

**IN THE HIGH COURT OF ORISSA AT CUTTACK****W.P.(C) No.34400 of 2021*****Ashish Kumar and others* .... *Petitioners******-versus-******Union of India and others* .... *Opposite Parties*****Advocates appeared in this case:*****For the Petitioners* : Mr. Ashish Kumar  
(Petitioner No.1) in person*****For the Opposite Parties* : Mr. Bimbisar Dash  
Central Government Counsel****CORAM:  
THE CHIEF JUSTICE  
JUSTICE M.S. RAMAN****JUDGMENT  
25.11.2022****Dr. S. Muralidhar, CJ.****सत्यमेव जयते**

1. The present petition challenges an order dated 30<sup>th</sup> September 2021 passed by the Central Administrative Tribunal (CAT), Cuttack Bench, Cuttack dismissing O.A. No.260/00445 of 2019 filed by the present Petitioners, who were the Applicants for the post of Danger Building Worker (DBW) pursuant to an advertisement issued for filling up 252 posts with the last date of submission of application being 10<sup>th</sup> July, 2017.

2. The minimum essential qualification for the post of DBW was “Matriculation with National Trade Certificate/ National Apprentice Certificate issued by National Council of Vocational

Training (in short 'NCVT') in the Attendant Operator Chemical Plant (in short 'AOCP') or Process Plant Operator (in short 'PPO') Trade".

3. The advertisement was issued by the Ordnance Factory, Chanda, Maharashtra. A Committee was set up to scrutinize the applications in carrying out document verification of the provisional list of candidates, who had qualified in the written test held on 10<sup>th</sup> September, 2017. The said Committee undertook the exercise between 18<sup>th</sup> and 24<sup>th</sup> January 2018, and provisionally selected 47 candidates to appear at the trade test for the post of DBW. The Ordnance Factory Recruitment Centre (OFRC), Nagpur provisionally published a final select list of 319 in various trades including names of 47 candidates who were allowed to face the trade test for the post of DBW. The present Petitioners also figured in the said list of 47 candidates.

4. On 6<sup>th</sup> October 2018, a clarification was sought by the Directorate General of Training (DGT), New Delhi on the issue of equivalence of educational qualification/trade certificates of the various candidates with the qualification provided in the advertisement. The DGT, New Delhi, by a letter dated 12<sup>th</sup> October 2018, clarified as under:

"Please refer to letter No.1013/Manpower/Estt./OFBL/2018 dated 06.10.2018 in this regard it is informed that training programme with one year BBBT +6 months advanced module +6 months specialized module is considered equivalent/ suggested to conventional ITI trade under Craftsman Training Scheme (CTS). National Trade Certificate (NTC) in Broad Based Basic Training

of 1 years duration followed by NTC. Advanced modular courses of 6 months duration and certificate of specialized module in same sector of 6 months duration makes the candidates eligible Craftsman in his relevant sector duly having compatibility with the similar trades offered under Craftsman Training Scheme. The matching of NCVT approved certificates in respect of CoE scheme and Craftsman Training Scheme is as under:

| Sl.No. | Name of Trades                                                                                                                                                                                                                                | Suggested trade under NCVT                                     |
|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|
|        | National Trade Certificate (NTC) of One year BBBT in sector of Chemical COE + NTC in Advance Module of any of the following 6 months course advance module in Attendant Operator Certificate in Specialize Module of 6 months in some sector. | 2 years of trade<br>“Attendant Operator Chemical Plant (AOCP)” |

It is observed that the copies of certificates of 47 candidates which have forwarded vide letter no. 06.10.2018 to this Directorate not indicate the completion of training. Some of the candidates has attached only NTC issued for one year while some of candidates have enclosed only NTC issued for 6 months advanced courses.

Trade ‘Attendant Operator Chemical Plant (AOCP)’ with duration of 2 years has suggested to equivalent only those who have completed all modules of training i.e. One year BBT +6 months advanced module and 6 months specialized.

It is further informed that National Trade Certificate (NTC)/National Apprentice Certificate (NAC) issued for the trade ‘Attendant Operator Chemical Plant (AOCP)’ is a recognized qualification for purpose of recruitment to subordinate posts and services under Central and State Government. However, National Apprentice

Certificate (NAC) is higher qualification than National Trade Certificate (NAC)".

