

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 697 of 2015

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Pratap Chandra Dehury, aged about 37 years, S/o Rathi Dehury, at present working as Chargeman (T), Ordnance Factory, Badamal Estate, PO-Badamal, Dist-Bolangir.

.....Applicant

VERSUS

1. Union of India represented through the Secretary to the Govt. of India, Ministry of Defence, DHQ Post Office, New Delhi-110011.
2. Director General, Ordnance Factories to Govt. of India, Ministry of Defence, Ordnance Factory Board, AYUDH Bhawan, 10-A Saheed Khudiram Bose Road, Kolkata-700001.
3. The General Manager, Ordnance Factory, At/PO-Badamal, Dist.-Bolangir.
4. Janardan Rai Nagar Rajasthan Vidyapeeth University, Udaipur, Rajasthan.
5. IGNOU, New Delhi, IGNOU Campus, Maidangarhi, New Delhi-110019.
6. Central Vigilance Commissioner, New Delhi, India, Satarkata Bhawan, A-Block, GPO Complex, INA, New Delhi-110023.

.....Respondents

For the applicant : Mr.S.Mohanty, counsel

For the respondents: Mr.S.Behera, counsel

Heard & reserved on : 1.8.2019 Order on : 28.8.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA praying for the following reliefs :

"Let there be an order to call for the records more particularly the decision of the Board or the Factory as the case may along with the letter of opinion of the Asst. Solicitor General of Orissa High Court and on hearing the same, the Hon'ble Tribunal may be pleased to quash the order of reversion under ANNEXURE-22 and pass any other and/or further order as deemed fit and proper under the circumstances of the case."

2. The facts in brief are that the applicant, while working under the respondents, had participated in the examination for promotion to the post of Chargeman (Tech) and after clearing the test, he was promoted. But later on he was reverted by the respondents on the ground that the Diploma in Engineering acquired by the applicant on distance mode, from one deemed to be university of Rajasthan, was not a valid Diploma as it does not have the

approval of the AICTE and without such Diploma, he did not fulfil eligibility criterion for promotion to the post of Chargeman (Tech). The applicant has furnished the reasons to consider his Diploma certificate to be a valid Diploma. It is stated in the OA that the respondents had decided to revert the applicant vide order dated 10.10.2014 (Annexure-15). Subsequently, this order dated 10.10.2014 was withdrawn vide order dated 21.10.2014 (Annexure-16). Then vide the letter dated 21/24.10.2014 (Annexure-17), instructions were issued to all the factories under the Ordnance Factory Board, that the Diploma awarded by one Janardan Vidyapith University in Rajasthan was not approved by the AICTE and the same cannot be accepted for the purpose of recruitment under the rules. Such appointments were to be identified to take action for reversion of the incumbents if promoted on the basis of such Diploma.

3. Thereafter, a notice dated 21.3.2015 (Annexure-19) was issued to the applicant to show cause as to why he will not be reverted as his Diploma awarded by Janardan Vidyhapith University on distance mode was irregular. The applicant, has submitted the letter at Annexure-20 stating that one case on this issue was pending before Hon'ble High Court in which the order of the Tribunal has been stayed, and hence, he should not be reverted from his post. This contention was countered in the letter at Annexure-21 and finally, two impugned orders dated 9.9.2015 (Annexure-22 and 23) were passed reverting the applicant on the ground that his Diploma acquired through distance mode did not have the approval of the AICTE, which was the required eligibility criterion as per the recruitment rules.

4. The grounds urged in the OA are that the principle of legitimate expectation has been violated as the advertisement mentioned about Diploma from the Institution recognized by Govt. of India. The applicant has enclosed the information received under the RTI Act, 2005 about another employee, having Diploma from the JNV (same institution from where the applicant had got the Diploma. It is stated that the Diploma of above employee was accepted and he was appointed on the ground that it is as per the Govt. of India notification dated 7.4.2006. It is alleged that the applicant has been discriminated.

5. Counter has been filed by the respondents stating that the issue was decided earlier by the Tribunal and Hon'ble High Court for which the OA is hit by principle of res-judicata. It is stated that the OA did not challenge the provisions of statutory rules and orders basing on which the advertisement was issued. It is also stated that in similar matters, Allahabad Bench of this Tribunal in order dated 12.12.2014 (Annexure R/5) has dismissed the OAs which were filed for non-acceptance of the qualification obtained through distance mode for appearing in LDCE for promotion to the post of Chargeman

(Tech.) In this order, it was held that the diploma in Mechanical Engineering awarded by Janardan Rai Nagar Rajasthan Vidyapeeth deemed University (in short JRNRV) was not in accordance with SROs and hence the concerned employees were not eligible. The present dispute is covered under that judgment of the Tribunal and therefore, the OA is liable to be dismissed. It is stated that the applicants earlier also filed OA No. 290/2011 and vide order dated 30.6.2014 it was held that the Tribunal lacks jurisdiction to adjudicate this case. Copy of this said order is at Annexure A/13 of the OA. The same was upheld by the Hon'ble High Court in a writ filed by the applicant vide order dated 29.9.2015 (Annexure A/23). It is further stated in the counter that in the promotion order of the applicant dated 30.10.2010, it was clearly mentioned that this order is subject to decision of the cases pending in CAT/Courts. Copy of the promotion order of the applicant is at Annexure R/6 of the counter. The matter was enquired into by Ordinance Factory Board and it was concluded vide letter dated 24.10.2014 (Annexure A/17) that the degree acquired by the applicant was not eligible for the purpose of promotion to the post of Chargeman (Tech).

