

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM**

Original Application No. 534 of 2013

Tuesday, this the 29th day of October, 2013

C O R A M :

**HON'BLE Mr. JUSTICE A.K. BASHEER, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

V. Anilkumar, Aged 40 years,
Scientific Assistant,
LLRRL, IRE Campus,
Beach Road, Kollam,
Residing at Plankalathazhathetil,
Karumbakara P.O., Pathanapuram,
Kollam Dist., Kerala : 689 695

... Applicant.

(By Advocate Mr. S.A. Razzak)

v e r s u s

1. Deputy Establishment Officer,
TC & TSC, Central Complex, 3rd Floor,
Bhabha Atomic Research Centre,
Trombay, Mumbai : 400 085

2. Officer Incharge,
LLRRL, BARC, IRE Campus,
Beach Road, Kollam : 691 001

... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

This application having been heard on 29.10.13, the Tribunal on the same day delivered the following :

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant, a Scientific Assistant under the respondents, had applied for appearing in the Departmental Qualifying Examination (DQE) in the year 2011 and later vide his representation dated 25.07.2011 sought permission to



take examination on the next available opportunity after 2011 as he was attending his sick father. He was informed vide letter dated 28.07.2011 that if he did not appear for the examination, he would be deemed to have availed of a chance. Though the applicant appeared for the DQE held in the year 2012, he failed to qualify. When he applied for the DQE in the year 2013, he was informed vide letter dated 03.05.2013 at Annexure A-4 that he had already availed of two chances available to him. Aggrieved, the applicant has filed this O.A for the following reliefs:

- (i) To quash Annexure A-4 order;
- (ii) To direct the respondents to permit the applicant to appear for Departmental Qualifying Examination (DQE) 2013 or at any rate (DAE) 2014 at Trombay Centre as the 2nd chance available despite Annexure A4 and A1 and in view of Annexure A3;
- (iii) To award the applicant's cost-s and such other relief deemed necessary to meet the ends of justice.

2. The applicant submitted that Annexure A4 and A1 orders are arbitrary and discriminatory in so far as the applicant is denied the permitted two chances to take the DQE. He was included in Annexure A3 list as a fresh candidate and not as a repeater. Hence he is entitled to have one more chance as he could not qualify in the DQE of 2012.

3. The respondents in their reply statement submitted that this O.A is barred by limitation as he is challenging Annexure A-1 order dated 28.07.2011. It was further submitted that the respondents have given due attention to the development of human resource and that they have a unique scheme called "Merit Promotion Scheme", which is not vacancy based, for



promotion of Scientific Assistants/ Technical staff in the Department of Atomic Energy. The DQE is conducted every year since 2009 for allowing promotion to Technical Officers and Scientific Assistants. An employee is given two chances for clearing the DQE within a period of three years from the date of acquiring the requisite additional qualification with 60% marks or more. The applicant was considered under the one time exemption category to appear in the DQE in the year 2011 as he had scored only 58.4% marks in M.Sc. Zoology. The applicant had to complete the DQE process in two chances within three years, i.e. 2011 or 2012 or 2013. The name of the applicant was included in the list of employees appearing in the DQE, 2011 held on 30.07.2011. The absence of candidate for his own medical reasons duly certified by BARC Hospital doctors only was considered as a valid reason for getting an extended chance. The applicant vide letter dated 25.07.2011 had intimated to the respondent No.1 that he is unable to write the DQE, 2011 owing to the illness of his father. He was advised to appear in the DQE, 2011, in his own interest, else he will be deemed to have availed one chance. The applicant would have been included in the repeater category for DQE, 2012, but was shown in the fresher category inadvertently since he had submitted his nomination again in 2012, thereby misleading the respondents to get undue advantage. The averment that the applicant was admitted as a fresher is not acceptable in view of the fact that he is a repeater since roll number and registration number etc. were allotted to him for DQE, 2011, and that he remained absent on the date of examination for personal reasons which were not acceptable to the competent authority. The applicant had deliberately requested for a change in Centre from Kalpakkam to Trombay vide his letter dated 07.03.2013 which was rejected by the respondents vide




letter dated 03.05.2013 as there are no more chances available to him for appearing in the DQE. DQE, 2013 has already been conducted on 15.06.2013 without applicant's name therein. The appearance of fresh candidate in DQE, 2012 list cannot give the applicant any right to appear for the DQE since he had already availed of two chances available to him and there are no more chances available to him for appearing in DQE, 2013 or thereafter.

