

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

OA/020/01117/2014 & OA/021/00759/2019



Date of Pronouncement: 22.10.2020

Date of CAV: 14.10.2020

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

OA No.1117/2014

D.Sridhar Rao S/o Srinivas Rao,
Aged about 45 yeas, Occ : Technician 'A',
System Planning and Implementation Centre ,
Defence Research Development Organization,
NTR-II, Visakhapatnam, R/o Deepanjalinagar,
NTPC, Simhadri, Visakhapatnam.

...Applicant

(By Advocate : Dr.A.Raghu Kumar)

Vs.

1. Union of India rep by its Director,
System Planning and Implementation Centre,
Development Enclave, Behind Army HQ Camp,
Delhi Cantt Post, New Delhi-110010.
2. The Joint Director (Admn),
System Planning and Implementation Centre
Development Enclave, Behind Army HQ Camp,
Delhi Cantt Post, New Delhi-110010.
3. The General Manager, Defence R & D Organization,
Ministry of Defence, NTR-II, Post Box:1,
Deepanjalinagar, NTPC, Simhadri,
Visakhapatnam District.Respondents

OA No.759/2019

D.Sridhar Rao S/o Srinivas Rao,
Aged about 45 years, Occ : Technician 'A', Gr.'C',
(Under the orders of cancellation of promotion),
O/o System Planning and Implementation Centre (SPIC),
Defence Research Development Organization,
STF (SPIC), CCE (R&D) Complex,
Akbar Road, Diamond Point, Hyderabad-3.



Vs.

1. Union of India rep by its Director,
System Planning and Implementation Centre,
Development Enclave, Behind Army HQ Camp,
Delhi Cantt Post, New Delhi-110010.
2. The Director (Admn),
System Planning and Implementation Centre
Development Enclave, Behind Army HQ Camp,
Delhi Cantt Post, New Delhi-110010.
3. The General Manager, Defence R & D Organization,
Ministry of Defence, CCE (R&D) Complex,
Akbar Road, Diamond Point, Hyderabad-3.
4. The Senior Administrative Officer-II,
O/o the Director, SPIC, DRDO,
Development Enclave,
Delhi Cantonment, New Delhi-110010.

....Respondents

(By AdvocateS : Mrs.K.Rajitha, Sr. CGSC &
Mrs.L.Pranathi Reddy, Addl.CGSC)

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

2. The OA 759/2019 was filed challenging the order dated 21.8.2019 cancelling the appointment of the applicant to the post of Technician-A and OA 1117/2014 challenges the action of the respondents in not issuing the call letter to the applicant to appear in the DRTC LDCE exam of 2014 conducted for selection to the post of Sr. Technical Assistant-B



Applicant and the respondents being one and the same and the basis of the dispute in both the OAs is the Diploma certificate issued by the Janardan Rai Nagar Rajasthan Vidyapeeth University, Udaipur (Rajasthan), a common order is passed.

3. Brief facts of the case are that the applicant joined the respondents organisation on 29.6.2007 as Attendant Laboratory Service-A (ALSA). To seek further promotions, applicant sought permission to pursue Diploma in Mechanical Engineering through Distance Education from Janardan Rai Nagar Rajasthan Vidyapeeth University (for short "**JRN University**") which was granted and the applicant came out successful in the Diploma Course on 8.12.2010. Thereafter, on clearing the Defence Research Technical Cadre Limited Departmental Competitive Exam 2014 (for short "**DRTC LDCE 2014**") applicant was appointed on 29.10.2012 to the post of Technician A. Later, on 1.8.2019 show cause notice was issued to the applicant, proposing to cancel the appointment of the applicant as Technician-A on the ground that he did not possess the required qualification as the Diploma obtained from Rajasthan Vidyapeeth was

invalid. Applicant replied to the show cause notice and in response, respondents cancelled the appointment of the applicant as Technician A w.e.f. 21.8.2019 without referring to the earlier orders of the Government and the nature of clarification given by the Hon'ble Supreme Court. Challenging the said order dt. 21.08.2019, OA 759/2019 is filed.



In OA 1117/2014, the grievance ventilated is about not permitting the applicant to appear him in DRTC LDCE exam of 2014 conducted for the post of Senior Technical Assistant B based on the Degree obtained from JRN University and praying for conduct of exam to enable him to appear in the said exam.

