

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.260/00948 OF 2015
Cuttack, this the 24th Day of August, 2018

Ptabas Digal Applicant

Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

(DR. M. SARANGI)
MEMBER (A)

(A. K. PATNAIK)
MEMBER (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.260/00948 OF 2015

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HON'BLE MR. A. K. PATNAIK, MEMBER(J)

HON'BLE DR. M. SARANGI, MEMBER (A)

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Pitabasa Digal, aged about 39 years, Son of Sarse Digal, At: Nahangam, Po-
Phiringa, Dist-Kandhamal

...Applicant

(By the Advocate- M/s. D.K. Mohanty, S. Nayak)

-VERSUS-

Union of India Represented through

1. Comptroller & Auditor General of India, Pocket-9, Deendayal Upadhy Marg
New Delhi-110124.
2. The Accountant General (G & SSA) AG Square, Bhubaneswar, Khurda-
751001.
3. Dy. Accountant General (Admn), O/o-Accountant General (G & SSA) AG
Square, Bhubaneswar, Khurda-751001.

...Respondents

(By the Advocate- Mr. S. K. Patra)

ORDER

DR. M. SARANGI, MEMBER (A)

The applicant was working as MTS Trainee in the Office of Deputy Accountant General (Administration), Office of Accountant General (G & SSA) Bhubaneswar (Respondent No.3) and was issued a termination notice on 15.12.2014 on the ground of non submission of the Matriculation Pass Certificate. He submitted a representation on 28.12.2014 to Respondent No.2 for reconsidering the matter and when no decision was taken he filed the O.A. No.488/2015 before this Tribunal which was disposed of by order dated 07.08.2015 directing the Respondent No.2 to consider and dispose of his representation within a period of two months from the date of receipt of the Tribunal's order. The

Respondent No.2 vide his order dated 09.11.2015 rejected the representation of the applicant dated 28.12.2014 and confirmed the action taken by the Dy. Accountant General (Admn.) in terminating his services. Aggrieved by this, the applicant has filed this O.A. prying for the following relief(s):-

“ In view of the facts mentioned in para-4 & 5 above, the Applicant prays for the following relief(s)

- (i) To quash the order dt.15.12.2014 under Annexure-A/4 and order dt. 09.11.2015 under Annexure-A/7.
- (ii) To direct the Respondents taking into consideration of the applicants matriculation certificate under Annexure-A/3 or A/8 series and to allow the applicant in the post of MTS (staff) retrospectively with consequential benefit.
- (iii) To pass any other order/orders as deem fit and proper.

2. The applicant has based his prayer mainly on the ground that injustice has been shown to him by denying regularisation. Initially the applicant had submitted the Matriculation Pass Certificate from the Board of Higher Secondary Education, Delhi which is however not listed as a Member-Board of the Council of Boards of School Education in India (COBSE). Subsequently he has passed the Tenth Class Examination from the National Institute of Open Schooling which is recognised by the Member- Board of (COBSE). The certificate was obtained by him in April 2015 by which time his services had already been terminated. The Respondents should have taken into account this recognised certificate and continued him in the post of MTS. The applicant has also alleged that similarly placed employees in the Department have been granted regularization and the applicant has been subjected to discrimination. Right to work is a fundamental right and the Respondents by terminating his service have violated his fundamental right. The action of the Respondents is also against principles of natural justice. The applicant was not aware that the Delhi Board of Higher Secondary Education is not

recognised under the COBSE and although he subsequently produced another certificate from the National Institute of Open Schooling he has been terminated from his service is unjustifiably.

3. The Respondents in their counter have challenged the claim of the applicant. They have submitted that the applicant was appointed as a Multi Tasking Staff (MTS) in May, 2012 and since he did not have a Matriculation Pass Certificate he was granted two years time to obtain the said certificate and submit to the authorities. The applicant had been earlier engaged as daily wage casual labourer and this special concession was given to him due to his earlier services. In the letter dated 27.04.2012, it was very clearly specified as a condition of his appointment that he must pass the Matriculation Examination or equivalent examination from the recognised Board within two years of his joining as “Trainee MTS” and he can be regularised as MTS only after submission of the Matriculation Certificate failing which his services will be terminated. When the applicant in his letter dated 28.04.2012 accepted the offer of appointment for the above mentioned preconditions, he was issued with the appointment letter on 03.05.2012 (Annexure-A/2). He joined as MTS (Trainee) on the same day. The two years period expired on 02.05.2014. The applicant submitted a certificate on 02.07.2013 issued by a non recognised Board namely the “Board of Higher Secondary Education, Delhi” certifying him to possess Higher Secondary Examination (10th Class) in session ending in March, 2013 with 61% of marks. However, since the Board of Higher Secondary Education, Delhi is not a recognised Board of School Education and also is not listed as a Member-Board of COBSE, therefore, the certificate was not considered valid for the purpose of Central Government employment. He was therefore instructed to submit certificate of passing

