

(2023) 01 CAT CK 0028
In the Central Administrative Tribunal
Case No : Original Application No. 477 Of 2021

Dharam Kumar Yadav S/o Raj Nath Yadav	APPELLANT
Vs	
Union Of India & Ors	RESPONDENT

Date of Decision : 19-01-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2023) 01 CAT CK 0028

Hon'ble Judges : Om Prakash VII, Member (J); Dr. Sanjiv Kumar, Member (A)

Bench : Division Bench

Advocate : Siddharth Khare, M.K. Sharma

Final Decision : Allowed

Judgement

Om Prakash VII, Member (J)

1. This O.A. has been filed by the applicants U/s 19 of the AT Act, with the following reliefs:-

a) That by means of a suitable order or direction quash the order dated 22.6.2021 passed by the Chairman, Railways Recruitment Board, Allahabad (respondent No. 2) (Annexure No. 12 to the O.A.).

b) That by means of a suitable order or direction command the respondent authorities to grant appointment to the applicant on the post of Assistant Loco Pilot (Electric) in compliance with the offer letter dated 5.8.2020 within a period to be stipulated by this Hon'ble Tribunal.

2. The brief facts of the case are that in pursuance of the employment notice dated 3.2.2018 for the post of Assistant Loco Pilot & Technician, applicant applied for the same and appeared in each stages of selection and was selected for the post. Offer of appointment was issued on 5.8.2020. A notice dated 3.2.2021 was issued by the respondents that an enquiry is being undertaken in the complaint filed against the applicant of having possessed two degree and diploma in the

same academic session. On 31.3.2021, an order was issued by the respondents to the effect that enquiry into the allegation against the applicant has been completed and forwarded to the headquarter for final decision. A show cause notice dated 7.5.2021 was issued to the applicant alleging that he has passed B.A. 1st year in the month of July, 2010 to 30th June, 2011, 2nd year in 2011-2012 and 3rd year in July 2012 to 30th June, 2013 on regular basis from Lala Luxmi Narayan Degree College, Sirsa, Prayagraj. He has also undergone the aforesaid B.A. degree with diploma course from Hanswahini Institute of Science and Technology , Naini, Prayagraj i.e. 1st year in the year 2011-12, 2nd year in 2012-13 and 3rd year 2013-14 on regular basis which is against the University Grant Commissions (UGC) guidelines. Applicant filed his reply, denying the charges leveled against him. Respondents vide order dated 22.6.2021 cancelled the offer of appointment of the applicant for the post of Assistant Loco Pilot.

3. Learned counsel for the respondents have filed counter affidavit stating therein that applicant was selected for the post of Assistant Loco Pilot. At the time of document verification, it is found that applicant has passed BA from Lala Luxmi Narayan Degree College, Sirsa, Prayagraj on regular basis and diploma course from Hanswahini Institute of Science and Technology , Naini Prayagraj in the same years on regular basis, As per the UGC letter dated 15.1.2016, the students are not allowed to pursue two degree simultaneously in the same academic session. It is also stated that as per Distance Education Council Notification (IGNOU) dated 8.6.2012, two degree program cannot be allowed to be pursued simultaneously. Under the circumstances, a show cause notice was given to the applicant. Applicant submitted his reply. It is stated that applicant has used his diploma as essential qualification in RRB examination while in other RRB examination, he has used his qualification as B.A., which is not permissible under the law. Accordingly, respondents vide order dated 22.6.2021 cancelled the offer of appointment of the applicant for the post of Assistant Loco Pilot (Electric).

4. Heard the learned counsel for the parties.

5. Learned counsel for applicant argued that in the impugned order, a reference has been given to the UGC letter dated 15.1.2016 holding that the students are not allowed to pursue two degree/ diploma in regular mode simultaneously whereas the authority concerned on their own volition have proceeded to modify it while mentioning "two degree diploma" which is contrast to UGC notification dated 15.1.2016. It is further argued that applicant had undertaken the BA degree course and diploma course between the year 2010 to 2014 , the UGC guidelines dated 28.12.2012 was applicable on him and not notification dated 15.1.2016. Learned counsel for the applicant also relied upon the following case laws:-

i) Kuldeep Kumar Pathak Vs. State of U.P. and others 2016 (3) SCC 521

ii) Arvind Prakash Dwivedi Vs. State of U.P. and others (Writ A No. 5210 of

2020) dated 25.8.2020.

iii) Board of Basic Education and another Vs. Arvind Prakash Dwivedi and others (Special Appeal (Defective) NO. 898 of 2020 decided on 21.10.2020.

iv) The Basic Education Board U.P. Prayagraj and another Vs. Laxmi Shankar Yadav (Special Appeal No. 37 of 2002) decided on 19.11.2022 by Hon'ble Allahabad High Court.

v) Laxmi Shankar Yadav Vs. State of U.P. and others (Writ A No. 5394 of 2001) decided on 14.9.2021 by the Hon'ble Allahabad High Court.

6. Learned counsel for respondents argued that as per the UGC letter dated 15.1.2016, students are not allowed to pursue two degree/diploma in regular mode simultaneously. However, the applicant have completed BA degree and diploma in regular modes simultaneously, hence his offer of appointment was rightly rejected by the respondents.

