

CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH
KOLKATA

Original Application No.353 of 2011.

Present : Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member
Dr Ashish Mukherjee & Another
.....Applicants

-Vs-

Union of India & ors. (CDL)
.....Respondents

For the petitioner : Mr K. Pal, Counsel

For the respondents : Ms M.Bhattacharya, Mr A.K.Chattopadhyay,
Mr D. Mukherjee, Counsel

Date of Hearing : 05.05.2016.

Date of Order : 13.05.2016

ORDER

JUSTICE V. C. GUPTA, JM:

By means of this O.A under Section 19 of the Administrative Tribunals Act, 1985, the applicant sought for the following reliefs :

- a) Leave to file jointly as both are similarly circumstanced under Rule 4(5) (a) of CAT(Procedure) Rules 1987.
- b) Order directing the UPSC to issue interview letters for the post of Pharmaceutical Chemist against the applications dated 24.06.2010 sent by the applicants and to defer the proposed interview to any other date so that the applicants can also participate.

2. The brief facts for deciding this application are that the applicants in pursuance of advertisement made for one post of Pharmaceutical Chemist in Central Drugs Laboratory, (for short CDL) Kolkata published on 12-18 June, 2010 in the Employment News both the applicants applied for the same. The eligibility criteria for the post was mentioned in the advertisement as under :

"QUALIFICATIONS : ESSENTIAL : A. EDUCATIONAL : Master's degree in Pharmaceutical Chemistry or Organic Chemistry or Pharmacy of a



recognised University or equivalent. B. EXPERIENCE: Five years experience in research, testing and standardization of drugs with publications out of which not less than two years should be in testing and standardization of drugs and pharmaceutical substances."

The applicants have filed their experience certificates along with their application which were annexed jointly as Annexure A-4, which were issued on 21.06.2010 in respect of applicant No.2 Dr Ajoy Bera and on 21/23.6.2010 in respect of applicant No.1 Dr Ashish Mukherjee. Those certificates were issued by Shri P.K.Guha, Director, Central Drugs Laboratory, Kolkata. The same are being re-produced herein below for ready reference :

"Dated the 21/23 June, 2010

TO WHOM IT MAY CONCERN

1. This is to certify that Dr. Ashish Mukherjee, M.Sc.Ph.D, has been working in this Laboratory, Kolkata, since 02.11.1998 as Junior Scientific Assistant, in the scale of Pay Rs.5000-150-8000/- (revised to Rs. 9300-34800, Grade Pay Rs. 4200/- he is in Grade Pay Rs. 4600 on MACP) and his basic pay is Rs. 18360/- as on date 21-06-2010 (11 years 7 months 19 days) and consolidated pay Rs. 32454/-.
 2. He is experienced in testing of drugs and pharmaceutical substances. Having research publication in individual capacity.
 3. He is experienced in conducting of testing of drugs (synthetic) which are received as statutory samples or as survey samples, using physicochemical methods (viz., modern instrument like UV-Visible spectrometer, Potentiometer & HPLC).
 4. He imparts the training on Physico-chemical methods of analysis of drugs.
- This is issued for application to the post of "Pharmaceutical Chemist" in CDL, Kolkata on UPSC adv. No.11 item No.13 dated 12-18 June, 2010.

Director
Central Drugs Laboratory."

"Dated the 21st June, 2010

TO WHOM IT MAY CONCERN

1. This is to certify that Dr. Ajoy Bera, has been working in this Laboratory, Kolkata, since 13.03.1997 as Junior Scientific Assistant, in the scale of Pay Rs. 5000-150-8000/-(revised to Rs.9300-34800, Grade Pay Rs.4200/- he is in Grade Pay Rs. 4600/- on MACP) and his basic pay is Rs. 18690/- as on 21-06-2010 (13 years 3 months) & consolidated pay Rs. 33,449/-.
2. He is experienced in testing of drugs and pharmaceutical substances, having research publication in individual capacity.
3. He is experienced in conducting testing of various formulations of drugs & pharmaceuticals which are received as statutory samples or as survey samples, using physicochemical methods (viz., modern instrument like UV-Visible spectrometer, Flame photometer, Potentiometer & HPLC).
4. He imparts the training on Physico-chemical methods of analysis of drugs.

