

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

Dated: Allahabad, the 18th day of December, 2000

Coram: Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiq Uddin, J.M.

Original Application No.1129 of 1996

Rahul Gupta,
aged about 21 years,
son of Sri B.N. Gupta,
1/o C-692, G.T.B. Nagar,
Kareli Scheme,
Allahabad.

..... applicant
(By Advocate Sri Sudhir Agarwal)

Versus

1. The Union of India, through
the Secretary, Ministry of Defence
(Production), New Delhi.
2. The General Manager Ordnance Equipment
Factory, Hazratpur, Tundla, Ferozabad.

..... Respondents
(By Advocate Sri Ashok Mohiley)

O R D E R

(OPEN COURT)

(Hon'ble Mr. S. Dayal, AM)

This application under Section 19 of the
Administrative (Tribunals) Act, 1985 has been filed
for setting aside order dated 16.8.1996 and for giving
direction to the Respondents to reinstate the applicant
on the post of Chargeeman Grade-II (Technical/CT) with

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continuity of service and other consequential benefits of arrears of salary and seniority etc.

2. The applicant submitted his application against the notice given in the news-papers for filling up one vacancy of Chargeman Grade-I (Clothing Tech), for which an advertisement had appeared in the Employment News in March, 1996. The qualifications laid down for the post were recognised 3 years' diploma or equivalent in Textile/Clothing/Garment/Apparel manufacturing technology. The applicant qualified in the written examination and faced interview after acceptance of his application for the post and was offered appointment by a letter dated 29.6.1996. He accepted the offer of appointment issued on 1.7.96. He was served with a copy of Office Order dated 16.8.96 stating that he did not fulfil the qualifications, as mentioned in the advertisement, as he had a diploma of 2 years duration and had experience of less than 2 years. The said order is challenged in this application along with the order by which his services on probation were terminated with effect from 16th August, 1996.

3. We have heard Sri Sudhir Agarwal for the applicant and Sri Ashok Mohiley for the Respondents.

4. The learned counsel for the applicant has challenged the order of termination on a number of grounds- the first is that after the applicant was appointed, he joined the post of Chargeman Grade-II and certain rights were vested in him and no orders adverse ^{to him} could be passed without giving opportunity to him. The learned counsel for the applicant has contended

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that the applicant has claimed that the Recruitment Rules for the post of Chargeman Grade-II (Tech) in the scale of Rs.1400- 2300 require 3-Year diploma or equivalent in any technology or draftsman with 2 years' experience in relevant technical field or B.Sc. with Physics, Chemistry and Maths where diploma in any category could not be identified by the Ordnance Factory and 2 years' experience in the relevant field. The recruitment rules also provided that in Design category, if recognition certificate in Draftsanship or diploma course was less than 2 years duration, experience in Draftsanship to cover the balance period will be necessary. The Respondents have denied the applicability of replacement of one year of diploma by a certificate in Draftsanship in the case of post for which the applicant was considered. They have maintained that the applicant was required to have 3 years' diploma in Textile/Clothing/Garment/Apparel Technology, as per the Notification of Rozgar Samachar and Employment News. It is contended by the learned counsel for the applicant that the reduction in the duration of diploma course showed that 3 years' diploma was not an absolute requirement, but could have been relaxed to 2 years. The learned counsel for the applicant also mentioned that as far as the experience was concerned, only 8 days less in 2 years' experience was found at the time of induction of the applicant on the post. At the time of termination of services of the applicant, he had already worked for a month and a half and, thus, the period of 8 days was sufficiently covered and he could not have been terminated on this ground. The respondents have

contested this fact and have stated in their counters that the applicant had experience of one year, 9 months and 4 days only, as his application did not contain the certificate of experience of two months with Mohan Dresses.

5. The learned counsel for the applicant has also contended that the respondents have mentioned in the order of termination that diploma of 2 years duration was given by Ruchi Institute Creative Arts, Allahabad, which is not affiliated with the Technical Board of Education, U.P., Lucknow, while the letter dated 24.8.1996 issued by the Ruchi Institute Creative Arts and letters of Government of Uttar Pradesh dated 24.8.92 and 20.9.93 showed that the Institute was duly recognised by the State of U.P.

6. As regards the issue of possession of the requisite qualifications by the applicant, it is admitted that the diploma of 2 years duration instead of 3 years' diploma or equivalent was required. As far as the question of recognition of diploma was concerned, the learned counsel for the applicant has drawn our attention to the letter dated 24.8.92 addressed by the Joint Secretary, Department of Primary Education to the Secretary, Primary Education Council, Lucknow, by which the Governor of State of Uttar Pradesh has recognised, in principle, the 2 years Fashion Designing Course for one year, subject to certain conditions. The applicant has claimed that the recognition continued till 1994, 95 and in 1995 the recognition of the Council of Technical

Education, New Delhi was sought and the same was granted. The applicant had passed examination of 1993-95 Batch, for which the Institute was duly recognised by the Technical Education Council of Uttar Pradesh. The respondents have contested this claim of the applicant by annexing Annexure -CA-15, in which the Secretary, Technical Education Council of Uttar Pradesh, Lucknow has informed the General Manager, Ordnance Factory Hazratpur, Ferozabad that Ruchi Institute Creative Arts is not an institution affiliated to the Council. The Respondents have mentioned in the counter reply that they did not challenge the recognition of diploma course but only the fact that Ruchi Institute Creative Arts was not affiliated with Technical Education Council. We find that Ruchi Institute cannot be said to be recognised in 1995 by Technical Education Council of U.P. although it was recognised in 1993, when the applicant joined the course. It was for the Respondents to consider whether the applicant passed the examination in 1995 as per the syllabus and scheme for the batch of 1993 to 1995. Since the Selection Committee does not appear to have raised the issue of non-recognition, the same cannot be raised now.