Aggrieved over the action of the respondents on the two issues, the OAs have been filed.

4. The contentions of the applicant in OA 759/2019 are that the letters dated 13.12.2018 and 12.7.2019 referred to in the notice dated 1.8.2019 are not applicable to his case in view of the fact that he had obtained his Diploma way back in 2009 and nowhere the Hon'ble Apex Court has interfered in regard to the Diplomas so obtained. Hon'ble Supreme Court has itself clarified so in its order dated 22.1.2018 in MA Nos.1795-1796 of 2017 in CA Nos.17869-17870 of 2017. Government of India in notification dated 1.3.1995 and OM dated 6.12.2012 has clarified that Diplomas obtained earlier are valid for public employment. Respondents relied on FR 31-A in the impugned order to revise the pay from 29.10.2012 and ordered recovery along with the cancellation of the promotion.

In OA 1117/2019, the contentions of the applicant are that non issue of the hall permit to appear in the DRTC LDCE exam 2014 conducted for selection to the post of Senior Technical Assistant–B is bad in law and illegal. The Diploma in Mechanical Engineering was obtained in 2009 from an University recognized by UGC and that too, after taking permission from the respondents. One of the eligibility conditions to appear in the exam was a 3 years Diploma in Engineering, which the applicant possessed. For the DRTC LDCE exam 2013 the exam proposed to be conducted for selection to the post of Technician –A and the Senior Technical Asst. –B respondents found the application of the applicant with the cited diploma to be in order. However, the 2013 exam was postponed. When it came to DRTC LDCE 2014, respondents did not issue hall permit to appear in the exam for selection to the post of Senior Technical Asst – B though the Diploma certificate submitted was one and the same as was submitted in 2013 and that he applied well in time. Applicant was not allowed to take the exam though he was eligible to appear in all respects and hence, respondents are liable to conduct the exam again for him. There were only 2 candidates who competed for 4 posts.

When the OA 759/2019 came up for admission, an interim order suspending the impugned order dated 21.8.2019 was passed for a short period of 14 days and continued later.

5. Respondents in their reply statement in OA 759/2019, state that the applicant on being granted permission to pursue Diploma in Mechanical Engineering from JRN university through distance mode he obtained the



Diploma. Along with the valid Diploma all other eligibility criteria have to be fulfilled for career progression. In Sep. 2012, applicant applied for DRTC LDCE conducted on 25th/26th Sep 2012 for both the posts of Senior Technical Assistant-B (STA-B) and Technician-A duly enclosing the Diploma Certificate in Mechanical Engineering obtained in distance mode from JRN University. He was permitted to appear for the exam held in respect of Technician-A exam. The committee constituted for conducting DRTC LDCE -2012 erroneously considered the case of the applicant for Tech-A, though he did not have the Essential Qualification Requirement and recommended his promotion as Tech-A. Accordingly, he was promoted on 29.10.2012. Producing the same Diploma certificate as was produced in Sep. 2012, applicant applied as well for appearing in DRTC LDCE conducted in Sep. 2014 for the post Senior Technical Assistant B (STA-B) and his candidature was rejected vide letter 24.09.2014 (Annexure R-8) owing to non recognition of the Diploma Course by AICTE as clarified by UGC vide letter dated 26.8.2014 (Annexure R-9) as well as the decision of the Central Information Commission (for short “CIC”) in Complaint No. 551 (Annexure R-10). Applicant filed OA 1117/2014 for not permitting him in DRTC LDCE 2014 for the post of STA-B, which is pending adjudication. Keeping in view the judgment of the Hon’ble Apex Court in WP(C) No. 382 of 2018, the competent authority decided that the appointment of the applicant was not justified vide letter dated 12.7.2019 . Hence, a notice was issued to the applicant on 1.8.2019 (R-14) and based on the reply received, the appointment to the post of Technician-A was cancelled. Besides, Hon’ble Apex Court has opined in W.P. (C) No.382 of 2018 that though AICTE approval is not required but the AICTE norms



have to be followed in granting B.Tech/ Diploma. The Ministry of Human Resource Development OM dated 6.12.2012 relied upon by the applicant is applicable to the institutions to which it is addressed wherein JRN University does not figure (Annexure R-20). Applicant was reverted to the post of ALS-III by an Authority superior to the Appointing Authority based on FR-31.