This is issued for application to the post of "Pharmaceutical Chemist" in CDL, Kolkata, on UPSC adv. 11 item No.13 dated 12-18 June, 2010.

Director
Central Drugs Laboratory."

3. It has been contended that the applicants came to know that two of their colleagues, namely, Shri Arindam Basu and Suman Biswas being less qualified have received interview letters from UPSC. The interview said to be held on 21.04.2011. however, no interview letter was issued to the applicants. They contacted telephonically to the officers of UPSC who informed that their cases are under consideration. Dr Ajoy Bera has also made a representation to the Chairman, UPSC on 07.04.2011 but inspite of that no interview letters were issued to the applicants. Thereafter, the applicants filed this application seeking the aforesaid reliefs.

4. The reply has been filed by respondent No.4 against the application on 10.05.2011 and the Tribunal thereafter decided the matter by dismissing the application by order dated 20.05.2011.

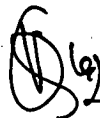
5. Aggrieved by the aforesaid order passed in this O.A on 30.05.2011 a WPCT No.137/2011 was filed by the applicants, which was allowed by the order dated 04.07.2011. The order of the Tribunal was set aside and the matter was remanded for fresh hearing.

6. During the pendency of the Writ Petition appointment was made on the post in question of Shri Arindam Basu. Consequently, Arindam Basu was added as respondent after remand of the matter.

7. Applicants after remand filed rejoinder to reply filed by respondent No.4, UPSC on 12.07.2011. The applicants also filed supplementary affidavit on 21.09.2011 with the leave of the Court as evident from order dated 16.11.2011 after bringing the fact of appointment of respondent No.5 Sri Arindam Basu.

8. Respondent UPSC filed fresh reply after remand on 14.11.2011.

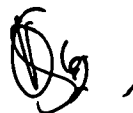
9. On 04.10.2012 the respondent No.5 also filed reply. Rejoinder affidavit have also filed by applicant against the reply of respondent No.5 on 10.10.2012.



10. Thereafter, the applicants filed another supplementary affidavit in the form of rejoinder affidavit on 23.11.2012. No leave was granted by the Court to file the same. Consequently, none of the respondents called upon to reply the same.

11. Respondents No.1 to 3 did not file their reply and only filed reply in the form of a supplementary affidavit on 05.09.2013 in compliance of an order of the Court passed on 21.06.2013, wherein certain queries were made by the Court in respect of the certificates issued to the applicants by the Director of CDL. Along with the reply a letter dated 5.3.2013 written by Ex-Director P.K.Guha to the Director, CDL, Kolkata has been annexed as Annexure A-5. It appears from the aforesaid letter dated 5.3.2013 that P.K.Guha first of all issued certificate on 31.07.2008 to Ashish Mukherjee in respect of his experience in analytical and testing of modern life saving drugs and other pharmaceutical techniques using latest analytical techniques. Another certificate was issued to Ashish Mukherjee on 18.11.2008 regarding his experience, in research, testing and **standardization of drugs and pharmaceutical substances** and having publication. Thereafter another certificate was issued on 16.9.2009 by Dr P.K.Guha, regarding experience to Ashish Mukherjee and mentioned therein about his experience in testing of drugs and pharmaceutical substances only and **not in respect of standardization** as earlier issued on 31.07.2008. Thereafter, the certificate attached with the application for the present post issued by Director P.K.Guha on 21.6.2010 was placed on record, **which was also not issued in respect of standardization** and issued only with regard to experience in testing of drugs and pharmaceutical substances having research publication in individual capacity. Some other certificates of Dr. Ashish Mukherjee were also attached issued on 12.9.2011 & 25.1.2012. Both these experience certificate also pertains to testing of drugs and **not in respect of standardisation.**

12. In respect of Dr Ajoy Bera, certificate of experience has been issued on 7.11.2007 and mentioned therein that "his experience in Assay and testing of various kind of bio-chemical samples, vitamins, hormones, steroids and enzymes in pharmacopoeial and non pharmacopoeial preparation." Then another certificate was issued by P.K.Guha on 18.11.2008 mentioned therein "he is experienced in **research, testing and standardization of drugs and**



pharmaceutical substances and having publications". Again another experience certificate was issued by P.K.Guha on 21.6.2010 which relates to experience in testing of drugs, pharmaceutical substances and not in respect of standardization. Another certificate dated 12.9.2011 also attached which was issued by P.K.Guha, Director in respect of testing of drugs only and not for experience in standardization.