5. Prior to the above clarification, by a letter dated 17<sup>th</sup> October 2013, another clarification had been issued regarding "Educational qualification for Direct Recruitment in Semi Skilled Grade". The said clarification reads as under:

"In continuation of OFB circular No. 800/SRO/A/I/245 dated 21.10.2011, it is hereby intimated that in the advertisement for Direct Recruitment to Semi Skilled Posts of Annexure-A Trades, the requisite educational qualification should be mentioned as "Matriculation + NAC/NTC issued by NCVT" without mentioning the failing which clause in the existing SRO.

2. It is once again clarified that NAC are to be treated as par for all recruitment purposes and that Diploma in Engineering without possessing NAC/NTC cannot be accepted as qualification for direct recruitment.

3. In partial modification to para 6(A) of OFB Circular No. 570/A/I(Pt)/54/Vol.IV/294 dated 06.01.2011, it is intimated that wherever applications for direct recruitment are being invited online, even the trade apprentices of Ordnance Factories would be required to apply on line. It is should be made amply clear in the text of the advertisement notice.

4. This issues with the approval of DGOF & Chairman."

6. On the above basis, the Committee found 16 candidates eligible to be appointed. The present Petitioners then submitted a representation dated 1<sup>st</sup> November 2018 for consideration of their cases. Thereafter, they filed O.A. No.542 of 2018 in the CAT which disposed of the said O.A. on 6<sup>th</sup> December, 2018 with a

direction to the Opposite Parties to consider and dispose of the representation. On 11<sup>th</sup> July 2019, in respect of one of the Applicants, the representation was rejected by the order dated 11<sup>th</sup> July 2019, issued by the Opposite Parties *inter alia* stating as under:

“4. And whereas, factual position was ascertained from Ordnance Factory Board (OFB) as given below:

- i) An advertisement was published for filling up vacancies/posts of Semi Skilled Grade Industrial Employees (IEs) Group ‘C’ in different trades and Labour Group ‘C’ in various Ordnance Factories located across India. In the said advertisement, it was stated that verification of original documents will be done only at the time of Trade Test in the respective factories.
- ii) Due to mass agitation organized by local people over different issues at Badmal, Orissa, the situation of normalcy could not be restored around the factory premises.
- iii) On the direction of OFB vide their FAX dated 23.11.2017, Ordnance Factory, Badmal was asked to make necessary arrangements for conduct of Trade Test/Document Verification of the said posts at Ordnance Factory, Chanda, Maharashtra in r/o those candidates who had qualified in the written examination so as to conduct the whole process smoothly without causing any inconvenience to the candidates;
- iv) Accordingly, an online link was established in the first week of January, 2018 for the candidates (including petitioners of the said OA) who had qualified the written examination to download their admit card for Trade Test/Document verification with details of venue, date and time.
- v) At the time, the petitioners of the said OA did not represent against the change of venue of Trade

Test/Document verification and appeared for the document verification at Ordnance Factory, Chanda, Maharashtra;

vi) Since the petitioners were not in possession of the relevant Trade Certificates as per the said advertisement, they were declared ineligible for the post applied. Their candidature was rejected and they were not allowed to appear in the Trade Test. The change in venue of Trade Test/Document Verification had no bearing on the selection of the candidates including the petitioners.

5. AND WHEREAS, after having carefully considered the representation dated 01.11.2018 of the applicants and comments furnished by OFB thereon, it is observed that:

(i) The venue of document verification/Trade Test was changed in public interest with prior permission of OFB;

(ii) The applicants were well informed in advance of the change in the venue of Document Verification/Trade Test;

(iii) The candidates including the petitioners appeared for Document Verification/Trade Test at Ordnance Factory, Chanda, Maharashtra on the prescribed date and time. They did not challenge the issue of change in venue of Trade Test/Document Verification at that time.

(iv) Candidatures of the petitioners was cancelled due to non possession of the requisite Trade Certificate;

(v) The recruitment process has since been finalized by Ordnance Factory Recruitment Centre (OFRC).”

