

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00279/2018

DATED THIS THE 15th DAY OF NOVEMBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V.SANKAR, MEMBER (A)

Puneeth Kumar M.R.
S/o.Ramachandra
Aged 29 years
Working as Electronic Engineer
All India Institute of Speech and Hearing
Manasagangotri
Mysore-570 006.
R/o No.2112, Dhanvantri Road
Devaraja Mohalla
Mysore-570 001.

....Applicant

(By Advocate Sri Ranganath S.Jois)

Vs.

1. The All India Institute of Speech
and Hearing
"Naimisham" Campus
Manasagangothri
Mysore-570 006
Rep. by its Director.
2. The Union of India
Rep. by its Secretary
Ministry of Health and Family Welfare
New Delhi-110 001.
3. Abhishekh, T.E.
S/o.Sri Eshwara T.G.
Junior Technical Officer
"Naimisham" Campus
Manasagangothri
Mysore-570 006.

...Respondents

(By Advocates Sri V.N.Holla for R2, Shri K.Ananda for R1 & Shri
Meghachandra D N for R3)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The applicant has filed the present OA seeking the following relief:

- a) *Call for the entire records relating to the impugned order bearing No.SH/PL/C.01(b)/2016-17 dtd.5.7.2016 and No.PH/PL/C.1234/2016-17 dtd.22.7.2016 passed by 1st respondent vide Annexure-A18 and A19. Peruse and quash the selection and appointment of the third respondent, who is less merited, is clearly violative of Articles 14 and 16(1) of the Constitution of India.*
- b) *Issue a consequential writ, or direction to the respondents 1 to 2 to select and appoint the applicant as Junior Technical Officer in place of the third applicant, having regard to the marks scored by the applicant in written/skill test and grant him all the consequential benefits from the date the third respondent was appointed.*
- c) *Issue such a writ or order to the respondents 1 and 2 to consider the claim of the applicant for continuation of the services having regard to his initial recruitment as Electrical Engineer and also the experience gained by him in the Institution and to extend to him the benefit of equal pay for equal work from the date of his initial appointment, till date, with arrears of salary and other allowances as per law.*

2. The applicant has stated that he is an in-service candidate already working as Electronic Engineer on temporary basis from 14.10.2010 on a consolidated salary against a clear vacant post. He is a holder of Diploma in Engineering(Electrical and Electronics). He was earlier subjected to regular process of selection by calling for application vide notification dtd.14.10.2010(Annexure-A1) along with several other posts including one post of Electronic Engineer. He had the required qualification and also experience. Accordingly, the applicant was continued in service from time to time on 12 months/6 months basis and thus has completed almost 7 years of service. Copies of the orders of appointment and renewal issued from time to time are enclosed as Annexures-A2 to A10. The services of the applicant have been appreciated by issuing suitable certificate as per Annexure-A11 &

OA.170/00279/2018/CAT/Bangalore Bench

A15 and he has also been deputed to get special training in a special workshop and thus has rendered valuable service to the Institute.

3. The applicant being an in-service candidate has again applied for regular appointment to the post of Junior Technical Officer for which Advertisement was issued on 21.10.2015 (Annexure-A16). It is seen from the said notification that the applicant had the required qualification of Diploma and also Degree in Engineering. Since he has already rendered about 5 years of service in the Institution and being of higher merit in the test conducted, he believed that he would be selected. In the Skill test conducted, the applicant had scored higher marks i.e. 70 marks in addition to the experience in the Department/Institution. It is submitted that even though better performance and merit in the Skill Test and long experience in the Institution, he was not selected whereas the 3rd respondent who is now on probation for a period of two years and got lesser merit in the Skill Test/interview has been selected and appointed in his post by order dtd.5.7.2016(Annexure-A18) and joining report dtd.22.7.2016(Annexure-A19). The 1st respondent Institute informed that the selected candidate has scored higher marks. The applicant applied for the marks to be given which is not yet furnished to him in the said selection.
4. He submits that he was subjected to further injustice in addition to the selection relating to the post of Audio Visual Technician which was challenged in OA.No.794/2017. So far as the present selection is concerned, it is clear that the applicant has scored higher marks in the skill test and aggregate of 70 in total from Skill Test and Written Test. He has also got the vast experience of 5 years as on the said date. Therefore, his non-selection to the post of Junior Technical Officer is totally illegal. Since at the time of process of

