
(2022) 05 CAT CK 0015

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00029 Of 2019

Santhilal G.K & Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 11-05-2022

Acts Referred:

Citation : (2022) 05 CAT CK 0015

Hon'ble Judges : P. Madhavan, Member, J;K.V. Eapen, Member A

Bench : Division Bench

Advocate : Raji. T. Bhaskar, R. Seema, N. Anilkumar, Thanuja Roshan George

Final Decision : Disposed Of

Judgement

K.V.Eapen, Member A

1. This Original Application has been filed by the applicants seeking the following reliefs:

" I) To issue appropriate order or direction declaring that the applicants are eligible and are entitled to be included in Annexure A7 selection result for post of Post No.1 Assistant Unreserved/Ex-servicemen quota in Thiruvananthapuram.

II) To issue appropriate order or direction, directing the 3rd respondent to include the name of the applicants in Annexure A7 selection results for Post No.1 Assistant Unreserved/Ex-servicemen quota in Thiruvananthapuram giving them appropriate rank considering the marks obtained by them in the written test and to give them appointment in the above said post.

III) To pass such other order or direction as this Honourable Tribunal may consider as fit and proper to issue in the facts and circumstances of the case.

IV) To award costs of and incidental to this Original Application. "

2. The applicants are all Ex-servicemen. They had applied for the post of 'Assistant' in the Indian Space Research Organisation (ISRO for short) Centres/

Units at Thiruvananthapuram in response to the advertisement dated 11.07.2017, produced as Annexure A-1. The advertisement had been released by the ISRO Centralized Recruitment Board (ICRB for short). It indicated 89 vacancies for the post of Assistant available in Thiruvananthapuram (52 vacancies reserved for Unreserved (UR) candidates, 25 vacancies reserved for OBC candidates and 12 vacancies reserved for SC candidates). It also indicated 11 vacancies for Persons With Disabilities (PW) and 9 vacancies for Ex-servicemen. The advertisement reveals that the eligibility for the post was:

"Graduation in Arts/Commerce/Management/ Science/Computer Applications with First Class, as declared by the University. The prescribed qualification to be acquired on or before 31.07.2017, with knowledge in the use of Computers. "

All the applicants submit that they were having the prescribed qualifications and were fully qualified and eligible to apply for the posts of 'Assistants' against the 9 vacancies reserved under the Ex-servicemen category. The four applicants are in possession of Bachelor of Science (B.Sc for short) degrees (meeting the criteria for Graduation in service) and their degree certificates have been issued by the Cochin University of Science and Technology, Kochi (CUSAT for short). The first applicant has a B.Sc degree in Aeronautics (Mechanical) with first class, the second applicant has a B.Sc degree in Electronic Technology with first class, the third applicant has a B.Sc degree in Radio Technology with first-class with distinction and the fourth applicant has a B.Sc degree in Electronic Technology with Grade B (above average) . All applicants submit that they are possessing marks above first class and have the knowledge of the use of computers. Copies of their degree certificates have been produced at Annexures A2, A3, A4 and A5 respectively.

3. The ICRB held a written test for the post of 'Assistant' on 15.10.2017 followed by a skill test, which was held on 4.8.2018. The applicants were invited and had appeared for the written test as well as for the skill test. However in the final selection list containing the Selection Result produced as Annexure A-7, in the panel for the post of 'Assistant' UR/Ex-servicemen, only five names have been shown, even though it had been indicated that there were 9 vacancies reserved for Ex-servicemen. In any case, none of the applicants have been included in the said panel. The applicants submitted that they later obtained the mark list of all the candidates for the written test and skill test which has been produced in the O.A as Annexure A-8. It is submitted that as per the marks scored, all the four applicants have been indicated as qualified in the list at Annexure A-8. This implies that they possessed marks over and above the cut-off mark prescribed for the post of Assistant in UR/Ex-servicemen quota. Thus, having had the prescribed qualifications, they should have been taken as eligible for the posts of 'Assistant', as advertised vide Annexure A-1 by the ICRB. They submit that there is no valid reason for their non-inclusion in the panel at Annexure A-7. It is submitted that the first applicant had secured more marks than at least three persons among the shortlisted candidates in the UR/Ex-servicemen panel at

Annexure A-7. Similarly, the third applicant also secured more marks than the last candidate in the Assistant UR/Ex-servicemen panel at serial no.5. The 2nd and 4th applicants have also also qualified as per Annexure A-8 mark list. Hence, they claimed that they are qualified and eligible for appointment against the Post No.1 Assistant against the UR/Ex-servicemen quota for ISRO Centres/Units at Thiruvananthapuram.

