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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**O.A No.885 of 2011**

Cuttack this the 30<sup>th</sup> day of June, 2014

Sri Manoj Kumar Gauda...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 all the Benches of the Tribunal ? *ys*

*R.C. Misra*  
(R.C.MISRA)  
MEMBER(A)

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

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**O.A No.885 of 2011**

Cuttack this the 30<sup>th</sup> day of June, 2014  
CORAM

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

Sri Manoj Kumar Gauda

Aged about 38 years

S/o. Udayanath Gouda

At present working as Fitter/General(Skilled) Personal No.7434

Ordnance Factory, Badamal

At/PO-Badmal, PS-Saintala

District-Bolangir

...Applicant

By the Advocate(s)-M/s.S.Ku.Das

S.Ku.Mishra

-VERSUS-

Union of India represented through

1. The Secretary,  
Government of India,  
Ministry of Defence(Production)  
New Delhi
2. The General Manager  
Ordnance Factory,  
At/PO-Badmal  
PS-Saintala  
District-Bolangir



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...Respondents

By the Advocate(s)-Mr.L.Jena

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

Applicant in this O.A. is working as Fitter General (Skilled) in the Ordnance Factory at Badmal in Balangir District of Odisha, and has approached the Tribunal challenging the illegal and arbitrary action of the Respondents in not appointing him to the post of Chargeman -II (Technical), though he has the requisite qualification and passed the required test, i.e, L.D.C.E., 2008 and was found eligible for the said post by the Respondents.

The exact relief that he has prayed for is quoted below.

"Under the above circumstances the applicant therefore humbly prayed that this Hon'ble Tribunal be graciously pleased to direct the respondents to appoint the applicant as Charge Man-II(T/Tech) under Respondent No.2 establishment and grant him all consequential, financial and service benefits from the date other selected candidates have been appointed, as he has passed the LDCE-2008 and found eligible for the said post.

And/or pass any other appropriate order/orders, direction/directions in the fitness of the case to give complete justice to the applicant to save him from further sufferings".

2. The essential facts of the case are that the applicant was appointed as a Fitter General (Semiskilled) in the Ordnance Factory, Badmal on 12.4.2001, and on 16.7.2003, he was promoted as Fitter General (Skilled). The applicant completed a



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Diploma course from the Institute of Mechanical Engineers (Mumbai). Based upon this qualification, he submitted his application for the post of Chargeman-II, Technical for which the respondents had brought out an advertisement. The applicant went through a Limited Departmental Competitive Examination (LDCE) for the years 2006 and 2007. But his candidature was cancelled on the ground that the said diploma certificate was not accorded recognition by the AICTE and the duration of the course was two years, and not three years. In the year 2008 applicant appeared in the LDCE again for appointment to the said post, and although he passed his examination, the respondents denied him the appointment, based upon the ground that has been mentioned above. In fact, his candidature was cancelled by the authorities by an order dated 30.12..2008. Applicant made a representation to authorities, and finally the Ordnance Factory Board in a communication dated 27.8.2010 wrote to the General Manager, Ordnance Factory, Badmal that applicant is eligible for appointment to the post of Chargeman, and the diploma he has obtained was valid. Based upon this position, the applicant could not have been debarred from appointment as Chargeman, but since he did not get his letter of appointment, he represented to the authorities. On the other hand, the respondents while disposing of his representations, issued letter dated 26.7.2011 to him in which it was communicated that " **since the issue**



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of validity of Diploma level certificate obtained through correspondence course on technical subjects as fulfillment of SRO provisions for recruitment (M-T(Mech) through LDCE is pending with the Hon'ble Tribunal, Cuttack Bench, you have to wait for the final outcome of the same." This is the backdrop against which the applicant has approached the Tribunal.

3. The Respondents have filed their counter affidavit in the case, in which they have averred that the grievance of the applicant related to the year 2008, whereas he approached the Tribunal only in 2011. Therefore, the OA is barred by limitation. On the facts of the OA, submission of Respondents is that in order to fill up the vacancies in the post of Chargeman (T), a Factory Order dated 16.7.2008 was issued inviting applications from the eligible candidates. As per the qualification specified, one must possess three years diploma or equivalent qualification certificate in the respective field duly affiliated by All India Council for Technical Education (AICTE) with two years' experience in the relevant field. Further, the operating instructions dated 20.6.2008 inter alia indicated that candidates possessing the required qualification in terms of the SROs from an Institute recognized by the Govt. of India are also eligible. The ratio decidendi of the above instruction is thus; that candidates obtaining the qualification from an Institute recognized by the Govt. of India should also fulfill the prime requirement



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of 03 years diploma course duly affiliated by AICTE. In other words, possessing a certificate from an Institute recognized by Govt. of India but not affiliated by AICTE cannot make a person eligible for the post of Chargeman, Technical as per SRO's governing the field.

