

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 00480/2013

Friday, this the 30th day of September, 2016.

CORAM:

**HON'BLE Mr. JUSTICE N.K. BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs. P. GOPINATH, ADMINISTRATIVE MEMBER**

T.V. Chandran,
Technical Officer (T-V),
CPCRI Kasaragod (Compulsory Retirement),
Residing at Priyadarsini,
Dr. Ambedkar Road, Nellikkunnu,
Kasaragod. - **Applicant**

(By Advocate Mr. P.V. Mohanan)

Versus

1. The Director,
Central Plantation Crops Research Institute,
Kasaragod, Post Kudlu - 671 124.

2. Indian Council of Agriculture Research,
Represented by the Secretary,
Indian Council of Agriculture,
Krishi Bhavan,
Dr. Rajendra Prasad Road,
New Delhi - 110 001. - **Respondents**

(By Advocate M/s. Varghese & Jacob)

The application having been heard on 23.08.2016, the Tribunal
on 30.09.2016 delivered the following:

ORDER

Per: Mrs. P. Gopinath, Administrative Member

The applicant commenced service as Refrigeration Mechanic,
Grade T-II-3 in Category II governed by Technical Service Rules of
ICAR in Central Plantation Crops Research Institute, Kasaragod on
02.05.1988. On completion of five years service in the Grade T-II-3, he



was assessed as contemplated by Technical Service Rules and was found fit for promotion and was promoted to Grade T-4 in Category-II on 01.01.1994 and thereafter was promoted to Grade T-5 in category II on 01.01.1999 on successful completion of five year service and assessment in Grade T-4. The post of Refrigeration Mechanic is included as item No. 44 in Group III- Workshop Staff in Appendix II of Technical Service Rules. In the trade of Refrigeration and Air conditioning, applicant contends that there is no 2 or 3 years Diploma courses available in the country. The Technical Service Rules was introduced by ICAR on 01.10.1975. Appendix IV of Technical Service Rules fixes qualifications for the technical posts. The qualification stipulated in Appendix IV of Technical Service Rules, 1975 in Category-II Group-III Workshop staff including Engineering Workshop Staff is

- (I) Three years Diploma/Bachelor's Degree in the relevant field,
- (ii) At least 3 years' experience for Diploma holders or Higher Certificate/Diploma in the Trade with five years' experience in the relevant field. (In fields where the duration of Diploma Courses available in the country is only two years, the minimum qualification will be two years Diploma instead of three years Diploma).

2. The Central Plantation Crops Research Institute, Kasaragod by advertisement No. 1/87 dated 10.04.1987 invited application for appointment to the post of Refrigeration Mechanic (T II-3) to be filled by direct recruitment. There is no stipulation in the notification that the incumbents should possess three years Diploma in Refrigeration

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Mechanic. In the notification published on 11th April, 1987 in Employment News, instead of putting "*Or, higher Certificate/Diploma in the Trade with five years' experience in the relevant field*", stated "*Or, Higher Certificate in the trade with five years experience in the relevant field*". This is contrary to the provisions contained in the Technical Service Rules. The applicant applied with the following documents.

1. SSLC – year of passing – 1974
2. P.U.C – 1980
3. Diploma in Refrigeration and Air-conditioning Technology – Indian Technical Institute, Hind Rajasthan Building, Dadar – March 1978.
4. Diploma in Electrical Engineering – Indian Technical Institute, Hind Rajasthan Building, Dadar – July 1984.
5. Experience Certificate from M/s. GEM works, Mangalore for four years till 15th February 1980 (Feb. 1976 to Feb. 1980).
6. Experience Certificate from M/s. Summer Sands, Mangalore for 6 years upto 28th February (Feb. 1980 to Feb. 1986.)

