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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK.

O.A No.294 of 2011

Cuttack this the 30th day of June, 2014

Chinta Bhaskar Rao...Applicant
-VERSUS-
Union of India & Ors....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
(R.C.MISRA)
MEMBER(A)

A.K. Patnaik
(A.K.PATNAIK)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
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CORAM:

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

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

Chinta Bhaskar Rao

Aged about 39 years

S/o.Appa Rao

At present working as Chargeman G-II/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



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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
Mr.R.C.Behera

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

The applicant who is working as Chargeman Gr-II/T in the ordnance Factory, Badmal, in the Bolangir district of Odisha has approached the Tribunal seeking the following relief.

- i) Let the records dealing with the appointment of the applicant in the factory as Fitter along with the records dealing with appointment of the applicant as Chargeman be called for.
- ii) Let there be scrutiny of facts with regard to the validity of the applicant's posting as Chargeman.
- iii) Let the impugned order of reversion be quashed.
- iv) Let this Hon'ble Tribunal be pleased to pass any order/orders as deemed fit and proper under the circumstances of the case.



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Facts of this OA are briefly stated as follows:

2. Applicant has been working as Chargeman Gr. II (T) w.e.f 31.12.2008 in the Ordnance Factory, Badmal. He has challenged the legality and validity of his reversion from NGO grade to Industrial grade issued by the Respondents vide order dated 2.4.2011. His case is that he joined the Ordnance Factory at Badmal in the year 2001 as a Fitter. While working as such, he prosecuted a Diploma course in Mechanical Engineering in the Distance Education Mode in the Vinayak Mission University recognized by Distance Education Council, IGNOU, New Delhi. Meanwhile, the Ordnance Factory Board invited applications from departmental candidates against posts of Chargeman by a notice dated 16.7.2008. The applicant was one of the aspiring candidates. The Respondents had in the first instance rejected the candidature of applicant on the ground that Diploma certificate issued by Vinayak Mission University was not approved by AICTE. Later on, based upon the clarification of Ordnance Factory Board, his candidature was provisionally accepted, and he was given Admit Card enabling him to sit in the LDC Examination. He was successful in the said examination, the Ordnance Factory Board was satisfied about the validity of Diploma certificate and a letter of appointment was issued to the applicant on 31.12.2008, posting him as Chargeman. While the applicant has been discharging his normal function as

Chargeman since 31.12.2008, the Respondents again reopened the earlier settled issue of validity of Diploma certificate by serving a show-cause dated 1.2.2011. The applicant gave his reply justifying the validity of Diploma certificate. Thereafter, the Ordnance Factory has held that Vinayaka Mission University is not approved by AICTE and is not competent to issue Diploma certificate. Thereafter, Respondents reverted the applicant and three others from the post of Chargeman (T) to the Industrial grade by an order dated 2.4.2011. This order is challenged which is annexed as Annexure-A/17 to the present O.A.

3. The applicant has submitted that this order ^{of} reversion is not legally sustainable, since the Institute where he had studied is recognized by DEC, even though it is not affiliated to AICTE. Moreover, the applicant had spent about two years of service as Chargeman, and after that an order of reversion was absolutely unjustified. One of the affected Chargeman ^{is}, Sri Sisir Kanta Nayak who is similarly placed has challenged the order of reversion by filing OA No.62/2011, and on the basis of interim orders of the Tribunal, he is working as Chargeman. Equity, therefore, demands that he should get the same relief.

4. The Respondents have filed their counter affidavit in the case. It is their contention in the counter affidavit that the order of reversion has been passed in



respect of applicant after serving him a show cause notice, following the principles of natural Justice. In terms of SRO 13(E) dated 4.5.1989 as subsequently amended, the educational qualification required for selection as Chargeman is three years' Diploma or equivalent qualification certificate in the respective field affiliated to AICTE. A clarification was received from AICTE in their letter dated 23.12.2010 that "***it has been the policy of the AICTE, not to recognize the qualifications acquired through distance education mode at Diploma, Bachelors and Masters' level in the field of Engineering, Technology including Architecture, Town Planning, Pharmacy Hotel Management & Catering Technology, applied Arts and Crafts and PGDM and MCA programmes through distance mode.***" In the light of this clarification, it was found that the applicant was not in possession of required qualification as per the SROs governing the field, and therefore a show cause notice was served upon him asking him why he would not be reverted. The reply of the applicant was duly examined. It was seen that his Diploma certificate was issued by an Institute which did not have the affiliation or approval by AICTE. Therefore, his reply was disposed of in a letter dated 2.4.2011 and he was reverted with effect from the same date.

5. It is submitted in the counter affidavit that the Tribunal had heard similar matters in OAs 253/2008 and 254/2008. By passing an order on 4.4.2011, the



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 Tribunal held that it ^{lacks} ~~take~~ jurisdiction to hold an opinion in case when the ^{authenticity} ~~authority~~ of the certificate as well as the Institution issuing such certificate are called in question by the employer and dismissed the OAs.

6. The Respondents have pleaded that the facts and circumstances of the present OA are similar to those of the OAs No.253 and 254/2008. They have further submitted that the Respondent No.3 had allowed the applicant to appear in the LDC Examination only provisionally, subject to the condition that he should satisfy the requirements of educational qualification prescribed in the governing SROs. After the AICTE sent its clarification by letter dated 23.12.2010, it was clear that AICTE has not approved the Technical Degree/Diploma Education imparted by Vinayaka Mission University, and therefore, the applicant's certificate was non est in the eyes of law in so far as eligibility to the post of CM/Tech is concerned. ^{ed}

With these submissions, Respondents have prayed for dismissal of the ^{tion being} ~~applicant~~ as devoid of merit.

The applicant's counsel has filed a rejoinder in the case.

7. We have heard learned counsels for both sides and perused the papers. The learned counsel for applicant has filed written note of argument in the case. In the written notes, applicant has vehemently opposed the order of reversion on

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the ground that according to the SROs, apart from institutional affiliation to AICTE, candidates possessing 3 years' Diploma or equivalent qualification certificate issued from an Institute recognized by Govt. of India are also eligible for selection. The further submission made in the written note of argument is that facts in the OA Nos.253/2008 and 254/2008 are different from those raised in the present OA. Here is a case where the Respondent No.3 lacks jurisdiction to sit upon the decision of the Ordnance Factory Board. In the OAs 253 and 254 of 2008, applicants had prosecuted only one year course in the Institutions that were not recognized. Therefore, the ratio decidendi of OA 253 and 254 of 2008 has no relevance to the present case.

8. Mention in this regard needs to be made to OA No.62/2011 filed by one Sisirkanta Nayak, similarly placed person which was disposed of by this Tribunal on 13.5.2014. This OA was disposed of in the light of decision of the Tribunal dated 4.4.2011 in OA Nos. 253 and 254 of 2008. It will be relevant to quote the following from the said order dated 13.5.2014.

"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

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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 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".

9. Our attention has been drawn to the judgment of the Hon'ble Apex Court in the case of S.I Roopal Vrs. Lt. Governor of 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, in which the Hon'ble Apex Court has laid down the law that in order to maintain judicial consistency, a co-ordinate Bench of the Tribunal cannot pass an order contrary to decision of another co-ordinate Bench. If there is a

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difference of view, it has to refer it to a larger Bench for adjudication. The relevant part of the 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".

10. We find that the substantial question for adjudication in the present OA and the earlier OAs cited, is the validity of an educational certificate which has been questioned by the employer. This Tribunal has already taken a view that it lacks jurisdiction to hold an opinion on this issue, particularly when the authenticity of certificate as well as the institution issuing such certificates are called in question by the employer. In the light of the ratio laid down by the Hon'ble Apex Court in the SI Rooplal case, we do not find any rationale in deviating from the orders passed by this Tribunal in the earlier OAs.

11. Accordingly we hold that the Tribunal lacks jurisdiction to try and adjudicate this matter. In the circumstances, the OA is dismissed. No costs.

(R.C.MISRA) 

MEMBER(A)

BKS


(A.K.PATNAIK)
MEMBER(J)