6. No rejoinder has been filed by the applicant.

7. We have heard learned counsels for the applicant and the respondents. It was stated by applicant's counsel that the permission was given for pursuing the said diploma course through JRNRV through correspondence course. Then he was allowed to appear in the examination for the promotion to the post of Chargeman (Tech) as per the SRO 191, copy of which is enclosed at Annexure R/2 of the counter. The applicant was selected and then promoted in 2010. But he was subsequently reverted in 2011. He reiterated the grounds mentioned in the OA. Learned counsel for the respondents reiterated the grounds mentioned in the counter.

7. On perusal of the pleadings and submissions of the parties, it is clear that the following questions are required to be decided –

- i) Whether the present OA is barred by principle of res-judicata as claimed by the respondents.
- ii) Whether the Diploma qualification acquired by the applicant through distance mode from JRNRV will be legally valid for the purpose of eligibility criteria as per SRO 191 for promotion to the post of Chargeman (Tech).

8. Regarding the issue No. (i), the applicant has challenged the order dated 9.9.2015 (Annexure-22) of the respondents to revert the applicant in this OA. It is seen from the order dated 30.6.2014 (Annexure-13) of this Tribunal in the OA No. 290/2011 filed by the present applicant, it was decided that the Tribunal lacks jurisdiction to determine the validity of the Diploma certificate acquired by the applicant from JRNRV. No specific decision in earlier OA was

there on the reversion order dated 9.9.2015 impugned in present OA. No details of any previous judgment/order has been furnished in which the issue of reversion of the applicant has been adjudicated. Hence, the objection that the present OA is barred by the principle of res-judicata, is not acceptable. The question No. (ii) of para 7 is decided accordingly.

9. Regarding the other question relating to the validity of the Diploma qualification acquired by the applicant through distance mode from JRN RV for the purpose of the promotion to the post of Chargeman as per the SRO 191, it is seen that this Tribunal vide order dated 30.6.2014 (Annexure-13) passed in the OA No. 290/2011, it was held as under:-

".....The AICTE in their letter dated 23.12.2010 confirmed that it is not the policy of the AICTE to recognize the qualification acquired through distance education mode in the field of engineering, technology including architecture, town planning, pharmacy, hotel management etc. and instead, they recognize only MBA and MCA Programmes through Distance Education Mode. This position was also confirmed by a letter dated 31.12.2010 received from the Joint Secretary, Ministry of HRD, Government of India. Based upon these clarification, it was decided that the applicant did not possess the educational qualification required for Chargeman and therefore, he was issued with a show cause notice dated 1.2.2011. According to Respondents, Hon'ble High Court of Orissa vide judgment reported in 2011 (1) OLR CUT-162 (Policy Planning Body and another -vs- silicon Institute of Technology & Ors.) held that AICTE is the body which can grant permission to the institute for study of technical education and not the University or Government. Since the AICTE had not approved the Diploma course obtained by the applicant from J.R.N.R.Vidyapeeth University, Rajasthan, the Respondents concluded that the certificate in their opinion was non est in the eyes of law and consequently, the applicant was not eligible for the post of Chargeman (T). In response to the show cause notice, reply given by the applicant was considered and no merit was found in the same. This was disposed vide order dated 2.4.2011 and accordingly, the order of reversion was issued....."

10. Above order dated 30.6.2014 was challenged by the applicant before Hon'ble High Court in W.P. (C) 12140 of 2014, which was disposed of vide order dated 29.9.2015 (Annexure-23) of Hon'ble High Court, in which it was held as under:-

"1. This petition is preferred from the order dated 30.6.2014 of the Central Administrative Tribunal, Cuttack Bench Cuttack in O.A. No. 290 of 2011, whereby the prayer of the petitioner to direct upholding his promotion by upholding the Diploma Certificate on the basis of which promotion was granted, has been rejected.

2. The impugned order of the Tribunal is expressly relying upon ratio of earlier decision of the Tribunal in O.A. Nos. 253 and 254 of 2008 as also O.A. No. 62 of 2011. The Tribunal has adopted the view that, as decided in the earlier applications, the Tribunal lacks jurisdiction to hold an opinion when the authenticity of the certificate as well as the institution issuing such certificate were called into question by the employer. The employer in the present case has clearly conveyed once again vide its order dated 24.8.2015 inter alia as under:-

"Whereas letter dated 21/24.10.2014 and the report of the Committee constituted for the said purpose and clarification received from OFB (Ordnance Factory Board) vide their letter no. 2982/LDCE/CM(T&NT)/Vig/Per/NG. dated 13.3.2015 in response to

this factory letter of even number dated 10.3.2015 together, it reveals that the promotion earned on the basis of Diploma qualification obtained from Janardan Rai Nagar Rajasthan Vidyapeeth University, Udaipur, Rajasthan by the said P.C. Dehury is irregular."

