

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application Number 290/00600/2011

Reserved on : 23.04.2019

Jodhpur, this the 7th May, 2019

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Hon'ble Ms Archana Nigam, Administrative Member

Mahendra Prakash Parmar S/o Shri Champa Lal Parmar, H.No. II-10, Afri Residential Complex, 729 Plot Basni II Phase, Jodhpur – 342005. Presently working as Technical Operator Drilling.

.....Applicant

By Advocate : Mr Manoj Bhandari alongwith Mr Govind Suthar.

Versus

- (1) Union of India through its Secretary, Ministry of Water Resources, Central Ground Water Board, Shram Shakti Bhawan, New Delhi.
- (2) The Director (Admn.), Central Ground Water Board, Government of India, Bhoojal Bhawan, NH-IV, Faridabad 121 001 (Haryana).
- (3) The Executive Engineer, Central Ground Water Board, Government of India, Division-XI, C-8, Saraswati Nagar, Pali Road, Basni 1st, Jodhpur - 342005.

.....Respondents

By Advocate : Mr K.S. Yadav.

ORDER

Per Smt. Hina P. Shah

The applicant has filed the present Original Application seeking following relief(s):

- (i) By an appropriate order or direction, the respondents be directed to change the cadre of the applicant from Technical Operator Drilling (TOD) to Technical Operator Mechanic

(TOM) and count his service for the purpose of further promotion to the post of Foreman in accordance with law.

- (ii) By an appropriate order or direction, the respondents be directed to consider his case for promotion by way of promotion to the post of Foreman looking to his qualification.
- (iii) By an appropriate order or direction, the respondents be directed to take into account the qualification of the applicant attained by him, by entering the same in the service book to consider his case for change in the cadre and for further promotion to the post of Foreman with all consequential benefits.
- (iv) Any other appropriate order or direction which this Hon'ble Tribunal may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

2. The case of the applicant is that he was initially appointed on 02.04.1991 as Technical Operator Drilling (TOD). Thereafter he attained the degree of ITI in Diesel Mechanic. He has also underwent apprentice training of two years in RSRTC. He also done post graduation in Political Science, i.e. M.A. from Maharshi Dayanand Saraswati University, Ajmer (M.D.M. University) in the year 1993. Applicant further states that he had attained the advance course of Diploma in Automobile Engineering, i.e. AMIMI from IMI Chennai. It is his claim that he is fully entitled and eligible to be appointed as Technical Operator Mechanic (TOM) but he has not been granted the said appointment despite having the requisite qualification for the said post. He further states that he was appointed through employment exchange for the post of TOD. He had requested the authorities on several occasions to

allow him to work on the post of TOM but his requests were not accepted by the respondents. It is his claim that he possesses the qualification required for the post of TOM and he is completely eligible for the same but still for the reasons best known to the respondents he is not allowed to work on the post of TOM. He further states that the promotion to the higher post of Foreman, additional qualification required is Diploma in Mechanic Automobile and Electrical Engineering from the recognized institution alongwith experience of five years. Since he had completed his Diploma in the year 1991 and also holding the certificate for the said Diploma from the IMI, Chennai and the courses are approved by the AICTE between years 1993 to 2006, therefore, not considering him for promotion to the post of Foreman is unwarranted from the respondents. Since in the year 2007 when the vacancy arose in Jodhpur Division for the post of Foreman vide advertisement dated 22.08.2007, the applicant applied for the same but was not called for the interview. It is his case that neither the respondents are accepting applicant's request to consider his case for appointment as TOM, nor are considering his case for appointment as Foreman. It is his plea that since he fulfils all the requisite qualification, he is entitled for the post of TOM as well as for promotion on the post of Foreman. The applicant further states that he had requested the respondents for change of cadre from TOD to TOM for umpteen

numbers of occasions but the respondents did not pay any heed to that. The post of TOM is equivalent to the post of TOD, therefore, he should be permitted to change his cadre looking to his qualifications. It is his claim that as he had obtained Diploma Certificate in Mechanic Automobile and Electrical Engineering from the IMI, Chennai and also possesses ITI Certificate in Diesel Mechanic and also has undergone two years of apprentice training in RSRTC, he is fully eligible for the post of TOM and promotion to the post of Foreman. It is his grievance that as his request for change of cadre from TOD to TOM could not be acceded to by the respondents, he is suffering and also his career has become stagnant in the post of TOD, therefore, he has no option but to file present OA for redressal of his grievance as not considering him for promotion to the post of Foreman is arbitrary and discriminatory.

