

## CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.040/0000334 of 2016

Date of Order: This the      Day of September 2016

**HON'BLE MRS.MANJULA DAS, JUDICIAL MEMBER****HON'BLE MOHD HALEEM KHAN, ADMINISTRATIVE MEMBER**

Md.Kamal Uddin Ahmed  
 S/O late ARshed Ali Ahmed  
 R/O-New Guwahati Rilway Colony  
 Quarter No.503/E  
 Bamunimaidan, Guwahati-781021

Applicant

By Advocate Mr.M.Hussain

-Versus-

1. The Union of India,  
 Represented by the Secretary to the  
 Govt of India, Ministry of Railways  
 New Delhi-110001.
2. The General Manager, N.F.  
 Railway, Maligaon, Guwahati-781011
3. The Divisional Railway Manager,  
 Lumding Division,  
 Lumding , Dist-Nagaon, Assam,PIN....
4. The Senior Divisional Mechanical  
 Engineer (Diesel), N.F.Railway,  
 Bamunimaidam, Guwahati-781021

Respondents

Mr.M.K.Mazumdar, Railway Standing Counsel

## **ORDER**

### **Per Mohd Haleem Khan, Member(A):-**

Md.Kamal Uddin Ahmed, S/O Late Arshad Ali Ahmed R/O New Guwahati, Railway Colony, Bamunimaidan, has filed this application under Section 19 of the Administrative Tribunals Act 1985, seeking following reliefs:-

“ 8.1 That the Hon’ble Tribunal be pleased to direct the respondent N.F.Railway (Respondent No.4) to allow the applicant to appear in the written examination to be held on 09.10.2015 at 10.A.M. at DTTC/NGC for the post of JE (Mechanical).

8.2 That the Hon’ble Tribunal be pleased to direct the respondent N.F.Railway to update the service book of the applicant with his present educational qualification

8.3 Cost the application.

8.4 And other relief(s) that the applicant is entitled to in the facts and circumstances of the instant case as may be deemed fit and proper by this Hon’ble Tribunal.”

2. The applicant also prayed for interim order as follows:-

“The applicant prays for stay of the written examination scheduled on 09.10.2015 at 10 A.M. for the post of JE (Mechanical)”

3. The learned counsel for the applicant submitted that against the advertisement Notice dated 13.5.2015, being eligible, the applicant applied for permission to appear in the written test for the post of JE(Mech.) in Pay Band Grade Pay of Rs.9400-34800 Grade Pay 4200/- against 25% (IAM) intermediate quota. The Railway issued a letter No.E/254/D/M/Pt.II dated 13.05.2015 and published a list of eligible candidates to appear in the written test to be held on 09.10.2015 at 10.00 A.M since the applicant did not find his name in the said list applicant filed a representation on 17.09.2015. According to the applicant he was eligible for appearing in the written examination.

4. Since much time was not available to wait for disposal of the representation, the applicant approached the Hon'ble Tribunal on 23.9.2015 for intervention.

5. The learned counsel for the Railways submitted that since the applicant filed a representation before the authority it may be awaited disposal as per rule and records available with the respondents and if the applicant still remains aggrieved he should approach the Court subsequently.

6. Keeping in view above observations of the rival parties, this Court decided that balance of convenience lies in directing the

respondents to allow the applicant to appear in the examination. The respondent may pass speaking order against the representation as a parallel act. The Court also observed that success or otherwise of the applicant in the written test etc. will be subject to the outcome of this O.A.

7. The Respondents filed written statement, whereby they emphatically denied the averments made by the applicant except those borne out of records or admitted specifically in the written statement. The respondents in their reply of para 4.3. of the O.A. submitted that the applicant did not take prior permission for admission for Diploma in Automobile Engineering from the Institute of Technical Education. The applicant took admission for Diploma Course in 2010, however, he applied for permission from the department on May 2012. The respondents further elaborated that the Certificate was issued to the applicant on 2<sup>nd</sup> May, 2014, however, he did not submit the copy of the Certificate for upgradation of records of qualification till 25.5.2015. Respondent also submitted that the Sr.DME/D/NGC vide letter dated 9.9.2015 has communicated to the applicant of his ineligibility for appearing in the written examination to be held on 09.10.2015 at 10.00 hrs.