7. Aggrieved by the above order and also challenging the clarification dated 17<sup>th</sup> October 2013, O.A. No.260/00445 of 2019 was filed by the present Petitioners in the CAT, Cuttack Bench,

Cuttack. A further prayer was that the said clarifications and order should be declared illegal since it was contrary to SRO No.185. A direction was sought to the Opposite Parties for redrawal of Final Select List keeping in view the eligibility criteria prescribed in SRO No. 185 and the marks secured by the Petitioners in the written examinations vis-à-vis all other candidates within a reasonable time to be stipulated by the tribunal.

8. It was noted by the CAT that although the successful candidates have been impleaded as private Respondent Nos.5 to 48 in the CAT, they had neither entered appearance nor filed any counter.

9. After considering the reply of the official Opposite Parties/Respondents, the CAT rejected the above application. The CAT observed that the contention of the Petitioners before the CAT was that “in the Rule (SRO 185) the essential qualification for the post of DBW is provided as ‘National Council of Trades for Vocational Training Certificate in the relevant trade failing which by ITI or equivalent Diploma certificate holder whereas in the advertisement it was mentioned ‘National Council of Trades for Vocational Training (NCVT) certificate’ which is contrary to Rules. It has been stated that although the applicants are having the qualification as provided in the SRO 185 and secured more than the cut off marks in the selection, Respondents rejected their case on the ground of lacking essential qualification and appointed private respondents which is bad in law.” The above contention was resisted by the official Opposite Parties/ Respondents *inter alia* pointing out that “the applicants cannot

question violation of conditions stipulated in the advertisement before they are appointed to the posts”.

10. In the impugned order, the CAT noted that the Respondents had “specifically mentioned in the advertisement that the candidate must have essential qualification of National Council of Trades for Vocational Training (NCVT) certificate in the relevant trade for the post of DBW.” The CAT’s conclusion was that the Petitioners did not possess such qualification. Further, since they had participated in the process of selection knowing fully well about the required educational qualification through advertisement without any debar and subsequently, it was found that the Petitioners did not possess such qualification. The Opposite Parties had rightly rejected their candidature. It was held that the Petitioners were estopped under law from challenging the advertisement as being contrary to the provisions of the SRO No.185. Reference was made to the decisions in ***Chandra Prakash Tiwari v. Shakuntala Shukla (2002) 6 SCC 127***; ***Public Service Commission v. Hiranyalal Dev AIR 1988 SC 1069***; ***Praveen Singh v. State of Punjab (2000) 8 SCC 633***; ***A.B. Krishna v. State of Karnataka AIR 1998 SC 1050***; ***Union of India v. Bikash Kuanar (2006) 8 SCC 192***.

11. One development that took place was that on 16<sup>th</sup> June 2021, the Union Cabinet, Government of India decided to corporatize 41 production units of the Ordnance Factory Board (OFB) functioning under the Department of Defence Production (DDP), Ministry of Defence. Pursuant thereto “Government of India

decided to transfer with effect from 1<sup>st</sup> October 2021, the management, control, operations and maintenance of these 41 units to seven Government companies wholly owned by the Government of India, namely (i) Munitions India Limited (ii) Armoured Vehicles Nigam Limited (iii) Advanced Weapons and Equipment India Limited (iv) Troop Comforts Limited (v) Yantra India Limited (vi) India Optel Limited and (vii) Gliders India Limited.” The Court was further informed that “the Ordnance Factory at Badmal District- Bolangir, Odisha comes under the control of Munitions India Limited, Ammunition Factory Khadki, Pune- 411003.”

12. An objection was raised to the amending of the cause title as a result of the above changes by the Petitioners. However, by an order dated 6<sup>th</sup> July 2022, the said objections were negated by this Court and it was directed that Opposite Party Nos.2 to 4 to the petition be deleted and be substituted as under:

- “(i) The General Manager, Ordnance Factory, Badmal- 767070, Dist. Bolangir, Odisha
- (ii) Chairman-cum-Managing Director (CMD), Munitions India Limited, 2nd Floor, Nyati Unitree, Nagar Road, Yerwada, Pune- 411006.
- (iii) Director General Ordnance (Coordination & Service), Directorate of Ordnance, 10-A, S.K. Bose Road, Kolkata- 700001.”

