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**CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.**

O.A.210/00636/2016

Dated this Wednesday the 20<sup>th</sup> day of November, 2019.

**Coram: Dr.Bhagwan Sahai, Member (Administrative)  
Ravinder Kaur, Member (Judicial).**

Shri Mahadev Dnyanu Hake,  
Working as Technician B,  
High Energy Materials  
Research Laboratory,  
Sutarwadi, Pashan,  
Pune - 411 021,  
residing at Type I, 3/1,  
Armament Colony, Ram Nagar,  
Pashan, Pune - 411 021. .. Applicant.

( By Advocate Shri S.V. Marne ).

**Versus**

1. Union of India, through  
the Secretary,  
Ministry of Defence,  
Defence Research Development  
Organisation, DRDO Bhavan,  
New Delhi - 110 011.
2. Director,  
High Energy Materials Research  
Laboratory,  
Sutarwadi, Pune - 411 021.
3. Shri Nitin A. Mundhe,  
Working as Technician 'A',  
(Under Promotion as STA "B"),  
Material Management Division,  
High Energy Materials Research  
Laboratory, Sutarwadi,  
Pune - 411 021.
4. Prakash R. Panda,  
Working as Technician 'A'  
(Under Promotion as STA "B"),  
Igniter Division,  
High Energy Materials Research  
Laboratory, Sutarwadi,  
Pune - 411 021.
5. Shri Anand V. Halliked,  
Working as Store Assist 'A',  
(Under Promotion as STA "B"),

Material Management Division,  
High Energy Materials Research  
Laboratory, Sutarwadi,  
Pune - 411 021.

6. Shri Dilip Singh,  
Working as AMS-III,  
(Under Promotion as STA "B"),  
Administration/MS Division,  
High Energy Materials Research  
Laboratory, Sutarwadi,  
Pune - 411 021.
7. Shri Megh Singh Meena,  
Working as Technician 'A',  
(Under Promotion as STA "B"),  
TEG Division,  
High Energy Materials Research  
Laboratory, Sutarwadi,  
Pune - 411 021. ..Respondents.

( By Advocates Shri R.R. Shetty and Shri P.J.  
Prasadrao ).

Order reserved on : 31.07.2019  
Order delivered on : 20.11.2019.

O R D E R  
Per : Dr.Bhagwan Sahai, Member (A).

Shri Mahadev Dnyanu Hake, working as  
Technician-B with High Energy Materials Research  
Laboratory, Sutarwadi, Pashan, Pune filed this O.A.  
on 12.09.2016. He has sought quashing and setting  
aside of letter dated 01.09.2016 (Annex-A-1) holding  
him ineligible for Limited Departmental Competitive  
Examination (LDCE) 2016-2017; declaration that the  
applicant is eligible to appear in the LDCE for  
promotion to the post of Sr.Technical Assistant 'B';  
order dated 08.09.2016 (Annex-A-17) to the extent of  
non-promotion of the applicant to the post of  
Sr.Technical Assistant 'B'; direction to the  
respondents to promote the applicant on that post

from 01.09.2016 on being selected in the LDCE; and direct the R-2 to hold special written test for LDCE as per Circular dated 17.08.2016. He has also sought cost of this application.

**2. Summarized facts:**

**2(a).** The applicant was recruited for the post of Security Attendant in High Energy Materials Research Laboratory, Pune on 18.07.2001. Subsequently he was promoted as Technician-A in the year 2006 and as Technician-B in 2013. As per normal promotional channel, a Technician-B gets promoted as Technician-C but those having diploma in Engineering have the option of appearing in LDCE for promotion to the post of Sr. Technical Assistant Group B.

**2(b).** After implementation of 6<sup>th</sup> CPC recommendations, the post of Sr. Technical Assistant 'A' and Sr. Technical Assistant 'B' were merged and individuals having diploma in Engineering can get directly promoted as Sr. Technical Assistant Gr.'B' after passing the LDCE. As per Rule 5 of DRDO Technical Cadre Recruitment Rules, 2000, 25% of vacancies in Category-B are to be filled through LDCE from Departmental employees having minimum 3 years regular service and qualifications prescribed in Schedule-II i.e. either Bachelor's degree in Science, or three years Diploma in Engineering or Technology or Computer Science or allied subjects in the required discipline (Annex-A-3, page 28).

