

\$~50

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 16971/2022**
RAJ KUMAR

..... Petitioner

Through: Petitioner in person.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. G.S. Chaturvedi and Mr. Shrinkar
Chaturvedi, Advs. for R-2

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

%

14.12.2022

1. The challenge in this writ petition is to an order dated March 28, 2022 of the Central Administrative Tribunal ('Tribunal', for short) in Original Application No.679/2022 filed by the petitioner herein challenging a letter dated November 18, 2020 issued by RITES Ltd. (hereinafter referred to as 'RITES'), i.e., respondent No.2 herein, wherein RITES has informed the petitioner that his request for consideration of his candidature to the post of Junior Assistant (Finance) cannot be considered.

2. We shall narrate in brief, the facts leading to the filing of the present petition. On April 27, 1996, the petitioner joined the Indian Army, from where he retired on August 31, 2017, after putting in a service of 21 years and 4 months. The respondent No.2 / RITES had on September 18, 2019 issued a notification for recruitment of finance professionals on regular basis which included the post of Junior Manager (Finance) and Junior Assistant

(Finance).

3. On September 28, 2019, the petitioner applied online for the post of Junior Assistant (Finance) under ex-Servicemen quota. The qualification sought for by RITES for the said post was B.Com / BBA (Finance) / BMS (Finance). It is the case of the petitioner that on his retirement from the Indian Army, as per the policy of the Central Government, he was issued a Graduation Certificate (Annexure-A) and further, having the experience of working in Administration / Accounts / Finance / Budget / Logistics in the Army, he has the essential qualification / experience required to apply to the post of Junior Assistant (Finance). Pursuant to his application, the petitioner also sat in the examination conducted by the respondent No.2 / RITES and qualified the same. Subsequently, the petitioner was called for scrutiny of the original documents. At this stage, it was conveyed to the petitioner that he is not eligible to apply for the post in question.

4. It is also noted that the petitioner had submitted a representation dated September 22, 2020 to RITES. The same was replied to by RITES vide communication dated November 18, 2020 stating that his candidature cannot be considered in view of the educational qualification required for the post of Junior Assistant (Finance).

5. The petitioner, who appears in-person has placed reliance on the judgment of the Supreme Court in the case of *Chief Executive Officer, N.S.S.O. & Ors. v. Biswa Bhusann Nandi, Civil Appeal No.5304/2008*, dated August 29, 2008 to contend that in the said case, the Supreme Court refused to interfere with the order of the High Court which directed the respondent authorities to accommodate the petitioner therein to the post of Data Entry Operator, despite the fact that the petitioner did not have the

required qualification of Graduation with Mathematics or Statistics as subjects.

6. That apart, he has placed reliance on the certificate issue by the Clerks Training School under The Bihar Regimental Centre, wherein it is stated that the petitioner has sound knowledge of 'A' as well as PRI Matters to contend that he had undergone training in NCO Clerks Course.

7. He seeks the prayer as made in the writ petition.

8. On the other hand, learned counsel for the respondent No.2/RITES would contest the petition on the ground that the post in question is relatable to finance and the qualification required is B.Com / BBA (Finance) / BMS (Finance). In other words, it is his submission that the qualification required for the post, is not merely Graduation but B.Com/BBA/BMC with specialised qualification in Finance. He also states that the certificate issued by the Army at the time of retirement of the petitioner shall not commensurate with the qualification required for the post in question.

9. He also states that even in the application submitted by the petitioner, the petitioner had depicted his qualification apart from Graduation as B. Com / Commerce, which according to him is a misrepresentation. This submission of the learned counsel for the respondent No.2 is contested by the petitioner by stating that since the application had to be submitted online, the computer / software was not accepting any other qualification other than B.Com / Commerce and as such he had no option but to state B.Com/Commerce.

10. According to the counsel for the respondent No.2, the judgment of the Supreme Court as relied upon by the petitioner in the case of *Chief Executive Officer, N.S.S.O. & Ors. (supra)* would not be applicable in the

facts of this case for the reason that the post in question in that case was that of Data Entry Operator with qualification of Mathematics or Statistics and the Supreme Court had only refused to exercise its discretionary jurisdiction under Article 136 of the Constitution of India.

