

**Central Administrative Tribunal
Chandigarh Bench**

(Circuit Bench at Srinagar)

Decided on : 17.09.2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman

Hon'ble Ms. P. Gopinath, Member (A)

1. R.A.No.62/00046/2017

IN

TA No.62/00011/2015 &

MA No.62/1263/2017 &

MA No.62/1264/2017 &

MA No.62/1265/2017

Ashok Kumar, aged 42 years, S/o Late Sh. Des Raj, R/o Nagroota, District Kathua, presently posted at GE 969 EWS C/o 56 APO, Baramulla, Kashmir, J&K.

... Applicant

(By Mr. S.A. Naik, Advocate)

Versus

1. Union of India through Secretary, E-Block, Ministry of Defence, Govt. of India, New Delhi.
2. The Chief Engineer in Chief, Military Engineering Services (MES), Army HQ, New Delhi, C/o 56 APO.
3. Chief Engineer, Headquarters 133 Works Engineers, C/o 56 APO.
4. Garrison Engineer, 969 EWS, C/o 56 APO.

... Respondents

(By Mr. Satinder Singh, Advocate)

**2. OA No.62/126/2018 &
MA No.62/1307/2018**

Ashok Kumar, aged 45 years, S/o Late Shri Des Raj, R/o Nagroota District Kathua, presently posted at GE 969 EWS, C/o 56 APO Baramulla Kashmir.

... Applicant

(By Mr. S.A. Naik, Advocate)

Versus

1. Union of India,
Through Secretary,
Ministry of Defence,
Government of India,
New Delhi.
2. Chief Engineer in Chief,
Military Engineering Service (MES),
Army HQ, New Delhi,
C/o 56 APO.
3. Chief Engineer Headquarters,
133 Works Engineers,
C/o 56 APO.
4. Col. Commander Works Engineers (CWE),
HQ 133, WE, C/o 56 APO.
5. Garrison Engineer,
969 Engs. Wks Sec. (EWS),
C/o 56 APO.
6. Secretary, Ministry of Human Resources Development,
Department of School Education & Literacy,
Government of India,
New Delhi.

... Respondents

(By Mr. Satinder Singh, Advocate

Mr. Harshwardhan Gupta, counsel for applicant in MA
62/1307/2018)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman :

The applicant has filed this Review Application (RA), with a prayer to review the order dated 22.2.2017 passed by this Tribunal in T.A.No.062/00011/2015.

2. The facts which give rise to filing of the case, are that the respondents issued an advertisement dated 5.12.2011 inviting applications for the posts of Peon & others. The applicant submitted his application for that post. The qualification stipulated in the advertisement was Matriculation from a recognized University / Board. The applicant studied his matriculation from a school at Gurdaspur (Punjab), which is stated to have been recognized by the Board of Higher Secondary Education (for short "BHSE"), Delhi. The applicant was appointed through order dated 20.3.2013. However, he was issued an office order dated 23.1.2014, stating that the certificate held by him is not from a valid institute, as the BHSE, Delhi, is not recognized by any University or Board, and his appointment was cancelled.

3. The applicant filed SWP No. 204/2014 before the J&K High Court. An interim order of stay on termination of his

services was passed. Thereafter, the SWP was transferred to this Tribunal, which in turn was registered as T.A. No. 062/00011/2015.

4. The respondents have filed a reply stating that the BHSE, Delhi, through which applicant acquired qualification, is not recognized by any University or board. An effort was made, during the pendency of the T.A., to find out, whether BHSE, Delhi was recognized or not and it was clarified in 2012 that it was an invalid one and ultimately, T.A. was dismissed on 20.2.2017.

5. The applicant filed SWP No. 954/2017 in the J&K High Court, challenging the order passed in T.A. which was dismissed as withdrawn with liberty to file a Review Petition in this Tribunal. Thus, arose the Review Petition.

6. Shri S.A. Naik, learned counsel for the applicant submitted that the BHSE, Delhi, was recognized under the Uttar Pradesh Intermediate Education Act, 1921 (for short U.P. Act of 1921), and such a recognition was in force till the year 2012 and in that view of the matter, it cannot be said that the BSE Delhi was not recognized, at all.

7. Shri Harshwardhan Gupta, learned counsel for the respondents, on the other hand, stated that the Ministry of

Human Resource Development, New Delhi, maintains a list of Boards / universities, whose certificates of secondary level are recognized and the name of BHSE Delhi, does not figure therein. It is, also contended that certificate produced by the applicant is not genuine, and is unacceptable.

8. The only question, that arises for our consideration in this R.A. and for that matter, in the O.A. is whether the matriculation certificate produced by the applicant was recognized by any Board/University or not?

9. The office of Garrison Engineer, by itself does not maintain any list of recognized Boards / Universities. The respondents have filed a list of Boards of School Education, recognized by the Council of Boards of School Education, in India. As many as 42 Boards / Institutions are mentioned therein. At Sr. No. 34, the U.P. Board of High School and Intermediate Education, Allahabad is mentioned. There is no dispute that BHSE, Delhi was recognized under the U.P. Act of 1921, and such recognition was cancelled or withdrawn only in the year 2012. The applicant passed Matriculation Examination during the academic session 2009-2010 i.e. at the time when the board was recognized by the U.P. Board.

10. It is no doubt true, that the School where applicant studied matriculation, was not in the State of U.P. but at the same time, it was recognized under the U.P. Act of 1921. In the context of interpretation of such a provision, the benefit of doubt deserves to be given to the applicant. Another reason is that the post in question is not skilled one and admittedly the nature of education undergone for the purpose of this post is not so significant. Since the applicant belongs to down trodden strata of society and post is menial in nature, we are of the view that the applicant can be treated as eligible for the post of Mate SSK, but without any right of promotion to any higher skilled post, unless he has improved his educational qualifications, while in service.

11. In the result, order dated 22.2.2017 is reviewed and T.A/O.A. shall stand allowed. The order of termination is set aside and the applicant shall be reinstatement into service, but without any back wages or promotion. The period from the date of termination to the date of reinstatement, shall be counted only for the purpose of pension and other retirement benefits. Needful be done within a period of 60 days from the date of receipt of a certified copy of this order.

12. The parties are, however, left to bear their own costs.

13. Pending M.As, if any, also stand disposed of.

(P. Gopinath)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

HC*