

(2010) 05 DEL CK 0161

In the Delhi High Court

Case No : Writ Petition (C) No. 7389 of 2008

Moninder Singh

APPELLANT

Vs

UOI and Another

RESPONDENT

Date of Decision : 03-05-2010

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10, 10(O), 10(V), 2, 22
Kurukshetra University Act, 1986 — Section 15, 23

Citation : (2010) 05 DEL CK 0161

Hon'ble Judges : Indermeet Kaur, J;Gita Mittal, J

Bench : Division Bench

Advocate : B.S. Saini, with Mr. S.K. Tyagi, for the Appellant; B.V. Niren, for the Respondent

Judgement

Gita Mittal, J.—By this writ petition, the petitioner assails the rejection of his candidature for consideration for appointment as a pilot with the Indian Air Force. The facts giving rise to the present petition are within a narrow compass and to the extent necessary are briefly noticed hereinafter.

2. By an advertisement issued in March, 2008, the respondents invited applications for appointment to the post of 3 Short Service Commission (Men) Flying (Pilot) course and 32 SSC (Women) Flying (Pilot) Course commencing in January, 2009 from eligible candidates. The advertisement prescribed the following eligibility conditions:

An unmarried Male or female Indian citizen, born between 02 Jan 86 and 01 Jan 90 (Upper age relaxable upto 02 Jan 84 for those having commercial Pilot License).

A first class Graduate (aggregate of 60% and above marks) in any discipline (three year course) with physics and Maths at 10+2 level or BE (Four year course). Final year students may also apply provided they do not have any backlog and have 60% marks in the previous year/semester and would qualify

for a degree and submit the result by 15 Dec 2008.

At least 162.5 cms in height and have a leg length in the range 99 cms (min) and 120 cms (max).

3. So far as the petitioner is concerned, it has been stated that he had passed the Secondary School Examination, 2002 conducted by the Central Board of Secondary Education which stands certified by the Board on the 4th March, 2003. The petitioner had thereafter taken admission to a Three Year Diploma Course in Mechanical Engineering which was conducted by the Government Polytechnic, Ambala City, affiliated to the Kurukshetra University. The petitioner successfully completed the diploma course in mechanical engineering and was issued a diploma in this behalf which was dated 27th September, 2005 by the State Board of Technical Education, Haryana.

4. After obtaining the diploma, the petitioner sought admission under the Lateral Entry Scheme to the Bachelor of Technology Course (Mechanical Engineering) which was being conducted by the Maharishi Markandeshwar Engineering College in district Ambala, also affiliated to the Kurukshetra University. The petitioner successfully completed the course and was duly issued a degree in B. Tech. (Mechanical Engineering) on the 6th October, 2008 by the Kurukshetra University.

5. Desirous of pursuing a flying career in the Indian Air Force, the petitioner made an application pursuant to the said advertisement dated 11th March, 2008 under the category of candidates who were possessed of the BE (Four year course) degree. A call letter dated 10th June, 2008 was received by the petitioner requiring him to appear before the No. 1 Air Force Selection Board, Dehradun on 30th June, 2008 to undergo the selection procedure for entry into the flying branch of the Indian Air Force as a Pilot. When the petitioner reported for undergoing the formalities which form part of the selection procedure, the call letter issued to him was taken back by the President of the Selection Board. The petitioner was informed that for the reason that he did not possess the 10+2 examination certificate, he was ineligible for undertaking the selection process and for consideration for appointment as a pilot.

6. The petitioner made a representation dated 16th July, 2008 to several authorities in this behalf and received a response dated 8th September, 2008 from the Directorate of Personnel (Officers) at the Air Headquarters. It was stated therein that the criteria for all entries into the Flying Branch mandates that a candidate needs to have undergone the 10+2 course with Maths and Physics as per para 7(b) of the "Important Instructions" mentioned in the advertisement. It was further stated that the wording of the advertisement may have caused misinterpretation and that the advertisement had to be read in its entirety. The petitioner was informed that he was eligible for appointment into the Aeronautical Engineering (Mechanical) Branch in the Indian Air Force and was exhorted to seek a career in the Air Force under this category.

