



**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 350/01557/2016

Date of order: 5. 4. 2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Wimlesh Kumar,
S/o. Mishri Gop,
Resident of Village – Baldha,
P.O. – Damodarpur,
P.S. – Nagarnausa,
District – Nalanda,
Bihar, Pin – 801305
As unemployed.

Applicant

VERSUS –

1. The Union of India,
Through the Chairman,
Staff Selection Commission,
Block No. 12,
Central Govt. Office Complex,
Lodhi Road,
New Delhi – 110 001.
2. The Regional Director (ER),
Staff Selection Commission,
1st MSO Building, (8th Floor),
234/4, Acharya Jagadish Chandra Bose Road,
Kolkata,
West Bengal,
Pin – 700 020.
3. The Deputy Director (ER),
Staff Selection Commission,
1st MSO Building, (8th Floor),
234/4, Acharya Jagadish Chandra Bose Road,
Kolkata,
West Bengal,
Pin – 700 020.

.. Respondents

For the Applicant

Mr. B. Bhushan, Counsel
Mr. R.N. Tiwari, Counsel

For the Respondents : Mr. M.K. Ghara, Counsel

ORDER (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

Aggrieved at not being appointed as Statistical Investigator Gr. – II by the respondent authorities, the applicant has approached the Tribunal in the instant O.A. under Section 19 of the Administrative Tribunals Act, 1985, praying for the following relief:-

- “8.1. That the respondent authorities may be direct to decide and consider the claim of the applicant/petitioner for his appointment on the post of Statistical Investigator Grade – II.
 - 8.2. That the respondent authorities may be direct to decide and consider the applicant has filed series of representation.
 - 8.3. That any other relief/reliefs as the petitioner/applicant is entitled and Your Lordships may deem fit and proper in the end of justice.
 - 8.4. That the respondents authorities may direct to pay the cost of litigation to the applicant/petitioner.”
2. Heard both Ld. Counsel, examined pleadings and documents on record.
 3. The applicant's submissions, as canvassed through his Ld. Counsel, is that, the applicant had applied for the post of Statistical Investigator Grade – II in response to the notification dated 19.1.2013 by Staff Selection Commission for Combined Graduate Level Examination – 2013.

Although the applicant had appeared in the examination between June to September, 2013, the said examination was cancelled. Thereafter, the applicant appeared in the re-examination. The results of the Combined Graduate Level (Tier- I & Tier – II) Re-examination-2013) was declared and the applicant was declared successful in the written examination upon which he received a call letter / admit card for document verification and interview. When the final results were declared, however, the applicant was shocked to see that his name was not included in the list of successful candidates, although, as an OBC candidate, he had secured 462.50 in the said examination for which the cut off marks was 451.74.

Upon pursuing with the authorities under the Right to Information Act, 2005, the applicant was informed that as per documents submitted by him during/ after document verification, it has not been established that he possessed the essential qualifications for the said post. The applicant thereafter obtained certificates from the Controller of Examination of Magadh University, Bodh Gaya and approached the Tribunal in its Patna Bench which dismissed his O.A. as withdrawn with liberty to the applicant to file appropriate application before the appropriate forum and, accordingly, the instant Original Application.

In support of his claim, the applicant has furnished the following grounds:-

- (a) That, the actions of the respondent authorities are unconstitutional, illegal and arbitrary and, as the applicant fulfilled all educational eligibility conditions, the rejection of his appointment is legally invalid.
- (b) That, the applicant obtained more marks than the cut off marks, with reference to OBC candidates.
- (c) Despite his numerous representations, the respondent authorities have been indifferent to his prayers.

