

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

**Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr.C.V.Sankar, Member (A)**

OA 290/2020

1. Prasanta Kumar Mishra, aged 44 years, S/o Panchanan Mishra, at present working as Fitter/R & AC(HS_I), Ordnance Factory Badmal, Dist.-Bolangir, Odisha-767070.
2. Ajaya Kumar Sahoo, aged about 49 years, S/o Antaryami Sahoo at present working as Fitter/AC(HS-I), Ordnance Factory, Badmal, Dist-Bolangir, Odisha-767070.
3. Niranjan Rout, aged about 49 years, S/o Jameswar Rout at present working as Fitter/AC(HS-I), Ordnance Factory Badmal, Dist-Bolangir, Odisha-767070.
4. Gyanaranjan Khuntia, aged about 44 years, S/o Durga Charan Khuntia, at present working as Fitter/AC(HS-II), Ordnance Factory Badmal, Dist-Bolangir, Odisha-767070.

OA 303/2020

1. Sushila Kumar Behera aged about 43 years, S/o Saranga Behera, At-Lunakua, PO-Jhimani, PS-Paradeep Lock, Dist-Jagatsinghpur at present Odisha Ordnance Factory, Badamal Estate, Qr. No. 22327/4th Phase, At/PO/PS-Badamal, Dist-Bolangir, Odisha, Pin - 767070.
2. Purna Chandra Bindhani aged about 43 years, S/o Late kalandi Bindhani, At-Karadapal, PO-Bangara, PS-Hatgarh, Dist-Keonjhar, Odisha, Pin-758023 at present Qr. No. 21121/Type II P Old, At/PO-Odisha Ordnance Factory, Badamal Estate, PS/Dist-Bolangir, Odisha.
3. Bhajendra Kisku, aged about 53 years, S/o Late Rabana Kisku, At-Sarasabilla, PO-Radha, PS-Udala, Dist-Mayurbhanj at present Qr. No. 21367/5, At/PO-Odisha Ordnance Factory, Badamal Estate, PS/Dist-Bolangir, Odisha.
4. Tejendra Kumar Singh, aged about 40 years, S/o Pabitra Singh, At-Jujurang, PO-Gokuleswar, PS-Kesinga, Dist-Kalahandi at present Qr. No. 12332/Type P-1, Phase 4th, At/PO-Odisha Ordnance Factory, Badamal Estate, PS/Dist-Bolangir, Odisha.

.....Applicants.

VERSUS

OA 290/2020

1. Union of India, represented through the Secretary to Government of India, Ministry of Defence, South Block, New Delhi-110001.
2. Ordnance Factory Board, 10-A Saheed Khudiram Bose Road, Kolkata – 700001, represented by its Secretary.
3. The General Manager, Ordnance Factory, Badmal, Dist-Bolangir, Odisha-767070.

OA 303/2020

1. Union of India represented through its Secretary, Ministry of Defence, Room No. 239, south Block, New Delhi.
2. The Secretary, Ordnance Factory Board, 10A Saheed Khudiram Bose Road, Kolkata-700001.

3. The Chairman, Ordnance Factory Board, 10A Saheed Khudiram Bose Road, Kolkata-700001.
4. The General Manager, Ordnance Factory Board, At/PO/PS-Badamal, Dist-bolangir-767070.

.....Respondents.

For the applicant : Mr.S.Malik, counsel (OA 290/2020)
Mr.A.K.Mohanty, counsel (OA 303/2020)

For the respondents: Mr.G.R.Verma, counsel (OA 290/2020)
Mr.R.K.Kanungo, counsel (OA 303/2020)

Heard & reserved on : 19.1.2021 Order on :

O R D E R

Per Mr.Swarup Kumar Mishra, J.M.

Since common question of facts and law are involved in these cases, both the cases are heard analogously on the consent of learned counsels for the parties and therefore being disposed of by this common order.

