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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No.260/00239 of 2012

Date of Order : 22-JUNE , 2017

CORAM

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

Jayant Kumar Ranjit aged about 53 years S/o Late Dhrubachanran Ranjit at present working as Medical Attendant, Healthcare Center, Integrated Test Range, Chandipur, Balasore.

...Applicant

By the Advocate-S.K.Ojha

-Vs. -

- 1- Union of India represented through its Secretary, Ministry of Defence, Sena Bhawan, New Delhi - 11.
- 2- The Director General & Scientific Adviser to Raksha Mantri, Research & Development Organization, Ministry of Defence, Sena Bhawan, New Delhi - 11.
- 3- Scientific Advisor to Rakshya Mantri Defence Research & Development Organisation, DRDO Bhawan, Rajaji Marg, New Delhi - 05.
- 4- Director, Interim Test Range, At/PO Chandipur, District Balasore-25.
- 5- Smt. Labanyabati Kar aged about 41 years W/o Shri Ranjan Kumar Mishra, At-Postal Colony, Jail Road, Azimabad Near F.M. College, Balasore, presently serving as Medical Attendant at Health Care Centre, Interim Test Range, Chandipur, Balasore.

...Respondents

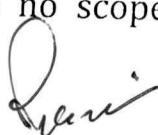
By the Advocates-Sh.S.Behera & Sh. P.R.J.Dash

ORDER

Per R.C.MISRA, MEMBER(A):

The applicant, through this O.A., has prayed to quash the impugned orders at Annex. A/3 and A/4 dated 17th February and 12th February, 2012 debarring him to appear in the Limited Departmental Competitive Examinations (LDCE) for the post of STA-B despite the standing instructions of the Government that incumbents holding three year diploma in General Nursing Midwifery are not eligible to be considered on the said post.

2. The facts in brief are that before his appointment as Medical Attendant on 25.07.2002 under the respondent No. 4 in Integrated Test Range (ITR), registered under the Factories Act, 1958, Chandipur, Balasore, applicant was a defence personnel and while working in Army, he successfully completed training of Nursing Assistant. While working at the Health Care Centre, duly sanctioned by the Defence Research Development Organization (DRDO) his duties were to provide first aid and apparently, there was no provision for admitting the patients in Wards and on account of this, there was no scope for recruiting a nurse.



Moreover, no lady employee is allowed to be present in the office after 17:30 hours as per instructions of the Government. As per Annex.A/1, qualifications for recruitment as Senior Assistant 'A'/Technical Assistant 'B' through LDCE, are Bachelor of Science or three year Diploma in Engineering/Technology/Computer Science/Allied subject in the required discipline under SRO 147. The applicant has pleaded that there exists no provision for recruitment of Senior Technical Assistant 'B' with qualifications of Nursing Midwifery particularly when there are no maternity/general wards in the Health Care Centre, Balasore. A clarification dated 19.11.2009 (Annex.A/2) was also received from the Headquarters of DRDO, New Delhi specifically mentioned ~~any~~ ^{of} candidates with three years Diploma in General Nursing Midwifery are not eligible for STA-B post. It is stated that respondent No. 4 issued a Daily Order bearing No. 60/2012, Part I on 17.2.2012 vide Annex.A/3 for recruitment of One Unreserved post of STA-B through LDCE on 27-28th March, 2012, in the Defence Research Technical Cadre with essential educational qualification of Nursing Midwifery with three years Diploma in concerned subject from a recognized institution. Upon this, applicant preferred a representation dated 24.2.2012 (Annex.A/5) to respondent No. 4 and respondent No.3 as well, categorically stating to reconsider the matter and allow him to appear in the said interview instead of Midwifery because there is no facility for Indoor patients in the Health Centre.

3. It is the contention of the applicant that the impugned Part-I Daily Order dated 17.2.2012 has been issued in clear violation of the provisions of the Government of India. It is submitted that he has been working as Medical Attendant since 2002 and such post requires an experienced man so as to provide first aid to the persons working in technical areas during the mission irrespective of time and, the fact remains that Nursing Midwifery cannot work in emergency in the night hours because of clear instructions that no lady employee will work after 17.50 hours. Hence, the applicant moved this Tribunal for directing the respondents not to undertake such recruitment and consequently set aside the same.

4. Through **MA No. 664/2015** one Smt. Labanyabati Kar was permitted to join as an intervener vide order dated 16.11.2012, who is represented by Sh. P.R.J.Dash who relying upon reply filed by the respondents, also filed his reply. The Tribunal while impledging the intervener, also directed that, "if the



examination as scheduled is held the result of the same shall be kept in a sealed cover and it shall not be published without the leave of this Tribunal".

