and other categories for whom, relaxations are provided in the instructions issued by Government from time to time)

Note: In case of the re-employment of Ex-serviceman, qualifications are relaxable provided they possess the technical trade proficiency certificate issued by Army or Navy or Air Force, and have at least ten years of experience in the relevant trade.

In specialized areas or fields like GIS mapping remote sensing, imagery analysis UAV etc. those who possess professional or technical qualification, equivalent to graduate degree or diploma in Engineering along with experience of at least five years in the relevant field, will be treated as eligible.

14. Attainment of aforementioned essential qualifications by the applicant thus making him eligible for the post of Technical Assistant-A is not in dispute. It is also not in dispute that applicant having been selected was appointed to the post of Technical Assistant-A on direct recruitment basis. Appointment of applicant on direct recruitment basis implies that candidates belonging to ex-servicemen, Government employees or other categories where relaxation if admissible as per the instructions issued by the Government of India from time to time were not within the zone of consideration along with the applicant. It is of significance to note that in A/2 restricted circular, bottom note to the Age Limit in respect of all categories of Posts has been prescribed. It is mentioned

therein that **“for deputation/absorption/re-employment the age limit is 56 years”** whereas no such stipulation is there under the Age Limit in so far as Technical Assistant ‘A’ is concerned. Conversely as quoted above,, it has been mentioned that the **“Age limit 18-30 (relaxable for reserved categories for whom, relaxations are provided in the instructions issued by Government from time to time”**. From this the corollary is that as the applicant’s selection and appointment to the post in question is not as a reserved category candidate or ex-serviceman or the Government employee, as the case may be, it goes without saying that the source of his selection to the post of Technical Assistant ‘A’ was through direct recruitment basis.

15. In view of the above factual position, the sole point that emerges for determination is whether applicant could be held ineligible and thus, his appointment to the post of Technical Assistant ‘A’ could be terminated without complying with the principles of natural justice on the ground that he does not belong to any of the organizations or departments to which restricted circular had been circulated inviting applications for filling up the post in question and therefore, he was not eligible to be considered in terms of circular dated 21.03.2007.

16. The word ‘eligible’ in service jurisprudence refers to fulfilment of prescribed norms or standards for appointment, promotions of certain benefits, as the case may be, and if one does not fulfil any of the eligibility conditions, he/she cannot attain the objects sought to be achieved. Similarly, in the instant case, applicant’s eligibility has not been questioned by the respondents in so far as educations attainments are concerned. The only point which they have canvassed to justify their action for termination of service of the applicant is that he did not belong to any of the organisations/departments from which applications had been invited. In this connections, we would like to reiterate that applicant’s appointment to the post of Technical Assistant ‘A’ was on direct recruitment basis and not through any source or mode of recruitment so as to encourage in service personnel form the restricted organizations/departments to submit their applications. We are also not in agreement with the submissions of the respondents that for direct recruitment, the organizations/departments which had been circulated with the restricted circular could have sponsored or recommended candidates for the purpose.

17. Secondly, as indicated above a candidate could be considered eligible or otherwise subject to the provisions of the recruitment rules for the post in question and it is not in dispute that the applicant did not possess the requisite educational qualifications as prescribed in the circular while making his applications. Be that as it may, it is an admitted position that applicant’s joining as Technical Assistant ‘A’ being dated 18.1.2008 his two years’ probation period came to an end on 17.1.2010. For the sake of clarity, paragraph-5 of Memorandum dated 20.12.20078(A/3) offer of appointment reads as under:

“Shri Subhendushree Routroy will be on probation for a period of two year from the date of joining which may be extended at the discretion of the competent authority. The terms and conditions of service during this period will be governed as per Central Civil Service (Temporary Service) Rules, 1965 in force from time to time. During this period of probations his service are liable to be terminated without notice or without assigning any reason there of if his performance is found to be not satisfactory of if the Govt. is satisfied that he was ineligible for recruitment to his service/post in the first instance itself.”