7. In view of the stand, the instructions mentioned at serial no. 7 of the

"important instructions" mentioned in the advertisement may also be considered in extensor and read as follows:

7. The following documents must be carried in original along with photocopies by the candidates while reporting to the Air Force Selection Board for tests:

(a) Matriculation or Secondary School leaving Certificate issued by Board of Secondary Education for proof of Date of Birth. (No other document would be accepted as proof of Date of Birth).

(b) +2 Certificate and Mark Sheet (issued by Board only) as proof of having studied Physics & Maths.

(c) Original/Provisional Graduation Degree Certificate. Mark Sheet issued by the University only. For those appearing for the final exams semester/year wise mark at sl. set is to be taken.

(d) In case of final year degree students, certificate from Principal of the College certifying that:-

"The candidate is a student of final year and is appearing for the final examination. In ____ (Month & Year) and his final year result will be declared by 15 Dec 2008.

(e) Original Air Wing Senior Division "C" Certificate (if applicable). In case the candidate is to appear in the NCC "C" Certificate (Sr. Division) Examinations, a certificate from the Commanding Officer of the NCC Air Squadron is to be attached to the effect that the candidate will produce the certificate by 15 Dec. 2008.

(f) Original Commercial Pilot License (if applicable).

8. Aggrieved by the rejection of his candidature, the petitioner has filed the present writ petition seeking a direction to the respondents to permit the petitioner to undertake the selection procedure for appointment as a pilot with the air force. The writ petition came up for hearing firstly on the 20th October, 2008 when Rule D.B. was issued. On the interim application being CM No. 14306/2008 filed by the petitioner, this court had directed that if the petitioner succeeds in the writ petition, he would be eligible to appear for the test.

9. The respondents have opposed the writ petition and filed a counter affidavit primarily urging that the petitioner does not possess the 10+2 certificate and that he has not undergone a four year BE course. It is contended that the petitioner's entry in the Bachelor of Engineering course was in its second year under the lateral entry scheme and that he has actually undertaken only a three year BE course. Reliance has been placed on the contents of para 7(b) of the "Important Instructions" given in the afore-noticed advertisement to submit that the petitioner was required to produce proof of his having studied Maths and Physics at the 10+2 level.

10. The respondents have enclosed a copy of the communication dated 16th July, 2008 sent by Air Cmde H.H. Patel, President of the Indian Air Force Selection Board who has considered the case of the petitioner. This communication notes that in the three year diploma course, the petitioner had studied physics and maths only for the first year and that for this reason, his diploma was not considered equivalent to the 10+2 physics and maths. The communication also mentions the following:

It is opined that there is indeed an ambiguity in the advertisement. As per the interpretation of the advertisement, a candidate who is BE doesn't need to have Physics and Maths at 10+2 level. (He could have done BE as lateral entry after Diploma without Physics & Maths in all the years of Diploma). The anomaly in the advertisement needs to be addressed for future course. Meanwhile, the DISCLAIMER clause given in the advertisement could always be resorted to.

(Emphasis supplied)

11. The first question which arises for consideration in the present case is the manner in which the advertisement prescribing the eligibility conditions is required to be read. Perusal of the conditions which have been prescribed by the respondents would show that two categories have been provided. The first category consists of applicants who are first class graduates in any discipline who have secured an aggregate of 60% and above marks. Such graduation degree may be possessed in any discipline after a three year course. It is noteworthy that so far as such a graduate is concerned, an additional condition is prescribed. The respondents have mandated completion of the 10+2 level by such a graduate with Physics and Maths.

12. The other category of persons eligible for applying for appointment is persons holding a degree in Bachelor of Engineering in a four year course. The qualification prescribed for this second category of candidates is not qualified by any requirement of a school leaving certificate. These two categories are distinct and disjunct as is evident from the clear use of the expression "or" between the two.