7. As regards the question of experience, it is an admitted fact that the applicant had an experience, which was short of 2 years at the time of his selection. The contention of the applicant that he had made it good by virtue of service after induction has already been mentioned earlier. The

learned counsel for the applicant has relied upon the case of Arunaben T. Bhojak Vs. Secretary, Ahmedabad Education Society and others JT 1997 (10) S.C.C. 547 in urging that the experience acquired even after the initial appointment would be relevant in considering eligibility of the applicant for continuation on the post. The case cited relates to the case of a Scheduled Tribe candidate and the ratio of this case will not strictly be applicable to the present case, as the applicant admittedly does not belong to any of the weaker-sections, who have been considered favourably as per guidelines issued for them for relaxation of qualification while being recruited to various posts under the Government of India. The learned counsel for the applicant also placed reliance on State of Punjab & others Vs. Suman Lata 1999 S.C.C. (L & S), 1065 to contend that it is for Selection Committee to examine the qualifications and appointment cannot be cancelled subsequently by the District Education Officer. This ratio would be inapplicable to a case where the applicant is found without any doubt to be not possessing the required qualification. The learned counsel for the applicant has also contended that the applicant fulfils the requirement of 3 years diploma course by completing 2 years diploma course in Fashion Designing from Ruchi Institute Creative Arts and one year for Intermediate Drawing Examination. We find from the para-1 of the application that the applicant had done his diploma in Fashion Designing from 2 years. 1993 to 95 and he had also completed

Intermediate Drawing Examination in 1996. However, equivalence of one year Intermediate Drawing to diploma qualification is not established in this case. We, thus, find that the applicant was not possessed of 3 years diploma, as required in the notice for recruitment to the post and by Recruitment Rules.

8. As far as the question of opportunity before termination of service is concerned, the learned counsel for the applicant has relied upon the case of Basudeo Tewary Vs. Sido Kanhu University and others, reported in (1998) 8 SCC, 194. The Hon'ble Supreme Court has laid down as follows:-

" 12. The said provision provides that an appointment could be terminated at any time without notice if the same had been made contrary to the provisions of the Act, Statutes, rules or regulations or in any irregular or unauthorised manner. The condition precedent for exercise of this power is that an appointment had been made contrary to the Act, rules, statutes and regulations or otherwise. In order to arrive at a conclusion that an appointment is contrary to the provisions of the Act, Statutes, rules or regulations, etc., a finding has to be recorded and unless such a finding is recorded, the termination cannot be made, but to arrive at such a conclusion necessarily an enquiry will have to be made as to whether such appointment was contrary to the provisions of the Act etc.. If in a given case such exercise is absent, the condition precedent stands unfulfilled. To arrive at such a finding necessarily enquiry will have to be held and in holding such an enquiry, the person whose appointment is under enquiry will have to be issued a notice. If notice

is not given to him, then it is like playing Hamlet without the Prince of Denmark, that is, if the employee concerned whose rights are affected is not given notice of such a proceeding and a conclusion is drawn in his absence, such a conclusion would not be just, fair or reasonable as noticed by this Court in D.T.C. Mazdoor Sabha case. In such an event, we have to hold that in the provision, there is an implied requirement of hearing for the purpose of arriving at a conclusion that an appointment had been made contrary to the Act, statute, rule or regulation etc. and it is only on such a conclusion being drawn, the services of the person could be terminated without further notice. That is how Section 35(3) in this case will have to be read."

9. The learned counsel for the applicant has also relied upon the case of C.M. Pandey Vs. State of U.P. and another, 1999 (4) A.W.C. 3415, in which the above authority has been cited with approval. It has also been mentioned in this judgment that in the case of Pancham Ram and others Vs. Chief Engineer, U.P. Jal Nigam and others reliance on several decisions of the Supreme Court was placed for holding that the termination of service of an employee on the ground that his appointment was irregular and unauthorised will be illegal if no opportunity of hearing was given before passing the impugned order. In this connection, learned counsel for the applicant cited Samar Bahadur Yadav Vs. Regional Higher Education Officer, Varanasi, 2000(2) E.S.C. 977

10. The learned counsel for the Respondents has relied upon the judgment of Apex Court in the case of Syed Khalid Rizvi and others Vs. Union of India and others-

1994 Supreme Court Cases (L & S) 84. While dealing with promotion to Indian Police Service from State Service, the Apex Court observed as under:-

"This court, while repealing the contention, held that appointment to the post in accordance with the rules is a pre-condition and the conditions of rules of recruitment cannot be relaxed and that the promotees get their seniority only from the date of the regular promotion in accordance with the rules and within quota. The entire officiating period was held to be fortuitous. It must, therefore, be held that recruitment by promotion in accordance with the regulations and rules are conditions of recruitment and are mandatory and should be complied with."

