

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

OA No.290/00296/2017

**Pronounced on : 28.10.2020
(Reserved on : 16.09.2020)**

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**CORAM: HON'BLE MRS. JASMINE AHMED, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

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Mahavir Kumar Jain S/o Sh. Prem Chand Jain, aged about 57 years, R/o 1-D-27 Pawnpuri Colony, Bikaner. Presently working on the post of Technical Officer (Sr. Computer) in the office of Director ICAR, CIAH, Bikaner, Rajasthan.

.....Applicant

By Advocate: Mr. S.K. Malik, present, through VC.

Versus

1. The Indian Council of Agricultural Research through its Secretary Krishi Bhawan, New Delhi.
2. Deputy Director General (Hort Sci.) Horticultural, Science Division Krishi Anusandhan Bhavan II, Indian Council of Agricultural Research, Pusa Campus, New Delhi-12.
3. The Under Secretary Indian Council of Agricultural Research Krishi Anusandhan Bhavan II, Pusa, New Delhi-12.

4. The Director Indian Council of Agricultural Research, Central Institute for Arid Horticultural, Bikaner, Rajasthan.

.....Respondents

By Advocate: Mr. Rajesh Bhati, counsel for the respondents, present through VC.

ORDER

Per Hon'ble Mrs. Jasmine Ahmed, Member (J)

The applicant has filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- i) By an appropriate writ order or direction impugned order dated 05.07.2017 at Annx. A/1, and impugned order dated 27-02-15 at Annx. A/2 be declared illegal and be quashed and set aside.
- ii) By an order or direction respondents may be directed to treat the post of Grade T-II-3 category II held by the applicant w.e.f. 01-01-95 as legal and valid with all consequential benefits and further direct the respondents to consider the case of applicant for further promotion to the post of T-6 (Sr. Technical Officer) and T-7 (Assistant Chief Technical Officer) from the due date as has been done in the case of similarly situated person Sh. M.R. Solanki along with all consequential benefits.
- iii) Exemplary cost be imposed on the respondents for causing undue harassment to the applicant.
- iv) Any other relief which is found just and proper in the facts and circumstances of the case may be passed in favour of the applicant in the interest of justice."

2. Facts having not being seriously disputed, the same avoids debate. The applicant with the qualification of B.Com with statistics as one of the (optional) subjects sought and got appointment to the post of T-2 (Lab Technician-Senior Computer) as early as in the year 1985. Successfully, he claimed in the ladder of hierarchy at every five years as per the Rules, he having fulfilled the requisite conditions for promotion. Thus, he was promoted to the post of T-I-3 in July, 1991, to T-II-3 in January 1995, to T-4 in January 2000 and to T-5 with pay scale of Rs.5500-9000 in January, 2005. The next promotion is from T-5 to T-6 for which certain pre-requisites are prescribed. The methods are available for promotion to the said post - after five years service as T-5 in case the requisite qualifications are provided for and alternatively after 10 years in the absence of the said qualification. As by 2010 the applicant had completed five years service in T-5 category clarification was sought by the respondent No.4 from the Deputy Secretary, ICAR some times in 2011 (08.12.2011), in response to which, he was asked to furnish information about the qualification and the functional responsibilities performed by the applicant in that

post. Unfortunately, the records were not available with the respondents, it was then the applicant who furnished the details of his qualifications which was communicated to the ICAR. The applicant was informed in 2013 that his qualifications i.e. B.Com is not relevant to the recruitment of technical employees. The concerned advertisement No.01/1984 and the T.S.R. were then send to the ICAR when the ICAR questioned as to how the applicant could be accommodated against a reserved post. The fourth respondent then clarified that the appointment of the applicant is against Point No.42, which pertains to General Category. That clarification being over, the issue of basic qualification for technical employees remained to be addressed. The applicant clarified that he has the requisite subjects in his graduation and there is no exclusive degree in Economics/Statistics/Mathematics and the fourth respondent, who is the Appointing Authority accepted the same and thus recommended the case of the applicant for promotion to T-6. This was not agreed by the ICAR, which had passed the impugned order for processing the case of the applicant as on 01.09.1995, i.e. when he was promoted from the post of

Senior Computer to T-I-3. It is on the interim order that the applicant continues in the present post of T-5.

3. The respondents in their counter have emphasized upon the qualification factors for technical posts. The following are their contentions:-

(a) As per the advertisement vide notification No.01/84, one of these alternative qualifications for the post of T-2 (Lab Technician-Sr. Computer) is intermediate/equivalent qualification in the Economics/Statistics/Mathematics. Admittedly, the applicant did not have this qualification. His qualification is B.Com with optional subjects of Costing and Quantitative methods and compulsory subjects of Accountancy and Statistics, Economic Administration, Financial Management & Business Administration. And, it is always the optional subjects i.e. recognized. As such, the applicant cannot be said to have the requisite qualification for appointment to the post of T-2. His appointment in the post is thus questionable.

(b) As regards further promotion which had been given to him, the same was based on requirement of five years' experience as T-2 which the applicant was possessing (albeit, his first appointment was questionable).

(c) For T-II-3, which is a category-II post for direct recruitment, "3 year's Diploma/Bachelor's Degree/Equivalent Qualification in the relevant field" is a sine qua non and 'relevant field' for technical post being Economics/Statistics/Mathematics which should be optional in Graduation, whereas the applicant does not have any of these subjects as optional subjects. As regards category-III post, the applicant needs a degree in the relevant field of Economics/Statistics/Mathematics, which the applicant does not possess. However, in view of the fact that he is a matriculate plus, and assuming without accepting that his initial appointment is not questionable, though he could not fulfil the qualifications for T-6 after five

years of his service as T-5, he would qualify for T-6 only after 10 years of his service in the feeder post.

(d) It is wrong to contend that there is no exclusive degree for economics, as even by the reference given by the applicant, one Mr. M.R. Solanki has degree in Economics. In any event, prescriptions of Technical Service Rules have not been followed in the case of the applicant and as such the impugned order is fully justified.

4. Counsel for the parties advanced their arguments on the lines and in consonance with their pleadings.

5. Arguments were heard and documents perused. The fact that the applicant is a Graduate (B.Com) is not in dispute. The said degree with subjects like Economic Administration, Financial Management & Business Administrative fills the bill for meeting the qualification requirements for appointment as T-2 (Lab Technician-Sr. Computer). Again, another question arises as to whether the applicant could be considered for promotion to T-6 grade on completion of five years or 10 years.

6. The respondents while selecting the applicant as T-2 (Lab Technician-Sr. Computer) were fully aware of the degree possessed by the applicant. The qualification for the said post has spelt out in the notification includes intermediate/equivalent qualifications in Economics/Statistics/Mathematics, for the post of T-2. The intermediate course is broadly classified as Arts or Science without any intermediate divisions such as Intermediate (Commerce), Intermediate (Economics) and the like. The standard of the subjects taught obviously would be lower than that for higher degree course. In so far as graduation is concerned, there is one elective subject and certain other subsidiary or ancillary subjects. The allied subjects in general have the standard higher than the subject in the intermediate courses. An intermediate course with certain subjects could be equated with the same subjects as ancillary subjects in the Graduation. The term "equivalent" appearing in the qualification requirements has to be thus interpreted. But then the question would be who is competent to decide such equivalent qualification? Certainly the Courts cannot, but the Department could. It has been held in the case of *O.P. Lather*

vs. Satish Kumar Kakkar 2001 3 SCC 110 wherein, the Apex Court has held as under:-

"There is nothing wrong in the appointing authority issuing a clarification as to what would be the equivalent qualification for the purpose of appointment."

In the instant case, vide Annexure-A/5 order dated 23.12.1985 the appointing authority i.e. the Director had been pleased to appoint the applicant to the temporary post of Lab Technician grade T-2 (Senior Computer). A copy of the said order has been addressed to the Audit and Accounts Section as well. Audit Section, in all fairness, would have ascertained the eligibility of the applicant for appointment, while Accounts Section dealt with the pay and other aspects. Again, the Assessment Committee considered the merit promotion to the next higher grade of technical service as T-3 w.e.f. 01.07.1991 vide Annexure-A/6 order dated 01.01.1992. Again vide Annexure-A/7 Office Order dated 27th June 1995, the Director (Appointing Authority) while promoting the applicant in the grade of T-II-3 category, it has been certified that the applicant has been in possession of the qualifications prescribed for entry to category-II by direct

recruitment. Thus occasions were many when the qualifications of the applicant had been verified and ascertained.

If, having ensured that the applicant thus possess the requisite qualifications for entry grade which had been verified on various subsequent occasions, after nearly a score and 7 years, if the authority turn around and locates the so called lacuna of the recruitment qualifications and try to push the applicant back to the position as on 01.01.1995, the act on the part of the respondents cannot be appreciated.

7. Not that the applicant did not possess any qualification in the related subjects viz. Economics. His score subjects admittedly, in the Graduation being Economics Administration & Financial Management should equate the qualification of intermediate course in Economics. That could at least in fact and circumstances of the case be taken as equivalent qualification especially when the Appointing Authority had approved the initial appointment and given further promotions as narrated above. In an almost identical situation, but in respect of admission to Engineering Course,

the Apex Court had to examine the case of "Equivalent" qualification in a batch matter captioned *Rajendra Parsad Mathur vs. Karnataka University* 1986 Supl. SCC 740. It has been held therein as under:-

8. "We accordingly endorse the view taken by the learned Judge and affirmed by the Division Bench of the High Court. But the question still remains whether we should allow the appellants to continue their studies in the respective Engineering Colleges in which they were admitted. It was strenuously pressed upon us on behalf of the appellants that under the orders initially of the learned Judge and thereafter of this Court they have been pursuing their course of study in the respective Engineering Colleges and their admissions should not now be disturbed because if they are not thrown out after a period of almost four years since their admission their whole future will be blighted. Now it is true that the appellants were not eligible for admission to the Engineering Degree Course and they had no legitimate claim to such admission. But it must be noted that the blame for their wrongful admission must lie more upon the Engineering Colleges which granted admission than upon the appellants. It is quite possible that the appellants did not know that neither the Higher Secondary Education of the Secondary Education Board, Rajasthan nor the first year B.Sc. Examination of the Rajasthan and Udaipur

Universities was recognised as equivalent to the Pre-University Examination of the Pre-University Education Board, Bangalore. The appellants being young students from Rajasthan might have presumed that since they had passed the first year B.Sc. Examination of the Rajasthan or Udaipur University or in any event the Higher Secondary Examination of the Secondary Education Board, Rajasthan they were eligible for admission. The fault lies with the Engineering Colleges which admitted the appellants because the Principals of these Engineering Colleges must have known that the appellants were not eligible for admission and yet for the sake of capitation fee in some of the cases they granted admission to the appellants. We do not see why the appellants should suffer for the sins of the managements of these Engineering Colleges. We would therefore, notwithstanding the view taken by us in this Judgment allow the appellants to continue their studies in the respective Engineering Colleges in which they were granted admission.” (Emphasis supplied)

8. In the instant case too, it is the fault of the respondents as in the above case. It is settled law that no one could be permitted to en-cash his own mistake as in support of the same, following decisions of the Apex Court could usefully referred to :-

(a) *A.K. Lakshmipathy vs. Rai Saheb Pannalal H. Lahoti Charitable Trust & Ors.* (2010) 1 SCC 287, "They cannot be allowed to take advantage of their own mistake and conveniently pass the blame to the respondents."

(b) *Rekha Mukherjee vs. Ashish Kumar Das* (2005)3 SCC 427: "The respondents herein cannot take advantage of their own mistakes."

9. Had the respondents waken up at the appropriate time i.e. immediately on the appointment of the applicant or soon thereafter, the applicant would not have a case. And, he would have, if dislodged from the post, secured appointment elsewhere and would have claimed in the ladder of promotion as per the hierarchy. This case deserves to be allowed to the extent that the case cannot be reopened w.e.f. 01.01.1995 in view of the following grounds as well:-

a) It is by now 35 years since the applicant was initially appointed and the proposal of the respondents is to push the applicant back to his position prior to 01.01.1995 on the alleged ground of lack of

qualifications, that too when on various occasions in the past at the time of initial appointment and at the time of every promotion, they had occasioned to verify about the requisite qualifications.

b) During these 35 years, the fact that the applicant was not overlooked for promotion and had earned by dint of his merit goes to prove that he has been performing his duties efficiently.

c) Absence of any proceedings against the applicant confirms the fact that from the point of view of conduct also he proved his worth.

d) In fact when records were not available, it is the applicant who volunteered to produce the advertisement and also informed as to his qualifications, which confirms his bona fide nature. Had the applicant kept silent and the records were not traceable with the respondents, the respondents would have allowed the matter to cool.

In view of the above, the impugned orders are to be quashed and set aside, which we order.

10. The applicant has prayed for consideration for promotion from T-5 to T-6 as in the case of one Mr M.R. Solanki. The respondent No. 4 also has stated that since the applicant has now at his credit a post graduate degree in Commerce, he may be considered for promotion from T-5 to T-6. The post of T-6 falls under category III for which the qualification requirement is different, as given in para 4.5 of the reply filed on behalf of the respondents. The term "three years' Diploma/Bachelors Degree in relevant field" is specific.

11. The relevant field is Economics/Statistics/Mathematics. The applicant does not possess a degree in any of the above subject. His post graduation degree in Commerce cannot be equated with the required qualifications, unlike the case of Mr Solanki, who has at his credit the qualification of B.A. (Economics) which fulfils the requirement of Category III. For those who do not fulfil the qualification, five years' additional experience in T-5 has been provided for. Thus, the applicant could be considered for promotion to T-6 on completion of 10

years' of service in T-5, which falls in 2015. Hence, it is declared that the applicant has to be considered for promotion in T-6 w.e.f. 2015, subject to the conditions of merit, if any prescribed.

12. As the applicant is due for superannuation by the end of October, 2020, the respondents shall take expeditious action in considering the case of the applicant for promotion to T-6 and the time limit of 03 months is therefore, calendared for this purpose. Meanwhile, action be initiated in regard to pension and other terminal benefits by getting from the applicant, necessary forms with kindred documents, such as joint photographs, finger prints, details of bank account etc., and either his pension be worked out taking into account the last pay drawn as of date in which event, in the eventuality of the applicant been promoted to T-6, his pay be revised w.e.f. the relevant date of promotion in 2015, arrears of pay disbursed and pension and other terminal benefits fixed on the basis of the last pay drawn and the difference in pension be worked out and credited to the applicant's pension account.

13. Accordingly, OA is allowed with no order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(JASMINE AHMED)
MEMBER (J)

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