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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of order: 18th July 2018

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W.P.(C) 7139/2018, C.M. APPL. No. 27222-27224/2018

HEMANT SINGH BISHT & ORS Petitioners

Through: Ms. Rashmi Chopra, Ms. Atiya
Advocates

versus

SAURABH KUMAR & ORS Respondents

Through: Mr. Arun Bhardwaj, CGSC with Mr.
Nikhil Bhardwaj, Mr. Shashwat
Sharma, Advocate for respondent –
UOI.
Mr. M.K. Bhardwaj, Mr. Akash
Dhaiya, Advocates for (Caveator).

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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18.07.2018

S. RAVINDRA BHAT, J. (ORAL)

1. The petitioners are aggrieved by an order of the Central Administrative Tribunal (hereinafter referred to as “CAT”), which had, on a common application made by several candidates who possessed B.Tech qualifications, ruled that the minimum educational qualification prescribed by the Indian Metrological Department (hereinafter “IMD”) for the post of Scientific Assistant, Group ‘B’, non-gazetted non-ministerial post entitled them to apply and be considered to participate in recruitment process and be considered for

appointment.

2. The minimum essential educational qualification, as on the date of the recruitment advertisement being issued, read as follows:

"5. MINIMUM ESSENTIAL EDUCATIONAL QUALIFICATIONS: (As on 04.08.2017)

Bachelor's Degree in Science (with Physics as one of the subject Computer Science/ Information Technology/ Computer Applications or Diploma in Electronics and Telecommunication Engineering from a recognized, Institution/University or equivalent.

NOTE-I The qualifying Degree or diploma referred above should be in First Class (60% marks) or 6.75 CGPA on a 10 point scale.

NOTE-II The qualifying degree or diploma referred above must be of three (3) years duration after (10+2) examination.

NOTE-III The applicant must have passed 10+2, Examination from a Recognized Board or equivalent in Science with Physics and Mathematics as core subjects."

3. The Staff Selection Commission (hereinafter "SSC") by notice of 04.08.2017 clarified that those applying for selection in recruitment must possess a three year degree/diploma. Later, on 28.03.2018, further clarification was issued on the website of the Indian Metrological Department, which reads as follows:

"Regarding appointment of candidates for the post of Scientific Assistant in India Meteorological Department, it is clarified that the candidates having

qualifying degree in the listed must be of 3 years duration after 10+2 examination. In this regard, Staff Selection had issued clarification vide Notice NO.3-1/2017-P&P-1 dated 4th August, 2017.

In view of the above, it is further clarified that four year degree holders are not eligible for the post of Scientific Assistant in the India Metrological Department.”

4. The applicants before the Tribunal, who were B.Tech degree holders, complained that in the absence of any amendment to the Statutory Recruitment Rules, the IMD could not have excluded them from participation in the selection process. Their applications to the Tribunal (CAT) were resisted by the respondents including the IMD, which *inter-alia*, stated that past experience had shown that those possessing B.Tech degrees tended to resign, after or during the course of special training that was provided to them, thus, causing grave inconvenience and put to loss.

5. The applicants, however emphasised that the rules did not appear so and that they were eligible in all respects.

6. The CAT after considering the submissions of the parties, and citing certain decisions of the Hon'ble Supreme Court in *Dr.M.S.Mudhol and another vs. S.D.Halegkar and Others, (1993) 3 SCC 591*; *Ashish Kumar vs. State of Uttar Pradesh and Others, (2018) 3SCC 55*; *Union of India and another vs. Internal Trading Co. and another, (2003) 5 SCC 437*; *Vishal Properties (P) Ltd. vs.*

State of Uttar Pradesh and Others, (2007) 11 SCC 172. Tribunal's held in favour of the applicants as follows:

"8. The Recruitment Rules and the employment notice dated 18.7.2017/notice dated 4.8.2017 issued by the respondent-SSC stipulated the minimum essential educational qualification of Bachelor's Degree in Science (with Physics as one of the subject)/Computer Science/Information Technology/Computer Applications or Diploma in Electronics and Telecommunication Engineering from a recognized Institution/University or equivalent. It was also stipulated that the qualifying degree or diploma should be in first class (60% marks) or 6.75 CGPA on a 10 point scale and must be of 3 "(three) years duration after 10+2 examination, and that the candidate must have passed 10+2 examination, from a recognized Board or equivalent in Science with Physics and Mathematics as core subjects. It is not in dispute that the applicants possessed the qualification of 4-year B.Tech degree in Electronics & Communication Engineer/Computer Science Engineering /Information Technology/Electronics Engineering and 4-year B.Sc. Engineering in the relevant disciplines', with first class (60% marks) or 6.75 CGPA on a 10 point scale and passed 10+2 examination from a recognized Board or equivalent in Science with Physics and Mathematics as core subjects. Thus, the question that arises for our consideration is as to whether the applicants or any other candidates possessing 4-year B.Tech degree/4-year B.Sc. Engineering in the relevant disciplines are-ineligible for selection and appointment to the post of Scientific Assistant in IMD. Similar question came up for consideration of the Hon'ble Supreme Court in Jyoti K.K. and others vs. Kerala Public Service Commission (supra), wherein Their Lordships have held that if a person has acquired higher qualification in the same faculty, such qualification can certainly be stated to presuppose the acquisition of the lower qualification

