

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

O.A. No. 2409/93

Date of decision 31 Aug 94
X (13)

HON'BLE SHRI N.V. KRISHNAN, VICE- CHAIRMAN (A)

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri Girja Shanker Dixit,
B 74, Plot No.20,
Group Housing Complex Retreat
Retreat Co-op group Housing Society,
Patparganj,
Delhi-92.

.. Applicant

(By Advocate MS Raman Oberoi)

Versus :

(1) Union of India
through
The Chairman of Rly.
Recruitment Board,
DRM's Office Complex,
Bombay Central-8

(2) Director General (Health)
Indian Railway,
Railway Board,
Rail Bhawan,
New Delhi

.. Respondents

(By Advocate Sh. H.K.Gangwani)

ORDER

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The applicant, being aggrieved that he is not
among the selected candidates in the letter issued by the
Railway Recruitment Board, Bombay dated 22.10.1993 (A. I)
for appointment to the post of Health Inspector (Medical
Department) on Western Railway, has filed this application

18

..

under Section 19 of the Administrative Tribunals Act,

1985.

2. In the Railway Recruitment Board, Bombay, Notice No. 1/92 (Annexure A-2), published in the Employment News dated 13-19/6/92, against the advertisement category 11, post of Health Inspector, Medical Department, the essential educational qualifications prescribed were B.Sc. (Chemistry) from a recognized University plus diploma of Health Inspector from a recognized university. The applicant applied for this post which was in the payscale of Rs. 1200-2040. The applicant possessed ^a B.Sc. Degree in Agriculture (Hons.) - with Dairy-chemistry and Agricultural Bio-chemistry as subjects in the course - from Agra University, together with Sanitary Inspectors' Diploma from All India Institute of Local Self Government (Annexures A-3 and A-4). The applicant was allowed to sit in the written test and he had passed the same. He was also called for the interview vide letter dated 12.9.1993 (Annexure A-7). However, during the interview, the applicant was informed that his candidature cannot be considered for the post of Health Inspector as he is not B.Sc. (Chemistry) and is only a B.Sc. in Agriculture with Dairy-Chemistry and Agricultural Bio-Chemistry as subjects. Against this

(15) 25

decision of the Respondents, the applicant has filed the D.A.

3. The learned counsel for the applicant has challenged

the decision of the Respondents on the following grounds namely -

- (1) That there is discrimination under Article 14 of the Constitution between the above qualifications prescribed for direct recruits and the qualification prescribed for promotees which is only Matric and Sanitary Inspector Certificate ;
- (2) That since the Railway Authorities have referred to the qualifications prescribed under Section 8 of the Prevention of Food Adulteration Act, 1954 (P.F.A. Act) for appointment as Food Inspector, which include a Graduate in Science with Chemistry as one of the subjects or a Graduate in Agriculture, there was no justification in excluding the applicant, who had a degree of B.Sc. in Agriculture Science ;
- (3) That para 163 of the Indian Railway Establishment Manual which originally prescribed the qualification as Matric with a Sanitary Inspector's Certificate, being a statutory rule ; cannot be changed by executive instructions ; and
- (4) The Respondents having called the applicant for the written test, which he had passed, and then having called him for interview, promissory estoppel will be against the Respondents from stating that he has not been found qualified for the post. On the plea of promissory estoppel, the learned counsel for the applicant has relied on the decisions in Moti Lal Padampat Sugar Mills Co. v. The State of Uttar Pradesh and others [AIR 1979 SC 621] and Satish Kumar v.

89

UOI and others [SLJ 1994 (1) CAT Jaipur p. 364]

16

She stressed on the fact that the applicant had not concealed the facts that he had only a degree of B.Sc. Agriculture with Chemistry as one of the subjects and he had also passed in the written test and now the Respondents cannot go back on their action. In other words, she has pleaded that the equitable principle of promissory estoppel is in her favour.