3. The respondents, on the other hand, by their reply dated 02.07.2012 have stated that the applicant was appointed as TOD w.e.f. 02.04.1991. Thereafter, he has acquired Diploma Certificate in Mechanic Automobile and Electric Engineering from AMIMI, Chennai. He has also undergone apprentice training in RSRTC. He also possesses post graduation degree in Political Science. The respondents stated that the applicant submits that he should thus be permitted to change his cadre from TOD to TOM but it is clear that the applicant's request cannot be accepted merely on

the ground that he possessed the qualification equivalent for appointment on the post of TOM. The certificate of diploma issued to the applicant by Motor Industries, Madras as well as certificate of diploma in Mechanic Automobile and Electric Engineering obtained from AMIMI Chennai are not considered as approved by AICTE. It is the plea of the respondents that they approached to the higher office seeking clarification from AICTE, New Delhi vide their several letters dated 17.08.2000, 25.04.2008, 07.01.2009 and lastly by their letter dated 12.04.2012 regarding validity of the qualification acquired by the applicant. It was clearly mentioned in the letter pertaining to the query as to whether the acquired qualification by the applicant is recognized by the State/Central Government and also whether the diploma course has been recognized for getting jobs or promotion in the State or Central government (R/1 to R/12). The respondents have clarified that there is no provision for the conversion of the cadre from TOD to TOM in the existing Recruitment Rules allowing the change of cadre from TOD to TOM. Also as per prevailing provisions in the Recruitment Rules for TOM, it is very clear that all the posts of TOM is required to be filled up by Direct Recruitment. The departmental candidates can also apply for the same as and when vacancy is advertised for the post of TOM. Since the additional qualifications acquired by the applicant could not be certified by the MHRD and AICTE, New Delhi, the applicant

could not be accorded change in cadre from TOD to TOM and also could not be considered for further promotion to the post of Foreman. The respondents have pointed out that the applicant himself has stated that the course was approved by the AICTE between years 1993 to 2006, therefore, the applicant himself is aware that the said certificate is not approved by AICTE obtained prior to the said period. The respondents have also clarified that in letter dated 17.10.2012 of the Central Ground Water Board (CGWB), Ministry of Water Resources, Govt. of India, it has clearly been pointed out that AICTE has not granted any approval for conducting engineering course to Motor Industries, Madras and AMIMI from IMI, Chennai and also the same does not come under the purview of AICTE, therefore, respondents state that since there was no provision under the rules approving to allow a person to change cadre and therefore, applicant was not permitted for the said change of cadre from TOD to TOM. Pertaining to further promotion of the applicant on the post of Foreman, it is clear that the applicant was made aware that as and when vacancy for the said post is advertised, he is free to apply for the same as per rules. Therefore, since the applicant was not eligible to change his cadre from TOD to TOM and further to count his services for promotion to Foreman from the post of TOM, the same cannot be acceded to being not in accordance with law.

4. Heard Mr Manoj Bhandari alongwith Mr Govind Suthar, learned counsel for the applicant as well as Mr K.S. Yadav, learned counsel for the respondents.

5. During course of the arguments, it is the plea of the applicant that he is working with the respondents since 1991 and possesses the certificate of ITI in Diesel Mechanic, apprentice training of two years in RSRTC, post graduation in Political Science, i.e. M.A. from Maharshi Dayanand Saraswati University, Ajmer (M.D.M. University) and certificate of advance course of Diploma in Automobile Engineering, i.e. AMIMI from IMI Chennai. Since applicant possesses the ITI certificate and diploma certificate AMIMI from IMI Chennai, he should have been promoted to the post of Forman as working of the TOD and TOM is inter-changeable because in drilling, the applicant is doing the work of overhauling/repairing of drilling rigs, deep well turbine pumps, submersible pumps, vehicle etc., the applicant can very well work as TOM as he also possesses experience of more than 10 years. Therefore, the respondents should have allowed the applicant's request to change is cadres as his career in the post of TOD is stagnant. It has been contended that the applicant has requested the respondents on several occasions allowing him to change his cadre which has not been acceded to, which is completely arbitrary and violative of rules and Article 14 and 16 of