8. According to the respondents as per Railway Establishment Manual Vol-1 (Revised Edition-1989) for promotion to JE (Mech.) against IAM quota the candidate must have passed ITI/ACT Apprentice in the relevant trade or 10+2 in science stream. The respondents also emphasised that Railway Board 's letter No.E/(WG)-II/2010/RR-1/17 dated 08.12.2011 has clarified that Diploma/Degree in Engineering obtained through distance mode are not accepted for employment in the railways, except AMIETE. According to the respondents, the certificate submitted by the applicant is not of a regular course and the Institute is not approved by AICTE. Respondents however, admitted that as per service Book as well as the averments made by the applicant, he is HSLC passed.

9. In view of the above, the respondents submitted that the applicant is not eligible to appear in the test for promotion as JE (Mech) against 25% intermediate quota. The Respondents emphasised that they are acting as per rules. There is no merit in the application and accordingly, the application deserve to be dismissed.

10. In support of their contention that the applicant has taken the admission in the year 2010, the copy of receipt of Rs.5200/- issued

by the Indian Institute of Technical Education Silpukhuri, Guwahati in the name of Kamal Uddin Ahmed, for the course DAE, 1<sup>st</sup> Year and the Diploma issued by the Institute of Motor Industry (India) dated 2<sup>nd</sup> May 2014 along with the mark sheet and the application of the applicant addressed to the Sr.DME/SSL/NGC, N.F.Railway dated 10.06.2015 were submitted with the written statement. The applicant also submitted following documents in support of his life membership of the Institute of Motor Industry (India):-

- “1. Membership Card bearing Regn.No.GUI 12B10033.
2. Certificate issued by the Institute of Motor Industry (India) as a life member.
3. Letter informing the applicant for elevation as an Associate Member of Examining Body of Institute of Motor Industry (India).”

11. The applicant filed rejoinder and stated therein that he has submitted an Application on 1<sup>st</sup> February 2012 seeking permission to complete his Diploma in Automobile Engineering from Indian Institute of Technical Education, which according to the applicant was duly received by the concerned authority and the same he has supplied with the O.A. as Annexure-3. The applicant admitted that although he has taken admission for the aforesaid Diploma course in 2010 he sought permission in 2012 because he was not aware that such

permission had to be sought from the authorities to go for further education. According to the applicant it was an inadvertent mistake on the part of the applicant which was subsequently rectified by him.

12. Applicant submitted that he is only HSLC passed. However, he has obtained Diploma in Automobile Engineering which is a higher qualification than ITI. While the ITI is a two years Course, the Diploma in Automobile Engineering is a three years course. The applicant also emphasised that according to the notification dated 13.5.2015 there was no debar against a diploma holder in applying for the post of JE (Mech) and emphasised that the over qualification cannot be a disqualification. The applicant also submitted that he has been working on the post of Technician Grade-III (Mech) since 26.11.2011, thus has more than three years experience and has better qualification than that required as minimum qualification as per Notification dated 13.5.2015. The applicant also emphasised that if distance mode learning is not acceptable to the Railway respondents, it should have been mentioned in their notification dated 13.5.2015. The authorities also had not specified that the candidates should have passed from an institute approved by the AICTE. According to the applicant the Institute of Motor Industry (India) is registered under Tamilnadu

societies Act, 1975. Thus it is very clear that though no specific conditions were mentioned in the notification dated 13.5.2015 regarding distance mode of education and approval of Institute by AICTE, yet the respondent authorities have taken such stand as an after thought in order to deprive the applicant. Accordingly, the applicant prayed that the application be allowed.

13. Pleadings being complete. The case was heard on 8<sup>th</sup> June 2016.

Learned counsel for the applicant argued on the lines of his submissions made in O.A as well as rejoinder. The learned counsel vehemently emphasised that the applicant has a Diploma in Automobile Engineering from the Institute which is run by a trust International Professional Organization registered under Tamilnadu Societies Act 1975. The learned counsel also emphasised that the Institute has ISO Certification 9001-2008 certified examining body and the Diploma would certainly rank above the minimum qualification prescribed, that is ITI/ Act Apprentice.

14. The learned Railway Standing Counsel however emphasised that they are working as per Rules and cannot go beyond what is



provided in the Indian Railway Establishment Manual Vol-1, Revised Edition 1989. The learned Standing Counsel however, in a subtle way, to create doubt about the sanctity of the certificate, brought to the notice of the Court a Caveat written on the bottom corner (left) of the Certificate of the Institute of Motor Industry (India), namely:-

**“THIS DIPLOMA IS NOT VALID  
WITHOUT LIFE MEMBERSHIP CARD”**

Replying to the learned Standing Counsel for the Railways, the learned counsel for the applicant submitted that he will submit the supplementary details relating to the Diploma Certificate to satisfy the concerns if any, of the court aroused by the learned counsel for the Railways.