4. The applicants further submit that as per their understanding only B.Tech graduates with first class are not eligible to apply for the post of Assistant. All Graduates in Arts/Commerce/Management/ Science/Computer Applications with First Class are eligible to apply. It is submitted that the respondents have wrongly made the assumption that the degree of Bachelor of Science (B.Sc) in Aeronautics (Mechanical)/Electronic Technology/Radio Technology are B.Tech degree courses. It is submitted that this assumption of the respondents is incorrect. The certificate issued by the Cochin University of Science and Technology (CUSAT) has specifically stated that "B.Sc Degree offered by various Naval Schools, approved by Cochin University of Science and Technology, are recognized B.Sc. Degree in the respective branches mentioned in the Degree Certificates and they cannot be equated to respective B.Tech Degree." The certificates issued by CUSAT clarifying the position have been produced by all the four applicants at Annexures A-9, A-10, A-11, and A-12. Thus, the action of the respondents in not including their names in Annexure A-7 selection panel and denying their right to get appointment as Assistant as per Annexure A-1 advertisement is unjust and arbitrary.

5. The official respondents (Respondents nos.1 to 3) entered their appearance through Adv. Mr.N.Anilkumar, Sr.PCGC and have filed their reply statement. The reply statement filed by the respondents nos.1 to 3 at the outset submits that the Department of Space(DOS) / Indian Space Research Organisation (ISRO) is empowered to formulate its own personnel policy, including norms for recruitment and promotion of its personnel, by virtue of a Presidential Notification dated 18.7.1972. It is submitted that the orders issued by various Ministries/Departments of the Government of India, including the Department of Personnel and Training, with respect to the personnel policy of the employees under their control are not applicable to the DOS/ISRO. It is further submitted that the recruitment of Assistants is being done on a zonal basis by the ISRO Centralized Recruitment Board (ICRB) based in Bangalore. The selection process for the post of Assistant/UDC had consisted of a written test and a skill test. The written test contained two parts viz; part-I objective type questions and part-II descriptive type questions. Only those who secured a minimum of 50% marks each, in both objective and descriptive type questions in the written test, had been considered for shortlisting for the skill test (computer literacy test). The skill test was conducted on a purely 'go-no-go' basis (pass or fail) with the marks obtained therein not being considered for selection, though the candidates needed to secure a minimum of 60% marks in the Test. The final selection was done from the candidates who had passed the skill test with a minimum of 60%

marks. The panel was then formed in the order of marks obtained in the written test, subject to vacancies notified. It is submitted that as many as 698 candidates were shortlisted after the written test in the order of merit for the vacancies meant for the Thiruvananthapuram zone. It is submitted that the qualifications of the shortlisted candidates were verified with the original certificates a few days prior to the scheduled date of the skill test. The skill test was then held on 4.8.2018. It is submitted that all the candidates who possessed the notified qualifications were allowed to appear for the skill test and that the applicants in this O.A were also allowed to appear as they had qualified in the written test held on 15.10.2017.

