



**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 351/01593/AN/2017

Date of order : 11.07.2018

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

A.V. Bharat Kumar,
Son of A. Srinivasulu,
Aged about 24 years,
Residing at P-297/4, Srinagar Miniebay,
P.O. Junglighat,
District : South Andaman,
Port Blair, Pin – 744 103,
And working to the post of Mate (Mason)
Under the Commandar Works Engineer,
Military Engineering Services,
Govt. of India, Ministry of Defence,
Minniebay, P.O. Junglighat,
Port Blair, Pin – 744103.

---Applicant

-Versus-

1. The Union of India,
Service through the Secretary,
Ministry of Defence,
Department of Army,
Navy & Airforce,
North Block,
New Delhi – 110 001.
2. The Chief Engineer (Southern Command),
Military Engineering Services,
Headquarters, Pune,
Pin – 411 001.
3. The Chief Engineer,
Andaman & Nicobar Zone, Brichgunj,
P.O. Junglighat, Port Blair,
Pin – 744 103.
4. Garrison Engineer,

Minniebay,
District : South Andaman, Port Blair,
Pin – 744 103.

5. Commander Works Engineer,
Military Engineer Services, Minniebay,
P.O. Junglighat, District : South Andaman,
Port Blair,
Pin – 744 103.

6. AO (MES),
GE Minniebay,
Port Blair,
Pin – 744 103.

---Respondents

For the Applicant : Mr. P.C. Das, Counsel
Ms. T. Maity, Counsel

For the Respondents : None

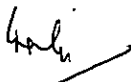
ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

This matter has come up at the second stage of litigation on account of the applicant, who being aggrieved with the speaking order of the competent authority dated 11th November, 2017, has filed the instant Original Application seeking the following specific relief:-

“(a) To quash and/or set aside the impugned Speaking Order dated 11th November, 2017 passed by the Commander Works Engineer by directing to cancel the appointment of the present applicant with immediate effect by violation of principles of natural justice, equity and fair play which is not only against the applicant but also against the interest of the administration as also the interest of the public which cannot be sustained in the eyes of law.

(b) To quash and/or set aside the impugned Office Letter No. 10025/LRS/Mason/463/E-1B dated 12th October, 2017 issued by the Commander Works Engineer on the ground which is not at all sustainable in the eyes of law as because your applicant did not suppress any material facts at the time of submitting her application and your applicant not only fulfilled the minimum educational qualification she has fulfilled the higher qualification therefore her appointment has been made in accordance with the law which cannot be questionable under any circumstances.



(c) To set aside and quash the action of the official respondents in terms of the impugned Notice dated 12th October, 2017 which is otherwise bad in law and illegal.

(d) To declare that appointment which your applicant has got to the post of Mate (Mason) is in accordance with the law and in accordance with the advertisement published by the respondent authority and in terms of the Recruitment qualification prescribed in the advertisement and being a higher qualified candidate.

(e) Costs;

(f) Any other appropriate relief or reliefs as your Lordships may deem fit and proper."

2. Heard the Ld. Counsel for the applicant. None appeared for the respondents and hence, after invoking Rule 16(1) of Central Administrative Tribunal (Procedure) Rules, 1987, we have proceeded to pass our orders. Despite opportunities, the applicant has not also filed his rejoinder and hence the pleadings are treated to be as complete.

Examined pleadings and supporting documents.

3. The applicant's case, as articulated by his Ld. Counsel, is that the applicant, in pursuance to the notice issued by the Military Engineer Services for appointment to the post of Mate (Mason) published on 21.11.2015, applied for appointment to the said post on 23.12.2015 along with relevant documents.

That, after receipt of such application, the respondent department permitted him to appear in the written test held on 21.8.2016 and after being declared successful in the written examination as conducted by the respondent authorities vide letter dated 17.1.2017, the applicant was called for document verification and, after such verification, was issued an offer of appointment vide Office Order dated 24.8.2017 to the post of Mate (Mason).

The applicant, having duly accepted the said offer of appointment, joined his duties on 11.9.2017.

That, after the applicant had rendered service for more than 42 days, a letter dated 12.10.2017 was issued by the respondent authorities directing the applicant to show cause as to why his appointment will not be cancelled on the



ground of suppression of material facts. That the notice so impugned was bad in law as it had noted the last date of receipt of application incorrectly as well as wrongly alleged that the applicant had suppressed material facts at the time of submission of his application.

That, the applicant also possessed higher qualification i.e. Diploma in Civil Engineering which is superior to ITI pass certificate. That, after passing the CBSE 12th Standard, the applicant had acquired his Diploma in Civil Engineering from the Maharashtra State Board of Technical Education and hence, as the applicant had fulfilled the minimum educational qualification being in possession of higher qualification, his appointment order cannot be said to be illegal.

That, upon receipt of such notice, the applicant submitted his reply on 14.10.2017 denying and disputing the contentions made by the respondents in their notice dated 12.10.2017 and also approached the Tribunal in O.A. No. 351/01441/2017 against the arbitrary and illegal notice dated 12.10.2017 and that the Tribunal directed the respondent authorities to dispose of the representation of the applicant dated 14.10.2017 within a stipulated period and further directed that status quo as on date insofar as the applicant's continuance in the present place of posting was to be maintained until the passing of such orders. The respondent authorities thereafter issued a speaking order on 11.11.2017 which directed that the appointment of the applicant dated 24.8.2017 be cancelled. Being highly aggrieved with such speaking order, the applicant has approached the Tribunal in the instant O.A.

4. Per contra, the respondents in their written statement have argued as follows:-

That, the minimum essential qualification for the post of Mate (Mason) is as follows:-

<p>Matriculation pass from recognized Board and Industrial Training Institute pass certificate from a recognized institute in relevant trade.</p> <p><u>Education Qualification for Ex-Serviceman:</u></p> <p>Matriculation pass from recognized Board and Industrial Training Institute pass certificate from a recognized Institute in relevant trader</p>
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Or
Trade certificate issued by Regiment Trg Centre in terms of Govt. of India, Min. of Labour and Employment, Directorate General of Employment & Training letter Nos. DGET-07/36/2012-CD dt. 04 Mar 2013 for equitation of trades taught and practiced in the Army, Air Force and Navy with the corresponding trades in the industrial Training institutes under the craftsman/apprenticeship training scheme.

That, the applicant does not possess the qualification of Industrial Training Institute pass certificate.

That, due to human error/mistake there was an oversight on account of which it was not detected at the outset that the applicant does not hold the requisite educational qualification. To obviate such errors, checks had to be conducted for verification of documents upon joining of the individual to the designated office and also with the issuing authorities to correct any discrepancies.

That at a later stage during scrutiny it was found that the applicant did not possess the mandatory minimum qualification. The lack of minimum essential qualification in respect of the applicant was noticed during the physical verification of documents vide GE Brichgunj letter No. 1184/145/E1B dated 10th October, 2017 based on which show cause notice dated 12th October, 2017 was issued to the applicant.

That as directed by the Tribunal on 13/10/17 in OA. 1440/17 a reasoned speaking order has been passed rejecting the applicant's candidature.

ISSUE

5. The issue which arises before us in order to adjudicate the instant Original Application is whether the speaking order dated 11.11.2017 issued by the respondent authorities is in accordance with law.

FINDINGS

6. At the outset, the primary document that is referred to is the advertisement issued by the respondent authorities on 21.11.2015 and particularly the relevant

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quoted below :-

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certificate from a recognized institute in relevant trade.

Education Qualification for Ex-Serviceman:

certificate from a recognized Institute in relevant trader

Or

Trade certificate issued by Regiment Trg Centre in terms of Govt. of India, Min. of Labour and Employment, Directorate General of Employment & Training letter Nos. DGET-07/36/2012-CD dt. 04 Mar 2013 for equitation of trades taught and practiced in the Army, Air Force and Navy with the corresponding trades in the industrial Training institutes under the craftsman/apprenticeship training scheme.

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Note – II Candidates who have not acquired / will not acquire the educational qualification as on the closing date of receipt of application will not be eligible and need not apply.

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12. All applicants must fulfil the essential educational requirements of the post, age, health and other conditions as stipulated in the advertisement. They are advised to satisfy themselves before applying that they possess at least the essential qualifications as laid down for the relevant post. No enquiry for advice regarding eligibility will be entertained."

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26. **Certificates to be Attached.** Candidates should ensure that they should attach with their application attested/self attested copies of the following documents:-

- (a) xx
- (b) Technical Education qualification certificates.

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Hence, the notification on Employment Notice dated 21.11.2015 had made it abundantly clear that the minimum educational qualification was:

- (a) Matriculation pass from recognized Board;
- (b) Industrial Training Institute pass certificate from a recognized institute in relevant trade.

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As laid down by the Hon'ble Apex Court in **M. Rathinaswami v. State of T.N. (2009) 5 SCC 625**, "It is for the Government to decide whether qualifications have a reasonable relation to the nature of duties and responsibilities of a promotional post and the court not being an expert in administrative matters, cannot sit in appeal over decisions of executive authorities unless they are arbitrary or shocking.

The respondent authorities have considered that matriculation pass from recognised Board and Industrial training Institute Pass Certificate from recognised institute in relevant trade would be the minimum essential qualifications for Mate (Mason) in the context of the nature of duties and responsibilities of the posts. It is also not the applicant's case that the minimum essential qualifications are not reasonably related to the nature of duties and responsibilities to the post applied for. Hence the minimum essential qualifications for Mate (Mason) as notified on 21.11.15 are not in dispute.

Admittedly, the applicant got through the stages of the written examination as well as the document verification at the initial stage.

The applicant's appointment letter dated 24.8.2017 (Annexure "A-6" to the O.A.) have, however, made a specific endorsement to the Garrison Engineer, Minniebay, Port Blair directing the Garrison Engineer to ensure that the original documents submitted by the original appointee are, inter alia, checked and that the instructions contained in the said appointment letter be followed. It is upon verification at this stage by the Military Engineering Services at Minniebay that the office of the Commander Works Engineer discovered that the applicant's qualification is a Diploma and the anomaly was noted during physical verification of documents at the level of CE, Brichgunj

Next we examine the contents of the speaking order dated 11.11.2017, which is under challenge in the instant O.A. The four grounds which have been



advanced in the speaking order in response to the applicant's reply dated 13.10.2017 are as follows:-

(a) The applicant had claimed that he possessed a higher qualification of Diploma in Civil Engineering then advertised in Employment News. The speaking order does not dispute the same but reiterates that the minimum essential qualification was ITI pass certificate from a recognized institute in relevant trade and it was noted in the recruitment notification that any candidate who has not acquired such qualification as on the closing date of application will not be eligible and need not apply. The applicant was aware that after passing CBSE, he went on to acquire a Diploma in Civil Engineering and at no point of time he possessed the educational qualification of ITI pass from a recognized institute in relevant trade. Hence, when one does not possess the basic qualification which is noted as mandatory and essential by the recruiting authorities, the question of higher qualification vis-à-vis the minimum essential qualification does not arise and the respondent authorities were quite correct in rejecting this contention of the applicant. Had the applicant possessed a ITI pass certificate from a recognized institute in relevant trade and thereafter acquired a diploma in Civil Engineering his contentions would have held good but as he had travelled from the stage of CBSE 12th Standard to Diploma in Civil Engineering at no stage of his educational qualification he had acquired the ITI certificate that was essentially required in order to meet the application interior.

(b) The next contention of the applicant was that since his application was found accepted for written examination the applicant satisfied the minimum educational requirement for the said post. Herein, the speaking order refers to the noting in the advertisement which states that applicants are advised to satisfy themselves before applying that they possess the minimum essential qualifications as laid down for the relevant post. Hence,

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the onus was on the applicant to ascertain as to whether a Diploma in Civil Engineering was adhering to the minimum essential qualification to the post of Mate (Mason). The speaking order also mentions that three more applicants were rejected as not having the minimum essential educational qualifications despite appearing in the written test. Hence, the applicant's case is not the isolated case whose candidature has been rejected despite appearing in the written examination.

(c) The third contention that the applicant did not make any false claim regarding his qualification has been accepted and admitted in the speaking order and the incorrect recording of the last date of submission of application as printed in the show cause notice has been admitted by the respondent authorities in their speaking order who have accepted that as because his application was well within the last date of receipt of application, he was allowed to participate in the selection process.

7. The sole bone of contention, therefore, is whether the applicant did possess the minimum requisite educational qualification as laid down in the Employment Notification and whether his appearance in the written test automatically confirmed fulfilment of the requisite educational qualification. It is clearly seen from the applicant's application form to the said post (Annexure A-2 to the OA) that after passing CBSE examination at the level of 12th Standard he has acquired Diploma in Civil Engineering from MSBTE. Hence at no stage the minimum essential qualification of ITI pass has been established nor is it the contention of the applicant that he indeed had an ITI pass certificate.

Acquiring a higher qualification in the form of Diploma without traversing the primary qualification of ITI pass does not automatically entitle the applicant to claim that he did have the qualifications for the said post and in our considered view it is the respondents, who are the best judge of the requisite educational qualifications as required under discharging duties and responsibilities with respect to a particular post. It is reiterated that the onus was on the applicant to

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satisfy himself that he did possess the minimum essential qualification as called for. Regarding the offer letter issued, we are guided by the ratio laid down by the Hon'ble Apex Court in **State of Rajasthan v. Hitendra Kumar Bhatt, (1997) 6 SCC 574** which had laid down that, " An ineligible person cannot claim to continue in service merely because he was called for an interview under an interim order of the court and was provisionally selected."

The appointment order dated 24.8.2017 had stated in para 'g' of the same that acceptance of the joining report would be subject to production of original certificates and the Garrison Engineer at Minniebay was directed to verify and scrutinize the original documents wherefrom the anomaly was detected.

Hence, the mere receipt of the provisional appointment letter did not entitle the applicant for a permanent appointment, given that the minimum essential educational qualifications were not established in his case. The respondents also have been careless in allowing that applicant who did not possess the minimum educational qualification to appear in the written examination and also failed to detect the anomaly at the initial stage of document verification. The respondents have admitted their mistake and with the probability of such errors in mind, have provided for a second stage of document scrutiny.

8. Hence, we do not find any reason to interfere with the speaking order dated 11.11.2017 so impugned.

9. Accordingly, the O.A. is dismissed on merit. There are no orders on costs.

(Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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