15. From the order dated 20.12.2016 as extracted above, it is clear that the issue of the circular being a restricted circular was decided in the OA No. 359/2012 and it was held that the applicant’s selection was on direct recruitment basis which was allowed as per the circular dated 21.3.2007. In case the respondents did not agree with this findings, it was open to them to have challenged the order dated 20.12.2007 of this Tribunal before Hon’ble

High Court. There is nothing on record to show that the respondents have challenged the order dated 20.12.2016 of this Tribunal in OA No. 359/2012 as per provision of law. Having accepted the order dated 20.12.2016 of the Tribunal without any challenge, its findings in this regard as in the paragraphs 13 and 14 of the said order, are binding and it is not open for the respondents to again question the eligibility of the applicant for the post of TA in response to the circular dated 21.03.2007 (A/1) on the ground that it was a restricted circular. Hence, we are inclined to agree with the contentions of the applicant in the Rejoinder that by again raising this issue, the respondents have raised the issues which were decided by this Tribunal in OA No. 359/12, which was not challenged by the respondents in higher forum.

16. Similarly regarding the issue of eligibility of the applicant on the ground of essential qualification of the applicant, the findings of this Tribunal in paragraph 13, 14 and 17 of the order dated 20.12.2016 (Annexure-A/6) are very clear. In fact it is observed in paragraph 14 of the said order that eligibility of the applicant with regard to essential qualifications was not in dispute. It is noticed that in the impugned order dated 2.2.2018 (A/10), it is mentioned that the applicant 'was not meeting the essential qualification (EQ)', without mentioning in what respect the applicant's qualification was not matching the essential qualification specified for the post of TA in the circular dated 21.3.2007 (A/1). In the Counter, it is mentioned that the applicant had B.Sc. degree in Information Science, as against the requirement of Bachelor Degree or three year diploma in Electronics and Communication, which was notified. If the respondents felt that the applicant did not possess the essential qualification for the post, they could have raised the issue in earlier OA No. 359/12 and could have challenged the findings of the Tribunal in order dated 20.12.2016.

17. The issue can be examined from another angle. As mentioned in the Counter, such irregularities have been pointed out in the audit report of the CAG, on which the NTRO had committed to take necessary follow up action as per the direction of Hon'ble Apex Court. It is mentioned in the Rejoinder that the applicant's father was working in the NTRO and he had informed the applicant about the circular dated 21.3.2007. If the contentions of the respondents about the applicant's eligibility are correct, then it was a serious issue, which should have been inquired/investigated to identify the officials/authorities who were responsible for such gross irregularity committed in the process of recruitment of personnel in an important institution like NTRO. There is no mention of any inquiry or investigation conducted by the respondents to identify such persons and to take appropriate action against

the guilty officials who had allegedly selected ineligible candidates. In absence of such efforts, the allegations against the applicant in the impugned order that he “got himself selected, and joined the service...” appear to be hollow. The pleadings of the respondents in this OA are silent as to how the candidature of the applicant, who admittedly did not belong to any government institution, could be entertained by the authorities and he was cleared in the selection process. No action has been taken against the guilty officials when the irregularities were pointed out by the audit. The applicant in his rejoinder has mentioned that there are other persons who were selected in a similar process and no action has been taken against them. Such contentions in the Rejoinder have not been refuted by the respondents. Without conducting any inquiry/investigation into such serious matter, actions seems to have been taken against the applicant taking advantage of the fact that he was not confirmed.

18. In view of the discussions above, we are of the considered view that following the order dated 20.12.2016(Annexure-A/6) of the Tribunal in OA No. 359/12, the issues at paragraph 13(i) and 13 (ii) of this order are to be decided in affirmative in favour of the applicant.

19. Regarding the issue at paragraph 13 (iii) of this order, the respondents have relied on the DOPT OM dated 19.5.1993, which is incorporated as Government of India’s decision under the rule 11 of the CCS (CCA) Rules, 1965 to contend that the applicant’s service is liable to be terminated. The said circular dated 19.5.1993, states as under:-

“(10) Action against Government servants to be taken if they are later found ineligible or unqualified for their initial recruitment -

Attention of the Ministries/Departments is invited to Ministry of Home Affairs OM No. 39/1/67-Ests.(A) dated 21.02.1967 wherein it was clarified that departmental action can be taken against Government servant in respect of misconduct committed before his employment. Attention is also invited to the Ministry of Home Affairs OM No. 5/1/63-Estt. (D) dated 30.04.1965 wherein Ministries/Departments were requested to make use of the provision of ‘warning’ inserted in the Attestation Form for taking action against Government servant furnishing false information at the time of appointment.