6. Explaining the reasons as to why the candidates did not form part of the selection panel the respondents have submitted that, prior to October 2010, the qualifications required for the post of 'Assistant' was 'Graduation in any discipline, including Technology/Engineering, etc. with a first class. It is submitted that the qualification for the post of Scientist/Engineer-SC in the ISRO is 65 % marks in graduation in the relevant Technology/Engineering disciplines. Thus, prior to 2010, a candidate who possessed the required percentage of marks in Technology/Engineering was eligible to apply for the posts of Assistant as well as Scientist/Engineer-SC. It is submitted that the post of Assistant is a clerical post (Group C Non-Gazetted) in the Pay Level-4 of the 7th Pay Commission Pay Matrix, whereas the post of Scientist/Engineer-SC is a Group A post in the Pay Level 10 of Pay Matrix. This gave rise to situations where the candidates who possessed the same qualifications were appointed as Assistants or as Scientist/Engineer-SC. It is submitted that over a period of time after joining those who had joined as Assistant compared their low pay with those who had joined as Scientist/Engineer-SC, even though they had the same qualifications. Such employees who joined as Assistants were dissatisfied being not able to work in Scientific/Technical field in which they had graduated. It is submitted that they started applying for the posts carrying higher pay scales in Scientific/Technical areas in other Central Government Departments and also within ISRO/VSSC. After selection a number of Assistants resigned from ISRO/VSSC creating a huge number of vacant posts. These resignations ultimately resulted in the recruitment process being in vain by wasting considerable time and effort and causing heavy expenditure to the public exchequer. In this background, a Committee was constituted in 2010 for reviewing the qualifications prescribed for the post of 'Assistant'. The Committee conducted a detailed analysis of the recruitments and concluded that the functional need for the post of 'Assistant' i.e, for administrative support staff, does not require the knowledge and skill possessed by Engineering Graduates. The Committee recommended to change the generic definition from 'Graduation in any discipline' to 'Graduation in Arts/Commrce/Management/Science/Computer Application with first class as declared by the university with the knowledge in the use of Computers. These recommendations were approved by the Competent Authority and the recruitment norms for the post of Assistant were also accordingly

revised. Subsequent notifications inviting applications for the post of Assistant were thus issued under these revised norms.

7. It is submitted that regarding the issue raised in this Original Application, while the recruitment process was underway it was noted that some of the applicants who had submitted online applications for the post of Assistant were holding degrees which appeared to be professional in scope and nature. Hence, various Centres/Units of ISRO had sought clarifications from the ICRB regarding the eligibility of such courses. The ICRB issued a clarificatory communication dated 20.09.2018, produced as Annexure R1(C) with the reply statement. This statement clarified that the 2010 Committee, by changing the generic definition to specific courses to suit the functional requirements of the post, implied that the skill and knowledge acquired through Engineering Degree and other professional degrees are not required for the post of Assistant. It was also clarified in the same statement that B.Sc in Electronics Technology/Marine Technology degree are technical courses and hence not eligible to be considered for the post of Assistant. Similarly, some other Science courses like B.Sc (Honours) in Food Science and Nutrition/ Horticulture/Agriculture/ B.Sc. Nursing/ Bachelor of Pharmacy/ Bachelor of Hotel Management etc. were found to be professional Courses and not eligible to be considered.

8. It is submitted that the applicants are possessing the degree of Bachelor of Science issued by the Cochin University of Science and Technology for the B.Sc. Degree offered by various Naval Schools in the areas of Aeronautics (Mechanical)/ Electronics Technology/Radio Technology. After a scrutiny of the subjects studied, it has been found that the course contents are purely technical in nature and do not fulfil the criteria of basic science subjects of B.Sc. graduation. The advertised qualification is Graduation in Arts/Commerce/ Management/Science/Computer Applications with first Class as declared by the University. This is to suit the functional requirements of the post of Assistant. It is submitted that the skill and knowledge acquired through the technical courses are not required to carry out the functions of the post of Assistant. It is submitted that the applicants are in possession of qualifications in technical courses even though it is categorized as B.Sc. by the CUSAT. This has been found as not suiting the requirements of the post of Assistant and, thus, based on the clarifications issued by the ISRO Centralized Recruitment Board, the applicants were not considered by the Selection Committee while finalizing the selection panel for the post of Assistant. It is also submitted that there were a total of 13 such candidates including the applicants whose candidatures were thus rejected based on the Annexure R1(C) clarification. Only such of those Ex-servicemen candidates, who possessed the essential qualifications as advertised, were considered for inclusion in the Selection Panel, published on 30.10.2018/01.11.2018. Among Ex-servicemen candidates, five candidates from the un-reserved (UR) category and one candidate from OBC category were found to be eligible and were empanelled under Ex-servicemen quota. The remaining three vacancies were kept vacant to be filled from subsequent recruitment.

