

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA No. 060/00177/2016

Pronounced on : 13.12.2017

Reserved on : 28.11.2017

**CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS.P. GOPINATH, MEMBER(A)**

Varinder Hans son of Sh. Avtar Chand age 33 years resident of House No. B 08/00860, Kamaou Colony, Naya Gaon, Mohali.

.....Applicant

BY: Sh. P.M. KANSAL

VERSUS

1. Union of India through the Secretary to Government of India, Ministry of Health & Family Welfare, Department of Health & Family Welfare, New Delhi.
2. Postgraduate Institute of Medical Education & Research (PGIMER), Sector 12, Chandigarh, through its Director.
3. The Administrative Officer (RC), Postgraduate Institute of Medical Education & Research (PGIMER), Sector 12, Chandigarh.

.....Respondents

BY ADVOCATE: SH. VIKRAM SHARMA VICE SH. AMIT JHANJI

ORDER

HON'BLE MRS. P. GOPINATH, MEMBER(A):-

1. Applicant is a matriculate and has approximately eight years of experience of canning chairs. Applicant was working part time with M/s Perfect Furniture Solutions, Mohali. PGIMER Chandigarh issued an advertisement No. PGI/RC/011/2012 dated 18.09.2012 inviting online applications for the post of Technician Grade IV (Caneman). Candidates were required to have the following essential qualifications:-

10th Standard with ITI Certificate in the respective trade

OR

Matric with trade certificate from a recognized Institute Board or Authority with 5 years experience in respect of trades for which ITI Certificate/Training is not available.

2. The applicant was directed to appear before the Selection Committee on 27.04.2013 for interview. The Selection Committee recommended the name of the applicant under Reserved Category (SC) for the post of Technician Grade IV (Caneman). The applicant joined the Institute on 05.02.2014.

3. One Sh. Sanjay Kumar, waitlisted candidate for the post of Technician Grade IV (Caneman) sent a complaint dated 04.04.2014 regarding the eight years experience of the applicant. The respondent constituted a four member committee to verify the facts of the experience certificate submitted by the applicant. The committee submitted a report on 18.02.2015 recording that the verification of the genuineness of the experience certificate of the applicant had been made by the Engineering Department and M/s Perfect Furniture Solution had also confirmed vide letter dated 11.02.2015 that the applicant was associated with them and the certificate dated 12.10.2012 issued by them is true to facts and genuine. Regarding the part-time experience in the said company, the committee left the matter to the competent authority for consideration. The applicant argues that the above recommendations of the fact finding committee was beyond the scope of work assigned to the committee.

4. Sh. Sanjay Kumar, the waitlisted candidate, filed OA No. 060/01080/2014 on 18.11.2014 challenging the appointment of the

applicant on the ground that he lacked essential experience. The respondent institute submitted that neither the applicant nor the waitlisted candidates nor other candidates possessed the trade certificates and the selection process would have to be reviewed. During the pendency of the OA, the services of the applicant were terminated vide letter dated 01.10.2015. The OA was dismissed by the Tribunal thereafter.

5. The applicant challenges as arbitrary the order cancelling his appointment, as neither a show cause notice was issued nor any opportunity of being heard provided to the applicant by the respondents before terminating his service.

6. Applicant had sought information from ITI Chandigarh regarding the trades for which his certificate is issued. In response, a list of 21 trades was supplied which does not include the trade of Caneman. Hence, the applicant's contention is that there is no recognized qualification in the trade of Caneman. As such, the respondents' action in prescribing such a trade certificate is illegal and applicant's services cannot be terminated on this account.

7. The respondent contest the arguments of the applicant. It is submitted that the applicant was appointed as Technician Grade IV (Caneman) on 05.02.2014. On 12.01.2015, Director, PGIMER, constituted a committee to verify the experience certificate of the applicant. The committee recorded as under:-

“Since the candidate Sh. Varinder Hans does not fulfil condition No. (i) above as he was not having the ITI certificate in the respective trade and he was considered under condition (ii). However from the certificates submitted by the candidate Sh. Varinder Hans it reveals that he does not fulfil the mandatory requirement of trade certificate

as is otherwise required vide condition (ii) (b) above of recruitment rules for this category.”

Following the above report, the Director, PGIMER, terminated the service of the applicant and one Sh. Anupam as they did not meet the requirement of recruitment rules. The decision was taken in pursuance of GOI Department of Personnel & Training OM No. 11012/7/91-Estt (A) dated 19.05.1993 (Govt. of India decision No. 2 below Rule II of CCS (CCA) Rules, 1965) which provides that no Government servant should be retained in service if it is established that he is not qualified or eligible in terms of the provisions of the Recruitment Rules.

