

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00248/2018

Tuesday, this the 5th day of February, 2019

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Ajith.T.R.,
S/o.late Radhakrishnan.T.R.,
Trainee, Subsidiary Intelligence Bureau,
Ministry of Home Affairs, Government of India,
No.572, Montfort House, Vazhuthacaud, Trivandrum – 695 014.
Resident of A301, Indravihar Quarters, Vazhuthacaud,
Trivandrum – 695 014. ...Applicant

(By Advocate – Mr.Jayakrishnan.D)

v e r s u s

1. Union of India represented by the Secretary to Government,
Ministry of Home Affairs, Internal Security, North Block,
Central Secretariat, New Delhi – 110 001.
2. The Director,
Intelligence Bureau Head Quarters,
Ministry of Home Affairs, Internal Security,
North Block, Central Secretariat, New Delhi – 110 001.
3. The Director,
Intelligence Bureau Head Quarters,
Ministry of Home Affairs, Internal Security,
North Block, Central Secretariat, New Delhi – 110 001.
4. The Assistant Director,
Subsidiary Intelligence Bureau,
Ministry of Home Affairs, Government of India,
No.572, Montfort House, Vazhuthacaud,
Trivandrum – 695 014. ...Respondents

(By Advocate – Mr.P.G.Jayan, ACGSC)

This application having been heard on 24th January 2019, the Tribunal
on 5th February 2019 delivered the following :

ORDER

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

The reliefs sought by the applicant in this O.A is as follows :

1. Call for the records leading up to Annexures A-17 and A-18 and quash them as they are bad in the eye of law.
2. Direct the respondents to re-engage the applicant in the light of Annexure A-12, A-15 and A-16.
3. Grant the cost of this litigation from the respondents.
4. Such other reliefs as may be prayed for and is just and proper in the facts and circumstances of this case.

2. The brief facts of the case are : the applicant was appointed under the compassionate ground scheme and was directed to acquire matriculation within the time limit specified in Annexure A-3. Annexure A-3 specify that matriculation has to be acquired by the appointee within five years from the date of his appointment. It is submitted that though the applicant has obtained matriculation within the time from Annexure A-3, his date of appointment is reckoned from the date of Annexure A-1 ie. 29.11.2010 which was in fact superseded by Annexure A-3 dated 9.12.2014. Pursuant to the above, by impugned order at Annexure A-18 dated 28.11.2017 his services was terminated. He approached this Tribunal for redressal of grievance and submitted that the applicant had cleared matriculation in 2017 as is evident from Annexure A-12, Annexure A-15 and Annexure A-16. As grounds it is submitted that the impugned order does not reckon period properly from the date of Annexure A-3. The fact that the applicant has cleared matriculation well within the time limit from Annexure A-3 has not been noticed in Annexure A-18. In view of the above

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the impugned order is bad in law and is liable to be set aside. He has relied upon the judgment passed by the Apex Court in **Prakash Ratan Saha v. State of Bihar and others reported in (2009) 14 SCC 690** in which it was held that if there was adverse decision with drastic civil consequences the rule of natural justice has to follow. Annexure A-17 and Annexure A-18 do not noticed the relevant fact that the applicant was offered the post on compassionate grounds and the termination thereof on non existent grounds is grossly unjust. Further in **Madras Port Trust v. Hymanshu International reported in 1979 (4) SCC 176** it has been held that :

“2.It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority.....”

3. Notices were issued and reply statement has been filed by the respondents. It is submitted in the reply statement that as per Annexure A-3 the period of five years within which the applicant was supposed to acquire minimum educational qualification is to be reckoned with effect from 23.12.2010. ie., the date of his actual joining in SIB Trivandrum. Therefore, he was directed to submit his matriculation certificate before the expiry of time. Though representations submitted by the applicant for extension of time limit to acquire the minimum educational qualification were examined, the same was not acceded to as there is no provision for extension of time limit in such cases. It is further submitted that as per Corrigendum dated 9.12.2014 (Annexure A-18) which was in supersession of memo dated

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29.11.2010 (Annexure A-11) the applicant was appointed as trainee afresh. It was clarified that his services would be counted from 23.12.2010 ie. the date of his actual joining and all service benefits would be given to him with effect from that date.