9. It is submitted that the applicants were not thus considered because their degrees were found to be in technical courses. Further, these degrees have been issued by the Faculty of Technology under CUSAT, whereas in other streams of degrees viz., Arts/Commerce/Science/Management etc., the Universities are issuing the certificates from the Faculty of Arts/Commerce/ Science/Management etc. Thus the certificates produced by the applicants show technical qualifications only. The functional requirement of the post of Assistant is for carrying out clerical work/activities. The certificates produced at Annexures A-9 to A-12 by the applicants only indicate that B.Sc Degree offered by various Naval Schools, approved by Cochin University of Science and Technology, are recognised B.Sc. Degree in the respective branches mentioned in the Degree Certificates and that the same cannot be equated with respective B.Tech Degree. However, it is submitted that the said University (CUSAT) has not declared such course is equivalent to B.Sc. in Science stream. The applicants have been awarded B.Sc.degrees in Electronic Technology/ Radio Technology/ Aeronautics (Mechanical). It is submitted that the respondents are not refuting the claim of the applicants that the graduation degree possessed by them is a B.Sc Degree and is not B.Tech Degree. However, the B.Sc Degree possessed by the applicants is based on Technical Courses, even though, its nomenclature is Bachelor's degree in Science. The essential educational qualification for the post of Assistant is Graduation in Arts/commerce/Management/Science/Computer Application etc with First Class as declared by the University with knowledge in the use of computers. The qualifications possessed by the applicants thus do not fit into the functional requirements of the post of Assistant. It is submitted that the certificates produced at Annexure, A 19, A 10, A 11 and A 12 do not prove that the degree is the same as a graduation in Science as per the qualifications. No other Universities are found to be offering B.Sc. Degree courses in the branches mentioned in the degree certificate issued by CUSAT i.e, in Aeronautics (Mechanical), Electronics Technology, Radio Technology etc. All the topics covered in the course syllabus reveal that the applicants had studied technical subjects only. It is submitted that it is understood that the CUSAT and Navy had executed an MOU in 2002, whereby, the training provided by Naval Schools was recognised for the award of M.Tech and B.Sc. Degrees by CUSAT. These are tailor made courses to suit the functional requirements of Navy and cannot be compared with the normal B.Sc. Degree courses offered by various Colleges/Universities. Further, it is also submitted that candidates possessing graduation in technical course are not inducted as Assistant from October 2010 onwards.

10. When the Original Application first come up before this Tribunal on 11.1.2019, an interim order was issued to the effect that the final selection would be subject to the final decision in the Original Application. However, as the results had been published, some of the selected candidates had been given offers during the months of December 2018/January 2019 to join as Trainees i.e, even before receipt of the interim order. These offers were given subject to pending character and antecedents verification for issuing offer of appointment

on permanent basis. It was thus a fact that many of the empaneled candidates had already joined as trainees and were only awaiting completion of the verification to join as permanent employees. Thus, since the entire selection process had been completed some of the selected candidates later impleaded themselves in the Original Application as respondent nos.4 to 64 on 16.11.2020. This Tribunal on a prayer made by them modified the interim order to the extent that the Order would be in effect only with regard to the cases of Ex-servicemen concerned and not to all other candidates. This order was issued to all the parties on 8.4.2021. Thus as the matter stands now, there is no issue relating to further confirmation in service etc of the recruited candidates to the post of 'Assistant' under categories like UR/SC/ST/OBC or the quota relating to Persons With Disabilities. The issue in the Original Application pertains only to the selections under the Ex-servicemen Panel category.

11. The applicants in the Original Application then filed a rejoinder contesting the reply statement of the respondents. They submitted that the degree certificate produced by them at Annexures A2 to A-5 are clearly degree certificates of B.Sc, awarded by the Cochin University of Science and Technology, Kochi, one of the prestigious Universities in India. It was submitted that the contention of the respondents that the B.Sc Degree in Science possessed by the applicants are only offered by various Naval Schools and that the Certificates were issued on that basis by the CUSAT is subject to misinterpretation and is misleading. The applicants clearly possess a graduation degree in Science (B.Sc) from a recognised University and this is the only qualification prescribed in Annexure A-1 advertisement. The Bachelors in Science degree courses conducted by the Naval Schools approved by the University are recognized B.Sc degrees. The applicants have undergone a course of study prescribed by the University and have been certified by duly appointed examiners to be qualified to receive the degree. Thus, a mere statement that the B.Sc Degree offered by various Naval Schools and certificates issued by the Cochin University of Science and Technology are not a B.Sc degree in Science by the respondents cannot be taken at face value and is not correct. Many graduation courses offered by various colleges affiliated to various other Universities and certificates awarded by those Universities are in similar subjects and courses. Hence, the stand taken by the respondents with respect to the qualifications of the applicants is not at all sustainable. The respondents should only have considered that their B.Sc Degree in Science was validly issued by a University. It is also submitted that Annexure R1(c) clarification dated 20.09.2018, revising the norms for recruitment to the post of Assistants, is not applicable in the case of the applicants as they had applied pursuant to Annexure A1 advertisement dated 11.7.2017. The written test and skill test were completed by 4.8.2018. The contention of the respondents that notification inviting applications for the post of Assistant were issued under revised norms is not at all relevant. The so called clarification revising the qualifications for recruitment for the post of Assistants is dated 20.09.2018 and can thus be taken as effective only from that date. It has been

