

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 410 of 2017

**Present: Hon'ble Mr.Swarup Kumar Mishra, Member (J)
Hon'ble Mr.Tarun Shridhar, Member (A)**

Dipan Krushna Patalasingh, aged about 27 years, S/o Damodar Patalsingh, Village-Kerendatangi, Dist-Nayagarh, at present working as Electrician-cum-Plumber in JNU, Nayagarh, At/PO/District-Nayagarh, Odisha.

.....Applicant

VERSUS

1. Navodaya Vidyalaya, an autonomous organization, represented through the Commissioner under Ministry of HRD (Department of School Education & Literacy), Government of India, Regional Office, A-135/A, Alkapuri, Habibganj, Bhopal, Madhya Pradesh.
2. Commissioner, Navodaya Vidyalaya Samiti, A-135/A, Alkapuri Habibganj, Bhopal, Madhya Pradesh-462024.
3. Principal, Jawahar Navodaya Vidyalaya, Nayagarh, At/PO/PS/ Town/District – Nayagarh, Odisha.

.....Respondents

For the applicant : Mr.L.P.Dwivedy, counsel

For the respondents: Mr.D.K.Mallick, counsel

Heard & reserved on : 17.12.2020 Order on :

O R D E R

Per Mr.Swarup Kumar Mishra, J.M.

The applicant has filed the present OA under Section 19 of the Administrative Tribunals' Act, 1985 seeking the following reliefs :

- “(i) quash the impugned order, dated 23.6.2017 as at Annexure A/9 by concurrently holding the same is bad, illegal and cannot be maintainable and/or sustainable in the eye of law;
- (ii) pass such other order(s) or issue direction(s) as may be deemed fit and proper in the bona fide interest of justice;

2. The brief facts of the case are that pursuant to the advertisement in the year 2013, the applicant applied for the post of Electrician-cum-Plumber (ECP) and submitted all requisite certificates along with the application form. After due verification of the necessary certificates by the Selection Committee, the applicant was allowed to participate in the Trade Test. The applicant came out successful in the Trade Test and was issued appointment order as ECP on 31.12.2014. But after completion of 2 years of service a show cause notice was

issued to the applicant on 19.4.2017 inter alia stating therein why his appointment shall not be cancelled as he has submitted less than 2 years of experience at the time of submission of application for appointment of ECP. Being aggrieved the applicant approached this Tribunal in OA 263/2017 which was disposed of on 26.4.2017 with a direction to the applicant to file a representation before respondent No.3 who will dispose of the said representation with a reasoned and speaking order within a period of 60 days and till then no coercive measure shall be taken against the applicant in pursuance of the show cause notice dated 19.4.2017. The applicant submitted a representation on 28.4.2017 before the respondent No.3 who vide order dated 23.6.2017 passed an order stating that the appointment of the applicant in 2014 was not in order. The grounds stated in the order dated 23.6.2017 are contrary to the advertisement. Though in the advertisement, no cut off date was mentioned, but after 2 years, the respondent No.3 opined that the cut off date was 28.6.2013. The applicant has averred that since he is a confirmed employee, respondent No.3 cannot cancel the appointment of the applicant without holding an enquiry and hence order dated 23.6.2013 is bad and illegal. Hence the present OA.

3. Respondents have filed their Counter stating that while submitting his application, the applicant claimed that he acquired experience including the period of experience gained while pursuing the course of ITI, through an experience certificate for the period from 1.2.2011 to 15.9.2011 as a part time Electrician-cum-Plumber while studying the ITI course. He completed his ITI after declaration of final result i.e. in July 2011. Although, the applicant worked on daily wages in the JNV, Nayagarh with an intermittent breaks in service w.e.f. 21.9.2011 to June 2013 (total 512 days). Thus he was found ineligible for the post of Electrician-cum-Plumber and his appointment was cancelled since his appointment was based on false information furnished by him. The respondents have therefore prayed for dismissal of the present OA.