2(c). While working as Technician-B, the applicant obtained a Diploma in Mechanical Engineering from Government Polytechnic, Pune based on part-time programme of four years and his result was declared on 05.06.2015 (Annex-A-4) mentioning that he had passed with distinction Diploma in Mechanical Engineering (Diploma PTD) with 70.13% marks.

2(d). Based on the circular issued by Respondent No.2 on 14.08.2015 for conducting LDCE for promotion to the post of Sr.Technical Assistant 'B', he submitted a provisional certificate dated 05.06.2015 in which it was not mentioned that the diploma course undertaken by him was a part-time course (Annex-A-5, page 32). Along with that he also submitted another certificate of Government Polytechnic, Pune of equivalence stating that he had passed Diploma in Mechanical Engineering in June, 2015 and Maharashtra State Board of Technical Education, Mumbai has granted academic equivalence to the above programme.

2(e). Based on those certificates, the applicant was permitted to appear in the LDCE conducted in 2015. Subsequently he submitted a certificate dated 25.02.2016 issued by Government Polytechnic, Pune certifying that he had been awarded diploma in Mechanical Engineering (part-time). The Respondent No.2 again issued a circular on 17.08.2016 for

holding LDCE for the post of Sr. Technical Assistant 'B' (Annex-A-8). The applicant again applied for it but on verification of his documents on 29.08.2016 the respondents raised doubt about his provisional certificate dated 05.06.2015 submitted while applying for LDCE 2015 which did not mention that the diploma was on part-time basis. Thereafter the applicant obtained another provisional certificate of the same date i.e. 05.06.2015 mentioning the word PTD in that certificate (Annex-A-9). He was also given a copy of letter dated 24.06.2016 issued by Director, Maharashtra State Board of Technical Education, Bandra (East), Mumbai about extension of one year in the equivalence period for academic year 2015-16 subject to decision of the Equivalence Committee which was in the process of being reconstituted. He submitted the provisional certificate obtained in 2016 and the letter about equivalence to Respondent No.2.

**2(f).** The LDCE 2016 was held on 31.08.2016 but in the list of eligible candidates issued on 30.08.2016, but it did not have the applicant's name (Annex-A-12). On enquiry the Respondent No.2 vide letter dated 01.09.2016 informed the applicant that his diploma was of four years whereas requirement under the Recruitment Rules is Diploma of 3 years and there were doubts about the provisional certificate submitted by the applicant in 2016 but

bearing the date of 05.06.2015 and, therefore, he was not eligible for appearing in the LDCE, 2016 as per DRTC Rules which stipulate diploma course of 3 years duration.

Thereafter the applicant submitted a representation to Respondent No.2. In view of this the present O.A. has been filed.

**3. Contentions of the parties:**

In the O.A., rejoinder and arguments of counsel on 31.07.2019 the applicant has contended that -

**3(a).** the impugned letter dated 01.09.2016 issued by Respondent No.2 declaring the applicant ineligible for LDCE for promotion to the post of STA-B is legal and void;

**3(b).** the applicant cannot be held ineligible for the LDCE because he has qualification of Diploma in Mechanical Engineering as per DRTC Rules, 2000 and, therefore, he was entitled to participate in the selection process through LDCE as per Circular dated 17.08.2016;

**3(c).** the letter of 01.09.2016 did not specify the reasons for holding the applicant ineligible for LDCE, therefore, it is arbitrary and baseless. The applicant has diploma course completed in 4 years as against the prescribed duration of 3 years of diploma in DRTC Rules, 2000. The applicant has also submitted equivalence certificate issued by