3. The selection was by written test followed by interview. The Original certificates produced by the applicant during interview were verified by the Selection Committee consisting of experts and found to be genuine. The applicant was selected and offer of appointment was issued vide memorandum No. F4 (197)/82 Estt. dated 19.04.1988. The applicant commenced service as Refrigeration Mechanic on 02.05.1988. On successful completion of assessment in the lower grades, applicant was promoted to higher grades. The applicant had been discharging the duties, responsibilities and functionalities of technical post for the last 22 years. After a span of 22 years, the Director, CPCRI by office order dated 26.09.2009 instructed Shri K. Madhavan, Principal Scientist and



T.E. Janardhanan Assistant Administrative Officer to verify from Indian Technical Institute the genuineness of the Diploma obtained by the applicant. They submitted report on 26.09.2009 stating that the Indian Technical Institute was functioning till 1985; that the Indian Technical institute was affiliated to ITES and that Maharashtra State Board of Technical Education (MSBTE) do not run Diploma Course in Refrigeration and Air-conditioning Technology. The applicant was suspended from service on 23.02.2010 and by memorandum dated 20.05.2010, the following Articles of charges are framed.

Article – 1

Shri T.V. Chandran had furnished false information and produced fake certificates for securing appointment as T-II-3 (Refrigeration Mechanic) at CPCRI, Kasargod. As per Government of India's instructions (2) 2 under Rule 11 of CCS 9CCA) Rules, 1965, his services are liable to be terminated for adopting fraudulent practice to secure employment. The above act of Shri Chandran is also unbecoming of a Government Servant and violation of the provisions of Rule 3(1) (I) & (iii) of CCS (Conduct) Rules, 1964.

Article -II

Shri Chandran had obtained fake certificates from Shri Venketeshwara College of Engineering, Thiruvannamalai, Tamil Nadu with ulterior motive. He had been hiding the fact that he had possessed Diploma Certificates in Refrigeration and Air-conditioning and also in Electrical Engineering from the above Institute with malafide intentions.



The above act of Shri Chandran is violation of the provisions of Rule 3(1)(i) & (ii) of CCS (Conduct) Rules, 1964.

4. The applicant filed explanation to the memo of charges, refuting the charges, An enquiry was held. The applicant had submitted written brief contending, inter alia, that there is no stipulation that the candidates should possess three years diploma in refrigeration and Air-conditioning in the advertisement No. 1/87 in Udayavani dated 10.04.1987. There is no evidence either oral or documentary to prove that the applicant had furnished false information and produced fake certificate for securing appointment. It is submitted that in the trade of Refrigeration and Air-conditioning, there was no two or three year Diploma Course conducted by the Government institution in the country. Therefore the qualification for the post rests with only matriculation with ten years experience in the relevant field. The Inquiry Officer submitted report to the Director, CPCRI. It is held in the report that no documentary evidence was produced to prove that the Diploma Certificate obtained by the applicant was fake, that the certificate of Diploma in Refrigeration and Air-conditioning Technology appears to be genuine as there is no tampering of any kind. And the Inquiry Officer found that the charges leveled against applicant are not sustainable. The Inquiry Authority relied on Exhibit D9 (e). The Director/Disciplinary Authority on disagreeing with the finding of Inquiry Authority came to the conclusion that the applicant had produced false certificate at the



time of recruitment. The applicant had submitted explanation on 31.03.2011 contending, inter alia, that it is a case of no evidence, that the notification No. 1/87 had not stipulated three years Diploma in Refrigeration and Air-conditioning and that the Recruitment Rules envisage the qualification of Matriculation with Ten years experience in the relevant field which the applicant had.

5. The Disciplinary Authority by proceeding dated 23.07.2011 proposed to impose a major penalty of compulsory retirement from service. The applicant submitted detailed explanation on 30.07.2011, contending inter alia, that the applicant had obtained requisite qualifications and rendered 22 years of meritorious service and the proposed major penalty of compulsory retirement for charges not proved and that the proposed punishment is disproportionate to the charge. The Disciplinary Authority/Director, CPCRI, without obtaining concurrence/consultation from the Central Vigilance Commission by proceeding dated 04.08.2011 confirmed the provisional decision and imposed a penalty of Compulsory retirement with immediate effect. The applicant filed statutory appeal before the second respondent, contending, inter alia, that the applicant obtained Diploma certificate in the year 1978 after completion three years course in an institute, and the issue as to whether it is a recognised or not is irrelevant as the applicant obtained the prescribed qualification stipulated in the Recruitment Rules, namely, matriculation with ten years experience in the relevant field. The Appellate Authority by proceedings dated 12.02.2013 rejected the

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appeal confirming the penalty of compulsory retirement. Aggrieved by the major penalty of compulsory retirement, the applicant filed this O.A.

