

(2009) 02 J&K CK 0029
In the Jammu And Kashmir High Court

Pankaj Kumar and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-02-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 2 JKJ 783

Hon'ble Judges : Jai Pal Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.P. Singh, J.—Petitioners have filed this writ petition questioning the selection and appointment of respondent Nos. 5 to 19 as Junior

Engineer Electrical and Maintenance in the Military Engineering Service made pursuant to advertisement No. CEUZ/1/2003 issued by Military

Engineering Service, Chief Engineer, Udhampur Zone.

2. Petitioners' Learned Counsel questions the respondents' selection and appointment solely on the ground that respondent Nos. 1 to 4 had not

followed the laid-down criteria for selection of Junior Engineers and had erroneously given preference to respondent Nos. 5 to 19 because of their

possessing higher qualification of Degree in Engineering, thereby depriving the petitioners, Diploma Holders of their right to requisite consideration

for selection and appointment as Junior Engineers in the Military Engineering Service.

3. Mr. V.K. Magoo, Learned Assistant Solicitor General of India, justified the respondent No. 5 to 19's selection and appointment on the ground

that Selection Guidelines and Rules had been duly followed by respondent Nos. 1

to 4 in making the selection and appointment of the respondents

and the grievance of petitioners-Diploma Holders regarding giving weightage of additional 10 marks to the Degree Holders was misconceived as

the rules governing the selection would justify allocation of 10 marks for the higher qualification of the candidates possessing Degree in Engineering.

4. Having been set ex-parte, respondent Nos. 5 to 19 have not responded to the writ petition.

5. I have considered the submissions of Learned Counsel for the parties and gone through the selection criterion which had been followed by the

respondents while making selection of respondent Nos. 5 to 19.

6. The short question which falls for consideration in this petition is as to whether or not the respondents had followed any selection criteria, and if

so, was it justified for the selection and appointment of respondent Nos. 5 to 19?.

7. Recruitment Rules for the post of Junior Engineer (Civil) and Junior Engineer (Electrical & Mechanical) were notified vide SRQ 78 of 30th

April, 2001. The prescribed qualification for the post of Junior Engineers (Electrical and Mechanical), in terms of the Rules is Matriculation or

equivalent with three years Diploma in Electrical or Mechanical or Automobile Engineering from a recognized Institute/University/Board or

equivalent.

Recruitment Guidelines issued vide Military Engineering Services, Engineer- in-Chief's Branch No. A/14/DG/PERS/POL dated July 02, 2003,

provide, inter alia as follows:

3. Recruitment of JEs: It has been decided that a common written test will be made for the post of JE B/R, JE E/M and JE (QS&C). The CE

comds will nominate CE Zones in their commands to appoint a Board of Officers to conduct this written test and carry out the recruitment process.

The Board of Officers will be commended by CE Zone and approve by CE Comd. Paper for the written test will be provided to the concerned

CE Zone one week in advance so that he can take out number of copies as required depending on the candidates who are to be examined in his

Centre.

The proposed date for this examination will be 31 Aug 2003. The CE Zones nominated by CE Comd to carry out this recruitment will be intimated

to Directorate General (Personnel)/EI by 15 Jul 2003. The marking procedure/ marking system to be done by the BOO is given in attached Appx

'A'.

ANNEXURE-1

MARKS TO BE GIVEN IN THE RECRUITMENT TEST

S.No. Cate- Total Basic Exper- Physical Inter- Written Typing Shor- Practical
gory Marks Quali- ience Fitness view Test thand

fication

(as per

rules)

01 JE (Civil)

02 JE (E/M) 100 10* 10** -- 15 65

3. JE (QS & C)

*Basic Diploma 0 marks, Degree in Engg. In relevant filed 10 marks.

**Experience: 02 Marks/Year, Maximum 10 Marks.

Experience should be in respective filed from reputed firm organization.

8. In terms of the Recruitment Guidelines, ten (10) marks have been earmarked for basic qualification, in terms of the rules, meaning thereby that

merit of the eligible candidates had to be assessed on the basis of the percentage of marks obtained by them in Diploma in Electrical and

Mechanical Engineering, which is the basic qualification prescribed as such under the Recruitment Rules of 2001.

9. Explanation appended in Annexure-1, however, indicates that no marks were required to be given for basic Diploma whereas all candidates

possessing Degree in Engineering in the relevant field had to be given 10 marks. This explanation appearing in Annexure-1 to the guidelines is the

bone of contention between the parties.

10. According to the petitioners, the explanation appearing in Annexure I of the Guidelines for selection nullifies the basic criterion prescribed in the

first part of Annexure-1, in terms whereof 10 marks are earmarked for assessing merit of candidates on the basis of their merit in the basic

qualification, whereas the contesting respondents supports the explanation saying that awarding of 10 marks to those possessing Degree in

Engineering was justified because respondent Nos. 5 to 19 were entitled to weightage at the selection on the basis of their higher qualification.

11. I do not find any justification in the explanation appearing in Annexure-1, to the Selection guidelines, in that, the explanation to the basic

Criterion, according to the rules of interpretation cannot be read in such a fashion that it destroys the very spirit of the criterion itself, in terms

whereof 10 marks had been earmarked for the basic qualification which in terms of the Rules is Diploma in Electric/Mechanical Engineering and

not Degree in Engineering.

12. The explanation appearing in Annexure-1 providing for allocation of 10 marks to all those candidates possessing the qualification of Degree in

Engineering, is even otherwise irrational, in that, the criterion may not contemplate providing of full 10 marks to all the candidates possessing the

qualification of Degree in Engineering, regardless of the percentage of marks obtained by each candidate in such examination. This is so because

the basic criterion contemplates only maximum marks earmarked for assessment of merit of each candidate on the basis of his performance

contemplated under various heads in the Annexure i.e. for the BASIC QUALIFICATION, EXPERIENCE, PHYSICAL FITNESS,

INTERVIEW, WRITTEN TEST ETC.

13. This apart, the explanation treats Degree in Engineering in relevant field as basic qualification, which on the face of it is misconceived in view of

the clear indication in the Recruitment Rules which prescribes Diploma in Electrical and Mechanical Engineering, as basic qualification for the post

of JE (E/M).

14. Respondents have thus adopted irrational and unsustainable Criterion for making selection and consequent appointment of Junior Engineers

(Electrical/Mechanical) relying upon the explanation to the Criterion for selection of Junior Engineers (E/M) appearing in Annexure-1 of the

Selection guidelines, which has adversely affected the candidature of candidates like the petitioners possessing basic qualification of Diploma in

Engineering.

15. For all what has been said above, the Explanation appearing in Annexure-1 of the Selection guidelines in so far as it provides for giving 0 mark

to those candidates possessing Basic Diploma and 10 marks to those possessing

Degree in Engineering in relevant field, is found to be arbitrary and violative of Articles 14 and 16 of the Constitution of India.

16. This petition is, accordingly, allowed quashing the selection and appointment of respondent Nos. 5 to 19 to the posts of Junior Engineer

(Electrical/Mechanical) and respondent Nos. 1 to 4 are, accordingly, directed to reassess the merit of the petitioners vis-à-vis the respondents

assessing their merit for allocation of 10 marks on the basis of the merit obtained by them in Basic Diploma and thereafter consider appointment of

those who are found entitled to selection and appointment as Junior Engineer (Electrical/Mechanical) under the rules governing their selection and

appointment ignoring the explanation indicated with the Mark *(star) in the Selection Guidelines (supra).