issued one year after the issue of Annexure A-1 advertisement dated 11.7.2017 and after all the formalities and process of selection was completed. Such changes cannot be made applicable as per the principle laid down by the Hon'ble Supreme Court in a judgment reported in 2019 (3) KLT 802 SC in the case of Bank of India v. Aarya K.Babu. Paragraph 14 of the judgment, inter alia, reads as follows:

"..... If there is any change in qualification criteria after the notification is issued but before the completion of the Selection process and the employer/recruiting Agency seeks to adopt the change it will be incumbent on the employer to issue corrigendum incorporating the change to the notification and invite application for those qualified as per the changed criteria and consider the same along with the application received in response to the initial notification. "

Further it is held in the same paragraph that:

"the change made subsequent to the notification depicting the qualification would be effective only from the date of the corrigendum. "

12. The applicants have submitted that, it is clear that the changes in qualification etc have been issued much after the selection process had been initiated and almost at the point of completion of the same. The applicants reiterate that their B.Sc degrees are recognised degrees in respective branches mentioned in the degree certificate and cannot be equated to B.Tech degrees. Any contention that they possess qualifications in technical courses is incorrect and is denied. Even if the degree was issued by the Faculty of Technology of the CUSAT it is not a valid ground to treat the qualifications as only technical qualifications and deny appointment to the applicants at this distance of time after they underwent the process of recruitment/selection. What is relevant in the matter of appointment to the post of Assistant was the qualification which was notified for the post in Annexure A-1. The applicants possessed the same and nothing else should be considered. Their University (CUSAT) has also certified that the B.Sc degree offered by the various Naval Schools approved by the University is a recognized B.Sc degree in the respective branches mentioned in the degree certificate and cannot be equated with respective B.Tech degrees. This shows that the B.Sc degrees is not a technical degree and it is only equivalent to other B.Sc degree courses offered by various Colleges/Universities. Further, even in case some of the other candidates who were not considered for selection have not come before this Tribunal, it is not a valid ground to deny the appointment entitled to these applicants. It is submitted that any person who is not interested to apply for the post or to contest the selection is not entitled for the job. The applicants had come to know about the selection results for the posts of Assistants only after 1.11.2018, which was the date of publication of the selection results for the post of Assistants as per Annexure A-7. The applicants approached this Tribunal immediately thereafter. It is submitted that 4 vacancies have been even now kept vacant and persons who have obtained less marks than the applicants in the written test have been given appointment as

Assistants in the vacancies earmarked for Ex-Servicemen, denying their legitimate claim.

