

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 217 of 2018

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

Ramesh Chandra Hota, aged about 58 years, S/o Late Trilochan Hota, presently working as Director engineering (I/C), doordarshan. Hyp[er Transmitter, Balasore – 756003.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary, Govt. of India, Ministry of Information & Broadcasting, Shastri Bhawan, New Delhi – 110115.
2. Prashar Bharati through its Chief Executive Officer, 2nd Floor, PTI" Building, Parliament Street, New Delhi – 110001.
3. The Director General, Doordarshan, Doordarshan Bhawan, Copernicus Marg, New Delhi – 110001.
4. The Director General, All India Radio, Akashvani Bhawan, Sansad Marg, New Delhi-110001.
5. Director, Engineering, Doordarshan, Hyper Transmitter, Balasore-756003.

.....Respondents.

For the applicant : Mr.D.K.Mohanty, counsel

For the respondents: Mr.D.K.Mallick counsel

Heard & reserved on : 19.7.2019 Order on : 27.8.2019

ORDER

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs :

"i) To inclusion the applicant's name for convening the DPC for the post of Junior Time Scale (JTS) vide letter dt. 6.4.2018 under Annexure A/11 as per the directives of Hon'ble CAT, Guwahati Bench and as per their letter dt. 30.1.2015.

ii) To direct the respondents to consider for regular promotion to the post of JTS as per rules and dept. Letter dt. 6.4.2018 under Annexure A/11 as he has completed 27 years of service in the feeder grade of JTS i.e. post of Assistant Engineer and eligible for promotion to the said post from 2007 when he acquired the qualification of M.Sc. Physics with Electronics;

iii) To pass any other order/orders as deemed fit and proper."

2. The only issue, required to be decided in this case, is whether the degree of M.Sc.(Physics) with electronics from M.P.Bhoj (Open) University, which is claimed to be a State University and not a deemed to be university, can be treated as a valid educational qualification for the promotion to the post of

Junior Time Scale (in short JTS) from Assistant Engineers under the respondents.

3. The respondents have taken a stand that since the university from where the applicant has acquired the said degree does not have the approval of AICTE and the said degree is a Technical Education it cannot be taken as a valid educational qualification for the purpose of deciding eligibility for promotion to the post of JTS. This matter was considered in detail on 18.12.2018 after the respondents did not include the applicant's name for consideration of the DPC which was going to be held for the purpose of promotion to the post of JTS. After hearing both the parties vide order dated 18.12.2018 this Tribunal passed the following order :

"In view of the letter dated 30.1.2015 and 6.4.2018 by which respondents enclosing the name of AE to JTS promotion took steps for convening the DPC without including the name of the applicant, the respondents are directed to include the applicant's name provisionally for the DPC for the post of JTS, if he is otherwise suitable for consideration subject to further order by this Tribunal. The recommendation of the DPC in respect of the applicant shall not be acted upon without leave of this Tribunal during pendency of the OA."

4. The grounds urged by the applicant are that he had taken the matter earlier to Guwahati Bench of this Tribunal and vide order dated 28.11.2014 (Annexure A/8) the following directions were issued :

"5. We have heard the learned counsel, perused the pleadings and materials placed before us. From the papers, it appears that applicant has duly possessed the qualified PG of M.Sc.(Physics) in the year 2007 in the 1st Division which appears very much from page 21 and appended as Annexure-6 to the OA. It is further noted that applicant is serving as Assistant Engineer in the Programme Production Centre (North East) Doordarshan, Guwahati. Applicant's representation dated 27.5.2014 was made through proper channel which has been duly forwarded by the Programme Production Centre (NE), Doordarshan, Guwahati on 30.5.2014 to the respondent No.2 with a copy to respondent No.3. We are not inclined to go into the merit rather feel it expedient to direct the respondent authorities to take a decision on the representation made by the applicant on 27.5.2014.

6. Accordingly, we direct the respondent Nos. 2 & 3 i.e. the Director General, Doordarshan, Prashar Bharati, (India's Public Service Broadcaster), Doordarshan Bhawan, Copernicus Marg, New Delhi and the Director General, All India Radio, Prashar Bharati, (India's Public Service Broadcaster), Akashvani Bhawan, parliament Street, New Delhi to dispose of the application made by the applicant on 27.5.2014 and consider the case of the applicant by including the name of the applicant in the final eligibility list of Assistant Engineer as on 1.1.2008 for promotion to the post of Assistant Station Engineer (ASE in short) within a period of two months from the date of receipt of a copy of this order by providing adequate opportunity to the applicant of being heard. It is made clear that the decision to be arrived by the respondent authority shall be communicated to the applicant forthwith so as to enable to take appropriate steps by the applicant."

5. It is the case of the applicant that the respondents have not properly considered the matter as per the directions of the Guwahati Bench as extracted above and vide order dated 30.1.2015 (Annexure A/9) have stated as under :

"3. Whereas the Hon'ble CAT, Guwahati in its order dated 28.11.2014, has directed the respondents to consider the case of the applicant by including his

name in the final eligibility list of AE as on 1.1.2008 for promotion to the post of ASE within a period of two months from the date of receipt of this order.

4. Whereas the status of Technical Degrees obtained via Distance Education mode is pending before the Hon'ble Supreme Court, this Directorate is not able to finalize the eligibility list of AEs w.e.f. 2008 tp 2014. The promotion of AEs to JTS has not been made due to non-finalization of eligibility list. As of now promotion of AEs to JTS has been made only upto the eligibility list of 2007. So the name of applicant will be included whenever the eligibility list is prepared, based on the decision of the Hon'ble Supreme Court."

It is stated by the applicant that by not considering him to be eligible for consideration for promotion his fundamental right for promotion has been affected.

6. The respondents have filed counter opposing the OA explaining in detail the essential qualification required as per rules for the said promotion. In paragraph 3 the relevant portion on the basis of which the applicant has taken the stand that he is eligible is as under :

"3(v) M.Sc. degree or its equivalent with Wireless Communication, Electronics, Radio Engineering as a special subject."

It is further stated in this paragraph 3(v) of the counter as under :

"It is brought to the knowledge of this Hon'ble Tribunal that the applicant has done M.Sc.(Physics) from M.P.Bhoj (Open) University through distance mode, which does not fall in the list of Degrees as specified by the UGC under Section 22 of the UGC Act.

Therefore, the qualification obtained by the applicant is not in consonance with the Recruitment Rules.

A copy of the list of degrees as provided under Section 22 of the UGC Act is annexed as Annexure R/1."

7. It is also stated in the counter that the policy of the AICTE is not to recognise the qualification through distance education mode as Diploma and Degree level courses in Engineering, Technology including MC, Architecture, Town Planning, Pharmacy etc. and their policy is to consider MBA & MCS through distance courses for its recognition. Therefore the respondents have taken a stand that the qualification obtained by the applicant is not in consonance with the Recruitment Rules. It is further stated in para 6 of the counter as under :

"That the qualification obtained by the petitioner is not in consonance with the Recruitment Rules. However, in terms of the interim directions of the Hon'ble Guwahati Bench dated 28.11.2017 in OA No. 392/2014, name of the applicant herein is provisionally included in the eligibility list of AEs for promotion to JTS, subject to the outcome of SLPs No. 35793-35796/2012 pending before Hon'ble Supreme Court."

8. It is further mentioned in the Counter that similarly placed persons have earlier approached Principal Bench of this Tribunal in OA No. 1308/2009 (Annexure R/4) and the said OA was dismissed. The order of the Tribunal was assailed by the applicant before the Hon'ble High Court in WP(C) 1149/2012 (Annexure R/5). After hearing the parties Hon'ble Delhi High Court vide order dated 28.1.2013 made the following directions :

“8. But till the Supreme Court decided on the subject, petitioners would be treated as having valid degrees but this would be subject to the view which the Supreme Court may finally take.

