

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/21/433/2020

HYDERABAD, this the 11th day of September, 2020



**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

1. M. Ramesh Kumar, S/o. M. Venkaiah, Group. C
Aged about 44 years,
T.No.2348-3, Fitter Auto, MM Section,
Ordnance Factory Medak,
Yeddumilaram - 502 205, Medak District, (TS).
2. V. Shyam Sunder, S/o. V. Krishnaiah,
Aged about 36 years,
T.No.2489-1, Fitter Electronics, MSL Section,
Ordnance Factory Medak,
Yeddumilaram - 502 205, Medak District, (TS).
3. M. Dhanaraju, S/o. Rajaratnam,
Aged about 43 years,
T.No.2630-6, Fitter LMS,
Ordnance Factory Medak,
Yeddumilaram - 502 205, Medak District, (TS).
4. K. Lakshmi Narayana, S/o. Bheima Raju,
Aged about 442years,
T.No.2658-8, Fitter Foundry,
Ordnance Factory Medak,
Yeddumilaram - 502 205, Medak District, (TS).
5. T. Anjaneyulu, S/o. T. Venkaiah,
Aged about 41 years,
T.No.2513-5, Welder, HULL Section,
Ordnance Factory Medak,
Yeddumilaram - 502 205, Medak District, (TS).
6. C. Vittal Reddy, S/o. Nagi Reddy
Aged about 45 years,
T.No.2172-8, Fitter Electronics, HMS,
Ordnance Factory Medak,
Yeddumilaram - 502 205, Medak District, (TS).



7. G. Goppaiah, S/o. G. Devadanam,
Aged about 48 years,
T.No.2337-6, Electrician, HRD Section,
Ordnance Factory Medak,
Yeddumilaram - 502 205, Medak District, (TS).

... Applicants

(By Advocate: Mr. T. Koteswara Rao)

Vs.

1. The Union of India rep. by
The Secretary to Government of India,
Ministry of Defence, South Block,
New Delhi – 110 001.
2. The Director General of Ordnance Factories,
and Chairman Ordnance Factory Board,
10 A, Saheed Khudiram Bose Road,
Kolkata – 700 001.
3. The General Manager,
Ordnance Factory,
Government of India, Ministry of Defence,
Yeddumailaram, Medak, Telangana – 502 205.

... Respondents

(By Advocate: Mrs. K. Rajitha, Sr. CGSC)

O R D E R (ORAL)**Hon'ble Mr. B.V. Sudhakar, Admn. Member****Through Video Conferencing:**

The OA is filed challenging the decision of the respondents rejecting the candidature of the applicants to participate in the Limited Departmental Competitive Examination (for short “LDCE”) to get promoted to the post of Chargeman Non Tech [Other than Stores (O.T.S) & Stores].

3. Brief facts of the case are that the applicants are Skilled / Highly Skilled Workmen of the respondents organisation, who, having possessed degree qualification, submitted applications to participate in the LDCE to be conducted for selection to the post of Chargeman Non Tech (OTS & Stores) against notification dated 24.4.2020. However, the same on being rejected the OA is filed.

4. The contentions of the applicants are that since they posses Graduate degree they are eligible to participate in the exam as per recruitment rules. The requirement of pre entry qualification of 10+2 has to be brought about by a subordinate legislation under Article 309 of the Constitution. The genuineness of the degree qualification obtained by the applicants is accepted by the respondents and that the degrees were obtained from Universities established under the appropriate act. Any clarification if required in the subject matter has to be obtained from UGC and that the respondents should not take unilateral decisions on the issue. Further respondents have presumed the entry level qualification as 10+2 and ignored courses like ITI of 2 years duration. Any clarification received from the UGC should have been circulated.

5. Respondents in the reply statement state that the educational qualification required to appear in the exam for the post of Chargeman (Group –II) (Non Tech OTS & Stores) is degree from a recognised University. Due to certain complaints in regard to educational qualification the competent authority decided that the UGC guidelines with regard to minimum qualification required at entry level of the degree programme and minimum duration of the programme shall be followed.

The relevant Gazette notification dated 5.7.2014 has spelt out that 10 +2 is the entry level qualification for undertaking degree courses. The applications of the applicants were rejected by a screening committee for not possessing the pre-entry level qualification of 10 +2. UGC has clarified that the degrees obtained through distance mode from universities/ institutions approved by it, are recognized for the purpose of employment and pursuing higher studies. The minimum eligibility criteria for obtaining the degree should be as per UGC norms. Respondents claim that the 10+2 pre entry qualification cannot be equated with ITI course of 2 years based on the brochure of Universities. The degrees submitted by the applicants are undisputed. All factories of the Ordnance Factory Board Organisation are applying the similar rule. The judgment of the Hon'ble High Court of Madras in W.P No.18729 of 2010 supports their contention. The appointing authority is empowered to lay down qualifications for recruitment.

Applicants filed a rejoinder wherein they claim that in regard to any doubt relating to the issue has to be got clarified from the respective University / Institution. UGC guidelines cannot be interpreted by the respondents. The Judgment of the Hon'ble Madras High Court is not relevant.