Coming to OA 1117/2014, the contentions of the respondents are that the permission granted to pursue Diploma course in Engineering would not mean that the Diploma acquired will be accepted for promotion. The diploma has been obtained in 2 years period but the certificate is showing the course duration as 3 years. Obtaining a higher qualification, in a period less than the one prescribed is accepted, only when the competent authority relaxes the time period. Applicant did not get the higher qualification recorded in the service records. DRTC LDCE exam of 2013 was postponed due to the proposed move of the Govt. to de-recognize 44 deemed universities including the JRN University. The JRN University confirmed the genuineness of the diploma certificate issued but they did not reveal the affiliation details with the governing bodies like UGC, AICTE etc. for conducting technical diploma courses. However, when UGC was approached, it was informed vide letter 26.8.2014 that the JRN University was recognized as deemed university but it was not permitted to conduct engineering courses in regular mode and through study centers. In view of the clarification given by UGC and since the applicant did not produce any documents about proof of recognition of qualification by AICTE/UGC etc. he was not granted the hall permit. Further, in para 8 (b) of Orissa High

Court in Misc Case No.15613 of 2013 W.P. (C) No.16718 of 2013, AICTE representative has intimated that they have not recognized the diploma in engineering course offered by JRN University. Similarly, Public Information Officer (PIO) of AICTE confirmed on 14.7.2011 before the CIC that JRN University was not granted permission to conduct technical courses in distant mode for the year 2007-08, which, in fact, was the year in which the applicant joined the course in question in JRN. Hon'ble Apex Court has held in *Orissa Tech. College Assn v AICTE* that approval of AICTE was compulsory for conduct of technical courses. The candidates who did not qualify in the DRTC LDCE exam of 2014 were duly informed of the reasons for rejection. Respondents affirm that they have a right to review unintended benefits secured by submission of certificate not recognized by statutory bodies relying on the judgment of the Hon'ble High Court of Punjab and Haryana in CWP No.12304 of 2012.

Applicant filed a rejoinder in OA 1117/2019 wherein it was stated that the duration of the Diploma certificate issued by JRN University (Annexure A-III of OA) is of 3 years. When the applicant joined JRN University, there was approval given by UGC for the period in question, vide Annexure R-II. The Distance Education Council grants permission to conduct courses in distance mode and the same was clarified by UGC in Nov 2007 in a letter to JRN (Annexure-R-III). Further, AICTE has made it clear that once Distance Education Council approves a course in distance mode then approval of AICTE is not required vide letter dated 4.10.2007 (Annexure R-IV). Respondents have not replied on facts or on law.

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

7. I. Applicant while working as ALS-A in the respondents organization, applied for appearing in DRTC LDCE 2014 for the posts of Technician-A and Senior Technical Asst.-B by duly enclosing the Diploma Certificate in Mechanical Engineering obtained in distance mode from the JRN University. Applicant was permitted to appear in the exam meant for Technician -A and not in the exam for Senior Technical Assistant-B. For not allowing the applicant to appear in the Senior Technical Asst. B exam, applicant filed OA 1117/2014. Further, respondents claim that the committee constituted for DRTC LDCE 2014 erroneously selected the applicant for the post of Tech-A though he did not possess the Essential Qualification requirement. The same is under challenge under OA 759/2019. The Essential Qualification requirement (EQR) is extracted hereunder:

“Essential:

- (i) *X Class or equivalent (and)*
- (ii) *Certificate from Industrial Training Institute in the required discipline (or)*
- (iii) *Certificate of minimum one year duration from a recognized institution in the required discipline if Industrial Training Institutes do not award Certificate in that discipline.”*

II. Instead of ITI certificate, applicant obtained Diploma in Mechanical Engineering from JRN University. The validity of the certificate is under hot contest. Respondents claim that the committee has erroneously selected the candidate albeit the Diploma obtained from JRN University is invalid. To substantiate this fact, respondents cited the orders of UGC dated 26.08.2014 (Annexure R-9 in OA No. 759/2019) and the Central

Information Commissioner dt.14.07.2011 (Annexure R-10 in OA 759/2019) in respect of the validity of the Diploma, which are extracted here under:



"With reference to your letter dated 31.07.2014, I am directed to inform you that the Government of India, Ministry of Human Resources Development, on the advice of UGC, declared Janardan Rai Nagar Rajasthan Vidyapeeth, Udaipur, Rajasthan as deemed to be university vide notification No. F.9-5/84-U.3 dated 12th January, 1987. The Deemed to be University can award degrees from its main campus in UGC approved courses in regular mode. The UGC has not granted any approval to run the courses through Study Centre(s).

