

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 043/00056/2016

Date of Order: This, the 21st day of February 2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, ADMINISTRATIVE MEMBER

Rakesh Kumar Pathak
S/o Srinivas Pathak
Vill – Karaila, P.O. – Saisar, Buxar
Bihar – 802117.

...Applicant

By Advocates: Dr. J.L. Sarkar, Mr. S. Nath & Mr. G.J. Sharma

-Versus-

1. Union of India
Represented by Secretary
Ministry of Human Resource and Development
Shastri Bhawan C. Wingh
Dr. Rajendra Prasad Road, New Delhi – 110001.
2. Navodaya Vidyalaya Samiti
Represented through the Commissioner
Head Quarter, B-15, Institutional Area
Sector-62, Noida – 201307
Dist – Gautam Budh Nagar, Uttar Pradesh.
3. Deputy Commissioner
Navodaya Vidyalaya Samiti
Regional Office, Barik Point
Temple Road, Lachumiere, Shillong – 793001.
4. Principal
Jawahar Navodaya Vidyalaya Samiti
Nongstoin, West Khasi Hills
Meghalaya – 793119.

...Respondents

By Advocate: Mr. M. Mahanta, NVS

ORDER

NEKKHOMANG NEHSIAL, MEMBER (A):

The present case has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- “8.1 That the order of removal dated 07.12.2015 be set aside and quashed.
- 8.2 The applicant be allowed to resume duty as PGT (Chemistry).
- 8.3 The applicant be paid salaries for the period of his absence due to the removal.
- 8.4 Any other relief (s) the Hon'ble Tribunal is pleased to grant.
- 8.5 Cost of the case.”

2. Facts of the case are that on the basis of appointment letter No. 2-7/2012-NVS(SHR)/Pers/PGT/(DIR)/UR/Roll No. 2704131385/5180 (62) dated 03.01.2013, the applicant joined on 22.01.2013 as Post Graduate Teacher (Chemistry) (PGT in short) at Jawahar Navodaya Vidyalaya, Shillong. This post for the Teacher was advertised through employment notice for recruitment of PGT (Chemistry) published by the Jawahar Navodaya Vidyalaya inviting applications with last date of submission as 13.01.2012. The cutoff date for essential qualifications M.Sc. (Chemistry), B.Ed was 30.11.2011. The interview for the said post and documents verification

was done on 22.06.2012. On the basis of the performance in the interview and the documents submitted and verified, the applicant was given appointment. However, subsequently it came to reveal through RTI application that the applicant had not got the degree of B.Ed as on 30.11.2011 as required by the mandatory conditions of recruitment notice/to be filled up online. Accordingly, the applicant was issued a show cause notice vide letter No. 2-7/PF/RKP/PGT(Chem)/NVS(SHR)/ Pers dated 31.03.2015 directing him to explain as to why his service as PGT (Chem) should not be terminated. After considering his representation/reply dated 08.05.2015 with reference to the show cause notice dated 31.03.2015, the respondent authorities vide office order No. 2-7/PF/RKP/PGT(Chem)/NVS(SHR)/2015-16/Pers/3755 dated 07.12.2015 removed the applicant from the services by withdrawing the appointment in accordance with clause 13 of Offer of Appointment letter dated 03.01.2013.

3. Aggrieved with the said order, the applicant approached this Tribunal and submitted the following grounds to justify the quashing of the said termination order dated 07.12.2015.

- i. That on the date of the interview i.e. 22.06.2012 he had got his certificate of B.Ed. degree from BHU, University securing 79.7% of marks. This was taken to record. The applicant was found eligible.

ii. That by letter dated 03.01.2013 the Navodaya Vidyalaya Samiti issued offer of appointment to the post of PGT Chemistry to the applicant. The applicant was instructed by the said letter to produce documents particularly the documents in original particularly the educational qualification certificates under Para 12 of the said letter.