4. The Respondents have denied the above allegations. In their reply, they have stated that the qualifications prescribed by the Railway Recruitment Board for the post of Health Inspector (Medical Department) was B.Sc. (Chemistry) with diploma as Health Inspector from any recognized institution. Their contention is that since the applicant did not possess the prescribed educational qualifications, he was not eligible to be appointed to the post of Health Inspector. The learned counsel for the Respondents submitted that it was for the applicant to ensure that he had the prescribed educational qualifications. All the candidates, who had applied, were allowed to sit in the written test. At the time of interview, the candidates were required to satisfy themselves that they had the prescribed qualifications as per para (1) of the instructions contained in the interview letter dated 18.1.93 (Annexure A-7) to the applicant. At the time of the interview, the Respondents had found that the applicant did not possess the essential qualifications of B.Sc. (Chemistry).

5. Respondents also contend that para 163 of the Indian Railway Establishment Manual is not a statutory rule. It is only an executive instruction which can be modified. It is pointed out that the arguments based on discrimination do not merit consideration as no relief is sought on these grounds. In any case, prescribing qualifications for a post is a matter of policy in which there can be no interference. It is also denied that the principle of promissory estoppel can be involved in this case. The learned counsel for the respondents relied on the

18
judgments of the Supreme Court in U.P. Public Service Commission

18
17

Allahabad Vs Alpana (1994 (SCC) L&S 742) and State of

Rajasthan v. Shyam Lal Joshi & Others [1994 SCC) L&S 610].

6. There are only four queries for consideration :-
of the

(i) Whether Rule 163, Indian Railway Establishment Manual is statutory such that it could not have been amended by executive instructions?

(ii) Whether there is any discrimination between direct recruits and promotees in the matter of qualifications?

(iii) Whether there is a hostile discrimination against Agriculture graduates?

(iv) Whether the respondents are barred by the principle of promissory estoppel?

7. In our view , the Indian Railway Establishment

Manual is only a compilation of the various orders passed by

the Railway Board from time to time. No proof has been adduced

that it is statutory in nature. The afore-said orders of the

Railway Board No.86/90 and No.192/92 seem to indicate that

the Indian Railway Establishment Manual is only a collection

of instructions. Para 163 of the Manual relied upon by the

applicant , has been subsequently amended by the orders of

the Board as provided therein. The applicant has, in fact, also

relied upon the subsequent amendments dated 24.5.90 and 19.11.1992.

19

16
18

to press his case on grounds of discrimination. In the

circumstances, we hold that there is no question of
amendments of a statutory rule by executive instructions.

In this case, the plea to the contrary is, therefore,
rejected.

8. Regarding the ground that there is discrimination under Article 14 of the Constitution in the qualification needed for recruitment to the post of Health Inspectors as between direct recruits and promotoes vide Annexures 8 A and 8 B respectively, we find that the Ann. A 8.A letter dated 24.5.90 has not been impugned on this ground. Nevertheless, we consider this issue on merits. Initially, Rule 163, Indian Railway Establishment Manual- reproduced in Annexure A-B,- prescribed the qualification for Health and Malaria Inspectors for both direct recruitment and promotion to be only Matriculation with Sanitary Inspector's Certificate/ Diploma. By the R.B.E. Order No.86/90, dated 24.5.90 (Annexure 8-A) in the case of recruitment to the post of Health Inspector by both methods, the minimum qualification was raised to B.Sc.(Chemistry) plus diploma of Health Inspector so as to authorize them to act as Food Inspector under the P.F.A. Act. Later, by R.B.E. Order No.192/92,

12

dated 19.11.1992 (Annexure 8-8) the Railway Board

decided, following a PNM meeting, that in case of

promotion of serving employees of the Medical Department

to the post of Health and Malaria Inspectors in grade

Rs 1200-2040, the minimum educational qualification will

be Matriculation plus Sanitary Inspector Certificate/

Diploma as was the case earlier. This was done apparently

to avoid hardship to the concerned departmental employees.

This cannot be taken to be an irrelevant consideration

because, Govt. has also a duty to see that reasonable

promotional avenues are available. To facilitate this

the qualifications have been relaxed for promotees-

decreed
the
Simultaneously/Indian Railway Medical Manual

also provides (Ann. A.10) that persons who do not have

the qualification prescribed for Food Inspectors under the

as
P.F.A. Act will be designated only / Sanitary Inspector

vide Rule 51. Therefore, the relaxed qualification

is for the post of Sanitary Inspector only. That apart,

we are of the view that Direct Recruits and Promotees

from the Department are two distinct feeder categories

for appointment and it is open to Govt. to treat them

differently in so far as qualification for appointment

HS

17
19

18
20

to the post of Health Inspector is concerned. In view

of these facts, we find that there is a reasonable basis

for prescribing different qualifications for direct

recruits and promotees, which is neither arbitrary or

unreasonable. Hence, the plea of discrimination is

rejected.