4. Heard learned counsel for the parties at length. We have perused the records. The short question that arise for consideration in this O.A is whether the applicant has acquired the requisite qualification of matriculation within the specified prescribed time of five years. On a perusal of Annexure A-3 it was found that it begins with “in supersession of our memo of even no. Dated 29.11.2010 offering Shri.T.R.Ajith a temporary post of Lab Attendant on compassionate grounds inthe pay scale of Rs.4440-7440/- with Grade Pay Rs.1650/-.” Further, it is stated that exercising the provision of FR 31A, the pay scale mentioned in para 1 in the offer of appointment dated 29.11.2010 is cancelled. Shri.T.R.Ajith is now offered the post of 'Trainee' afresh on following guidelines mentioned therein. On a plain reading of the corrigendum it is clear that the earlier period of service of the applicant has come to an end and a fresh contract has been offered to him on 9.12.2014 with the issuance of Annexure A-3.

Clause (iii) reads as follows :

“(iii) The appointee will have to acquire minimum educational qualification ie. Matriculation within five years fromthe date of his appointment. If he/she does not attain the essential educational qualification within stipulated time, his/her services will be governed as per Govt. rules/instructions applicable at that time. Further, he/she will be given the regular pay bands and grade pay only on acquiring the minimum educational qualification prescribed under government rules on the subject.”

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5. This means five years period has to be reckoned from 9.12.2014. The applicant has acquired the matriculation certificate in the year 2017 which is well within the time prescribed as per the corrigendum. It is altogether a different connotation that he has given appointment from 2010 but as per Annexure A-3 corrigendum the period given to him for acquisition of prescribed qualification was five years with effect from 9.12.2014, which he did by acquiring a matriculation certificate in the year 2017.

6. In view of the above, we are of the view that the present O.A has merit on its side and the O.A deserves to be allowed. The O.A is accordingly allowed. We hereby set aside Annexure A-17 and Annexure A-18 dated 22.11.2017 and 28.11.2017 respectively and directed the respondents to re-engage the applicant with immediate effect in pursuance to Annexure A-3 order in the light of Annexure A-12, Annexure A-15 and Annexure A-16 declaring him passed in the matriculation exam. This order shall be complied with, within a period of 60 days from the date of receipt of a copy of this order. No order as to costs.

(Dated this the 5th day of February 2019)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00248/2018

- 1. Annexure A-1** – True copy of the Memorandum No.64/Estt(G)/1994(11)-CG-7664 dated 29.11.2010.
- 2. Annexure A-2** – True copy of the Office Order No.787/2010 dated 20.12.2010.
- 3. Annexure A-3** – True copy of the Corrigendum No.64/Estt(G)/1994(11)-CG-2229 dated 9.12.2014.
- 4. Annexure A-4** – True copy of the Memorandum No.1/PF(T)/2010(38)1199 dated 7.9.2015.
- 5. Annexure A-5** – True copy of the representation dated 18.11.2015.
- 6. Annexure A-6** – True copy of the covering letter dated 19.11.2015.
- 7. Annexure A-7** – True copy of the representation dated 15.7.2016.
- 8. Annexure A-8** – True copy of the representation dated 4.5.2017.
- 9. Annexure A-9** – True copy of the Corrigendum No.64/Estt(G)/1994(11)-CG-3746 dated 23.5.2017.
- 10. Annexure A-10** – True copy of the Memorandum No.1/PF(T)2010(38)1598 dated 20.9.2015.
- 11. Annexure A-11** – True copy of the reply dated 27.9.2017 to Annexure A-10.
- 12. Annexure A-12** – True copy of the result of the applicant's matriculation examination.
- 13. Annexure A-13** – True copy of the letter dated 25.10.2017.
- 14. Annexure A-14** – True copy of the letter dated 24.11.2017.
- 15. Annexure A-15** – True copy of the provisional certificate issued by the National Institute of Open Schooling for passing secondary school examination.
- 16. Annexure A-16** – True copy of the mark list of the applicant.
- 17. Annexure A-17** – True copy of the Corrigendum No.64/Estt(G)/1994(11)-CG-8286 dated 22.11.2017.
- 18. Annexure A-18** – True copy of the Office Order No.509/2017 dated 28.11.2017 terminating the engagement of the applicant.

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19. Annexure A-19 – True copy of the performance assessment reports for the years 2011-2012.

20. Annexure A-20 – True copy of the performance assessment reports for the years 2012-2013.

21. Annexure R-1 – True copy of the OM F.No.14014/2/2009-Estt(D) dated 11.12.2009.

22. Annexure R-2 – True copy of the OM F.No.14014/2/2009-Estt(D) dated 3.4.2012.

23. Annexure R-3 – True copy of the letter dated 7.1.2015.

24. Annexure R-4 – True copy of the DoP&T OM dated 16.1.2013.

25. Annexure R-5 – True copy of the OM F.No.1/1/2008/IC dated 24.12.2008.