2. The applicants have filed the OAs seeking following reliefs :

OA 290/2020

- (i) Quash the impugned order dt. 2.7.2020 as at Annexure-10.
- (ii) Direct/order that applicants shall be allowed to appear the LDCE, 2020 for the post of Chargeman (technical) without asking them to produce any clarification from AICTE and/or SCTEVT regarding approval of conducting of evening classes at OFBL campus by GIST, Rayagada before issue of admit card.
- (iii) Direct/order that the examination for the OFBL employees shall be held at Barbil or the schedule of examination may be extended to a future date after lifting of lock down and communication facilities are available.
- (iv) Direct/order that the candidature of the applicants shall not be cancelled.”

OA 303/2020

“(i) Admit this Original Application, call for records.

(ii) Issue notice to the respondents to show cause as to why the order under Annexure A/8 series and Annexure A/9 series shall not be quashed, if the respondents do not show cause or show insufficient cause, the impugned orders under Annexure A/8 series and Annexure A/9 series passed by the respondent No.4 may be quashed.

(iii) Any other relief/relief may be granted which the applicants are entitled to in the facts and circumstances of the case.”

3. The facts of the cases in brief are as follows :

The applicants in both the OAs are highly skilled technicians working in the Ordnance Factory Badmal. On 17.8.2015 respondent No.2 issued circular

for creation of facilities for providing evening classes of diploma course to the skilled technicians of the Ordnance Factory for appearing in the LDCE for the post of Chargeman (Tech). On 23.5.2016 respondent No.3 invited a Technical Institution for providing the diploma course within the factory premises and on 2.6.2016 circular was issued to attend the counseling for admission to diploma course. The applicants sought for 'No Objection' on 22.6.2016 and 'No Objection' was granted by respondent No.3 on 1.7.2016. On 31.8.2018 the applicants passed the diploma course and obtained certificates. On 15.6.2019 respondents allowed incentive to the applicants for acquiring higher qualification. On 3.6.2020 notification was published inviting applications for LDCE-2020 and the applicants applied for the same. On 2.7.2020 the respondent No.3 asked the applicants to produce clarification from AICTE regarding approval of opening evening classes by GIST and stated that the admit cards shall not be issued if clarification is not produced. In this OA the applicants have challenged the order dated 2.7.2020 (Annexure A/10) threatening to cancel their candidature and not to issue admit cards for appearing in the LDCE. The applicants in OA 303/2020 have already made representations dated 10.7.2020 (Annexure A/11) before the authorities which is still pending.

4. The respondents have filed their Counter stating that the present OA is liable to be dismissed being premature since the applicants have approached this Tribunal before exhausting the remedies. The present OA is also liable to be dismissed for non-joinder of proper and necessary parties because the applicants have not impleaded AICTE as necessary party in the OA. The respondents have further stated that respondent No.3 published an advertisement for filling up the vacancies of Chargeman/Tech & Non-Tech through LDCE and in response to the same 133 employees applied. While the applications were under scrutiny, some complaints were received against some candidates alleging that they have acquired Degree/Diploma Certificate through un-natural means. Respondent No.3 being the competent authority took up the matter with GIST, Rayagada, AICTE and SCTEVT and came to the

conclusion that 14 applicants who have obtained diploma course from GIST, Rayagada are not eligible to appear in the LDCE 2020 and therefore their candidatures have been rejected vide letter dated 17.8.2020 (Annexure A/13). It is humbly stated by the respondents that GIST, Rayagada had the approval of the statutory bodies for conduction of diploma courses in 2nd shift and as a full time course in their own campus. However, the said Institute has conducted evening class and outside the campus of GIST in OFBL campus (about 200 Kms away from GIOST, Rayagada). Regarding NOC (AnnexureA/4) it is submitted by the respondents that it was categorically mentioned in para 8 of the said NOC that the applicant shall verify at their own interest the authenticity of certificate issued by the institution/university and whether it is recognized by the appropriate Govt. body for the purpose of employment/promotion in Govt. organization. It is also submitted that during scrutiny for entering their higher qualification in Service Book, it was observed that the applicants have obtained their diploma certificate in 2nd shift and therefore it was felt necessary to seek clarifications from AICTE, GIST and SCTVT who have given their verification reports against the claims of the applicants. The respondents have therefore stated that the applicants are not entitled to any relief as prayed for in the present OA and the same is liable to be dismissed.

