

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-3464/2016

Reserved on : 25.10.2018.

Pronounced on :

Hon'ble Ms. Praveen Mahajan, Member (A)

Abdul Wahid, 55 years
Pump Driver/Operator
S/o Majid Khan,
Working under EE South-I,
J-Block, Saket Market,
New Delhi-110017.

R/o H.No. C-1, Raju Park,
Devli Road, Khanpur,
New Delhi.

.... Applicant

(through Sh. A.K. Mishra, Advocate)

Versus

1. Delhi Jal Board through
Its CEO,
Govt. of NCT of Delhi,
Varunalaya Phase-II,
Karol Bagh, New Delhi.
2. Delhi Development Authority
Through its Vice-Chairman,
Vikas Sadan, New Delhi.

.... Respondents

(through Sh. Sany Singh for Sh. Arun Birbal and Sh. Rajeev Kumar with
Sh. P.K. Singh, Advocates)

O R D E R

The applicant in the O.A. has sought the following relief:-

"Direct the respondent to waive the technical qualification of the applicant as per directions passed by the Hon'ble Delhi High Court of Delhi in WP(C) Nos. 2104/2013 and 1826/2013 and again on 15.07.2014

passed in WP(C) No. 2532/2014 and regularize his service as pump operator along with all consequential benefit."

2. Brief facts of the case are that the applicant, along with others was engaged on muster roll as a Pump Driver with the respondents from 1988-1992. In the year 1995, the applicant approached the Industrial Tribunal for regularization of his service. On 23.11.1999, the Industrial Tribunal passed an order directing regularization of the applicant working with the respondents in accordance with their policy. The respondents challenged this order before Hon'ble High Court of Delhi by way of WP(C)-522/2002, which was dismissed on 21.08.2002. The respondents again approached the Division Bench by filing LPA-683/2003. The award was set aside by an order dated 07.02.2006 and it was directed that Recruitment Rules should not be interfered with. On 24.04.2006 the Hon'ble Supreme Court dismissed the SLP filed by the Workmen/petitioners.

3. The applicant again approached the Tribunal by way of an OA-4334/2011, along with a similarly placed employee Ganga Shahi, who also filed another OA-4492/2011. Both the OAs were dismissed on 03.11.2012 as being treated as hit by res judicata. Finally on 23.07.2013, the Hon'ble High Court of Delhi, while dismissing WP(C)-2104/2013 filed by the applicant, directed the respondents to consider the case of the applicant for his regularization by waiver of technical qualification.

4. The applicant wrote a letter to the respondents on 17.09.2013 for considering his case as per directions of the Hon'ble High Court of Delhi. But no action was taken by the respondents. However, in reply to an RTI query he was informed that the competent authority has granted relaxation for grant of ACP to employees who are not having educational qualification.

5. On 31.03.2016, the respondents in compliance of the order dated 23.07.2013 pronounced by Division Bench of Hon'ble High Court of Delhi in WP(C) Nos.-2104/2013 and 1826/2013, informed the applicant that his claim for regularization to the post of Pump Driver cannot be accepted in absence of required educational/technical qualification as prescribed in the Recruitment Rules to the post of Pump Driver. The applicant states that the respondents ought to have considered his case on humanitarian grounds since he has been working with the respondents for more than two decades. It is stated that the respondent No.1 vide Office Order dated 28.04.2016 granted financial upgradation to the various other Pump Operators, who are not having educational qualification, hence the treatment meted out to the applicant is discriminatory.

6. In the counter affidavit filed on behalf of respondent No.1, it is stated that the applicant (Abdul Wahid) has challenged the order

dated 31.03.2016 by which he was intimated that his claim for regularization to the post of Pump Driver cannot be accepted since he does not possess required educational/technical qualification as prescribed under the Recruitment Rules.