9. We now consider the argument that by

restricting the qualification to B.Sc.(Chemistry)

there is a hostile discrimination against graduates in

Agriculture. There is a mention about this in para 5.1

of the B.A. where the grounds on which the relief is

sought are set out. But the applicant has not prayed

for a direction that the Annexure A-8A order dated 24.5.90,

which specifies B.Sc.Chemistry as the minimum qualification,

should be struck down as discriminatory and that the

respondents should be directed to specify therein all the

qualifications which are mentioned in Clauses (b) and

(c) of Section 8 of the P.F.A. Act. Nevertheless, we are

considering this question.

10. The objection raised by the applicant would

have been relevant if the appointments were to the post

19

19
21

of Food Inspector under the P.F.A. Act. In that event,

the respondents could not have restricted the appointment

to only B.Sc (Chemistry) graduates.

11. No doubt, the applicant having a degree and

a Sanitary Inspector's diploma, can discharge the Sanitary

Inspectors' functions included in the duties to be

performed by a Health Inspector. Likewise, having a

degree in Agriculture, he is also qualified to discharge

the function of a Food Inspector. In other words, he could

certainly have been appointed as a Health Inspector. But

the fact is that the respondents have prescribed that

the candidates should have a degree in B.Sc. Chemistry.

On this ground, he is disqualified. The question is

whether this amounts to discrimination.

12. We are of the view that this is purely a matter

of policy in which the executive has considerable amount

of freedom to pick and choose. Merely because a large

number of persons holding different qualifications could

be appointed as Health Inspector does not necessarily mean

that all such categories of persons, having diverse

qualifications, should also be made eligible for appointment

as Health Inspector. Nothing prevented the Department from

19
21

widening the base of selection but, if the selection is
restricted to persons holding a B.Sc. degree in Chemistry,
that cannot amount to discrimination. The mere mention
in Section 8 of the P.F.A. Act that graduates in
Agriculture are eligible to be appointed as Food Inspectors,
does not per se confer any right on such graduates
to be considered for appointment as Health Inspectors,
who can also be authorized as Food Inspectors for
purpose of inspection of food items sold in railway
premises.

13. The applicant has no case that the restriction
imposed is attributable to malice or nepotism. No such
objection has been made. In our view, the executive
is not required to assign any reason for this decision,
which is purely administrative in nature. If a reason is,
however, sought for, it is discernible. B.Sc. Chemistry
graduates are available in the market in plenty. They can
be counted in thousands. But, graduates in agriculture
are relatively scarce. Perhaps, they cannot be counted
even in hundreds. It would be socially more beneficial
to leave such agriculture graduates to take up a job or
profession concerning agriculture, which is much more
important to society, than waste them on a job concerning
food adulteration, which can be handled by the thousands of

Chemistry graduates.

21
23

14. The Annexure A-8A order specifying the minimum qualification as B.Sc.(Chemistry) is neither malafide nor perverse. As indicated therein, this decision was taken after deliberations in a conference of Chief Medical Officers. In the circumstances, the challenge to the Annexure A-8A order on the ground of discrimination has no merit.

15. Lastly, coming to the question of promissory estoppel, we are of the view that no case has been established to invoke the principle because the first requisite is that a promise should have been made that an Agriculture graduate would be considered for appointment, which is not the case. The true principle of promissory estoppel seems to be that where one party has, by his words or conduct, made to the other a clear and unequivocal promise, which is intended to create legal relation or effect a legal relationship to arise in the future, knowing or intending, that it would be acted upon by the other party, to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, see

Moti Lal Padampat Sugar Mills Co. v. The State of Uttar Pradesh & Others

AIR 1979 SC 621. The question, therefore,

arises in this case whether the Respondents, by their action, have held out a promise to the applicant to appoint him in the