selection for the post of Junior Technical Officer vide notification dtd.21.10.2015, the procedure of selection by holding skill test and interview was in vogue, the applicant should have been selected and appointed on the basis of marks obtained by him. He submits that he gained experience in the institute and has been appreciated for his work and has attended several workshops and is also having the qualification of Graduation in Engineer as compared to the qualification prescribed for the post of Junior Technician which is diploma. Therefore, he cannot be denied the selection on regular basis or at least to continue in the post of Electronic Engineer and by giving the pay scale of the post. He is entitled to continue in service until the regular recruitment is made by the UPSC and he has to be provided with necessary weightage and age relaxation as per law.

5. The 3rd respondent has filed his reply statement denying the contentions of the applicant that he was an in-service candidate as he was working as Electrical Engineer on contract basis. He submits that the applicant should be subjected to strict proof for his statement that he is holder in Diploma in Engineering(Electrical & Electronics) as it can be seen that the qualification for the post of Electronic Engineer requires a candidate to possess a Degree in Engineering(BE) or Technology(B.Tech) which he does not qualify. As regards the post of Junior Technical Officer, the same requires qualification of B.Sc Degree with Diploma in Electronics or M.Sc(Electronics). It is not known whether the applicant possess a Degree in B.Sc. But the 3rd respondent is a Master's Degree holder in Science i.e., M.Sc(Electronics) who qualifies the criteria required for the post of Junior Technical Officer. Though the applicant has produced the copies of the orders continuing him in service from time to time on temporary basis, it is not clear from the averments as to which post he was appointed. In the averments, he stated that he was appointed as software

OA.170/00279/2018/CAT/Bangalore Bench engineer, electrical engineer only to mislead the Court. It is specifically denied that the applicant was an in-service candidate at the time of appointment as he was not serving under any regular post.

6. The 3rd respondent further submits that Annexures-A11-A15 filed claiming to be appreciation letters are false and misleading as it is apparent on thorough perusal that the same are his character and conduct certificates obtained at his own request, much less appreciation certificates. The applicant has not produced any documents pertaining to his requisite qualification suitable for appointment to the post under challenge. It is further submitted that the applicant had also applied for the post of Junior Technical Officer in pursuance of the Advertisement No.10/2015 along with respondent No.3. But under the said notification, the essential education qualification required for the post of Junior Technical Officer was II Class B.Sc Degree with Diploma in Electronics or M.Sc.(Electronics) or equivalent. The applicant has not produced any document to substantiate his qualification for the post of Junior Technical Officer. The applicant has claimed that he possesses Diploma in Engineering(Electrical & Electronics). But still he is not qualified as the post requires B.Sc. Degree coupled with Diploma in Electronics. Whereas the 3rd respondent has the qualification of M.Sc.(Electronics) post graduate candidate. But both are belonged to OBC category as the said post was reserved for. The 3rd respondent who was allotted a Roll No.JTO-04 as per admission ticket at Annexure-R1 secured 37 marks in the Written Test(WT) and 20 marks in Skill Test(ST). The applicant claimed that he secured 20 marks in WT and 50 marks in ST but failed to produce any document that he was allotted the claimed Roll number per Annexure-A17.
7. He submits that after completion of the selection process and basing on the merit and qualification, the respondents have issued order of appointment

appointing the 3rd respondent to the post of Junior Technical Officer vide appointment order dtd.5.7.2016 and OM dtd.22.7.2016 which annexed as Annexures-A18 & A19 in the OA are supposed to be retained by the office of the respondents for its record as the same are not public documents. But the applicant has secured the same by illegal means for which he should be put to strict proof. The applicant is guilty of leaking confidential information maintained by the respondents which is a grievous penal offence as well as in the service jurisprudence.