13. Countering these contentions, the official respondents filed an additional reply/written statement reiterating their stand as indicated earlier. It is submitted that the 3rd respondent viz. the Director of Vikram Sarabhai Space Centre, ISRO, is bound to comply with the decisions/directions of the ICRB/ISRO Headquarters in all matters of recruitment. The Annexure R1(c) communication had not amended or revised any of the norms at a later stage as contended by the applicants. It was only a clarification issued to the implementing Centres to exclude non-relevant courses from the purview of the selection process. Hence, there was no question of issuing any corrigendum to Annexure A-1 notification. The judgment of the Hon'ble Supreme Court brought out by the applicants in the rejoinder has no application in the present case. There is no change in qualifications due to issuance of Annexure R1(c) clarification dated 20.9.2018. The qualifications remain as graduation in Arts/Commerce/Science/Computer Application/Management with first class. The applicants are possessing B.Sc degrees in purely technical subjects. The clarification has not made anybody else become eligible other than those who had applied against the notification at Annexure A-1. Hence there is no need for any corrigendum or amended notification to be issued as contended by the applicant. It is also submitted that no other universities have been found to be offering B.Sc degree courses in the branches mentioned in the degree certificates issued by CUSAT like Aeronautics (Mechanical), Electronic Technology, Radio Technology etc. Even a cursory look at the topics covered in the course syllabus would reveal that the applicants have studied technical subjects only. This does not suit the functional requirement of the post of Assistant in DOS/ISRO as per recruitment norms. Further, there were five other candidates who had degrees in the same/similar subjects from CUSAT who had scored more marks in the written test than the applicants in the O.A. They had also qualified in the skill test. In addition, three more candidates from other Universities had scored more marks than all the applicants. None of them have approached this Tribunal even though they had not been considered. Thus, if the candidature of the applicants are to be considered, similarly situated candidates will also have to be considered as they possess the same qualifications and have secured more marks in the written test and skill test. Not considering them would be discriminatory and a violation of the recruitment norms. Such action will be against the dictum laid down by the Hon'ble Supreme Court's decision in *District Collector, Vizianagaram vs. M.Tripura Sundari Devi* reported in 1990 (4) SLR 237, as follows:

"..... It is not a matter only between the Appointing Authority and the Appointee concerned. The aggrieved are all those who had similar or better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualification mentioned in the advertisement. It amounts to a fraud on public to appoint a person with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable.

No Court should be a party to the perpetuation of fraudulent practice. ”

Hence, it is submitted that if the prayer is considered, other similarly situated persons will also become eligible to be considered. This will adversely affect the future/career of the empaneled eligible candidates. It will upset the entire process of selection as the select panels were published on 1.11.2018.

14. The additional respondents nos.4 to 64 have also filed a reply statement. Their main grievance remaining at this stage is that the modified interim order still affects those in the Ex-servicemen panel. The additional respondents at serial no.4 to 7, being persons included in UR/Ex-servicemen panel, will get adversely affected in case the Tribunal arrives at a finding that the relief sought is correct and directs the respondents to re-draw the UR/Ex-servicemen panel for the post of Assistant to accommodate the applicants. It has been broadly indicated, during oral arguments that the other respondents from 8 to 64 have since been confirmed and thus may not be affected by any further direction. However, it is contended that notification dated 1.11.2018 regarding the Ex-servicemen panel, produced at Annexure A-7/Annexure R1(b), may have to be withdrawn in case the Original Application is found in favour of the applicants. A fresh panel would then have to be issued. In that event, it is submitted that this will affect the entire service period of all the additional respondents after their joining the post of 'Assistant' by virtue of Annexure A-7 select list. Thus, it is prayed that the duration of service of the additional respondents and their seniority and consequential benefits accruing therefrom should be protected.

15. We have heard the learned counsel for the applicant Adv.Mrs.Seema R, learned counsel for additional respondents nos.4 to 64, Adv.Mrs.Thanuja Roshan George and Adv.Mr.N.Anilkumar,Sr.PCGC, learned counsel for official respondents 1 to 3. All sides have submitted Written Statements. Counsels for the respondents have also relied upon various directions of the Hon'ble Supreme Court in a number of matters to show that it is the prerogative of the respondents/recruitment agencies to formulate policy according to the requirements of their service. Counsels have brought to notice judgments such as Commissioner, Corpn. Of Madras v. Madras Corpn, Teachers' Mandiram (1997) 1 SCC 253, Banarsidas v. State of U.P, AIR 1956 SC 520, Mangej Singh v. Union of India (1998) 9 SCC 471 and V.K Sood v. Secretary, Civil Aviation, 1993 Supp (3) SCC 9 etc. These clearly establish that it is open to the appointing authority to prescribe requisite qualifications. The decision of the 3rd respondent to disqualify the applicants in the O.A along with others with similar qualifications was based on the policy decision of the respondent organisation which was formulated back in 2010 in the light of a certain, peculiar situation faced by the establishment as an employer. The action taken thus falls clearly within the scope of these judgments. Learned counsel for the respondents, in addition, has brought to notice other judgments of the Hon'ble Supreme Court in Chandigarh Administration through the Director Public Instructions (Colleges), Chandigarh v. Usha Khetarpal Wahi and Ors in Civil Appeal No. 7570 of 2011 dated 2.9.2011,

