

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 6th May, 2021.**

+ **W.P.(C) 4251/2021**

RAHUL KUMAR ARYA AND ORS. Petitioners

Through: Mr. Anuj Chauhan, Ms. Ananya De
and Mr. Anand, Advocates.

Versus

PRASAR BHARTI AND ORS. Respondents

Through: Mr. Sahil Bhalaik, Advocate for R-1,
2 & 3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

C.M. No. 12932/2021(for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

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3. The 15 petitioners participated in the selection process pursuant to the advertisement dated 23rd February, 2013, for recruitment of Engineering Assistants and Technicians, in the respondents Prasar Bharti. The petitioners, on 25th August, 2015, though claimed to be having an

engineering degree, were appointed as Technicians and joined the said post of Technician.

4. The petitioners, after more than one year of so joining the post of Technician, on 18th October, 2016, made a representation that they should have been appointed to the post of Engineering Assistant and not to the post of Technician. Upon no decision being taken on the representation aforesaid, OA No.3558/2017 was preferred before Central Administrative Tribunal (CAT), Principal Bench and which was disposed of with the direction to the respondents Prasar Bharti to decide the representation of the petitioners. The said representation was rejected, and which led to the filing of OA No. 1328/2019, against the dismissal whereof this petition has been preferred.

5. The counsel for the respondents Prasar Bharti appears on advance notice but neither has read the file nor is ready to argue.

6. We have heard the counsel for the petitioners.

7. CAT has dismissed the OA preferred by the petitioners, reasoning that (i) the examination conducted, was common for the two posts i.e. for the post of Technician as well as for the post of Engineering Assistant; (ii) however, the method of appointment to the two posts, was slightly different; (iii) the result of the examination was declared and the successful candidates were required to exercise their options; (iv) the petitioners and other successful candidates exercised their options for allocation as well as for the zone; (v) the petitioners were issued offer of appointment for the post of Technician; (vi) in case they had any objection to being selected and appointed as a Technicians, they were expected to make a representation or

record their protest before joining; (vii) the petitioners did not do either and on the contrary joined the duties and it is only thereafter that the representation was made and by which time the appointments had already been made and the entire selection process stood concluded; (viii) even if any possibility of adjustment of the petitioners against the post of Engineering Assistant existed, that would have the effect of replacing persons who had already been appointed as Engineering Assistants; (ix) in any case, the petitioners, by not objecting to the offer of appointment as Technician and by accepting the said offer and having joined the post of Technician, without any protest or demur, had waived their right even if any to be appointed as Engineering Assistant; (x) there was no ground to interfere with the rejection by the respondents, of the representation of the petitioners.

8. Prima facie finding no fault or perversity in the reasoning aforesaid of CAT, of the petitioners, after having accepted the post of Technician, without any demur or protest, being not entitled to belatedly upset the entire recruitment process by seeking appointment to a post different from that which was offered and to which they were appointed, and to test the bonafides of the petitioners, we have enquired from the counsel for the petitioners, whether the petitioners are willing to give up the post of Technician and be reverted to the stage immediately prior to that of appointment and to then challenge the entire selection process.

9. On request of the counsel for the petitioners, the matter was passed over. On passover, the counsel for the petitioners states that the petitioners are willing to give up the post of Technician only on the condition of being

appointed as Engineering Assistants. Else it is stated that the petitioners are not willing to be reverted to the stage of prior to their appointment as Technicians.

10. The conditional statement of the counsel, on behalf of petitioners, demonstrates the malafides of the claim of the petitioners. The petitioners, even now are not willing to be reverted to the stage at which they ought to have made the challenge, which was belatedly made as aforesaid. The statement, that the petitioners would give up the post of Technicians, if appointed as Engineering Assistant, is a position which in any case would follow in law. The petitioners cannot hold both the posts i.e. of Technician as well as Engineering Assistant.

11. The question for consideration is, whether the petitioners, after having got themselves appointed as Technicians, without any demur and protest, can belatedly seek appointment to a different post than to which they were found entitled and which was offered to them and accepted by them. The stand of the petitioners today also shows that the petitioners want to have their cake and eat it too, and which cannot be permitted.

12. However, to satisfy our judicial conscience, we have also seen the policy contained in the recruitment advertisement for offering the post of Technicians to the petitioners and find the respondents, in offering the post of Technicians to the petitioners, to have abided by the said policy.

13. The counsel for the petitioners now states that the case of the petitioners is, that the said policy adopted for recruitment, is bad and arbitrary.

14. As the aforesaid would reveal, the challenge by the petitioners is to the very terms and conditions of recruitment and which challenge cannot be permitted to be now made, after the petitioners have participated in the recruitment process and availed benefit thereof and secured a job for themselves. Reference in this regard can be made to *Om Prakash Shukla Vs. Akhilesh Kumar Shukla* (1986) 1 Supp SCC 285, *Madan Lal Vs. State of Jammu and Kashmir* (1995) 3 SCC 386, *Chandra Prakash Tiwari Vs. Shakuntala Shukla* (2002) 6 SCC 127, *Union of India Vs. S. Vinodh Kumar* (2007) 8 SCC 100, *Munindra Kumar Vs. Rajiv Govil* (1991) 3 SCC 368, *Amlan Jyoti Borooah Vs. State of Assam* (2009) 3 SCC 227, *Ashok Kumar Vs. State of Bihar* (2017) 4 SCC 357 and *Anupal Singh Vs. State of Uttar Pradesh* (2020) 2 SCC 173. It is not the case of the petitioners that the policy for recruitment, which is now impugned, was not published at the time of advertisement itself or was not known to the petitioners.

15. There is no merit in the petition.

Dismissed.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

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