

CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU

Hearing through video conferencing

T.A. No. 61/298/2020

Order reserved on 05.02.2021
Order pronounced on 12.02.2021

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. ANAND MATHUR, MEMBER (A)

Rahul Sharma, aged 36 years, S/o Shri Ashok Kumar Sharma, R/o W. No. 1
Nagri, District Kathua.

.....Applicant

(Advocate: Mr. Anil Sethi)

Versus

1. State of Jammu and Kashmir, Through Commissioner-cum-Secretary to Government, Industries & Commerce Department, Civil Secretariat, Jammu.
2. J&K Services Selection Board, Sehkari Bhawan, Panama Chowk, Jammu.
3. Director, Department of Handloom Udhog Bhawan, Bahu Plaza, Jammu.

.....Respondents

(Advocate: Mr. Amit Gupta, Additional Advocate General and Ms. Monica Kohli)

(ORDER)

Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member-J

The present TA has been filed by the applicant seeking the following reliefs:

- i. Writ of Certiorari seeking quashment of the Government Order No. 52-IND of 2019 dated 12-03-2019.
- ii. Writ of Mandamus commanding the respondents to consider, select and appoint the petitioner on the post of Head Weaver as advertised vide advertisement notice No. 3/2012 dated 28.12.2012 in view of his merit obtained by him in the selection process.
- iii. Writ of Mandamus commanding the respondents to accord all consequential benefits to the petitioner for considering him being selected and appointed in terms of advertisement notice No. 3/2012 dated 28.12.2012.
- iv. Such other relief which this Hon'ble Court may deem fit and proper in the given circumstances of the case may kindly be passed in favour of the petitioner as against the respondents."

2. Case of the applicant is that he had applied for the post of Head-Weaver pursuant to advertisement notification no. 3/2012 and the minimum qualification prescribed for the said post was matriculate with ITI in Weaving. It is the case of the applicant that SWP No. 1580/2013 was filed by Surinder Kumar wherein the Director Handloom took the position that the qualification for the post of Head-Weaver was Matric with ITI in Weaving. It is the further case of the applicant that none of the candidates including respondent Surinder Kumar possess the ITI qualification and that the candidates were possessing three years diploma in handloom. However, the applicant is at a better position as compared to other candidates since he possesses the Diploma in Textile Technology (Spinning). Despite none of the candidates possessing ITI in Weaving, the respondents prepared a selection list of candidates for the post Head-Weaver vide order dated 26.04.2017. It was found by the respondents, as per, the website of Punjab State of Technical Education and Industrial Training that the syllabus for both diplomas i.e., Textile Technology (Weaving/Spinning) is identical. It is the case of the applicant that his representation for the appointment to the post of Head-Weaver on the basis of possessing diploma in Textile Technology (Spinning) from Punjab Institute of Textile Technology, Amritsar was rejected vide impugned order dated 12.03.2019. Applicant has challenged the impugned order rejecting his candidature on the ground that the diploma possessed by the applicant in Textile Technology (Spinning) is superior than ITI in Weaving and respondents overlooked the facts that the syllabus for both Diplomas i.e., Textile Technology (Weaving/Spinning) are identical.

3. In the counter affidavit filed by the respondent Surinder Kumar who is in the waiting list in the select list of candidates for post of Head Weaver, it has been averred that respondent had filed a RTI before the Punjab State Board of Technical Education and Industrial Training for confirming the fact that whether the syllabus of diploma in Textile Technology (Spinning) is similar than that of Textile Technology (Weaving) and in response to RTI application, Punjab State Board of Technical Education clearly revealed the fact that syllabus of diploma in Textile (Spinning) is different from the Textile Tech. (Weaving) and the same is also available in official website of Punjab State Technical Education & Industrial Training Board i.e., www.punjabteched.com. It has been further averred that the claim of the applicant that he possesses diploma in Textile Technician (Spinning) which is a much higher

and advanced than the syllabus of ITI in Weaving has no relevance as the post so advertised was for Head Weaver and not for any other purpose and that the diploma in textile spinning from Punjab State Board of Tech. Education & Industrial Training is not in conformity with prescribed qualification for post of Head Weaver i.e. matric with ITI in Weaving. It is further submitted that the Diploma in Handloom/Weaving from Indian Institute of Handloom Technology under Ministry of Textile, Government of India has better recognition than any other diploma.

4. Whereas the respondent-Handloom Development Department no. 1 and 3 in their counter affidavit aver that they obtained advice of subject expert/staff member of the Department who was of the opinion that the Diploma in Textile Technology (Spinning) from Punjab Institute of Textile Technology, Amritsar does not suffice the requirement for the post of Head Weaver because the syllabus for both the diploma courses i.e., for Diploma in Textile Technology (Weaving) and (Spinning) are different. Further the answering respondent No. 3 while considering the case of the applicant issued the order impugned bearing Govt. Order No. 52-IND of 2019 dated 12-3-2019, where under the claim of the applicant admittedly possessing Diploma in Textile Technology (Spinning) from Punjab Institute of Textile Technology, Amritsar for selection/appointment against Head Weaver in the Industries and Commerce Department was found without any merit, moreso in view of the reasons mentioned in the order impugned.