11. He seeks the dismissal of the writ petition.

12. Having heard the petitioner and the learned counsel for the respondent No.2, suffice to state that on a perusal of the advertisement, it is clear that the post in question is Judicial Assistant (Finance) and the qualification required for the same was B.Com / BBA (Finance) / BMS (Finance) which is a specialised qualification, keeping in view the duties attached to the post. The certificate issued by the Indian Army certifies that the petitioner has the qualification of Graduation without any specialisation.

13. The plea of the petitioner that he has sufficient working knowledge of Finance and Accounts, and as such, shall be eligible for appointment to the post in question is not appealing, for the reason that even if he has some working knowledge of Accounts and Finance, that would not really commensurate with the qualification and knowledge required for the post in question, which one achieves after three years of study.

14. Insofar as the reliance place by the petitioner on the judgment of the Supreme Court is concerned, we are of the view that the same shall have no applicability in the facts of this case, as the post in that case is of Data Entry Operator which does not require any specialised qualification. The duties involved are primarily of entering data. Though in the said case, the advertisement prescribed the qualification of Graduation with Mathematics or Statistics, but what weighed with the Division Bench of the High Court is the fact that he had cleared the written test and viva-voce. Further, as noted

by the Supreme Court, the Division Bench of the High Court has observed that in the peculiar facts of that case, the respondent therein deserves to be accommodated to the post for which he had submitted the application and if for any reason, it is not possible to appoint him to the post of Data Entry Operator, the respondent may be accommodated on a suitable alternative post. That apart, it is noted that during the pendency of the appeal before the Supreme Court, an application was filed by the appellant N.S.S.O. before the High Court for extension of time to comply with the directions of the High Court, with an assurance that the authority concerned shall certainly comply with the earlier directions. It is in this background the Supreme Court has in paragraph 13 stated as under:-

“13. In the aforementioned circumstances, in our opinion, it is not a fit case where this Court should exercise its discretionary jurisdiction under Article 136 of the Constitution of India. Appellant nowhere took the stand that even upon grant of some training, the respondent would not be able to perform the job of a Data Entry Operator. It is also not their case that there was no vacancy in any other post. The appellant also does not say that it committed any mistake in verifying the application for recruitment filed by the respondent. He was not only permitted to appear at the written examination but was also permitted to appear in the interview.”

15. In the context of the facts of this case, we are of the view, the judgment relied upon is clearly distinguishable.

16. If the plea of the petitioner is accepted, then it shall mean that, for example, if the eligibility for a given post is B.Sc. (Chemistry), a candidate

similarly placed like the petitioner would be able to seek equivalence of the Graduation Certificate issued by the Army with a Decree in B.Sc (Chemistry). That cannot be the intent of providing a Graduation Certificate. In fact, the certificate itself state that in terms of DoPT letter dated February 12, 1986, an Ex-serviceman who has put in 15 years of service in the Armed Forces and having minimum qualification of Matriculation may be considered for appointment to the posts for which the essential qualification prescribed is Graduation.

17. We find that the Tribunal has dismissed the petition by stating the following:

“5. We have carefully gone through the record and find that the applicant applied for the post of Junior Assistant (Finance) in response to notification no. VC 50/19 under the ex serviceman category. The essential educational qualification prescribed for the said post was B.Com/BBA (Finance) / BMS (Finance), which he does not fulfil. When the essential qualifications of a particular post are clearly mentioned in the advertisement, the action of the respondents in not accepting the qualification of deemed graduation held by the applicant as an equivalent qualification, cannot be faulted with. Therefore, the applicant cannot be considered for appointment against the aforesaid post. The OA is found devoid of merit and is accordingly dismissed There shall be no order as to costs.”

18. For the reasons stated by the Tribunal and additionally for the reasons

stated by us in the aforesaid paragraphs, we are not inclined to interfere with the impugned order of the Tribunal. The writ petition is devoid of merit and the same is dismissed, but with no order as to costs.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

DECEMBER 14, 2022/aky