13. Perusal of the "Important Instructions" also shows the disjunctiveness of the two eligibility conditions. Clause 7 of the "Important Instructions" mentioned in the advertisement provides the documents which are required to be produced. The instructions mentioned at serial no. 7 of the important instructions have to be read in conjunction with the eligibility conditions which have been prescribed by the respondents. These instructions do not by themselves provide any additional conditions. At serial no. 7, the respondents have only provided the documents which candidates are required to produce in support of their claim for qualification.

14. From a bare reading of the advertisement, it is apparent that the respondents have mandated that a candidate should possess either a first class graduate degree in any discipline with physics and maths at the 10+2 level or

hold a degree in BE of a four year course. No other interpretation of the conditions prescribed in the advertisement is either possible or would be legally permissible. "BE" as appears in the advertisement is a stand alone qualification not qualified with any other requirement.

15. Such reading is also evident from the communication dated 16th July, 2008 which has been sent by the President of the Indian Air Force Selection Board noticed hereinabove. This communication points out that as per the advertisement "a candidate who is a BE does not need to have Physics or Maths at 10+2 level". We are, therefore, unable to agree with the contention on behalf of the respondents to the effect that a candidate who was possessed of a degree of Bachelor of Engineering was required to have an additional qualification of having Physics & Maths at the 10+2 level.

16. This brings us to the second question which has been raised in the present matter. The respondents have submitted that the petitioner had not undertaken a four year course in the Bachelor of Engineering and for this reason he was not eligible for participating in the selection process.

17. It has been further pointed out by Mr. Saini, learned counsel for the petitioner that the Kurukshetra University was created under the statutory provisions of Kurukshetra University Act, 1986 as a teaching-cum-affiliating University at Kurukshetra. The Maharishi Markandeshwar Engineering College is affiliated to the Kurukshetra University. Section 15 of the enactment prescribes that the Executive Council shall be the principal executive body of the University. By virtue of Section 23, the Executive Council stands empowered to make, amend, repeal or add Ordinances for the purposes of giving effect to the statutory provisions. It has also been pointed out that the Act also enables notification of statutes whereby assignment of department/institute/school of studies to faculties have been effected.

18. Statute 27(7) notified in exercise of the statutory power prescribes engineering and technology courses including mechanical engineering.

19. So far as the course and examination of Bachelor of Technology (B. Tech.) conducted by the Kurukshetra University is concerned, the relevant ordinances notified by the Executive Council of the University approved on 31st July, 1998.

20. The Executive Council of the Kurukshetra University amended the ordinance relating to the Bachelor of Technology Examination by its resolution No. 6(12) of 25th January, 2002 to include a sub clause (iii) and clause 7 enabling candidates with a diploma of three year (after matriculation) course to take lateral entry to the third semester level of the B. Tech. (Engineering) course in all colleges.

21. The Ordinance as amended vide executive council resolution no. 6(12) dated 25th January, 2002 provides as follows:

Notwithstanding anything contained in any other Ordinance with regard to the matters hereunder, the courses of study for the Degree of Bachelor of Technology

in the Faculty of Engineering & Technology and the conditions for admission thereto shall be as under:

1. (a) The Bachelor of Technology Degree Course shall extend over a minimum period of four academic years. Teaching in each academic year shall be divided into two semesters. Each semester will be of about 16 weeks duration. A candidate will be eligible to be considered for admission to the First Semester of this course only if he fulfils the following requirements:

(i) that he has passed the Senior Secondary Certificate Examination (10+2 Examination) from the Board of School Education, Haryana or its equivalent without any pending compartment/re-appeal.

(ii) that he has passed in the subjects of English, Physics, Chemistry and Mathematics and obtained at least 50% marks in the aggregate of Physics, Chemistry and Mathematics of Senior Secondary Certificate Examination (10+2 Examination);

(The condition of 50% marks shall not apply in the case of candidates belonging to Scheduled Castes/Scheduled Tribes).

OR

(iii) that he has passed Diploma of 3-years (after Matric)/Diploma of 2-years (after +2) or of more duration from the State Board of Technical Education, Haryana or its equivalent with at least 50% marks in aggregate.

