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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. NO. 1487/92

DECIDED ON 18.12.1992

Vikram Singh

... Applicant

Vs.

Central Provident Fund  
Commissioner

... Respondent

CORAM : THE HON'BLE MR. P. C. JAIN, MEMBER (A)

THE HON'BLE MR. J. P. SHARMA, MEMBER (J)

1. Whether to be referred to the Reporter ? Yes
2. Whether reporters of local newspapers may be allowed to see the Judgment ? Yes
3. Whether to be circulated to other Benches of the Tribunal ? No

( J. P. Sharma )  
Member (J)

( P. C. Jain )  
Member (A)

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THE HON'BLE MR. J. P. SHARMA, MEMBER (J)

Shri S. C. Luthra, Counsel for Applicant

Shri K. L. Sharma, Counsel for Respondent

JUDGMENT

Hon'ble Shri P. C. Jain, Member (A) —

In this O.A. under section 19 of the Administrative Tribunals Act, 1985 the applicant who is working as Peon in the office of Central Provident Fund Commissioner, New Delhi has assailed memorandum dated 18.5.1992 (Annexure A-1) by which the offer of appointment to the post of Lower Division Clerk (LDC) made to him vide letter dated 31.10.1990 was cancelled and withdrawn. He has prayed for quashing of the aforesaid impugned memorandum and for a direction to the respondents to appoint him in terms of the offer dated 31.10.1990 (Annexure A-6) and further that the applicant should be deemed to have been appointed w.e.f. 12.11.1990, the date on which he reported for duty vide Annexure A-7.

2. The respondents have contested the O.A. by filing their reply. The applicant did not file any rejoinder. As the pleadings in this case were complete, it was decided with the consent of the parties to finally dispose of this O.A. at the admission stage itself. Accordingly, we have perused the material on record and also heard the learned counsel for the parties.

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3. Briefly stated, the relevant facts are that the applicant is physically handicapped with 40 per cent disability and he joined the Central Office of the Employees' Provident Fund Organisation as Peon ( Group 'D' ) on regular basis on 2.12.1986. He was not matriculate on the date of his appointment as Peon. By his application dated 19.1.1987 he informed the respondents that in order to improve his educational qualification, he intended to prepare and appear in the High School Examination (matric) conducted by the Board of Adult Education and Training and that permission for the same be accorded. He was informed vide memo dated 29.1.1987 that the respondents had no objection to his taking the high school examination provided the same did not in any way affect the applicant's efficiency in the official work. The applicant acquired his certificate (Annexure A-3) of having passed Ucha Madhyamik Examination (Matriculation standard examination, 1989) from the Board of Adult Education and Training. This certificate is dated 26.12.1989. A photo copy of the same was sent by him to the respondents vide his letter dated 11.7.1989 (Annexure A-4) for purposes of record. For the post of LDC (Group 'C') in the Central Office of the Employees' Provident Fund Organisation the relevant recruitment rules prescribe for 65% through direct recruitment and 35% by departmental promotion quota, the minimum educational qualification being as under :-

- (1) Matriculation or equivalent;
- (2) Typing speed at the rate of 30 w.p.m. in English or 25 w.p.m. in Hindi.

The applicant applied for the direct recruitment quota post and for the recruitment test held for that purpose. On the basis of the matriculation standard examination certificate

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issued by the Board of Adult Education and Training, New Delhi, he was allowed to appear in the said test and declared successful in the O.P.H. quota. Further, he was exempted from typing test by relaxing the recruitment rules in terms of Government of India O.M. No. 15/3/61-Eatt.(D) dated 23.12.1961 under which physically handicapped persons who are otherwise qualified to hold clerical posts and who are certified as being unable to type, can be exempted from typing test. He was given offer of appointment vide office order dated 31.10.1990 (Annexure A-6) and he was directed to produce medical certificate which he did on 12.11.1990 for joining his duties as LDC. He was not allowed to join and finally the offer of appointment was cancelled and withdrawn. Hence, this O.A.

4. The question which falls for determination in this case is whether the certificate issued by the Board of Adult Education and Training, on the facts and in the circumstances of the case, can be accepted as fulfilling the prescribed qualification of matriculation or equivalent in the recruitment rules for the post of LDC. The main contention of the applicant is that based on identical certificate, many persons have been appointed and these persons are continuing in their appointments, and that, therefore, the applicant cannot be discriminated against. The other contention of the applicant is that his case is fully covered by judgments in (1) OA-557/86 between Shri Kailash Chand vs. Union of India & Ors. decided on 20.12.1988 (year 1989 written by the applicant is obviously incorrect); (2) OA Nos. 2654, 2652, 2656 and 2660, all of 1990 between Shri Mehtab Singh & 3 Ors. vs. Union of India through Secretary, Ministry of Health and