13. On 01.03.2013 a letter has been issued by the in charge Director Sri Hariharan of CDL Kolkata to P.K.Guha, Ex-Director seeking clarification which reads as under :

"No.1-1/2012-AD/CAT-353/661

Dated 1st March, 2013

To
Sri Pradip Kumar Guha, Ex. Director,
Central Drugs Laboratory, Kolkata.
Flat No. 4D, Block II,
51/2, Moore Avenue,
Kolkata - 700 040.

Sir,

Several Experience Certificates have been issued to i) Dr. Ashish Mukherjee, Jr. Scientific Assistant and ii) Dr. Ajoy Bera, Jr. Scientific Assistant from time to time since 2007 to January, 2012 under your signature being Director Central Drugs Laboratory, Kolkata. Wherein one particular certificate issued during November, 2008 to both the above two officials inter alia mentioning "experience in research, Testing, Standardization of Drugs and Pharmaceutical Substances and Publication" but in no other certificate issued to them mentioning such specific term of "standardization of Drugs and Pharmaceutical Substances".

Please provide your valuable opinion and guidance on the above matter to take suitable stand in the matter of OA 353 of 2011 before Hon'ble C.A.T Kolkata Bench. Copies of all certificates are enclosed herewith for your kind perusal.

Yours faithfully,

(C. Hariharan)
Director I/c
Central Drugs Laboratory, Kolkata."

The reply of which has been given on 05.03.2013 which reads as under :

"To

The Director
Central Drugs Laboratory
3, Kyd Street
Kolkata - 700 016.

Kolkata
Dated : 5/03/2013

Sub: Regarding Experience certificate Shri Ashis Mukherjee & Shri Ajoy Bera.

Dear Sir,

This is with reference to your letter No. 1-1/2012-AD/CAT-353/661 dated: 01/03/2013 regarding experience certificate issued to Shri Ashish Mukherjee and Shri Ajoy Bera both working as "Junior Scientific Assistant" in CDL Kolkata.

I have carefully examined the copies of the certificates issued by the CDL Kolkata under the Signature of myself in the capacity of Director CDL Kolkata at different times.

This is to state that I joined as Director, CDL on 07.09.2007. While issuing the 1st certificate on dated 18/11/2008, issued to Shri Ashish Mukherjee and Shri Ajoy Bera both working as "Junior Scientific Assistant" in CDL Kolkata, on their request, it was inadvertently mentioned about their experience in "Standardization" of drugs.

Whereas to the best of my knowledge both the analysts were not involved in "Standardization" of Drugs. They were involved in routine job to carry testing of drugs and formulations.

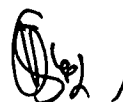
Thereafter when they again applied for experience certificate during 16/09/2009, 21/06/2010 and 25/01/2012, at that time experience certificates were issued to both based on their actual job/performance with due correction of mistake in the earlier certificate dated 18/11/2008, the experience part of "Standardization" word was omitted/removed and obviously not mentioned since they were not involved in "Standardization".

They themselves happily accepted the experience certificate issued on dated 21/06/2010 without raising any objection which clearly indicate that they themselves knew very well that they were not entitled to get such experience certificate about "Standardization" of drugs.

Yours truly,

(P.K. Guha)
Ex-Director
Central Drugs Laboratory
Kolkata"

14. The UPSC, respondent No.4 by another reply filed after remand of the matter have categorically stated therein that the applicants were not having requisite experience in standardisation and therefore their applications were rejected and was not called for the interview as they were not short listed. It was further contended that in this post after advertisement 107 applications were received and after scrutiny of the candidates they were summoned for interview. The applicants were not called for interview and their applications were rejected under the category of "lack of essential qualifications", as the experience possessed by applicants were not found to be meeting the requirement of rules.