Maharashtra State Board of Technical Education certifying that the part-time diploma course is equivalent to full time course. The diploma course conducted by the Government Polytechnic, Pune is approved by AICTE and Maharashtra State Board of Technical Education. The Recruitment Rules do not make any distinction between part-time and full time diploma course, the syllabus, course structure and examination pattern of both the full time and part-time course at Government Polytechnic, Pune are identical. Therefore, the respondents cannot question validity of the applicant's qualification;

**3(d).** the part-time course is designed for serving individuals. Other employees of Respondent No.2 such as Shri Bapusaheb Gadade, Shri V.M. Valmiki, Shri Sapkal and Shri Girola have also undergone the same part-time diploma course in Engineering but they have been permitted to appear in the LDCE and promoted as STA-B;

**3(e).** the respondents themselves had accepted the applicant's qualification for the LDCE 2015, hence treating him as ineligible for LDCE 2016 is their afterthought raising the issue of his part-time diploma course being of four years whereas as per rules the required qualification is three years diploma. While rules provided for three years Diploma in Engineering or Technology or Computer Science or allied subjects in required discipline,

there is no distinction between full time and part-time diploma and, therefore, the applicant's diploma done on part-time basis over period of four years cannot be treated as ineligible;

**3(f).** the contention of the respondents that the applicant was allowed to participate in the LDCE 2015 on account of confusion is misleading and they have not explained as to why the above mentioned candidates were permitted to appear in the LDCE and promoted to the post of STA-B after having undergone the same part-time diploma course. Under SRO 296 or in the circular of respondents dated 17.08.2016, there is no provision for not accepting part-time diploma as the required qualification;

**3(g).** after filing of this O.A., in view of interim relief granted on 19.09.2017, the applicant was allowed to appear for the examination pending further orders and its result has been kept in a sealed cover. Therefore, the applicant's result be declared and he should be promoted as STA-B; and

**3(h).** the Recruitment Rules are for entire DRDO and Armament Research and Development Establishment, Pune has also allowed part-time diploma holders to appear in the LDCE, and Shri Anil Ghodki and Shri N.D. Bachal who had undergone the same part-time diploma course have been allowed to appear in the LDCE 2018 for the post of STA-B. Since the ARDE and HEMRL are governed by the same DRDA Recruitment

Rules, the Respondent No.2 has also allowed for LDCE 2018-19, three candidates who had obtained the diploma certificate through distant mode and, therefore, the O.A. should be allowed and the result of the applicant kept in sealed cover should be declared and he should be promoted.

In their reply, response to rejoinder and during the arguments, Respondents No.1 and 2 have contended that -

**3(i).** the applicant has not been allowed to appear for the LDCE 2016 vide letter dated 01.09.2016 because he does not possess the required minimum qualification i.e. three years Diploma in Engineering or Technology or Computer Science or allied subjects in the required stream as per the applicable Recruitment Rules (Annex-A-3);

**3(j).** the applicant obtained a part-time diploma which is not stipulated under the Recruitment Rules and there is no scope in those rules for accepting any qualification which may be held equivalent to three years Diploma in Engineering. The word 'part-time' or 'equivalent' are conspicuous by their absence in the Recruitment Rules. Therefore, the decision of the Competent Authority for not permitting the applicant to participate in the LDCE 2016 for the post of STA-B is proper and does not warrant any interference by the Tribunal;

3(k). diploma course completed in four years is not recognized in the SRO 296 and circulars issued by the respondents on 04.11.2015 and 17.08.2016, which specifically mentioned that the required qualification for eligibility was three years Diploma in Engineering in the required discipline;

3(l). there was variation in the provisional certificate and final certificate submitted by the applicant creating confusion because of which the applicant happened to be allowed to participate in the LDCE 2015. But thorough scrutiny of his certificates for LDCE 2016-2017 revealed that he was not an eligible candidate. The applicant submitted two conflicting provisional certificates i.e. one certificate dated 05.06.2015 as having obtained diploma in regular course and another certificate of the same date but issued in 2016 stated that the diploma course was completed on part-time basis;

3(m). with reference to documents pertaining to ARDE, Pashan, Pune, it is claimed that ARDE is a distinct unit dealing with research and development of specific items, whereas the respondents are governed by the provisions under the relevant Recruitment Rules for the post of STA-B which the applicant does not fulfil.

