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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.398 of 2012

Cuttack this the 30th day of June, 2014

Paresh Kumar Mahalik...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*

Shri
(R.C.MISRA)
MEMBER(A)

Ables
(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)

Paresh Kumar Mahalik
Aged about 38 years
S/o.Sri Kanhei Charan Mahalik
AT/PO-Chikana
Dist-Jajpur
Presently working as Examiner(HS-II)
Ordnance Factory,
AT/PO-Badmal
PS-Saintala
District-Bolangir, Orissa

...Applicant

By the Advocate(s)-M/s.B.P.Tripathy
K.K.Pradhan
P.K.Tripathy
P.K.Sahu

-VERSUS-

Union of India represented through

1. The Secretary,
Government of India,
Ministry of Defence, DHQ Post Office
New Delhi-110 011
2. The General Manager
Ordnance Factory,
At/PO-Badmal
PS-Saintala
District-Bolangir
3. The Director General
Ordnance Factory Board
10-A, Saheed Kshudiram Bose Road
Kolkata-700 001

Paresh

4. Administrative Officer
 Ordnance Factory,
 At/PO-Badmal
 PS-Saintala
 Dist-Bolangir

...Respondents

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

Mr.S.K.Patra

Mr.L.Pradhan

Mr.B.P.Das

ORDER

R.C.MISRA, MEMBER(A)

Applicant, who is working as Examiner(HS-II) in the Ordnance Factory, Badmal in the District of Bolangir has approached this Tribunal seeking the following relief.

- i) To declare that the applicant is eligible to appear at the LDCE 2011-12 and be considered for promotion, if otherwise qualifies for the same and to direct the Respondents to allow the application of the applicant at the LDCE-2011 to be held on 2.6.2012.
- ii) To declare that action of the respondents not accepting his diploma certificate and debarring the applicant to sit for the LDCE 2011-12 is illegal.
- iii) And to pass any order/orders which this Hon'ble Tribunal deem fit and proper.

2. The short facts of the case are that the applicant passed Diploma in Mechanical Engineering from Vinayak Mission University, Sal^{em} ^r, Tamil Nadu in April, 2007 through Distance Education Mode. For the year 2011-12, he had applied for a promotion to the post of Chargeman through a Limited Departmental Competitive Examination (LDCE). It is submitted by him that

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for the years 2009-10 and 2010-11, he was not allowed to sit for the LDCE and therefore, he had earlier approached this Tribunal in O.A.No. 434 of 2010 and the Tribunal, as an interim measure, directed the Respondents to allow the applicant to take part in the LDCE, 2010-11. O.A.No.434/2010 was disposed of by the Tribunal on 4.4.2010, in which the Tribunal passed the following order.

"However, from the elucidated facts, the point for consideration is whether Diploma Certificate submitted by the applicant is in accordance with the circular and/or as per the course approved by AICTE failing which, the Tribunal cannot declare the applicant eligible as prayed for by him. In this connection, we would like to note that the determination of the above point is not amenable to the jurisdiction of the Tribunal, as it is not expected of the Tribunal to try and adjudicate certain matter with a view to holding an opinion on the legality and validity of a certificate and pass a declaratory order. In the circumstances, in our considered view, the Tribunal is not the proper adjudicatory forum and as such the prayer of the applicant in the present O.A. to that extent regarding the recognition of Diploma Certificate is not maintainable.

Of late we came across a decision of the Hon'ble Supreme Court in Bharathidasan University v. All India Council of Technical Education (2001) 8 SCC 676: AIR 2001 SC 2861, wherein it has been held that "All India Council for Technical Education Act, 1987 – SS. 10(I)(k), 2(h), (i) & 23 – Act does not require a university to obtain prior approval of AICTE for starting department or unit as an adjunct to the university itself to conduct technical education course of its choice. We have also examined its applicability to the facts of the case in hand. From the records it reveals that the diploma certificate which has been called in question by the Respondent-Department has been issued by Vinayak Mission Research Foundation (VMRF) Salem(Tamil Nadu), Deemed University. This apart, vide Annexure-R/6 dated 23.12.2010, "it has been clarified by the AICTE that "it has been the policy of the AICTE not to recognize the qualifications acquired through distant education



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mode at Diploma, Bachelors & Master's level in the fields of Engineering, Technology including architecture, Town Planning, ^{Pharmacy &} Primary, Hotel Management & Catering Technology, Applied arts & Crafts and Post Graduate Diploma in Management (PGDM). AICTE only recognize MBA (not even PGDM) and MCA programme through distant mode". The applicant has not rebutted the above statements made by the Respondents with regard to attainment of diploma qualification through distant education mode and that the certificate issued by VMRP is deemed university nor has he produced copy of the said certificate for the appreciation of the Tribunal. In this view of the matter, the aforesaid decision is not applicable to the facts of the case in hand.

In so far as the submission of the applicant that one Srikanta Nayak, ^(sic) who has produced the similar certificate has been accepted by the Respondents and in effect he has been promoted and appointed to the post of Chargeman, Gr.II, the Respondents have clarified the position and have stated that Sri Srikanta Nayak has been issued with show cause notice of reversion. In the meantime, they have prayed that the applicant could not have any grievance in this regard.

We have considered the submissions of the learned counsel for the parties. Be it noted that if no further action in pursuance of show cause notice issued to Shri Nayak is taken by the Respondents, it would be deemed that they are having mens ria to discriminate the applicant. In effect, apart from they being liable to be proceeded against under the Contempt of Courts Act for having misled the Tribunal, the applicant shall be deemed to be declared eligible for the post in question and accordingly, the Respondents shall appoint the applicant to the post of Chargeman, Gr.II provided he has come out successful in the LDCE".

3. However, it was brought to the notice of the Tribunal that one Sisir Kant Nayak who had produced the similar certificate has been accepted by the Respondents and in effect he has been promoted and appointed to the post of Chargeman, Gr.II. Respondents had clarified the position and had stated that Shri Nayak has been issued with a show cause notice of



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reversion and in the circumstances, they have prayed that the applicant could not have any grievance in this regard. Considering these facts, the Tribunal had passed orders that if no further action in pursuance of show cause notice issued to Shri Nayak was taken by the Respondents, it would be deemed that they are having mens ria to discriminate against the applicant and in that event, Respondents would be liable to be proceeded against under contempt of Courts Act and the applicant shall be deemed to be declared eligible for the post in question. The Ordnance factory, Badrnat by an order dated 28.4.2011 reverted Shri Sisirkant Nayak to his former position, challenging which the said Shri Nayak had moved this Tribunal in O.A.No.62/2011. In the meantime, although the applicant duly applied for the LDCE during the year 2011 for the post of Chargeman, Respondents did not allow him to sit for the examination on the ground that the certificate obtained from Vinayak Mission University through Distant Education Mode was not valid. In this regard, applicant's submission is that Vinayak Mission University was established under Section 3 of the U.G.C. Act, 1956 and all qualifications awarded through DCE by this University shall be recognized for the purpose of employment. The authorities of AICTE have informed that the approval for Distance Education is granted by the Joint Committee comprising UGC, AICTE and DDCE. This Joint Committee in their 3rd meeting held on 2007, held that all Universities shall be given provisional recognition for one year, i.e., for the academic year 2007. AICTE has communicated that the Vinayak Mission University has been recognized to



offer Diploma in Mechanical Engineering upto the year 2007. It has been further submitted that basing on the above recognition of the Joint Committee and relying upon the judgment of the Hon'ble Apex Court in Bharathidasan University & another vs. AICTE & Ors., the Hon'ble High Court of Punjab & Haryana in Vikash Kumar vs. Haryana Sate Pollution Control Board & another held that the decision by the State under the circumstances, to look to the approval from AICTE and finding that such approval was not obtained to disqualify a person to hold a Diploma issued by a Deemed University through distance education mode is clearly untenable. Applicant has submitted that he has passed three years' Diploma in Mechanical Engineering in Vinayak Mission University which is established under University Act, 1956 and is deemed University for this purpose through Distance Education Mode. The joint Committee had approved this course for two years upto 2008. The applicant's case is that that he stands on a similar footing as Vikash Kumar in C.W.P.No.1405 of 2009 decided on 13.01.2010 by the Punjab & Haryana High Court. Therefore, the decision of the Ordnance Factory, Badmal not to allow the applicant to sit in the ensuing LDCE 2011-12 has been challenged by the applicant as arbitrary and illegal as well as discriminatory.

4. Respondents in the counter reply have averred that the Tribunal had issued an interim order to the Respondents to allow the applicant to appear in the LDCE 2011-12, but not to publish the result of the examination without the leave of the Tribunal. In pursuance of the interim



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direction, applicant has been allowed to participate in the selection test. However, the principal grievance of the applicant in this O.A. is that his Diploma certificate obtained by him from Vinayak Mission University should be accepted.

5. With regard to this prayer, the Respondents have submitted that the Tribunal vide order dated 4.4.2010 in O.A.No.434 of 2010 filed by the same applicant held the O.A. not maintainable. Since the applicant has agitated the same issue in the present O.A. as was raised by him in O.A.No.434 of 2010, this O.A. suffers ^{from} ~~constructive~~ res judi cata in view of the fact that with regard to the recognition of this Diploma certificate, the order dated 4.4.2010 of this Tribunal has attained finality. In O.A.No.434 of 2010, the Tribunal had disposed of the matter with an observation that the Tribunal was not the proper adjudicatory forum and as the prayer of the applicant in the present O.A. is regarding recognition of the Diploma certificate, the same is not maintainable. Further, the Tribunal held that if no further action in pursuance of the show cause notice issued to Shri Sisir Kanta Nayak a similarly placed employee is taken by the Respondents, it would be deemed that they are having mens ria to discriminative against the applicant. Counter reply mentions that Shri Nayak and three other similarly placed employees ^{wee} ~~reverted~~ vide order dated 2.4.2011 from the post of ^Q Chargmaen(Tech) in pursuance of the above show cause notice. Subsequently, they approached this Tribunal by filing O.A.Nos.62/11(Sisir Kanta Nayak), O.A.No.232/11(G.B.Mishra), O.A.No.290/2011(P.C.Dehury)



