

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/00568/2020

HYDERABAD, this the 14th day of October, 2020
(Reserved on 09.10.2020)



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

Anand Telagatoti S/o Ravi Kumar,
Aged about 34 years, Occ : Un-employee,
'C', R/o Plot No.206, Citadel Enclave,
Dwarakanagar, 2nd Line, Nagaralu, Guntur.

...Applicant

(By Advocate: Mrs. B. Geeta)

Vs.

1. Union of India, Rep by its Secretary,
Ministry of Defence, New Delhi.
2. Addl. DGQA,
Department of Director General Quality Assurance,
H Block, DHQ PO, Room No.34,
'H' Block, New Delhi – 110 011.
3. The Deputy Director,
Admin-7B, Dte.Gen. Quality Assurance/Adm 7B,
Nirman Bhavan PO, New Delhi.
4. The Staff Selection Commission,
GOI, Rep by its Chairman,
Block No.12, CGO Complex,
Lodhi Road, New Delhi-110 003.
5. The Staff Selection Commission (Western Region),
Rep by its Regional Director (WR),
Pratishta Bhawan (Old CGO Building),
1st Floor, South Wing, 101, Maharshi Karve Road,
Mumbai, Maharashtra-400 020.

....Respondents

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

ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA has been filed aggrieved by the order of rejection issued by the 5th respondent in respect of allowing the applicant to participate in the examination in question.

3. Brief facts of the case are that the applicant applied to the 5th respondent in pursuance of the Phase VII-2019 Staff Selection Commission (for short “SSC”) Examination for the post of Scientific Assistant (M&E) and the said notification has been issued in pursuance of the request made by the 2nd respondent. Applicant submitted all the relevant documents and was shocked to find that on 08.07.2020, the respondent SSC has published a list of ineligible candidates wherein the applicant’s name figured at Sl. No. 281 with the remark “does not possess prescribed qualification”. The applicant sent an email on 01.07.2020 clarifying that the educational qualification possessed by him i.e. B. Pharmacy is as per qualifications mentioned in the Recruitment notification. Applicant cited judgment rendered by the Hon’ble Delhi High Court in Thirupathi Kodari v. Union of India in WP (C) 9671/2017 dt.13.08.2019 in support of his contention. Without considering the grounds raised by the applicant, the respondents have issued proceedings dt. 21.07.2020. He also submits that the action of the respondents is violative of the law laid down in P. Ranjitha v. University Grants Commission 1990 Lawsuit (Del) 78 and in the case of Mamta A. Ghodasara & others v. State of Gujarat, 2011 Lawsuit (Guj) 27. Aggrieved over the action of the respondents, the OA has been filed.

4. The contentions of the applicant are that Chemistry is one of the subjects in B. Pharmacy and therefore, he is eligible to be considered for selection. Right to employment is guaranteed under Article 16 of the Constitution of India. Impugned rejection order has been issued without application of mind. He represented to the respondents on 12.07.2020 and the process of selection is at the stage of verification of documents.



5. The respondents have filed elaborate instructions, in which they state that the applicant applied for the post of Scientific Assistant; eligibility criteria in respect of the said post was qualification in Bachelor's Degree in Science with one of the subjects at the Graduate level in Chemistry from a recognized University OR Diploma in Chemical Engineering from a recognized University or State Board of Technical Education. Applicant was successful in the Computer based examination as per the result declared on 18.02.2020. However, when his documents were verified for taking the examination process to the next stage, it was found that he did not have the educational qualification as prescribed in the notification. The applicant possess educational qualification of B. Pharmacy with one of the subjects as Chemistry. The educational qualification has to be identical to what has been published in the notification and since it was found to be different, his candidature was rejected. Recruitment process is under progress and as the applicant does not possess requisite educational qualification, he is not eligible for any relief.

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

7 (I) Applicant responded to the notification No. Phase VII/2019 Staff Selection Commission issued by respondents for filling up the posts of

Scientific Assistants (M&E). Respondents prescribed educational qualification for the said post as Bachelor's Degree in Science with one of the subjects at the Graduate level as Chemistry from a recognized University OR Diploma in Chemical Engineering from a recognized University or State Board of Technical Education. Applicant had the qualification of B. Pharmacy with Chemistry as one of the subjects. Contention of the applicant is that B. Pharmacy is as good as B.Sc. Chemistry and as such, he does possess the requisite qualification. However, respondents when they were scrutinizing the documents, after the computer test which the applicant cleared, they found that he did not possess the required qualification of B.Sc. with Chemistry as one of the subjects. Consequently, candidature of the applicant was rejected. The stand of the respondents is that candidature of any candidate, whose qualification varies from what has been prescribed in the notification, the same shall be rejected. Applicant cited judgments of the Hon'ble High Courts of Gujarat and Delhi cited supra in support of his contentions.

II. Basically, in any organization, it is the prerogative of the employer to decide the qualifications required to perform a particular job. Reason being that the employer is best suited to decide the requirement which each candidate should possess. Employer knows as to what is the work that has to be got done through the prospective employee. It is not for the Tribunal to interpret the qualification given in the notification. Moreover, it does not have the wherewithal to do so. In particular, the question of equivalence of qualification will definitely fall beyond the domain of judicial review.