The UGC has not granted any permission to Janardan Rai Nagar Rajasthan Vidyapeeth, Udaipur, Rajasthan, to conduct Engineering courses in regular mode."

"Respondent: Mr. M.S. Ghuge, Public Information Officer & Assistant Director;

It is evident that categorical reply had not been provided to the Complainant when he filed the RTI application. On 07/07/2011, the PIO has sent a reply but has not provided a proper answer with respect to query-1. The PIO admits that J.R.N. Rajasthan Vidhyapeeth, Udaipur had not been given permission for offering technical courses under distance mode for the year 2007-08. It appears that the information has now been provided and the Commission is enclosing the information sent by the PIO to the complainant with this order."

III. Respondents have cited the judgment of the Hon'ble Supreme Court in W.P (C) No.382 of 2018 dt.30.07.2018 wherein it was opined that though AICTE approval is not required but the AICTE norms have to be followed in granting B Tech/ Diploma. The Hon'ble Minister for HRD in his letter dated 29.11.2018 to MOD, recommends that the ODL courses in non technical areas can be considered. Relevant paras are extracted here under:

"However, in areas where AICTE is the regulator, I would like to inform that AICTE does not allow ODL program in technical areas such as engineering, pharmacy, architecture, hotel management and Applied Arts & Crafts. AICTE allows ODL program only in the area of management, information technology and travel & tourism.

In view of above, I would request you to kindly issue necessary instructions to all the PSUs and autonomous bodies under your Ministry to take cognizance of the various notifications/ circulars/ public notices of MHRD and UGC regarding the recognition of ODL mode decrees and consider the UGC recognized ODL decree/ diploma in non technical subjects and in the subjects of management, information technology and travel & tourism at par with degree/ diploma from regular university for the purpose of employment.”



IV. Applicant during the hearing has enclosed the respondents letter dated 13.2.2020 circulating the Dte of Human Resource Development letter dated 31.1.2020, wherein at paras 4 & 5 it was clarified as under:

“4. The above notwithstanding, AICTE vide its letter No. AICTE/P&AP/Misc/2018/622 dated 11 Dec 2018 (Copy enclosed) validated the Degree/ Diploma of individuals through Indira Gandhi National Open University (IGNOU) if enrolled upto 2009-10. Also, AICTE vide Advt. No. P&AP/10(04)/2017 (copy enclosed), has clarified that the Council in “52nd Emergent Meeting held on August 03, 2017 decided to recognize equivalence for all purposes including Higher Education & Employment to Technical courses conducted by various Professional Bodies/ Institutions which were duly recognized by MHRD with permanent recognition upto 31st May 2013. Thus, all those students who were enrolled with these institutions with permanent recognition upto 34.05.2013, stand recognized.”

*5. In view of the foregoing, it has decided that **all technical Degrees/ Diploma through Open and Distance Learning (ODL) mode from IGNOU will be valid, if enrolled upto 2009-10 as per AICTE letter No. AICTE/P&AP/Misc/2018/622 dated 11 Dec 2018. Similarly, all technical Degrees/ Diplomas from Institutions/ Universities covered by MHRD OM F. No. 11-15/2011/AR(TS-II) dated 06.12.2012 will be treated as valid if the individual is enrolled upto 31 May 2013 as per AICTE Advt. No. P&AP/10(04)/2017.***