Learned counsel for the respondents has relied on the following judgments in support of his case :

- i) University of Mysore -vs- Govinda Rao [AIR 1965 SC 491]
- ii) Dolly Chhanda -vs- Chairman, JEE & Ors. [Appeal (Civil) No. 6506/2004 dated 5.10.2004]
- iii) Bedanga Talukdar -vs- Saifudaullah Khan [2011 (12) SCC 85]
- iv) Banarasi Das -vs- Stte of UP [AIR 1956 SC 520]
- v) R.Prabha Devi & Ors. -vs- UOI & Ors. [AIR 1988 SC 902]

4. The applicants have filed rejoinder stating that before allowing incentive to the applicants, the respondents have verified the duration of courses, affiliation of the institution and obtained DVO certificate from the concerned authority and without any objection, recorded in the Service Book and allowed the incentive. Therefore now the respondents cannot dispute the validity of the

certificates. Moreover the respondent No.3 has acted on the complaints of some outsiders without giving any opportunity to the applicants to defend their case. But on enquiry it was proved that the certificates are authentic and genuine satisfying the requirements of the advertisement. The course conducted was full time diploma course and the institution was approved by the AICTE to provide the course. Hence the objection of respondent No.3 is misconceived. It is also stated that the decisions cited by the respondents are no way applicable to the present case.

5. Respondents have filed reply to the rejoinder. Regarding the allegation of allowing incentive for acquiring the higher qualification of diploma in engineering, it is submitted that the same incentive was allowed on the presumption that the applicants had satisfied the qualification requirements without scrutinizing the certificates of the applicant. It was presumed that all those who have been paid the incentive had the valid diploma certificate. But upon receipt of complaints, it was found that the applicants are not eligible for the said examination. It was at that stage that the mistake of allowing incentive to the applicants was discovered. It is also stated that incentive is one time benefit to the individual and not adversely affect the other candidates of the LDCE. Respondents have placed reliance on the orders passed by this Tribunal in OA 62/2011 on 13.5.2014 (Annexure R/8) and order passed in OA 253-254/2008 on 4.4.2011 (Annexure R/9) wherein this Tribunal held that this Tribunal lacks jurisdiction to hold an opinion in the matter where the authenticity of the certificate as well as the institution issuing such certificates are called in question by the employer. The respondents have again prayed for dismissal of the present OAs.

6. We have heard both the learned counsels and have gone through the pleadings on record.

7. The applicants were required to appear in LDCE examination for the purpose of promotion from the post of Technician to Chargeman. Their candidatures having been rejected they have approached this Tribunal. On the basis of the interim order passed in both the cases, the applicants were

permitted to appear in the examination. The examination process has since been completed. But the results in respect of the applicants have not been declared since it was directed by this Tribunal vide order dated 30.9.2020 that without leave of this Tribunal the results of the applicants should not be declared. The main ground of rejection of their candidature is that the certificate furnished by them to show that they have undergone diploma course in engineering is not acceptable to the department.