4. It is further stated that General Manager, Ordnance Factory, Badmal constituted a Screening Committee to verify the eligibility of all candidates for this post. The Committee observed that the applicant had submitted a certificate of passing Technician Engineers Examination from the Institution of Mechanical Engineers (India) Mumbai which is said to be at par with a Diploma in Mechanical Engineering awarded by State Polytechnics vide Govt. notification dated 11.7.1988. However, OFB letter dated 11.1.2007 stipulates that the candidates who obtained Diploma from the Institute of Mechanical Engineers (India), Mumbai are not eligible for LDCE for the Post of <sup>C</sup>M-II (T) in terms of the provisions laid down in SRO 66 dated 27.5.2003, as the course/certificate is not affiliated by AICTE. Hence, the application was rejected. The remark of the committee was conveyed to applicant in a letter dated 18.8.2008. The applicant submitted a copy of letter dated 24.11.2006 addressed to the Institute from Ministry of HRD which revealed that the courses conducted by the Institute were being reviewed by AICTE. On the basis of this letter, the applicant was



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provisionally allowed to appear in the examination subject to condition that he should provide proof of validity of the educational qualifications. Since the applicant has again represented regarding validity of diploma certificate, the matter was referred to the Ordnance Factory Board, Kolkata who issued a clarification dated 27.8.2010 stating that the Diploma certificate was recognized for employment in Central Govt. Immediately after the issue of above letter of Board vide letter dated 30.10.2010, while approving para-wise comments prepared in O.A No.434 of 2010 filed by similarly placed employee, Sri P.K.Mahalik had held that the requirement of SRO is also that the course has to be approved by AICTE. The clarification issued by AICTE in letters dated 28.10.2010 and 23.12.2010, and by Ministry of HRD in letter dated 31.12.2010 unequivocally indicate that AICTE does not permit Technical courses through open distance learning (correspondence) mode except MBA and MCA. A number of similarly placed employees had approached the Tribunal on the subject of validity of diploma certificates in by filing OAs which were subjudice. In view of these factors the representations of the applicant were disposed of vide letter dated 26.7.2011 in which it was communicated to him that he has to wait till the outcome of the O.As which are sub judice in the Tribunal is known.

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5. With the above submissions, the Respondents have prayed that this OA deserves to be dismissed in limine.

6. Having heard the learned counsels on both side, we have also perused the records. It was brought to our notice in the counter affidavit filed by Respondents that in a similar matter<sup>is</sup> this Tribunal vide order dated 4.4.2011 in OA No.253/2008 filed by Sri J.K. Senapati and OA No.254/2008 filed by Sri Trilochan Behera has already held that the Tribunal lacks jurisdiction to hold an opinion in case when the authenticity of the certificates as well as the Institution issuing such certificates<sup>is</sup> are called in question by the employer, and finally dismissed OAs being devoid of merit. The Tribunal has disposed of OA No.62/2011 filed by similarly placed employee on the same issue on 13.5.2014. The relevant part of the order dated 13.5.2014 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<sup>5</sup> & 254 of 2008, which have been disposed of by this Tribunal on 4.4.2011. The Tribunal in ~~the~~ 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

*[Signature]*



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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 <sup>the</sup> 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".

7. In the matter of S.I Rooplal Vs 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], the Hon'ble Apex Court has laid down the law that a co-ordinate Bench of the Tribunal must not pass an order contrary to an order passed by another Co-ordinate Bench. Judicial consistency has been stressed by the Hon'ble Apex Court as of primary importance. In the absence of Judicial consistency, public confidence in the judicial process would be eroded. If a co-ordinate Bench of the Tribunal takes a different view, all that it should do is to refer the subject to a larger Bench for final decision. The relevant part of the

*Dr. Jai*

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decision rendered by the Hon'ble Apex Court in S.I Rooplal (supra), 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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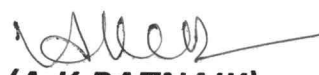
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8. In pursuance of the ratio laid down by the Hon'ble Apex Court (supra), and considering the view already taken by this Tribunal in O.A. No. 62 of 2011, as well as in earlier OAs No.253 and 254 of 2008 filed on the same subject, we are not inclined to deviate from the earlier view rendered, and we, accordingly, hold that the Tribunal lacks jurisdiction to try and adjudicate this matter. In the circumstances, <sup>2</sup>the OA is dismissed. Parties to bear their respective costs.

(R.C.MISRA)  
MEMBER(A)

BKS



  
(A.K.PATNAIK)  
MEMBER(J)