8. As against requirement of ITI certificate in trade or a trade certificate from a recognized institute/board or authority with five years experience in the trade, the applicant possessed the educational qualification of 10 + 2 only. Applicant had part time experience of working with M/s Perfect Furniture Solution as Caneman from May, 2002 to July, 2010 which would qualify as work experience but cannot replace the educational qualification requirement of ITI certificate. Hence, he possessed five years work experience but lacked the ITI certificate/trade certificate as detailed above. The DGE&T, Govt. of India website shows that there exists a course, “Cane Willow & Bamboo Worker” of one year duration under the aegis of National Council for Vocational Training (NCVT). This course is offered in other States and not in Chandigarh. Thus, this is not a case where the course is not available in Vocational Training Institutes as argued by the applicant and hence his inability to obtain such an ITI Certificate would not hold water.

9. In OA No. 060/01080/2014 filed by one Sanjay Kumar on a similar relief and which was dismissed on 19.11.2015, the Tribunal had held that once a person does not possess the trade certificate, he cannot be held to have fulfilled the eligibility conditions as required under the recruitment rules and advertisement.

10. The applicant was a candidate for the post of Technician Grade IV (Caneman) for which the educational qualification was 10th standard with ITI Certificate in the trade or matriculate certificate from a recognized institute, board or authority with five years experience in the respective trade for which ITI certificate is not required. The respondent had the option of taking a person with an ITI certificate in the trade or a person who has a trade certificate from a recognized trade institute, board or authority and five years experience in respect of a trade for which an ITI certificate is not available. The applicant's trade is one in which ITI certification is available but the applicant has neither the ITI certificate nor a trade's certificate. He, however, possesses five years experience in his trade. Neither, thus the Annexure A-4, Notification for the post provides any relaxation of the qualification. Thus, any person who does not have either of the two qualifications prescribed for the post, would not be eligible for appointment. The candidate's case was also examined by a committee constituted by the Director, PGIMER who noted that he does not fulfill the mandatory requirement of the trade certificate. In Annexure A-1, the impugned order, terminating the services of the applicant, the fact of his not possessing the trade certificate as per requirement of the existing recruitment rules for the post of Technician Grade IV (Caneman) has been recorded in para 2. The

respondent also submits that Government of India decision No. 2 below Rule 11 of CCS (CCA) Rules, 1965 clearly provides that no Government servant should be retained in service if it is found that he was not qualified or eligible in terms of the provisions of the recruitment rules. Whereas the said termination order could have been issued after a show cause notice and applicant's reply to the same, we note from the OA and the rejoinder that the applicant does not contest that he has the required certificate.

11. It is a well-settled proposition of law that an appointment made in violation of the statutory rules, does not have any legs to stand. This is a case where the applicant is trying to substitute his experience as a Caneman for the lack of an ITI certificate/trade certificate and also comes up with a contention that such a certification is not available, whereas such a certification as established from a reference made to the Director General Employment & Training wherein the information is provided that the course is conducted by the National Council for Vocational Training established in many States in the country. That such an institute is not available where the applicant is residing, would not be a reason to provide relaxation of the statutory rules.

12. Whereas we disapprove of the action of the respondents in cancelling the appointment without giving the appellant a chance to be heard or a chance to reply to a show cause notice, the lack of an educational qualification could not have been covered in any of the above processes had they have been followed. The respondents have a right to withdraw the erroneous appointment made, but it would have been a better option to issue a show cause notice calling for a reply within a stipulated time, and issuing

an order by considering the reply so received. Not issuing the show cause notice would not have given rise to a different cause of action as the statutory recruitment rules cannot be violated or ignored or set aside for any manner of recruitment. The infirmity arising out of a lack of a statutory qualification cannot be cured by seeking reasons for absence of qualification, or explanations subsequently given as to why a person could not acquire the qualification. This is not a case where the said qualification which the applicant is lacking is not available in the country. It is legally untenable to continue with an unqualified person in a post.

13. The order of cancellation of appointment was made by the competent authority after a committee was constituted to examine the veracity of the possession of essential educational qualification as per provisions of the statutory recruitment rules, and after a prima facie satisfaction into the correctness of the allegations made. The competent authority had constituted a fact finding committee which examined the allegations of non-possession of ITI Certificate by applicant, and after a due and proper application of mind on the allegation made formulated a view and recorded reasons in support of the view that applicant's qualifications did not fulfill the requirement of the recruitment rules. Judged by the above procedure, the decision to cancel the appointment of the applicant was not the arbitrary decision of an individual but supported by a fact finding committee and subsequent consideration and application of mind on the recommendation of the committee. Application of mind is the threshold requirement of a valid order. The Apex Court in the case of **Karnatka Vs. M.L. Kesari** decided on 03.08.2010, had held as follows:-

“Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal.”

The latter part of the Apex Court ruling is applicable to the OA under consideration.

14. For the aforestated discussion, we do not find any merit in this OA and accordingly dismiss the same. No order as to costs.

(P. GOPINATH)
MEMBER (A)



(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
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