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and O.A.No.294/2011(C.B.Rao). In these matters, the Tribunal had granted interim order of stay on the reversion orders and the O.As are pending disposal. On the merits of this matter, it is submitted by the Respondents that the governing SORs for the post of Chargeman(Tech) are SRO-13(E) dated 4.5.1989 as amended by SRO 199 dated 28.11.1994 and SRO 66 dated 26.5.2003. According to these SROs, the essential qualification for recruitment to the post of Chageman(Tech) is that a candidate must possess three years' Diploma or equivalent qualification in the respective field duly affiliated by the AICTE with two years' experience. Candidates possessing the required qualification in terms of the SRO from an Institute recognized by the Government of India were also eligible. The ratio decidendi of these instructions is that the candidates obtaining the qualification from an Institute recognized by the Government of India should also fulfill the requirement of three years' Diploma course duly approved by AICTE. Therefore, possession of a certificate from an Institute recognized by the Government of India, but not affiliated by AICTE cannot make a person eligible for the post of Chargmn(Tech). This applicant had filed O.A..No.434 of 2010 in which the Tribunal in their order dated 4.4.2010 held that the Tribunal is not the proper adjudicatory forum and therefore, the present O.A. regarding recognition of Diploma certificate was not maintainable. In the same order the Tribunal also held that the decision of the Hon'ble Apex Court in Vinayak Mission University vs. AICTE and ors is not applicable to the facts of the present case. It is further submitted that

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the Hon'ble High Court of Orissa in the case of Policy Planning Body and another vs. Silicon Institute of technology & Ors. 2011(1) OLR CUT- 162 has held that AICTE is the body which can grant permission to the Institute for study of Technical Education and not the University or the Government. It is also the submission of the Respondents that in O.A.No.253 of 2008 filed by Shri J.S.Senapati , O.A.No.254 of 2008 filed by Shri T.Behera, the Tribunal in their order dated 4.4.2011 has held that it lacks jurisdiction to hold an opinion in the case when the authenticity of the certificate as well as the institution issuing such certificates are called in question by the employer and finally, dismissed those O.As being devoid of merit. In view of the decision already rendered by the Tribunal, the Respondents have submitted that the present O.A. is liable to be dismissed.

6. We have heard the learned counsel on both the sides and perused the records. Applicant has also filed a written note of submission which in fact is the reiteration of submission as in the O.A. However, it has been submitted that since the Diploma certificate issued by the Vinayak Mission University being a recognized Institute by the Government of India, the question of its invalidity does not arise. The plea of res judi cata as urged by the Respondents has been refuted by the applicant on the ground that the issue of acceptance or otherwise of the Diploma certificate has not been directly and substantially adjudicated in O.A.No.434/2010.

7. We have considered the submissions made by the learned counsel for the parties. It is to be noted that O.A.No.62/11 filed by one Sisir Kant



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Nayak who has been already mentioned in the course of this order has been disposed of by this Tribunal on 13.5.2014. After discussing the matter in detail in that O.A., the Tribunal held as under.

"It is seen that the issue under consideration in the present O.A. is the same as in O.A.Nos. 243 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 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. The Tribunal had taken a view based upon the earlier decision in O.A.Nos. 253 and 254 of 2008 and also in O.A.No.285 of 2008 wherein a finding was recorded that the Tribunal lacks jurisdiction to render an opinion on the issue particularly when the employer Respondents have



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questioned the authenticity of Diploma certificate as well as the Institution issuing such certificate. On this ground, it was held that the Tribunal lacks jurisdiction to try and adjudicate those matters and in the circumstances dismissed those OAs. On perusal of the order of the Tribunal in O.A.No.434 of 2010, which was filed by the same applicant Paresh Kumar Mahalik, the Tribunal had come to a finding that this is not the proper adjudicatory forum as the issue involved in the O.A. was regarding recognition of Diploma certificate. In the present O.A., the same applicant has brought out the same issue for adjudication. Therefore, this O.A. ~~by any stretch of~~ ^{a P} ~~imagination~~ is hit by the principle of res judi cata.

9. It is now evident that the Tribunal had earlier heard the matters arising out of similar circumstances and involving similar issues and in all those matters the Tribunal had come to the conclusion that it lacks jurisdiction to try and adjudicate the matter regarding the validity of the certificate issued by the concerned Institutions. Since the Tribunal has already taken a view in similar ~~matter~~ ^P matters like that of the present one, we are not inclined to make a departure from the view already taken. In this regard, the judgment rendered 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 December, 14, 1999] – 2000 Supreme Court Cases (L&S) 213 lays down the law as under.

“ 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,

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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. For the foregoing discussions, 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)




(A.K.PATNAIK)
MEMBER(J)

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