8. The 3rd respondent further submitted that the Ministry of Personnel, Public Grievances and Pensions have frequently conducted meetings and issued OMs to give effect immediately, in so far as discontinuation of interviews at junior level posts in Govt. of India and has strictly clarified that the Skill Tests and Physical Tests will only be of qualifying nature and assessment will not be done on the basis of marks for such tests, thus clearly covering the case of 3rd respondent and his selection departing from the claim of the applicant. The OM dtd.15.2.2016 issued by the Min. of Health and Family Welfare in pursuance of OM dtd.29.12.2015 and OM dtd.15.03.2016 issued by the 1st respondent in pursuance of OM dtd.15.2.2016 were issued much prior to the commencement of selection process of the applicant and 3rd respondent. The 1st respondent relying upon the said OMs and under instructions of strict and early implementations has concluded that the 3rd respondent was the meritorious and suitable candidate for the post of Junior Technical Officer at the 1st respondent. It is further submitted that the 3rd respondent is a graduate in Science with distinction grade and Post Graduate in Science with A++ grade from Kuvempu University. He is also a qualified National Eligibility test for Assistant Professor conducted by the UGC and also qualified holder of Karnataka State Eligibility Test for Lecturer/Assistant Professorship which

OA.170/00279/2018/CAT/Bangalore Bench shows that the 3rd respondent is both educationally and professionally qualified for the post of Junior Technical Officer at the 1st respondent institute. Copies of the Degree certificates and eligibility and qualified certificates are annexed at Annexures-R2 to R5. He is the second highest in the list of marks in Written Test. Accordingly he was considered for selection to the post of Junior Technical Officer which does not require any interference by this Tribunal.

9. The 1st respondent has filed reply statement wherein they submit that the 1st respondent i.e. All India Institute of Speech and Hearing(AIISH), Mysore is an autonomous body under the Administrative control of Ministry of Health and Family Welfare and is wholly funded by the Govt. of India. The Director of the Institute carries out the functions under the guidance of the Executive Council and Bye-laws and Rules and Regulations framed by the Executive Council of the Institute.
10. The applicant was engaged as Electronic Engineer on contract basis for a particular period initially and thereafter he was continued from time to time with intermittent breaks. As per the contract appointment order dtd.18.5.2017(Annexure-R1), the applicant was appointed to the post of Electronic Engineer on 18.5.2017 for a period of 11 months from the date of reporting for the duty and as per the terms and conditions of the said contract appointment, the term of the applicant will expire on 17.4.2018. The terms of contract appointment are clear and unambiguous wherein it is stipulated that 'this offer does not confer any right or title to claim permanent appointment at AIISH, Mysuru. Admittedly, the applicant accepted these terms and conditions and reported for duty in the 1st respondent Institution. After completion of 11 months, as per the terms and conditions of the contract appointment order, he

was relieved of his contract services from the 1st respondent Institution on 17.4.2018 vide OM dtd.17.4.2018(Annexure-R2).

11. It is submitted that the respondents had issued the recruitment notification vide Advertisement No.10/2015 dtd.21.10.2015 (Annexure-R3) to fill up the post of Lecturer in Clinical Psychology, Hindi Translator and Junior Technical Officer in the 1st respondent institution. In pursuance of which, the applicant and 3rd respondent along with other candidates filed their applications to the post of Junior Technical Officer. The essential qualification to the said post is II Class B.Sc. Degree with Diploma in Electronics or M.Sc.(Electronics) or equivalent and the method of selection to the said post is initially conducting Skill Test and who are qualified in the Skill Test will be called for interview. Before conducting the Skill Test to the said post, the Govt. of India had issued an OM on 29.12.2015(Annexure-R4) stating that there is no interview for the recruitment in so far all Gr.C, Gr.D posts and non-gazetted posts of Gr.B category and all such equivalent posts are concerned. Further, it was made clear that Skill Test or Physical Test is different from the interview. However, these tests will only be qualifying in nature. The assessment will not be done on the basis of marks obtained for such tests. Thereafter, on 15.2.2016, the Govt. of India issued one more OM dtd.15.2.2016(Annexure-R5) based on which the 1st respondent passed an order on 15.03.2016(Annexure-R6) regarding the procedure to be followed for filling up the posts at the level of Gr.B, Gr.C and Gr.C(MTS) in the 1st respondent Institution and regarding discontinuation of holding interview for the recruitment of Junior level posts. It is pertinent to state that though the recruitment notification was issued on 21.10.2015, the Skill Test was not conducted as on 29.12.2015 and hence the 1st respondent as per the directions issued by the Govt. of India adopted the said Guidelines to the said recruitment also. Admittedly, the post of Junior

