

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No.267/03

Cavalier, this the 8th day of December, 2004.

CORAM

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

Neeraj Singh Chauhan
S/o Shri K.S. Chauhan
Chemical Process Worker (Skilled)
R/o Shivaji Nagar
Old Itarsi
Dist. Hoshangabad.

Applicant

(By advocate Shri S. Nagu)

Versus

1. Union of India through
Secretary, Ministry of
Defence, Department of
Defence, Production &
Supplies, South Block
New Delhi.
2. Chairman
Ordnance Factory Board
10-A, Shaheed Khudiram Bose Road
Kolkata.
3. General Manager
Ordnance Factory Itarsi
Itarsi.

Respondents.

(By advocate None)

ORDER

By Madan Mohan, Judicial Member

By filing this OA, the applicant has sought the following reliefs:

- (i) To quash the impugned advertisement published in the Employment News dated 24.5.02.
- (ii) To direct the respondents to re-advertise the vacancies in the cadre of chargeman Gr.II available under respondent No.3 by calling applications from persons possessing essential qualifications as prescribed by the recruitment rules including the applicant, and thereafter consider their candidature in accordance with law and proceed thereafter by issuing appointment orders to the candidates as per their merit ranking.

(iii) to hold that the action of the respondents in issuing the impugned advertisement and going ahead with the selection process is vitiated in the eyes of law as it infringes the fundamental right of the applicant enshrined under Article 16 of the Constitution of India.

2. The brief facts of the case are that the applicant is equipped with the following educational qualification:

- (a) B.Sc. in Chemistry, Zoology and Botany.
- (b) Diploma in Computer Application acquired before gaining the requisite experience.
- (c) Experience of more than 2 years as Chemical process Worker under respondent No.3.

An advertisement was published by respondent No.3 for filling up 20 vacancies in the cadre of Chargeman Gr.II (Technical/Chemical) in the scale of Rs.5000-8000 (Annexure A2). In this advertisement, following qualifications were mentioned:

"Recognized 3 years diploma or equivalent in Chemical Engineering/Technology with 2 years experience in relevant technical field".

Contrary to the aforesaid laid down essential qualification, The SRO governing the service conditions of Chargeman Gr.II (Technical/Chemical) provides the following essential qualification for the said post to be filled by direct recruitment:

- (a) B.Sc. degree from a recognised University having Chemistry as one of the main subjects.
- (b) 3 year diploma or equivalent examination recognised by AICTE in the relevant field (Chemical).

Therefore, the advertisement published in the Employment News dated 24.5.02 prescribed essential qualifications which were materially diverse and different than the one prescribed in the recruitment rules. The applicant preferred a representation dated 24.9.02 (Annexure A4) which did not invoke any response. The selection process initiated on the basis of the advertisement is still to be completed as appointment orders have not been issued for the post of Chargeman Gr.II (Technical/Chemical). One Vishal Kumar Lal



who is working in the post of Chargeman possesses the same educational qualification of B.Sc. in Chemistry, Botany and Zoology as that of the applicant. Shri Lal even till date, continues to function as Chargeman Gr.II (Technical/Chemical). The said Shri Lal was appointed in the year 1995 and has since been confirmed on the same post. Hence this OA is filed.

3. None is present for the respondents. Hence the provision of Rule 16 of the CAT (Procedure) Rules, 1987 is invoked.

4. Heard learned counsel for the applicant. It is argued on behalf of the applicant that the applicant is having the requisite qualification and experience required for the post advertised. The qualifications required for post advertised in Annexure A2 are not in conformity with SRO and further argued that one Vishal Kumar Lal who possessed the same qualifications as that of the applicant is presently working as Chargeman Gr.II (Technical/Chemical) and he has been confirmed on the same post. He further argued that the advertisement is against the mandatory provisions and is therefore, liable to be quashed and the respondents be directed to re-advertise the vacancies in the cadre of chargeman Gr.II.