Joshi P.U and Ors v. Accountant General, Ahmedabad reported in 2003 (2) SCC 632; O.P Lather and Ors v. Satish Kumar Kakkar and Ors reported in 2001 (3) SCC 110. They seek to establish that the authorities are fully within their power to prescribe the qualifications and to interpret them according to the requirements of the post. They have particularly relied on the judgment of the Hon'ble Apex Court in Union of India vs. Pushparani and others reported in 2008 (9) SCC 242. Paragraph 37 of this indicates as follows :-

"37. Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The Court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open the Court to make comparative evaluation of the merit of the candidates. The Court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration. "

Thus, it is contended that the power of this Tribunal is limited in such situations.

Courts cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of recruitment. Further, Courts cannot sit in appeal over employment and order that a particular post be filled up by Direct Recruitment/Promotion/Transfer etc.

16. We have closely heard the contentions of both sides. During the course of hearing, we had requested the official respondents to file a clarificatory statement on the following two points:

1. Whether any technically or professionally qualified persons were appointed as Assistants during the 7 years, i.e, from October 2010 till the selection initially in 2017 at Annexure A1?
2. Whether these applicants, if not eligible for the selection to the post of Assistants, are eligible for the post of Scientist/Engineer as per their qualifications?

In response, the official respondents filed a statement in which they submitted that, earlier, applications had been invited by ICRB vide an Advertisement dated 18.7.2009. The qualification prescribed at that time was Graduation in any discipline including Technology, Engineering etc with first class. Some of the

candidates whose character and antecedents verification got delayed joined after October 2010 and, thus, these include candidates who possess technical/professional qualifications. Though they were appointed after October 2010, the notification and selection was done before that date, i.e, before the change of norms. However, all notifications which have been issued after October 2010 and all selections/appointments after October 2010, have excluded anyone with B.Tech/BE qualification. However, regarding the question as to whether the applicants, if not thus eligible for the selection to the post of 'Assistant' would be eligible for the post of Scientist/Engineer as per their qualifications, it is submitted that the qualification required for applying to the post of Scientist/Engineer – SC is a BE/B.Tech in First Class, in the concerned discipline with an aggregate minimum of 65% marks of CGPA 6.84/10 (average of all semesters for which results are available). Thus it is clarified that since the applicants in the Original Application are not holding the qualification of BE/B.Tech, they are not eligible to apply for the post of Scientist/Engineer-SC in ISRO.

17. In our perspective, the replies to the above two queries are revealing and have a bearing on our decision making in the case. From the clarification it appears to us that the applicants in this Original Application are found by the respondents to be neither eligible to be appointed to the post of Assistant or to the post of Scientist/Engineer-SC. Thus, it appears to us that they are being discriminated by not being offered the cake, let alone being allowed to eat it! The rejection of their candidature in spite of the fact that they only possessed a B.Sc degree thus can only be viewed in this light. We can only conclude that the said rejection was illegal as they are to be taken as graduates in Science and had fulfilled the eligibility conditions. It is only the Universities who have power to issue degree certificates and clarify about equivalence. It is not for the recruiting agencies to further interpret these certificates over and above Universities. The University has already declared in Annexure A-9 to A-12 certificates that the degree offered is a B.Sc degree in the respective branch and it cannot be equated to a B.Tech/B.E degree. In these circumstances it does not appear to us that the so called clarification /interpretation issued vide the Annexure R1(c) circular by the ISRO Centralized Recruiting Board is acceptable. A degree of Bachelors in Science at the end of the day has to be thus taken as that only, i.e, as a Graduation degree in the field of science as prescribed in the qualifications for the post. It cannot be taken as anything less or anything more than what it is, which is a graduation degree in science . The clarification/interpretation produced at Annexure R1(c) seems to us to be an attempt at a justification issued right at the fag end of the selection process in order to eliminate the candidatures of certain candidates. If at all this was to be done, it should have been issued much earlier or just after the advertisement was issued for the knowledge of all candidates.

