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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

DATED: ALLAHABAD THIS: THE 20/5 DAY OF JUNE 1996

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ORIGINAL APPLICATION NO.966 of 1996

CORAM: Hon'ble Mr. S. Das Gupta A.M.

Hon'ble Mr. T. L. Verma J.M.

Suresh Chandra s/o Ram Bharoshe Lal,
Tele.com.Mechanic, 509 Army Base Workshop
Agra r/o care of Raghunath Singh,
37 A/8 Madhu Nagar, Agra.

-----Applicant

C/A Sri R. K. Yadav

VERSUS

1. Union of India through Secretary,
Ministry of defence, New Delhi.

2. Commandant 509 Army base workshop
Agra.

-----Respondents

C/R Sri N. B. Singh

ORDER

By Hon'ble Mr. T.L.Verma JM

This application has been filed under section 19 of the Administrative Tribunals Act, 1985 for quashing the order dated 2.5.1988 intimating the applicant that his case for employment as T.C.M. in Army Base Workshop Agra Cantt: cannot be considered because as per new recruitment rules, he does not possess the requisite qualification and fulfil/ the terms and conditions as laid down under rules and for issuing a direction to the respondents to appoint the applicant

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on the basis of appointment letter dated 27.2.1988.

2. The applicant was appointed as Telecom mechanic in the Corps of EME (Electrical, Mechanical & Engineering) ~~in Army~~ on 30.3.1973. He was, however, discharged from service on 3.11.1988 after completing 11 years and 9 months ^{on medical ground} ~~in Service~~. The name of the applicant was sponsored for employment ~~in army base~~ workshop, Agra by D.G.R./New Delhi by letter dated 20.8.1986. The applicant was called for appearing ^{at} in the trade test held on 13.2.1988. He is stated to have cleared the ^{thereafter} written examination and ~~he~~ was called for interview. He qualified in the interview also. He was accordingly informed by letter dated 22.7.1988 that he has been selected for appointment as Telecom Mechanic in temporary capacity in Army base workshop, Agra and he was asked to convey his willingness to accept the appointment. The applicant by his letter dated 2.3.1988 (annexure 5) expressed his willingness to accept the job offered to him. The respondents, however, it is alleged, did not issue appointment letter and ultimately informed the applicant by the impugned order dated 2.5.1988 that he cannot be considered for appointment as he does not possess the requisite qualification. Hence this application for the relief mentioned above.

3. The respondents have resisted the claim of the applicant. In the counter affidavit ~~xxxxxxxxxxxxxx~~ the respondents, while admitting that the applicant qualified in the trade test (both written and vivavoce) held ~~for~~ appointment on the post of Telecom Mechanic, have averred that the applicant could not be considered for appointment to the said post as he did not possess the requisite qualification ~~as~~ prescribed under rules.

4. We have heared the learned counsels for the parties and have perused the records.

5. The first question that falls for our consideration is whether the applicant possessed the requisite qualification for appointment on the post of Telecom Mechanic. Respondents have annexed extract of annex-3 revised recruitment rules as were ~~enforced~~ on the date the applicant submitted his application for appointment on the post of Telecom Mechanic. ~~XXXXXX~~

A certificate from a recognised
Industrial Training Institute ^{or} _{equi-}
valent in the appropriate field
or Grade.

OR

Intermediate/10 + 2 Educational system or its equivalent with Mathematics and Physics.

OR

Armed Forces Personnel/Ex-service man
in the appropriate trade and grade I
at minimum.

The applicant in the rejoinder affidavit has averred that the applicant was fully eligible for appointment on the post of Telecom Mechanic. According to the instruction issued by the Army Base Workshop (annexure 4 to the C.A.), applicant was not eligible for appoint-

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on the post of Telecom Mechanic as he was not grade I in his trade and also because he did not complete the term of his engagement in the Army. To counter the contention of the respondents, ^{that} the applicant did not complete full term in the Army, the applicant has relied on the letter issued by the government of India, Ministry of Defence on the subject of extending benefits to ex-service man for resettlement (annexure 2 to the RA). According to the instruction issued in the above letter, the revised definition of ex-service man came into force on 1.7.1987 and is applicable to those persons who are discharged on or after 1.7.1987. The applicant was discharged on 3.11.1986 ^{i.e.} prior to coming into force of the definition of ex-service man. That being so the candidature of the applicant could not have been cancelled on the ground that he has not completed his full term in the army. This, however, does not conclude the matter. It is still to be seen, whether the applicant was grade I of the appropriate trade or not, Para 10 of the counter affidavit clearly mentions that the applicant was not found eligible for appointment as Telecom Mechanic as he was not in grade I of the trade of Telecom Mechanic. The applicant in reply to the above averments of C.A. has, in para 7 of the Rejoinder affidavit in a vague and general manner, denied the above averments without furnishing any material to show that he was Telecom Mechanic grade I for coming within the zone of consideration for appointment as Telecom Mechanic.