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Family Welfare, decided by a common judgment dated 22.2.1991; and (3) DA-1434/91 between Shri Sunil & Anr. vs. Union of India & Anr. decided on 1.11.1991. The stand taken by the respondents is that the certificate from the Board of Adult Education and Training, New Delhi for the examination mentioned therein is not recognised by the Ministry of Education, Government of India as equivalent to matriculation for any purpose either by the Ministry of Human Resources Development (Department of Education), Government of India or by Delhi Administration as is clear from letter dated 18.8.1989 (Annexure-I to the counter reply). It is also contended that the Department of Education under the Ministry of Human Resources Development is the sole authority to decide whether any institution conducting an examination as also the examinations conducted by such institution is recognised for any purpose and whether such an examination is equivalent to any qualification prescribed by the Central Government for its purpose. It is also contended that it has been confirmed by the Ministry of Human Resources Development, Department of Education vide their letter dated 8.10.1992 (Annexure-III to the Counter reply) that the certificate issued by the Board of Adult Education is neither recognised nor is equivalent to matriculation and accordingly, the applicant was not allowed to join and finally the offer of appointment given to him was cancelled and withdrawn.

5. We have given our careful consideration to the rival contentions of the parties. It is not in dispute that the educational qualification prescribed for appointment to the post of LDC is matriculation or equivalent. Providing of this qualification is also not challenged in this OA. The

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certificate issued to the applicant by the Board of Adult Education and Training (copy at Annexure A-3) itself shows that the applicant passed the Ucha Madhyamik Examination which is stated in the certificate itself to be "Matriculation Standard Examination, 1989". In other words, this certificate does not itself show that the applicant passed the matriculation examination; it only stated that the examination passed by the applicant is of matriculation standard. It has not been shown by the applicant on the basis of any expert advice of the competent academic authority that this examination is equivalent to matriculation. The Department of Education has clearly stated in its letter dated 8.10.1992 (Annexure-III to the counter reply), addressed to the Employees' Provident Fund Organisation, Central Office, New Delhi that the certificate awarded by the Board of Adult Education and Training is not recognised as an equivalent of matriculation examination for any purpose whatsoever. Earlier in the OM dated 18.8.1989 (Annexure-I to the counter reply) it is stated that the Society registered under the Societies Registration Act, Delhi by the name of Board of Adult Education and Training (Pradh Shiksha Sansthan), New Delhi are styling themselves as recognised Board for conducting the Uchhatar Madhyamik Examination (matriculation standard examination) and are awarding certificates equivalent to Class-X of the Secondary Board of Education, Delhi, and that the said Board and the certificates issued by it are not recognised for any purpose whatsoever either by the Ministry of Human Resources Development (Department of Education) or Delhi Administration. The Ministries and Departments of Government of India were, therefore, advised not to give any cognisance/recognition to the certificates issued by the said Board for purposes of initial appointment in the

Government of India and for further promotion of the candidates holding certificates of the said Board. In the counter reply filed by the respondents it is stated that the Employees' Provident Fund Organisation is a statutory body administered by a Central Board of Trustees constituted under the Employees' Provident Fund Act, 1952, and that the Organisation has various categories of staff working in it which are categorised on a basis similar to that of the Central Government staff. It is further stated that according to section 5D(7)(a) of the EPF Act, 1952 the method of recruitment, salary and allowances, discipline and other conditions of service of employees of the Central Board of Trustees is to be such as may be specified by it in accordance with the rules and orders applicable to the employees of Central Government drawing corresponding scale of pay. These averments have not been rebutted by the applicant. Thus, it is clear that the instructions issued by the Government of India in 1989 and further clarified in 1992 as already adverted to above, if followed by the respondents, they cannot be faulted. If the qualification prescribed in the statutory recruitment rules is matriculation or equivalent, then the respondents, on the basis of advice from competent authorities, can certainly decide whether a person who is to be appointed to a post require the above qualifications, fulfills these qualifications or not. The mere fact that the applicant was allowed to acquire a higher qualification from the Board of Adult Education & Training and was also allowed on the basis of the certificate issued by it to take the examination, cannot in law, prevent the respondents from refusing to give appointment if he is not otherwise qualified.

6. We may now take up the judgments relied upon by the applicant in support of his case. In all the three judgments cited by the applicant which have already been referred to above, the applicants therein had already been appointed. In OA-557/86 (supra) the applicant was engaged as a daily wage labourer in Dr. Ram Manohar Lohia Hospital, New Delhi w.e.f. 13.5.1982 and was later on appointed to the temporary post of a Kahar w.e.f. 30.12.1985. His services were terminated by an order dated 12.7.1986 and the Bench while quashing the order of termination had observed as below :-

"As the applicant had been working under the respondents since 1982 as a labourer and later on as Kahar, he has . . . . . acquired the status of a temporary Government servant. Even under the terms and conditions of offer of appointment the applicant was entitled to be given one month notice for termination of his services."

