

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD

O.A. No. 021/00314/2014

HYDERABAD, THIS THE 24th DAY OF DECEMBER, 2019

THE HON'BLE MR .JUSTICE L NARASIMHA REDDY,CHAIRMAN

THE HON'BLE MR. B.V.SUDHAKAR, MEMBER (A)

J GANESH KUMAR,
S/o Uday Bhaskar,
Age 26 years,
R/o # 6-74. Plot No.15,
Madhura Nagar Colony, Dammaiguda Road,
Nagaram, Keesar Mandal,
Ranga Reddy District 500 083.

APPLICANT

(By Advocate: Mrs. N Shoba)

A N D

1. Union of India represented by
Its Secretary,
Department of Atomic Energy,
CSM Marg, Anushakthi Bhavan,
Mumbai 400001,
2. The Chief Executive, Nuclear Fuel Complex,
Department of Atomic Energy,
Government of India,
ECIL PO, Hyderabad 500062,
3. The Deputy Chief Executive (Admn.),
Nuclear Fuel Complex,
Government of India,
Department of Atomic Energy,
ECIL PO, Hyderabad 500062,
4. The Administrative Officer-III,
Nuclear Fuel Complex,
Department of Atomic Energy,
Government of India,
ECIL PO, Hyderabad 500062,


RESPONDENTS

(By Advocate:Mr.V.Vinod Kumar, Sr.C.G.S.C)



ORAL ORDER

(PER HON'BLE Mr. JUSTICE L.NARASIMHA REDDY, CHAIRMAN)



Nuclear Fuel Complex, Department of Atomic Energy, issued an advertisement in the year 2010 inviting applications from the qualified candidates for various categories of posts to fill up regular vacancies. Under the category No.6, the post of Attendant (115 vacancies, out of which, 58-UR, 17-SC, 8-ST and 32-OBC) was also advertised. The qualification prescribed for that post is 'Tenth Class pass'. In response to the advertisement, applicant submitted application and also participated in the written examination conducted for this purpose. He was placed at Sl.No.37 in the select list for un-reserved category. The applicant was expecting order of appointment, but he was not issued the same, while others were appointed.

2. This O.A. is filed with a prayer to direct the respondents to consider the case of the applicant for appointment to the post of Attendant (now redesignated as Work Assistant 'A') in pursuance of the Advertisement No. NFC/01/2010. It is pleaded that once he was placed at Sl.No.37 in the select list for un-reserved category, subsequent issuance of fresh notification for the said post by the respondents is unjust and unconstitutional.

3. Respondents filed a detailed counter affidavit. It is stated that the qualification prescribed for the post of Attendant is only Tenth Class pass, whereas the applicant has passed ITI also. According to them, the applicant suppressed the relevant information and in that view of the matter, his selection was cancelled and he was not issued with the order of appointment. Reliance is also placed upon an order dated 22.04.2014 passed by this Tribunal in O.A.No.1218 of 2013.

4. We heard Mrs. Vijaya Lakshmi, proxy counsel for Mrs. N.Shobha, learned counsel for the applicant and Mr.V.Vinod Kumar, Sr.Central Govt. Standing Counsel for the Respondents, in detail and perused the record.



5. Quite a large number of posts, ranging from Scientific Officers to Attendants were notified by the respondents-department through the advertisement in the year 2010. We are concerned with the post of Attendant. The qualification stipulated for the post of Attendant is 'Tenth Class pass'. As a part of selection process, respondents conducted a written test and the interview, and the results were declared on 02.04.2013. The name of the applicant figured at Sl.No.37 in the select list of un-reserved category. Since there are 58 vacancies available under that category, the applicant was justified in expecting the appointment, but he was not appointed. Therefore, he approached this Tribunal by filing this O.A.

6. In their counter affidavit, the respondents did not dispute the fact that the applicant was placed at Sl.No.37 in the selection list. The reason stated by them is that the applicant suppressed the factum of his passing the ITI. It was also stated that in the interview also, the applicant stated that he discontinued the ITI, but the same is contrary to the record.

7. The applicant can certainly be disqualified from being considered for appointment to the post of Attendant if only, (a) recruitment rules, (b) advertisement, and (c) application form; contain a clause to the effect that holding of any qualification over and above the pass in Tenth Class shall constitute a disqualification for being considered for appointment to the post of Attendant. Apart from there not being such a clause, column 16 of the application form contains 6 specific columns for SSC, HSC, Degree, ITI, Diploma and MBBS. In addition to that, three columns are left for other qualifications. Not a word is said about the disqualification of the candidate who studied any course over and above the SSC or Tenth class. Once the respondents did not prohibit additional qualification and, on the other hand, not enabled the candidates with additional qualification also to apply, rejection of the candidature of the applicant is totally impermissible in law.

8. Reliance is placed upon the order passed by this Tribunal in O.A.No.1218 of 2013 dated 22.04.2014. It is true that the facts of the present case are similar to those in that O.A. The Bench took note of



all the relevant facts and examined the plea of the respondents therein that holding of additional qualification is a bar for any candidate to be appointed. In the ordinary course, we are required to follow the same. What, however, convinced us to take a different view is that firstly, the Tribunal did not take note of the absence of any clause disqualifying the candidates with additional qualifications and secondly, it brushed aside the ratio of the judgment of Hon'ble Supreme Court in ***Commissioner of Police & Another Vs. Sandeep Kumar (Civil Appeal No.1430 of 2007)***. If we take into account, the facts of the case before Hon'ble Supreme Court and to the one on hand and those of the present case, a very strong case exists for granting the relief.



9. In the case before the Hon'ble Supreme Court, there was a column as to whether the candidate has been arrested, prosecuted or kept under detention etc. The respondent therein who was in fact arrested, mentioned against the relevant column, 'No'. Still the Hon'ble Supreme Court condoned the misstatement by observing that "youth often commit indiscretions, which are often condoned". In the instant case, the applicant did not furnish any wrong information. Once pass in Tenth Class was prescribed as a qualification for the post, he was not under obligation to state anything further, even if he has any such additional qualification. As observed earlier, if it was the intention of the respondents to disqualify any candidate with the qualification in excess of pass in Tenth class, a clause was required to be added to that effect. Absence of the same, would disable them to disqualify any candidate on the sole ground that he studied anything more than that.

Similarly, failure of the candidate to mention can not be treated as misleading. In fact the equivocal approach on the part of the respondents would give rise to discretions, which are prone to be used to disqualify a person otherwise eligible and to pave the way for others, in waiting. The whole exercise smacks of arbitrariness.

10. We, therefore, allow the O.A and direct the respondents to consider the case of the applicant for issuing an order of appointment on the basis of the rank assigned to him in the selection list. On being appointed, the applicant shall be assigned proper place in the seniority, but he shall not be entitled to be paid any salary till the date of appointment. The exercise in this behalf shall be completed within a period of two months from the date of receipt of the certified copy of this order.

11. We also direct that in case the respondents are of the view that holding of any qualification over and above passing the Tenth Class is a disqualification, they shall incorporate a clause to that effect in the concerned advertisements, in future.

12. There shall be no order as to costs.

(B V SUDHAKAR)
MEMBER (A)

(JUSTICE L.NARASIMHA REDDY)
CHAIRMAN

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