

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00049/2016

Friday, this the 15th day of November, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

Anuja R.,
W/o. Naithin Prabodh,
aged 25 years,
Anjali Maru, South,
Alumkadavu,
Karunagappally-690 542,
Kollam.

..... **Applicant**

(By Advocate : Mr. Paul K. Varghese)

V e r s u s

1. The Director, ICAR,
Central Tuber Crops Research Institute,
Sreekariyam,
Thiruvananthapuram, 695 017.

2. The Administrative Officer, ICAR,
Central Tuber Crops Research Institute,
Sreekariyam,
Thiruvananthapuram, 695 017.

3. Union of India, represented by its Secretary,
Department of Economic Affairs,
Ministry of Finance,
New Delhi – 110 001.

..... **Respondents**

**[By Advocates : Mr. P. Santhosh Kumar (R1&2) and
Mr. N. Anilkumar, SCGSC (R3)]**

This application having been heard on 08.11.2019 the Tribunal on
15.11.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

- “i) To declare that the applicant is entitled to join as per Annexure 2 appointment order F. No. 1-2/2014 ESTT dated 18.12.2015 in the post of Skilled Support Staff.
- ii) To direct the 1st and 2nd respondent to allow the applicant to join as per appointment order F. No. 1-2/2014 ESTT dated 18.12.2015 in the post of Skilled Support Staff in the pay scale of Rs. 5200-20200+1800.
- iii) To grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.
- iv) To grant cost of this OA.”

2. The brief facts of the case are that the applicant applied for the post of Skill Support Staff in PB-1 Rs. 5,200-20,200/- plus Grade Pay of Rs. 1,800/-. She qualified in the examination. She secured good marks and after interview she had been given appointment order on 18.12.2015 by e-mail and registered post. After due verification and necessary formalities she was not allowed to join the post by stating that she is overqualified. She submitted a representation on 23.12.2015 with a request to allow her to join the post but is of no avail and left with no other efficacious alternative remedy, she approached this Tribunal with the present OA. She claims that after due process of selection she should not be denied the post without assigning any valid reason.

3. The respondents on notice filed their reply statement and submitted that the applicant in the application form for the post of Skilled Support Staff shown her qualification as SSLC and Plus 2. She was called before the

committee for verification where she informed that she is a Graduate. She has not disclosed this fact in the application form though she had completed her degree course in 2013 but had many back papers. The competent authority has not taken any interview for the low category posts and the selection was on the basis of merit marks obtained by the candidates. The respondents further submitted that the applicant was given offer of appointment and not appointment order as stated by her. Later applicant disclosed that she is an Engineering Graduate w.e.f. 2013 and she has suppressed this material information in the application form. Therefore, her candidature is liable to be rejected. Since the applicant is having higher qualification i.e. B.Tech. degree she has not been allowed to join the post.

4. Heard Shri Paul K. Varghese, learned counsel appearing for the applicant, Mr. P. Santhosh Kumar, learned Standing Counsel appearing for respondents 1 & 2 and Mr. N. Anilkumar, learned SCGSC appearing for respondent No. 3. Perused the record.

5. The short point to be considered in the present Original Application is whether possessing a higher qualification than prescribed for the post can be a disqualification for denial of the post ?

6. We find that the argument of the applicant that higher qualification would be a disqualification for the post in question, was not mentioned in the notification, has some force. The respondents cannot stipulate this condition later to disqualify the applicant for the above post. Learned

counsel for the respondents submitted that in the notification dated 6.6.2014 it was duly mentioned that the Director has the right to fix the criteria for screening of the application to reduce the number of candidates to be called for the written test/interview. Under this clause the respondents can deny the post to the candidates who have higher qualifications. This stand of the respondents is far from the reality as normally selection is being done to get the best for the post, whereas the same cannot be taken as a disqualification which was not the idea of the notification circulated for the post in question. If that be so, the respondents should have clarified this fact that higher qualification like in the present case Bachelors degree would be a disqualification in the notification itself. That has not been done by the respondents in the present case. The rule of game cannot be changed once the game is started as held by the apex court in numerous decisions. On this ground alone the respondents fail to convince us.

7. Learned counsel for the applicant has relied on the following decisions in support of her claim:

- a) In ***Pankaj Kumar Dubey v. Punjab National Bank & Ors.*** - 2014 (6) ADJ 529, the Hon'ble Allahabad High Court held as under:

“11. Similar question came up for consideration before the Punjab and Haryana High Court in case of [Manjit Singh vs. State of Punjab & others](#) reported in 2011 (1) 115 (P&H) (FB) where the qualification prescribed for the post of Physical Training Instructor was Certificate in Physical Education. The aspirants were Bachelors in Physical Education, which was a higher qualification as compared to Certificate in Physical Education, and were thus, denied the appointment. The Full Bench of Punjab and Haryana High Court held that higher education cannot be treated to be a disqualification, as otherwise, it would be violative of [Article 14](#) and [16](#). It was observed as under :-

26. The distinction sought to be created to deny eligibility is arbitrary and illusory. It goes without saying that the higher qualification provides better knowledge, better sense and in sight and equip the person with better understanding of the issues and problems. It cannot be a "bane" but has to be a "boon". The Hon'ble Supreme Court in the case of [Mohd. Riazul Usman Gani and others vs. District & Sessions Judge, Nagpur](#), (2000) 2 Supreme Court Cases 606 had the occasion to consider whether the higher qualification than 8th standard prescribed for the post of Peon renders a candidate ineligible. Examining the issue, it is observed as under:-

"21. A criterion which has the effect of denying a candidate his right to be considered for the post on the principle that he is having higher qualification than prescribed cannot be rational. We have not been able to appreciate as to why those candidates who possessed qualifications equivalent to SSC Examination could also not be considered. We are saying this on the facts of the case in hand and should not be understood as laying down a rule of universal application."