OA.170/00279/2018/CAT/Bangalore Bench
Technical Officer is Group-C post is also covered under the above OM.

12. It is submitted that as per the recruitment notification and the above OMs, the method of recruitment to the said posts is that, after receiving all the applications, the 1st respondent Institution verify the same and prepare a list of eligible candidates to each of the posts. Thereafter, list of candidates eligible for the Skill Test was prepared based on the marks secured in the Essential Educational Qualification. To qualify in the Skill Test, the candidates should secure minimum 50% of marks in each paper. However, the marks secured in the said Skill Test will be considered only to declare that such candidates are qualified or not qualified technically and the same will not be considered to prepare the selection list. Thereafter, out of the qualified candidates, the merit list will be published based on the marks secured in the essential educational qualification and thereafter, the 1st respondent will publish the selection list.
13. The applicant had applied for the post of Junior Technical Officer in pursuance of the notification dtd.21.10.2015 and had appeared for the Skill Test along with others. It is true that the applicant has secured 70 marks out of 150 marks in the Skill Test and Written Test but the percentage of marks secured by the applicant in the essential educational qualification i.e. Degree is 57.62%, on the other hand, the 3rd respondent has secured 77.71% marks which is higher than the applicant. Therefore, the 3rd respondent was selected to the said post of Junior Technical Officer. The very selection of the 3rd respondent is in accordance with the guidelines issued by the Min. of Health & Family Welfare. The copy of the list of candidates who appeared for the Skill Test to the post of Junior Technical Officer and their marks in the Essential Educational Qualification and the Skill Test is produced as Annexure-R7. Thus it is clear that the applicant has secured less marks than the selected

candidate i.e. the 3rd respondent in the essential educational qualification and therefore, the applicant was not selected to the said post. There is no provision to give weightage for the services rendered on contract basis.

14. The applicant was appointed on contract basis as Electronic Engineer and the terms and conditions of his contract appointment are unambiguous and clear that the contract appointment is on a consolidated salary and for a particular tenure that is indicated in the order. His contract service has been extended periodically with intermittent breaks based on the requirement of the 1st respondent institution. It is submitted that the applicant was appointed to the said contract post on contract basis and the same cannot be equated to the appointment on regular basis which is done by following the regular recruitment process of the 1st respondent institution and therefore, the applicant cannot be equated as an in-service candidate. It is submitted that mere issuance of certificate and letter of appreciation to the applicant will not create any right to the applicant to claim regular appointment. Being a contract employee, the applicant had also applied to the post of Junior Technical Officer in pursuance of the notification dtd.21.10.2015. The 1st respondent institution vide OM dtd.15.3.2016 has formulated the guidelines for the recruitment of Gr.B & Gr.C posts which have been strictly followed. These guidelines clearly stipulate that Skill Test is to be taken only for evaluating the skill of the candidates and is qualifying in nature only and it would not be the criteria for preparation of merit list. The applicant had appeared to the Skill Test and secured 70 marks out of 150 marks in the Skill Test. However in view of the applicant secured less percentage of marks in the essential qualifying examination i.e. B.Sc., Degree with Diploma in Electronics, he was not selected to the said post. On the other hand, the 3rd respondent was selected to the said post for securing higher marks than the

applicant.