(b) Admission on migration to the Third Semester may be allowed, in the beginning of the Session, to candidates who are permitted to migrate in accordance with the rules framed by Kurukshetra University.

2. Candidates with Diploma of 3-years (after Matric)/Diploma of 2-years (after +2) 2-year Certificate Course (after Matric) Plus Diploma of 2-years or of more duration may be allowed Lateral Entry at 3rd Semester level of B. Tech. Degree Course in all Colleges in the Faculty of Engg. & Tech. Except Regional Engineering College, Kurukshetra. Such candidates will be considered for admission to the 3rd Semester of B. Tech. In any discipline under Lateral Entry System only if they have passed Diploma Course in any discipline from the State Board of Technical Education, Haryana, or its equivalent with at least 60% marks in aggregate. The candidates must be valid residents of Haryana.

(Emphasis supplied)

22. The Ordinance makes provisions for the manner in which semester examinations are required to be conducted; the course of study and subjects of the examinations which includes written paper, practical examination, sessional work etc. The same is not relevant for the purposes of our present consideration. Suffice it to say, a bare reading of the above Ordinance would show that the only course for award of a degree of Bachelor of Technology conducted by the Kurukshetra University is concerned, the same is for a period of four academic

years. No other course is provided for or recognized by the Kurukshetra University. The Kurukshetra University, however, has factored into its scheme of completion of the four year course of study the fact that there may be persons who have already undergone a full fledged diploma course which may be either of two year duration (after 10+2) or a diploma of three year duration (after having undergone matric).

23. The above Ordinance prescribes that such candidates who have undergone and have acquired a diploma in engineering after a secondary or a Higher Secondary Examination may be allowed lateral entry on the third semester level of B. Tech degree course in all colleges in the faculty of Engineering & Technology except at the Regional Engineering College, Kurukshetra.

24. The examination scheme also shows that the four year degree course has been divided into six month semesters. The competent authorities have equated three year diploma in Mechanical Engineering after acquisition of the matriculation certificate to the first year course of the B. Tech. degree course conducted in the colleges affiliated to the Kurukshetra University.

25. So far as the maintenance of standards is concerned, the above Ordinance has prescribed that candidates who are possessed of diploma would be considered for admission to the three year bachelor degree under lateral entry admission only after having passed the diploma course in any institution from the State Board of Technical Education, Haryana or its equivalent with at least 60% marks in aggregate. There is no dispute that the petitioner had passed the diploma course with more than 60% in aggregate.

26. Mr. Saini, learned counsel for the petitioner has also placed reliance on the All India Council of Technical Education Act, 1987 (referred to as "AICTE Act" for brevity). The provisions of this enactment provides for the establishment of the All India Council for Technical Education (AICTE) for the purpose of proper planning and coordinated development of the technical institutes throughout the country, the provision of qualitative institutes in relation to proper maintenance of norms and standards in the technical education system and for matters connected therewith. Section 2(g) of this Act includes programmes of education, research and training in engineering technology within the meaning of "technical education". The legislation provides for creation of the All India Council for Technical Education whose functions are prescribed u/s 10 of the Act. Section 10 enables the Council to take steps for ensuring coordinated and integrated development of technical education and maintenance of standards in technical education, laying down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions assessment and examination etc. conducted by the technical institutions. By virtue of Section 10(k), the Council is enabled to grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies involved. Section 22 provides for the rule making power of the Council whereas u/s 23, the Council is further empowered to make

regulations to carry out the purposes of the Act. It needs no elaboration that the AICTE is, therefore, the expert body statutorily created for prescribing technical education including engineering courses, their composition, curricular etc.

27. Learned counsel for the petitioner has placed before this court a notification dated 12th January, 2007 issued by the AICTE in exercise of powers conferred by sub section 1 of Section 23 read with Section 10(O) & (V) of the AICTE Act, 1987 notifying the regulations called the "All India Council for Technical Education (AICTE) Admission of Students in Degree Engineering Programmes through Lateral Entry Regulations, 2007". Clause 3 of this notification provides the purpose thereof which reads as under:

These regulations provide for admission of diploma holders and B.Sc. graduates into second year degree programmes in Engineering and technology through lateral entry.