the Constitution of India. The respondents have also committed an error by not calling the applicant for interview held for the post of Foreman as he had applied in pursuance of advertisement dated 22.08.2007 for the said post and was fully eligible for the said post having requisite qualification. Since applicant is working on the post of TOD for more than 10 years, he is having complete experience of working on the post of TOM and therefore, ought to be considered for the post of Foreman. Therefore, by not calling the applicant for interview for the post of Foreman is arbitrary and discriminatory. The applicant thereafter issued legal notice to the respondents for not allowing him to change his cadre from the post of TOD to TOM and the reply dated 04.10.2011 that the matter is pending consideration is of no consequence since respondents have not taken any steps to allow the applicant to change his cadre from TOD to TOM. Had the respondents allowed the applicant to change his cadre from the post of TOD to TOM, the applicant would have been eligible for promotion to the post of Foreman also which is next promotional post of TOM. It is the applicant's plea that the Apex Court has also held that every person working in the Government is entitled for atleast two promotions whereas the applicant's career is stagnant. Therefore, applicant states that he is justified in seeking reliefs prayed for in view of his qualifications and working experience.

6. Per contra, respondents rebutted the claim of the applicant by stating that there is no provision under the Recruitment Rules to allow the applicant to change his cadre from the post of TOD to TOM. It may be the case that TOD is isolated post but without any provision under the rules, respondents cannot allow the applicant to change his cadre from TOD to TOM. Their submissions is that the applicant was not allowed and was not called for the interview for the post of Foreman is quite clear that he was not possessing the requisite qualification as prescribed under the Recruitment Rules for the post of Foreman. It is their further submission that since the applicant himself stated that AICTE has approved the course of AIMIM from IMI, Chennai between years 1993 to 2006 but not prior to that period and not after the said period, therefore, the applicant is not eligible as he obtained the said certificate in the year 1991. This clearly reveals that when applicant completed diploma, the said course was not approved by the AICTE. Therefore, respondents prayed for dismissal of the OA.

7. We have considered the rival contentions and perused the record.

8. It is an admitted position that the applicant was appointed as TOD w.e.f. 02.04.1991 and obtained ITI Certificate in Diesel Mechanic, underwent apprentice training in RSRTC, possesses

Diploma Certificate in AIMIM from IMI, Chennai and is having post graduation degree in Political Science. The applicant's plea that he is fully entitled and eligible for being appointed as TOM instead of TOD cannot be accepted as there is provision under the relevant rules allowing such change of cadre. The requisite qualification for the post are not approved and do not fall under the purview of AICTE and without any approval from the competent authority, degree/diploma obtained from any institution, which is not recognized, cannot entitle the applicant to state that he possesses the requisite qualification. It is clear that the qualifications or Diploma/degree possessed from the institution which is not recognized by the AICTE cannot be considered at par with the qualifications or Diploma/degree obtained from a recognized institution. Hence, in absence of any provision allowing change of cadre from TOD to TOM, respondents are justified in not allowing the applicant to change his cadre from TOD to TOM. With regard to the submission of the applicant that he should have been appointed to the post of Foreman, it is clear that for the post of Foreman the mode of appointment is Direct Recruitment. The applicant should have possessed the requisite qualification as per the advertisement and RRs for the said post. Since the applicant himself averred in the Original Application itself that he possessed diploma from IMI Chennai in such courses which were approved by the AICTE

between 1993 to 2006 whereas the applicant obtained diploma in Mechanic Automobile and Electrical Engineering prior to 1993, i.e. in 1991 and during that time such courses were not approved by the AICTE. In these circumstances, as applicant was not having requisite qualification, the respondents were justified in not calling applicant for interview also. The plea of the applicant that his career is stagnant on the post the TOD being an isolated post cannot be accepted as DoPT has already introduced Schemes, i.e. ACP, MACP to overcome the issue. Under ACP Scheme, employees who were not granted promotions after regular service of 12, 24 years on a post are given financial upgradations to avoid stagnation and thereafter, in MACP Scheme, the upgradations are granted after 10, 20 and 30 years of regular service or 10 years of regular service on a pay scale, whichever is earlier.

9. In view of discussions hereinabove made, it is clear that respondents are justified in not allowing the applicant to change his cadre from TOD to TOM as there is no provision under the relevant rules for the same and consequently, not considering his case for promotion to the post of Foreman looking to the fact that he has not obtained diploma certificate within the period such institution was recognized by the AICTE at relevant time.

10. Accordingly, as discussed above, Original Application filed by the applicant lacks merit and the same is dismissed with no order as to costs.

[Archana Nigam]
Administrative Member

[Hina P. Shah]
Judicial Member

Ss/-