

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA



O.A/350/00766/2021

Date of Order: 09.08.2021

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

Anirban Ghosh, son of Late Sekhar Chandra Ghosh,
aged about 33 years, by occupation service as HS I
(Fitter), Rifle Factory, Ishapore, P.O. Ishapore
Nawabgunj, Dist – North 24 Parganas – 743144,
residence at 502, Madhusudan Banerjee Road,
P.O. Nimta, Calcutta 700049, North 24 Parganas.

.....Applicant

-Versus-

1. The Union of India, service through the
Secretary, Ministry of Defence, Government of
India, South Block, New Delhi – 110011
2. The Chairman-cum-Director General, Ordnance
Factory Board, 10A, Shahid Khudiram Bose Sarani,
Kolkata – 700001.
3. The General Manager, Rifle Factory, Ishapore,
P.O. Ishapore Nawabgunj, Dist. – North 24
Parganas, Pin – 743144.

.....Respondents

For The Applicant(s): Mr. B. Samantha, Counsel

For The Respondent(s): Mr. K. Prasad, Counsel

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ORDER (ORAL)

Per: Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

Being aggrieved at not being promoted to the post of Chargeman Mechanical (IT), the applicant has approached this Tribunal praying for the following relief:

"(a) DIRECTION do issue directing the respondent authorities to forthwith grant promotion/appointment to the applicant in the post of Chargeman Mechanical (IT) at RF, Ishapore with all consequential benefits including seniority with effect from the date when similarly circumstanced LDCE successful candidates have been granted such promotion/appointment;

(b) DIRECTION do issue quashing and/or setting aside all documents/orders standing in the way of grant of promotion/appointment to the applicant in the post of Chargeman Mechanical (IT) at RF, Ishapore and thereupon directing the respondent authorities to forthwith grant promotion/appointment to the applicant in the post of Chargeman Mechanical (IT) at RF, Ishapore with all consequential benefits including seniority with effect from the date when similarly circumstanced stipendiary trainees have been granted such appointment/absorption;

(c) INJUNCTION do issue restraining the respondent authorities from withholding the grant of promotion/appointment to the applicant in the post of Chargeman Mechanical (IT) at RF, Ishapore;

(d) INJUNCTION do issue restraining the respondent authorities from interfering in any manner whatsoever with the successful candidature of the applicant for grant of promotion/appointment in the post of Chargeman Mechanical (IT) at RF, Ishapore;

(e) DIRECTION in the nature of certiorari do issue upon the respondent authorities directing them to produce and / or cause to be produced the entire records of the case and thereupon to pass necessary orders for rendering conscionable justice;

(f) Cost and costs incidental hereto;

(g) And/or to pass such other or further order or orders as your Lordships may deem fit and proper."

2. Heard both Ld. Counsel. Examined documents on record. This matter is taken up for disposal at the admission stage.

3. The submissions of the applicant are that, vide a notification dated 16.05.2020, further amended on 16.06.2020 (Annexure A-1 to the

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O.A.), the authorities had advertised their intention for filling up vacancies in the post of Chargeman/Tech. and Non-Tech. (OTS and Stores) through limited departmental competitive examination for vacancies arising up to 01.01.2020.

One vacancy for the post of Mechanical (IT), (UR) was advertised therein specifying requisite qualifications as under:

**RIFLE FACTORY ISHAPORE
CIRCULAR**

No.228

Date:16/06/2020

**Sub: FILLING UP OF VACANCIES IN THE POST OF
CHARGEMAN/TECH & NON-TECH (OTS & STORES)
THROUGH LIMITED DEPARTMENTAL COMPETITIVE
EXAMINATION (LDCE) FOR VACANCIES ARISES UP TO
01.01.2020 – AMENDMENT OF.**

Ref: (i) RFI Office Circular No. 199 Dated 16/05/2020
(ii) OFB Letter No. 2982/LDCE/CM(T&NT)/2020/PER/GB dated 24/04/2020.

With reference to the instruction vide OFB Letter No. 2982/LDCE/CM(T&NT)/2020/PER/GB dated 01/06/2020 the following revision in vacancy position against the Circular under reference is hereby made –

Discipline	Total Vacancies	UR	SC	ST
Mechanical	35	26	04	05
Mechanical(IT)	01	01	00	00
Civil	02	02	00	00
Chemical	01	01	00	00
Metallurgical	02	02	00	00
NT(OTS)	03	02	01	00
NT(Store)	02	02	00	00

Specification of the post and eligibility criteria including experience for the post of Chargeman (Mechanical/IT) –

Sl. No.	Post	Essential educational qualification	Experience
01	Mechanical (IT)	Must pass 'A' Level competency certificate course or equivalent qualification in Computer Science duly recognized by GOI.	Person(s) in all categories of skilled workers or equivalent with 2 years' experience in the grade

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Last date of receipt application has been extended from 15.06.2020 to 22.06.2020.

All other entries will remain unchanged.

*(J. P. MAJUMDER)
WORKS MANAGER
For GENERAL MANAGER "*

The applicant, being an aspirant to the post of Chargman/Tech. Mechanical (IT), participated in the selection process and, as per Annexure A-4 to the O.A., his name appeared in the 'Provisional Select List' for LDCE Chargeman 2020. When the final promotional list was published on 12.11.2020 (Annexure 'A-5' to the O.A.), however, the names of thirty-nine (39) candidates of the 'Provisional Select List' appeared in the said publication, whereas, the applicant's name was excluded.



The applicant was further directed, vide Annexure A-6 to the O.A., to furnish his educational qualification certificates that would meet the essential educational qualifications as prescribed for the post of Mechanical (IT). The applicant responded to the said direction highlighting, inter alia, that his qualification of B.Sc. (Elec. Hons.) is equivalent to 'qualification in Computer Science'.

The applicant also submitted an appeal to the Ministry of Defence vide his representation dated 07.03.2021 (Annexure A-9 to the O.A.). By way of a supplementary affidavit, the applicant would disclose that the respondent authorities responded to his prayer dated 07.03.2021, vide their communication dated 09.07.2021 ('S-1' to the supplementary affidavit), in which the authorities informed the applicant, inter alia, as follows:

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"However, as directed by OFRC, upon scrutiny of the educational qualifications of all provisionally selected candidates at that time it was found that your educational qualification was not as per the essential educational qualification criteria for the IT Trade/Discipline as specified and notified by OF Board vide its letter No. 2982/LDCE/CM(T&NT)2020/PER/GB Dtd. 24.04.2020 & RFI Circular No. 228 Dtd. 16.06.2020. As per the SRO provisions i.e. recruitment & condition of service rules (copy enclosed) and as per the notification, the essential educational qualification of a candidate for Chargeman/T(Information Technology) Trade is "Must pass "A" Level competency certificate course or equivalent qualification in Computer Science duly recognised by Govt. of India and whereas your educational qualification was B.Sc. (Electronics Honours).

In view of above and since your educational qualification was not in line with the requisite essential educational qualification criteria set in the recruitment rules for the aforesaid post and therefore your promotion was put on hold subject to fulfillment of the requisite educational qualification criteria.

Subsequently, you were requested, vide RFI communication Dtd. 23.11.2020, to furnish/provide suitable educational qualification certificates meeting the said criteria for the above mentioned trade/discipline for further processing his case.

In reply you have submitted the same educational qualification certificates which were submitted by you at the time of submitting your original application for the subject examination (LDCE-2020) and accordingly your case was under active consideration & process of the competent authority. Thereafter, several times you were asked to submit/produce other details of the course undertaken by you like subject details, course duration etc.

Side by side your case was also taken up with AICTE & DOEACC Society. [Now NIELIT] officially and in this regard the inputs received from them are briefed below:

A. That it is upto the employer to decide the suitability for a particular post. However, Ministry of Human Resource Development/Ministry of Education vide its Notification Dtd. 01.03.1995 has recognised "A" Level examination conducted by DOEACC/NIELIT as equivalent to Advanced Diploma level courses for the purpose of employment under the Central Government. Further, it was viewed that the BCA/B.Sc Computer Application courses are of advanced diploma level courses and the same may be considered for employment purpose and thereby indirectly making the B.Sc. Electronics (Honours) course as not suitable for that purpose.

B. The 'A' Level educational qualification has been declared as equivalent to PGDCA (Post Graduate Diploma in Computer Application). "A" Level Course qualifier is expected to be a key member of a software development team with all around capabilities to manage and guide a software project. NIELIT "A" Level course consists of Ten theory modules (Nine compulsory modules and one elective module), two practical's and one Project. From the structure of the 'A' Level syllabus it is noticed that all the 10 Modules are completely related to IT & Programming languages and in contrary for the Course B.Sc. (Electronics Honours), importance is given on the topics related to the core subject of Electronics."

The applicant was also informed by the respondents, by way of a communication dated 28.07.2021 (Annexure S-3 to the supplementary affidavit), that his educational qualification, namely B.Sc. (Elec. Hon.),



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is not equivalent to "A' Level Competency Certificate Course in Comp. Sc." which has been prescribed as the essential educational qualification (as per SRO) for the post of Chargeman/T(Mech/IT).

The applicant would, therefore, approach this Tribunal praying for a direction that he should be granted promotion forthwith, on the grounds that he was successful, as per the 'Provisional Select List' of LDCE, and, that the respondent authorities have denied him promotion on the grounds of inadequacy of his educational qualification, violating the provisions of equality as enshrined in Article 14, Article 16 and Article 21 of the Constitution.



4. Ld. Counsel for the respondents, on the other hand, by way of instructions, would submit as follows:

- *"Shri Anirban Ghosh, the applicant and existing employee of RF in the industrial cadre, sat for Limited Departmental Competitive Examination during the year 2020 for departmental promotion to the post of Chargeman (Technical/ Information Technology) against 01 vacancy earmarked for UR category.*
- *OFRC in its letter dated 09-11-2020 has instructed that the discipline wise select lists of the candidates have been prepared in order of merit, against "Selected Category" in respective disciplines as per vacancies projected by RFI and thereby RFI was requested to meticulously scrutinize the eligibility and educational qualification of successful candidates before effecting promotion in line with OF Board directives.*
- *As per SRO 66 - the Statutory Rules and Orders Governing the Recruitment Rules to the post of Chargeman in various streams, the Minimum Educational Qualification for applying for the post of Chargeman (Tech/IT) is mentioned as under,*

"Must pass 'A' level competency certificate course or equivalent in Computer Science as duly recognized by Govt. of India"
- *Upon scrutiny of the applicant's EQ documents it was found that he had qualified in B.Sc Electronics Honours. B.Sc. Electronics Honours has Computer Science as one of the general subjects but it does not hold any specialization course in Computer Science and thus B.Sc. Electronics Honours cannot be treated as an equivalent of 'A' level competency certificate course in Computer Science.*

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- *In view of above and since the educational qualification of Shri Anirban Ghosh was not in conformity with the requisite essential educational qualification criteria set out in the recruitment rules for the aforesaid post candidature of Shri Anirban Ghosh was not cleared for effecting promotion to the post of Chargeman (Technical/ Information Technology and his case was put on "hold subject to fulfillment of the requisite educational qualification criteria.*
- *The applicant's EQ was taken up with the appropriate authorities of AICTE and DOEACC (now called NIELIT) for ascertainment of its equivalence with 'A' Level course in computer science. Neither of the bodies could confirm B.Sc (Electronics Honours) to be equivalent to 'A' Level Course."*

5. The Hon'ble Apex Court, in **Benarasi Das Vs. State of Uttar Pradesh**, AIR 1956 SC 520, had held that it is well settled that it's open to the appointing authority to lay down requisite qualifications for recruitment to government service. Hon'ble Apex Court further reiterated in the **Commissioner, Corporation of Madras Vs. Madras Corporation Teachers' Mandram** 1997 (2) SLR 468 (SC) that prescribing recruitment qualifications pertains to the domain of policy. This view is reiterated in **Surendra Singh Vs. Union of India**, 2007(11) SSC 599, that it is for the state to decide the qualifications required and it is the prerogative and authority of the employer. In **Basic Education Board, UP Vs. Upendra Rai**, 2008 (3) SSC 432, the Hon'ble Apex Court has cautioned that eligibility conditions/educational qualifications, for the purpose of recruitment, is a policy decision which cannot be interfered with by the Court. The Hon'ble Apex Court similarly observed in **M. Rathinaswami Vs. State of Tamil Nadu**, 2009 (5) SSC 625, that it is for the Government to decide whether the qualifications have a reasonable relation in the nature of duties and responsibilities on a promotional post and the Court, "not being an expert in administrative matters",

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cannot sit in appeal over decisions of executive authorities unless they are arbitrary or shocking.

In the instant context, we find the authorities, while notifying the vacancies of Mechanical (IT) on 16.06.2020, had categorically stated that the essential educational qualification was 'A' Level Competency Certificate Course in Comp. Sc. or equivalent qualification in Computer Science "*duly recognized by Government of India*". Admittedly, the applicant's qualification was that of B.Sc. (Elec. Hon.) and the applicant, in his appeal dated November 2020 (Annexure 'A-7' to the O.A.), had claimed equivalence on the following grounds:



Essential Educational Qualification	Justification
Must pass 'A' level competency certificate course or equivalent qualification in computer science duly recognized by Govt. of India	<ol style="list-style-type: none"> 1. My qualification justifies the part "<u>Equivalent qualification in computer science duly recognized by Govt. of India</u>" 2. I am a B. Sc. (Hon.) with one of the main subjects as Computer Science (CMSC) 3. This degree also confers pre-requisite eligibility to pursue MCA as per <u>AICTE norms</u> similar to BCA. 4. My B. Sc. Degree is awarded through University of Calcutta which is <u>recognized by UGC</u> and is also marked as centre of excellence. 5. It is also recognized as one of the top performing universities under <u>MHRD, Govt. of India</u>.

6. We find that the respondent authorities, while responding to the applicant's claim at S-1 to the Supplementary Affidavit, have informed that, while it is the sole purview of the authority to frame and decide the essential educational qualification or criteria for a particular post,

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final decision in the matter would be taken upon disposal of the O.A. 350/0766/2021 by this Tribunal.

We would, accordingly, direct the competent respondent authority to refer the contentions/claim of the applicant, dated November 2020 (at Annexure 'A-7' to the O.A.), to the concerned experts in this field for their considered opinion on the equivalence of the applicant's degree, as claimed by him, to the essential educational qualification of 'A' Level Competency Certificate Course in Comp. Sc. ^{Once ✓} ~~Once~~ such expert opinion is made available, and if so required, the authorities will initiate necessary consequent actions with respect to the applicant.



The decision taken should be conveyed to the applicant with clarificatory rationale on the equivalence, or otherwise, of the applicant's educational qualifications vis à vis that required in the notification for filling up the vacancy in the post of Mechanical (IT).

We make it clear that, being guided by the Hon'ble Apex Court in **Rathinaswami (Supra)**, we are not entering into the merits of the matter and the entire decision on the equivalence of the applicant's educational qualification vis à vis the essential qualification as laid down in the notification are to be decided upon by concerned experts in this matter.

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The entire exercise may be completed within a period of 16 weeks from the date of receipt of a copy of this order.

7. With these directions, this O.A. stands disposed of. No costs.

(Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