5. After hearing the learned counsel of the applicant and careful perusal of the records, we find that the applicant has prayed for quashing the impugned advertisement and to direct the respondents to re-advertise the vacancies in the cadre of chargeman Gr.II (Technical/Chemical). We have perused the return of the respondents in which it is clearly mentioned that SRO 13(E) dated 4.5.89 (Annexure R1) provides following educational qualifications for the post of Chargeman Gr.II (Technical):



"Recognised 3 years diploma or equivalent in Engg/Technology/D'manship with 2 years experience in relevant technical field:

OR

B.Sc. with physics, Chemistry and Math. where diploma for any category cannot be identified by OFB (Ordnance Factory Board) and with 2 years experience in the relevant field.

In design category, if recognised certificate in D'manship or Diploma course is less than 2 years duration experience in D'manship to cover the balance period will be necessary".

In the above SRO, the Ordnance Factory Board has been vested with the right of identification of diploma courses of any category. Hence by virtue of the above right, Ordnance Factory Board has identified the diploma course for the post of Chargeman Gr.II (Tech./Chem.). The OFB, vide letter dated 26.11.99 (Annexure R2), while making identification of the diploma courses for the post of Chargeman Gr.II had circulated the details of such institutes which are imparting diploma courses in various new trades. The OFB's above letter reads as follows:

"As per the provision of SRO, the educational qualification required for direct recruitment to chargeman Gr.II (Tech) is required to be properly identified. The SRO provides 3 years diploma or equivalent in Engineering Technology or B.Sc. with Physics, Chemistry and Mathematics where diploma for any category cannot be identified.

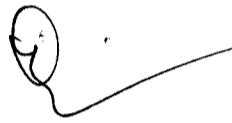
Nowadays a lot of new disciplines have been introduced in diploma education and hence it has become essential to identify the discipline of the diploma which should be considered essential educational qualification for recruitment to various trades. An exercise has accordingly been made and details of institutes which are imparting diploma course in various new trades have been collected. Based on this exercise, identification of qualification have been made out and the same is being circulated herewith for information of all concerned. Factories are required to follow the educational qualification as prescribed hereunder for all future direct recruitments."

It is also mentioned that the appointment of Vishal Kumar Lal was made during the year 1995 i.e. before identification



of diploma qualification for the post of Chargeman Gr.II (Tech./Chem.) by the Ordnance Factory Board, Kolkata. Hence there is no relation with the advertisement under challenge and appointment of Vishal Kumar Lal. The instant advertisement was published by the respondent No.2 strictly following the statutory provisions in SRO 13 (E).

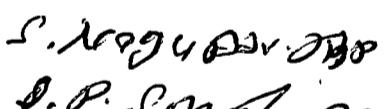
6. Considering all the facts and circumstances of the case, we are of the considered opinion that the OA has no merit. Accordingly the OA is dismissed. No costs.

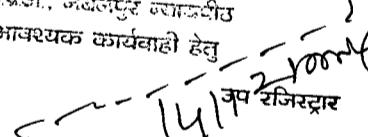

(Madan Mohan)
Judicial Member

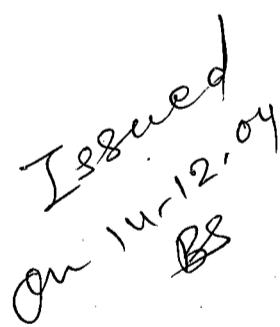

(M.P. Singh)
Vice Chairman

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पृष्ठांकन सं. ओ/न्या..... जबलपुर, दि.....
पति/लिपि आवेदिता -
(1) संहित, उच्च व्यापारिय पार एन्ड इंडस्ट्रीज, जबलपुर
(2) आवेदक श्री/श्रीमती/दू..... के काउंसल
(3) प्रत्यक्षी श्री/श्रीमती/दू..... के काउंसल
(4) विधायक, केंद्रीय, जबलपुर व्यापारीउ
सूचना एवं आवश्यक कार्यवाही हेतु


S. P. Singh
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जप रजिस्ट्रार


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