

Central Administrative Tribunal Lucknow Bench
Lucknow

Lucknow this the ^{31st} day of February, 2014

March - J. Chander

Original Application No. 307 of 2006

HON'BLE MS. JAYATI CHANDRA, MEMBER (A)
HON'BLE SHRI M. NAGRAJAN MEMBER (J)

Amit Kumar Jain, aged about 23 years son of Shri Pramod Kumar Jain, R/p C/o smt. Madhu, 21/b, Railway Colony, Mahanagar, Badshah Nagar, Lucknow.

Applicant

By Advocate: Sri Pankaj Kumar Awasthi.

VERSUS

1. Union of India, through the Secretary, Ministry of Railways, Railway Board, Rail Bhawan, New Delhi.
2. Secretary, Railway Board, Rail Bhawan, New Delhi.
3. General Manager, North Eastern Railway, Gorakhpur.
4. Chairman, Railway Recruitment Board, Gorakhpur.

Respondents

By Advocate Sri S. Verma.

(Reserved On 5.2.2014)

ORDER

By Hon'ble Shri M. Nagrajan, Member (J)

The grievance of the applicant in the present original application 307/2013 is as to his non selection and appointment to the post of Section Engineer (C&W) in response to the employment notice No. RRB/ GKP/1/04-05 dated 25.6.2004 issued by Railway Recruitment Board, Gorakhpur.

2. The brief facts of the case of the applicant is that in response to the employment notice no. RRB/GKP/1/04-05, Gorakhpur dated 25.6.2004 issued by Railway Recruitment Board, Gorakhpur, he applied to the post of Section

Engineer(C&W) and that he was permitted to take part in the selection process by allowing to write the written examination held on 31.10.2004. The Railway Recruitment Board Gorakhpur published the result of the written examination held on 31.1.2004 and the select list was published in 'Times of India' Newspaper on 6.1.2005. As per the result published, he was declared successful in the written examination for the said post of Section Engineer (C&W) amongst the posts earmarked for unreserved category candidates. Thereafter, the Railway Recruitment Board Gorakhpur addressed a letter to the applicant directing him to appear for verification of original documents on the basis of the result declared on 6.1.2005. Accordingly, the applicant appeared before the RRB/Gorakhpur for verification of original documents on 8.2.2005 and submitted all the documents. On verification of the original documents, the applicant was not issued an order of appointment in pursuance of his selection as per select list published on 6.1.2005 in Times of India. According to him, he has been making repeated representation to consider his case for appointment to the said post of Section Engineer (C&W) in pursuance of his said selection. His final representation dated 23.5.2006 (Annexure No. 5) to the Executive Director (R.R.B) Ministry of Railways, Rail Bhawan New Delhi seeking direction to the Chairman, R. R. B. to release his candidature for appointment as Section Engineer (C&W). came to be rejected by the Executive Director, RRB, Ministry of Railways, Rail Bhawan, New Delhi, on the ground

that the applicant does not have the qualification prescribed for the post in question and the said decision of the said Executive Director was communicated to him through a letter dated 19th July 2006. Being aggrieved by the decision by the Executive Director RRB which is communicated to the applicant through a letter dated 19th July 2006 (Annexure No. 18), the applicant has presented the O.A. contending that he is entitled to be appointed to the post Section Engineer in pursuance of the said employment notice dated 25.6.2004 (Annexure No. 1).

3. Perused the pleadings. Heard the learned counsel for the applicant Shri Pankaj Kumar Awasthi and Shir S. Verma, learned counsel for the respondents.

4. On perusal of the pleadings and upon hearing the learned counsel for the applicant and the respondents, we find that the short question that arises for consideration in this O.A. is "whether the applicant is entitled to be appointed to the post of Section Engineer (C&W) in pursuance to the recruitment notification dated 26.05.2004 issued by the Railway Recruitment Board, Gorakhpur. In order to appreciate this question, it is necessary to refer the said notification dated 25.6.2004, which prescribed the educational qualification for the post in question. The said notification is available at Annexure No-1. The post of Section Engineer(C&W) which carries the pay scale of Rs. 6500-10500/- find place at Serial No. 5 of the said **notification**. As against the Serial No. 5, the minimum qualification prescribed is degree in Electrical/

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Mechanical Engineer. At the time of argument, the learned counsel Sri Pankaj Kumar Awasthi appearing for the applicant fairly conceded that the applicant is not a holder of degree either in Electrical engineering or Mechanical Engineering. On the other hand, he is a holder of degree in Production of engineering. Thus, the fact that the applicant did not possess the qualification prescribed under the notification Annexure No. 1 inviting application to the post of Section Engineer (C&W) is an admitted one.