15. The applicants by filing a supplementary rejoinder affidavit without taking leave of the Court on 23.11.2012 by filing certain documents so to change the nature of entire case. By supplementary affidavit documents has been brought on record demonstrating that the Secretary of UPSC vide letter dated 07.04.2011 (wrongly mentioned as 7.4.2009) requested by the Ministry of Health and Family Welfare to review/re-consider the case of the applicants and 2 others, namely, Pranab Kr. Saini and Gopinath and they may be called for interview with intend to give a wider pool in terms of requisite qualification and experience to fulfil the aforesaid post. They also filed another letter of Ministry dated 18.04.2011 (wrongly mentioned as 18.4.2009) nominating Shri Sanjay Prasad Director as representative in connection with the interview for the selection on 21.04.2011. Another letter of 5.4.2011 written to Secretary of Ministry of Health & Family Welfare by the UPSC has been brought on record, wherein UPSC by informing Govt. sought suggestion from the Ministry concerned by 15.04.2011 with a statement that if comments are not received by such date it will be presumed that department has no suggestion to make. The certificate of experience dated 21/23.6.2010 of Arindam Basu has also been annexed. A notice dated 08.06.2012 issued to the Chairman, UPSC on behalf of the applicants was also annexed, wherein he asked to take action for concealment of material fact by Arindam Basu of his joining in Indian Space Research Organisation (for short ISRO) in November, 2006 and resigning from there on December 2006 and to again join CDL, Kolkata, on the basis of informations received through R.T.I.

16. No reply to the supplementary affidavit has been filed by any of the respondents for want of calling for reply by the Court as no leave was sought by applicant to file the same.

17. During the course of hearing the application of the applicants and the selected candidate against the present vacancy as well as the vacancies advertised for the same post in 2008 were brought on record. As an when need would be arisen to refer these documents in this case, the same may be referred in the judgment at appropriate place.

18. Heard the learned counsel for the parties and perused the records and written submission of the counsel for the parties.



19. The learned counsel for the applicants would submit that no reply has been given of the pleadings made in supplementary rejoinder affidavit dated 23.11.2012 so the facts mentioned therein shall be deemed to have been admitted. He further submits that the Director Dr P.K.Guha issued certificate of experience in 2008 in respect of standardization also so far as the applicants are concerned but in 2012 for the present post, the certificates have been issued by Dr. P.K.Guha, the then Director omitting the experience of standardization of the applicants. His contention is that if a person is qualified having experience and qualification for the same post in 2008 how he can be declared having no experience in standardization subsequently. It was contended by learned counsel that it has been done with mala fide intention. Hence the entire process of selection is illegal. It was also contended that the process adopted by the UPSC is mala fide and not in accordance with recruitment rules and thus liable to be struck down. It has been further contended that respondent No.5 do not have all the component (research). It has been further contended that respondent No.5 concealed material fact of joining the ISRO on 1.11.2006 and resigned on 19.12.2006. It is strange that respondent No.5 how joined ISRO while working as an employee of CDL Kolkata. The respondent No.5 is less educational qualification, having no research/ doctorate degree though the applicants are having doctorate degree (PHD). He has only one publication though requirement is of more than one. He further contended that testing of Drugs include standardization of drugs. The UPSC violated the directions of concerned Ministry.

20. The counsel for respondent No.5 stated that no leave has been granted to file the supplementary rejoinder affidavit and documents by such affidavit dated 23.11.2012, therefore they cannot form part of the pleadings and cannot be taken into record of the case or into consideration. As no leave has been granted to file the document through this affidavit, therefore no reply has been sought from the respondents. It was further contended by learned counsel for respondent No.5 that no amendment has been sought either in the relief clause or in the pleadings so validity of selection of respondent No. 5 cannot be looked into. It has been stated that UPSC which is an expert body after due process of law and observing the recruitment rules completed the process of selection in accordance with law and only

thereafter, appointed the respondent No.5 against the aforesaid post. Hence the application is liable to be dismissed.

21. Learned counsel for the respondents No.1, 2 and 3 submits that substantive prayer in the O.A was against such interview, which is now over, selection has been completed, hence the O.A filed by the applicant has become infructuous. He further submits that the additional supplementary rejoinder affidavit filed by the applicants without the leave of the Court making completely a different case from the case set up in O.A cannot be accepted and on that basis the O.A cannot be decided. It was further submitted that the certificate which was issued on 18.11.2008 to the applicants with regard to **standardization of drugs** by Shri P.K.Guha, Ex-Director was issued inadvertently as is evident from the explanation submitted by Sri P.K.Guha, Ex-Director and as such has no relevance with the present application. It was further contended that after 18.11.2008 the applicants were issued several experience certificates but in none of them experience in the **standardization of drugs** is mentioned and the same has been accepted by the applicants and used the same. Hence they cannot now plead contrary to it.