4. We have heard Mr. S.A. Razzak, learned counsel for the applicant and Mr. Sunil Jacob Jose, learned SCGSC appearing for the respondents and perused the records.

5. The applicant had a reasonable expectation that based on his genuine difficulties, the respondents would take a humane approach in considering his request for deeming as not having availed any chance for the DQE as on 29.07.2011. In the context of not getting a reply to his letter dated 29.07.2011 coupled with showing him as a fresher in the year 2012, any man of ordinary prudence would believe that his request dated 29.07.2011 was granted. But the impugned order of 03.05.2013 sealed the fate of the aspirations of the applicant for appearing in the DQE for ever. It is the failure on the part of the respondents as per their letter of 05.03.2012 to change their unreasonable stand as stated in the letter of 28.07.2011, that is truly under challenge in this O.A. Hence, we do not consider the O.A. to be hit by limitation.

6. The Merit Promotion Scheme of the respondents is designed for the development of human resource by providing promotion to Scientific



Assistants / Technical staff. A one time exemption for those who could not get 60% marks for the requisite additional qualification of post graduation was given so that such employees are not put to any disadvantageous position in the matter of promotion. In the instant case, the applicant could not appear in the DQE, 2011 as he had to attend to his ailing father, which fact is not disputed. Vide Annexure A-1 letter dated July 28, 2011, the applicant was informed that the reasons attributed by him for not appearing in the DQE, 2011, have been considered and he was advised to appear for the said examination in his own interest, else he would be deemed to have availed one chance. The rigidity and lack of human touch in considering the request of the applicant in the context of his need to attend to his ailing father and impossibility of reaching Kalpakkam in time are appalling.

7. In the representation dated 29.07.2011, the applicant submitted that he had received the communication dated 15.07.2011 on 25.07.2011 only and that he was on leave attending his sick father since 03.7.2011. It was humanly impossible to make arrangement to reach Kalpakkam on 30.07.2011 at 09.00 a.m. to appear in the examination and he had requested to consider that he has not availed any chance for the DQE vide his letter dated 29.07.2011. This representation was not replied to. The respondents would have very well given a reply in time.

8. The applicant had sought change of allotment of examination centre for DQE, 2013, which was rejected by the respondents vide Annexure A-4 letter dated May 03, 2013. It was stated in the said letter that there is no more chance available to him to appear in the DQE. It is too hyper technical to



consider him as a repeater only because he was allotted roll number and registration number for DQE, 2011. The stark fact is that the applicant did not avail of the chance in the year 2011 to appear in the DQE, as he did not write the examination. The stand of the respondents that they had inadvertently shown him as a fresher in the year 2012 as the applicant had submitted his nomination again in 2012, thereby misleading them is unconvincing. The rigidity and righteousness on the part of the respondents disappear when it comes admitting their own short comings and they pass on the entire blame to the applicant. If the respondents had shown the applicant as fresher in 2012, going by their own rigidity, they should have given him the second chance in 2013. If the objective of the Merit Promotion Scheme coupled with one time exemption of two chances is the development of human resource by providing promotional avenues, it gets killed in its implementation. The respondents should have realised that it was the duty of the applicant to have attended to his ailing father and should have given him an extended chance on the basis of the recommendation of his superior in Annexure R-4. No rule should be so rigid as to defeat the very purpose for which it framed. In fact, no rule restricting extended chance on medical grounds of self only is produced by the respondents. The applicant should not be penalised for discharging his filial duty. Even in the impugned order, the respondents have not shown what course of action on the part of the applicant would have been found acceptable to them in resolving the issues of leaving his ailing father in distress and reaching Kalpakkam in time. The stand of the respondents in respect of availment of chance in 2011 by the applicant is arbitrary in as much as it does not take into account all relevant factors.



9. In the result, we hold that the applicant has not availed the first chance in the year 2011. Annexure A-4 is set aside. The respondents are directed to permit the applicant to appear for Departmental Qualifying Examination (DQE) 2014 or any subsequent DQE as the second chance available.

10. The O.A is allowed as above. No costs.

(Dated, the 29th October, 2013)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE A.K. BASHEER)
JUDICIAL MEMBER

cvr.