6. Applicant argues that one of the qualifications stipulated in the Technical Service Rules for appointment to Grades in Category-II is Diploma in the trade with 5 years experience in the relevant field. This qualification is omitted in the Notification for selection. It is not stated in the Notification that the Diploma obtained by the applicant is perfectly justified for holding the post.

7. Respondent submits that the Central Vigilance Commission is required to be consulted before passing the final order where the official concerned comes under the purview of the Commission. The cases which involved the allegation of corruption, improper motive or malafide are to be referred to the Commission. The Government being the supreme administrative authority cannot employ persons who seek employment under false and doubtful documents.

8. Respondent submits that there are four categories of staff working under ICAR viz., Scientific, Technical, Administrative and supporting. In order to enable the members of the Technical services to give their best to the organisation and the farming community, ICAR introduced from 01.10.1975 new personnel policies for its Technical services. All posts, the incumbents of which are engaged in performing technical services in support of research, education and training whether

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in the laboratory, workshop or field or in areas like library documentation, publication, photography/Art and agricultural communications, come under the Technical services Rules (TSR). The permanent and temporary employees appointed through regularly constituted DPC/Selection Committees were fitted into the specified category below on a point to point basis without any further screening irrespective of their qualifications.

Category I : T-1, T-2, T-I-3

Category II : T-II-3, T-4, T-5

Category III : T-6, T-7, T-8, T-9

The minimum qualifications prescribed for Workshop staff for Direct recruitment are furnished below.

WORKSHOP STAFF INCLUDING ENGINEERING WORKSHOP STAFF

CATEGORY – 1	CATEGORY-II	CATEGORY-III
<u>Essential qualifications</u> At least one year's Trade Certificate. <u>Desirable qualifications</u> (I) Higher certificate/Diploma in the Trade. (ii) Two year's experience in the relevant field	Essential qualifications (I) Three years Diploma/Bachelor's Degree in relevant field. (ii) At least 3 years experience for diploma holders. OR Higher Certificate/Diploma in the Trade with five year's experience in the relevant field.	<u>Essential Qualifications</u> (I) Three years Diploma/Bachelor's Degree in relevant field. (ii) At least 5 years experience. <u>Desirable qualifications</u> (I) experience of working in an Organisation/Workshop/Factory of repute in the relevant field. (ii) Master's Degree in the subject.

9. During 1987, one vacancy of T-II-3 Refrigeration Mechanic was available at CPCRI under direct recruitment quota. The said vacancy was notified and the qualifications prescribed for the post were as follows:

I * 3 years Diploma/Bachelors Degree in relevant field OR
** National Trade Certificate of ITI/National Apprenticeship Certificate or equivalent qualification with 7 years experience in the relevant field.

OR



Matriculate with 10 years experience in the relevant field.

II. At least 3 years experience for Diploma holders or higher certificate in the trade with 5 years experience in the relevant field.

* In the fields where the duration of Diploma course available in the country is only two years, the minimum qualification will be two years diploma instead of 3 years diploma.

** Applicable to ICAR employees only.

10. In response to the above advertisement, the applicant Shri T.V. Chandran applied for the post of T-II-3 Refrigeration Mechanic. After completing the recruitment formalities, the applicant was offered the post and he reported for duty as T-II-3 Refrigeration Mechanic on 02.05.1988. Under the Career Advancement Scheme, his five yearly assessment was considered by the duly constituted committee and as per the recommendation, the applicant was promoted to T-4 Refrigeration Mechanic w.e.f. 01.01.1994 and T-5 Technical Officer w.e.f. 01.01.1999.

