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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK.

O.A No.232 of 2011

Cuttack this the 30th day of June, 2014

Gopal Bhakta Mishra...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *yes*
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? *yes*


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK.

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CORAM:

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Gopal Bhakta Mishra

Aged about 43 years

S/o.late Rudra Narayan Mishra of Gandhi Nagar Para

PO/PS/Dist-Bolangir, Orissa

At present Qr.No.33018

Ordnance Factory, Badamal Estate

PO-Badmal

District-Bolangir, Orissa

...Applicant

By the Advocate(s)-M/s.S.Mohanty

S.Moharana

S.Routray

N.Tripathy

-VERSUS-

Union of India represented through

1. The Secretary,
Government of India,
Ministry of Defence, DHO Post Office
New Delhi-110 011
2. The Director General
Ordnance Factories, Govt. of India

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Ministry of Defence
Ordnance Factory Board, AYUDH BHAWAN
10-A, Saheed Kshudiram Bose Road
Kolkata-700 001

3. The General Manager
Ordnance Factory,
At/PO-Badmal
PS-Saintala
District-Bolangir

...Respondents

By the Advocate(s)-Mr.U.B.Mohapatra

ORDER

R.C.MISRA, MEMBER(A):

Applicant in this O.A. is an employee of the Ordnance Factory at Badmal in the District or Bolangir, Odisha, and has approached this Tribunal praying for the following relief.

- i) Let the records dealing with the appointment of the applicant in the factory as Fitter Electronics along with the records dealing with appointment of the applicant as Chargeman under Annexure-17 be called for.
- ii) Let there be scrutiny of facts with regard to the validity of the applicant's posting as Chargeman pursuant to Annexure-17 and finding no infirmity in the said appointment let the impugned order of reversion be quashed.



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- iii) Let this Hon'ble Tribunal be pleased to find out as to how the applicant has been victim to the harassment from the day one of his appearing the LDC Examination till his appointment by the interference of the OFB;
- iv) Let this Hon'ble Tribunal have a judicial scrutiny of facts as to how the applicant has been subjected to unwarranted harassment and hearing the parties pass order/orders as deemed fit and proper under the circumstances of the case.

2. The short facts in respect of this OA are that the applicant having done his Intermediate in Science prosecuted a Diploma Course in Electronics and Telecommunication in the Institution of Electronics and Telecommunication Engineer (IETE), New Delhi. He then joined the Ordnance Factory at Bolangir as an Electronics Fitter in 1997. The Factory authorities brought out a notification dated 16.7.2008 to fill up vacancies in the post of Chargeman. As per the SRO governing the field, the required qualification was three years Diploma or equivalent qualification certificate in the respective fields duly affiliated by AICTE. It was notified that a candidate possessing the required qualification in terms of the SRO from an Institute recognized by the Govt. of India is also eligible. The applicant applied for this position. The General Manager, Ordnance Factory (Res. No.3) held the applicant eligible for the Limited Departmental Competitive Examination (LDCE) provisionally, subject to his satisfying that the Diploma is recognized by



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Govt. of India/DEC and AICTE before issue of the Admit Card. Later on, the authorities were satisfied to issue the Admit Card. The applicant fared well in the examination, and while his posting as Chargeman was in the pipeline, the Respondents served a show cause notice on the applicant calling upon him to explain as to why his candidature shall not be cancelled on account of his Diploma certificate neither being recognized by AICTE nor being of three years duration course. The applicant submitted his reply to the show cause notice. Even thereafter, the applicant's result in the LDCE was not declared which prompted him to file a grievance petition before the Ordnance Factory Board, Respondent No.2, i.e, Director General. O.F.B. called for the comments of Res. No.3, i.e., GM, Ordnance Factory, Badmal on the allegation of the applicant. The Respondent No.2 disposed of the matter by accepting the Diploma certificate of applicant and directed Respondent No.3 to accommodate the applicant in the post of Chargeman. Thereafter, Respondent No.3 appointed applicant as Chargeman (T) (Electrical) retrospectively from 31.12.2008 vide order dated 22.2.2010. After this, however, Res. No.3 reviewed his own decision and served a show cause notice on applicant to which the latter gave a reply. Then, the Respondent No.3 reverted the applicant to the industrial grade by an order dated 2.4.2011 copy of which has

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been filed at Annexure-A/22 to the O.A. This order of reversion has been issued in respect of four similarly placed employees, including the applicant.