22. We have carefully considered the written arguments as well as oral submissions of the learned counsel for the parties and also perused the record.

23. It is not in dispute that by filing a second rejoinder supplementary affidavit on 23.11.2012 mentioning entirely new facts and not pleaded in the O.A. It is also evident from that affidavit that by filing the same for the first time the appointment of respondent No.5 has been assailed without making any necessary amendment in the pleadings as well as without seeking any leave of the Court. It is also not in dispute that the Court has not granted any leave to file such an affidavit. It is also not denied that Court has not asked to any of the respondents to file the reply against the supplementary affidavit dated 23.11.2012. It is also not denied that none of the respondents filed reply against the same. Hence it will be necessary to look into this aspect first before further proceeding in the matter and to grant reliefs claimed by the applicants.



24. Chapter VI of CAT Rules of Practice 1993 deals with filing of reply statement/rejoinder.

Rule 31, 32, 33 and 34 are extracted herein below for ready reference :

"FILING OF REPLY STATEMENT/REJOINDER

31. Case deemed to be ready on failure to file reply in time. – When all or any of the respondent(s) fail(s) to file reply statement in the form and in the manner provided under rule 12 of the Procedure Rule within the time granted, the case shall be deemed to be ready for hearing and included in the ready list for final hearing.

32. Filing of rejoinder. – (a) The applicant(s) intending to file rejoinder to the reply statement filed by all or any of the respondent(s) shall do so, with the leave of the Bench/Registrar within the time granted. The rejoinder shall be filed with the time granted, duly signed and verified in the manner prescribed for filing reply statement under rule 12 of the Procedure Rules.

(b) After the expiry of the time granted for filing the rejoinder, the case shall be deemed to be ready for hearing and included in the ready list for final hearing.

33. Papers not to form part of the records. – (a) Except with the leave of the Tribunal, the following shall not form part of the records of the case:-

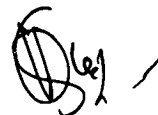
- (i) Reply statement filed after the expiry of the time granted for the purpose.
- (ii) Rejoinder filed without the leave of the court or filed after the expiry of the time granted.
- (iii) Additional pleadings filed without the leave of the court or filed after the expiry of the time granted.

(b) The above papers treated as not forming part of the record shall be notified on the Notice Board of the Registry requiring the party to take them back within four weeks from the date of the Notification, failing which the Registry shall take steps to destroy the same.

34. Incorporation of amendments, filing of additional reply, etc. – When the Tribunal allows a prayer for a amendment of the pleadings or for addition of parties, the same shall be carried out in red ink indicating the date of the order and duly signed by the party/legal practitioner, who has obtained the order, within the time granted for the purpose by the order or if no time is thereby limited then, within 14 days from the date of the order. If however, the Bench or the Tribunal has directed furnishing of a fresh copy incorporating the amendments/addition of parties, the same shall be filed in triplicate and after serving a copy of the amended pleading on the other party within the time granted by the court or if no time is granted with 14 days from the date of the order. In default, the Registry shall place the matter before the Bench for orders."

Rule 32 clearly speaks that applicant intends to file rejoinder to the reply statement filed by any of the respondents shall do so, with the leave of the Bench/Registrar within the time granted.

Rule 33 speaks that except with the leave of the Tribunal, the reply statement filed after the expiry of the time granted for the purpose or rejoinder filed without the leave of the court or



filed after the expiry of the time granted or additional pleadings filed without the leave of the court or filed after the expiry of the time granted shall not form part of the records of the case and for any such papers filed shall be treated as not forming part of the record and shall be returned back the same or if refuses to take back the documents, the Registry shall destroy the same. Rule 34 deals with amendment of pleadings. It contains that Tribunal allows a prayer for an amendment of the pleadings or for addition of parties, the same shall be carried out in red ink indicating the date of the order and duly signed by the party/legal practitioner.

25. In this case admittedly no amendment has been sought seeking any further relief with regard to the appointment of respondent No.5. The application was initially filed with regard to the selection of candidature of the applicants and on the basis of which prayer was sought to allow the applicants to participate in the process of selection by permitting them to appear before the interview Board. It is not denied that no interim order was granted to the applicants. It is also no denied that interview has been conducted and thereafter selection process has already been completed and respondent No.5 was appointed against the post in question. The status of the present applicants now is as an unsuccessful candidates.