11. The CPCRI office received few letters from the Public under RTI Act for information/document about the qualification of Shri T.V. Chandran which have been replied based on the records available. In view of the inexorable enquiry from the public, the competent authority decided to verify the qualification with reference to the service records and entrusted the assignment to a two member committee. The committee reported that the diploma courses conducted by the Indian Technical Institute (ITI) is only for six months to one year duration and so far no Diploma course for a period more than one year duration has



been offered by them. Based on the above report, a memo was served to Shri Chandran calling his explanation. In response to the memo, Shri Chandran informed that he was awarded the certificate of Diploma in Ref. & Air conditioning technology in 1978 by I.T.I, Bombay and Diploma in Electrical Engineering in 1984 by the same Institute which is affiliated to ITES, Bombay. He has also stated that he had undergone correspondence course on Diploma in Refrigeration and Air conditioning in the year 1979-81 and Diploma in Electrical Engineering during 1985-87 from Shri Venkateshwara College of Engineering, Tamil Nadu. In reply to a further memo dated 26.06.2009, Shri Chandran has furnished details such as period, Roll Number, year-wise and subject-wise marks obtained in the Diploma in Refrigeration and Air-conditioning and also Diploma in Electrical Engineering from Indian Technical Institute, Mangalore. He had also produced another set of marks card along with the Diploma Certificate of Refrigeration and Air-conditioning to the preliminary inquiry committee. In both the above diploma certificates, duration of the course has not been mentioned but simply states the month and year of passing. The certificates do not carry Registration number or serial number which are invariably there in any certificate issued by any Board of education or university. Similarly the mark lists are also devoid of registration number.

12. As the preliminary inquiry report was not conclusive, another committee was formed to ascertain the genuineness of the certificates

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possessed by Shri Chandran. The Committee reported that, Indian Technical Education Society (ITES) is a private body and it is not recognised by government of India or Government of Maharashtra and they are not conducting 3 year Diploma courses in any subject and the Diploma certificates produced by Shri T.V. Chandran was issued by ITI, Bombay and not by ITES. Shri Sambre, General Secretary, ITES Bombay informed that ITI was affiliated to ITES and ITES is totally a private body and it is not recognised by Government of India or Government of Maharashtra. Further he clarified that the certificates submitted by Shri T.V. Chandran is seen issued by ITI and not by ITES. It was also intimated that they are not issuing any three year Diploma certificates. Since ITES and ITI both are private bodies, affiliation of ITI with ITES makes no difference. When the matter taken up with Maharashtra State Board of Technical Education (MSBTE), Bombay, it was informed that MSBTE do not run Diploma courses in Refrigeration and Air-conditioning Technology and ITI, Bombay is not affiliated with MSBTE and not approved by Government of Maharashtra.

13. As regards the experience certificates produced by Shri Chandran from M/s. GEM Works, Mangalore, he was working with them as Trainee and Service Mechanic since February, 1976 whereas according to the Diploma certificates issued by ITI, Bombay he was undergoing studies for Diploma with them through regular course from March 1975 to March 1978. Hence, even before completing the course,

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applicant was working as Service Mechanic. The certificate issued by M/s. Summersands, Mangalore for the period from February, 1980 to February, 1986 was also found to be not genuine as he was undergoing the part time course for Diploma in Electrical Engineering from ITI, Bombay during the period 1982-1984. The experience certificates are issued by firms which are also purely private and unregistered. The applicant had stated in his letters dated 25.05.2009 and 03.07.2009 that he had acquired 3 year Diploma course in air-conditioning and refrigeration in the year 1979-1981 in First class and Diploma in Electrical Engineering during 1985-1987 from Srivenkateswara College of Engineering, Thiruvannamalai, Tamil Nadu through correspondence course as an additional qualification.