6. Heard both the counsel and perused the pleadings on record.

7. I. It is not under dispute that the degree qualification obtained by the applicants is genuine. Besides, it is also not under dispute that the Universities / Institutions which awarded the degrees to the applicants are recognized by U.G.C.

The recruitment rules, which are statutory in nature and framed under article 309 of the constitution, prescribe that the educational qualification required to appear in the LDCE exam for Chargeman Non. Tech (OTS & Stores) is degree. The recruitment rules have not prescribed any pre entry level qualification of 10 + 2.

The appointing authority has to go by the recruitment rules and cannot by-pass them by issuing executive instructions. Statutory instructions have primacy over executive instructions as observed by the Hon'ble Supreme Court in:

a. ***Union of India & Ors vs Somasundram Viswanath & Ors*** on 22 September, 1988, reported in 1988 AIR 2255, 1988 SCR Supl. (3) 146, as under:

“If there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under proviso to Article 309 of the Constitution of India prevail, and if there is conflict between the rules made under the proviso to Article 309 of the Constitution of India and the law made by the appropriate Legislature the law made by the appropriate Legislature prevails.”

b. ***State of M.P. v. Yogendra Shrivastava***, (2010) 12 SCC 538 : (2011) 1 SCC (L&S) 251 at page 542

“When there is conflict between the statutory rules and the executive orders, the statutory rules will prevail (see K. Dayanandalal v. State of Kerala [(1996) 9 SCC 728 : 1996 SCC (L&S) 1314], T.N. Housing Board v. N. Balasubramaniam [(2004) 6 SCC 85 : 2004 SCC (L&S) 833], State of Karnataka v. KGSD Canteen Employees' Welfare Assn. [(2006) 1 SCC 567 : 2006 SCC (L&S) 158] and Punjab National Bank v. Astamija Dash [(2008) 14 SCC 370 : (2009) 1 SCC (L&S) 673]). Executive orders cannot be made or given effect in violation of what is mandated by the Rules.”

Hence, the executive instructions issued by the competent authority that 10+2 pre entry service is required before acquiring the degree qualification is thus invalid as it contravenes recruitment rules. Even assuming, though not admitted, as per

Gazette notification dated 5.7.2014 pre entry qualification of 10+2 is required to acquire degree qualification, it is pertinent to point out that the applicants obtained the degree qualifications between the years 1991 to 2008, prior to the date of Gazette notification. The notification will have prospective and not retrospective effect. Therefore, even on this count the stand of the respondents is not tenable.



II. Besides, the appointing authority being a statutory authority has to abide by the statutory rules which have the force of law and they do grant a statutory status to the employees. The said authority is obligated not to deviate from the statutory rules. Courts should ensure that the statutory authorities comply with statutory rules laid down under Article 309 of the Constitution. We rely on the judgment of the Hon'ble Supreme Court in **Sukhdev Singh v. Bhagat Ram** [1975] 3 SCR 619, as under, for making the aforesaid remarks.

“(a) Regulations defining duties, conduct and conditions of its employees framed by statutory bodies have the force of law. The form and content of contract with a particular employee being prescriptive and statutory, the statutory bodies have no free hand in framing the terms and conditions of service to their employees, but are bound to apply them as laid down in the 774 regulations. The regulations give the employees a statutory status and impose obligations on the statutory authorities, and that they cannot deviate from the conditions of service laid down therein. There is no personal element in public employment and service. Whenever employees rights are affected by a decision taken under statutory powers the court would presume the existence of a duty to observe the rules of natural justice and compliance by the statutory body with rules and regulations imposed by the statute.”

III. Moreover, UGC has recognised the Universities/ Institutions from which the applicants have obtained the degrees. UGC while granting recognition would have gone through all the relevant aspects for permitting award of the degrees. Therefore, the stage of interpretation of UGC guidelines is over once the Universities/ institution are recognized to award the degrees. It is not for the respondents to claim that the 2 year course of ITI course cannot be equated with 10+2 but it is for the UGC to clarify, if at all required. By not doing so and rejecting the applications of the applicants is arbitrary and unfair.

IV. The judgment of the Hon'ble High Court of Madras in WP No. 18729 of 2010 is not applicable to the case of the applicants since the State Govt. of T.N. has prescribed a pre-entry qualification of 10+2 to obtain a degree against which the challenge was made. In the instant case, the recruitment rules have not prescribed 10+2 pre-entry level qualification for obtaining the degrees.



VII. Lastly, all factories following the same rule is no valid ground. A wrong has to be made right otherwise the wrong will be perpetuated. The wrong of not allowing the applicants to appear in the LDCE has to be made right by allowing them to appear. As observed by his Lordship Justice Krishna Iyer in Maneka Gandhi case (1978) "*Lawful illegality could become the rule, if lawless legislation be not removed*" . Therefore, we have to intervene to obliterate the lawless order disqualifying the applicants to appear in the exam in question, so that it does not become a rule.

VIII. Therefore, in view of the above circumstances, the OA fully succeeds. The letter dated 20.7.2020 issued by the respondents is quashed and set aside. Consequently, respondents are directed to permit the applicants to appear in the LDCE, whenever it is held, for selection to the post of Charge man Non Technical (OTS & Stores).

IX. With the above direction, the OA is allowed with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(ASHISH KALIA)
MEMBER (JUDL.)

pv/evr