26. Therefore, on the basis of aforesaid facts and circumstances, it is crystal clear that the O.A was filed challenging the cancellation of candidature of the applicants and asking to permit them to participate in the selection process.

27. So, we are of the view that we should first go through the claim of the applicants, whether they succeed on the strength of their pleadings made in the O.A. with regard to their eligibility criteria.

28. In this case experience in the field of **standardization of drugs** is an essential qualification apart from other qualifications with regard to testing of drugs etc. But the certificates which has been issued to the applicants by Director of CDL and which has been annexed with the application does not contain any experience in the **standardization of drugs**. The case of the applicants is that the same Director in 2008 issued certificates mentioned therein the experience of **standardization of drugs** to the applicants and on the basis of the



certificates they were permitted in the process of selection for the similar post in 2008 and once they have been allowed to participate in the process of selection on the basis of that certificates issued in 2008, the applicants cannot be debarred from participating in the selection process on the basis of present certificates which does not contain this experience in **standardization of drugs**. He further submits in the alternative that testing of drugs include **standardization of drugs** and in this regard he relied upon the definition of standardization given in Drugs and Cosmetics Act. It is something else with experience in standardization of drugs. Hence in view of submission of the applicants we have to examine their case.

29. So far as the certificates issued in 2008 are concerned which contained the experience of applicants in standardization of drugs would not extending any help to the applicant for the present recruitment process for the following reasons.

(i) Admittedly, in the selection process of 2008 none of the candidates were found suitable for appointment

(ii) It is not denied by the applicants that after issue of certificates in 2008 certificate by the same Director was issued in 2009, 2010 and 2012 but in none of them experience of **standardization of drugs** was mentioned, so far as the applicants are concerned. They did not raise any objection right from 2009 till the filing of the certificates by the applicants in the present process of selection. Moreover, the explanation sought from Mr P.K.Guha in terms of the order passed by this Tribunal will reveal that certificate of the applicants relied upon and issued in 2008 inadvertently issued and the mistake was rectified by issuing fresh certificates.

30. Therefore, we are of the view that so far as the eligibility criteria is concerned for the post in question, both the applicants fail to qualify the eligibility criteria needed for the present post and therefore we are of the view that no mistake has been caused by respondent No.4 by not considering the candidature of the applicants for the post and we find no reason to interfere with the decision of respondent No.4 for not calling them for interview.



31. So far as the challenge to the qualification of respondent No.5 is concerned, admittedly, the certificates attached to the application contains a declaration that they have experience both in testing as well as **standardization of drugs**.

32. So far as the educational qualification of the respondent No.5 is concerned he is admittedly a Post Graduate, which is the requirement for the post. In the recruitment rules or in the advertisement there is no requirement that candidates must have possessed a Degree of Ph.D or which completed the research and obtained the Degree of doctorate and hence merely for this simple reason that applicants are having Ph.D Degree and respondent No.5 have no such Degree would not entitle the respondent No.5 ineligible for the post.

33. So far as the publications of respondent No.5 are concerned, we have gone through the record made available by UPSC, the respondent No.4 which contains the application of respondent No.5. The perusal of which reveals that there were three publications. The first one is in simultaneous estimation of paracetamol, chlorzoxazone and diclofenac potassium in pharmaceutical formulation by RP HPLC method, second is RP-HPLC method for simultaneous estimation of metformin HCl and glimepiride in tablet dosage form and third in simultaneous LC estimation of amoxycilin and tinidzole in tablet dosage form. So far as the first is concerned it has been published in the international journal and other two was said to be under communication. The review Article (under communication) is Analytical Method Validation. Therefore, we are of the view that on this score when expert body has satisfied with the publications of the respondent No.5 under communication, we are not supposed to interfere with the decision making by an expert body.