187

22
2X

post of Health Inspector. The only implied promise in the advertisement given by the Respondents is that persons having B.Sc. (Chemistry) Degree will be considered for the post. The learned counsel for the applicant laid great stress on the fact that the applicant has been allowed to appear for the written test which he had passed, and the fact that he had not concealed any material regarding his qualification in his application. Later, he had also been called for the interview. This, according to the learned counsel, shows that the Respondents had held out a promise from which they should not be allowed to go back. Reliance was placed on the judgment of the Tribunal (Jaipur Bench) in Satish Kumar v. UOI & Ors [AISL 1994(1) (CAT) 369] where it was held as under :-

"... The doctrine of promissory estoppel can also be applied to some extent against the respondents. Respondents while issuing the admission card and allowed the applicant to appear in the examination, promised him that in case he passed the examination, he will be appointed as a regular candidate on merit basis. This condition was believed by the applicant and for this reason, the doctrine of promissory estoppel may be applied to some extent as the applicant has neither misrepresented nor in any way concealed the facts. There was a lapse on the part of the respondents." *BB*

16. We have perused the judgement of the Jaipur Bench of the Tribunal in Satish Kumar (Supra). That was a case where the applicant was appointed on 17.6.1986 as a LDC on an ad hoc basis. This appointment was continued from time to time till 6.3.90 (6.3.91 sic). In the meanwhile, Special Qualifying Examination, 1987, was held by the Staff Selection Commission to regularise such ad hoc employees. In the notification inviting applications, there was a condition that only ad hoc LDCs with at least one year's service during the period from 1.1.1985 to 30.9.1986 were eligible to take part in the above examination. Obviously, the applicant who was appointed as ad hoc LDC on 16.6.1986 did not satisfy this condition. Yet, he applied, knowing fully well that he did not have the requisite qualifications. He, however, did not hide any facts. He was allowed to take part in that examination without any condition, whatsoever. Quite possibly, on the date of the examination, he might have acquired the necessary qualification. Before considering him for appointment, the applicant was directed to fill up a proforma so that his candidature could be cleared. That proforma required him to declare that he had completed one year's ad hoc service as L.D.C. prior to 30.9.86. The applicant declined to fill up the proforma, as he did not have the qualification. The Respondents, therefore, cancelled his candidature on that ground.

17. The observation that the doctrine of promissory estoppel could also be applied to some extent against the respondents was rested by the Tribunal on the following grounds :-

- (i) At the time of appearance at the examination, it was not indicated to the applicant that he was allowed to appear only provisionally in the examination.

"1. Candidates should note that if they fail to meet any condition age/experience/qualification etc. from that what is stated in employment notice, they can be disqualified at any stage. They are advised to check conditions once again in their own interest before appearing for interview". (emphasis given)

Therefore, in this case, we find there was no unconditional promise. Hence, the ratio of Satish Kumar does not apply to the present case.

19. We find it necessary at this stage to say a word about the practice of permitting candidates to appear at an examination without any screening as to their qualifications, eligibility etc., which has been construed to operate as an estoppel. In our view, this is purely a matter of administrative convenience. The written examinations have to be conducted within a specified time limit and, therefore, the admission cards will also have to be issued within a reasonable time. This would be physically/possible if it is decided to first verify each application with a view to finding out whether the applicant is eligible to appear or not. This is not only a time consuming process but would also be a futile exercise in most cases because, by and large, persons apply only after satisfying themselves that they are eligible to appear at the examination. It is only a few persons like the applicant who apply, even without possessing the necessary qualifications. To find out who these persons are and to deny them the admission card at the

24
26

(ii) By issuing the admission card, without any conditions and allowing the applicant to appear in the examination, the respondents promised him that in case he passed the examination, he would be appointed as a regular candidate on merit basis. This condition was believed by the applicant.

18. But for the fact that this judgement is distinguishable, we might have had to express our respectful disagreement with this view. The features which distinguish that judgement are as follows:

(i) The Tribunal considered the situation only from the stage of issuing the admission card and not from the anterior stage when a notification relating to the examination was issued which only promised that candidates having at least one year's service from 1.1.1985 to 30.9.86 would be entitled to take part in the examination.

(ii) In the instant case, we find it necessary to note the fact that the advertisement was issued specifying B.Sc. (Chemistry) only as the minimum qualification. Persons who did not have this qualification were not expected to apply.