18. Further, we note that the clarification issued basically rejects the courses done by the applicants on the ground that they are 'technical' courses. It is perplexing as to how technical courses, per se, are not found suitable for the

post of Assistant, even clearly seen such so called technical courses do not amount to a B.Tech/B.E course. In fact, we would have expected a respondent like the ISRO, which is a scientific/technical organization to welcome even as administration assistants, those who have some level of so called technical qualifications rather than, say, those with a pure arts qualification, as their understanding of scientific matters which may have a bearing in administrative duties will be all the more better. In these trying times where young people are looking for stable government jobs, they should not be rejected on untenable or flimsy grounds that a course done by them, through a graduation in Science, is a 'technical' course. As indicated in Pushparani and Others (supra), the power of judicial review can be exercised in such matters if it is patently arbitrary or is initiated due to malafides. In this connection, we also find that the clarification is at Annexure R-1(c) is also not self explanatory. For example, why is a B.Sc degree in Journalism and Mass Communication found to be 'eligible' whereas B.Sc degree in Hotel Management is 'not eligible'? Both are professional courses. It is a fact that in India, B.Sc courses are being offered in a wide gamut of subjects. Hence, without a clear understanding of what a 'graduation in science' implies, it would be required in interest of natural justice for a recruiting agency to accept all B.Sc degree courses as Graduation in Science especially when so clarified by a recognised University, unless it is otherwise indicated in the advertisement or through subsequent clarifications immediately thereafter, that certain subjects/courses will not be considered.

19. We note that no such clarification was issued and, on the other hand, the so called clarification was only internally circulated just before the final result was published. It was not known or disseminated to any of the candidates, who were having the impression till then that their qualifications were accepted. They were allowed to appear right up to the skill test, which means that they had passed scrutiny almost up to the last stage. Thus, rejecting them on the basis of an extremely questionable interpretation about the equivalence of their degree at the fag end is not correct and can be clearly viewed as arbitrary and not in the interest of natural justice. Whether these courses were technical courses or professional courses or whether these were conducted in Naval Schools for the purpose of Navy only are no longer germane, once the candidates were given B.Sc degrees in the particular course by a recognised University, authorised to do the same. We have already noted that though the respondents term these as 'technical' degrees, they are not considered good enough for considerations for the post of Scientist/Engineer-SC the flagship post for recruitment to ISRO. Does this not mean that the applicants are thus ineligible for any other job than the ISRO as they are not qualified for the same? We, find the fear of leaving the post brought out in the reply statement is over blown and unfortunate. Even the one recruited for Scientist/Engineer-SC may leave for other prospects. As we mentioned earlier many candidates with higher qualifications are appointed in jobs much lower than their qualifications due to various considerations including availability, number of jobs, the safety/security of government service etc.

20. In view of these considerations, we find that the action taken by the respondents to reject the qualifications possessed by the four applicants is arbitrary and not in the interest of natural justice. The applicants had every right to be considered for the post they had applied for as they had the required qualifications. The rejection of their qualifications was not justified under the circumstances. Moreover, the rejection after the entire process was almost completed and at the very last stage due to a sudden and very questionable 'clarification' issued without informing them is also unacceptable. In view of this, we are allowing the prayer in Original Application. The respondents are directed to revise Annexure A-7 select list for the Ex-serviceman candidates by considering the case of the applicants. We note that there are still appear to be at least three more vacancies in the category of Ex-servicemen even after the select panel at Annexure A-7/Annexure R1(c) has been published. It is also not the case that the entire Selection List has to be affected. In fact as far as we have been informed the confirmation in respect of the other candidates other than the Ex-Servicemen who had been selected has been completed after their training/probation and only the confirmation of those in the of Ex-servicemen panel is pending. The respondents may therefore take necessary action to offer appointment to the applicants if they so qualify otherwise and also take necessary steps in this regard. Further, the applicants, if they qualify should be given their seniority from the date of recruitment of other candidates as per their rank and position in the recruitment test. It is to also be noted that we are issuing this order only in the case of the applicants' even as we have been told that there may have been other similarly placed candidates who did not appear before this Tribunal with their grievances. These orders are issued only in personam for the applicants and not for anyone else. The action taken by the respondents for offering appointment etc to the applicants, if eligible as well as for any necessary administrative follow up, etc. should be completed within a period of two months from the date of issue of this order.

21. The Original Application is accordingly disposed of with the above directions. No order as to costs.