3. The applicant has submitted that in this case, the Ordnance Factory Management has reviewed the decision taken under direction from Ordnance Factory Board, which is wrong in law. On the ground of reversion, applicant pleads that he obtained the Diploma in Electronics and Telecommunication from a Govt. of India recognized Institute, i.e. I.E.T.E., New Delhi. At a later point of time, the Factory Management questioned the validity of the Diploma certificate and withheld his promotion as Chargeman. Even after a favourable decision from the Ordnance Factory Board, the Factory Management issued the show cause notice and reverted the applicant. This, according to applicant, amounts to unwarranted harassment caused to him.

4. Turning to the counter affidavit filed by Respondents, it is found that they have focused on the qualification required for selection of Chargeman (T) through LDCE, which is a three years' Diploma or equivalent certificate duly affiliated by AICTE. The applicant did not possess this qualification. The AICTE in their letter dated 23.12.2010 clarified that ***"it has been the policy of AICTE not to recognize the qualifications acquired through distance education mode in the field of***

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Engineering, Technology including Architecture, Town Planning, Pharmacy, Hotel Management & Catering Technology, applied Arts and Crafts, PGDM and MCA programme through distance mode." That is the reason why a show cause notice was issued to the applicant. The ^{re}Reply of the applicant to show cause was examined, and since it was found that the Diploma certificate was from Institute of Electronics and Telecommunication Engineers through Distance Education Mode which was not recognized/approved/affiliated to/by AICTE, the matter was disposed of by letter dated 2.4.2011. Thereafter, the applicant was reverted from the post of Chargeman by order dated 2.4.2011. It is the contention of Respondents that no doubt the applicant was promoted as ^{C R}IM (T) vide order dated 22.2.2010, basing on clarification of Ordnance Factory Board. But the circumstances changed after receipt of clarification of AICTE as mentioned above, which was supported by a letter of Joint Secretary (Higher Education) M.O. H.R.D., Govt. of India. The case of the Respondents is that they have only reverted the applicant in consonance with the rules, since he was found to be ineligible to be selected to the post of Chargeman (T). Further contention of the Respondents is that this Tribunal has disposed of similar matters in OA No.253 and OA No.254 of 2008 by their order dated 4.4.2011. In those OAs similarly placed employees, Sri J.K. Senapati and Sri Trilochan Behera approached the Tribunal. The Tribunal in



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this order held that it lacks jurisdiction to hold an opinion in case when the authenticity of the certificate as well as the Institution issuing such certificate are called in question, and, finally dismissed the OAs. Since the present OA arises out of similar circumstances and also involves the same issues, the Tribunal should on similar lines dismiss this OA, so submit the Respondents.

5. The learned counsel for applicant has also filed a rejoinder.

6. We have heard learned counsels from both sides and perused the records. The learned counsel has filed a written note of argument in which, it has been, inter alia stated that this OA is different from OA Nos. 253 and 254/2008, since in the present case the issue raised is that the Respondent No.3 lacked jurisdiction to go against the decision already taken by Respondent No.2, and unsettle the matter of selection of the applicant. On the other hand, the Respondents in their written notes of argument have asserted that clearly, according to clarification received ^{from} AICTE and Govt. of India, the Diploma obtained by the applicant was not valid as per the SRO governing the field, and order of reversion was due to the fact that applicant was not eligible. This is not a matter of promotion but of recruitment governed by RR's. The earlier mistake of allowing the applicant to sit

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in the LDCE on the basis of unrecognized certificate was only rectified by issuing a show cause notice and reverting the applicant.

