

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 2044/92

DECIDED ON : 13.01.1993

Surender Singh Mann

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Applicant

Vs.

Union of India & Ors.

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Respondents

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

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

Shri Rajeev Sharma, Counsel for the Applicant.

Shri M. L. Verma, Counsel for the respondents.

J U D G M E N T (ORAL)

Hon'ble Shri P. C. Jain, Member (A) :

In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant who was working as Draftsman Grade-III under respondent No. 4 and who applied for the limited departmental competitive examination for recruitment to the grade of Junior Engineer in the scale of Rs.1400-2300 in the C.P.W.D. scheduled for 10th and 11th October, 1992, is aggrieved by the communication dated 26.6.1991 (Annexure-4) by which his candidature for the examination was cancelled as he did not possess the basic qualification of having a diploma in Engineering. He has prayed for quashing the aforesaid impugned order and for declaration of the results of the examination held in May/June, 1991 after he is considered along with other candidates. It may be pointed out at this stage that the departmental competitive examination was not held in May/June 1991 but was held in October, 1991 and as such the relief prayed for in this respect is obviously incorrect.

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2. The respondents have contested the OA by filing their return to which a rejoinder has also been filed by the applicant. We have perused the material on record and also heard the learned counsel for the parties, and we accordingly proceed to dispose of this case finally at the admission stage itself.

3. It is common ground between the parties that a notice dated 16.7.1991 (Annexure-1) was issued by the Director General of Works, C.P.W.D. inviting applications for about nine posts in the grade of Junior Engineers (Civil) and three vacancies in the grade of Junior Engineers (Electrical). The applications were required to reach the prescribed Superintending Engineer on or before 16.8.1991. The examination was open to the employees either workcharge or regular working in the C.P.W.D. and possessing diploma in Civil/Electrical/Mechanical Engineering from an institute recognised by the Central Government or equivalent thereto or any higher qualification, with five years' continuous service in the C.P.W.D., but there was no age limit. Admittedly, the applicant applied for the above examination alongwith the certificate dated 2.8.1991 (Annexure-2) from Aryabhat Polytechnic, G.T.K. Road, Delhi in which it is certified that the applicant had appeared in the final year examination in Civil Engineering of the four years diploma course (part time) conducted by the Board of Technical Education, Delhi, held in June/July, 1991 and that the result of the candidate was likely to be declared in August, 1991. On receipt of his

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application an objection memo was issued by the respondents on 17.9.1991 pointing out four deficiencies including the one that a certified copy of the prescribed diploma was not enclosed. The applicant wrote thereon in his own hand writing on 24.9.1991 that he has completed columns 1 to 4 of that letter; column 3 being about the non-availability of the certified copy of the diploma. After that, he was issued Roll No. D-17 (Civil) by letter dated 24.9.1991. He accordingly sat in the examination and thereafter the impugned order cancelling his candidature was issued which is the order impugned in this case. Hence this OA.

4. The main contention of the learned counsel for the applicant is that while sending his application he had made it clear by enclosing the appearing certificate from the Polytechnic (Annexure-2) that he had appeared in the final year examination and that the result of which was likely to be declared in August, 1991. As he did not say anywhere in his application that he had passed the diploma course, by issuing the roll number as aforesaid he was extended an assurance that if he passes the examination he would be considered alongwith others for selecting candidates for appointment to the post circulated as per notice above. In this connection, he has also drawn our attention to para 1.2 and para 1.3 of the annexure to the notice dated 16.7.1991. This annexure gives the rules for the limited departmental competitive examination for recruitment to the post in question. Para 1.2 lays down that the decision of the Chief Controller of the

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Examination as to the eligibility or otherwise of the candidate for admission to the examination shall be final. Para 1.3 lays down that no candidate shall be admitted to the examination unless he holds a certificate of admission from the Controller of Examination. By referring to these provisions, it is sought to be argued that when the applicant was issued the roll number the Chief Controller of Examination was satisfied about the eligibility of the applicant to take that examination and in view of the assurance so extended the action of the respondents in cancelling the candidature of the applicant is hit by the doctrine of promissary estoppel. The other contention of the applicant is that one Shri Rakesh Kumar who was similarly placed as the applicant had in earlier years been appointed to the post of Junior Engineer.