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6. Learned counsel for the applicant has drawn our attention to annexure 10, testimonials for Civil appointment given by the Commandant to the applicant on col.7 of the ann.10, it has been mentioned that the appl-

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is a Telecom Mechanic (Radio) class I. It has further been stated that he is well conversant with the repairing and maintenance of all types of telecom equipment. Annexure 10, however, nowhere indicates that the applicant was T.C.M. grade I. His document, therefore, does not help the applicant in substantiating his contention. Reliance has also been placed on the certificate (annexure 3). This certificate indicates that the applicant attended the telecom (mechanical) apprenticeship course at Apprenticeship Training School, Bhopal from 30.3.1975 to 30.3.1978 and attained satisfactory degree of proficiency. The course is recognised by the Institute of Engineers for exemption from their student-ship examination. This certificate also does not prove anything beyond the fact that the applicant had attended telecom mechanical apprenticeship course. That by itself does not make him TCM grade I.

7. It is an admitted fact that the application submitted by the applicant did not enclose any certificate showing him as TCM grade I. The respondents, despite omission on the part of the applicant, to enclose necessary certificate in respect of his technical qualification called him for appearing at the trade test (Written and vivavoce both) and even selected him for appointment. ^{The question is} Whether the said act of the respondents in denying appointment on the ground that he did not possess requisite qualification ^{is illegal.} A similar question came up for consideration before Supreme court in ^P UPSC-Allahabad v/s. Alpana reported in (1994) 27

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Administrative Tribunal cases 101. In the case before Hon'ble Supreme Court, appellant invited applications for appearing at U.P.Judicial service examination in 1988. Last date for receipt of the applications was 20.8.1988. It was mentioned in the advertisement that candidates must possess LLB.degree on the last date for receipt of the application. The advertisement also mentioned that an attested copy of the degree must also be attached with the application. Respondents submitted an application^{stating} that she had appeared in law degree examination and was awaiting the result, which was declared in October, 1988. U.P.Public service commission allowed the respondent to appear in the written examination, which she successfully passed. She was, however, not called for interview on the ~~el~~ ^{lity} ground that she ~~did~~ not satisfy the ~~eligi~~/condition of educational qualification on the last date fixed for receipt of the application. On the intervention of the Hon'ble High Court, respondent was interviewed by appellant, but the result was kept in abeyance. Later on High court finally disposed of the matter by directing the appellant to declare the respondent's result and if she was successful, to forward her name to the state government for appointment. The Hon'ble Supreme Court, while setting aside the directions of the Hon'ble High court held :

There is no rule or practice which permitted entertaining of respondent's application. The appellant was therefore right in refusing to call respondent for interview. The approach of the High court cannot be supported on any rule or

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prevalent practice nor can it be supported on equitable considerations. In the absence of any specific rule, there was no occasion for the High Court to interfere with the decision of the appellant not to interview the respondent. Many candidates superior to the respondent in merit may not have applied as the result of the LLB. examination were not declared before the last date for receipt of applications. If once such an approach is recognised there would be several applications received from such candidate not eligible to apply and that would not only increase avoidable work of the selecting authority 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. If however, the respondents has already been appointed in pursuance of High Court, her appointment shall not be cancelled.

8. In the case of Union of India and another Versus Jogendra Singh reported in 1994 (2) Administrative Tribunals Cases 746 again Hon'ble Supreme Court has held that no candidate who does not possess prescribed qualification, can be said to be qualified or have any vested right to be appointed. It has also been held that every candidate who aspires to fill any vacancy must

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possess educational qualification prescribed for the post.

9. Inview of the principle laid down by Hon'ble Supreme Court in the aforesaid ~~two~~ cases and having regard to the fact that the applicant does not possess the minimum qualification for appointment on the post of Telecom Mechanic, respondents cannot be compelled to give appointment to the applicant on a post for which he does not possess the requisite qualification.

10. In the facts and circumstances of ^{the} case discussed above, we find no merit in the case and therefore the same is dismissed, leaving the parties to bear their own cost.

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