The object of this regulation has to be found in para 6.1 (a) thereof which reads as follows:

6.1(a) Admission of Diploma Holders

Although engineering diploma programmes are conceived as terminal in nature, some flexibility has to be built in to enable the meritorious amongst diploma holders to obtain Engineering degrees. There is evidence of diploma holders pursuing an Engineering programme having performed well not only in their academic careers but also in their jobs.

28. So far as the eligibility for lateral entry into the degree programme is concerned, Clause 6.1(b) of the regulation prescribes as follows:

6.1(b) Eligibility

For being eligible to seek lateral entry to an Engineering degree programme at the second year/third semester level, a candidate must have passed the diploma in Engineering in the relevant branch with a minimum of 60 percent in the aggregate. Only candidates fulfilling these conditions would be eligible for appearing in the entrance test meant for selection of diploma holders for Lateral entry to degree programmes. The selection of candidates will be based on an entrance test, the merit ranking in the test being the basis of admission.

At present students obtain diploma through different programmes in different States/UTs. Such programmes have different structures and forms like the semester pattern, annual pattern, sandwich pattern, etc. In order to maintain uniformity, a common entrance examination seems essential. Further, it is necessary to select only meritorious students who have passed the diploma with good academic record.

A student who has acquired a diploma in Engineering through a minimum of three years of institutional study, after 10+ (Secondary School Leaving Certificate Examination) can be considered to be academically equivalent to a

student who has passed the first year of the four year Engineering degree programme for which the qualifying examination is of the 12+ level (Physics & Mathematics).

29. Mr. Saini, learned counsel for the petitioner has painstakingly taken us through the requirements of the courses which the petitioner has undertaken.

30. It may be noted at this stage that even in the communication dated 16th July, 2008, the respondents found that the petitioner had actually taken Physics and Maths course in the first year Diploma Course in Mechanical Engineering. It is not disputed that the petitioner has successfully undergone a full fledged three year diploma course before taking admission in the Bachelor of Technology Degree course conducted under the aegis of the Kurukshetra University.

31. The petitioner applied for and took lateral entry into the third semester of the B.E. (Mechanical Engineering) course conducted at the college affiliated to the Kurukshetra University. On successful completion of the course, it is not disputed by the respondents that the petitioner has acquired a degree in BE (Mechanical Engineering).

32. The respondents have, however, disputed the equivalence of the lateral entry and the course completed by the petitioner to acquisition of a degree on completion of a four year course.

33. We put a query to learned counsel for the respondents to the effect as to whether there was any difference in the degree which was awarded by the Kurukshetra University to candidates who secured admission by lateral entry in the manner prescribed under the afore-noticed provisions and a candidate who joined the engineering course at the first semester. The answer was in the negative.

34. So far as the award of the degree is concerned, the competent authorities have laid down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions assessment and examination etc. The experts have looked into the course completed and degree acquired by a candidate who has secured lateral entry into the course. It cannot be disputed that the University is the expert authority which has been enjoined with the task of laying down the equivalence of the courses for the purpose of admission and award of degrees is concerned. The same position stands confirmed by the AICTE.

35. So far as the case in hand is concerned, one material fact requires to be noticed. Learned counsel for the petitioner has pointed out that the respondents invited applications from eligible candidates for appointment to the post of Aeronautical Engineer (Mechanical) Branch. So far as the eligibility conditions which are prescribed for such appointment is concerned, the respondents have prescribed a Bachelor of Engineering (B. Tech.) in Aeronautical Engineering (Mechanical), production, industrial or combination of this as one of the eligibility

condition. The petitioner was considered as possessed of a valid qualification and was issued a letter dated 30th June, 2008 for joining the course for AE (M) commencing on 7th July, 2008 for this position. However, for the reason that the petitioner was committed to flying and to pursue a career in the Indian Air force, he opted not to join the same.