2. A question has now arisen as to whether a Government Servant can be discharged from service where it is discovered later that the Government servant was not qualified or eligible for his initial recruitment in service. The Supreme Court in its judgment in the District Collector, Vizianagram vs. M. Tripura Sundari Devi (1990(4) SLR 237 went into this issue and observed as under :-

“It must further be realized by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint a person with inferior qualifications in such circumstances unless it is clearly stated that the

qualifications are relaxable. No Court should be a party to the perpetuation of the fraudulent practice.”

The matter has been examined in consultation with the Ministry of Law and Justice and it has now been decided that wherever it is found that a Government servant, who was not qualified or eligible in terms of the recruitment rules etc, for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, he should not be retained in service. If he is a probationer or a temporary Government servant, he should be discharged or his services should be terminated. If he has become a permanent Government servant, an inquiry as prescribed in Rule 14 of CCS (CCA) Rules, 1965 may be held and if the charges are proved, the Government servant should be removed or dismissed from service. In no circumstances should any other penalty be imposed.

3. Such discharge, termination, removal or dismissal from service would, however, be without prejudice to the right of the Government to prosecute such Government servants.

[Deptt. Of Personnel & Training OM No. 11012/7/91-Estt. (A) dated 19.05.1993]”

20. From above, it is clear that the OM dated 19.5.1993 is applicable for the case of the government servant who was not qualified or eligible under the Recruitment Rules for initial appointment in service. As discussed earlier, the question of the eligibility of the applicant and the issue of his qualification vis-a-vis essential qualifications notified for the post, have been decided in the order dated 20.12.2016 (A/6) of the Tribunal, which has not been challenged by the respondents as per provisions of law and hence, it is not open for the respondents to raise the same questions again. Hence, we are unable to accept the contentions of the respondents that the OM dated 19.5.1993 of the DOPT is applicable to this OA, taking into consideration the facts and circumstances of this case.

21. The respondents have cited the judgment in the case of M. Tripura Sundari Devi (supra) in their written submissions. In that case, it was held that if the applicant did not have the qualifications, then his/her appointment cannot be sustained unless there is provision to relax the qualification requirement. In this OA, as discussed earlier, the applicant in this OA was held to possess essential qualification vide order dated 20.12.2016(Annexure-A/6) of the Tribunal in OA No. 359/12, which was accepted by the respondents without any challenge as per provisions of law. Hence the cited case is factually distinguishable.

22. Respondents have also referred to the judgment in the case of Mohd. Salman (supra) in which it was held that when a person is appointed against a post on probation for a specific period of time, he will not be automatically treated as confirmed unless there is a specific order of confirmation or there is provision in service rule that at the end of the probation period, he will be automatically confirmed without any order. In present OA, there is no dispute in fact that the applicant is being on probation and he has not been confirmed after end of the probation period. His service has not been terminated on the

ground of his performance during probation. His service has been terminated on grounds which are not sustainable in view of the findings of this Tribunal in OA No. 359/12. Similarly other cases referred by the respondents will be no help for the respondents.

23. It is noticed that in the Varinder Hans vs. Union of India & others in C.W.P. No. 30737 of 2018, Hon'ble Punjab and Haryana High Court, on a similar issue of qualification of a an employee, has observed as under:-

"15. Hon'ble Supreme Court in Dr. M.S. Mudhol v. Shri S.D. Halegkar 1993 (3) SCC 591 held that where there was no misrepresentation by a candidate, and despite his not possessing the qualifications he had been appointed and had worked for considerable time it would be iniquitous to disturb him. It was observed as under:

"6. Since we find that it was the default on the part of the 2nd respondent, Director of Education in illegally approving the appointment of the first respondent in 1981 although he did not have the requisite academic qualifications as a result of which the 1st respondent has continued to hold the said post for the last 12 years now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There is nothing on record to show that he had at that time projected his qualifications other than what he possessed. If, therefore, in spite of placing all his cards before the selection committee, the selection committee for some reason or the other had thought it fit to choose him for the post and the 2nd respondent had chosen to acquiesce in the appointment, it would be iniquitous to make him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd respondent. They are alone to be blamed for the same."