9. The Writ Petition stands disposed of declaring as above but without any order as to costs.”

It is also stated in the Counter that the dispute raised in the matter is no more res integra in view of the order passed by the Hon’ble Apex Court vide order dated 3.11.2017 in the matter of Orissa Lift Irrigation Corp. Ltd. -vs- Rabi Shankar Patra in SLP No. 17869-17870/2017, copy of which has been enclosed at Annexure R/6 of the counter. Subsequently another order has been passed, copy of which is kept in Annexure R/7 of the counter. It is further mentioned that the department has filed a petition for transfer application before the Principal Bench and the Principal Bench passé an order that adjournment will be sought from the Cuttack Bench till the matter is decided by the Principal Bench in OA 1630/2018. Therefore the respondents have prayed for keeping the matter in abeyance till the said OA is decided by the Principal Bench.

9. The applicant has filed Rejoinder denying the contentions made in the Counter/preliminary objections filed by the respondents. The grounds mentioned in the OA are reiterated. It is also stated that in the OA before the Principal Bench, the applicants had obtained the degrees from IASE through distance mode education in the unauthorized study centres. It is stated that M.P. Bhoj (open) University has been recognized by the UGC and approved by the DEC for its distance education for the Course of M.Sc Physics with Electronics as a special subject. It is further stated that the judgment of Hon’ble Apex Court is in no way applicable to the applicants.

10. Heard learned counsel for the applicant, who also filed his written note of submissions reiterating the stand taken in the pleadings. It is stated that the respondent no. 4 has wrongly treated the M.Sc degree with Electronics subject as a technical qualification based on the order of Hon’ble High Court as in that case, the candidate had obtained the M.Sc degree in distance mode from IASE, which is a deemed to be University. It is argued that the order will not apply for the distance mode courses offered by M.P. Bhoj (open) University. It is submitted that the judgment dated 3.11.2017 of Hon’ble Apex Court applies to B. Tech degree.

11. Learned counsel vehemently argued that the degree of M.Sc with Electronics to be a technical qualification, for which the approval of AICTE was required. He also argued that the judgment dated 3.11.2017 of Hon’ble Apex Court will be applicable to the present case.

12. We have considered the submissions and the pleadings by both the parties and take note of the decision of the respondents not to consider the technical education degree acquired through correspondence or distance mode to be a valid degree for the purpose of the promotion to JTS. For reasons not disclosed by the respondents, no amendment of the Recruitment Rule was undertaken to disallow such degrees. It is noticed that all the qualifications specified in para 3 of the Counter of the respondents required for the degree in Electronics/Electrical Engineering, in which the qualification of M.Sc degree with special subject of Electronics, wireless Communication, Radio Engineering has been mentioned as an acceptable degree.

13. After going through the documents placed before us, we are of the view that before taking a view as to whether the degree of the applicant can be taken as valid degree, it is necessary to get the clarification of the AICTE and the U.G.C. on whether the applicant's degree of M.Sc. Physics with Electronics from M.P. Bhoj (open) University through distance education mode can be treated as a valid degree as per the law. We, therefore, dispose of this OA without expressing any opinion on the merit of the case, with a direction to the respondent No. 2/competent authority to get the clarification from the AICTE and the U.G.C. about validity of the applicant's M.Sc Degree as stated above and take a final decision about eligibility of the applicant for promotion to the JTS as per the Recruitment Rules, by passing a speaking order after taking into account the clarifications of the AICTE and the U.G.C. in the matter. A copy of such order is to be communicated to the applicant within a period of four months from the date of receipt of a copy of this order. Before passing of the order as above, if the DPC for promotion to the post of Assistant Engineer is held, then the applicant's name is to be provisionally included in the list of eligible name to be considered by DPC in which action is to be taken in accordance with decision of the respondent No. 2/competent authority as stated above. If the applicant's name has already been considered provisionally in compliance of the interim order dated 18.12.2018 of this Tribunal passed in this OA, then appropriate action on the recommendation of the DPC in respect of the applicant is to be taken after passing of the speaking order as stated above.

14. The OA stands disposed of as above. No order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

I.Nath

(GOKUL CHANDRA PATI)
MEMBER (A)

