

22.02.2022
Mithun
List – D/L
Sl. No. 12
Ct. No. 04.

IA No: CAN/1/2021
in
WP. CT/13/2017

Sri Shyamal Kumar Sarma
-Vs.-
Union of India & Ors.

Ms. Reshmi Ghosh, Adv.

Mr. Soumya Sarkar Chini, Adv.

...for the petitioner.

Mr. Dayashankar Mishra, Adv.

...for Union of India.

The writ petition is filed challenging the order and judgment dated 2nd May, 2016 passed by the learned Central Administrative Tribunal, Calcutta Bench in O.A. No.560 of 2013 whereby and whereunder the Tribunal application seeking relief to quash the speaking order dated 15th October, 2012 and a direction upon the respondent to appoint the petitioner as Junior Engineer (Electrical or Mechanical) by way of promotion of all consequential benefit was rejected.

Indubitably the petitioner was appointed to the post of Chowkidar and such appointment was made permanent with effect from March, 1999. The petitioner was having a Graduate degree in Science stream and subsequently passed the Diploma course in the

Mechanical Engineering from the State Counsel of Engineering and Technical Education, Government of West Bengal. The petitioner further passed the trade test in the year 2003 and claimed to have come under the Skilled Grade category. The dispute arose when the promotional post for Junior Engineer (Electrical & Mechanical) fall vacant and the petitioner was not considered as eligible for such promotional post. The Tribunal application was taken up when the authority was apathetical in considering the case of the petitioner for such promotional post which was disposed of on 29.06.2012 with the categorical finding that though the petitioner was appointed as Chowkidar but subsequently acquired Diploma degree in the Mechanical and Engineering from the recognized institution and having made the representation before the Competent Authority, it is not acceptable that the authority would sit tight over the said representation without taking any decision. Accordingly, the Tribunal application was disposed of directing the Competent Authority to take a decision on the representation filed by the petitioner within the specified period.

Pursuant to the said order, the authority took up the representation so filed and denied the prayer of the petitioner taking recourse to the recruitment rules being S.R.O.45 of 2008. The petitioner challenged the said order before the Tribunal on the ground that the

moment he passed the Trade Test, he is put into a skilled category and therefore, eligible to be considered for such promotional post. For the purpose of the record it is apposite to mention that in the meantime, the petitioner has been appointed to the post of Mate(Electrical) with effect from 7th January, 2010. Still the petitioner pursued his earlier claim that to be posted at the promotional post of Junior Engineer (Electrical & Mechanical). The rules concerning the consideration for such promotional post is categorical and a specific which is not denied by either of the parties. The eligibility criteria for the promotional post of Junior Engineer (Electrical & Mechanical) is restricted to a Highly Skilled Tradesman with 8 years service and a Skilled Tradesman with 16 years of service. It appears that after acquiring the qualification i.e. Diploma in the Mechanical Engineering from a recognized Institute, the petitioner is still at the Semi- skilled category and does not acquire a category of Highly Skilled Tradesman or Skilled Tradesman. The authorities being the creature of statute cannot travel beyond the ambit of the Recruitment Rules applicable in this regard. The petitioner has not challenged the Recruitment Rules i.e. ultravires to the Constitution or the Statutory Act. If the rules provide the modalities and mechanism for recruitment to a promotional post, authorities cannot travel beyond the peripheral thereof and have to act

strictly within the precincts of the statutory rules. The eligibility criteria ascribed for such promotional post cannot be bypassed by the authority and if the petitioner does not fall within such category, there is no infirmity or illegality in the action of the authorities in denying the relief claimed therein. There is a real distinction between the right to be appointed at the promotional post and the right to be considered for an appointment to such promotional post. The former is never a vested right but in later case one has a right to be considered for such promotional post but such right can only accrue if fructified from a statutory rules and not otherwise. The petitioner is ineligible to be brought within the zone of consideration for the post of Junior Engineer (Electrical or Mechanical).

In view of the eligibility criteria enshrined in the said Recruitment Rules, we do not find any ground warranting interference with the order of the Trial Court.

The writ petition is dismissed, as a consequence of application also stands dismissed.

(Harish Tandon, J.)

(Rabindranath Samanta, J)