4. The applicant has filed rejoinder stating that since he has submitted experience certificate of 2 years, in consonance with the advertisement, hence

the question of suppression or false declaration by the applicant does not arise. Moreover as the applicant has completed 2 years of service and is a confirmed employee, therefore no punishment can be imposed upon him without following the procedure of CCS (CCA) Rules, 1965. Therefore the steps taken by the respondents to cancel the appointment of the applicant is not in accordance with the rules governing the field. The applicant has also stated that he has completed 4 years of service as Electrician-cum-Plumber and hence the alleged shortage of one month and 2 days of experience of essential qualification can be well substituted by 4 years of service rendered by him. The applicant has relied upon the following judgments of Hon'ble Supreme Court in support of his case :

- i) Smt.Naseem Bano -vs- State of UP and Ors. [AIR 1993 SC 2592]
- ii) Shekhar Ghosh -vs- Union of India & Ors. [2007 (1) SCC 331]
- iii) Bhagwati Prasad -vs- Delhi State Mineral Development Corporation [AIR 1990 SC 371]

4. We have gone through the pleadings and submissions made by both the learned counsels and the citations relied upon by the learned counsel for the applicant.

5. It is alleged against the applicant that he has got 34 days less experience in order to make him eligible and to meet the required essential qualification for the purpose of getting job as per the advertisement vide Annexure A/1. The applicant had earlier approached this Tribunal by filing OA 263/2017, the said case was disposed of as per order dated 26.4.2017 vide Annexure A/7. In pursuance to the said order, the applicant had filed another representation and the impugned order vide Annexure A/9 dated 23.6.2017 was passed. It has been mentioned that as a rule a wrong appointment cannot be allowed to be perpetuated. The question as to whether he had adequate experience in the field before joining the post in question is disputed as the applicant asserts that he had required experience as per the requirement of the advertisement in question. The said disputed question cannot be duly considered by simply issuing show cause notice. It was submitted by learned counsel for the

applicant that the applicant has not misrepresented or practiced fraud for the purpose of getting employment under the respondent. The applicant ought to have been given due opportunity to explain the detailed facts regarding his experience in the field and experience certificate issued in his favour by the concerned organization and department and the cut off date by which he should have acquired the said experience.

6. In the present case admittedly the applicant was put under probation after joining as seen from Annexure A/4 dated 31.12.2014. There is no document or averment from the side of the respondents to show that the said period of probation has been extended. In the absence of any such extension of probation period, the normal course is to assume that the applicant has been confirmed in the post in question. He being one regular employee of the respondents department, he cannot be removed from service without following due procedure of law and without giving him due opportunity to defend himself in any regular enquiry. Besides that the authorities have not applied their mind to relevant aspects in proper perspective. Since it was submitted by learned counsel for the applicant that even though for sake of argument it is assumed for time being that the applicant had 32 days less experience before joining the respondents department, still then by working for more than two years in the department, he has acquired sufficient experience and expertise in the field in question,. There is no allegation that the performance of the applicant during the said period was not satisfactory to the respondents. Since the applicant has been able to perform his duty without any blemish and taking into consideration his departmental experience for more than two years, the authorities could have considered the said aspects for the purpose of exercising their discretion to construe the same to be sufficient experience in lieu of so call 32 days' less experience before joining the job. In this regard decisions of Hon'ble Supreme Court can also be referred to in the following cases :

i) Hon'ble Supreme court in Dr. M.S.Mudhol -vs- 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, inspite 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 inequities 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.”

ii) Hon'ble Supreme Court in Bhagwati Prasad & Ors. -vs- 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.”

The authorities having not exercised their discretion in this regard and having not decided as to whether it will be proper on their part to simply go for removal of service of the applicant solely on the basis of show cause issued against the applicant vide Annexure A/6 or to go for regular inquiry in view of specific stand taken by the applicant that in the meantime he has already completed two year service and no longer under probation.

7. Accordingly this Tribunal directs that the status quo as on today shall be maintained by the respondents till they take a considered decision in this regard in accordance to law and regulations governing the field and to communicate the decision to the applicant preferably within a period of three months from the date of receipt of copy of this order. There will be no order as to costs.

(TARUN SHRIDHAR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

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