14. In response to CPCRI, Kasaragod letter dated 27.04.2010, the Commissioner of Technical Education, Chennai informed that the 3 year Diploma course in Electrical Engineering and Refrigeration & Air-conditioning held by Shri Chandran were not issued by them. Further they clarified that Srivenkateswara College of Engineering, Thiruvannamalai, Tamil Nadu is not an affiliated institution of State Board of Technical Education, Tamil Nadu for award of Diploma. According to the statement furnished by Shri Chandran, he possessed 3 year diploma in Air-conditioning and Refrigeration in the year 1978-81 in first class. Respondent argues that had the applicant really possessed the 3 year Diploma from Srivenkateswara College of Engineering, Tamil

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Nadu in 1981, he would have definitely shown this qualification in the bio-data. Moreover, he has never intimated the office that he had one more Diploma in air-conditioning and refrigeration and in Electrical Engineering than the one indicated in the bio-data in any of the official documents until he was asked to furnish the details of his qualifications in December 2008 and thereafter.

15. From the above documentary evidences and contradictory statements, it was found that Shri Chandran furnished false information and fake certificate for securing employment under CPCRI. He has also acted in a manner unbecoming of a Government servant and violated the provisions of Rule 3(1) (I) & (ii) of CCS (Conduct) Rules, 1964. In between, the applicant submitted a notice for voluntary retirement on 16.12.2009 but the same has not been accepted by the competent authority. As advised by the competent authority the applicant was placed under suspension with effect from 23.02.2010 followed by charge sheet under CCS (CCA) Rules, 1965. The Inquiry Officer without proper evaluation of the reports of two preliminary inquiry committees, prosecution documents/witnesses and circumstantial evidences, submitted the inquiry report stating that the articles of charges framed against Shri Chandran are not sustainable. As per the provision contained in the CCS (CCA) Rules, 1965 the disciplinary authority is permitted to disagree with the findings of the inquiry officer and the reasons for disagreement should have been communicated to the charged

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officer with an opportunity to submit explanation if any. As per the request of the applicant, the respondent submits that an opportunity was also given to hear him personally. It is not a case as if the power of disagreement is not allowed under the rules. And the applicant was also given the opportunity to respond to the disagreement.

16. Taking into account all the relevant facts and circumstances of the case, the Disciplinary Authority decided that ends of justice will be met by imposing a penalty of compulsory retirement on the applicant. Accordingly, the penalty of compulsory retirement imposed on the applicant with effect from 04.08.2011. This may have been guided by the fact that applicant did not have a right to be appointed as he did not possess the appropriate qualification for the post. The appeal submitted against the compulsory retirement was carefully considered by the Appellate Authority at ICAR, New Delhi and rejected vide Annexure a-10 order. The applicant states that 3 years diploma was not necessary as per the advertisement. He further states that in the trade of Refrigeration and Air-conditioning no two/three year diploma course are available in the country. Despite knowledge of these facts, he has submitted three years diploma certificates in Refrigeration and Air-conditioning.

17. The Hon'ble Supreme Court in its judgment in the **Collector, Vizianagaram v. M. Tripura Sundara Devi (1990) 4 SLR 237** went into this issue and observed as under:

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"It must further be realized by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the Appointing Authority and the appointee concerned. The aggrieved are all those who had similar or better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint a person with inferior qualifications in such circumstances unless it is clearly stated of that the qualifications, are relaxable. No court should be a party to the perpetuation of fraudulent practice."

Here the applicant who was not qualified or eligible in terms of the Recruitment Rules etc. for initial recruitment in service. He had furnished false information/produced a false certificate in order to secure appointment. Hence he cannot be retained in service.

18. The respondent argues that the applicant is making different inconsistent and contrary submissions. According to him the three years diploma was not necessary as per the advertisement. At the same time he submits that in the Trade of Refrigeration and Air-conditioning there was no 2-3 year diploma course available in the country and strangely he produces 3 year Diploma certified in Refrigeration and Air-conditioning and also in Electrical Engineering. At the time of hearing he explains that these certificates are produced from unrecognized agency. The applicant is attempting to rely on Exhibit D9(e) dt. 17/09/2009 issued by the Central Head, Indian Technical Institute, Mangalore certifying that xerox copies of the certificates appears to be genuine. That their signatory cannot verify the genuineness as they did not have the records pertaining to that year, 1978 with them. Question is not whether xerox copies are correct but whether the invalidity or falsity is attached to it. That could not be controverted.