Matriculation or equivalent examination from a recognised Board or National School within the stipulated period of two years which expired on 03.05.2014. He was also issued reminder on 16.04.2014 to submit the Matriculation (10th Class) pass certificate from a recognised Board in compliance with the precondition of his appointment. To this the applicant replied on 23.04.2014 (Annexure-R/3) that he has appeared in the HSC examination conducted by the Jharkhand Board and the result would be published in the end of June, 2014. On 16.06.2014 he furnished a provisional certificate issued by the Hindi Vidyapitha, Deoghar, Jharkhand certifying him to have passed “Praveshika” in Hindi and he claimed the qualification to be equivalent of 10th Class of general curriculum. However, neither this is treated as 10th pass nor the Hindi Vidyapitha, Deoghar, Jharkhand is a recognised Board to conduct Matriculation Examination following the National Curriculum/framework and as such, is not a Member-Board of Council of Board of Secondary Education, New Delhi. The applicant submitted another representation on 18.07.2014 praying for further six months time to appear in the examination in October, 2014 to be conducted by the National Institute of Open Schooling, where he was registered as a student. However, since the two years relaxation period had expired on 03.05.2014 no further time was given to him and he was informed accordingly in a letter dated 19.08.2014. The applicant submitted another representation on 17.09.2014 praying for further four months’ time to appear in the Matriculation/ 10th Class Examination in recognised Open Schooling, New Delhi. But even after the expiry of two and half years the applicant did not produce the necessary certificates. He was therefore issued final notice on 15.12.2014 and his services were terminated on 16.01.2015. The applicant had filed O.A. No.488/15 in which this Tribunal had ordered consideration of his representation and the

Respondent No.2 in a reasoned order dated 09.11.2015 had rejected the representation since the applicant did not produce the Matriculation pass certificate as per the condition laid down in his provisional appointment order in April, 2012. Although the applicant submitted two different certificates from two different Boards of Education, they were invalid for the purpose of Central Government services. Therefore, the order passed by the Respondent No.2 dated 09.11.2015 is legal and valid and the O.A. filed by the applicant deserves no consideration.

4. The matter was heard on 20.06.2018 when the respective counsels presented their argument. We have perused the documents submitted by Ld. Counsels for both the Parties. The issue to be decided in the present O.A. is whether the applicant has a legal right to continue in service beyond 16.01.2015 when his services were terminated.

5. The advertisement issued for the post of MTS in the Employment Notice dated 24-30 July, 2010 (Annexure-R/1) stipulates the required educational qualification as stated below:

“4. Educational Qualifications: (As on 01.01.2010)

The minimum required educational is 10th class pass.

Note-1: In case of casual workers engaged in IA&AD, the minimum required educational qualification would continue to be 8th class pass. However, if recruited, these candidates would be appointed to Pay Band-IS. For confirmation, following conditions will have to be fulfilled.

1. These candidates will have to pass 10th from any recognized Board of Education /National Open School.
2. Such candidates shall have to pass 10th within a period of two (02) years. Failure to do so shall entail termination of services.”

This condition is common for all the candidates who had applied for the posts. Accordingly, in the appointment letter received by the applicant dated 27.04.12 condition No.1 stipulates that he has to pass Matriculation or equivalent

Examination from a recognised Board within two years from the date of his joining as trainee MTS. Failure to do so, within the prescribed time period, shall entail termination of his services without assigning any reason. The applicant submitted two different certificates both of which were from institutions which are not recognised by the Council of Boards of School Education in India (COBSE). Although the applicant has enclosed a Mark Statement from National Institute of Open Schooling at Annexure-A/8, it is found that this was issued in April, 2015 by which time the applicant had already been terminated from service. The grounds taken by the applicant that the termination is in violation of fundamental rights and against the principles of natural justice are not valid since passing of 10th class was a specific precondition of his appointment and by accepting the appointment he had agreed to abide by the condition.

6. Considering the facts and points of law involved in the case, we find no merit in the present O.A. The O.A. is accordingly dismissed being devoid of merit. No costs.

(DR. M. SARANGI)
MEMBER (A)

(A. K. PATNAIK)
MEMBER (J)

K.B.