

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 246 OF 2012

Tuesday, this the 6th day of November, 2012

CORAM:

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

B.Muraleedharan Pillai
Technical Assistant T-1 (Fitter)
Directorate of Oil Palm Research
Palalode, Pacha PO
Thiruvananthapuram – 695 562
Residing at DOPR Staff Quarters ... Applicant

(By Advocate Mr.P.V.Mohanam)

versus

1. Director
Director of Oil Palm Research
West Godavari District
Andhra Pradesh
Pedavegi – 534 450
2. The Director General
Indian Council of Agricultural Research
Krishi Bhawan
Dr.Rajendra Prasad Road
New Delhi – 110 001
3. The Scientist in Charge
Directorate of Oil Palm Research
Regional Station (Research Centre)
Palalode, Pacha PO
Thiruvananthapuram – 695 562 ... Respondents

(By Advocate Mr. P.Santhosh Kumar)

The application having been heard on 06.11.2012, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant is working as a Technical Assistant (Fitter) in the office of the respondents. He was appointed as Fitter pursuant to the selection conducted by the official respondents. Annexure A-6 is the

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appointment order dated 13.09.2002. The applicant is aggrieved since the appointment order is cancelled after a lapse of several years by Annexure A-11 order dated 12.03.2012. The said order is impugned in this proceedings.

2. Briefly stated the facts are as follows:-

A circular was issued informing all concerned the proposal to fill up the post of Technical Assistant T-1 (Fitter) by selection / promotion from amongst staff possessing the qualification mentioned thereunder. Annexure A-3 is the notification dated 26.07.2002. The essential qualification prescribed are (i) Matriculation passed from a recognized Board (ii) one year trade certificate in the field of ITI Fitter. The desirable qualification is two years National Trade Certificate in the trade of Fitter. The candidates who are desirous of applying for the post may submit their application in the prescribed format. The applicant submitted his application Annexure A-4 in the prescribed format. Pursuant to which, he was called for interview and notice for appearing for interview is Annexure A-5 dated 10.09.2002. An expert committee consisting of Director - Chairman , Joint Director / Head of Division - Member, Senior Administrative Officer/any officer of the equivalent status nominated by the Director – Member , An outside expert, nominated by Director – Member, An officer not lower than officers under consideration belonging to SC/ST community nominated by the Director – Member, Administrative Officer/Assistant Administrative Officer (in the absence of this officers, an officer of equivalent status, nominated by the Director) – Member, Secretary was constituted. It was the selection committee which interviewed the only candidate, the applicant herein. Thereafter, the offer of appointment was issued. Accordingly, the applicant was appointed and continued in the post for more than 10 years. Annexure A-9 memorandum was issued on 22.09.2011. The applicant was informed that subsequent to



the appointment of the applicant to the post of Technical Assistant (T-1) (Fitter) , it came to the knowledge of the authorities that he did not possess the essential trade qualification prescribed for appointment to the grade of Technical Assistant (T-1) (Fitter). He had completed the ITI Fitter course during the year 1984-86 and hence competent authority has good and sufficient reasons to believe that the appointment of the applicant is erroneous and liable to be cancelled. He was given an opportunity to make a written submission . Annexure A-10 is the reply. In Annexure A-10 it is specifically pointed out that he has not suppressed any material facts or played any fraud. He has produced a certificate issued by the competent authority which clearly shows that he had only completed the course and he was presented for the National Trade Certificate Examination of July 1986. As a matter of fact, the notification also did not specifically say that a pass in the National Trade Certificate Examination is required to be possessed for appointment as Fitter. The mistake is only on the part of the respondents. If so, such unilateral mistake cannot be corrected by cancelling the appointment order, he having continued in the post for more than ten years. However, without considering any of the submissions by Annexure A-11, the offer of appointment was cancelled.

3. It is his contention that in the absence of any fraud or mistake committed by him, such appointment cannot be cancelled after such a long period. He places reliance on the decisions of the Apex Court in AIR 1977 SC 112 and 1991 SC 295 and also Kerala High Court in 1992 (1) KLT 458. He prays that Annexure A-11 order be quashed by this Tribunal.

4. In the reply statement filed by the respondents, it is stated that the applicant has furnished willfully a false statement to satisfy the condition



regarding educational qualification, though he did not possess the required qualification. Thus the applicant has also intentionally deceived the office by submitting an irrelevant certificate. The applicant is not having the necessary qualification and hence the impugned order has been issued rightly. According to them, the mistake can be rectified at any time.

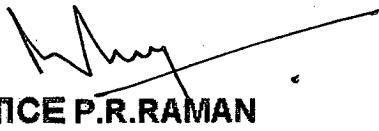
5. We have heard the counsel on both sides. Annexure A-4 is the copy of the proforma for application wherein the applicant has stated that he had matriculation and ITI Fitter, (two year course). As a matter of fact, Annexure A-3 notification merely states that a pass in the matriculation from a recognized board besides one year trade certificate in the field of ITI Fitter. While a pass in matriculation is specific and a pass from ITI is not mentioned. Applicant had submitted Annexure A-1, copy of the SSLC certificate to evidence the fact that he had passed SSLC and had completed one year course of study in the Fitter course which he has produced as Annexure A-2. Annexure A-2 is the certificate issued by the Institution where he underwent the studies as per which he has completed the prescribed course and he was presented for the National Trade Certificate Examination of July, 1986. Anybody who reads Annexure A-2 would come to know that he had not passed the Trade Certificate Examination. He only appeared for the examination. Thus, if the authorities intended for a pass in the Trade test examination, they should have mentioned it in the notification which is absent in this case. Secondly, the applicant had not suppressed any material facts or played any fraud. He had only submitted Annexure A-2 and had never claimed to have passed the National Trade Certificate Examination. In the circumstances, mistakes if any, is committed by the respondents and not by the applicant. The sole question that arises for consideration is whether the unilateral mistake committed by the respondents could be

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allowed to be corrected by cancelling the appointment order after lapse of several years. In this connection, we need only to refer the decision of the Apex Court in ***Nayagarh Co-operative Central Bank vs. Narayan AIR 1977 SC 112*** where in the validity of an order passed by the Registrar Co-operative Society was challenged directing the termination of service of a Secretary after a period of 13 years of appointment, on the ground that he had no qualification at the time of appointment. It was held that " it is undesirable that appointments should be invalidated in this manner after a lapse of several years." The Hon'ble Supreme Court took the view that it was not open to the Registrar to set aside the appointment as Secretary after having acquiesced in it and after having for all practical purposes, accepted the appointment as valid. This was followed by the Kerala High Court in ***Rajalekshmi vs. State of Kerala 1992 (1) KLT 458*** in a similar situation. Based on the following decisions, it has to be held that so long as notification did not specifically mention a pass in the National Trade Certificate Examination as an essential qualification and further since the applicant had not suppressed any material facts from the authorities there is no justification to cancel the appointment after lapse of several years. The mistake, if any, committed by the respondents in the light of the Hon'ble Supreme Court decisions, such mistakes cannot be allowed to be corrected after lapse of several years by cancelling the appointment orders issued by the authorities. In the circumstances, we quash Annexure A-11 order. OA is allowed as above. No costs.

Dated, the 6th November, 2012.


K GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE P.R.RAMAN
JUDICIAL MEMBER