(iii) No doubt, the call letter (i.e. admission to the examination) did not contain any stipulations (Ann.A.5) and mentioned no conditions. To this extent alone, the position in that case is similar to the position in this O.A. However, in the present case, there was also an interview for which the Ann.A.7 interview call letter dated 22.9.1993 was issued to the applicant. There are nine instructions given in this letter. The first reads as follows:

JS

26
28

threshold itself would be like searching for a pin in a haystack. Therefore, all persons are issued admission cards, after placing the onus squarely on them to ensure that they are eligible to appear. In some recruitments, the more detailed scrutiny to identify such persons is held at the time of the interview. In some other cases, this is even deferred to the stage of actual appointment. At these stages, the number of persons involved are substantially less. The authorities can then easily identify the persons not eligible to appear for lack of qualifications, as has been done in the case of the applicant or alternately to continue the simile, the pin will be compelled to show itself up without any search and it can be thrown out, as was the case in Satish Kumar's case. We are of the view that in these circumstances, merely permitting a person to either appear in the examination or in the interview will not entitle the person not having the necessary qualifications to be appointed, even if he passes in the examination and his candidature /appointment can still be cancelled. There is no promissory estoppel in such circumstances.

20. In our view this issue involved has to be disposed of on the ratio of the Supreme Court's decision in Alpanes case supra.

FB
In that case the appellant Public Service Commission issued an

26
29

Advertisement inviting applications for a competitive examination called the U.P. Nyayik Seva(Munsif) Examination, 1988. The last date for receipt of the applications was 20.8.1988. It was mentioned in the advertisement that the candidates must possess an LL.B degree on the last date of receipt of the application. The advertisement also mentioned that an attested copy of the degree must also be attached with the application. The respondent submitted an application stating that she had appeared in law degree examination and was awaiting result, which was declared in October, 1988. The appellant allowed respondent to appear in written examination held from 3rd to 5th May, 1990 which she successfully passed. She was, however, not called for interview on the ground that she did not satisfy the eligibility condition of educational qualification on the last date fixed for receipt of applications. On the intervention of the High Court, the respondent was interviewed by the appellant but the result was kept in abeyance. Later on, the High Court finally disposed of the matter by directing the appellant to declare respondent's result and if she was successful, to forward her name to State Government for appointment. The Supreme Court also noted that the High Court went to the length of ordering the creation of a supernumerary post to accommodate her. The Supreme Court quashed the impugned order of the High Court and allowed the Special Leave Petition. The Supreme Court held as under :-

" This approach of the High Court cannot be supported on any rule or prevalent practice nor can it be supported on equitable considerations. In fact, there was no occasion for the High Court to interfere with the refusal of the Public Service Commission to

19

interview her in the absence of any specific rule in that behalf. We find it difficult to give recognition to such an approach of the High Court as that would open up a flood of litigation. Many candidates superior to the respondent in merit may not have applied as the result of the examination was not declared before the last date for receipt of the applications. If once such an approach is recognised there would be several applications received from such candidates not eligible to apply and that would not only increase avoidable work of the selecting authorities but would also increase the pressure on such authorities to withhold interviews till the results are declared, thereby causing avoidable administrative difficulties. This would also leave vacancies unfilled for long spells of time. We, therefore, find it difficult to uphold the view of the High Court impugned in this appeal."

21. There is no need to consider the other judgment in

Shyam Lal Joshi & Others case (Supra) relied upon by the respondents for the facts therein are some-what different ; though it was held therein that the Govt.'s decision therein was not barred by promissory estoppel.

22. Therefore, based on the decision of the Supreme Court in

U.P. Public Service Commission v. Alpana [1994 (SCC) L&S 742],

¹⁸ therefore, fact that though the applicant, admittedly, did not have the minimum prescribed qualification of B.Sc.(Chemistry) yet he was called for interview, does not prevent the respondents from denying him employment. We are of the view that the

29
31

equitable doctrine of promissory estoppel. ¹⁸ That doctrine is not applicable to the facts of this case as no promise had been held out by the respondents contrary to the advertisement.

23. In the result, the application fails and is, therefore, dismissed. There will be no order as to costs.

Lakshmi S. N. S.
(Lakshmi Swami Nathen)
Member (Judicial)

V.K.
31.8.84
(N.V.Krishnan)
Vice Chairman (A)