When the language of the advertisement is clear that the Bachelor degree in science with Chemistry as one of the subjects, Tribunal cannot sit on the judgment over the same. In case, even if there is any ambiguity in regard to the notification, the matter has to be decided by the respondents in accordance with law. In the garb of judicial review, Tribunal has no authority to direct the respondents to consider the case of the applicant.



While making the above observations, we take the support of the legal principle laid down by the Hon'ble Supreme Court in its judgment in ***Maharashtra Public Service Commission v. Sandeep Shriram Warade & Others*** in Civil Appeal No. 4597/2019, arising out SLP (Civil) No. 8494/2018, delivered on 3.5.2019. In para 10 of the judgment, Hon'ble Supreme Court took a serious view in regard to the interpretation of the conditions of the notification, as under:

“10. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being at par with the essential eligibility by an interpretive rewriting of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the Court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the Court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.”

By telescoping the legal principle enunciated to the case of the applicant relief sought cannot be granted.

We have also gone through the judgment of the Hon'ble Delhi High Court relied upon by the applicant and found that the judgment of the

Hon'ble Supreme Court cited supra has not been referred to by the Hon'ble Delhi High Court.

III. It is indeed incumbent on the Tribunal to tread carefully in matters pertaining to selection and particularly in the context of the conditions laid down in the notification. We are conscious of the fact that the Tribunal should not lose sight of the terms and conditions laid in the notification.



Usually, when Staff Selection Commission conducts examination, there would be generally lakhs of candidates who apply. Any relaxation of the notification in regard to the educational qualifications will lead to a cascading effect with similar demands emerging from all over the country leading to uncalled for litigation. Hence, in the background of this fact as well as to keep up the sanctity of the examination, it is necessary that the Tribunal has to uphold the strict implementation of the instructions contained in the notification. The post to which appointment is to be made is a public post and the public interest involved is to select those who are fully eligible to compete for selection as per the notification. Public interest is paramount and any action/decision compromising the same is unacceptable.

IV. It should also be noted that when a notification adduces about a required qualification, then it is not a matter between the respondents and the applicant concerned alone. True to speak, aggrieved shall be all those who had similar or even better qualifications than the applicant, who is agitating before this Tribunal. It is probable and possible that there would be many other candidates who would have had the qualification of B.Pharmacy with Chemistry as one of the subjects but did not apply in view

of the eligibility condition being prescribed as B.Sc. in Chemistry. If the Tribunal were to concede to the request of the applicant, then it would tantamount to doing injustice to others who could not come over to the Tribunal for agitating on the dispute in question. *Defacto*, Tribunal has no power to relax any of the conditions of the notification nor can it interpret the condition differently when the language is unambiguous. To state what we did, we take the support of the Hon'ble Supreme Court judgment vide Civil Appeal No. 2559/1988, decided on 20.04.1990 in ***District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram & Anr v. M. Tripura Sundari Devi, (1990) 3 SCC 655***, as under:

“6. It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact.”

Hon'ble Apex Court has, in fact, observed that any appointment of a person with different qualifications would be required to be termed as a fraud on the public. Such is the gravity of the seriousness involved in interpreting the examination qualification laid down in the notification. Therefore, it is not for the Tribunal to encourage practises which are not desirable.

V. In respect of the judgment of the Hon'ble Delhi High Court in *Thirupathi Kodari & Anr v. Union of India & Anr* in WP (C) 9671/2017 &

CM Appl. 39384/2017 dt.13.08.2019, para 6 is reproduced here under to make it clear that the judgment would not be applicable to the case of the applicant:



"It is not in dispute that in the aforementioned writ petition, the advertisement dated 20.09.2016 is also the subject matter of the present petition. As per the advertisement dated 20.09.2016, the education qualification required for the post of Junior Technical Assistant is Degree in Agriculture or a Degree with Zoology, Chemistry or Bio-Chemistry as one of the subjects. It was never clarified by respondent No.2 that the applicants required a degree in Zoology, Chemistry or Bio-Chemistry before reply dated 26.04.2017 to the representation of petitioner No.2 therein."

In the instant case, the respondents vide letter dt. 21.07.2020 clarified as under:

"2. Your e-mail under reference has been perused by the Competent Authority. It is intimated that essential qualifications required for the post of SA (ME) in DGQA is indicated in SRO – 69 dated 16 Nov. 2011 B. Pharma is not the essential qualification."

In view of the clarification given by the respondents and also in view of the law laid down by the Hon'ble Supreme Court, the Hon'ble High Court of Delhi judgment is not applicable.

In the instant case, we find that the applicant is repeatedly attempting to equate B.Pharmacy with Chemistry as one of the subjects with B.Sc. wherein Chemistry is one of the subjects. However, as has been observed by the Hon'ble Supreme Court, Tribunal does not have the competency to equate qualifications. Best recourse that would be available is to direct the respondents to take a decision in the case. In the instant case, respondents have taken a decision and clarified to the applicant vide letter dt. 21.07.2020, requiring no intervention on behalf of the Tribunal.

VI. Thus, in view of the latest law laid down by the Hon'ble Apex court cited supra, Tribunal has to abide by the said decision and the cases cited by the applicant are of no assistance to his case for reasons elaborated above. Therefore, based on the legal principles discussed supra, the OA fails requiring its dismissal. Hence, dismissed with no order as to costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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