

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A./100/1242/2013

New Delhi, this the 28th day of February, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

Shri Naveen Kumar Rathore,
S/o Shri Bhudev Prasad Rathore,
R/o E-200, Krishna Vihar,
Near Pooth Kalan, New Delhi-110086 ...Applicant

(Through Shri R.V. Sinha with Shri Amit Sinha,
Advocates)

Versus

1. Govt. of N.C.T. of Delhi
Through its Chief Secretary
Delhi Sachivalaya, Players Building,
I.P. Estate, New Delhi
2. The Secretary,
D.S.S.S. Board,
FC-18, Institutional Area, KKD,
New Delhi-110092 ... Respondents

(Through Shri H.A. Khan, Advocate)

ORDER (Oral)

Justice L. Narasimha Reddy, Chairman

The respondents issued advertisement no.02/2008 proposing to appoint candidates against various posts. One such post is Assistant Programmer in the Department of Information Technology (Item No.17) with Post Code No. 032/08. The qualification stipulated therefor included a Pass in B.E./B.Tech in Computer Engineering/Computer Science/Computer Technology of a recognized University or equivalent. The last date for submission of the application was 12.08.2008.

2. The applicant states that he acquired his B. Tech. Degree from Uttar Pradesh Technical University, Lucknow. According to him, provisional certificate for completion of the degree was issued on 13.12.2008, after declaration of result of the final examination.

3. The application submitted by the applicant was processed and he was permitted to appear in the written test. However, his result was not declared on entertaining a doubt, about the adequacy of the qualifications, held by him.

4. When his result was not declared, the applicant filed OA 1356/2010 before this Tribunal. The said OA was disposed of directing the respondents to take final decision on the representation of the applicant. In compliance of the same, the respondents passed order dated 10.06.2010, informing the applicant that on scrutiny of the documents submitted by him, it was found that he did not possess the prescribed qualification as on the cut-off date i.e. 12.08.2008. This OA is filed challenging the same.

5. The applicant contends that normally a candidate is deemed to have passed an examination on the date it is held but in view of the judgment of the Hon'ble Supreme Court in **Rakesh Kumar Sharma Vs. Govt. of NCT of Delhi & Ors.**, 2013 SCC OnLine SC 674, a candidate would be deemed to have acquired the qualification the date on which the result is declared. He contends that since the result was declared on 20.06.2008, he is deemed to have held the qualification as on cut-off date i.e. 12.08.2008.

6. The respondents filed a counter affidavit opposing the OA. It is stated that the applicant was required to

submit not only the documents relating to essential qualifications but also the mark sheet for each year and on verification of documents, it was found that mark sheet of B.Tech final year was issued on 23.08.2008 i.e. after the cut-off date of 12.08.2008, and in that view of the matter, the applicant was held ineligible to apply for the post.

7. We heard Shri R.V. Sinha, learned counsel for the applicant and Shri H.A. Khan, learned counsel for the respondents.

8. The relevant facts are borne out by the record. The qualification stipulated for the post, among others, is of B.E./B.Tech. The date as on which a candidate is supposed to have held this qualification can be gathered from the notification itself. Para 8 of the notification deals with “Invalid Applications” and enumerates various instances under which an application will be treated as invalid. Clause `j’ thereof reads as under:

“(j) Not having the requisite qualifications as on closing date.”

The closing date is stipulated as 12.08.2008. Therefore, the candidate must have held the qualification, as on that date.

9. It is true that the applicant was not possessing the certificate as on 12.08.2008. The fact, however, remains that result of the final examination in which he appeared, was declared on 20.06.2008. This was certified by the University itself. It is a different matter that the mark sheet and the provisional certificates were issued few days later.

10. The question as to when, a candidate can be said to have cleared an examination, was dealt with by the Hon'ble Supreme Court in Rakesh Kumar Sharma (supra). That was also a matter pertaining to employment. In para 16 of the judgment, their Lordships observed as under:

“16.The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court.”

11. It is evident that the result of the examination does not relate back to the date of examination but a person

comes to possess the qualification only on the date of declaration of the results. In the case of the applicant herein, this date happened to be 20.06.2008. This is evident from the Schedule of the concerned examination issued by the University. It reads as under:

“Results for Session 2007-08

Course

B.TECH

Uploaded On

Updated On

B.Tech First Year Results	09-07-2008	10-12-2008(52)
B.Tech Second Year Results	27-07-2008	08-01-2009(40)
B.Tech Third Year Results	22-07-2008	08-01-2009(40)
B.Tech Final Year Results	20-06-2008	07-01-2009(68)

”

12. On application of the principle laid down by the Hon’ble Supreme Court to the facts of the case borne out from the record, it becomes evident that the applicant possessed the qualification as on 12.08.2008.

13. Therefore, the impugned order cannot be sustained in law. It is accordingly set aside. The applicant shall be considered for appointment for the post of Assistant Programmer covered by the Post Code 032/08. The exercise shall be completed within a period of four weeks from the receipt of a certified copy of this order. If the

applicant is appointed on being found eligible, it shall date back to the one on which the person who secured lesser marks than him was appointed, but he shall not be entitled to be paid any arrears of salary. There shall be no order as to costs.

(Mohd. Jamshed)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

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