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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH:JODHPUR.**

Original Application No. 16/2004

Date of decision 29-3-2005

Hon'ble Mr J K Kaushik, Judicial Member.

Hon'ble Mr. G R Patwardhan, Administrative Member.

Anil JB S/o Shri Arjun Ram JB, aged about 31 years, r/o 1 Karmachari Colony, 8 Residency Road, Jodhpur, Official address recruited Engineer/Scientific Officer under going Orientation Court in the Centre for Advance Technology Training School, Indore but denied placement.

: Applicant.

Rep. By Mr. Kamal Dave: Counsel for the applicant.

VERSUS



1. Union of India through the secretary Department of Atomic Energy, Government of India, New Delhi.
2. Chairman, Department of Atomic energy, Vikram Sarabhai Bhawan, Central Avenue, Anu Shakshti Nagar, Mumbai, 94.
3. Director, Central for Advance Technology, Rajendra Nagar, Indore, (MP)

: Respondents.

Rep. By Mr. Vinit Mathur: Counsel for the respondents.

ORDER

Per Mr. G.R.Patwardhan, Administrative Member.

Shri Anil JB has filed this O.A under Sec, 19 of the Administrative Tribunals Act, 1985, wherein he has prayed for the following reliefs:

“ a) That the respondents may be directed to allow placement of the applicant as Scientific Officer (c) as allowed to other similarly situated recruits undergoing the Orientation Course with all consequential monetary benefits as allowed to other similarly situated recruits in the pay scale of Rs.8000-13,500 with exemplary cost.

b) Any other appropriate order or direction, which may be considered just and proper in the light of above, may kindly be issued in favour of the applicant.

c) Costs of the application may kindly be awarded in favour of the applicant.

2. The material facts leading to the filing of this case are that the applicant ^{possesses} ~~is~~ Engineering Degree in Electronics from MBM Engineering College, Jodhpur and he has secured 68.4% marks in the said examination. He also possess the qualification of Graduate Aptitude Test in Engineering securing 2404-All India Ranking amongst 31567 candidates with 92.21 percentile score. An advertisement came to be published in the Employment News dated 20-26 January 2001, inviting applications from bright and motivated Engineering Graduates and Science Post Graduates for Second one year C.A.T. Orientation Course. The applicant being eligible and aspirant applied for the same and he was subjected to written test followed by interview for admission to the Course of CAT Training School. He came to be selected and was allowed to undertake the said Orientation Course. He was asked to submit an agreement bond as well as declaration regarding his marital status. The object of the training was for orientating freshly recruited engineers and scientists to take up research and development work in the front line particle accelerators Lasers etc of the Department of Atomic Energy and introduce them to situation which they are going to have during the future employment period.

3. The further facts of the case are that the applicant successfully underwent the orientation Course. During the training period, he severely suffered from depression due to which he had

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to remain in the hospital and the authorities reimbursed even his medical bills. The period of the training Course was from 13.05.2002 to 13.09.2002. The final statement of marks was communicated to him wherein he had secured 1420 marks out of maximum marks of 3035. It is his case that he ought to have been allowed placement in any of the units of the respondent department, but he was directed to report to the Senior Executive Director, Mumbai. He tried to meet the said authority but despite making his endeavours, he was denied the same. He was kept on waiting on one pretext or the other. After waiting for sometime, a notice for demand of justice was got issued through his advocate demanding issuance of appointment letter in his favour. However, vide communication dated 23.10.2003, he was informed that he had secured 46.8% marks in aggregate whereas the minimum marks for passing the training course was 50%, which he failed to obtain. The applicant further stated that at no point of time, either during the Orientation Course or in the final statement of marks he was informed about the minimum marks for passing the said course. Such requirement, if it is so condition precedent, ought to have been specifically mentioned in the statement of marks. He has also averred, that certain restrictions were imposed by the respondents before undertaking the Orientation Course i.e he was not permitted to appear in competitive examinations or interview including those conducted by the Union Public Service Commission during the period of ^{the said} training and contractual obligation to serve the department. He was also restrained from applying for any post, scholarship, fellowship during the said period etc. It has also been



averred that prior to his selection, he was selected as Probationary Engineer in the pay scale of Rs. 8600-14600 in the Bharat Electronics Limited, Government of India, Ministry of Defence, as Deputy Engineer on 29.06.2001 and after selection with the respondent department he had to resign the said job in pursuance to the said condition. He had even deposited Rs.25,000/- along with interest as a penalty of breach of contract on account of his resignation. The O.A has been preferred on diverse grounds narrated in para 5 and its sub paras, which we shall deal in the succeeding paras of this order.