8. This Tribunal has heard both the learned counsels and has gone through the records carefully. It is submitted by learned counsel for the applicant that they were permitted by the departmental authorities to attend and complete the diploma course in question from Gandhi Institute which has got necessary approval by AICTE. The certificates are annexed as Annexure A/5 series. The main controversy arises as to whether the department should not have rejected the certificate on the ground that the course was not a full time course and that the classes were held in the second shift or that in the certificate it has been shown as 'Summer-2018' course and therefore it being a part time course, the same is not recognized by AICTE and also not acceptable to the department. The department had made necessary correspondences with the AICTE and learned counsel for the respondents has placed much emphasis on Annexure R/6 in support of his submission that 'Summer-2018' course is 2nd Shift Course and not a part time course and the classes being held in the second shift and not in the evening hours, the respondents have rightly rejected the candidatures of the applicants by not accepting the certificates. Learned counsel for the applicant on the other hand has submitted that the respondents cannot approbate and reprobate at the same time. He has drawn our attention to Annexure A/8 dated 15.6.2019, whereby incentive was granted by the Works Manager in favour of the applicants for successfully completing the diploma course in question. The Works Manager has also issued 'No objection' certificate vide Annexure A/4 for attending that course. Although it was submitted by Mr.Verma, learned counsel for the respondents in OA 290/2020, that the incentives granted in favour of the applicant was a mistake,

the respondents have not come forward with any materials to show that any action has been taken against the concerned persons who are responsible for such so-called mistake. On the other hand this Tribunal finds that granting of incentive is necessary corollary and the next step to be taken by the department after the applicant had submitted their certificates after successfully completing the course.

8. In view of the said submission the applicant's counsel has submitted that the respondents have rejected the candidature of the applicant on the ground that the certificate in question is not acceptable to them. Although learned counsel for the respondents has vehemently argued in support of the stand taken by the respondents, there is no material either from the AICTE or from Gandhi Institute who has conducted the classes, to come to a conclusion that the certificates issued vide Annexure A/5 relates to any part time course. Mere mentioning of Summer-18 course does not necessarily lead to any inference or conclusion in the absence of any acceptable material to that effect, to say that it must be a part time course. No clarification in this regard has been obtained from the department to create any such doubt in the mind of the candidates or in the mind of this Tribunal. Similar is the situation where the respondents have not taken any clarification from the Institute to show that the second shift conducted in respect of the applicants actually does not relate to the evening classes. The ambiguity if any, sought to have been created by such stand of the respondents, in absence of any acceptable material to that effect cannot be accepted by this Tribunal. It was for the respondents to bring materials to that effect by making necessary correspondences with Gandhi Institute or AICTE. In absence of any authentic documents and on the ground that incentive have been granted in favour of the applicant, the acceptability of the certificates should not have been questioned at such a belated stage solely for the purpose of rejection of the candidature of the applicants. The correspondences made by the Works Manager (Annexure A/12) also support the case of the applicants. It is not known why the Works Manager has gone out of his way to issue such clarification in favour of the applicant. But he

being the authority of the applicant, it is for the respondents to clarify the same before this Tribunal. The same has not been done successfully and the respondents have failed to successfully clarify the matter.

9. Learned counsel for the respondents has also submitted that this Tribunal has no jurisdiction to go into the question of acceptability of the certificate in question and non-acceptance of the certificates by the department cannot be questioned before this Tribunal. We do not accept such general stand taken by the respondents since it is to be examined whether respondents have either accepted or rejected the certificates in accordance with law and by assigning any good reason. This Tribunal finds that the said discretion has not been duly exercised by the respondents and if exercised, it has been done arbitrarily without giving satisfactory and acceptable reasons. Therefore the same also violates Article 14 of the Constitution. Hence the said action of the respondents becomes vulnerable and this Tribunal has jurisdiction to interfere on that ground. Learned counsel for the applicants has placed reliance on the judgments passed by this Tribunal in OA 68/2011 disposed of on 13.5.2014 and OA 253 & 254/2008 disposed of on 4.4.2011. But the facts and circumstances of these cases are not applicable to the facts and circumstances of the present case.

10. In the circumstances this Tribunal accepts the claim made by the applicants that the authenticity of the certificates in question and the authenticity of the Institute having due approval of the AICTE have not been successfully challenged, the applicants are entitled to reliefs in question. Therefore this Tribunal orders that the result of the applicant in the written examination be declared and they should be considered in accordance with law along with the similarly placed candidates as per the rules governing the field.

11. Accordingly both the OAs are allowed. There will be no order as to costs.

(C.V.SANKAR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)