12 a) "Degree/diploma certificate of educational qualification"

The original application of the candidate (i.e.) was enclosed. The wrong remark of the applicant in the original application form as regards his B.Ed. qualification was obliterated in the facts and circumstances of the case, as a relaxation/deemed relaxation. The appointment and joining of the applicant is a conscious decision by the samiti through the process of selection by the Selection Board (Interview), issue of appointment letter and sole and personal verification of the Principal.

iii. That the applicant was doing his best since his appointment to the satisfaction of all the superiors. The question of eligibility by qualification, was also not there because of his having qualification of B.Ed. before joining the post and also prior to the date of interview, with perusal of checklist, document verification and other formalities and also verification by the Principal before allowing to join. The error/mistake in writing 'Yes' against qualification on B.Ed. was condoned and waived by conduct in different stages and also by relaxation/deemed relaxation and continuing service month after month.

iv. That after the acceptance of offer as above the contract and status of the service attained finality. The furnishing of the false information or suppression of any factual information in attestation form would be a disqualification. The applicant had declared all the facts in attestation form correctly and truly. There is no scope thereafter to allege any suppression by him.

v. That after joining, he discharged duties very efficiently and with co-operation of authorities. As per the procedure two assessment reports were taken from him one after 11 months, another after 22 months, these reports are graded by the principal.

vi. That after submission of the show cause reply dated 08.05.2015 the respondents examined the totality of the facts and also that relaxation have also been made in

other cases as regards B.Ed. qualification i.e. those who possess the qualification for the subject for recruitment the requirement of B.Ed. have been relaxed and teachers without B.Ed. have also confirmed by letter dated 12.06.2015 from NVS. Applicant is NET qualified also. The applicant has also received a copy of the names of some teachers who have no B.Ed. qualification under letter dated 14.07.2015.

4. The respondents in their written statement filed on 21.07.2016 has pointed out that the Navodaya Vidyalaya Samiti being an autonomous organization under the Ministry of Human Resource Development, Department of Secondary Education and Literacy, Government of India, has its own Recruitment Rules for recruitment to the post of Teaching and Non-Teaching cadres. They have also highlighted the criteria for selection to the post of Post Graduate Teacher (Chemistry) as follows:-

Educational and other qualifications required for direct recruits.	<p style="text-align: center;"><u>Essential Qualification</u></p> <p>(a) Two year Integrated Post Graduate M.Sc Course from Regional College of Education of NCERT in the concerned subject with at least 50% marks in aggregate.</p> <p style="text-align: center;">OR</p> <p>Master's Degree from a recognized University with at least 50% marks in aggregate in Chemistry/Bio Chemistry.</p> <p>b) B. Ed or equivalent qualification from a recognized University.</p> <p>c) Proficiency in teaching in Hindi and English.</p> <p><u>Desirable Qualifications</u></p> <p>a) Experience as TGT in recognized institution in concerned subject.</p> <p>b) Experience in working in a residential school.</p> <p>c) Knowledge of Computer application.</p>
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5. The respondents submitted that an advertisement for recruitment to the post of PGTs including Chemistry was published in Employment News in December, 2011 inviting online applications from eligible candidates. In the said advertisement, it was clearly mentioned that the Cutoff date for determining various eligibility criteria (Educational Qualifications, age limit etc.) will be 30.11.2011 and the candidates must satisfy about their eligibility as on 30.11.2011 before applying. Further mentioned that the Samity may take up verification of the eligibility of the candidates at any point of time prior to or after the completion of the selection process. Even If admit card is issued to a candidate due to lack of information in the application form or otherwise and it is found that the candidate is not eligible, his/her candidature shall be summarily rejected.

6. In response to the aforesaid advertisement published by the Samiti, the applicant submitted his online application dated 13.01.2012 for the post of PGT (Chemistry) inter alia confirming that he possessed B.Ed degree and signed the declaration online confirming and declaring that all the statements made and information provided by him in the application are true, correct to the best of his knowledge and belief. The applicant also signed in the declaration that in the event of any information or part of it being found to be false or incorrect before or after the recruitment process, action can be taken against him by the competent

authority and his candidature/appointment will automatically be cancelled/terminated.

7. Accordingly, the applicant appeared in the written test on 26.02.2012 and in the interview held from 18.06.2012 to 23.06.2012. Thereafter, the applicant was shortlisted and allotted to Regional Office, Shillong for appointment to the post of PGT (Chemistry) vide letter dated 26.12.2012. According to the respondents, under Clause 2 (d) of the aforesaid letter, instructions were issued to the Regional Office that verification of the eligibility (i.e. age, category, essential qualifications etc.) of the candidates as per Recruitment Rules shall be done by the office concerned and the cutoff date for various eligibility criteria was mentioned as 30.11.2011. However, while verifying the documents of the applicant, inadvertently the cutoff date was not taken by the authorities concerned and as a consequence thereof erroneously the appointment was offered to him.

