

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

JAIPUR

Date of decision: 12.02.2004

OA No.176/2002

Rajesh Sharma s/o Shri Jagdish Prasad Sharma, aged about 26 years, resident of Ward No.2, Jain Colony, Kherli, Alwar, Rajasthan.

.. Applicant

VERSUS

1. The Union of India, through its Secretary to the Government of India, Department of Personnel and Training, Staff Selection Commission, New Delhi.
2. The Under Secretary to the Govt. of India, Staff Selection Commission (North Region), Department of Personnel and Training, New Delhi.

.. Respondents

Mr. P.P.Mathur, counsel for the applicant

Mr. Madhukar Sharma, proxy counsel to Mr. S.M.Khan, counsel for respondents

CORAM:

HON'BLE MR. A.K.EHANDARI, MEMBER (ADMINISTRATIVE)

HON'BLE MR. BHARAT BHUSHAN, MEMBER (JUDICIAL)

O R D E R

PER HON'BLE MR. BHARAT BHUSHAN.

The Staff Selection Commission (North Region), Department of Personnel and Training, New Delhi (respondent No.2) had issued an advertisement in the newspaper calling for applications for Combined Graduate Level Examination for filling up various posts in different ministries. The said advertisement was issued in

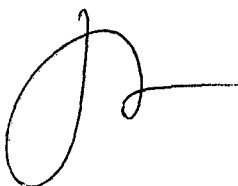


the month of November, 1999. The applicant has annexed photocopy of the relevant page of the advertisement from the Employment News 13-19 November, 1999 as Ann.A1. Under column No.4 indicating the educational qualification, it was written as under:-

"(a) Essential Qualification for all posts:

Degree of a recognised University or equaivalent. Candidate who have yet to appear at the degree examinations or whose result has been withheld or not declared as on 1.8.2000 are NOT eligible."

Meaning thereby that only those candidates were eligible to be considered for the posts who were graduates as on 01.08.2000. The case of the applicant is, that, since he was student of the final year of the qualifying examination, he submitted his application alongwith requisite documents and subsequently he also appeared in the pre-examination, which was held on 12.2.2000, the result of which was declared in the month of July, 2000 wherein he was declared as pass in the pre-examination. His case is that the University declared the result on 3.8.2000 i.e. just two days after the stipulated date of 1.8.2000 and he was declared pass in the said University examination and thus, according to him, he became eligible to be considered for the post applied for. On the basis of having passed the pre-examination, he was sent a call letter for appearance in the Main Examination in the month of December, 2000, the copy of the said call letter is Ann.A2. After having passed the said Main Examination as well, he was yet sent another call letter for Physical Efficiency Test. The copy of the said call letter dated 23.1.2002 is Ann.A3. His contention is, that, even after



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passing the Physical Efficiency Test, he was not allowed to go for medical examination on the ground that he had obtained the requisite qualification only on 3.8.2000 whereas as per the advertisement, the said qualification was to have been obtained by 1.8.2000. Thus such action, on the part of the respondents, is challenged by the applicant by filing the present OA and the relief sought in the present OA is as under:-

"i) by an appropriate order or direction, the advertisement providing the cut-off date for acquisition of the qualification as on 1.8.2000 may kindly be struck down being wholly arbitrary and irrational.

ii) to issue an appropriate order or direction, alternatively the respondents may kindly be directed to consider the candidature of the applicant for appointment to the appropriate post as per his merit position by applying the Doctrine of Estoppel.

iii) to issue an appropriate order or direction, the respondents may kindly be further commanded with a direction that the applicant may kindly be appointed on appropriate post as per his merit position and be awarded all consequential benefits arising out of it.

iv) any other appropriate writ, order or direction, which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case, may also kindly be passed in favour of the applicant.

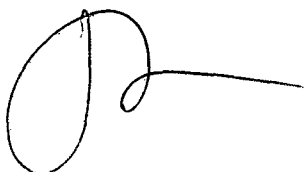
v) Cost may also be awarded to the applicant."

2. The respondents in the counter affidavit filed by them have contended that in the notice of examination itself it was made explicitly clear that the candidates who were graduate as on 1.8.2000 were only eligible and the onus of fulfilling or satisfying all the eligibility conditions lay on the candidate itself. According to them,