5. Official respondents have filed their reply narrating therein that consequent to the Daily Order Part I dated 17.2.2012 call letters to eligible candidates viz. Ms. L.B.Kar (respondent No.5) and Ms. S. Senapati were issued to appear in the LDCE for the post of STA-B on 27.3.2012 and the entire procedure was undertaken as per provisions hence, the allegations to adjust near and dear, made by the applicant are false and baseless having no motive of the respondents but to make a fair and transparent selection. It is pleaded that applicant had passed Health & First Aid Training Examination and the duration of the course was only six months, which does not make him eligible for the LDCE for Senior Technical Assistant 'B' which requires Bachelor's degree in Science or three years Diploma from a recognized institute as per Defence Research Technical Cadre Recruitment Rules, 2000 and the Guidelines issued thereafter enclosed as Annexs. R/1 to R/3 with the reply. The respondents denying the contention of the applicant regarding deployment of nursing staff only in maternity and general wards, contended that applicant has made a sweeping statement and undermined the services expected and failed to appreciate the requirement of nursing staff at ITR in its proper perspective. Respondents have stated that in the VI CPC the earlier entry level post of STA-A is upgraded and merged to STA-B vide DRDO Headquarters letter dated 8.6.2009.

6. The respondents have categorically mentioned the provision for recruitment of STA-B with qualification of Nursing Midwifery and submitted that the position regarding specialization/qualification required by a DRDO Lab/Establishment for recruitment to the post of Senior Technical Assistant A (now STA-B) has been clarified in DRTC Recruitment Rules in SRO 296 dated 5.12.2000 Sub Rule (6) of Rule 5 under future maintenance which states that for filling up the post through direct recruitment or through LDCE, the choice of specialization, subject to Sub Rule (4) will be at the discretion of the appointing authority depending upon functional requirement. It has been averred that there is no provision for recruitment of STA-B with qualification Nursing Midwifery and no such work is available. Based on the functional justification the LDCE recruitment for STA-B in the field of Nursing was concurred by the respondents. In the instant case, the eligible employees qualified for appearing for the tests are diploma holder with discipline General Nursing Midwifery of three years



duration from the recognized institute and the course is recognized whereas the applicant does not have any such diploma in possession. As per SRO, a candidate to become eligible to apply for the STA-B, must have bachelor degree in Science or Three years diploma in Engineering or Technology or computer science or allied subjects in the required discipline, as stated above, and the applicant does not have any such formal qualifications. All the attempts of the applicant making representation and without waiting for reply making another representation leaving no reaction time for respondents, were only to vitiate the recruitment process with ulterior motive. The respondents have averred that due to interim order to the effect that keeping the result of the selection process in a sealer cover is causing great administrative inconvenience being unreasonable, therefore, official respondents have prayed to dismiss this OA.

7. The Intervener (respondent No.5) has opted the reply of official respondents and merely reiterated the contentions already given and mainly argued that he has not arrayed the necessary parties who are likely to be affected. It is stated that in no way applicant is prejudiced or any of his conditions of service has been adversely affected by the issuance of notification for filling up the post of Nursing Midwifery so as to give rise to a cause of action. It is, therefore prayed to dismiss the O.A., as not maintainable.

8. It is stated in the reply that the Sub Rule (4) refers ^{red} above, determine the level at which recruitment of Senior Technical Assistant is to take place vis-à-vis Entry level, minimum qualification and age limits as laid down in Schedule-II of Technical Cadre Recruitment Rules, 2000 and Annexure-V of Revised Guidelines issued on 2003 which is enclosed as Annexs. R/3 and 3-A. Further, with the upgradation of STA-A post and merger of the same with STA-B after VI CPC the powers for appointment to the post of STA- B was also vested with the Director of establishment subsequent to VI CPC. Further, while identifying the specializations / qualifications / disciplines etc. the appointing authority has exercised due jurisprudence before coming to the conclusion of finalization of specialization for the post. The Head, Health Care Centre, ITR, Chandipur, who is extremely professional and an experienced doctor in the field of medicine and well versed with range activities, had put forth a strong justification for recruitment of STA B Nursing for HCC, ITR, Chandipur. Based on the justification furnished by the Head, HCC and only upon due deliberations on the subject, a committee comprising of Scientists had recommended to recruit STA-B in the field of Nursing and the same

