
(2018) 05 J&K CK 0013
In the Jammu And Kashmir High Court
Case No : SWP NO. 30 OF 2018

GAGANDEEP SINGH

APPELLANT

Vs

UNION OF INDIA TH. HOME DEPTT. AND ORS

RESPONDENT

Date of Decision : 08-05-2018

Acts Referred:

Border Security Force Act, 1968 — Section 141

Citation : (2018) 05 J&K CK 0013

Hon'ble Judges : DHIRAJ SINGH THAKUR

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. The issue in the present petition is with regard to the eligibility of the petitioner, as regards, qualification.Â

2. An advertisement notice dated 01.03.2017 was issued by the Government of India, Ministry of Home Affairs, Directorate General Border security

Force Recruitment Section inviting applications, inter alia, for the post of Assistant Commandant (Electrical). The qualification prescribed was degree

in Electrical Engineering from a recognized University or Institution. Petitioner possesses a degree in Electrical and Electronics. Pursuant to interim

direction dated 09.01.2018 passed by this Court, the petitioner was permitted to sit in the interview. The official respondents in compliance to the said

direction did permit the petitioner to sit in the said interview. Subsequently, the merit position of the petitioner was called for. It appears that the

petitioner does make up the merit qua the other candidates in the said category. However, the issue with regard to the eligibility of the petitioner still

requires to be determined.Â

3. Counsel for the petitioner placed reliance upon a judgment of Delhi High Court in the case of Ms. Nisha v. UOI and ors. (Writ petition (c) No. 6100

of 2012 along with connected matters decided on 12.07.2013). The judgment was relied upon for the purpose of emphasizing that the Delhi High Court

had gone into the issue of equivalence of degrees between B.Tech in Electrical and Electronics and B.Tech in Electrical. Although, according to Delhi

High Court, the experts had opined that the degrees were not equivalent, yet on a tabulated comparison of the syllabi prescribed for the two courses,

the Court arrived at a conclusion that they were equivalent.Â

4. Counsel for the petitioner also placed reliance upon Atul Kumar v. the Punjab National Bank and ors., 2017 (4) PLJR 838 where the High Court of

Patna by following the judgments of Delhi High Court (supra) and Gauhati High Court in the case of Shri Wilfred Vanlaliana and ors. v. The State of

Mizoram and ors. (WP(C) No. 2 of 2012) which have held the degree of Engineering in Electronics and Electrical as equivalent to the degree of B.

Tech in ElectricalÂ Engineering.

5. Counsel for the respondents, on the other hand, placed reliance upon Manoj Kumar Singh v. State of U.P. 2014 (9) ADJ 659. In the said judgment,

the Division Bench has distinguished the Delhi High court judgment (Supra) on the ground that although the Court had held that degrees of B.Tech

(Electrical) to be equivalent to the degrees in Electrical and Electronics, yet was not the only basis for allowing the writ petitions and that there were

certain other overwhelming reasons in the said judgment which were highlighted in paragraphs 21 to 28 and 30.Â

6. It needs to be highlighted that in Manoj Kumar Singhâ??s case (supra), the advertisement notice had specifically prescribed the eligibility condition

as under:

â??B.Tech in Electrical Engineering or a degree or diploma recognized as equivalent thereto by the State Government.â??

7. On a reading of the judgment Ms. Nishaâ??s case (supra), however, it is not clear as to whether the advertisement had similarly prescribed the

possession of an equivalent degree which could make a candidate eligible for the post.Â

8. The issue that arises for consideration in the present case is as to whether in the absence of an equivalence clause, as regards, qualification in the

advertisement notice, it would be permissible for the Court to hold the possession of a degree other than the one prescribed by the advertisement

notice as satisfying the eligibility criterion only on the basis of the same being equivalent to the prescribed qualification.Â Â

9. The advertisement in question which invited the applications from eligible candidates and prescribed the requisite qualification as degree in Electrical

Engineering was, in fact, in consonance with the rules prescribed by the official respondents vide G.S.R. No. 358(E) dated 11.05.2012 prescribed in

terms of section 141 of Border Security Force Act, 1968.Â

10. On a perusal of the relevant rules as also the advertisement notice, it is, thus, clear that what was prescribed as eligibility was only a degree in

Electrical Engineering from a recognized university or an Institution and did not envisage any degree equivalent to a degree in Electrical

Engineering.Â

11. It is settled law that it is open to the appointing authority to lay down the requisite qualification for recruitment to the Government service.Â

12. A Full Bench of Punjab and Haryana High Court in Som Putt v. State of HaryanaÂ and another 1984 (1) ILR (Punjab) 400 held thus:

â??9â?|â?|â?| Generally it seems somewhat elementary that the employer alone would know what are the specialties and conditions of service or post

for which the incumbent is required. Therefore, it would follow that its discretion in seeking the right man for the right job should be left relatively

unfettered. Consequently, no doctrinaire rule can be laid down that a technically higher educational qualification is necessarily better or more

advantageous for the peculiar needs of a post for which the employer-State has prescribed lower qualifications â?|â?|â?|â?|â?|Â

13. It appears that the official respondents with a view to get some clarity as to whether a B.Tech degree in Electrical and Electronics Engineering

was the same as the B. Tech in Electrical Engineering addressed a communication dated 26.11.2017 to the Director, All India Council for Technical

Education (AICTE), who, however, submitted a reply dated 06.11.2017 stating therein, as per the policy, the AICTE did not provide equivalence to

qualification obtained from AICTEâ??s approved Institutions/Departments at any level for higher education purpose as well as employment purpose.