5. The case of the respondents, briefly stated, is that as the applicant did not possess the prescribed diploma, he was not eligible to take the examination. It is also stated that in the examination held in June/July, 1991 for the diploma course, the applicant did not pass in all the papers and accordingly, he took the supplementary examination which was held in December/January, 1992 and the final result was declared some time in March, 1992. Thus the learned counsel for the respondents argued that neither on the date for receipt of the application nor on the date on which the limited departmental competitive examination was held, the applicant had passed the prescribed diploma examination and as such he was not eligible.

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6. We have considered the rival contentions of the parties and we have no hesitation in recording that the applicant has not approached the Tribunal with clean hands. On the deficiencies in his application being pointed out to him vide letter dated 17.9.1991, he made a wrong report that he had removed all the four deficiencies which inter alia included the deficiency about non-furnishing of the certified copy of the diploma certificate. It is in fact the assurance extended by the applicant by earlier furnishing the certificate to the effect that he had appeared in the final year examination of the diploma course in June/July, 1991 and later by submitting the aforesaid compliance report in respect of the deficiencies pointed out in his application, that it can be said that he succeeded in procuring the roll number for sitting in the limited departmental competitive examination. If it is a case of being hit by the doctrine of promissory estoppel, it is the applicant's own case which is hit due to his own conduct.

7. As regards the merits of the case, there is no dispute that the applicant passed the diploma course only in March, 1992 while the relevant date for this purpose could at best be the date on which the limited departmental competitive examination was actually held, i.e., in October, 1991, if not the last date prescribed for receipt of applications for sitting in that examination. The mere fact that the applicant had sat in the final year examination in June/July, 1991 may have at best made him eligible to take the examination in

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October, 1991 if he had passed in that examination by that time. Passing of the examination in the diploma course on any date subsequent thereto does not give him any legal right whatsoever for being considered eligible for taking that examination.

8. As regards the plea of discrimination raised by the applicant, we may refer to his averments in para 4.7 of his OA in this regard, which is as below :-

"4.7 That after receiving the said letter, the applicant replied on 20.7.1992. By way of reply the applicant informed that the cancellation of the candidature is illegal, unconstitutional and in violation of principle of natural justice. The application in the reply mentioned identical cases where candidature of the candidates was not only regularised but they were declared successful and at present working as Junior Engineer. The reply dated 20.7.1992 is annexed as Annexure A-5."

It is seen that no particulars at all have been given to establish any plea of discrimination. In the representation at Annexure-5 the applicant has drawn ~~our~~ attention to the limited departmental examination held on 4-5 June, 1990 in which "Shri Rakesh Kumar after giving the departmental examination submitted his diploma in September, 1990 and he was made Junior Engineer." He, therefore, prayed in the representation that seeing the case of Shri Rakesh Kumar he should be included in the examination. In this representation also he has not given full particulars of Shri Rakesh Kumar

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referred to therein nor any information is available as to when the result of the diploma course etc. was declared. As such, it has to be held that the applicant has failed to establish that he is equally placed ^{to} ~~to~~ one Shri Rakesh Kumar and that he has been discriminated against. Accordingly, the plea of discrimination cannot be held to be substantiated.

9. In the light of the foregoing discussion, we see no merit at all in this OA which is accordingly dismissed. We would have been justified in awarding costs against the applicant in this case but in view of the fact that he is a low paid employee, we refrain from doing so, and accordingly, we leave the parties to bear their own costs.

J. P. Sharma
(J. P. Sharma)
Member (J)

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