3. The promotion granted to the petitioner having been cancelled on the above basis and the letter dated 21/24.10.2014 and the report of the Committee constituted for the purpose having admittedly not been challenged in any forum, the petitioner was not entitled to straightway claim or pray for setting aside the order cancelling his promotion based upon the clarification which has been determined to be irregular. There is not even any argument as to why Tribunal should have taken any view inconsistent with its earlier decision on the same point.

4. Therefore, the petition is dismissed with liberty to the petitioner to challenge the original order, letters and decision whereby it is decided that the certificate of the petitioner was not required to be recognized or relied upon for his promotion. There is no order as to cost."

11. There is nothing on record to show that the order dated 29.9.2015 was challenged before Hon'ble Apex Court. The said order, which has attained finality, upheld the decision of the respondents vide order dated 24.8.2015 (Annexure-21 of the present OA) to revert the applicant on the ground that his Diploma obtained from JRNRV was irregular, with the liberty to the applicant to challenge the original decision regarding the requirement of his certificate. As per the SRO No. 66 (Annexure-R/3 of the Counter), the requirement for direct recruitment to the post of Chargeman Gr.II (technical) was a three year Diploma qualification certificate in respective field duly affiliated by AICTE. In the notification (at Annexure-6 of the OA) advertised for promotion through LDCE, the eligibility criteria clearly mentioned that the educational qualification for Direct Recruitment as per the SRO 66 will be applicable. The applicant has not challenged these notifications which specified the requirement that his Diploma is required to be affiliated to the AICTE in this OA. As observed in the order dated 30.6.2014 of this Tribunal (Annexure-13), the AICTE does not have policy for affiliating the Diploma courses on distance mode and it was decided that this Tribunal has no jurisdiction to decide the validity of the said certificate and the writ petition filed to challenge the order dated 30.6.2014 was dismissed by Hon'ble High Court vide order dated 29.9.2015.

12. The respondents have cited the order dated 12.12.2014 of Allahabad Bench of this Tribunal (Annexure-R/5) in OA No. 138/2012 and other linked OAs, in which a similar dispute was adjudicated and it was held as under:-

"2. In the present original application filed under Section 19 of the Administrative Tribunals Act 1985, the applicants has prayed for quashing of the impugned order dated 04.11.2011 (Annexure A-5) passed by the respondent no. 3 by means of which the candidature of the applicants to appear in Limited Departmental Competitive Examination (hereinafter referred to as L.D.C.E) for the post of Charge Man /Technical /Non-technical (Store & OTS) has been rejected on the ground that the Diploma in Mechanical Engineering awarded by

the Janardan Rai Nagar Rajasthan Vidyapeet (Deemed) University, Udaipur, Rajasthan (hereinafter referred to as "J.R.N.R.V") have not been issued by the authorized / authentic Institution as per the provisions of the relevant SROs.

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28. From the view as emerging from the above mentioned judgement of the Apex Court, it is clear that the concept of equality , as contained in Article 14 of the Constitution, is a positive concept and cannot be enforced in a negative manner. If an authority is shorn or realizes that it has committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim same illegality or irregularity on the ground of denial thereof to them. Having regard to this position, the argument of counsel for the applicants on this part based upon example of Shri D.K. Malviya cannot be sustained.

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31. Having regard to the facts and circumstances of these O.As, it is clear that the impugned order has been passed declaring the applicants as educationally ineligible to appear in LDCE -2011-12, in strict accordance with the provisions of statutory recruitment orders framed by the department. Therefore, there is no infirmity in the impugned orders. It is worth noting that SROs based upon which the advertisement of examination has been issued, have not been challenged in these O.As and so long they continue to exist in the present form, the respondents will have to follow its provisions. As the action of the respondents is in conformity with the provisions of relevant SROs and in terms of the relevant advertisement while passing the impugned orders, we do not find any good ground to interfere with it. Accordingly, the O.As are dismissed. No costs."

13. In the case before Allahabad Bench, the issue of validity of the Diploma certificate awarded by JRNRV on distance mode was adjudicated for the purpose of assessing the eligibility for promotion to the post of Chargeman under the Ordnance Factory Board. Hence, the factually the present OA is squarely covered by the order dated 12.12.2014 of Allahabad Bench of the Tribunal in the OA No. 138/2012.

14. In view of the above, the question no. (ii) of para 7 of this order is no longer *res integra* in view of the judgment dated 29.9.2015 of Hon'ble Orissa High Court (Annexure-23 of the OA) and the order dated 12.12.2014 of Allahabad Bench of the Tribunal in OA No. 138/2012 (Annexure-R/5 of the Counter). Following the above judgments, the Diploma qualification of the applicant from JRNRV on distance mode has to be held to be inadmissible for the purpose of the promotion to the post of Chargeman and the question no. (ii) is to be answered accordingly.

15. In the circumstances, the OA is devoid of merit and hence, it is dismissed with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath

