

6

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.434 OF 2010

Cuttack this the 04th day of April, 2010 (2011)

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

...

Sri Paresh Kumar Mahalik, aged about 37 years, S.o. Sri Kanhei Charan Mahalik,
At/PO-Chikana, Dist-Jajpur, presently working as Examiner(HS-II), Ordnance
Factory, At/PO-Badmal, PS-Saintala, Dist-Bolangir, Orissa

...Applicant

By the Advocates: M/s.S.K.Ojha & S.K.Nayak

-VERSUS-

1. Union of India represented through the Secretary to Government of India, Ministry of Defence, D.H.Q Post Office, New Delhi-110 011
2. The General Manager, Ordnance Factory, At/PO-Badmal, PS-Saintala, Dist-Bolangir
3. Director General, Ordnance Factory Board, 10-A, Saheed Khudiram Bose Road, Kolkatta-700 001
4. Administrative Officer, Ordnance Factory, At/PO-Badmal, PS-Saintala, Dist-Bolangir

...Respondents

By the Advocates: Mr.U.B.Mohapatra, SSC

ORDER

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER:

1. Applicant, at present working as Examiner (HS-II) under the Respondent-Organization has moved this Tribunal seeking the following relief:

- “i) To admit the Original Application.
- ii) To hold that the applicant is eligible to participate in the selection meant for the post of Chargeman/T(Mech) for the year 2010-11
- iii) To declare that the action of the Respondents illegal and arbitrary.
- iv) To pass any further order/orders as deemed fit and proper in the facts and circumstances of the case.

2. It is the case of the applicant that he having been considered eligible and allowed to take the examination on earlier occasions right from the year 2007 based

V.S.

on the diploma certificate which is alleged to be not in accordance with the SROs as the course has not been approved by AICTE, the Respondents at a later stage should not turn back and blow hot and cold in the same breath. In this connection, we have gone through the counter affidavit filed by the Respondents. By producing Annexures-R/1 and R/2, the Respondents have brought to the notice of the Tribunal that the certificate submitted by the applicant being not in accordance with the circular, the course having been approved by DEC but not AICTE, the applicant was allowed to appear at LDCE -2008 for the post of CM-II/T/Mechanical, provisionally, subject to the condition that he should produce the proof of the validity/suitability of educational qualification in support of his claim failing which he should not be issued with Admit Card for appearing LDCE. In this context, it is to be noted that the Respondent-Department have not produced any document restraining the applicant from appearing LDCE in the past questioning the validity and/or legality of the diploma certificate submitted by the applicant. Therefore, appearing the examinations in the past by the applicant from 2007 onwards is an admitted fact.

3. According to Respondents, they took a decision to conduct Limited Departmental Competitive Examination (in short LDCE) for filling up the post of Chargeeman (Tech & Non-Tech (Stores & OTS) for the year 2010-2011, taking together the vacancies of 2009-10 and 2010-11 falling under LDCE quota. The eligibility criteria fixed for the post in question is that a candidate must possess the educational qualification required for Direct Recruitment of CM-II(T & NT) as laid down in SRO-13E dated 4.5.1989, as amended by the SRO-191 dated 28.11.1994 and the SRO 66 dated 27.5.2003. According to them, candidates possessing the required qualification in terms of these SROs from an Institute recognized by the Govt. of

Al

India are eligible. In the circumstances, the Respondents have submitted that the Diploma Certificate produced by the applicant being not in accordance with the circular, referred to as above and although the course was approved by DEC, but not by the AICTE, the applicant was not selected to be chosen. With these submissions, the Respondents have prayed that the O.A. deserves to be dismissed.

4. Applicant has filed an affidavit.

5. We have heard Shri S.K.Ojha, learned counsel for the applicant and Shri U.B.Mohapatra, learned SSC appearing on behalf of the Respondents and perused the materials on record.

6. While admitting the O.A., this tribunal as an interim measure, directed the Respondents to allow the Applicant to take part in the LDCE for the post of Charge-man, Gr.-II scheduled to be held on 28.8.2010. It was further directed that the result of the examination in so far as the applicant is concerned should not be published without leave of the Tribunal.

7. However, from the elucidated facts, the point for consideration is whether Diploma Certificate submitted by the applicant is in accordance with the circular and/or as per the course approved by AICTE failing which, the Tribunal cannot declare the applicant eligible, as prayed for by him. In this connection, we would like to note that the determination of the above point is not amenable to the jurisdiction of the Tribunal, as it is not expected of the Tribunal to try and adjudicate certain matter with a view to holding an opinion on the legality and validity of a certificate and pass a declaratory order. In the circumstances, in our considered view, the Tribunal is not the proper adjudicatory forum and as such the prayer of the applicant in the present O.A. to that extent regarding the recognition of Diploma Certificate is not maintainable.

V.A.C

¶. Of late we came across a decision of the Hon'ble Supreme Court in Bharathidasan University v. All India Council of Technical Education (2001) 8 SCC 676 : AIR 2001 SC 2861, wherein it has been held that "All India council for Technical Education Act, 1987 – SS. 10(1)(k), 2(h), (i) & 23 – Act does not require a university to obtain prior approval of AICTE for starting department or unit as an adjunct to the university itself to conduct technical education courses of its choice. We have also examined its applicability to the facts of the case in hand. From the records it reveals that the diploma certificate which has been called in question by the Respondent-Department has been issued by Vinayak Missions Research Foundation (VMRF) Salem (Tamilnadu), Deemed University. This apart, vide Annexure-R/6 dated 23.12.2010 it has been clarified by the AICTE that "it has been the policy of the AICTE not to recognize the qualifications acquired through distant education mode at Diploma, Bachelors & Master's level in the fields of Engineering, Technology including Architecture, Town Planning, Primacy, Hotel Management & Catering Technology, Applied Arts & Crafts and Post Graduate Diploma in Management (PGDM). AICTE only recognize MBA (not even PGDM) and MCA programme through distant mode". The applicant has not rebutted the above statements made by the Respondents with regard to attainment of diploma qualification through distant education mode and that the certificate issued by VMRF is deemed university nor has he produced copy of the said certificate for the appreciation of the Tribunal.. In this view of the matter, the aforesaid decision is not applicable to the facts of case in hand.

¶. In so far as the submission of the applicant that one Srikanta Nayak, who has produced the similar certificate has been accepted by the Respondents and in effect he has been promoted and appointed to the post of Chargeman, Gr.II., the Respondents

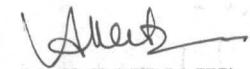
W.D.L.

have clarified the position and have stated that Sri Srikanta Nayak has been issued with show cause notice of reversion. In the circumstances, they have prayed that the applicant could not have any grievance in this regard.

10. We have considered the submissions of the learned counsel for the parties. Be it noted that if no further action in pursuance of show cause notice issued to Shri Nayak is taken by the Respondents, it would be deemed that they are having mens ria to discriminate the applicant. In effect, apart from they being liable to be proceeded against under the Contempt of Courts Act for having mislead the Tribunal, the applicant shall be deemed to be declared eligible for the post in question and accordingly, the Respondents shall appoint the applicant to the post of Chargeman, Gr.II provided he has come out successful in the LDCE.

With the above observation and direction, this O.A. is disposed of. No costs.


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K.PATNAIK)
JUDICIAL MEMBER

BKS