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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.290 of 2011

Cuttack this the 30th day of June, 2014

Pratap Chandra Dehury...Applicant


-VERSUS-

Union of India...Respondents

FOR INSTRUCTIONS

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


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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

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

Pratap Chandra Dehury
Aged about 33 years
S/o.Rathi Dehury
At present working as Chargeman(T)
Ordnance Factory, Badamal Estate
PO-Badmal
District-Bolangir, Orissa

...Applicant

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

-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
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



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...Respondents

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

ORDER**R.C.MISRA, MEMBER(A)**

Applicant in the present O.A. is working as Chargeman(Tech) in the Ordnance Factory, Badmal. He 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 be called for.
- ii) Let there be scrutiny of facts with regard to the validity of the applicant's posting as Chargeman pursuant and finding no infirmity in the said appointment let the impugned order of reversion be quashed.
- iii) Let this Hon'ble Tribunal have a judicial scrutiny of facts be pleased to pass order/orders as deemed fit and proper under the circumstances of the case.

2. Facts of the case are that the applicant joined Ordnance Factory at Badmal in the District of Bolangir in the year 2001 as Danger Building Worker(DBW). While working as such, he prosecuted a Diploma Course in Mechanical Engineering through an Institute called J.R.N. Rajasthan Vidyapeeth University, Rajasthan, which has received the approval from the Joint Committee of UGC, AICTE and DEC. He completed his three years' Diploma Course in Mechanical Engineering in the year 2006. Thereafter he offered his candidature for the post of Chargeman in pursuance of an



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internal advertisement dated 21.4.2010. His candidature was considered in conformity with the guidelines of the Ordnance Factory Board and he was allowed to sit in the LDCE. He came out successful in the process of selection and was given appointment as Chargeman vide letter of appointment dated 30.10.2010. While working in this post, he has been served with a notice in which he was asked as to why his Diploma certificate obtained through DCE will not be held invalid for the purpose of holding the post of Chargeman. This show cause notice has been issued to him on 1.2.2011, which is annexed as Annexure-11 to the O.A.. On getting the show cause notice, applicant gave a reply on 8.2.2011, in which he submitted that three years' Diploma certificate obtained through the Institute is fully recognized by the Government of India and therefore, show cause notice was completely baseless. His reply has been disposed by the Respondents by issuing a Memorandum dated 2.4.2011 by the Respondents. It was communicated in this Memorandum that the courses offered by J.R.N. Rajasthan Vidyapeeth University, Rajasthan through Distance Education Mode on technical subjects are not recognized by the AICTE. The AICTE has also confirmed that it is not their policy to recognize acquisition of technical qualification at Diploma, Bachelors' and Masters level in the field of Engineering, Technology through Distance Education Mode. Accordingly, it was indicated in the said Memorandum dated 2.4.2011 that the applicant was not eligible in terms of SRO 66 dated 27.6.2003 for appearing in the LDCE for CM-II/T(Mech). On the same date,



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i.e., 2.4.2011, the Ordnance Factory issued Factory Order reverting the applicant and three others from the post of Chargeman(Tech) to their earlier positions after disposing of the representation thereby questioning the validity of Diploma certificate. This Factory Order which is impugned herein is annexed at Annexure-14 of the O.A.

3. It is submitted by the applicant in this O.A. that similarly placed persons^D one Sisir Kanta Nayak challenged the impugned order before the Tribunal in O.A. No.62/11. In pursuance of the interim order of this Tribunal, Shri Nayak has been allowed to continue in the post of Chargeman^P(T). Therefore, according to applicant, equity demands that he should also be allowed to continue in the post in question. The ground taken by the applicant in support of his case is that the impugned order is a stereo type^d order mechanically passed covering as many as four Chargemen, regardless of the fact that the certificates given by them were processed through proper departmental scrutiny in conformity with the instructions of the Ordnance Factory Board. The Institute through which applicant has acquired his Diploma has been recognized by the DCE^{C P} and it is not necessary that AICTE should approve the Diploma certificate offered by this Institute.

4. Respondents in their counter reply have submitted that in order to fill up the vacancies in the post of Chargeman(T) by the method of Limited Departmental Competitive Examination, a Factory Order dated 21.4.2010 was issued inviting applications from the eligible candidates. The

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qualification required for the post was indicated therein where for the post of Chargeman, it was mentioned that one must possess three years' Diploma or equivalent qualification in the respective field duly affiliated by AICTE in addition to two years' experience in the relevant field. The present applicant, who was holding the post of DBW applied for the post of Chargeman(Mechanical) on the basis of a Diploma certificate issued through Janardan Rai Nagar Rajasthan Vidyapeeth University, Udaipur, Rajasthan. The Screening Committee found the applicant eligible based on this Diploma certificate and the applicant became successful in the examination obtaining the first position in the merit list. He was given appointment in the post of Chargeman-II/Technical(Mechanical). In the meantime, Respondents received some complaints in which allegations were made that the Diploma qualifications obtained by the employees appointed through LD/CE were not approved by AICTE with three years' duration. Acting upon this complaint, Res.No.3 took up the matter with the AICTE for clarification. The AICTE in their letter dated 23.12.2010 confirmed that it is not the policy of the AICTE to recognize the qualification acquired through distance education mode in the field of engineering, technology including architecture, town planning, pharmacy, hotel management etc. and instead, they recognize only MBA and MCA Programmes through Distance Education Mode. This position was also confirmed by a letter dated 31.12.2010 received from the Joint Secretary, Ministry of HRD, Government of India. Based upon these clarification, it was decided that



