
(1995) 05 RAJ CK 0045
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2739 of 1991

Allauddin Khilji

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 08-05-1995

Acts Referred:

Army Act, 1950 — Section 20

Citation : (1996) 2 RLW 90 : (1996) WLC 206 : (1995) 1 WLN 701

Hon'ble Judges : P.P. Naolekar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.P. Naolekar, J.—This writ petition Is directed against the notice dated 17.05.91 (Annex-5) issued by respondent No. 2 to the petitioner to show causes to why the he should not be dismissed from service for not having requisite educational qualifications for MER Gp in the Army. The next of the show-cause noitice reads as under:

1. It has been reported by sings Records vide their letter No. 15355406/D-1/T-9/56 dt 30 Jan 91 that your enrolment in the Army for MER is irregular since West Bengal Madrasa Eudcation Borad is not recognised by the competent auto. In terms of Section 20(3) of Army Act 1950 read with Army Rule 17, you are liable to be dismissed from service.
2. In persuance of the above, you are hereby called upon to "show caused, within 30 days of the receipt of this notice as to why you should not be dismissed from the service for not having requisite educational qualifications for MER Gp in the Army.
3. In case your reply is not read within the stipulated period, it will be presumed that you have noting to, say in your defence and action as deemed appropriate will be taken.

2. Briefly stated, the facts are that the petitioner was enrolled in the Army Corps of signal under MER category (operator) on 23rd August, 1986. The minimum qualification prescribed for enrolment to the said post is Secondary or High School Examination. The petitioner has passed High Madrasah Examination of the West Bengal Madrasah Education Board in the year 1983. Some time after his enrolment to the service in the Army in the year 1988 an objection was raised by the authorities that the West Bengal Madrasah Board is not recognised by the competent authority and as such the petitioner's enrolment is irregular. The petitioner submitted letter dated 11.01.90 of the Deputy Secretary, Government of West Bengal, Education Department, Calcutta alongwith the resolution of the Education Department, West Bengal dated 02.02.73 claiming that the West Bengal Madrasah Education Board is functioning under the Education Department of the West Bengal Government and the High Madrasah Examination conducted by the said Board is equivalent to the Madhyamik (Secondary) Examination of the West Bengal Board of Secondary Education for all purposes. In their return, the respondents have alleged that the qualification obtained by the petitioner from the West Bengal Madrasah Education Board is not recognised as equivalent to the High School or Higher Secondary Examination by the competent authority and as such his enrolment to the service was made erroneously.

3. It is contended by learned Counsel for the petitioner that the examinations conducted by the West Bengal Madrasah Board are duly recognised by the West Bengal Board of Secondary Education and the same is functioning under the Education Department of the Government of West Bengal. He has contended that the petitioner has submitted the necessary proof showing the equivalence of the certificate of High Madrasah Examination conducted by the West Bengal Madrasah Education Board to the Madhyamik (Secondary) examination of the West Bengal Board of Secondary Education still show-cause notice was issued. Learned Counsel for the petitioner lastly contended that the respondents are bound to accept the equivalence of the examination passed by the petitioner from the West Bengal Madrasah Board to the Madhyamik (Secondary) Examination of the West Bengal Board of Secondary Examination and as such the respondents have no authority to allege that the qualification obtained by the petitioner is not duly recognised by the competent authority and the petitioner's enrolment to the service is irregular.

4. While traversing the contentions of learned Counsel for the petitioner, learned Counsel for the respondents Union of India and another placed before the Court circular letter No. A/02863/Rtg 5 (OR) (a) dated 19th September, 1978 emanating from That Sena Mukhyalaya, Recruiting Directorate, Adjutant General's Branch, West Block No. 3, R.K. Puram, New Delhi captioned "RECOGNITION OF EDUCATION QUALIFICATIONS (POLICY LETTER No. 53/78" alongwith the enclosed list "Appendix-A". The relevant excerpts of the said circular and its enclosure Appendix-A run as under:

1. A revised list of educational qualifications recognised by the Government of India, as equivalent to Matriculation examination for purposes of employment to posts under the Central Government is forwarded herewith as Appendix-A to this letter

2.

3.

(Appendix "A")

List of examinations recognised as equivalent to Matriculation examination for purpose of appointment under the Central Government

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... ..

13. Matriculation of School Leaving Examination of a University established by law in India or an examination held at the end of the High School, Secondary School or Higher Secondary School by an authority authorised by the Central or a State Government in India to hold such examinations by Resolution, Notification or other Government order.

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5. Normally this Court would not interfere at the stage of show-cause notice only as it would be in the fitness of things for the person concerned to place all the material before the appropriate authority for consideration. However, in the present case, the facts are apparent on the face of record and the controversy appears to have arisen on account of non-application of mind, therefore, in the interest of justice I think it proper to deviate from the normal course. Moreover, there is apparent likelihood of prejudicial injury being caused to the petitioner.

6. It is clear from the aforequoted excerpts of the circular dated 19th September, 1978 that the certificates of matriculation of school leaving examination of a University established by law in India or of an examination held at the end of the High School, Secondary School or Higher Secondary School by an authority authorised by the Central or a State Government in India are recognised for the purposes of appointment to the posts under the Central Government. The petitioner has placed on record a photostat copy of letter dated 11.01.90 (Annex.-4) issued by the Deputy Secretary, Government of West Bengal, Education Department (Secondary Branch). To make things lucid and self-explanatory it would be better to quote the text of the said letter. It runs as under:

I am directed to say that the West Bengal Madrasah Education Board is functioning under the Education Department of this Government and that the High Madrasah Examination conducted by the said Board is equivalent to the

Madhyamik (Secondary) Examination of the West Bengal Board of Secondary Education for all purposes.

A conjoint reading of the aforequoted circular dated 19th September, 1978 (Policy Letter No. 53/78) and letter dated 11.01.90 (Annex.-4) leaves no manner of doubt that the qualification obtained by the petitioner is recognised by the Central Government for the purpose, of appointment to a post under the Central Government. The case of the respondents is only confined to the recognition of the qualification obtained by the petitioner as manifest from the impugned show-cause notice dated 17th May, 1991 and on true interpretation of other material there remains no controversy for issuing the show-cause notice in as much as the crux of the said show-cause notice is only recognition of the qualification and not under-qualification or other-wise.

7. In the result, this writ petition is allowed. The show-cause notice dated 17th May, 1991 (Annex.-5) is hereby quashed and set aside. The respondents are directed to drop all proceedings initiated in pursuance of the notice Annex.-5 dated 17.05.91. However, under the facts and circumstances of the case, there shall be no order as to costs.