4. The respondents, per contra, have submitted that the Combined Graduate Level Examination, 2013 was conducted in three phases: Written Examination (Tier-I), Written Examination (Tier-II) and interview/skill test. The essential qualifications as recorded in notification dated 19.1.2013 for the post of Statistical Investigator Gr. II was as follows:-

Bachelor's Degree with Statistics as one of the main subjects

OR

Bachelor's degree with Mathematics (with Statistics as a paper studied in one year/two years/all the three years as the case may be) as one of the main subjects)

OR

Bachelor's Degree with Economics (with Statistics as a paper studied in one year/two years/all the three years as the case may be) as one of the main subjects.

OR

hkh

Bachelor's Degree with Commerce (with Statistics as a paper studied in one year/two years/all the three years as the case may be) as one of the main subjects.

That, the applicant had been directed (as per call letter of document verification/interview) to bring all certificates / mark sheets to substantiate his claim that he possessed the essential qualification for the posts opted for by him. During the process of document verification prior to the interview, the applicant could not establish that he had the essential requisite qualifications for the post of Statistical Investigator. Despite the same, on the basis of an undertaking submitted by him on the very day, namely, 21.1.2015 (which was earmarked for document verification/interview) that he would submit a certificate issued from his College/University in this regard, failing which he would not be considered eligible for the above post, the applicant was allowed to appear in the interview. The applicant thereafter submitted a certificate issued by the Principal, Kisan College Sohasari dated 27.1.2015 stating that the applicant had studied statistics subject in the said college during the year 2011-2012 according to the syllabus of Economics (Hons.) of Paper-VII of Magadh University, Bodh Gaya, which, however, did not establish that the applicant had studied statistics subject as a paper and thus the applicant's candidature was rejected.

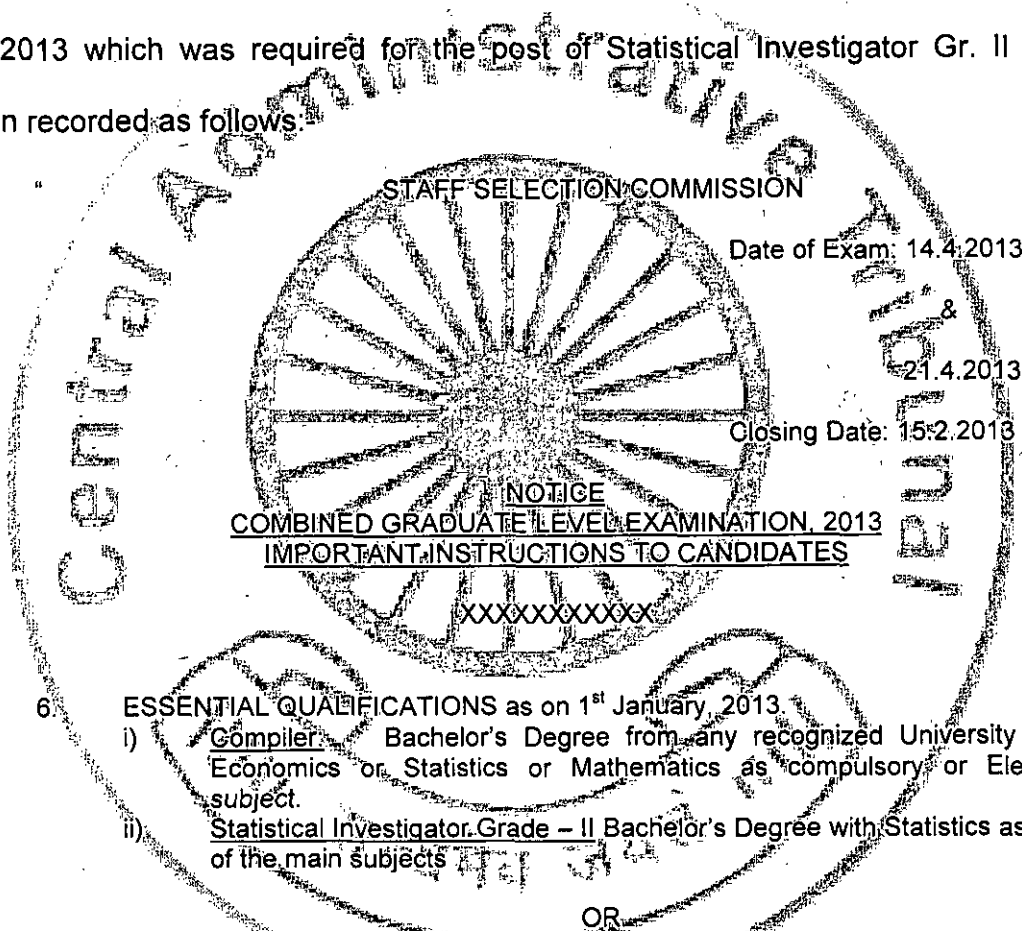
The respondents have further detailed that such certificate from the Principal, Kisan College Sohasari did not establish that the applicant had studied only statistics in Paper - VII and no other subject was studied by him in the said paper along with Statistics and, hence, not being able to establish that he possessed the requisite essential qualifications, the applicant's claim stood rejected.