7. It is mentioned that in the year 2013 two applicants Ganga Shahi and Abdul Wahid filed Writ Petition Nos. 2104/2013 and 1826/2013 respectively against the order of the Tribunal, the decision went in favour of Delhi Jal Board on 23.07.2013. It is submitted that the Hon'ble Division Bench of Hon'ble High Court of Delhi in its order dated 23.07.2013 had only ordered the competent authority to consider waiving the technical qualification as a onetime measure. A duly constituted Committees considered the case of the applicant and found that he is 5th class pass and has no requisite technical qualification for the post of Pump Operator. Hence, his request could not be acceded.

8. On going through the facts of the case, I find that the applicant was earlier working with Delhi Development Authority on work charge basis. He was transferred from DDA as Pump Operator in the year 1988. The applicant along with another employee has been agitating the issue regarding regularization of their services as Pump Operator/Pump Driver since 1999. The initial order in their favour was upheld by Single Judge of the Hon'ble High Court but set

aside by a Division Bench in favour of Delhi Jal Board. This issue was raised again by the applicants in the Central Administrative Tribunal seeking relief from Delhi Jal Board wherein the Tribunal held that the claim was barred by resjudicata vide their order dated 03.11.2012. The applicants again filed a Writ in the matter before the Hon'ble High Court of Delhi on the ground that large number of daily wagers had been regularized as Pump Operators over looking their claim, which was admitted by the Hon'ble High Court in WP(C)-2104/2013. Going over the facts of the case, their Lordships observed that one of the petitioners Sh. Ganga Shahi had obtained Electric Diploma from an Industrial Training Institute in 2006 while Sh. Abdul Wahid (current applicant in OA) did not possess any such Diploma. The status of the other persons, who were regularized in service on account of which Sh. Ganga Shahi raked up the issue again was explained satisfactorily by the respondents (para-8 of the judgment). Hon'ble High Court observed that Sh. Ganga Shahi, in possession of technical qualification in the year 2006, becomes eligible for becoming permanent as per the Rules (para-9 of the judgment). It was observed that as far as Sh. Abdul Wahid (the current applicant) is concerned, he does not possess the requisite qualification and as per the existing Recruitment Rules power to relax the Recruitment Rules does not exist so no relief can be granted to him. However, their Lordships were pleased to observe that:-

“11. Dismissing the two writ petitions we take on record the assurance with respect to Ganga Shahi as per para 9 above and as regards Abdul Wahid we would recommend to the Competent Authority to, as a onetime exception, consider waiving the technical qualification for the reason, experience gained while performing a job may sometimes equal more than a technical qualification. Abdul Wahid has been working as a Pump Operator for over two decades and he has successfully managed the job. Surely, he has learnt the nuances of the trade while working.”

9. Taking into account these directions, the case of the applicant (Abdul Wahid) was considered by a Committee constituted for this purpose to consider his claim for regularization of his services to the post of Pump Operator. The Committee found that the applicant does not possess the required educational/technical qualification and therefore rejected his claim for regularization as per policy of Delhi Jal Board.

10. The order of the Hon'ble High Court of Delhi is only a recommendatory for the Competent Authority to consider waiving the technical qualification in case of the applicant as a onetime measure. The rationale given is that the experience gained while performing a job sometime is more than a technical qualification. Since the applicant had been working for over two decades in the post, he would/might have acquired the requisite knowledge. On reexamining the case of the applicant, the respondents have not found him fit for the post. As per the Recruitment Rules, the technical qualification required for P.D. is “Certificate in Electrical or equivalent trade from I.T.I. or any other recognized institution”, and

for APD is "Wiremen Certificate from ITI or a recognized Institution". Since the applicant does not possess the required technical qualification for post of Pump Operator, as prescribed in the Recruitment Rules the respondents were correct in coming to the impugned decision of 31.03.2016, rejecting his request. The O.A. filed by the applicant lacks merit and is accordingly dismissed. No costs.

**(Praveen Mahajan)
Member (A)**

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