V. Further the applicant has also submitted that the letter of the Ministry of Human Resource Development dated 6.12.2012 is in his favour but the respondents disagree stating that the letter is not addressed to the JRN University and hence, not applicable. However, in the body of the letter at para (ii) it was mentioned that students enrolled in institutions with permanent recognition upto 31.5.2013 would be eligible. The important aspect to be verified is about the institution with permanent recognition and the letter does not state that the instructions apply to the institutions to

whom the copy was shown to be marked. Further, letters of MOD dated 14.3.2012, 4.11.2015, 13.12.2018, 20.12.2018 and that of the Minister HRD dated 29.11.2018 as well as that of AICTE dated 11.12.2018, AICTE public notice vide Advt. No. P&AP/10 (04)/2017 were submitted by the Applicant on the last day of hearing. We have gone through the letters which require a detailed scrutiny by the respondents to examine their application to the case of the applicant, by taking up with the concerned. We have observed that there have been a series of orders in regard to recognition of the Diploma issued by deemed universities like JRN University, by different Govt. bodies ranging from AICTE, UGC, MHRD etc. over a period of time with varying hues with the pendulum swinging either side. Recognition of a Diploma by the regulatory bodies is a sensitive issue, which can make or mar the career of thousands of employees, and therefore, it may not be proper for the Tribunal to express a view on the documents submitted, with divergent instructions from time to time. Each document is stating a set of facts in its own plane, which are to be verified from the Govt. institutions referred therein. Such an exercise has to be done by the respondents themselves. Any decision without doing such an exercise would be premature.

VI. In addition, validity of a Diploma to accept it for employment is the prerogative of the respondents. If any ambiguity in regard to the validity of the Diploma arises, the matter has to be referred to the respondents for a decision and it is not for the Tribunal to sit on appeal over the same in the garb of Judicial review. We rely on the observations of the Hon'ble Supreme Court in the following cases, to state the above:



a. In *Maharashtra Public Service Commission v. Sandeep Shriram Warade*, **2019 SCC OnLine SC 652**, decided on 03.05.2019, to state the above:



"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."

b. In *Surinder Singh v. Union of India*, (2007) 11 SCC 599,

"....It appears that CAT as well as the High Court, both have lost sight of the object and import of the Guidelines/Norms/Instructions dated 21-7-1998 (sic 21-11-1997) laid down by a competent authority. CAT is not competent to lay down criteria for the selection and appointment to the post of EDDA. It is the prerogative and authority of the employer to lay down suitable service conditions to the respective posts."

The legal principle that is to be drawn from the above judgment as at (a) above, is as to whether the Tribunal is competent to adjudicate about the validity of the diploma issued by JRN University. The answer is an emphatic no, since there is ambiguity with many circulars issued by different Govt. institutions over a period of time with different connotations about the recognition of the courses offered by JRN University. Respondents are to take a call on the matter. Hon'ble Supreme Court has also observed that recognition by AICTE is not required but it would suffice if the AICTE norms are followed, as referred to in paras supra. These aspects are to be verified in detail by the respondents by taking up with the competent bodies and take an appropriate decision in the matter as per prevailing rules and in accordance with law.

Besides, as pointed by the Hon'ble Apex Court as at (b), it is the guidelines/ norms/ instructions of the respondents organization in terms of its DRTC Rules, which decide the selection criteria as to whether the Diploma issued by JRN University can be taken as valid or otherwise. Tribunal has neither the prerogative nor the authority to decide the validity of the certificate since it is the exclusive domain of the respondents. Therefore, in regard to the twin issues of reversion from the post of Technician-A and permitting the applicant to appear in the LDC Exam for the post of Senior Technical Assistant-B, contested in the OAs filed, with reference to the Diploma issued by JRN University, respondents have to arrive at a decision, as observed above.

VII. Therefore, in view of the aforesaid circumstances, the OA Nos.759/2019 and 1117/2014 are disposed of by directing the respondents to take an appropriate decision in the light of the circulars submitted by the applicant, as at above and also based on any further guidelines issued by competent bodies dealing with the issue in question subsequent to filing of the OAs, as well as in accordance with the latest law on the subject. After doing so, they shall issue a reasoned and speaking order covering the contentions raised by the applicant in both the OAs to arrive at a decision they have decided to arrive at. Time period allowed to implement the order is 3 months from the date of the receipt of the order. Consequent to the above direction, interim order passed in OA 759/2019 stands vacated in the context of the observation of the Hon'ble Supreme Court cited at para VI. However, financial benefits, if any, disbursed to the applicant for working in the post of Technician-A, in view of the suspension of the impugned



order dated 21.8.2019 by the interim order referred to, the same shall not be recovered, if the applicant was allowed to work in the said post.

VIII. With the above directions, the OAs are disposed of, with no order as to costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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