8. Respondents also pointed out that an application under the Right to Information Act, 2005 was received by the respondent authorities seeking information as to when the applicant had obtained his B. Ed qualification. In the light of the said RTI application, all the certificates produced by the applicant in connection with his educational qualifications etc were re-examined

and found that the applicant have completed B. Ed degree only on 19.06.2012 i.e. after seven months of cutoff date of 30.11.2011.

9. They also highlighted that the respondent authorities has taken the right decision in terms of the instruction of Department of Personnel and Training under No. 11012/7/91-Estt. (A) dated 19.05.1993.

10. Dr.J.L.Sarkar, learned counsel for the Applicant submitted that the offer of appointment was accepted by the applicant and he joins service after the appropriate authorities i.e Deputy Commissioner, and Principal of School verified the documents, considering him eligible and he was accordingly, allowed to join and rendered service very effectively and efficaciously w.e.f. 22.01.2014. After the acceptance of the offer of appointment and the rendering service for long time, the offer of service fructified and there is no scope for withdrawal of appointment. On this ground alone, the order dated 7.12.2015, withdrawing offer of appointment was void ab initio and deserves to be set aside and quashed. The learned counsel also pointed out that as on 7.12.2015, the applicant had completed more than 2 years 10 months and therefore, his probation period was over and were deemed to be confirmed under Rule 5 of the Recruitment Rule. The order dated 7.12.2015, is therefore, without following the Procedure of rule 14 of CCS(CCA)

Rules, 1965, thereby not giving him the protection under Article 311(2) of the Constitution of India.

11. The learned counsel for the respondents Mr. M.Mahanta, has highlighted that the withdrawal of offer of appointment of the applicant by the Deputy Commissioner, NVS, Regional Office, Shillong was in accordance with Clause-13 of the offer of appointment on the basis of false declaration signed by the applicant in his online application. Further as per Office Memorandum No.11012/7/91-Estt.(A) dated 19.5.1993 issued by the Department of Personnel and Training it was provided that wherever it is found that the Government Servant, who was not qualified or eligible in terms of Recruitment Rules etc. for initial recruitment in service or had furnished false certificate in order to secure of appointment he should not be retained in service. If he is a probationer or temporary Government servant, he should be discharged or his service would be terminated. Learned counsel annexed the relevant portion of the direction of DOP&T is as under:-

“The matter has been examined in consultation with the Ministry of Law and Justice and it has now been decided that wherever it is found that a Government servant , who was not qualified or eligible in terms of the Recruitment Rules etc.for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, he should not be retained in service. If he is a probationer or a temporary Government servant, he should be discharged or his service should be terminated. If he has become permanent Government servant, an enquiry as prescribed in Rule 14 of CCS(CCA) Rules, 1965, may be held and if the charges are proved, the Government servant should be removed or

dismissed from service. In no circumstances should any other penalty be imposed."

12. After having gone carefully through the documents on record, the pleadings of the parties and the arguments advanced during the detailed hearings, it is considered that the applicant does not have any merit to justify for interference in the order of the respondents dated 07.12.2015. This is due to the fact that as per the requirement of the advertisement, the candidate was specifically required to indicate in the box of its column whether he has fulfilled the requirement/qualification as on the cutoff date. The cutoff date for having the degree either for the M. Sc.(Chemistry) or B.Ed was 30.11.2011 wherein he had consciously indicated "yes". But he actually got B.Ed degree only on 19.06.2012. It is a different matter that the personal interview and document verification was done on 22.06.2012, the applicant has got the B.Ed certificate on 19.06.2012. Had the interview date been a little earlier, he would not able to produce the required B.Ed degree certificate thereby exposing incorrect information furnished by him while filling up application form on line. When this fact has been noticed by the respondent authorities after due notice, his services were terminated in terms of Clause 13 of Offer of Appointment dated 03.01.2013. Moreover, mere completion of probation period of 2 years does not confer a Govt. employee the status of being permanent and the applicant

does not any cite or quote any order or document in support this point of his claim.

13. Keeping in view of the above facts, it is considered that the applicant does not have any justification for interfering by this court the impugned order No. 2-7/PF/RKP/PGT(Chem)/NVS(SHR)/2015-16/Pers/3755 dated 07.12.2015 and therefore, the O.A. is liable to be dismissed.

14. Accordingly, O.A. stands dismissed. No order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)