5. In support of the prayer of the applicant for quashing of the impugned order and to issue a direction as prayed him, Sri Pankaj Kumar Awasthi draw our attention to the letter from the Shivaji University, Kolhapur dated 7.7.2005 (Annexure-9). By referring to the said letter dated 7.7.2005, the learned counsel contended that the Dy. Registrar of Shivaji University, informed that B.E.(Production) degree is equivalent to that of B. E (Mechanical) Degree of the University. As such, the point that arises for consideration is "whether the applicant is entitled to be appointed on the ground that though he does not have the actual prescribed qualification, the qualification possessed by him is an equivalent qualification to that of the prescribed qualification In other words, the issue which is required to be resolved is whether a candidate can be appointed to the post of Section Engineer (C&W), who possess only an equivalent qualification to that of the prescribed qualification viz Degree in Electrical/Mechanical Engineering.

The present issue has been considered by the Hon'ble Supreme Court time and again and thus the same is no more res-Integra..

6. The Hon'ble Supreme Court in the case of Mohd. Sohrab Khan Vs. Aligarh Muslim University and others reported in **(2009) 1 SCC (L&S) 917** while dealing with and identical question of fact by referring to the fact of that case held:-

“The University can always have a person as a Lecturer in a particular discipline that it desires to have, but the same must be specifically stated in the advertisement itself. In the matter of selection of candidates, opinion of the Selection Committee should be final, but at the same time, the selection process midstream. There could have been intending candidates who would have applied for becoming candidate as against the said advertised post, had they known and were informed through advertisement that Industrial Chemistry is also one of the qualifications for filling up the said post. The Selection Committee during the stage of selection, which is midway could not have changed the essential qualification laid down in the advertisement.”

7. The Claim of the appellant before the Hon'ble Supreme Court in the said case is that he is a Master degree holder in Industrial Chemistry and that Master degree in industrial chemistry and master degree in pure chemistry being one and the same, though he does not have the prescribed qualification of Master degree in Pure Chemistry, in view of the fact that he is a Master degree holder in Industrial Chemistry which is one and the same or equivalent to pure chemistry he is entitled to be selected and appointed. The claim of the applicant in this O.A. is similar to that of the appellant before the Hon'ble Supreme Court in the above mentioned case **(2009)SCC(L&S) page 917**. The specific claim of the applicant is that though he does not have Bachelor degree

either in electrical or mechanical, he posses a degree in engineering (production) which is equivalent to that of the prescribed qualification. Since the claim of the appellant was rejected by the Hon'ble Supreme Court in the said case, which is similar to that of the claim of the applicant in the O.A. the impugned order under which his request for appointment came to be rejected cannot be faulted upon.

8. Further, the Hon'ble Supreme Court, in the case of the District Collector & Chairman Vizianagaram (Social Welfare Residential School Society) Vizianagaram and Anr. Vs. M. Tripura Sundar Devi reported in 1990 (4) SLR 237 by referring to the facts of that case held as:-

“ It must further be realized by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to fraud on public to appoint 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 the fraudulent practice. We are afraid that the Tribunal lost sight of this fact.”

9. If the above principles of the Hon'ble Supreme Court were to be applied to the facts and circumstances of the case it can be seen that the qualification for the post in question is prescribed in the notification dated 25.6.2004 (Annexure-A-1) is only a degree in Electrical/Mechanical Engineering. It does not mention any other equivalent qualification as a qualification for the post of Section Engineer(C&W). The said

notification dated 25.6.2004 prescribes only a particular qualification i.e. degree in electrical / mechanical engineering and as such, no appointment can be made in disregard of the same.

10. To deal with the reliance placed by the applicant upon the document at Annexure No. 9 i.e. the letter dated 7.7.2005 from Shivaji University, it is necessary to refer to the judgment of the Hon'ble Supreme Court in the case of "Deputy Director of Public Instructions and District Recruitment Authority and others Vs. Shaik Moula and another" (2007) 1 SCC (L&S)page 948. The facts of the said case is that a candidate who does not have the prescribed qualification approached the Karnataka Administrative Tribunal seeking a writ of mandamus to issue order of appointment to him to the post Primary school teacher in the Hindi subject which came to be allowed by the Karnataka Administrative Tribunal. As against the order of the Karnataka Administrative Tribunal, the authorities have filed preferred a writ petition on the file of the Hon'ble High Court of Karnataka and the Hon'ble High Court was pleased to dismissed the writ petition filed by the authorities.

11. The authorities have refused to appoint the applicant on the ground that he did not possess the requisite qualification. The requisite qualification prescribed in the relevant notification is:-

"1. Must have passed PUC and TCH or equivalent examinations.

But the candidates who had taken admission to TCH course prior to 1989 will be eligible if they have passed SSLC and TCH course or equivalent examination."

While dealing with the question that whether a candidate who does not have the prescribed qualification is entitled to appointed, with reference to the facts facts of that case at paragraph 8 of the order the Hon'ble Supreme Court observed thus:-

"8. It is to be noted that the Tribunal was really confused as to what was the subject matter of dispute. It is clear from the following observation of the Tribunal:

"Undisputedly, the documents produced by the applicant demonstrate that he has passed SSLC in the year 1990 (Annexure A-2, is the marks card), PUC in the Hindi Prachar Parishad (Annexure A-4 is the certificate). The applicant has not passed TCH. But his case is that a pass in Hindi Shikshana Praveen Pariksha of Kendriya Hindi Shikshana Mandal, Agra is recognized by the Government of Karnataka as equivalent to TCH and as such the applicant satisfies the requirements of education qualification. *In the circumstances the only question is whether Hindi Shikshana Praveen Pariksha passed by the applicant is equivalent to Teachers' Training Certificate?.*"

The High Court proceeded on the basis as if the Government's order dated 24.8.1974/26.8.1974 made the position clear that the qualification possessed by Respondent 1 was equivalent to TCH. There is really no such indication. Whether a particular qualification is equivalent to another has to be specifically indicated. That has not been done. Inferential conclusion, that too without appreciating the nature of the controversy, makes decisions of the Tribunal and the High Court vulnerable. They are accordingly set aside."

By applying the facts and principles of the said case to the case on hand, we have hold that the impugned communication does not call for any interference particularly in view of the fact that in the recruitment notification dated 25.6.2004(Annexure No. 1) there is no specific indication.

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12. The Hon'ble Allahabad High Court (Lucknow Bench) in the case of Dr. Anil Chandra Vs. Birbal Sahni Institute of Palaeobotany and others reported in (2003 (21) LCD 396) held as under:-

“ If the advertisement has been issued for a particular post giving the eligibility criteria and such other condition, which may be relevant for an applicant for applying under the said advertisement, that said conditions have to be adhered to, and the Selection Committee does not have any power to deviate from the same. The Selection Committee can neither of its own, extend the filed of eligibility nor can introduce any new criteria or conditions for selection.”

13. In view of the above judgments, the law is settled that cited judgments of the Hon'ble Supreme Court goes to a candidate who respond to a recruitment notification is not entitled to be selected and appointed in the absence of the qualification prescribed. This is being the settled position of law and if the same is to be applied to the facts and circumstances of the case, it is to concluded that the applicant is not entitled to any of the relief as sought by him, particularly in view of the admitted fact that he does not have the prescribed qualification to the post of Section Engineer (C&W), and the qualification possess by him is only an equivalent qualification to that of the prescribed qualification.

14. The applicant by placing reliance upon the employment notice issued at Annexure No. 20 and 21 contends that the degree in Production Engineer came to be prescribed as a qualification for the post of Section Engineer (C & W) and hence he is entitled to be appointed in pursuance of selection in view of the fact that subsequently, the Bachelor degree in

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production engineer came to be prescribed as a qualification for the post in question. This contention can not be accepted for the reasons that as on the date on which the notification was issued in the year 2004, the degree in Production Engineering is not prescribed as a qualification for the post of Section Engineer (C&W) under relevant Recruitment Rules. The recruitment notification is required to be issued in terms of the Rule which is in enforce as on the date of the notification. Admittedly as on the date of the notification at Annexure No. 20 and 21, the recruitment came to be revised. Thus the recruitment rules came to be revised is subsequent to that of notification issued in the year 2004. Hence, the mere fact that subsequently the degree in Production Engineering came to be prescribed as was introduced as the qualification for the post of Section Engineer(C&W) can not be ground to quash the impugned order as prayed by the applicant.

15. In view of the forgoing reasons, we are of the view that the claim of the applicant in the O.A. is devoid of merits and requires to be dismissed. Accordingly, the O.A. is dismissed. No order as to costs.

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M. Nagrajan
Member (J)

J. Chandra
(Ms. Jayati Chandra)
Member (A)