27. From the facts on record and dictum of above noticed judgments, it emerges that the candidate possessing higher qualification in the same line cannot be excluded from consideration for selection. It is a different matter that he/ she may not be entitled to any additional weightage for higher qualification, but cannot be denied consideration at par with a candidate possessing minimum prescribed qualification. Denying consideration to a candidate having better and higher qualification in the same line and discipline would definitely result in breach of Articles 14 and 16 of the Constitution of India."

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21. Before parting, it is noteworthy to mention that now the respondents themselves have prescribed standard XII as the minimum qualification for the post of peon, as is evident from letter by the Bank dated 6/7/2011 (Annexure 1 to the amendment application). The respondents have filed their counter affidavit in reply to the amendment application but have not denied the said fact. Sri D. Vaish admits that now the minimum qualification for the post of peon is intermediate. This is clear recognition by the Bank that higher education of intermediate is infact a necessity for due performance of duties attached to the post of peon, in a bank.

22. Thus, higher education if not a magic wand, but surely a jewel on one's crown; if not a hero but can never be a villain. A fortiori, the denial of appointment to the petitioner cannot be sustained. Impugned order dated 17/4/2008 is quashed. Respondents are directed to forthwith permit the petitioner to join his duties in pursuance to the offer of appointment dated 29/3/2008 and he shall be paid his regular salary, in accordance with law."

b) In *Biju v. Kerala Public Service Commission* – 2012 (4) KLT 980, the Hon'ble High Court of Kerala held that PSC is not entitled to effect any changes with respect to qualification, method of appointment or other conditions for recruitment, after issuance of notification for selection.

c) In *Jyoti K.K & Ors. v. Kerala Public Service Commission & Ors.* - 2010 (15) SCC 596 the apex court held as under:

“9. It is no doubt true, as stated by the High Court that when a qualification has been set out under the relevant rules, the same cannot be in any manner whittled down and a different qualification cannot be adopted. The High Court is also justified in stating that the higher qualification must clearly indicate or presuppose the acquisition of the lower qualification prescribed for that post in order to attract that part of the rule to the effect that such of those higher qualifications which presuppose the acquisition of the lower qualifications prescribed for the post shall also be sufficient for the post. If a person has acquired higher qualifications in the same faculty, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In this case it may not be necessary to seek far. Under the relevant rules, for the post of assistant engineer, degree in electrical engineering of Kerala University or other equivalent qualification recognised or equivalent thereto has been prescribed. For a higher post when a direct recruitment has to be held, the qualification that has to be obtained, obviously gives an indication that such qualification is definitely higher qualification than what is prescribed for the lower post, namely, the post of sub-engineer. In that view of the matter the qualification of degree in electrical engineering presupposes the acquisition of the lower qualification of diploma in that subject prescribed for the post, shall be considered to be sufficient for that post.”

8. Therefore, after hearing the learned counsel appearing for the parties and appreciating the legal position in the matter, we are of the view that the above Original Application deserves to be allowed. Accordingly, the OA is allowed. The respondents are directed to allow the applicant to join the post of Skilled Support Staff in the pay scale of Rs. 5,200-20,200/- plus Grade

Pay of Rs. 1,800/- as per Annexure A2/Annexure R1(g) offer of appointment, if she is otherwise qualified and accepts the terms and conditions enumerated in the above offer of appointment, within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00049/2016

APPLICANTS' ANNEXURES

- Annexure A1** - True copy of the memorandum send by the respondents to the applicant dated 4.8.2015.
- Annexure A2** - True copy of the appointment order No. F. No. 1-2/2014 ESTT dated 18.12.2015.
- Annexure A3** - True copy of the representation dated 23.12.2015 and English translation.

RESPONDENTS' ANNEXURES

- Annexure R1(a)** - True copy of the letter F. No. 1-2/2014-Estt dated 6.6.2014.
- Annexure R1(b)** - True copy of the letter F. No. 33(14)/2012-Estt.1, dated 12.3.2013.
- Annexure R1(c)** - True copy of the proceedings F. No. v 88/99 dated 15.5.2015.
- Annexure R1(d)** - True copy of the application form of the applicant dated 30.6.2014.
- Annexure R1(e)** - True copy of the memorandum F. No. 1-2/2014-Estt. Dated 4.8.2015.
- Annexure R1(f)** - True copy of the short list candidates called for certificate verification.
- Annexure R1(g)** - True copy of the memorandum F. No. 1-2/2014-Estt. Dated 11/18.12.2015.
- Annexure R1(h)** - True copy of the undertaking of the applicant.
- Annexure R1(h)** - True copy of the degree certificate of the applicant.

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