It was also held that the applicant was not asked to produce certificate recognised by any particular agency and, therefore, the respondents were precluded from re-examining the validity of such a certificate which the applicant had furnished at the time of his appointment. In OA-2654/90 with a batch of three other OAs decided on 22.2.1991 (supra) the applicants had worked as LDCs from 1981 to 16.10.1989 when they were reverted to the substantive posts of Peon on the ground that it had now been found that the secondary school examination certificate awarded by the Board of Adult Education and Training is not recognised by the Board of Secondary Education, Delhi and as such, they did not possess educational qualifications. The Bench noticed that the circular issued by the respondents on 17.2.1982 in connection with the consideration for appointment of Group 'D' employees working

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on regular basis against 5% vacancies in the grade of LDCs did not stipulate that the matriculation certificate should have been issued by a recognised institution and that passing of an examination equivalent to matriculation was sufficient. The Bench further observed that "There is nothing on record to indicate that the certificate issued by the Board of Adult Education & Training is not equivalent to Matriculation certificate." In the concluding part of the judgment, it is stated as below :-

"14. Having promoted the applicants as LDCs after the respondents accepted the certificate given by the Board of Adult Education & Training without any reservations or preconditions, and having allowed the applicants to work as LDCs for about 9 years, neither law nor equity would justify their reversion on the basis of a decision taken by the respondents in 1989 that the certificates issued by the Board of Adult Education & Training are not recognised for the purpose of employment under the Central Government. The O.M. dated 1.6.1989 and 18.8.1989 mentioned above refer only to the non-recognition of certificates issued by the Board of Adult Education & Training and do not state whether the certificate issued by the Said Board are, or are not equivalent to Matriculation Examination. We, therefore, set aside, and quash the impugned order of reversion dated 1.10.1990..."

It is thus clear that in these cases the relief was granted primarily because the applicants had worked on the post of LDC for about 9 years and that nothing was on record to show that the certificate issued by the Board of Adult Education & Training was not equivalent to matriculation examination.

In the case before us, in Annexure-III to the counter reply a clear advice of the Department of Education, Ministry of Human Resources Development has been brought on record.

In OA-1434/91 (supra) the applicants had joined their post on 7.12.1990 and 9.1.1991 respectively but their appointment

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letters were cancelled by orders passed on 8.2.1991. In that case also the appointments had already come into effect while in the case before us there was only an offer of appointment and the applicant was never allowed to join pending verification of his qualification. In the cited case the judgments in OA-557/86 and in OAs 2654, 2652, 2656 and 2660 of 1990, already referred to above, have also been referred to and this case was decided on the basis of the cited judgments as a covered case. It was specifically mentioned that there is no positive evidence to show that the certificate issued by the Board of Adult Education and Training is not equivalent to matriculation certificate.

7. From a perusal of all the three cited judgments, it is clear that they are distinguishable on facts and ratio from this case. As already stated above, the applicants in all the three cited cases had already been appointed to the post and had worked in one case for about 9 years, in the other case for about 10 months and in the third case for about 2 to 3 months. In the case before us, the applicant is yet to be appointed. Secondly, in the cited cases the primary ground for allowing the relief was that nothing had been placed on record to show that the certificate issued by the Board of Adult Education and Training was not equivalent to the matriculation certificate. In the case before us there is a positive material on record and which has not been rebutted by the applicant by filing a rejoinder, that the certificate issued by the above Board is not equivalent to the matriculation certificate.

8. Another ground taken by the applicant is that there are persons who have already been regularised/confirmed on the basis of the certificates issued by the above Board and even after

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issuance of the circular in 1989 (Annexure A-8 to the OA). There is no specific averment that any such thing has been done in the office of the Central Provident Fund Commissioner which is a part of a statutory body as distinguished from the Ministries/Departments of the Government of India. Even otherwise the plea of discrimination is not available to the applicant de hors the rules which have a statutory force. This is not the warrant of Article 14 of the Constitution that if anything against the provisions of Statute or statutory rules has been done, the same thing should be done in respect of others. Further, the plea of discrimination would be tenable in case of employees who are similarly placed in all respects. This is not so in the case before us.

9. In the light of the foregoing discussion, we are of the considered view that the OA. is devoid of merit and the same is accordingly dismissed leaving the parties to bear their own costs.

*J. P. Sharma*  
( J. P. Sharma ) (8/12/92)

Member (J)

*( P. C. Jain )*  
( P. C. Jain )  
Member (A)