5. The following issues are required to be resolved to adjudicate upon the relief sought in the instant matter:-

hsh

- (i) Did the applicant possess the essential eligibility conditions while applying for appointment as Statistical Investigator Gr. II in response to notification dated 19.1.2013?
- (ii) Was the applicant's eligibility established as per call letter issued to him on 15.12.2014 (Annexure A-3 to the O.A.) at the material point of time?

6.(I) At the outset, we refer to the notification which was published in the Employment News on 19.1.2013 in which the essential qualifications as on 1.1.2013 which was required for the post of Statistical Investigator Gr. II has been recorded as follows:



6. ESSENTIAL QUALIFICATIONS as on 1st January, 2013.
- i) Compiler Bachelor's Degree from any recognized University with Economics or Statistics or Mathematics as compulsory or Elective subject.
 - ii) Statistical Investigator Grade - II Bachelor's Degree with Statistics as one of the main subjects

OR

Bachelor's Degree with Mathematics (with Statistics as a paper studied in one year/two years/all three years as the case may be) as one of the main subjects

OR

Bachelor's Degree with Economics (with Statistics as a paper studied in one year/two years/all the three years as the case may be) as one of the main subjects.

OR

Bachelor's Degree with Commerce (with Statistics as a paper studied in one year/two years/all the three years as the case may be) as one of the main subjects

NOTE:- "Statistics" means any branch of Statistics, applied or otherwise.

hch

On 15.12.2014, the respondent authorities had issued a call letter intimating that on 21.1.2015 he would have to present himself for document verification and interview and it was further noted that he should bring with him the call letter and the following documents in original and also one set of self-attested certificates thereof for record as follows:-

- (i) "Matriculation /Equivalent certificate, issued by the State/Central Education Board (and not by the Principal/Headmaster of the School/Institution where studied), showing your date of birth (in Christian Era).
- (ii) All certificates and mark-sheets in support of your Essential Qualification(s) and subjects studied at various levels, as claimed in your application or the bio-data sheet."

It was noted therein that the applicant had to produce all certificate and mark sheets in support of his essential qualification(s) and subjects studied at various levels, as claimed in his application or the bio-data sheet.

In para 3 of the said Call-Letter, the following was stated:

"3. If you do not produce any of the above mentioned documents in original (along with their self attested copies) which are required for determining eligibility for the interview in question, excepting the documents mentioned against Nos. (viii) at para 2 above, you will not be admitted for the interview under any circumstances whatsoever and no further opportunity will be accorded to take the interview."

Further, in para 8 of the said call letter, the candidate was advised as follows:-

"8. Your candidature is Provisional. You must in your own interest go through the detailed instructions contained in the Notice of the examination (available on the website of the Commission <http://ssc.nic.in>) and related corrigendum to the Notice issued from time to time and ensure that you fulfill all the conditions of eligibility laid down in the advertisement/notice of the Examination. If at any stage it is found that you do not fulfill any of the conditions of eligibility, your candidature will be cancelled and no appeal against such cancellation will be entertained."