5. It is the stand of the applicant that he possesses diploma in Textile Technology (Spinning) issued by Punjab Institute of Textile Technology and it is his case that the syllabus for both the diplomas i.e., Textile Technology (Weaving/Spinning) are same as is apparent from letter dated 27.02.2018 issued by Under Secretary to Government Industries and Commerce Department and therefore, the impugned order rejecting his diploma for appointment to the post of Head Weaver is based on arbitrary reasons.

6. It would be pertinent to note the relevant portion of the impugned order dated 12.03.2019 rejecting the candidature of the applicant as follows:-

“AND whereas, the Director Handloom Development Department, J&K vide letter bearing No. DHD/Estt./3349/167 dated 08.01.2019 clarified that the ‘Head Weaver’ imparts training Handloom Weaving to the trainees enrolled in the Handloom Weaving Training Centres as per the prescribed syllabus. The prescribed qualification for the post of Head Weaver is Matric with ITI certificate in weaving in terms of the J&K Handloom Development (Subordinate) Service Recruitment Rules, 1993 and, therefore, in terms of the opinion of a subject expert i.e., the Assistant Director Handloom Jammu obtained vide letter dated 11.01.2019, the Diploma in Handloom Technology from IIHT Varanasi suffices the need for the post of Head Weaver whereas the Diploma in Textile Technology (Spinning) issued by the Punjab Institute of Technology, Amritsar is not meant for weaving trade and does not correspond with the Handloom Weaving.

AND whereas, Mr. Rahul Sharma, in the meantime, represented reiterating his claim against the post of Head Weaver on the basis of a certificate issued by the Principal, Punjab Institute of Textile Technology, Amritsar certifying that the contents of syllabus of ITI in Weaving are covered in Textile Technology Spinning and hence the Diploma in Textile Technology (Spinning) is considered on par with I.T.I. in Weaving for the purpose of recruitment;

AND whereas, Mr. Surinder Kumar furnished a communication from the Public Information Officer, Punjab State Board of Technical Education and Industrial Training, Chandigarh with his representation dated 14.09.2018. The Public Information Officer, Punjab State Board of Technical Education and Industrial Training, Chandigarh vide communication bearing No. PSBTE/IT/RTI/18/2784 dated 08.08.2018 had informed that the syllabus of Diploma in Textile Technology (Spinning) is different than that of Textile Technology (Weaving);

AND whereas, the Hon’ble High Court has passed directions dated 11.02.2019 in SWP No. 201/2019 titled Rahul Sharma Vs State of J&K and Ors, the operative part of which reads as under:-

“Meanwhile respondents are directed to consider and decide the representation of the petitioners within a period of four weeks from

today and place the order of consideration before the Court on the next date of hearing.”

And whereas, the matter has been examined viz-viz- the representations furnished by Mr. Rahul Sharma and Mr. Surinder Kumar and it has been found that on the basis of the clarification provided by the Director Handloom Development Department, J&K and the information furnished by the Public Information Officer of the Punjab State Board of Technical Education and Industrial Training, Chandigarh, Mr. Rahul Sharma possessing Diploma in Textile Technology (Spinning) from Punjab Institute of Textile Technology, Amritsar is not eligible for the post of Head Weaver as per the requirement of duties attached with the post of Head Weaver.

Now, therefore, in view of the above position, the claim of Mr. Rahul Sharma possessing Diploma in Textile Technology (Spinning) from Punjab Institute of Textile Technology, Amritsar for selection/appointment against the post of Head Weaver in the Handloom Development Department is found devoid of merit.”

7. Undoubtedly, the letter dated 27.02.2018 (Annexure No. 5) does mention that the syllabus for both the diplomas in weaving/spinning are the same. However, the respondents have placed on record the information received from Punjab State Technical Education and Industrial Training, Chandigarh mentioning that the syllabus of diploma in Textile Technology (Spinning) is different from that of Textile Technology (Weaving) and is available on official website of Board. The letter received from the Board is to be preferred to the communication dated 27.02.2018 (Annexure No. 5). This apart the respondents have taken the opinion of the subject expert i.e., Assistant Director Handloom that Diploma in Textile Technology (Spinning) obtained by applicant does not suffice for offering him the appointment of Head Weaver and which opinion has been accepted by the Director, Handloom Development Department.

8. Even so, respondents have assessed the merit of the diploma possessed by the applicant and taken the decision based on hosts of factors to hold that the diploma possessed by applicant does not make him eligible for appointment to the post of Head Weaver.

9. It is a settled law that the essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe any additional or desirable qualifications. It is the employer who is best suited to decide requirements a candidate must possess according to the need of the employer and the nature of work. The Court cannot lay down the conditions of eligibility or qualification. It is settled law that questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the Tribunal 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 appropriate authority for a decision thereupon. 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.

10. It is also a settled principle of law that the scope of review of such decision as taken by the respondents in the present case by the Tribunal is limited. Looking to the facts of the case, we are of the opinion that in the present case, the tribunal cannot sit as an Appellate Authority to examine the decision of the respondents like the court of appeal. Even so, looking to the tenor of the impugned order, we find the impugned order is a reasoned and speaking order and not arbitrary or suffer from any illegality or malice.

11. In view of the facts of the case and the legal principles, we do not find any merit in this T.A., it is accordingly dismissed. In the circumstances of the case, parties are left to bear their own costs.

(ANAND MATHUR)
MEMBER (A)

(RAKESH SAGAR JAIN)
MEMBER (J)

Arun/-