13. I.A. No.9250 of 2022 for modification of the above order was rejected by this Court on 16<sup>th</sup> September, 2022.

14. Petitioner No.1 appeared in person on behalf of the Petitioners having discharged the counsel who was earlier appearing on their behalf. His submissions were heard at length. Mr. Bimbisar Dash, learned Central Government Counsel appeared for Opposite Party Nos.1 to 4.

15. The case of the Petitioners is that in SRO No.185, it has been provided that for appointment to the post of Semi Skilled Workman, the candidates should have educational qualification of “National Council of Trade for Vocational Training Certificate in the relevant trade failing which by ITI or Diploma Certificate holder but the respondents while issuing the advertisement at Annexure-B which is appended to advertisement (page 59) have mentioned that for the post of Danger Building Worker, a candidate having NAC/NTC TRADE in AOCP & PPO will only be considered which runs contrary to the SRO No.185.” Reliance was placed on an order dated 28<sup>th</sup> January 2014 of the CAT, Bombay Bench in O.A. No.404 of 2012 where it was held that since the equivalent qualifications were not considered, the non-selection of the Applicants in that case was vitiated.

16. As regards questioning the selection after participating in it, reliance is placed on the judgment of the Supreme Court of India in ***Dr. (Major) Meeta Sahai v. State of Bihar*** (decision dated 17<sup>th</sup> December 2019 in Civil Appeal No.9482 of 2019) reported at (2019) 20 SCC 17 and in particular the rule concerning estoppel as under:

“16. It is well settled that the principle of estoppel prevents a candidate from challenging the selection

process after having failed in it as iterated by this Court in a plethora of judgments including ***Manish Kumar Shahi v. State of Bihar (2010) 12 SCC 576***, observing as follows:

“16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the appellant is not entitled to challenge the criteria or process of selection. Surely, if the appellant’s name had appeared in the merit list, he would not have even dreamed of challenging the selection. The appellant invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the appellant clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.”

The underlying objective of this principle is to prevent candidates from trying another shot at consideration, and to avoid an impasse wherein every disgruntled candidate, having failed the selection, challenges it in the hope of getting a second chance.

17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process.”

17. It was sought to be contended that in the present case too, when the statutory rules had been misconstrued, the mere participation by the Petitioners in the selection would not preclude them from questioning the legality of the decision of the Opposite Parties.

18. On behalf of the Opposite Parties, reliance was placed on the replies already filed before the CAT and it was pointed out that inasmuch as the Petitioners do not possess the minimum qualification as stipulated, they had rightly not been selected.

19. The Court must at the outset note that in the present case a specific issue was raised as regards the equivalent qualification which is clarified on 12<sup>th</sup> October, 2018. In terms of the said clarification, the completion of modular training was essential for recognizing the equivalent clarification. This letter dated 12<sup>th</sup> October 2018 was not challenged. It was only a further clarification of the earlier letter dated 17<sup>th</sup> October, 2013.

20. It is not possible to accept the contention of the Petitioners that the advertisement prescribed a qualification that was inconsistent with the SRO No.145. The fact remains that the Petitioners were not in possession of the relevant trade certificates. It is entirely up to the Opposite Parties to decide what should be the essential qualification as well as procedure/manner of selection to the post of DBW. The Petitioners were fully aware of what the essential qualification was even before they took the

trade test. This is not a question of any illegality committed by the Opposite Parties in applying the wrong criteria. The exception carved out in ***Dr. (Major) Meeta Sahai (supra)*** by the Supreme Court of India would not apply in the present case. It was not as if the rules were changed after the selection process started. The clarifications were already in place before the evaluation took place. The advertisement was very clear as to what the essential required qualification was and the fact remains that the Petitioners did not possess it.

21. It was correctly pointed out by the Opposite Parties that the large number of candidates who also did not possess the requisite minimum qualification may not have applied considering themselves to be ineligible in terms of what was required by the statutory rules and the advertisement. In this context, the observations of the Supreme Court of India in the decision in ***Rakesh Kumar Sharma v. Government of NCT of Delhi*** (Civil Appeal Nos.6116 of 2013) (para 17) are relevant.