36. It has been urged on behalf of the respondents that keeping in view the subject requirement of persons flying as pilots with the Indian Air Force, the respondents alone are the experts to decide the equivalence or expertise of the candidate. It is contended that the petitioner had not undertaken the four year course and therefore could not be construed as eligible for joining the air force. It has also been urged that the petitioner had not cleared the 10+2 examination with Physics & Mathematics and for this reason as well, he was ineligible.

37. These submissions deserve to be noted only for the sake of rejection. Perusal of the advertisement shows that any person who has cleared 10+2 examination with Physics and Maths and holds a first class Graduate degree in any discipline is eligible. Therefore, a person who may have completed the 10+2 course may opt to undertake a graduate course in any discipline which could include home science, painting, tourism, history, anthropology etc. So long as he secured above 60% marks in such course, he would be eligible for joining the air force as a pilot.

As against this, persons as the petitioner, who have successfully completed a three year diploma in mechanical engineering; permitted to take a lateral entry into the second year (or the third semester) of the Bachelor in Engineering Four Year Course, by the University and institution concerned and on successful completion of the course, stands awarded the degree of the four year course, is considered not eligible for such appointment. If the construction suggested by the respondents were to be accepted then a candidate with a higher secondary certificate and a graduation in humanity has the educational qualification for appointment as a pilot while a candidate who has undertaken six years of study in mechanical engineering stream. Such an interpretation of the eligibility conditions is not only devoid of any basis but is irrational and devoid of any logic or basis.

38. So far as the non possession of a certification of the 10+2 examination with Physics & Maths is concerned, we have noticed above that the same does not qualify the second stipulation of requirement of the BE course in the advertisement even if it were to be held that it was essential. It has been so noted even by the President of the Selection Board who has also observed that the petitioner had undertaken a course in Physics & Maths in his first year diploma. There is no requirement that any candidate is required to take physics or maths in the engineering course by the respondents.

39. To say the least, the stand taken by the respondents suffers from contradictions. The same is not supported by the advertisement issued by the

respondents pursuant whereof the petitioner had submitted his application. The respondents did not at any point of time prescribed that candidates who took lateral entry into four year course would not be eligible.

40. The stand of the respondents is also in the teeth of the requirement of the AICTE Act and the Kurukshetra University Act wherefrom the petitioner has been awarded the degree. The respondents have not disputed that the petitioner has a valid engineering degree by the authorities who have been statutorily enjoined with the task of assigning the eligibility, validity and equivalence of the courses. The AICTE and Kurukshetra University has considered the three year diploma course after matriculation, as equivalent to one year undertaken by a candidate for the four year engineering course. The degree which is held by the petitioner is of BE four year course and none else. In this background, it does not lie in the mouth of the respondents to dispute the eligibility of petitioner for undertaking the selection process pursuant to the advertisement issued by them.

41. At this stage, it has been submitted by the respondents that the petitioner has been rendered ineligible on account of passage of time for joining the course even if he was to be selected.

It may be noted that no such objection to the petitioner's candidature was raised when he applied for the same. The petitioner was eligible even when he was called for undertaking the selection process on the 30th June, 2008. He was not permitted to undertake the selection process by the respondents on the erroneous assumption of his being ineligible.

42. We find that this court while issuing notice to the respondents on CM No. 14206/2008 on 20th October, 2008 had clearly clarified that if the petitioner succeeds in the writ petition, he would be eligible to appear for the test in question. This order was passed in the presence of the respondents and remains in force even on date. At no point of time, the respondents have taken an objection to this effect.

43. The petitioner was wrongly not permitted to undertake the testing on 30th June, 2008 for which he had reported vide Batch No. F-FPM/80429 against the Code No. 568.

44. In view of the above, the writ petition has to succeed. The petitioner is entitled to undertake the selection process which is to be held by no. 1 Air Force Selection Board pursuant to the application which was submitted by him.

45. In view of the above, the respondents are directed to conduct the selection process of the petitioner and if found eligible, the petitioner would be considered. Necessary orders in this behalf shall be positively passed within three weeks.

The petitioner shall be entitled to costs which are quantified at Rs. 20,000/-.