16. The Hon'ble Supreme Court in Bhagwati Prasad and ors. Versus Delhi State Mineral Development Corporation 1990(1) SCC 361 held that even where the candidates did not possess the essential qualifications but they have worked and gained sufficient experience it would be harsh to deny them confirmation on the ground that they lacked essential qualifications. Hon'ble Court observed as under:

"6. The main controversy centers round the question whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 and ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial break in service for short period/periods created by the respondent, in the circumstances, would be sufficient for confirmation. If there is a gap of more than three months between the period of termination and re-appointment that period may be excluded in the computation of the three years period. Since the petitioners before us satisfy the requirement of three years' service as calculated above, we direct that 40 of the senior-most workmen should be regularised with immediate effect and the remaining 118 petitioners should be regularised in a phased manner, before April 1,

1991 and promoted to the next higher post according to the standing orders. All the petitioners are entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharge similar duties, and are entitled to the scale of pay and all allowances revised from time to time for the said posts. We further direct that 16 of the petitioners who are ousted from the service pending the writ petition should be reinstated immediately. Suitable promotional avenues should be created and the respondent should consider the eligible candidates for being promoted to such posts. The respondent is directed to deposit a sum of Rs. 10,000 in the Registry of this Court within four weeks to meet the remuneration of the Industrial Tribunal. The writ petitions are accordingly allowed, but without costs."

17. A Division Bench of this Court in *Sarabjeet Kaur Dhaliwal v. Punjab Agricultural University* 2003 (4) S.C.T 132 reiterated the same as under :

14. The Courts have held that where there is no misrepresentation on the part of the candidate for seeking appointment to a post but the candidate is appointed despite his not having the requisite qualifications, his services are not liable to be dispensed with. This Court in the case of *Saudamini Prabha v. State of Punjab*, 1999(3) Recent Services Judgments 499, held in para-5 as follows :-

"After considering the matter, I am of the view that this case can be disposed of on the short ground that though the petitioner may not have had the requisite qualification at the time of her initial appointment in the year 1976 but by efflux of time and the experience gained she should be deemed to have acquired the necessary expertise in the subject. This has been so held by the Hon'ble Supreme Court in *Bhagwati Prasad v. Delhi State Mineral Development Corporation*, AIR 1990 SC 371."

.....

18. Accordingly, this petition is allowed. The impugned judgment of the Ld. Central Administrative Tribunal is set aside. The order dated 01.10.2015 terminating the services of the petitioner is set aside. The petitioner is directed to be reinstated in service with all consequential benefits."

24. Applying the ratio of the judgments discussed above, it is seen that in the present OA, it is not the case of the respondents that the applicant has furnished any false declaration relating to educational qualifications or regarding his eligibility for the recruitment to the post of Technical Assistant. He had applied for the post in response to a restricted vacancy circular and he did not claim to be an employee of any government institution as required under the vacancy circular dated 21.3.2007 (A/1). But still he was selected for the post by the competent authority in the NTRO. There is nothing on record to show that any wrongdoing or malpractice by the officials has been alleged or action has been taken by the respondents to identify persons responsible for alleged irregularities leading to selection of the applicant, who are stated by the respondents to be ineligible to apply in response to a restricted circular. In absence of such action by the respondents and in the light of observation by the Tribunal, in order dated 20.12.2016 (Annexure A/6), it is difficult for us to accept the respondents' contentions that the applicant was responsible for such irregularities. Hence, applying the ratio of the judgments in the cases discussed above and taking into account the findings of this Tribunal in the

order dated 20.12.2016 of the Tribunal (Annexure-A/6), we are of the view that action of the respondents to terminate the services of the applicant vide the impugned order dated 2.2.2018 (Annexure A/10), treating him to be on probation is not sustainable in the eyes of law and the issue at paragraph 13 (iii) is answered accordingly, in favour of the applicant.

25. In view of the above discussions, the impugned order dated 2.2.2018 (Annexure-A/10) is quashed and the respondents are directed to reinstate in service with all consequential service benefits except the salary for the period for which he has not worked because of the said order dated 2.2.2018, within three months from the date of receipt of a copy of this order. The OA is allowed as above with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

pms