

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00691/2013

Date of Reserve:24.01.2019

Date of Order: 19.02.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Mantosh Kumar Mohanty, aged about 29 years, S/o.Gajendra Mohanty, At-Bhuinpada, PO-Seragada, District-Balasore.

...Applicant

By the Advocate(s)-M/s.K.K.Rath
M.Mohapatra
A.Samal

-VERSUS-

Union of India represented through:

1. The Secretary, Department of Defence, Ministry of Defence, New Delhi.
2. Commanding in Chief, Western Naval Command Headquarters, Sahid Bhagat Singh Road, Mumbai.
3. Vice-Admiral, Headquarters, Western Naval Command, Headquarters, Sahid Bhagat SinghRoad, Mumbai.
4. Flag Officer, Headquarters, Western Naval Command, Headquarters, Sahid Bhagat Singh Road, Mumbai.
5. Rear Admiral, Chief Staff Officer (P&A) for Flag Officer Commanding in Chief, Western Naval Command, Headquarters, Sahid Bhagat Singh Road, Mumbai.

...Respondents

By the Advocate(s)-Mr.D.K.Mallick

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has prayed for the following reliefs:

- i) To admit the Original Application.
- ii) To issue notice to the Respondents calling upon them to show cause as to why the applicant shall not be appointed as against the post of Computer Fitter.

- iii) To quash the order dated 15.5.2013 passed by the Respondent No.5
- iv) To issue the appointment order to the applicant.

2. Undraped fact of the matter runs thus : Applicant was an aspirant for the post of Computer Fitter in pursuance of an advertisement dated 14.4.2007 issued by the western Headquarters Naval Command, Mumbai. After his application submitted was scrutinized, the applicant was issued a call letter for appearing in the written examination, inter alia, with an instructions that he should bring with him the original mark sheet and original Diploma/ITI certificates which may be required in the event he is subjected to viva vice after getting through the written examination. However, the applicant came out successful in the written examination and was called for the viva voce test. According to applicant, he was informed that he had cleared the viva voce test. Since no offer of appointment was issued, the applicant submitted a representation dated 26.2.2010 to Respondent No.3. Applicant also sought information under the RTI Act, in response to which he was informed vide communication dated 4.3.2010 that because of lack of qualification, he was stood disqualified. Thereafter, the applicant submitted a further representation seeking marks secured by him in the written and viva voce. However, since the respondents expressed their opinion regarding fill up the vacancies through fresh advertisement, the applicant approached this Tribunal in O.A.No.613 of 2010. This Tribunal vide order dated 6.10.2010 disposed of the said O.A. with direction to respondents to accept the representation of the applicant and to consider his case as per the representation. In pursuance of the aforesaid direction of this Tribunal, the applicant submitted a representation before the respondents and in

consideration of the same, the authorities vide communication dated 26.11.2010 rejected the same with an observation that the requirement of the said post is Matriculation and Apprentice Training with one year experience in the concerned Trade. Aggrieved with this, the applicant again approached this Tribunal in O.A.No. 38 of 2011. This Tribunal vide order dated 11.2.2013 allowed the said O.A. as under:

"7. Having regard to the discussions made above, we remit the case back to the Respondents with a direction to consider this matter afresh based upon the eligibility criteria already advertised and also the merit of the applicant and communicate a decision thereon to the applicant within a period of sixty days from the date of receipt of this order".

3. In compliance of the above direction of this Tribunal, Respondent No.5 passed an order dated 15.5.2013 (A/8) by stating that the applicant's candidate could not be considered for selection since he was not eligible. Aggrieved with this, the applicant has filed this O.A. seeking for reliefs as mentioned above.

The grounds on which the applicant has mainly based his claim are :-

- i) The reasons assigned in the impugned order dated 15.5.2013 are not in consonance with the advertisement.
- ii) Respondent No.5 is not the authority competent to hold and declare that the Diploma Certificate produced by the applicant being undated is invalid. According to applicant, he had already submitted the proof before the respondents and this Tribunal in O.A. No.38 of 2011 had held that the applicant has successfully passed the course and obtained the certificate from the competent authority, i.e., State Council for Technical Education and Vocational Training, Orissa which was initially accepted by the Selection Board and the applicant was allowed to sit for the written examination as well as physical and viva voce.
- iii) Denial to accept the Diploma Certificate is an act of arbitrariness and colourable exercise of powers.

4. Contesting the claim of the applicant, the respondents have filed their counter. According to Respondents, as per the advertisement, the essential/desirable qualification for the post of Computer Fitter is Matriculation or equivalent from recognized Institute/Board with knowledge of English and should have completed Apprenticeship Training with 01 (one) year's experience in the trade OR Mechanic or equivalent with 02 (two) years' regular service in the appropriate Technical Branch of Army, Navy and Air Force. Due to lack of eligibility criteria and the applicant was disqualified to be appointed to the post in question by the Selection Board. Respondents have contended that issuance of call letter to the applicant for appearing the written test does not create any right to appointment. On qualifying the written test, the applicant appeared in the interview and verification of documents. At that time the applicant was found to be not eligible and therefore, he could not be considered for appointment. With these submissions, the respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

5. We have heard the learned counsels for both the sides and perused materials on record.

6. It appears from the record that this Tribunal had in the earlier round of litigation in O.A. No.38 of 2011 disposed of on 11.2.2013 dealt with the matter at great length. In this regard, it would be profitable to quote hereunder, the relevant part of the order.