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the applicant did not possess the educational qualification required for Chargeman and therefore, he was issued with a show cause notice dated 1.2.2011. According to Respondents, Hon'ble High Court of Orissa vide judgment reported in 2011(I) OLR CUT-162 (Policy Planning Body and another vs. Silocon Institute of Technology & ors.) held that AICTE is the body which can grant permission to the Institute for study of technical education and not the University or Government. Since the AICTE had not approved the Diploma course obtained by the applicant from J.R.N.R.Vidyapeeth University, Rajasthan, the Respondents concluded that the certificate in their opinion was non est in the eyes of law and consequently, the applicant was not eligible for the post of Chargeman(T). In response to the show cause notice, reply given by the applicant was considered and no merit was found in the same. This was disposed vide order dated 2.4.2011 and accordingly, the order of reversion was issued. It is also the submission of the Respondents that this Tribunal vide order dated 4.4.2011 in O.A.No.253 of 2008-filed by Shri J.K.Senapati and O.A.No.254 of 2009 - filed by Shri Trilochan Behera has held that the Tribunal lacks jurisdiction to hold an opinion in the case when the authenticity of the certificates as well as the Institute issuing such certificates are called in question by the employer and finally, dismissed those O.As. being devoid of merit. The present O.A., according to Respondents, arising out of similar facts and circumstances and in respect



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of similarly placed employee is liable to be dismissed being devoid of merit.

This is what the Respondents have submitted in their counter reply.

5. Applicant has ^{filed} rejoinder as well as written note of submission. In the written note of submission, it has been submitted by the applicant that the facts of the present case are different from the facts of O.A.Nos. 253 and 254 of 2008. According to applicant, in the instant O.A., Respondent No.3 lacks jurisdiction to sit upon the decision of the Ordnance Factory Board. The ratio decidendi in O.A.Nos.253 and 254 of 2008 has no relevancy ^e so far as the case of the applicant in particular is concerned. Since the applicant was already given promotion, his case should not have been reopened in view of the law of estoppel^e. The main thrust of the argument of the learned counsel is that applicant was not liable to reversion from the position of Chargeman on the basis of the clarification issued by the AICTE vide letter dated 23.12.2010 to the effect that it has been the policy of the AICTE not to recognize the acquisition of technical qualification at Diploma, Bachelors, Masters level in the field of Engineering Technology through Distant Education Mode.

6. After hearing the learned counsel from the both the sides, we have also perused the records.

7. The subject matter of decision involved in this O.A. is whether the Diploma certificate issued by Janardan Rai Nagar Rajasthan Vidyapeeth University, Udaipur, Rajasthan, which has not been affiliated to AICTE is



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valid for the purpose of considering the promotion of the applicant to the post of Chargeman.

8. The learned counsel for the Respondents has drawn our attention to the fact that this Tribunal vide order dated 4.4.2011 in O.A.No. 253 filed by Shri J.K.Senapati and O.A.No.254/2008 filed by Shri T.Behera has already held that the Tribunal lacks jurisdiction to hold an opinion in the ^ethe case when the authenticity of the certificates as well as the Institution issuing such certificates are called in question by the employer and finally dismissed the O.A. being devoid of merit.

9. The Tribunal has dismissed ^Pof O.A.No.62/11 filed by one Sisir ^eKant Nayak who is similarly placed person, vide order dated 13.5.2012 ^{4 e}on the ground that the Tribunal lacks jurisdiction to try and adjudicate the same. The Tribunal had gone by the view taken in O.A.Nos. 253, 254 and 285 of 2008. For the sake of clarity, the relevant portion of the orders of the Tribunal in O.A.No. 62/11 is quoted hereunder.

"It is seen that the issue under consideration in the present O.A. is the same as in O.A.Nos. 253 and 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 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



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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".

10. In this regard, the decision of the Hon'ble Apex Court in the case of S.I.Roop^l Vs Lt Governor Delhi [C.A Nos.5363-64 of 1997 with Nos.5643-44 of 1997 decided on December, 14, 1999] – 2000 Supreme Court Cases (L&S) 213 is worth mentioning. The Hon'ble Apex Court has clearly laid down the law that the Coordinate Bench of a Court cannot pronounce judgment contrary to the declaration of law made by another Bench. It can only refer to a larger Bench, if it disagrees with the earlier pronouncement. The Hon'ble Apex Court has further observed that judicial consistency has to be maintained while passing orders. The relevant portion of the judgment of the Hon'ble Supreme Court in S.I.Roop^l (supra) is quoted hereunder.

" 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".

11. The learned counsel for the applicant has pleaded that the facts of this case are different from the facts of in O.A.Nos. 253 and 254 of 2008 already disposed of by this Tribunal. However, on going through the facts, we find that the substantial issue to be decided in this O.A. is the same, i.e., whether the Diploma certificate issued by an Institution having not been affiliated by AICTE is valid for the purpose of considering promotion of the applicant or not, which was the subject matter of O.A.Nos.253 and 254 of 2008. Therefore, we are not at one with the learned counsel for the applicant that the facts of the present O.A. are different from the facts of O.A.Nos.253 and 254 of 2008 already decided by this Tribunal. In the circumstances, following the ratio decided in O.A.Nos. 253, 254 of 2008

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and O.A.No.62 of 2011 decided on 4.4.2011 and 13.5.2014, respectively, we cannot but hold that the Tribunal lacks jurisdiction to try and adjudicate this matter. Accordingly, the O.A. is dismissed. No costs.

(R.C.MISRA)
MEMBER(A)

(A.K.PATNAIK)
MEMBER(J)

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