It was further stated that it was for the employer to decide the suitability for a

particular post in case of employment. This was followed by a public notice issued by the Member Secretary, AICTE which reiterated the response earlier given to the official respondents.Â

14. Be that as it may, AICTE clearly had refused to comment on the issue of equivalence between the two degrees, that is, one possessed by the petitioner and one prescribed.Â

15. Counsel for the petitioner placed overwhelming reliance on a notification dated 28.04.2017 issued by All India Council for Technical Education.Â

16. It needs to be emphasized that by virtue of the said notification, the AICTE had framed the Regulations, namely, All India Council for Technical Education (Major/Core Branch of Engineering/Technology and their relevant/appropriate courses leading to degree in Engineering/Technology) 2007.

In the said regulations, the AICTE has defined the major/core branches of engineering and technology with nomenclature of under graduate and post graduate degrees relevant for recruitment to teaching positions in technical institutions.Â

17. On a perusal of the said Regulations, it can be seen that with the field of electrical engineering, there are several sub-branches in which a

candidate may acquire his degree of engineering. For example, Electrical and Computer Engineering, Electrical and Electronics (Power System),

Electrical and Electronics Engineering, Electrical and Electronics Engineering (Sandwich), Electrical and Instrumentation Engineering, Electrical and

Mechanical Engineering, Electrical and Power Engineering, Electrical Engineering, Electrical Engineering (Electronics and Power) etc.Â

18. From a reading of the aforementioned regulations, it becomes clear that apart from the core field of Electrical Engineering, other degrees are also

possible with other related subjects of Computer Engineering, Electronics (Power System) or Electronics (Sandwich) or Computer Science etc.Â

19. The argument of the learned counsel for the petitioner that anybody having acquired a degree in any of the sub groups is nevertheless an electrical

engineer may sound attractive on the face of it, yet on a close scrutiny of the Regulations, it becomes clear that electrical engineering in isolation is

also a field wherein a candidate can independently obtain a degree.

20. The AICTE Regulations (supra) do not at all determine the equivalence but only specifies the major branches which are primarily prescribed for

recruitment to teaching positions in technical institutions and not for the purpose of recruitment to any other position. The official respondents, in fact, by prescribing the requisite qualification in electrical engineering can insist on selecting only such candidates with degrees in electrical engineering and not degrees which are according to the learned counsel for the petitioner found equivalent thereto.Â

21. The issue of determining equivalence of degrees is best left to academic bodies who are academically equipped to opine by considering various aspects like course content, syllabi, duration of courses etc. Moreover, in the absence of any provision for equivalence either in the service recruitment rules or in the advertisement notice, the official respondents would be justified in declaring ineligible all such candidates who possessed any degree other than the degree in electrical engineering, which even, according to the AICTE Regulations discussed herein above, does form an independent field of study even for the purpose of recruitment in teaching positions in the technical institutions.Â

In *Tariq Islam v. Aligarh Muslim University and ors.* (2001) 8 Supreme Court Cases 546, the Apex Court, while placing reliance upon *University of Mysore v. C.D. Govinda Rao*, AIR 1965 SC 491 in paragraph 7 held thus:

â??7. In *University of Mysore v. C.D. Govinda Rao*Â the appointment of one Anniah Gowda was set aside by the High Court on the basis that he

did not satisfy the qualification that he â??must possess either a first or a high second class Masterâ??s degree of an Indian Universityâ?. This

Court stated that normally, it is wise and safe for the courts to leave the decision of academic matters to experts who are more familiar with the

problems they face than the courts generally are. Area of interference by courts would be limited to whether the appointment made by the academic

body had contravened any statutory or binding rule and while doing so, the Court should show due regard to the opinion expressed by the experts and

on whose recommendations the academic body had acted and not to treat such expert body as a quasi-judicial tribunal, deciding disputes referred to it

for decision. Equivalence of a qualification pertains purely to an academic matter and courts would naturally hesitate to express a definite opinion,

particularly, when it appears that the experts were satisfied that the equivalence has already been considered and declared by it. This view has been

reiterated by this Court in several decisions on the question of equivalence of qualifications including the one in *Rajendra Prasad Mathur v. Karnataka University*.â??

22. Keeping in view the ratio of the aforementioned judgment, this court would not venture to determine as to whether the degree possessed by the petitioner in Electrical and Electronics was equivalent to the degree of B.Tech in Electrical Engineering.

23. Having considered the matter in its entirety, I am of the opinion that petitioner has rightly been held to be ineligible by the official respondents and notwithstanding the fact that the petitioner was permitted to participate in the selection process and does make up the merit, has no right to seek appointment as being ineligible in view of the non fulfillment of the requisite eligibility clause as regards qualification.Â

24. For the reasons stated above, this petition is found to be without any merit and is, accordingly, dismissed along with connected MP(s).