

Central Administrative Tribunal, Principal Bench

Original Application No. 2162 of 1998

New Delhi, this the 28th day of March, 2000

Hon'ble Mr. S. R. Adige, Vice Chairman(A)
Hon'ble Mr. Kuldip Singh, Member (J)

Tarun Kumar
S/o Shri Baljeet Singh,
R/o B-9, Bhajanpura,
Delhi-53

- Applicant

(By Advocate - Mrs. Meera Chhibber)

Versus

1. Union of India
through Secretary
Ministry of Defence, South Block
New Delhi

2. Director General Quality Assurance
through Sr. Quality Assurance Officer
Directorate General Quality Assurance
Dept. of Defence Production
DHQ, P.O. New Delhi-11

- Respondents

(By Advocate - Shri V.S.R. Krishna)

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By Hon'ble Mr. Kuldip Singh, Member (Jud1)

The applicant has challenged a notice of termination of services issued to him under sub-rule (1) of Rule 5 of the CCS (Temporary Service) Rules, 1965, according to which, his services were to stand terminated with effect from the date of expiry of appointment of one month from the date of service of notice dated 6.11.1998 (Annexure P-I).

2. The case of the applicant is that the respondent-department had sent a requisition to the Employment Exchange for nominating persons for the post of Junior Scientific Assistant (hereinafter referred to as 'JSA') Grade-II wherein the requisite qualification was given as B.Sc. in Physical
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Education, since the department wanted to fill up the post by giving it to some sportsman to promote sports in the department.

3. The name of the applicant was sponsored by the Employment Exchange. Thereafter, the applicant appeared in a written test and was also interviewed and vide order dated 30.4.96 (Annexure P-IV), the applicant was appointed to the post of JSA Grade-II in the pay scale of Rs.1320-2040.

4. It is further stated that the work of the applicant had been quite satisfactory and he has also successfully completed the probation period vide Annexure P-VII.

5. It is further pleaded that though the applicant is fully qualified to hold the post and he had been working to the satisfaction of the department, so the notice issued to him under the garb of Rule 5 of the CCS (Temporary Service) Rules, 1965 is bad in law and it should be quashed.

6. It is further pleaded that the applicant has right to know the reason as to why his services had been terminated and the notice issued under Rule 5 is without any justification and the same is also liable to be quashed.

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7. On the other hand the case of the respondents is that though no doubt the requisition for one post of JSA Grade-II with qualification B.Sc. Physical Education was sent to the Employment Exchange and the applicant was given appointment on the basis of the same, on re-examination of the qualification it was found that as per rules the requisite qualification for the post of JSA Grade-II was a B.Sc. in General Science and not B.Sc. Physical Education.

8. It is further pleaded that Junior Scientific Assistants in the organisation of the respondents are testing Assistants who are deployed to conduct physical and chemical tests, and report the results of the tests/analysis/examination of samples. They are also to make sure that all the equipments and instruments used for testing are calibrated in time and give correct results, and for such like work, applicant who possesses a degree in Physical Education is neither eligible nor suitable. Hence applicant cannot be retained against the post of JSA Grade-II and the OA should, therefore, be dismissed.

9. We have heard the learned counsel for the parties and have gone through the records.

10. Mrs. Meera Chhibber appearing for the applicant, while arguing has emphasised the sympathetic aspect of the case, and submitted that

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since the applicant has successfully completed the period of probation to the entire satisfaction of the superiors, it goes to show that the applicant with a degree of B.Sc. in Physical Education can work on the post and his services should, therefore, not be terminated.

11. On the other hand the counsel for the respondents pleaded that the post of JSA is a technical post which requires a qualification of General Science and, therefore, eligibility qualification has been prescribed as B.Sc. in General Science and since the degree of B.Sc. Physical Education is not equivalent to B.Sc. General Science, the appointment is against the rules and the same cannot be allowed to continue.

12. In our view since the applicant has been appointed to the post of JSA for which the requisite qualification as per. rules is a B.Sc. degree in General Science, the same cannot be equated with a B.Sc. degree in Physical Education. Hence on the face of it, the appointment made by the authorities was irregular and was against the rules, and, therefore, cannot be sustained.

13. In this regard we rely upon a judgment noted down in the Swamy's case law Digest reported Vol.XIII - 1997/1 - Commissioner, Corporation of Madras Vs.

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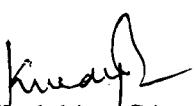
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Madras Corporation Teachers' Mandram and Others (Civil Appeal Nos. 15074-75 of 1996 - 1997 SCC (L&S) 723)
 wherein Hon'ble Supreme Court has observed as follows:-

"Creation of a post or prescription of minimum qualification for the post is the executive policy of the Government and the Courts or Tribunals cannot give any direction on these requirements". (emphasis supplied)

14. This judgment clearly shows that prescribing of a minimum qualification is the executive policy of the Government and Courts/ Tribunals cannot give any direction on this subject. In the present case the minimum essential qualification for the post is a degree of B.Sc. in General Science and we cannot direct respondents to retain an employee who does not possess the same. Merely because the applicant has been discharging his duties to the satisfaction of his superiors, does not mean that he possesses the requisite minimum essential qualification for the post. We are, therefore, of the considered opinion that the notice of termination issued on 6.11.98 (Annexure P-I) warrants no judicial interference.

15. In view of the above, the OA is dismissed.
 No costs.


 (Kuldip Singh)
 Member (J)


 (S.R. Adige)
 Vice Chairman (A)

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