was accepted by the concerned authority at DRDO Headquarters. Presently, there are three entry level nursing courses in India and several layers of post certificate, post diploma and post graduate courses. The availability of nursing education programs in India and Orissa up to Graduation are (i) ANM after 10th class (ii) General Nursing and Midwifery (GNM) for three years after 12 class or intermediate (iii) B.Sc. Nursing after 12th class with sciences. GNM is the only diploma course in Nursing, which is of three years duration, as is evidence from the Indian Nursing Council Website. In this view of the matter, it may not be correct to conclude that there is no provision for recruitment of STA-B with qualification Nursing Midwifery and no such work is available. It is pleaded in the counter that as regards the DRDO Headquarters letter dated 19.11.2009, it is submitted that this letter is one of the correspondences, out of many correspondences taken place between ITR and DHRD, New Delhi in this regard. As there was dissonance in this letter with the DRTC Rules, the issue was re-examined by the next higher authority at DRDO Headquarters at a later date and guidelines were issued for identifying and deciding specializations / disciplines / qualifications by each Lab / Estt. Vide DRDO Headquarter letter dated 8.9.2010 and in pursuance of these guidelines, the competent authority accorded clearance for the Nursing discipline vide Annex.R/7. It is submitted that there is no violation of SRO as the functional requirement for the post exists and educational and other requirements published in Daily Order are in conformity to SRO. The recruitment of nursing staff for HCC is initiated only after its need is established from necessity angle. The Head, HCC had furnished adequate justification for the quantum of work to be carried out by the Nursing Staff at HCC. Based on the said functional justification, the LDCE recruitment for STA-B in the field of Nursing was concurred by the higher authority. In view of the factual position brought out above, the allegations made by the applicant are not tenable.

9. The applicant has filed a rejoinder stating that he is very much eligible to be selected as a Male Nurse and would be available for work without any restriction of time under the Factories Act, but respondents with an ulterior motive, has ^{ve} published vacancies only for Nursing Midwifery to deprive the applicant from his legitimate rights. It is admitted by the respondents that applicant served in Indian Army as Nursing Assistant Grade-A for twenty years and, thus fully eligible to be selected as a Male Nurse because he has obtained a qualifying certificate to this effect. He further mentions that if the eligibility criteria is three years diploma, the



respondents may clarify how a Pharmacist named Sh. S.K. Kabi, has been appointed as STA-B in HCC of ITR. which is only for employees and staff since it is located in prohibited areas not acceptable to outsiders. The requirement of the nursing Midwifery is not there which provides first aid medical facilities only. The authorities have not been able to prove the requirement of Nursing Midwifery in a Missile Test plans and, they are only trying to show favoritism to certain candidates. The steps taken by the Department are, therefore violative of the SRO Rules. With this submission, applicant has prayed that his O.A. be allowed.

10. We have considered the arguments advanced by the learned counsel for the parties and perused the records including the written note of arguments filed by the respective parties.

11. The first issue that we are going to address is, the point raised by the applicant that, the recruitment to the post of STA-B in the category of Nursing Midwifery through LDCE, is unnecessary since it is not required in ITR. His contention is that without any requirement, the recruitment is undertaken in order to accommodate some favourites. He has also pleaded that he is a ^{Ex-2} Defence personnel and while working in the Army, has undergone Nursing Assistant training. He has been working with respondent authorities as a Medical Attendant from 25.7.2002 and being a Male Nurse, will be able to work beyond office hours. Since the respondents are contemplating recruitment of a lady employee according to the qualification, she may not be allowed to work beyond the office hours according to the provisions of the Factories Act stipulating that female employees should not work in an establishment beyond a particular hour in the evening. With regard to such submissions, we are of the view that applicant does not have authority to decide requirement of respondents rather, it is for the respondents to assess the medical requirement and, since it is in the administrative domain, this Tribunal would not like to entertain the submission of the applicant in this regard. Moreover, if there is a recruitment made to STA-B through LDCE according to the eligibility and qualifications criteria, the applicant cannot claim a right to be considered for such appointment, if he does not have the required qualification. The respondents are best placed to decide the validity of his submission as to where applicant's services will be more required in the organization. Therefore, applicant should not try to arrogate to himself the decision for such matters. If a person is working with the respondents as a Medical Attendant, the same does not confer on him any right to be considered

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for a promotional post, therefore, such submissions of applicant are misconceived.