15. The contention of the applicant that the process of selection has been started in the month of October, 2015 on which date the procedure to hold interview and skill test was in vogue is not acceptable as the orders issued by Govt. of India vide OM dtd.15.2.2016 clearly stipulates that for all appointments after 01.01.2016 the element of interview has to be discontinued. His working as Electronic Engineer from 2011 with breaks and his experience in the Institute will not give him any precedence over the candidate who has higher merit in the essential qualification which is the main criteria for the selection as per DOPT guidelines. It is not correct to state that he has gained experience in the 1st respondent institution and on the other hand, it is clear that the applicant had worked on contract basis as Electronic Engineer and he never worked as Junior Technical Officer and therefore, his contention that he has experience in the said post is false and incorrect. The 1st respondent selected and appointed the 3rd respondent duly adhering to the rules, procedures, purely on merits and guidelines issued by the Govt. of India from time to time and there is no violation of Article 14 and 16 of the Constitution, no illegality or infirmity as alleged by the applicant. As per the recruitment notification, there was no provision for grant of service weightage to the contract employees and more so, as of now, the applicant is not even working in the 1st respondent institution. The applicant has also sought for a direction to direct the respondents to continue his services as an Electronic Engineer and also sought for equal pay for equal work etc., which is not permissible in the eye of law as the applicant has already been relieved of his contract service on completion of his term. Knowing very well that he was not selected to the post for which he had applied, he is trying to take the back door entry by wilfully filing several applications before this Tribunal. Hence, the present OA is liable

to be dismissed.

16. We have heard the Learned Counsel for both the parties. Learned Counsel for the applicant has filed written arguments note enclosing therewith recruitment notifications of similar Institutions under the same department all over India where marks in the Skill Test and Written Test/Examination have been taken to prepare merit list and not the marks in the qualifying examination alone(Annexures-A24 to A40). The Learned Counsel for the respondent No.1 has also filed written argument note enclosing therewith Annexure-R8 wherein it is stated that the relaxation in upper age for recruitment to various categories of the posts under the Central Government is applicable only to the central government employees and not to the contractual employees. The Learned Counsels for the applicant and the respondents have made submissions reiterating the factual position and their points as highlighted by them in the OA and reply statements.

17. We have gone through the main contentions of the applicant and replies of the respondents and the written arguments note filed by both the parties in detail. The issue relates to the notification issued by the respondents dtd.21.10.2015(Annexure-R3) for the post of Junior Technical Officer-1 post (OBC). The essential qualification mentioned being II Class B.Sc. Degree with Diploma in Electronics or M.Sc.(Electronics) or equivalent. The applicant had also participated in the recruitment process and at the time of notification, the provision for interview was available and the same was mentioned in the notification. Subsequent to this notification, before the recruitment was completed, the Govt. of India came out with its OM dtd.29.12.2015(Annexure-R4) discontinuing the process of Interview and as per para-2(d), it has been clearly stated that 'from 1st January, 2016, there will be no recruitment with

OA.170/00279/2018/CAT/Bangalore Bench interview at the junior level posts'. It was also clarified in the same OM vide para-2(f) that 'as Skill Test or Physical Test is different from Interview, they may continue. However, these tests will be only of qualifying nature. Assessment will not be done on the basis of marks for such tests'. Vide Annexure-R7, the respondents have also given the details of the candidates whose cases were examined for filling up the post of Junior Technical Officer and they have gone by the percentage of marks in the essential qualifying examination and selected one Sri Abhisheka T E who had secured 77.71% in the qualifying M.Sc.(Electronics) examination. Sri Puneeth Kumar's case had also been examined and since he had secured 57.62% in B.E.(E&E) examination, he was not selected. The applicant would claim that for various other posts, the marks obtained in the Skill Test etc. have been considered and since the procedure of selection at the time of notification was holding the Skill Test and Interview, the applicant should have been selected and that OM of December 2015 should not be applied retrospectively.

