

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 203 of 2015

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Hon'ble Mr. Anand Mathur, Member (A)

1. Chandrabhanu Dandasena, aged about 47 years, S/o –
 Late Suresh Chandra Dandasena, At/P.O./P.S. –
 Narla, Dist. - Kalahandi.

.....Applicant.

VERSUS

1. Deputy Commissioner, Navodaya Vidyalaya Samiti,
 Regional Office, 160, Zone – II, M.P. Nagar, Bhopal,
 Madhya Pradesh – 462011.
 2. Principal Jawahar Navodaya Vidyalaya, At/P.O./P.S.
 Narla, Dist – Kalahandi.

.....Respondents.

For the applicant : Mr. M. K. Pati, Advocate.

For the respondents: Mr. C. M. Singh, Advocate.

Heard & reserved on :08.01.2021 Order on :09.02.2021

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant by filing this OA under section 19 of the Administrative Tribunals Act, 1985, has prayed for the following reliefs:-

(i) *To direct the respondents to give appointment to the applicant in the post of Electrician-Cum-Plumber immediately by quashing the letter Ref. F.3.21/JNU/NRL/KLD(O)/2012-14/392 dated 07.06.2013 issued by the Respondent No. 2 to the applicant (ANNEXURE – A/ 12).*

2. The case of the applicants as averred in brief in the OA is that he had started working as electrician in Jawahar Navodaya Vidyalaya, Narla, Kalahandi since April 1993 and he had completed the trade of House Wire Man in February 1998 (Annexure A/1), Secondary Examination in 1999 (Annexure A/2) and one year Electrician Training in 2006 (Annexure A/3) as also he was issued by certificates (Annexure A/4) for good knowledge of repairing of electrical appliances by the Respondents. The applicant submitted that in the year 2009 he was asked by Respondent No. 2 vide letter dated 23.06.2009 (Annexure A/5) to submit bio data along with attestation copies which he had submitted and then attended the interview and practical test (Annexure A/6) but he was not appointed in the regular post of electrician and though he continue to work in the same post neither he was regularized nor given appointment. The applicant submitted that he came across an advertisement dated

13.10.2012 (Annexure A/7) wherein Respondent No.2 had invited application for the vacant post of electrician-cum-plumber against which the applicant was working. The applicant applied for the said post but the same was returned by Respondent No. 2 vide letter dated 06/09.07.2013 (Annexure A/8) stating that the applicant was over aged. The applicant approached the Hon'ble High Court of Orissa in W.P. (C) No. 1335 of 2013, which was disposed of vide order dated 14.03.2013 (Annexure A/9) with granting liberty to the applicant to make a representation to Respondent No.2 and directed Respondent No.2 to take into account the previous service of the applicant. The applicant submitted that he had made a representation dated 21.03.2013 (Annexure A/10) which was not answered and he continued in the job as before without regular appointment but Respondent No. 2 instead of paying wages in the payment register after taking signature on revenue stamp paid the wages in cash without taking signature of the applicant. The applicant submitted that while he was attending his work, Respondent No. 2 vide letter dated 30.03.2015(Annexure A/11) requested the local employment exchange for sponsoring the list of candidate for recruitment for the vacant post of electrician cum plumber. The applicant approached Respondent No. 2 to consider his case for the said post as per direction of the

Hon'ble High Court which was not acceded to. The applicant further submitted that during the course of hearing in the present OA the counsel served a copy of letter dated 07.06.2013 (Annexure A/12) wherein the representation of the applicant dated 30.03.2013 of the applicant was rejected.

3. The respondents in their counter inter alia averred that the applicant was engaged on daily wages as Electrician only with intermittent breaks but not against the post of Electrician cum Plumber and certificate issued on 1.01.1.2012 clearly shows that the applicant was engaged as daily worker and his service was not for regular period. The respondent further submitted that a trade test was conducted at ITI Bhawanipatna on 12.10.09 but due to administrative reasons vide note dated 30.11.2009 (Annexure R/1) the said interview was cancelled. The respondent submitted that vide advertisement dated 13.10.2012 (Annexure R/2) the post of electrician cum plumber was published wherein the was specifically mentioned that the intending eligible candidate must have possessed the requisite qualification lie 10th pass, ITI certificate of equivalent in the trade of electrician and plumbing from Govt ITI/Central ITI, two year experience in electrical installation/wiring and plumbing work in a Govt./Autonomous organization and the age limit prescribed was between 18 to 40 years as on 27.10.2012.

The respondents submitted that the applicant's case was rejected vide Annexure R/3 due to non-possessing of requisite essential eligibility and also he was over aged. The respondents further submitted that the applicant had worked as daily wage worker till 06.03.2011, thereafter another person was engaged w.e.f. 19.07.2011 but after he left the applicant was again engaged on need basis up to 03.11.11 and subsequently Shri Laxman Das was engaged to manage the work on daily wage basis since 05.02.211 and later as per relevant recruitment rule a regular selection process was conducted on 27.11.2015 and Shri Laxman Das was offered appointment to the post of Electrician-Cum-Plumber which he joined on 20.05.2016 and is continuing. The respondents submitted that in compliance with the direction of Hon'ble High Court vide order dated 14.03.2013, the representation of the applicant was considered and rejected due to non possessing of valid certificate and over age. It was revealed from the certificate given by the applicant (Annexure R/5) that he had completed class 10 exam during the year 1999 but completed the wireman certificate course in the year 1998 which means he did not possess the required essential educational qualification which is pre-requisite to take admission into the certificate of wiremen course. The respondents also submitted that applicant

submission of working in the said post for last 22 years without break is totally false and vide letter at Annexure R/6 it is clear that the applicant's engagement was purely on need basis and he was not a regular worker.

4. Learned counsel for the respondents relied on some citations including the following:

a) Hon'ble High Court of Orissa in KadambiniSamantray& Others vrs State of Orissa & others 2017 (II) OLR – 995.

b) Hon'ble Apex Court in Secretary, State of Karnataka & others vs Uma Devi and others AIR 2006 SC 1806.

5. We have heard the learned counsels, gone through their pleadings, written note and citations relied upon by them. The applicant was working on part time basis on consolidated wages from the month of April 1993 till the time of filing of the OA as claimed by him. The engagement letter is vide Annexure A/4. The application of the applicant has been rejected vide Annexure A/8 on the ground of over aged and for not possessing essential qualification i.e. no ITI certificate. The said decision was made after the applicant had made application for the post of electrician cum plumber in pursuance to the advertisement dated 13.10.2012 (Annexure A/7). The applicant was working in the establishment of the respondents as electrician on daily wages. Since the

applicant does not have required qualification and any experience as electrician-cum-plumber and has become overaged therefore, the respondents have rightly rejected his application. No illegality or irregularity is found in the said action of the respondents. However as the applicant had worked in their establishment since the year April 1993 till 06.03.2011 as electrician on daily wages with intermittent breaks, therefore taking into consideration the decision of Hon'ble Supreme Court reported in **1990 (1) SCC 361 Bhagvati Prasad and others versus Delhi State Mineral Development Corporation**, the authorities may sympathetically consider his case for engagement as electrician in any other post available if the same is permissible in accordance with law within a period of three months from the date of receipt of copy of this order and pass a speaking and reasoned order which is to be communicated to the applicant within that period.

6. The OA is accordingly disposed of with above observation but in the circumstances without any order to cost.

(ANAND MATHUR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)