From the above call letter, the following is inferred:-

- (i) That, the dates of documents' verification and interview was fixed on 21.1.2015.
- (ii) That, the applicant has to furnish all certificates and mark sheets in support of his claim made in the application on 21.1.2015 itself.
- (iii) In case, such documents were not produced for determining his eligibility for interview, the applicant would not be admitted for the

hsh

interview under any circumstances whatsoever, and, no further opportunity would be accorded to appear at the interview.

- (iv) The applicant had to satisfy himself that he had to fulfill all the eligibility conditions after studying the detailed instructions and before appearing for document verification/interview.

(II) Next, we examine the applicant's testimonials as furnished in the pleadings. The syllabus of the Magadh University, Bodh Gaya, for BA Pass/Hons. Course in Economics (as annexed by the applicant to his supplementary rejoinder) states that for Three Year Degree Honours (Economics), Paper VII was on the subject of statistics. It is stated therein as follows:-

"Three Year Degree Honours (Economics)

PAPER-VII

STATISTICS

This paper will be of 100 marks and there will be no group or field work."

The applicant has annexed (at Annexure A-8 to the O.A.), his mark sheet from Magadh University in Economics under Three Year Degree Course held in the month of April 2012 which records that, against Paper VII, with full marks of 100 as noted therein, the applicant had obtained 54 marks.

Hence, the essential qualification (as on 1st January, 2013) for the post of Statistical Investigator Gr. II which, inter alia, call for Bachelors Degree in Economics with Statistics as a paper studied in one year/two years/all three years as the case may be) as one of the main subjects, was satisfied in the case of the applicant as because the syllabus of the Magadh University categorically stated that the paper VII will be on the subject of Statistics and that the "paper" will be of 100 marks with no group or field work.

Accordingly, as the syllabus of the Magadh University clearly lays down that the student qualifying in Economics (Hons) for three years degree course will have to study statistics as a subject and the paper therein would be marked out of 100, there is absolutely no ambiguity in the fact that the applicant did possess

hsh

the essential qualifications as on 1st January, 2013, the cut off date for essential qualifications and the issue at 5(i) is to be decided in the light of such qualification.

The respondents have argued that:

(a) The certificate that he produced from Principal, Kisan College Sohasari issued on 27.1.2015 and received on 5.2.2015 by the respondent authorities, however, merely mentioned that the applicant had studied Statistics subject in the college during the year 2011-2013 in the syllabus of Economics (Hons.) of Paper VII of Magadh University, Bodh Gaya and that the certificate did not establish that the applicant had not studied any other subject in the said paper along with Statistics.

(b) Further, certificates dated 15.6.2016 from the Controller of Examinations of Magadh University, Bodh Gaya and from the Principal, Kisan College Sohasari dated 27.1.2015 are not relevant for consideration because these were time barred and issued after final result of examination on 25.3.2015.

The Hon'ble Apex Court in *Prit Singh (Dr) v. S.K. Mangal, 1993 Supp (1) SCC 714* had held that, in deciding what is the true import of the requisite qualification, the context will provide the important clue and that a purely technical approach is to be avoided.

In this case, for the post of Statistical Investigator Gr-II, the applicant had indeed studied Statistics and the following course module substantiates that the applicant did receive training/academic inputs in basic Statistics as under:-

" Three Year Degree Honours (Economics)

PAPER - VII

STATISTICS

This paper will be of 100 marks and there will be no group or field work."