7. The examination of facts and circumstances of the case no doubt reveals that Respondent No.3 reviewed his decision, and did not accept the Diploma certificate of the applicant to be valid, after clarification received from AICTE, in spite of the fact that the Respondent No.2 had decided to accept the Diploma certificate and directed the Respondent No.3 to appoint the applicant against the post of Chargeman. Although this part of the contention of the applicant is correct, the central issue involved in the OA is the validity of the Diploma certificate obtained by the applicant. In this regard, it is relevant to mention that the Tribunal disposed of OA 62/2011, in which the same issue was involved. This OA was disposed of on 13.5.2014, and the relevant part of the orders of the Tribunal is quoted below.

"It is seen that the issue under consideration in the present O.A. is the same as in O.A.Nos. 243 & 254 of 2008, which have been disposed of by this Tribunal on 4.4.2011. The Tribunal in ~~its~~ order dated 4.4.2011 has also referred to an earlier O.A.No.285 of 2008, in which the cause of action arose out of similar circumstances. In the earlier O.A disposed of by this Tribunal it has been held that the Tribunal lacked jurisdiction to render an opinion on the issue particularly when the employer Respondents have questioned the authenticity of the diploma as well as the issuing institutions. It has been

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clearly held by the Tribunal in the earlier OAs that the Tribunal is not competent to adjudicate this issue. However, the learned counsel for the applicant has contested the claim by stating that the three OAs which were disposed of were relating to the qualifications/diploma obtained from Private Institutions whereas in the present case the applicant has acquired his qualification from an University. On this ground he has submitted that the applicant in the present case is entitled to get relief. However, we find that the Tribunal has already taken a view in the earlier OAs where the same issue was involved that it lacks jurisdiction to hold an opinion in the matter where the authenticity of the certificate as well as the institution issuing such certificates are called in question by the employer.

Having taken ^{this} view in O.A.Nos.253 and 254 of 2008 under similar circumstances, we are not inclined to deviate therefrom, and accordingly, we hold that the Tribunal lacks jurisdiction to try and adjudicate this matter. In the circumstances, the O.A. is dismissed. No costs".

8. It may be seen that the Tribunal in OA 62/2011 has held that it lacks jurisdiction to try and adjudicate the matter following the precedence of orders passed in OAs 253 and 254/2008 as well as OA No.285/2008. Judicial precedence is of utmost importance, and a co-ordinate Bench cannot differ from the findings reached earlier by another co-ordinate Bench, unless it decides to refer the dispute to a larger Bench for the purpose of adjudication. In this regard the law has been settled by the Hon'ble Apex Court in the case of *SI Rooplal Vs Lt Governor Delhi* [C.A Nos.5363-64 of 1997 with Nos.5643-44 of 1997 decided on

P. S. Rao

December, 14, 1999] – 2000 Supreme Court Cases (L&S) 213. The relevant portion of the said judgment is quoted below.

“ At the outset, we must express our serious dissatisfaction in regard to the manner in which a co-ordinate Bench of the Tribunal has overruled, in effect, an earlier Judgment of another co-ordinate Bench of the same Tribunal. This is opposed to all principles of Judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the co-ordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the Judgment of the earlier Bench but knowingly it proceeded to disagree with the said Judgment against all known rules of precedent. Precedents which enunciate rules of law form the foundations of administration of justice under our system. This is a fundamental principle which every Presiding Officer of a Judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our Judicial system. This court has laid down time and again that precedent law must be followed by all concerned, deviation from the same should be only on a procedure known to law. A subordinate Court is bound by the enunciation of law made by superior Courts. A coordinate Bench of a Court cannot pronounce Judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement”.

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9. In the present O.A. we do not find any ground to differ from the earlier orders of this Tribunal, and therefore, by following the ratio laid down by Hon'ble Apex Court in the case of ^{LT 2}SI Rooplal Vs Governor of Delhi (supra), we hold that the Tribunal lacks jurisdiction to try and adjudicate this matter. In the circumstances, the O.A. is dismissed. No costs.

(R.C.MISRA)
MEMBER(A)

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(A.K.PATNAIK)
MEMBER(J)