22. In Note-10 of the SRO, it has been clearly mentioned that “In relation to prescribed qualifications under Column 8 of this Schedule the question whether a qualification is equivalent to the prescribed qualification for any post shall be decided by the Ordnance Factory Board”. The underlying principle has been explained by the Supreme Court of India in ***Government of Andhra Pradesh v. P. Dilip Kumar (1993) 2 SCC 310*** as under:

“13. ...There is nothing arbitrary or unreasonable in the employer preferring a candidate with higher qualification for service. It is well settled by a

catena of decisions that classification on the basis of higher educational qualification to achieve higher administrative efficiency is permissible under our constitutional scheme. See *Roshan Lal Tandon v. Union of India*; *State of J & K v. Triloki Nath Khosa*; *Md. Sujat Ali v. Union of India*; *Roop Chand Adlakha v. Delhi Development Authority*; *V. Markendeya v. State of A.P. and Sanatan Gauda v. Berhampur University*.

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15. ....It is true that notwithstanding the preference rule it is always open to the recruiting agency to prescribe a minimum eligibility qualification with a view to demarcating and narrowing down the field of choice with the ultimate objective of permitting candidates with higher qualifications to enter the zone of consideration.”

23. Further, it has been explained how the Ordnance Factory at Badmal, Odisha is a chemical explosive filling factory. As per SRO No.185, required qualification had to be in the relevant trade since the work of DBW (SS) relates to the dealing with chemical/explosive powders. The NAC/NTC in the trade of AOCP/POP has been considered as the relevant trade for appointment to the post of DBW. Therefore, the exclusion of other trade people like wiremen, electrician, fitter, machinist etc. was justified as the present Petitioners do not possess the relevant trade certificate in “Attendant Operator Chemical Plant or Process Plant Operator” as stipulated in the advertisement. They possessed other trade certificates like Wireman, Electrician, Fitter, Machinist etc. Consequently, the Opposite Parties cannot be

faulted in holding that they did not possess the essential qualification for the post.

24. The Petitioners also placed reliance on the decision of Supreme Court in ***State of Orissa v. Prasana Kumar Sahoo AIR 2007 SC 2588*** to the effect that even a policy decision of the State would be amenable to judicial review if they were contrary to the recruitment rules. Reliance was also placed on the decision dated 31<sup>st</sup> July 2009, the Supreme Court of India in Civil Appeal No.4977 of 2009 (***Ajaya Kumar Das v. State of Odisha***) which is to the same effect.

25. In the present case, the Court is not satisfied that the clarification issued by the OFB on 12<sup>th</sup> October 2018 is inconsistent to SRO 145 and calls for interference. On the other hand, the decision dated 14<sup>th</sup> September 2012 of the Supreme Court of India in Civil Appeal No.6468 of 2012 (***State of Gujarat v. Arvindkumar T. Tiwari***) appears to be relevant in the context. In para 7 of the said judgment, it was held as under:

“7. The appointing authority is competent to fix a higher score for selection, than the one required to be attained for mere eligibility, but by way of its natural corollary, it cannot be taken to mean that eligibility/norms fixed by the statute or rules can be relaxed for this purpose to the extent that, the same may be lower than the ones fixed by the statute. In a particular case, where it is so required, relaxation of even educational qualification(s) may be permissible, provided that the rules empower the authority to relax such eligibility in general, or with regard to an individual case or class of cases of undue hardship. However, the said power should be

exercised for justifiable reasons and it must not be exercised arbitrarily, only to favour an individual. The power to relax the recruitment rules or any other rule made by the State Government/Authority is conferred upon the Government/Authority to meet any emergent situation where injustice might have been caused or, is likely to be caused to any person or class of persons or, where the working of the said rules might have become impossible. (Vide: *State of Haryana v. Subhash Chandra Marwah & Ors.*, AIR 1973 SC 2216; *J.C. Yadav v. State of Haryana*, AIR 1990 SC 857; and *Ashok Kumar Uppal & Ors. v. State of J & K & Ors.*, AIR 1998 SC 2812).”

26. For all of the aforementioned reasons, the Court finds that no ground is made out for interference of the impugned order of the CAT. The writ petition is accordingly dismissed with no order as to costs.

(S. Muralidhar)  
Chief Justice

(M.S. Raman)  
Judge

S. K. Guin/PA