The Apex Court has held that the condition of recruitment cannot be relaxed, while conditions of service can be relaxed. The learned counsel for Respondents has also relied on State of M.P. and others Vs. Shyama Pardhi and others- 1996 Supreme Court Cases (L&S) 466. Paras 4 & 5 of this judgment is relevant and is cited as below:-

4. The Tribunal in the impugned order had held that the respondents having been selected and undergone the training and the competent authority having duly appointed them, cancellation of their appointment without any opportunity is violative of the principles of natural justice and it accordingly set aside the order and directed their reinstatement with consequential benefits. Hence, these appeals by special leave.
5. It is now an admitted fact across the Bar that the respondents had not possessed the prerequisite qualification, namely, 10+2

with Physics, Chemistry and Biology as subjects. The Rules specifically provide that qualification as a condition for appointment to the post of ANM. Since prescribed qualifications had not been satisfied, the initial selection to undergo training is *per se* illegal. Later appointments thereof are in violation of the statutory rules. The Tribunal, therefore, was not right in directing the reinstatement of the respondents. The question of violation of the principles of natural justice does not arise. The ratio of *Shrawan Kumar Jha Vs. State of Bihar*, strongly relied on, has no application to the facts of this case. That was a case where the appellants possessed initial qualifications but they did not undergo the training. Since the appointment was set aside on the ground of want of training, this Court interfered with, directed the Government to reinstate them into service and further directed them to send the appellants therein for training."

The learned counsel for the Respondents has also referred the case of *State of Punjab Vs. Jagdeep Singh*, AIR 1964, 521, Para-8. The Apex Court has laid down that when an order is void on the ground that the authority which made it had no power to make it cannot give rise to any legal rights. It is also laid down where a govt. servant has no right to a post or to a particular status, though an authority under the govt. acting beyond its competence had purported to give

that person a status which it was not entitled to give he will not in law be deemed to have been validly appointed to the post or give the particular status. In this case, the Constitution Bench by a majority of four to one held that where an authority under the government acted beyond its competence and gave that person a status which it was not entitled to give he will not be in law deemed to be validly appointed to the post or given particular status. The notification changing the status of the Tehsildar from confirmed to officiating cannot be said to have the effect on reducing the rank by reason of merely correcting an earlier error. The Article 311 was, therefore, not attracted. The learned counsel for the Respondents also relied on Mrs. Rekha Chaturvedi Vs. University of Rajasthan & ors., JT 1993 (1) S.C. 220. It is mentioned that the candidate was required to have the essential qualifications on the last date for submitting the application. It is also laid down in this case that the Selection Committee can relax qualifications only if it is stated in the notification that qualifications will be relaxed and also the conditions on which they will be relaxed. Any other relaxation is held to be illegal.

11. In Arya Kanya Pathshala and another Vs. Smt. Manorama Devi Agnihotri and others, 1971 ALJ, 983, the ratio of State of Punjab Vs. Jagdeep Singh Supra has been adopted. The learned counsel for Respondents has relied on the case of District Collector and Chairman, Vizianagram Vs. M. Tripura Sundari Devi, (1990) 14 ATC cases 766. It has been held that when an advertisement

mentions a particular qualification and an appointment is made in disregard of the same, it is not the matter between the appointing authority and the party concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. The Apex Court held that a candidate who possessed third class Master Degree while the requirement of second class Master Degree was selected by mistake by the Selection Committee and was allowed to resume her duties was subjected to termination, when the mistake was detected. It upheld such an action. In the case of Director, Aims and others Vs. Dr. Nikhil Tandon and others, (1996) 33 ATC 354, the Apex Court held that the required qualifications of D.M. was not satisfied by training undergone in Cambridge University after the year 1978 and, therefore, the appointment of the candidate on the post was not valid.

12. We have carefully considered the merit of the case law cited before us. We have already come to the conclusion that the applicant did not possess the required qualifications at the time of his selection because the required qualification was diploma with

3 years duration. We are of the view that setting aside the order of termination of services of the applicant would have the effect of putting him back on his post in a situation where he admittedly does not possess the qualification. Hence, we do not consider that giving him show-cause notice would be necessary, as it would be a mere formality in this case devoid of substance. We are supported in our view by the judgment of the Apex Court in Aligarh Muslim University and others Vs. Mansoor Ali Khan, 2000 (5) SLR, 67, in which the case law on the subject of natural justice has been considered and the argument that there was violation of principle of natural justice no notice has been given was rejected because no prejudice had been caused because of action of the Respondents. This is applicable to the present case, which is a case of discharge simplicitor on ground of non-possession of qualifications. We, therefore, find that the application has no merit and is dismissed. No order as to costs.

Ranbir Reddy

J.M.

A.M.

A.M.

Nath/