7. Learned counsel for respondents have filed written submission, in which he has reiterated the facts as stated in the counter reply. However, it is further stated that as per UGC letter dated 15th January, 2016, the students are not allowed to pursue two degree simultaneously in the same academic session but in the present case, the applicant has completed both degree and diploma in regular mode simultaneously which is not allowed under the rules. It is further stated that applicant has used his diploma as essential qualification in RRB examination of CEN 1/2018 while in other RRB examination of CEN 1/2019, he has used his other qualification as B.A. The conduct of the applicant shows that he is taking advantage of both the qualification i.e. diploma and B.A. for different posts, which is not permissible under the law.

8. We have considered the rival submissions and have gone through the entire record.

9. In the present case, it is admitted fact that applicant had undertaken B.A. degree course and diploma course simultaneously between the year 2010 to 2014. On this ground vide impugned order dated 22.6.2021, respondents have cancelled the offer of appointment of the applicant for the post of Assistant Loco Pilot (Electric) issued vide letter dated 5.8.2020 to the applicant. The matter which is to be decided is whether two degrees are permissible or not and offer of appointment on this ground can be cancelled or not.

10. In the case of Laxmi Shankar Yadav Vs. State of U.P. and 4 others (supra), Hon'ble Allahabad High Court observed as under:-

"Thus, after discussing the entire material, I have no hesitation in holding that there is no bar created for a student in pursuing two degree simultaneously so as to dis-entitle him from appearing in the examination in question. Further more the circular dated 18.01.2021 cannot in any way alter the requirement of eligibility criteria retrospectively. Thus, the order based upon the circular dated

18.01.2021 is clearly not sustainable and is set aside.

Consequently, the respondents are directed to permit the petitioner to discharge his duties on the post, on which the petitioner was appointed, and the petitioner shall also be entitled to payment of his salary on month to month basis. The petitioner shall, however, not be entitled for salary from 02.03.2021 up to the date of this order on the basis of no work no pay.

Accordingly, the writ petition is allowed in part."

10. In the case of The Basic Education Board U.P. Prayagraj Vs. Laxmi Shankar Yadav(supra), Hon'ble Allahabad High Court observed as under:-

"10. Having perused the record and considered the rival submissions, we may observe that no doubt it may appear improbable as to how a person could obtain two degrees simultaneously but that cannot be taken as a ground to annul both the degrees. There has to be an exercise to annul either one or both the degrees on the basis of material collected, after giving opportunity of hearing to the holder of such a degree. Such an exercise has to be on case to case basis. Here, what is important is that neither the B.A. degree obtained from Awadh University, Faizabad, nor the Shastri degree obtained from Sampurnanand Sanskrit Vishwavidyalaya, has been cancelled. Importantly, the petitioner had sought appointment by relying on the Shastri degree and on the basis of the marks obtained therein the petitioner was placed in the select list and was ultimately selected and appointed. At this stage, it be noticed that the learned single Judge has returned a specific finding that the opposite party counsel could not place any regulation/ statutory enactment or even an order having statutory flavour to demonstrate that obtaining of two degrees simultaneously is prohibited. The learned standing counsel despite our request could not demonstrate that the said finding is incorrect. The U.G.C. clarificatory letter dated 15th January, 2016 on which the appellant has placed reliance only deprecates obtaining of two degrees simultaneously, but it does not mandate the University to annul the degree so obtained. In so far the clarificatory letter dated 4th December, 2020 is concerned that also does not mandate the authorities to cancel the candidature of a candidate who has set up such degrees but requires a case to case examination. In the instant case, the petitioner has set up Shastri degree obtained from Sampurnanand Sanskrit Vishwavidyalaya, Varanasi for the purposes of selection in the recruitment process undertaken by the appellants. This degree has admittedly not been cancelled. In our view, therefore, unless the professed qualification is annulled or is found in the teeth of statutory regulation or order, rendering the same ineffective or null, it would not be permissible to overlook or discard the same.

11. For the reasons above, we do not find a good ground to interfere with the impugned judgement and order of the learned Single Judge. The appeal is dismissed."

12. While deciding Laxmi Shankar Yadav (supra) case, Hon'ble High Court of

Allahabad in special appeal has considered the judgment passed by the Hon'ble Supreme Court in the case of Kuldeep Kumar Pathak Vs. State of U.P. and others (supra), which is relied upon by the learned counsel for applicant, in which the Supreme Court was confronted with the issue of any bar in any statute prohibiting the appearance of a person in the classroom examination of two different boards of the same year and holding that once there was no prohibition contained in obtaining a person two degree simultaneously, any action based upon the said is bad in law.

13. Considering the facts and circumstances of the case and in the light of the judgment passed by the Hon'ble Supreme Court as well as by the Hon'ble High Court , we are of the opinion that cancelling the offer of appointment of the applicant on the post of Assistant Loco Pilot (Electric) is not tenable in the eyes of law and O.A. is liable to be allowed.

14. Accordingly, O.A. is allowed. Impugned order dated

22. 6.2021 is quashed. Respondents are directed to permit the applicant to discharge his duties on the post on which the applicant was appointed and applicant shall also be entitled for payment of his salary on month to month basis. However, the applicant shall not be entitled for salary from 22.6.2021 upto the date of this order on the basis of no work no pay.

15. There shall be no order as to costs.