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19. Applicant argues that under Rule 15(3) of CCS (CCA) Rules consultation with Central Vigilance Commission is necessary before imposing major penalty. Rule 32 CCS (CCA) Rules directs that a copy of the Commission advice be supplied to the charged officer before imposing major penalty. In the light of the judgments rendered by the Apex Court in **UOI v. S.K. Kapoor 2011 (4) SCC 589** and **S.N. Narula v. UOI 2011 (4) SCC 591**, government by O.M dated 06.01.2014 and 05.03.2014 had directed that the enquiry report together with the representation of the charged officer be forwarded to the Commission for advice. On receipt of commission advice a copy of the same be provided to the charged officer to submit representation within a specified time period. While arriving at a final decision the enquiry report, disagreement note if any, advice of CVC and representation of the charged officer should be consulted. Under chapter 13 of ICAR Handbook on Disciplinary Matters it is stated that:

"ICAR comes under the jurisdiction of CVC. The commission is required to be consulted before passing the final order where the official concerned comes under the purview of the commission."

CVC jurisdiction under the Central Vigilance Commission Act, 2003 extends to Group A Officers of the Central Government and Officers drawing salary of Rs. 8700/- per month and above on Central Government DA pattern. The applicant informed the Bench that he is not a Group A Officer. Hence applicant does not come within the purview of consultation with the Central Vigilance Commission.

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20. The applicant submits that he has not produced a fake certificate or misrepresented to get appointment. He was selected by a properly constituted recruitment committee who assessed his competency and issued an offer of appointment. The respondent argues that while recruiting the applicant they were unaware that the educational certificate submitted at the time of recruitment, was one which was issued by a College which was not affiliated to the State Board of Technical Education of Tamil Nadu for award of Diploma. Applicant admits today that in the trade of Refrigeration and Air-conditioning there are no two/three year diploma certificate courses in the country. Despite knowledge of this fact, the applicant had submitted three year diploma certificate in Refrigeration and Air-conditioning at the time of recruitment.

21. At the time of recruitment applicant could have brought to the notice of respondent that such a certificate is not issued by any educational institution in the country. But instead of adopting this course of action, applicant has produced a false certificate. The plea that the demand of respondent for such a certificate was not proper, after it was discovered at a later stage, when his educational qualifications were scrutinised, cannot be sustained. It can hardly absolve him of the misdemeanor of submitting a false certificate at the appropriate time of recruitment and securing appointment on the basis of fabricated records. The respondents may be aware of the paucity of qualification which was had in the employment notice of 11 April 1987 given

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several options which included:

(1) 3 year Diploma / Bachelor's Degree in relevant field.

OR

(2) National Trade Certificate of ITI/National Apprenticeship Certificate or (i) equivalent qualification with seven years experience in the relevant field or

Matriculate with 10 years experience in the relevant field.

(ii) At least 3 years experience for diploma holders.

So that persons with appropriate recognised qualification could be recruited. The applicant's contention that as a Diploma in the trade is not available, his employment be considered under the alternate recruitment clauses is not admissible. The issue is not one of what appropriate alternate educational qualification could the applicant have been selected against, but one of selection on the basis of information and false certificates submitted at the time of selection by the applicant as seen from R-1(c) bio data and R-1 (f) diploma on record.

22. The selection of the applicant was made under false premises and hence his appointment cannot be sustained. Persons without appropriate qualification to be possessed at the time of initial recruitment in service cannot be retained in service.

23. The Original Application is dismissed. No order as to costs.

(Dated, this the 30th day of September, 2016.)


(Mrs. P. GOPINATH)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER