

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 749 of 1988
T.A. No.

DATE OF DECISION 31-8-1989

Prem Chand Applicant (s)

Mr. P.L. Mimroth, Advocate for the Applicant (s)

Versus
Union of India and others Respondent (s)

Mr. A.K. Sikri Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. B.S. Sekhon, Vice Chairman.

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes
4. To be circulated to all Benches of the Tribunal ? Yes

JUDGEMENT

D. K. Chakravorty
(D.K. Chakravorty)
AM

B. S. Sekhon
(B.S. Sekhon)
VC
31-8-89

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

O.A. 749 of 1988

Decided on _____

Prem Chand

....

Applicant

Versus

Union of India and others

Respondents

For the Applicant

- Mr. P.L. Mimroth, Advocate

For the respondents

- Mr. A.K. Sikri, Advocate

B.S.SEKHON:

Aggrieved by the failure of the respondents to offer appointment to the post of Mechanic Grade-II to the Applicant, he has preferred the instant Application. The factual background germane to the adjudication of this Application, in brief, is:-

Applicant, a member of the Scheduled Caste has been working as a daily rated highly skilled worker in Time and Frequency Section of National Physical Laboratory- a laboratory under the Council of Scientific & Industrial Research, New Delhi (CSIR) since August 26, 1981. As per advertisement No. 5/82 (for short the 'ad'), copy Annexure A-6), applications for 25 posts of Mechanic (Grade-II) were invited.
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Out of these posts, four were served for Scheduled Caste candidates. The essential qualifications for the aforesaid post were:

ITI Certificate

or

Matric/SSLC with two years experience in an industry or laboratory in the concerned trade.

As regards age, the desirable age specified was below 30 years. It was also set out in the ad that a lower

standard of suitability consistent with the efficiency of administration will be observed in the case of posts reserved for SC/ST candidates. The last date for receipt of applications was specified as September 29, 1982 (hereinafter referred to as "cut off date"). Applicant was neither a Matriculate nor had he gained two years experience in an industry or laboratory in the concerned trade. Applicant passed the matriculation examination held by the Central Board of Secondary Education in March/July, 1983. This is borne out from Annexure A-4. Notwithstanding the fact that the Applicant did not possess eligibility qualifications, he was called to take the practical test in September 83, was interviewed on September 6, 1983 and was further asked to undergo medical examination. As is evident from Annexure A-13, he was also found medically fit. Vide Memo dated October 3, 1983, Applicant was advised that he was being considered for appointment as Mechanic in N.P.L. He was further directed to bring his original certificates of educational qualification, technical qualifications and experience and see the Desk Officer. To the dismay of the Applicant, he was, however, informed vide Office Memorandum No. 20/42/83-E.III(PL) dated May 2, 1984 (Annexure A-15) that his appointment as Mechanic (Gr. II) has not been approved by the CSIR. He was also told that no further correspondence on the subject would be entertained from him in this behalf. Applicant, however, submitted repeated representations requesting for a sympathetic consideration of his case for appointment to the post

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of Mechanic (Grade-II), but to no avail. Vide Annexure A-1, the following observations of the Central Grievance Committee were conveyed to the Applicant:-

"It was found that Shri Prem Chand was not having the requisite qualifications at the time of applying for the post. The decision already conveyed by the CSIR is upheld. As per the guidelines for appointment of relations in CSIR, no relaxation in qualifications and experience is permissible."

2. The salient grounds put forward by the Applicant in support of his case are that:

- i) As he is a member of Scheduled Caste, lower standard of suitability should have been applied in his case in view of the stipulations contained in the ad.
- ii) The respondents have considered and relaxed the educational qualifications in the case of two of his colleagues namely Sarvshri Kishanji and Tara Chand and have also offered them the post of Mechanic (Gr. II), but have denied relaxation to him; and as such he has been subjected to a discriminatory treatment.
- iii) Action of the NPL and CSIR itself in not offering appointment to him for the post for which he had been duly selected by the Selection Committee is violative of Articles 14 and 16 of the Constitution.
- iv) As the Applicant had been called for the test and interview, he had qualified in the same and had also successfully undergone the medical examination, right has accrued in favour of the Applicant and the respondents are not within their right to deny appointment to the post of Mechanic (Gr. II) to the Applicant.

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3. Respondents have contested the Application both on the plea of limitation as well as on merits. Respondents' defence on merits, as disclosed in the reply is that Applicant did not possess the eligibility qualifications at the material time, he was called for the test and interview by mistake and has not acquired any right to be appointed to the post of Mechanic (Gr.II). Refuting the allegations of discrimination and infraction of Articles 14 and 16 of the Constitution, respondents have averred that Sarvshri Kishanji and Tara Chand were regular employees of N.P.L. at the time of their selection as Electrician (Mech.II) and fulfilled the criteria of the ad; and that the allegations of lowering down the standard of educational qualifications, experience etc. in their case hold no ground. Another point made by the respondents is that acquisition of educational qualifications as also experience subsequently and the lowering of qualifications for the subsequent advertisement No.1/87 was carried out on the basis of the recommendations of the Core/Vardarajan/Valluri Committee and the same is of no assistance to the Applicant's case.

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4. It would appear to be appropriate to deal with the plea of limitation at the very outset. In support of the aforesaid plea, the learned counsel for the respondents submitted that the cause of action to the Applicant arose when he was not offered appointment to the post of Mechanic (Gr.II)

or latest on the date when the O.M. dated 2nd May, 1984 (Annexure A-15) was received by the Applicant and that mere making of repeated representations does not have the effect of extending the period of limitation. The learned counsel for the Applicant countered by submitting that the fresh cause of action accrued to the Applicant on April 4, 1988 also, when he was advised that the Central Grievance Committee had upheld the decision of CSIR that no relaxation in qualifications and experience is permissible. It is no doubt true that mere making of repeated representations does not have the effect of extending the period of limitation or furnishing the aggrieved person with a fresh cause of action. But there is also no doubt about the proposition that if a representation is entertained, considered and rejected, it will furnish a fresh cause of action to the aggrieved person. It is pertinent to mention in this connection that representation dated November 16, 1987 was addressed to the ADG, CSIR. The Central Grievance Committee considered the aforesaid representation in its meeting held on March 2, 1988 and made the observations extracted hereinabove. This would doubtlessly show that the representation dated 16th November, 1987 was entertained, considered by the Central Grievance Committee and the same was rejected on 4-4-1988. Thus, a fresh cause of action accrued to the Applicant on 4-4-88. We are fortified in the view we have taken by the decision of the Principal Bench in 'B. Kumar v. Union of India & others', ATR 1988(1)C.A.T.1.

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5. Another point canvassed by the learned counsel for the respondents was that the Central Grievance Committee is not a statutory body and as such consideration of the representation and rejection thereof by the aforesaid Committee is of no avail to the Applicant. Suffice it to point out in this connection that even the CSIR is not a statutory body.

It is merely a Society registered under the Societies Registration Act, 1860. That apart, the Committee had considered representation, which was addressed to the ADG, CSIR. Consideration by the Committee would have taken place only after the representation had been forwarded to the Committee by the ADG. In other words, ADG considered that the Committee is the appropriate body to consider the representation. This point, therefore, does not improve the respondents' case on the point of limitation. The objection regarding the Application being barred by limitation is ^{thus} hereby repelled.

6. The contentions touching the merits of the case are dealt with ~~soriatim~~:

(i) Inviting our attention to the following stipulation contained in the ad, the learned counsel for the Applicant submitted that the Applicant being a member of the Scheduled Caste, the lower standard of suitability should have been applied in his case:

"A lower standard of suitability consistent with the efficiency of administration will be observed in the case of posts reserved for SC/ST candidates.

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 An analysis of the above extracted stipulations would show that a lower standard of suitability is to be observed only in case of the posts reserved for SC/ST candidates. It is nobody's case that the Applicant was being considered for a post reserved for a member of the Scheduled Caste. Further more,

the competent authority is also to keep in view the aspect of "efficiency of administration" while considering the question of applying a lower standard of suitability. It is for the competent authority to consider the aforesaid aspect. This submission by itself and without more does not create a justifiable right in favour of the Applicant.

ii) The learned counsel for the Applicant strenuously urged that the respondents have relaxed the educational qualifications in the case of Sarvshri Kishanji and Tara Chand, both of whom do not possess the requisite academic qualifications. The learned counsel also submitted that Shri Kishanji was also overage. Shri Tara Chand was middle pass, whereas, Shri Kishanji's educational qualification was 5th class. In the counter, respondents' case was that the standard of qualification and experience had ^{not} been lowered in the case of Sarvshri Kishanji and Tara Chand. The aforesaid stand of the respondents, however, stands belied by office orders No. 223 dated 20th December, 1983, 250 dated 19th January, 1984 and 231 dated 29th December, 1983 (copies Annexure A-29, A-30 and A-31 respectively).
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Neither of them possesses ITI certificate. Their appointment has been quite clearly made by relaxing the educational qualifications. The learned counsel for the Applicant further submitted that the Applicant has been subjected to hostile discrimination by not considering his case for relaxation. There would appear to be substance in this submission of the learned counsel for the Applicant. It may be that the question

of granting relaxation of essential qualifications is within the province and domain of the authorities concerned, but according of a differential treatment i.e. non-consideration of a more or less similarly situated candidate for the purpose of relaxation of essential qualifications when the other colleagues have been so considered and also granted relaxation, would appear to be infractive of the Right to Equality enshrined in Articles 14 and 16(1) of the Constitution. We may add that the right of consideration derivable from Articles 14 and 16(1) of the Constitution would apply with equal force to a case of non-consideration of a similarly placed candidate in the matter of relaxation of essential qualifications. Non-consideration of the Applicant's case for purposes of relaxation of essential qualifications also seems to be tainted with arbitrariness. Since arbitrariness is antithetic to the Right to Equality, the action of the respondents would seem to attract the frown of Articles 14 and 16(1) of the Constitution from this angle also.