"6.We have heard the learned counsel of both the sides. It is found that in the information which has been given to the applicant under the RTI Act, vide letter dated 4.3.2010, the qualification required for the post of Computer Fitter has been mentioned as two years ITI/NCTVT Course. It is absolutely clear from the records that this was not the qualification which was mentioned in the advertisement. Therefore, the information provided under the RTI Act does not match with the earlier records of the

authorities. This brings suspicion that the qualifications required for this purpose have been altered after the advertisement was issued. In public employment it is absolutely required that the qualifications and other details published in the advertisement must be adhered to at all stages and no alternations should be allowed to take place behind the back of the applicants. However, in the letter dated 26.11.2010, which was issued to the applicant in obedience to the direction of this Tribunal, the required qualification for the post as mentioned is the same as made in the advertisement. Obviously, there are glaring discrepancies between the communications sent by the authorities. This is not a very desirable situation. We, however, do not want to traverse the path as to how these discrepancies and lacunae have crept into these communications.

7. Having regard to the discussions made above, we remit the case back to the Respondents with a direction to consider this matter afresh based upon the eligibility criteria already advertised and also the merit of the applicant and communicate the decision thereon to the applicant within a period of sixty days from the date of receipt of this order.

8. With the above observation and direction, this O.A. is allowed to the extent indicated above. No costs".

7. In compliance of the above direction of this Tribunal, respondents have issued order dated 15.5.2013 (A/8) which is impugned and called in question in the instant O.A. For the sake of clarity, the relevant part of the order reads as under:

"5. Whereas on verification of documents/certificates by the Recruitment Board at the time of interview, the individual's candidature was not considered by the Recruitment Board as he did not fulfil the eligibility criteria for the post advertised. The individual has completed 06 months Diploma in Computer Hardware & Network Management through Ministry of SSI. Moreover, the Diploma Certificate issued by the State Council for Technical Education & Vocational Training, Orissa in the name of the individual is NIL dated and therefore invalid".

8. From the above, the short point to be determined in this O.A. is whether the applicant fulfils the eligibility criteria for the post of Computer Fitter in pursuance of the Advertisement dated 14.04.2007 (A/1).

9. It reveals from the Advertisement dated 14.4.2007 (A/1) that amongst other posts, the post of Computer Fitter finds place at Sl.No.9. The prescribed qualification for the post of Computer Fitter including other categories posts found at Sl.No. 1 to 25 of the Advertisement reads as under:

“Qualification: for post 1 to 25: Matriculation and Apprentice Training with 01 year experience in the concerned trade OR Mechanic or equivalent with 02 years regular service in the appropriate Technical Branch of Army, Navy and Air Force....”

10. At this juncture, it is to be noted that the applicant in support of his contention that he has the required eligibility for the post in question has annexed to the O.A. various certificates vide A/2 series. The Diploma certificate obtained by the applicant from State Council for Technical Education & Vocational Training, Orissa bearing Regd. No.013036 (Sl.No.040363) reads as under:

“This is to certify that Shri Mantosh Kumar Mohanty, Son of Gajendra Mohanty having undergone the prescribed course of studies for a period of Six SEMESTERS in Information Technology at Barapada School of Engineering & Technology, Barada has been declared passed and placed in First Division in theSUMMER, 2004 Examination”.

11. Applicant has also enclosed to the O.A. a certificate dated 22.04.2010 issued by the Managing Director, M/s. Manor Computers & Communication Pvt. Ltd., Bhubaneswar stating that the applicant was working in that Organization as Customer Support Engineer from 13th December, 2006 to 31st March, 2009. He has also produced a certificate dated nil. issued by M/s.Sylvesa Infotech (P) Ltd., certifying that the applicant was working in that Company as Customer Support Engineer from April, 2006 to September, 2006. Besides, applicant has also annexed to the O.A. a certificate received from the Central Tool Room & Training Centre, Government of India, Ministry of SSI

dated 06.04.2005 in which it has been certified that the applicant has completed the course in Advance Diploma in Computer Hardware & Network Management for the period from 29.09.2005 to 28.03.2006. There is no doubt that the applicant has passed Matriculation. As regards apprentice training, there is no such material placed on record to show that attainment of Diploma in IT is equivalent to the same. Secondly, it is found that the experience certificate submitted by the applicant is in respect of Customer Support Engineer whereas as per the eligibility criteria, 01 year experience in the concerned trade – means – Computer Fitter is one of the conditions. Prima facie, we are of the view that it is not the same experience as of Computer Fitter. We have perused the information received by the applicant under RTI Act and the various documents filed by him to substantiate his stand point. We would like to note in this connection that the applicant has not been able to establish that he has the required eligibility for the post of Computer Fitter as per the advertisement made vide A/1 nor he has submitted any unimpeachable document showing that the qualifications attained by him are equivalent in all respects with that of the qualifications prescribed in the advertisement, it would not be proper for the Tribunal to rush to a conclusion holding that the action of the respondents is in contravention of the rules of law.

12. For the reasons discussed above, the O.A. being devoid of merit is dismissed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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