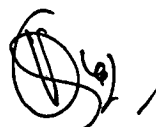
34. So far as the concealment of material fact regarding joining at ISRO of respondent No.5 is concerned, it has been contended and pleaded by respondent No.5 that retaining his lien with CDL with the permission he joined ISRO and after a short interval he again came back to CDL and joined the post, as the lien has not been vanished from the CDL. Whatever may be the situation in this regard, the matter has to be considered by the appointing authority. The applicant was employee of CDL and working there before joining the post and therefore it will in the domain of the appointing authority to consider this aspect. But the same by itself cannot



be a disqualification for the post. Unless the employer himself satisfied that it will amount to concealment of material fact.

35. Most of the other pleas of challenge to eligibility of applicants are not based on the pleadings available in the O.A but on the basis of supplementary rejoinder affidavit which has been filed without the leave of the Court and against which none of the respondents were asked to file their reply. Admittedly, no amendment has been sought by the applicants in relief clause or in the existing pleadings. Therefore, in absence thereof, the plea of the applicants' counsel that in absence of reply to the supplementary rejoinder affidavit, the fact pleaded therein shall be deemed to have been admitted and could not be sustained. Reliance placed in this regard by the applicant on a judgment of the Apex Court reported in *AIR 1964 SC 538, Badat and Co. Vs. East India Trading Co.* is not extending any help in the light of the facts and circumstances of the present case. Moreover, if this Tribunal consider the fact pleaded in supplementary rejoinder affidavit it shall cause serious prejudice to the respondent No.5 as he has no opportunity to rebut the allegation of supplementary rejoinder affidavit, which otherwise could not be taken into consideration legally.

36. So far as the case law cited by the applicant in *Charles K. Skaria and Ors. Vs. Dr. C.Mathew and Ors., reported in AIR 1980 SC 1231* is concerned, the same decision is also not extending any help to the applicants for the reasons that the law declared by the Apex Court in this judgment is that if the applicants could not produce the certificate or diploma which was required as an essential qualification for the post due to non issuance of the same by the Institute in time, the candidature of the applicant cannot be rejected on that ground if the same has been placed before the competent authority before conclusion of the selection process. Here in this case the eligibility criteria which was required for the post was not admittedly possessed by the applicants on the basis of documents produced by them. It is not the case that applicants were possessing the experience in **standardization of drugs** and the same could not be placed on record due to non availability at the time of filing the application. In this case in hand the requisite qualification is not being possessed by the applicants and on

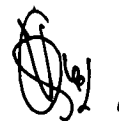


the basis of an earlier certificate issued they are claiming the benefit, which in our opinion cannot be available to the applicants in this case.

37. The applicants also relied upon on another judgment of the Hon'ble Calcutta High Court passed in **WP 15564 (W) of 2013 decided on 07.08.2013**. This is also a case which is almost similar to the case discussed in **Charles K. Skaria (supra)**. The Hon'ble High Court after relying upon the same granted the relief to the applicant. Therefore, the applicants is also not entitled to get any advantage of the said judgment.

38. Learned counsel vehemently argued that the Tribunal while admitting the O.A passed an order that any appointment made would subject to outcome of the O.A and on the basis of that relying upon the judgment dated 24.09.1980 decided by the Hon'ble Calcutta High Court in **Tapan Kumar Jana vs. Calcutta Telephones and Ors.**, it has been submitted that the Court can mould the relief and cannot dismiss the petition for seeking specific relief with regard to the appointment made subsequently.

39. There cannot be two views that Court can mould the relief in view of the prevailing circumstances of the case. It is no doubt true that if Court passed an order that any appointment made in pursuance of a selection under challenge is made during pendency of the same shall abide by the final outcome of the O.A, does not mean that Court after making a third case grant the relief to the applicants. If that order has been passed even then the Courts have to decide whether on the basis of pleadings selection process may be stalled or quashed. In this case, if cancellation of the candidature of the applicants would be held erroneous then certainly the entire process of selection would be void ab-initio and in such a situation if any appointment was made the same should bound to have been set aside and Court was left with no option except to set aside the entire process of selection including appointment of any person on account of defective and illegal selection but that is not the situation in the present case. The applicants have failed to establish their case, therefore, the process of selection which has been completed in accordance with law cannot be assailed as illegal.



40. Consequently, we are of the view that application lacks merit and accordingly dismissed.

There shall be no order as to costs.

41. The record placed by the respondent No.4 be returned to the learned counsel for respondent No.4 as per rules.

(Jaya Das Gupta)
Administrative Member

(Justice V.C.Gupta)
Judicial Member

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