The respondents have contested the case and have filed a detailed reply countering the facts and grounds raised in the OA. The reply contains the factual backgrounds as well as para wise reply. It has been averred that the applicant had been offered admission to the Course in question and he had accepted the terms and conditions of the same. In the offer, a specific assertion was made which reads as under:

“ On successful completion of the training you will be offered an appointment in CAT/VECC/BARC/ IGCAR depending solely upon your suitability and performance throughout the course, without any reference to any degrees, experience etc, that you might have obtained earlier”

It is also stated that the mere admission to the said course did not mean that he was not required to successfully complete the course and at the start of the course all the Trainee Scientific Officers were informed that for successful completion of the course they should obtain minimum 50% marks in aggregate. The department of Atomic Energy being a premier R & D organization of

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the country and for qualifying in the examinations conducted from time to time one has to secure a minimum prescribed marks of 50% of the aggregate for being absorbed in R & D Centres of the Department of Atomic Energy. Even though the applicant had undergone the training Course on payment of stipend per month, he could not successfully complete the same and he had obtained only 46.8% aggregate and not the requisite 50% aggregate marks. The depression pleaded in the OA was due to his personal problem and not attributable to the respondents. The applicant has not disclosed the correct facts and has misled the Hon'ble Tribunal by suppressing the facts of becoming unsuccessful in the training course. The respondents are not aware of the previous employment of the applicant with Bharat Electronics Limited. He has also suppressed this factual information required to be furnished in the application and attestation forms etc and therefore he clearly disqualified himself also for getting the appointment with the respondents. The grounds raised in the O.A have been generally denied.

5. A rejoinder has been filed on behalf of the applicant refuting the averments made in the reply by the respondents. It has been averred that the respondents are expected to categorically state the requirement of obtaining 50% aggregate marks and the indirect and hidden disclosure will not fulfil the requirement of proper communication. The rejoinder is followed by an additional affidavit filed on behalf of the respondents, wherein a copy of the agreement signed by the applicant has been annexed. It has been mentioned that the applicant was aware regarding the condition (q) of letter of

admission and as per condition 4 (e) (Annex. R/8) he was required to successfully complete the Orientation training Course and the orientation course is not merely meant to familiarise the activities/environment of the department, but one has to successfully complete the Orientation Course, which includes securing the minimum prescribed percentage of marks in the periodical examinations. The applicant had very well knew that he had secured only 46.8% and failed to successfully complete the Course and that is why he did not raise the matter. Certain other facts have been amplified.

6. We have heard the elaborate arguments advanced by the learned counsel representing the contesting parties and have very carefully perused the records and pleadings of this case. Certain records were produced before us, especially the letter dated September 2001 where the recommendations of BARC Training School Committee have been mentioned.

7. The learned counsel for the applicant has reiterated the facts and grounds raised in the pleading of the applicant. He has stressed very hard to persuade us, firstly on the point that this was only an Orientation Course, having no requirement of passing the same; least to say obtaining minimum percentage of qualifying marks. He has next contended that the applicant was never informed of the condition about securing the minimum 50% marks. His third limb of arguments was that the applicant had to change his position at the premises of the respondents in as much as he had to leave the employment, which he was enjoying elsewhere and

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embargo was put on him not to undertake any test or applying for any employment during the said period. Therefore he has been visited with unfair treatment which smacks of arbitrariness and is not in consonance with the terms and conditions made in the offer.