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(iii) Even though the action of the respondents in not considering the case of the Applicant for relaxation of essential qualifications would seem to be infractive of Articles 14 and 16(1) of the Constitution, even as such non-consideration would not per-se confer a right of appointment on the Applicant. Such a right would arise only if and when the competent authority considers the case of the Applicant for relaxation and after such consideration takes a decision to relax the essential qualifications and to appoint him to the post of Mechanic(Gr.II). The stand of the Applicant that he is entitled to be appointed to the aforesaid post is, therefore, turned down.

The submission of the learned counsel for the Applicant founded on the relaxation of educational qualifications in the advertisement No.1/87 is being noticed only to be rejected. It is common-place that the eligibility qualifications for a particular post are to be determined on the basis of qualifications possessed or acquired by a candidate by the cut off date or such date as may be specified in the advertisement for the post in question and in the light of eligibility qualifications laid down in the rules/circulars/advertisements relevant to the post in question. Acquisition of qualifications subsequent to the cut off date or the specified date as the case may be, is irrelevant for the aforesaid purpose. It may also be added that the lowering of the educational qualifications long after the selection and that too on the basis of the recommendations/report made by a duly constituted Committee would not have the effect of rendering eligible such candidates as were ineligible on the basis of the eligibility qualifications prescribed by the previous rules/circulars/ads (ad No.3/87 in this case).

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iv) The learned counsel for the Applicant vehemently contended that the Applicant had been called for the test and interview, he made the grade therein and had also been medically examined; and that the respondents cannot now be permitted to turn round and deny appointment to the Applicant. The learned counsel for the respondents met this ground by submitting that if a candidate who does not possess the essential eligibility qualifications has been called for the test and interview by inadvertence and he made the grade, no vested right to get appointed to the post in question is created in such a candidate. In support of his submission, the learned counsel for the respondents placed reliance on the decision of

the Supreme Court rendered in 'Dr. M.C.Bindal and another v. R.C.Singh and others' 1989 1LLN 206. In Dr. Bindal(supra), the necessary qualifications laid down for the post of Food and Drug Controller, Uttar Pradesh in the advertisement published in the newspaper of September 13, 1981 were as under.~

- (1) A degree from any recognised University in Medicine/Science/Pharmaceutical Chemistry.
- (2) Experience of 5 years in drug standardization and problems relating to controlling of drug standards or drug manufacturing or drug testing in a renowned institution.

The Uttar Pradesh Service Commission made a provisional recommendation for appointing Dr. Bindal to the post of Food and Drug Controller. This recommendation was, however, withdrawn and cancelled vide decision dated April 17, 1984. The aforesaid decision was taken on the ground that Dr. Bindal did not possess the requisite qualifications. This fact was discovered after a Deputy Secretary in the Commission had verified the question regarding Dr. Bindal's fulfilling the qualifications relating to practical experience in drugs standardization, or drug manufacturing or drug testing in a renowned institution. ⁱⁿ The action of the Commission/revising its earlier decision and withdrawing the candidature of Dr. Bindal was upheld by the Supreme Court. The following observations made in paragraph 12 of the judgment may be quoted with advantage.~

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"The Commission in this particular case has duly got verified the certificates of Dr. Bindal in regard to his experience of five years in drug testing by a Deputy Secretary of the Commission and after

considering his report as well as the certificates came to the conclusion that the appellant though fulfilled educational qualifications, lacked in the requisite experience of five years in drug testing. The Commission, therefore, revised its earlier decision and withdrew the candidature of the appellant and also cancelled its recommendation earlier given in favour of the appellant. This decision of the Public Service Commission, in our considered opinion cannot be faulted."

In support of his submission that no vested right has arisen in favour of the Applicant, the learned counsel for the respondents also stated that the Applicant had neither been appointed nor had been sent any offer of appointment and that in such a case no right to be appointed to the post arises. We are at one with the aforesaid submission of the learned counsel for the respondents. Mere calling of an ineligible candidate for the test by inadvertence and his making the grade in the test would not confer a right much less indefeasible right in such a candidate for appointment to the post in question. This view is fortified by the decision of the Supreme Court in 'Dr. Bindal' (supra). The contention of the Applicant in this behalf is, therefore, hereby turned down.

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7. In view of what has been stated and discussed hereinabove, the respondents are directed to consider the case of the Applicant for relaxing the essential qualifications laid down in advertisement No. 3/87, within a period of three months from today. In case the respondents decide to relax the eligibility

qualifications, the respondents shall appoint the Applicant forthwith and in any case not later than three months from today with all the consequential benefits less the difference in wages.

8. The Application is disposed of on the terms stated hereinabove with no order as to costs.

D.K.Chakraborty
(D.K.Chakravorty)
AM
31-8-1989

B.S.Sekhon
(B.S.Sekhon)
VC
31-8-89