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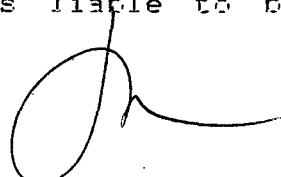
the applicant became eligible for the post only on 3.8.2000 i.e. two days after the stipulated date and, hence he had forfeited the right to be considered for the said post. According to them, the Staff Selection Commission had received a large number of applications running into several lakhs and it was not practically possible for the respondents to scrutinise the applications of all the candidates before holding the Preliminary Examination or even at the stage of holding the Main Examination, since at that stage too the number of candidates remain quite high and runs into several thousands. According to them, a detailed scrutiny of the application dossier of the candidates is undertaken only at the next stage when the candidates have to appear at Physical Efficiency Test/Interview and all the documents at that stage are verified by the Commission with reference to Original Degree/Certificates, and in the instant case too, when the documents of the applicants were checked at the time of holding the Physical Efficiency Test then it was detected that he was not eligible, as he was not graduate as on 1.8.2000. Their contention is, that, though it is a case of the applicant himself that his result of the graduation was declared only on 3rd August, 2000 meaning thereby that he was not eligible to appear in the Combined Graduate Level (Preliminary) Examination 2000, yet, he had furnished a wrong information in the application dated 30.11.1999 in column No.11 by stating that he would a graduate on the relevant date i.e. 1.8.2000. Then referring to the advertisement as also para 8(ii) of the call letter for appearing in the Physical Efficiency Test Ann.R2, it is stated that they had specifically mentioned 'that the



candidate should be graduate from a recognized university as on 1.8.2000 and those who have acquired graduation after 1.8.2000 are not eligible' and in the said call letter i.e. Ann.R2 it was further clarified that the candidate must bring clear proof of having passed the graduation on or before 1.8.2000 failing which he would not be liable to be admitted. Hence, their case is that while knowing fully well that he was not eligible at all, yet he deliberately attempted to appear at various stages of the examination conducted by the Staff Selection Commission of his own accord and at his own risk for which the Commission could not be held responsible.

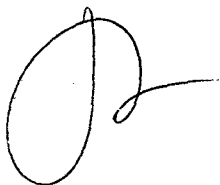
3. Heard the arguments of the learned counsel for the parties and have perused the records.

4. The contention of the learned counsel for the applicant is that the respondents have acted in an unfair manner by providing the cut-off date of acquisition of the qualification as on 1.8.2000, which was a future uncertain date on which the candidate could or could not acquire the qualification of graduation because in the case of the applicant, it was the University of Rajasthan only which was to declare the result by virtue of which the applicant could qualify to become a graduate. Hence, his forceful submission is that it was arbitrariness on the part of the Staff Selection Commission to fix such date. His contention is, that, there should have been some rational in prescribing the particular cut-off date, but, since nothing was forthcoming from the respondents, so their act of prescribing the cut-off date as 1.8.2000 was illegal, which is liable to be struck down. His contention is,



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that, where in such like cases, there is uncertainty in future as to whether on the said date the University will be able to declare the result thereby enabling the candidate to become eligible for the said post or not, such acts are liable to be struck down. In this regard the learned counsel has placed reliance upon the judgment of the Apex Court in S.E.Patwardhan and another vs. State of Maharashtra and ors., 1977 SCC (L&S) 391. We have perused the said judgment. The said judgment dealt with the seniority question of direct recruits and the promotees and it was held by their Lordships in the said ruling that "the seniority could not be made to depend on the fortuitous circumstance of confirmation of promotees when all other factors are equal between direct recruits and promotees". After going through the entire judgment, we find that this judgment is not applicable to the facts and circumstances of the instant case. Reliance has also been placed by the learned counsel in another judgment of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in S.B. Civil Writ Petition No. 1907 of 2000 in case of Smt. Santosh vs. State of Rajasthan etc., wherein the petitioner had been directed to produce before the concerned authorities examination result within three days. In the said case, allowing the Writ Petition, the Hon'ble High Court had held that the declaration of the result was not in the hands of the petitioner and as such it could not be expected of her to produce the result, since it was within her power only to appear in the examination and not to declare the results, hence the said ruling is also not applicable to the facts and circumstances of the instant case. Though, it is an unfortunate case wherein the applicant had acquired the



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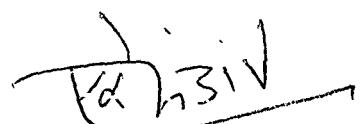
necessary qualifications just after two days of the date when he was required to do so, yet, the fact remains, that, all along he had the knowledge that he was not eligible to be considered for the post and yet he appeared in the examination whether Preliminary Test, Main Exam. or Physical Test. The respondents on their part had left nothing in doubt about the eligibility conditions. The eligibility conditions were made known to the applicant in the advertisement of the newspaper and then reiterated in so many clear terms in letter Ann.R2, but it appears that the applicant ignoring all such stipulations undertook the risk of appearing in the examination and now when the respondents found that he was not eligible to be considered for the post, the fault lies with the applicant and not with the respondents. The conduct of the applicant in wrongly stating in column No.11 in his form Ann.R1 that he was a graduate on 1.8.2000 is also a factor which goes against him. The Apex Court too under similar circumstances in case of State of Haryana and ors. vs. Anurag Srivastava and ors., JT 1998 (9) 30 190 had held :-

"the High Court has rightly held that candidate did not possess requisite qualification on the date of application and was not entitled to be selected."

5. As found above, the submissions on behalf of the applicant are devoid of force. In the result, the OA is dismissed. No order as to costs.


(EHARAT BHUSHAN)

Member (J)


(A.K. BHANDARI)

Member (A)