However, there are other issues raised by applicant which need consideration by the Tribunal. The matter pertaining to recruitment of STA-B through LDCE of required qualification of Nursing Midwifery was sent to the competent authority of DRDO Headquarters, New Delhi vide letter dated 9.7.2009 and the DRDO Headquarters through their communication dated 19.11.2009 clarified that candidates with three years Diploma in General Nursing Midwifery are not eligible for recruitment for the post of STA-B. This letter dated 19.11.2009 addressed from the DRDO Headquarters to the Director, ITR, Balasore, has been filed as Annex. A/2 of this O.A. The reply of the respondents is that after the letter dated 19.11.2009 was received, the Director ITR re-examined the letter and obtained approval for STA-B (Nursing) under LDCE with the required qualification of three years' Diploma in Nursing, vide letter dated 18.1.2011 (Annex.R/7). It is a letter addressed from the DRDO Headquarter to the Director, Integrated Test Range (ITR), Chandipur, Balasore. In this letter, the approval of the Board in respect of identification of qualification and disciplines for recruitment to DRTC Cadre at ITR Chandipur has been forwarded. On perusal of the aforesaid documents, we find that a category of nursing has been added at Sl.No.15 with qualification of B.Sc. or 3 years regular diploma in the concerned subject from a recognized university and in case of nursing, it is mentioned that, "in order to meet the requirement of Health Care Centre and support mission, this trade is required. The justification given by Medical doctor is enclosed". It is to be noted that the head of the HCC after giving due justification has submitted a proposal for sanction of 2 to 3 STA-B posts for HCC, ITR having three years Diploma in Nursing qualification to carry-out the several activities of the centre considering the hazards that are being faced by the employees staying within the ITR premises. It appears that in consideration of this recommendation, the respondents decided to add a subject of Nursing for recruitment through LDCE, as per their letter dated 18.1.2011. Subsequent to this development, recruitment notice of 17.2.2012 for LDCE was notified by the respondents. In the said notification, the subject has been mentioned as Nursing Midwifery and the qualification is laid down as three years Diploma in the concerned subject from a recognized institute. It also appears that the applicant of this OA made a representation to the Scientific Advisor to Rakshya Mantri, DRDO Bhawan, New

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Delhi on 24.2.2012 in which he has submitted that in the said hospital there is no inpatient facility and there is no maternity ward, therefore, the proposal of recruitment of STA B with qualification of Nursing Midwifery is pre-meditated plan to accommodate some persons in violation of the SRO. A prayer has been made by applicant that proposed recruitment would be a subject of criticism and, therefore, he prayed for intervention to stop the process of recruitment. However, it appears that this representation was not considered by the authorities.

12. There is no doubt that the applicant has no locus standi to challenge the notification for recruitment. He does not possess the educational qualifications as required for recruitment and the submission that he being a medical attendant working for some time, should be considered for recruitment, is not acceptable because it is for the authorities to decide such matters. However, it simultaneously appears to us that all the issues involved in this O.A. are not transparently answered by the respondents. For eg. In the recommendation made by the Head of the HCC on 18.10.2010 he has recommended STA-B having three years Diploma in Nursing qualification. In the letter dated 18.1.2011 (Annex.R/7), the qualification and discipline for selection to STA-B has been intimated by the Director of ITR as approved by the Board. As already stated above, nursing has been added as a classification in order to meet the requirement of HCC and to support the mission and in the face of the above mentioned facts, the notification dated 17.2.2012 by which the process of LDCE was initiated, the subject has been indicated as Nursing Midwifery. If the qualification was stated to be nursing only, it is not understood why the subject was mentioned as Nursing Midwifery. It may be argued that these are two allied qualifications but a recruitment notification has to be fully in accordance with the decision of the competent authority and any deviation there from will create a suspicion. The requirement of the Centre has been assessed and the Board has given approval for the post of STA-B with Nursing qualification. These question arises as to why Midwifery was added to Nursing and under whose authority, These questions are required to be answered in order to ensure transparency in this case. In view of the various allegations made in this O.A., it is all the more required that every thing should be transparently explained. The Notification of recruitment, therefore does not fully meet the test of transparency.



13. On perusal of the previous order-sheets, it is observed that the applicant in this O.A. did not appear before this Tribunal on number of occasions and, therefore, O.A. was dismissed for default by an order dated 20.2.2014. Subsequently, prayer for restoration of O.A. was also rejected by order of this Tribunal dated 12.5.2015. Thereafter, applicant had approached the Hon'ble High Court of Odisha to set aside this Tribunal's order and finally the O.A. was allowed to be restored, after which, the hearing of the matter was taken up. It is to be noted here that on 22.3.2012 as an interim order, it was directed that if the examination as scheduled is held the result of the same shall be kept in a sealed cover and it shall not be published without the leave of this Tribunal.

14. We have therefore after due consideration of all the issues, come to following conclusion:

15. The applicant's case for being considered for recruitment to STA-B through LDCE is found to be without any justification, for the reasons as given in the foregoing paras and to this extent, the prayer of the applicant is dismissed being devoid of merit.

16. However, since we have noted that there has been deficiency in the decision of the authorities vis-a-vis the Notification for LDCE due to lack of transparency in the publication of Notification issued on 17.2.2012 and a period of five years has also passed in the meantime, and as per the interim direction of this Tribunal, result of the LDCE has also not been published, therefore, respondents are directed to cancel the process of recruitment and re-notify the same after specifying the qualifications correctly and initiate a fresh process of selection through LDCE.

17. The O.A. is thus disposed of with the above observation and direction, with no costs.


(R.C. Misra)
Member (A)


(A.K. Patnaik)
Member (J)