3(n). the equivalence granted by the Maharashtra State Board of Technical Education is not relevant for the respondents unless such equivalence is

granted under the relevant rules by the competent respondent authorities. Since the Recruitment Rules do not mention about any equivalent diploma certificate to be accepted as eligibility qualification, such equivalence certificate cannot make the applicant eligible for the post of STA-B through LDCE.

3(o). The respondents have relied on the following caselaws:

(i). Decision of this Bench of the Tribunal dated 17.03.2011 in **O.A.431/2007** holding that the equivalent qualification was conspicuously absent in the Recruitment Rules and, therefore, the equivalent qualification held by the applicant was not accepted and the O.A. was dismissed.

(ii). As per Supreme Court decision dated 22.02.2017 in Civil Appeal No.3094/2017 (**State of Andhra Pradesh and others Vs. Shaik Mahibulla Sharief**) holding that since the Government had recognized a particular B.A. Degree awarded by Dr.B.R. Ambedkar Open University as equivalent to Bachelor's Degree with Telugu as the main subject, it was allowed to be accepted. However, in that case there was specific decision of the Government to treat the degree of the applicant in that case to be equivalent, whereas in the present applicant's case, there is no recognition under the Recruitment Rules of four years part-time diploma course as

equivalent to three years diploma course.

(iii). Apex Court decision dated 13.09.2006 in Civil Appeal No.4098/2006 and 4099/2006 (**Sanjay Kumar Manjul Vs. Chairman, UPSC and others**) holding that the statutory authority is entitled to frame the statutory rules laying down the terms and conditions of service as also the qualifications essential for holding a particular post. It is only the authority concerned which can take ultimate decision therefor.

(iv). Apex Court decision dated 17.07.2002 in Civil Appeal No.4119/2002 in **State of Rajasthan and others Vs. Lata Arun** holding that the matters of decision prescribing minimum educational qualification for admission to a course and recognising educational qualification as equivalent to or higher than the prescribed one, fall within the realm of policy decision to be taken by the State Government or the authority vested with power under any statute and it is not for the courts to decide whether the particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the concerned authority.

(v). Apex Court decision dated 05.12.2018 in Civil Appeal No.11853-54-55/2018 (**Zahoor Ahmad Rather and others Vs. Sheikh Imtiyaz Ahmad and others, Javed Ahmad Dar and others Vs. Naseer Ahmad**

**Mir and others)** holding that the prescription of qualifications for a post is a matter of recruitment policy. The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expend upon the ambit of the prescribed qualifications. Similarly, equivalence of qualification is not a matter which can be determine in exercise of power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State as recruiting authority to determine.

Therefore, in view of the above caselaws, the respondents contend that neither the Recruitment Rules applicable to the post of STA-B prescribe four years part-time diploma course as a qualification neither the Tribunal can hold that qualification of the applicant as equivalent to the qualification of three years diploma course prescribed under the Recruitment Rules. Therefore, the O.A. being devoid of merit should be dismissed.

**3(p).** Private respondents No.3 to 7 have submitted that Respondent No.3, 5, 6 and 7 had Bachelor's degree in Science and, therefore, they are eligible for the post of STA-B and that is why they were allowed to participate in the LDCE. Respondent No.4 has a Diploma in Mechanical Engineering from the Nalanda Institute of

Technology, Bhubaneshwar, he was also eligible for the post of STA-B and hence he was allowed to appear in the LDCE.

**4. Analysis and conclusions:**

We have perused the OA memo and its annexes, rejoinder of the applicant, reply and surrejoinder filed by the official respondents as well as reply filed by private respondents, caselaws relied upon by the official respondents and carefully considered the arguments advanced by both sides on 31.07.2019.

**4(a).** From the case record it is revealed that various certificates submitted by the applicant in support of his qualification were of doubtful nature. The mark-sheet issued by the Government Polytechnic, Pune dated 05.06.2015 for the applicant mentioned his marks as 70.13% and the result as First Class with Distinction. However, while distinction is awarded when the marks secured in a particular examination are 75% or more, it is not clear as to how his mark-sheet mentioned 70.13% marks as with distinction.

**4(b).** The applicant craftily submitted two provisional certificates of his Diploma. The first one issued on 05.06.2015 (Annex-A-5) mentioned that the applicant was a student of the Government Polytechnic, Pune for regular Diploma in Mechanical Engineering and had passed the regular Diploma in

Mechanical Examination in June, 2015. The second certificate produced by the applicant was also issued by the same institute on 29.08.2016 (though it does not mention the date on which it was issued) also having a date of 05.06.2015 stating that the applicant was a student of that Institute for part-time Diploma in Mechanical Engineering and had passed the part-time diploma examination held in June, 2015. While the date of both these certificates was mentioned as 05.06.2015, the second certificate was not a duplicate certificate of the first one issued on 05.06.2015 but even then it had the same date as 05.06.2015. The signatures of Principal on those two certificates were also different. The certificate issued by the Government Polytechnic, Pune on 25.02.2016 about award of Diploma to the applicant also mentioned it to be Diploma in Mechanical Engineering PTD. This shows that the applicant first produced a false/wrong certificate claiming that he had diploma in Mechanical Engineering as a regular course and then disclosed that it was on a part-time basis. As admitted by the applicant himself in Para 4.4 of the O.A. he had not mentioned in his 2015 application that he had completed the diploma course on part-time basis. Thus it was a clear misrepresentation of facts by the applicant.

4(c). As submitted by the respondents the required educational qualification for the post of Sr. Technical Assistant 'B' is Bachelor's Degree in Science or three years Diploma in Engineering or Technology or Computer Science or allied subjects in required discipline. In this regard their contention is correct that in the Recruitment Rules the qualification prescribed does not have any mention about any equivalent degree or diploma.

4(d). Similarly in the circular issued by the Respondent No.2 dated 17.08.2016 for the LDCE, citing DRDO headquarters instructions it was mentioned that the candidates should submit certificate of Degree or Diploma in the field of Engineering or Technology obtained through regular classes from any University and it should have recognition both institutional and course-wise of UGC and for all institutes awarding Technical Degree or Diploma recognition of the course by AICTE is mandatory.

4(e). Here the applicant only submitted a certificate dated 05.06.2015 (Annex-A-6) stating that the applicant is a student of that institute and he has passed Diploma in Mechanical Engineering in June, 2015 and Maharashtra State Board of Technical Education has granted academic equivalence to the above programme dated 03.07.2014. However, a copy of the letter at Annex-A-10 dated 24.06.2016

mentions extension of equivalence for the academic year 2015-16 as a special case subject to decision of the Equivalence Committee. This means the equivalence granted for the academic year 2015-2016 was only provisional and the applicant has failed to produce any certificate granting equivalence to a four year part-time diploma course in Mechanical Engineering with three years Diploma in Mechanical Engineering.

**4(f).** Therefore, the contention of the respondents is correct that neither there is any provision in the Recruitment Rules for part-time diploma course as qualification for the post of STAB nor such equivalence has been recognised by the competent respondent authority.

Hence the contention of the applicant that he was permitted to appear in the LDCE 2015 is irrelevant because he was allowed based on his doubtful certificates to the effect that he had completed diploma course on regular basis. Thus the permission to him at that time was based on the misrepresentation of facts by him.

**4(g).** In view of the above, the applicant's contentions based on the misrepresentation of facts cannot be accepted. The contentions of the respondents and action taken by them are correct and fully justified as per the stipulations under the Recruitment Rules.

4(h). In view of these facts and the caselaws cited by the respondents, we find no merit at all in the O.A., it is totally devoid of merits and, therefore, deserves dismissal.

5. Decision:

The O.A. is dismissed. No costs. Interim relief stands vacated.

(Ravinder Kaur)  
Member (J)

(Dr. Bhagwan Sahai)  
Member (A).

H.

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25/11/18