18. From the facts of the case, it is clear that the interview process was to be dispensed with w.e.f. 01.01.2016 and Skill Test etc. can be considered only for qualifying the candidates and not for actual rank of selection. The respondents have followed the decision of the Govt. of India and dispensed with the interview in this selection and also taken the skill test for qualifying only and not for ranking. We are unable to find fault with the same since the procedure was as mandated by GOI w.e.f. 01.01.2016 and the same has been followed uniformly for all the candidates as the selection process was not completed by 01.01.2016. The applicant has secured less in the essential qualifying examination and therefore was not selected. We also find that the 3rd respondent namely the selected candidate's appointment order was issued on 5.7.2016 but this OA has been filed in April 2018 i.e. more than an year

and 8 months after the date of appointment order of the 3rd respondent. The applicant would submit that he was a low paid official and has no source with the legal procedure etc. However, he has been filing several applications and WPs during this period as has been pointed out by the respondents and therefore, we are not able to appreciate the delay in the filing of this OA. On both these accounts, the OA is dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00279/2018

Annexure A1: Copy of the Notification dtd.14.10.2010
Annexure A2: Copy of the reported for duty on 07.1.2011
Annexure A3: Copy of the appointment order dtd.20.1.2012
Annexure A4: Copy of the appointment order dtd.24.1.2013
Annexure A5: Copy of the appointment order dtd.29.7.2013
Annexure A6: Copy of the appointment order dtd.3.2.2014
Annexure A7: Copy of the appointment order dtd.7.8.2014
Annexure A8: Copy of the appointment order dtd.10.7.2015
Annexure A9: Copy of the appointment order dtd.15.6.2016
Annexure A10: Copy of the order of duty report dtd.18.5.2017
Annexure A11: Copy of the service certificate dtd.7.2.2017
Annexure A12: Copy of the service certificate dtd.9.2.2017
Annexure A13: Copy of the statement for allocation of duty dt.30.4.2017
Annexure A14: Copy of the OM dtd.22.4.2016
Annexure A15: Copy of the letter dtd.10.8.2016

Annexure A16: Copy of the Advertisement dtd.21.10.2015

Annexure A17: Copy of the objective test marks card dtd.15.6.2016

Annexure A18: Copy of the select and appointment of R3 dtd.5.7.2016

Annexure A19: Copy of the duty joining report dtd.22.7.2016

Annexures with reply statement of R3:

Annexure-R1: Admission Ticket

Annexure-R2: Degree Certificate

Annexure-R3: PG Degree Certificate

Annexure-R4: NET Certificate

Annexure-R5: KSET Certificate

Annexures with reply statement of R1:

Annexure-R1: Copy of the offer of contract appointment order dtd.18.5.2017 and the declaration of the applicant

Annexure-R2: Copy of the Official Memorandum dtd.17.4.2018

Annexure-R3: Copy of the Recruitment Notification vide Advertisement No.10/2015

Annexure-R4: Copy of the OM dtd.29.12.2015

Annexure-R5: OM dtd.15.2.2016

Annexure-R6: Copy of the order of the 1st respondent dtd.15.03.2016

Annexure-R7: Copy of the List of candidate who appeared for the Skill Test to the post of Junior Technical Officer and their marks in the Essential Educational Qualification and the Skill Test.

Annexures with written arguments filed by the applicant:

Annexure-A20: Copy of Advertisement No.5/2010 dtd.14.10.2010

Annexure-A21: Copy of Advertisement No.10/2010 dtd.21.10.2015

Annexure-A22: Copy of recruitment rules for the post of Electronic Engineer

Annexure-A23: List of Institutions all over India coming under the Ministry.

Annexures-A24 to A38: Copies of Recruitment Notifications relating to the AIIMS

Annexure-A39: Copy of Recruitment Notification relating to the National Capital Territory of Delhi

Annexure-A40: Copy of Recruitment Notification relating to the Indo-Tibetan Border Police of the Home Ministry.

Annexures with written arguments filed by the respondents:

Annexure-R8: Copy of the letter dtd.6.9.2018 issued by the 2nd respondent.