We will examine these major issues in *seriatim* as follows:

In so far as the first and second contentions of the learned counsel for the applicant are concerned, at the cost of repetition, the learned counsel for the applicant has categorically submitted that the applicant was not informed of the requirement of securing the minimum 50% marks at any time and none of the documents indicate such a condition. He has cited the following judgements of the Apex Court in the cases of (i) **Bachhittar Singh Vs. State of Punjab and Anr** (AIR 1963 SC 395) (ii) **State of Punjab vs. Amar Singh Harika** (AIR 1966 SC 1313) and (iii) **The Secretary, Home Department, Govt. of Maharashtra Sachivalaya, Bombay vs. Bansi Dhar & Ors.** (1981 (2) SLR 475) in support of his contentions and has submitted that the condition of requirement of securing minimum percentage of marks as a qualifying marks was imposed without any intimation and in absence of any communication, the same cannot be applied to him and therefore the applicant had to be treated as qualified in the course. We find from the offer indicating the terms and conditions that clause 4 (q), makes a mention to the effect of 'successful completion of the training'. Thus it is clear that the Orientation Course is not a simple one and the respondent department being an organisation of the country engaged in frontier areas of research, one has to complete

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the training successfully, which makes it evident that one has to secure certain minimum percentage of marks. We were shown the recommendations of BARC meeting wherein it has been prescribed that one has to secure minimum 50% marks for successful completion of the course. Further we do not find from any communication or records of this case that such condition is palpably/per se illegal. We also find no reason to disbelieve the versions of the respondents that at the start of the training itself the trainees were informed about securing 50% marks as minimum qualifying marks for declaring a trainee as "having successfully completed the training". Afterall the applicant is well educated and every trainee is pretty well expected to know the various requirements of such training course.



We may look it from yet another angle as to what should be the standard for declaring a trainee as successful. This is a subject better left to the executive authorities and not taken for adjudication by the Courts/Tribunals. We also cannot doubt the action of the respondents in the absence of any material to the contrary. We, however, ascertained from the learned counsel for the respondents regarding the fixing of minimum qualifying marks, that and were categorically informed this standard is being followed for a number of years. It is not the case of the applicant that any one who had secured less than 50% marks in aggregate had been given appointment considering such person as having successfully completed the Orientation Course. The judgement cited on behalf of the applicant relates to communication of adverse orders holding

that until such orders are communicated to the individual who is adversely affected by the same, they cannot come into effect. There can be no dispute regarding the law laid down but we do not find that any of the judgements cited apply to the facts of instant case which is totally different.



10.

As regards the last contention, the respondents have categorically negated the submission of the applicant regarding his earlier employment elsewhere and for this purpose, even the attestation form submitted by the applicant has been filed as Annex. R/7 along with the reply. The version of the applicant on this point is ex-facie false and stands belied being contrary to the records submitted by the applicant himself in the attestation form. Therefore, the version that he had to change his position also loses the ground. As regards the other contention that he could not apply for any other job, we find that such position lasted only for a short while i.e. for period of four months and that could not completely jeopardise his future prospects. Therefore, this issue also goes against the applicant.

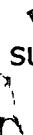
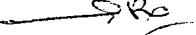
11. We would also like to point out that as per the pleadings of the applicant, the impression given is that the applicant is a more meritorious candidate and has excelled in all fields and is having a very high standard of academic life. But the applicant has very fairly conceded that he had to face with peculiar problem i.e. remained under depression and hence he was hospitalized during the training and thus could not secure the required marks. It is also

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not the case of the applicant that the absence of information of securing the minimum of 50% aggregate marks has in any way prejudiced his performance. In other words, it has not been indicated that had he been informed of the said requirement, he could have secured the said percentage of marks by putting more efforts. Thus we find that even the non information of requirement of securing the minimum percentage of marks did not materially affect the performance of the applicant and therefore prior knowledge regarding the said standard or otherwise can be construed as no consequence to him.

Before parting with the case, we would like to observe that in many cases the system makes provision of affording additional chances to the candidates for completing the Orientation course. But, in the instant case, no such rule or practice or instruction has been disclosed to us. Keeping in view the facts and circumstances of this case, we leave it to the respondents to explore the feasibility of considering the case of the applicant sympathetically.

13. The O.A. is devoid of merits and is therefore dismissed, subject to our observation in the penultimate paragraph. No costs.

 
(G.R. Patwardhan)
Administrative Member


(J.K. Kaushik)
Judicial Member

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