prescribed for any post. Similar view has also been taken by the Hon'ble Supreme Court in State of Haryana vs. Abdul Gaffar Khan (supra) and in Parvaiz Ahmad Parry vs. State of Jammu & Kashmir & others (supra) and by a Full Bench of the Hon'ble High Court of Punjab & Haryana in Manjit Singh vs. State of Punjab & others (supra). Therefore, we have no hesitation in holding that the 4-year B.Tech/B.Sc. Engineering degree in the relevant disciplines possessed by the applicants is higher than the 3-year Bachelor's Degree in Computer Science/Information Technology/Computer Applications and 3- year Diploma in Electronics and Telecommunication Engineering, and that the applicants are eligible for selection and appointment to the post of Scientific Assistant. Furthermore, the Recruitment Rules neither specifically exclude the 4-year B.Tech/B.Sc. Engineering degree in the relevant disciplines as the minimum essential educational qualification for the post of Scientific Assistant, nor do the same stipulate that holders of 4-year B.Tech/B.Sc.Engineering degree in the relevant disciplines are ineligible for selection and appointment to the post of Scientific Assistant. The employment notice dated 18.7.2017/notice dated 4.8.2017 issued by the respondent-SSC also did not specifically stipulate that 4-year B.Tech/ B.Sc. Engineering degree holders, like the applicants, would be ineligible for selection and appointment to the post of Scientific Assistant. Thus, the respondent-Department cannot be held to be justified in issuing the impugned clarification dated 28.3.2018 that 'four year degree holders are not eligible for the post of Scientific Assistant', more so when the respondent- SSC had admittedly conducted the recruitment examination and declared the result thereof, and had submitted the Merit Lists to the respondent- Department by 28.3.2018.”

7. The writ petitioners are the candidates, who had applied and were permitted to participate in the selection process. It is not

disputed that they hold three year degree or diploma qualifications that are necessary to the description in the Recruitment Rules. It is contended on their behalf by Ms. Rashmi Chopra, learned counsel, that the clarifications which sought to exclude the applicants (B.Tech degree holders) from the recruitment process, was in order and had to be complied with. It was firstly urged that Note 2 of Rule 5 is cast in mandatory term inasmuch as it emphatically states that only those who possess three year diplomas i.e. “candidates must be three year diploma or degree holders after the completion of their 10+2 schooling”. It was submitted that reading of this Note together with the main part of Rule 5, put the controversy beyond any doubt inasmuch as the basic or rather, the only qualification prescribed was a degree in the various discipline and, in the case of the general B.Sc there was a super added condition that the candidate must have undergone the course in physics. It was submitted that the expression ‘must be’ meant nothing more, nothing less and that to interpret it otherwise would be contrary to the understanding of the Rule making authority. Learned counsel next urged that those who could interpret the Rules i.e. the Expert Body- in this case, the IMD – had sought and was permitted to issue the clarification, which was specifically meant to exclude the degree holders, having regard to the past experience of such selected candidates having resigned. In these circumstances, the Tribunal’s finding, virtually amounts to overriding the expert body’s opinion and therefore requires interference.

8. It is evident from the above factual narrative that the narrow

controversy is with regard to the interpretation of Note 2 to Rule 5 of the Recruitment Rules. The writ petitioners before this court emphasised upon the expression 'must be'. Reading of the main part of the Rules suggests that not merely a degree, but also diplomas are included as essential qualifications. There can be various kinds of diplomas – one year, 2 year, and 3 year diplomas. Perhaps, keeping that in mind, the Rules Making Authority used the emphatic 'must be' to clarify the main part of Rule 1. In the present case, the past practice of the Department appears to have been to permit B.Tech candidates to participate in the recruitment process and proceed to select them. The question of their being resigned in the past would not otherwise arise at all. Therefore, learned counsel's submission that the expert body - in this case – IMD itself, clarified and that such clarification should be honoured, given regard to by the Tribunal is in the opinion of this court is untenable. There is only one method of clarifying, which is to amend the Rules. It is settled law that where the Legislation and the Statutory Rules prescribe something clearly, there can be no supplanting of such rules, there can only clarification by way of supplementary note. The matter can be supplemented if it is feasible to do so in the situation. In the present case, the past history of recruitment by the IMD excludes any doubt in that regard.

9. That apart, the emphatic 'must be' cannot be in the opinion of the court, read as to limit the consideration of those possessing degrees that are of more than a three year duration. It is quite possible that those who hold four year degrees in science and have qualified

from foreign universities would also be entitled to such consideration. Therefore, the emphatic ‘must be’ in the opinion of the court refers to something not less than 3 years and it cannot be construed as a cap on the nature of the qualification. It is not in dispute that B.Tech qualified candidates are degree holders. For selection to the B.Tech course one has to be a science candidate. Given these considerations, we find no infirmity in the impugned order of the learned Central Administrative Tribunal. Accordingly the writ petition filed by the petitioner is dismissed being bereft of any merit.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 18, 2018
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