Chapters -

1. Definition and scope of statistics.

hsh

2. Measures of Central Tendency – Mean, Median and Mode.
3. Measures of Dispersion – Mean Deviation and standard Deviation.
4. Census and Sample Methods of Investigation.
5. Primary and Secondary Data.
6. Index Number.
7. Simple Correlation and Analysis.
8. Statistical Organization in India.
9. National Income Statistics in India.
10. Census Reports of Government of India.
11. National Sample Survey Reports.

Accordingly, the dispute raised by the respondents that statistics was not studied as an exclusive subject in the VIIth paper in his course module is a technicality which moves away from the contextual application and the issue at (i) above, as highlighted in para 5 is resolved accordingly.

(III) We next come to the second issue, namely, whether the applicant could establish his qualifications as on the cut off date, namely, 21.1.2015, as directed in the call letter. The respondents have argued that on the date of verification of his documents the applicant could not furnish any document to prove that the Paper VII in his mark sheet from Magadh University related to Statistics and that he had studied Statistics as a subject in the said VIIth paper in the curriculum and that he was allowed to appear in the interview on the basis of his undertaking that he would procure a certificate thereon. Hence, to decide as to whether the applicant was able to establish his credentials on the cut off date, we refer to **Shankar Mandal v. State of Bihar, (2003) 9 SCC 519** wherein a Two Judge Bench, after referring to earlier authorities culled out the following principles on cut off date on determination of eligibility:-

- “(1) where a cut off date with reference to which eligibility has to be determined is the date appointed by the relevant service rules.
- (2) where no such cut off date is provided in the rules, then it will be the date appointed in the advertisement calling for application.
- (3) if there is no such date appointed, then eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received.”

In the case of the applicant, the date was clearly appended in the call letter dated 15.12.2014. 21.1.2015 was the only date specified for document verification. In ***State of Punjab v. Swaran Kaur, (2007) 9 SCC 192***, the Hon'ble Apex Court held that, if the service rules prescribed certain educational qualifications for direct recruitment and if the authorities took the view that the respondent did not possess the qualifications, any concession made by the Hon'ble High Court thereupon was uncalled for. Herein also the concession allowed to the applicant by the respondent authorities in allowing him to appear at the interview when he could not substantiate his cause on 21.1.2015, the only cut off date for document verification, was uncalled for. If such concession is allowed to a particular candidate, it is possible there were other candidates who were in a similar situation who had failed to establish their credentials on the cut off date of document verification. Unless the respondent authorities had allowed similar concession to all such candidates, the case of the applicant smacks of discriminatory concession. The respondent authorities/applicant have not been able to establish that similar concession had been accorded to similarly placed candidates, who failed to establish their credentials on the cut off date of document verification. In ***Charan Singh v. State of Punjab, 1995 Supp. (3) SCC 136***, the Hon'ble Apex Court has held that if a category has been validly exempted from undertaking a qualification test, then they stand at par with those who have not been so exempted. In the instant context, the exemption granted to the applicant on the basis of the undertaking cannot be held to be a valid exemption as it went against the conditions specified in the call letter.

In ***Jenany J.R. v. S. Rajeevan, (2010) 5 SCC 798***, it was held that according to plain language of the relevant rule, educational qualifications were to be determined on the cut off date and on that date, only the candidate who possess the requisite educational qualifications, deserves to be appointed.

In this case, it is not the applicant's case that he could satisfy the respondent authorities on 21.1.2015, namely, the date of his document

heli

verification, that his syllabus of Magadh University indeed referred to Statistics subject which would be considered as 100 marks paper in BA (Hons.) degree examination, as he had undertaken to furnish certificates at a later date, corroborating his claim.

The applicant had to be aware of the requirements prescribed in the call letter and he should have approached the authorities during document verification with the relevant certificates, syllabus, module and mark sheet to establish his case. Certificates validating his claim at later points of time does not assist the applicant as because, given the Apex Court's ratio, the qualifications had to be established on the cut off date and none other.

7. Accordingly, based on the factual and legal matrix, this O.A. fails to establish itself on merit and is dismissed accordingly.

There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP