

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1635/90

New Delhi, this 8th day of February, 1995

Hon'ble Mr. Justice S.C.Mathur, Chairman  
Hon'ble Mr. P.T.Thiruvengadam, Member(A)

Shri Surinder Singh,  
S/o Shri Balbir Singh,  
R/o 9, Ashoka Park Extension,  
DELHI - 110 006.

..... Applicant

(By Shri G.D.GUPTA, Advocate)

Vs.

1. Delhi Administration  
through its Chief Secretary  
5, Sham Nath Marg,  
DELHI - 110 054

2. The Director of Education  
Delhi Administration  
Old Secretariat  
DELHI - 110 054.

.... Respondents

(By Ms. Ashoka Jain, Advocate)

O R D E R (Oral)

Hon'ble Mr. Justice S.C.Mathur, Chairman

This Original Application is directed against order reverting applicant from the post of Laboratory Assistant to the post of Laboratory Cleaner.

2. The applicant was appointed as a Laboratory Cleaner in January, 1979 in the Department of Prevention of Food Adultration under the Delhi Administration. This post is Grade 'D' post. With effect from 10.1.1982, he was made quasi-permanent. Thereafter, by order dated 26.7.1989 he was promoted to the post of Laboratory Assistant. On 7.9.1989, the impugned order of reversion was passed on the ground that he did not possess the requisite academic qualification prescribed for the post.

.....2/-

11

3. The applicant has raised two grounds of challenge. In the first place, it is stated that the applicant was not lacking in academic qualification. It is next stated that discrimination has been practised by the respondents.

4. It is not disputed that the qualification prescribed for the post of Laboratory Assistant was "Matric with Science/Matric with reorientation course in Science". The applicant claims that he had studied science in the Matric Class and appeared also in the subject at the Matric examination and therefore, it cannot be said that he is not Matric with science, even though, in the subject of science, he had not obtained the pass marks. The applicant's Matric pass certificate is on record. It shows that he appeared at the examination conducted by the Board of School Education, Haryana in March, 1973. The subjects at that examination in which the applicant appeared were English, Mathematics, Social Studies, Hindi, Physics & Chemistry and Animal Husbandry. In all the subjects except Physics & Chemistry, the applicant had obtained the pass marks. Although, the marks sheet mentions marks obtained by the applicant in all the Six subjects, it stated that the applicant has passed Matriculation Examination in Five subjects only. Obviously, the Board has not certified him as having passed examination in the science subject also. We are unable to accept the submission of the learned counsel for the applicant that merely appearing at the examination in science will amount to acquiring the qualification of "Matric with Science". Passing the Matric examination with science subject is implicit in the prescribed qualification. Appearing at the examination in science subject cannot be equated with passing the examination in that subject.

.....3/-

5. Learned counsel then submitted that the applicant had worked as a Laboratory Cleaner from 1979 till 1989 and had acquired sufficient proficiency in the work which was of scientific nature and therefore, his experience should be treated as equivalent to reorientation course in science. The prescription of eligibility qualification is the jurisdiction of the administration. The Administration has not chosen to prescribe this experience as equivalent to reorientation course in science. We would be altering the prescribed qualification if we were to accept the submission of the learned counsel. It will also amount to amendment of rules as the qualification has been prescribed in rules framed in exercise of the power conferred by proviso to Article - 309 of the Constitution. This is impermissible.

6. The learned counsel has submitted that the offer of appointment required the appointing authority to verify the educational qualification of the applicant and therefore, when the appointing authority allowed him to join in the post of Laboratory Assistant, it will be deemed that the said authority was satisfied about the possession of the prescribed qualification by the applicant. The offer of appointment dated 26.7.1989 contains the following clause:

"The appointing Authority must verify the educational vocational qualification from the certificate to be produced in original before the issue of the offer of appointment. "Specified educational qualification is Matric with Science or Matric with three month's Orientation Course in Science."

7. It is not disputed on behalf of the respondent that the applicant was allowed to join the post of Laboratory Assistant in pursuance of the offer of appointment. However, such joining cannot alter the position created by the

.....4/-

statutory rule. Possession of qualification is a question of fact. If factually the qualification is not possessed it cannot be possessed by reading a deeming clause in the rule.

8. It was also submitted by the learned counsel for the applicant that the rules conferred power of relaxation and accordingly when the applicant joined on the post of Laboratory Assistant, the authority will be deemed to have exercised the power of relaxation. The power of relaxation is contained in the note below the rules and the same reads as follows:

"Where the administrator is of the opinion that it is necessary or expedient to do so he may by order for reason to be recorded in writing, relax any of the provisions of these rules with respect to any person/class/category of person/post".

9. Under the above provision, relaxation can be granted only by written order containing reasons. Accordingly, there is no scope for drawing inference of relaxation by mere joining of the applicant on the promoted post.

10. Learned counsel for the applicant has cited Dr. I. K. Bhattacharya Vs. U.O.I., OA No. 1363 of 90, decided on 31.8.1994 by a Division Bench of this Tribunal in support of the plea that where relaxation is given to one candidate it should be similarly given to other candidates also, otherwise it will result in violation of article 14 of the constitution.

11. The plea of discrimination is based on the ground that one Brahma Nanda who also did not possess the qualification of Matric with science was appointed Laboratory Assistant and was not reverted from the said post. It is not disputed on behalf of the respondent that Brahma Nanda did not possess the prescribed qualification of Matric with science and was promoted. Today,

*[Handwritten signature]*

.....5/-

(14)

the learned counsel for the respondent has produced before us letter dated 24.1.1995 addressed by the Administrative Officer, Establishment - 4, Directorate of Education, Delhi from which it appears that the said Brahma Nand had been reverted to his parent department w.e.f. 31.7.1991 Accordingly, the charge of discrimination does not survive.

12. In view of the above, the applicant lacks merit and is hereby dismissed.

P. J. D. K.

(P.T. THIRUVENGADAM)

MEMBER (A)

S. C. Mathur  
8.2.95

(S.C. MATHUR)

CHAIRMAN

/RAO/