15. The learned counsel of the applicant relied on Hon’ble Andhra High Court’s orders in

**(1) Om. Papanna Vs. The Personal Manager,  
State Bank , 1995 (2) ALT 358.**

**(2) Mary Sai Kumari Vs. Regional Manager,  
1994 (3)ALT 350, (1995) ILLJ 539 AP.**

16. In view of the above submissions, pleadings and

material on record following observations can be made:

- (1) The applicant is only HSLC passed, therefore, admittedly lacks the alternative minimum qualification i.e. 10+2 with science stream.
- (2) The applicant, has obtained a Diploma in Automobile Engineering which according to the applicant is a superior qualification than that being demanded by Railway Respondents to let him appear in written examination for promotion as JE Mechanical Grade-II.
- (3) The applicant is working as Technician Grade-III (Mechanical) and has more service than the minimum years of service required for being eligible for the examination. This aspect is not disputed by the respondents.
- (3) The issue which requires adjudication of this Court is limited to whether Diploma in Automobile Engineering obtained by the applicant from ISO Certified institute which does not have reorganization of AICTE may be considered superior to the minimum technical qualification being demanded by the respondent.
- (4) Also if the diploma is found superior whether the applicant will still be disqualified.

17. In view of the submission made by the learned counsel for

the applicant, supported by the judgment of Hon'ble **Andhra High Court Shri Mary Sai Kumari Vs. Regional Manager, State Bank of India in W.P.C.No5677/1987 decided on 15.9. 1994**, clearly the Railway respondents have not been able to come out with reasons that in case of over qualification of a Diploma in Automobile Engineering, the rules of the Railways specifically mentions that none other than ITI/ ACT Apprentice will be eligible. Therefore, once it is established that the Diploma in Automobile Engineering which the applicant possess is found superior to the minimum qualification, the Railway respondents will not be able to deprive the applicant from appearing in the examination for promotion as the Mechanical Grade-II.

18. With regard to Letter No.E (NG)-II/2010/RR-1/17 dated 08.12.2014, this Court could not be convinced by the Railway Standing Counsel that this circular will be applicable in the instant case. The relevant portion of the said circular is quoted below:-

“Sub:- Recognition of Engineering Diploma/Degrees obtained through Distance Education Mode-Apprentice for purpose of employment on the Railways.

References have been received from various railway establishments seeking clarification regarding status of diploma/degree in Engineering obtained from various institutions in India through

Open & Distance Learning mode. The issue has been examined in consultation with Distance Education Council, New Delhi.

Accordingly, Railway Board have decided not to accept diploma/degree in Engineering obtained through distance mode except AMIETE (recognition for which has been permitted vide RBE No.230/1990) for the purpose of employment in railways with immediate effect and till further orders.”

19. From a simple reading of the above, it is clear that this circular clarifies that Engineering Degree or Diploma obtained through Distance Mode except AMIETE will not be considered. From the wordings it can be safely arrived that the Engineering Degree and Diploma obtained by Distance Mode from AMIETE alone are acceptable and others are not. In the present case minimum required qualification is neither Degree nor Diploma hence the extrapolation of the circular to the present case is not legally sustainable.

20. The remaining issue, that is, whether the Diploma of Automobile Engineering awarded by Open & Distance Learning mode be construed a better qualification than ITI/Apprentice Act, this Court would not like to go in to because, it is a matter of technical nature. The syllabus, Mode of Education and examination in ITI will have to be

compared vis a vis Distance Learning mode as followed by the institute of Motor Industry (India), ISO Certificate. It will be therefore, proper in the interest of justice for the applicant as well as in the interest of Railways that the respondents constitute a committee headed by a person of sufficient seniority not below the officer who has disposed of the representation of the applicant dated 17.09.2015 and two other Mechanical Engineers/ officers. This committee will go into the details of course content of the diploma obtained by the applicant vis a vis the same followed by the ITI/ Act Apprentice. If the committee comes to the conclusion that the Diploma obtained by the applicant from the institute of Motor Industry (India) is a better qualification then the benefit should go to the applicant.

21. Since it may take sometimes for the committee to come to a conclusion as directed above, let the applicant be allowed to participate in the examination for promotion to the post of JE Mechanical Grade-III under 25% intermediate quota. The outcome for the applicant, however, will depend on the conclusion of the Committee as directed above. These orders are being issued so that the balance of convenience does not irrevocably gets shifted against the applicant.

O.A. is accordingly, disposed of. No order as to costs.

(MOHD HALEEM KHAN)  
ADMINISTRATIVE MEMBER

(MANJULA DAS)  
JUDICIAL MEMBER

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