

(2016) 11 P&H CK 0127
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 26163 of 2013.

Rajesh Kumar Poonia - Petitioner @HASH State of Haryana and Others

Date of Decision : 03-11-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 16, Article 226

Citation : (2017) 1 SCT 260

Hon'ble Judges : Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : Jitender Dhanda, Advocate, for the Petitioner in CWP No. 26163 of 2013; B.S. Rathee, Advocate, for the Petitioner in CWP No. 8379 of 2015; Shruti Jain Goyal, AAG, Haryana, for the Respondent; Pardeep Singh Poonia, Advocate and Avi Dhankhar, Advocate, for

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J. (Oral)—This order disposes of two writ petitions bearing CWP No.26163 of 2013 and CWP No. 8379 of 2015, as common issues are involved in them which can conveniently be decided by a common order.

2. The petitioner-Rajesh Kumar Poonia (in CWP No. 26163 of 2013) is working as Shift Attendant since August 10, 2004 in the respondent-Nigam. He claims promotion to the post of Junior Engineer on the strength of his Trade Proficiency Certificate (TPC) earned while serving in the Signal Regiment of the Indian Army. He has in addition successfully completed all phases of Technical Training and had to his credit 21 years of experience in equipment handling technical work while on duty at various Signal Regiments during Army service. He was employed in the Nigam on the strength of being an Ex-serviceman. The rules of service permit promotion from Shift Attendant to Junior Engineer on completion of 6 years of satisfactory service. As per clause 2.4.4 of the Recruitment and Promotion Policy dated June 7, 2004, an official of Technical Cadre Subordinate Staff [including the category of the petitioner] possessing BE/AMIE/3 years diploma with 3 years of experience were eligible to be promoted as Junior Engineer, Sub Station on the basis of a ranking list prepared from 1st August to

31st July in a year. The earlier rule position was prevailing before the petitioner was appointed as Shift Attendant. But the name of the petitioner was not included in the ranking list of the year 2007 as the Nigam felt that he had not completed 3 years service with the Nigam upto July 31, 2007 and accordingly, he was rightly ignored. However, the Recruitment and Promotion Policy was revised vide office order dated July 15, 2008 and as per its Clause 5.5.1, 5 years of regular service in the Nigam was introduced replacing the earlier condition of 3 years of service and the new order was made the pre-requisite for promotion to the post of Junior Engineer, Sub Station, in case of Technical Cadre Subordinate Staff. Accordingly, his name for promotion could not be considered till 2011. When he acquired the requisite experience, a dispute arose as to the qualifications possessed by the petitioner while serving in the Army and whether they are equivalent to the prescribed essential qualifications for the post of Junior Engineer in the Nigam which was inter alia qualifying the 3 years diploma in the streams mentioned in the policy. The streams are not in dispute or of any concern presently. What is disputed by the respondent Nigam is that the petitioner does not have a qualification equivalent to 3 years diploma obtained from the Haryana State Technical Education Board.

3. The Nigam was unsure as to whether the petitioner had acquired and possessed the essential or its equivalent qualification to consider him eligible for promotion to the post of Junior Engineer and to this end the Nigam had a clarification from the Army authorities regarding the certificates possessed by the petitioner and whether they could be treated as equivalent. The first communication received by the Nigam is dated October 23, 2012 signed by Major Sanjeev Y.K., Offg 2IC & SI for the Commanding Officer, which reads as follows:-

"Haryana Vidyut Prasaran Nigam Ltd.

Office of the Superintending Engineer (Admn-II)

Shakti Bhawan, Sector 6,

Panchkula-134109

CLARIFICATION REGARDING CERTIFICATES

1. Reference to your letter Memo No.Ch-68/SEG- 40/Vol-III dated 12 Oct 2012.
2. It is intimated that Technical Proficiency Certificate in respect of Rajesh Kumar has been verified and found genuine. The certificate was issued to the individual after successful completion of his Technician Electronics System (TES), Class-1.
3. It is further intimated that the exemption certificate issued to the individual is genuine and was issued prior to Oct 96 which is not equivalent to 3 years diploma by the State Boards of Technical Education. But to recognise (pre Oct 96) course equivalent to Diploma course in Electronics and Telecom Engg (DIPIETE) conducted by Institution of Electronic and Telecom Engg (IETE) exemption of 13 papers out of 16 papers is granted and the rest to be declared

by the indl.

4. With the above exemption, a person qualified with TER/TES Class I prior to Oct 9 can acquired a civil diploma in Electronics & Telecom Engg by passing the balance papers of DIPIETE.

5. This is for your information and necessary action please."

4. The response was in the negative. However, a careful reading of the letter reveals that it suffers from inadequate clarity of reasoning which could have removed all doubts and the advice was more or less ambiguous. Mr. Dhanda the learned counsel for the petitioner submits that sheet-anchor of the advice rests on the edifice of equivalence to Diploma course in Electronics and Telecom Engineering (DIPIETE) conducted by the Institution of Electronic and Telecom Engineering (IETE), which had in turn advised the Army that exemption could be had for 13 papers out of 16 papers but the rest of the papers should be cleared by the individual. Mr. Dhanda submits that IETE is a private institution managed by an Ex-serviceman and is not a statutory authority authorised to deal with exemptions or equivalence and thus no implicit faith and trust can be placed on the advice and consequently the letter addressed to the Nigam and placed on record with the writ petition.

5. Not feeling satisfied with the advice tendered the Nigam continued with its request for issue of a requisite certificate to set the matter at rest and accordingly on request received another response, now from P.K. Tumar, GSO-I (TRG) for the Commandant which reads as follows :-

"Managing Director

Haryana Vidyut Prasaran Nigam Ltd.

Shakti Bhawan,

Panchkula, Haryana

REQUEST FOR ISSUE THE EQUIVALENCY CERTIFICATE (WELFARE OF EX-SERVICEMAN)

1. Ref. Application dated 16 July 2014 received from No. 14247529L Ex-Hav Rajesh Kumar Poonia dated 16 July 2014.

2. It is submitted that No. 14247529L Ex-Hav Rajesh Kumar Poonia was a Technician Electronic System (TES) Class-I in Corps of Signals India Army.

3. He has been issued with a Trade Proficiency Certificate (TPC) on retirement. It is further submitted that he has successfully completed all phases of his technical training i.e. TES Class-IV - 24 weeks, TES Class III 54 weeks TES Class-II - 28 weeks and TES Class-I-24 weeks totalling to 130 weeks. In addition he has 21 years of experience in equipment handling while on duty at various Signal Regiments during his service.

4. Personnel of TES category prior to yr. 2002 were not issued with a diploma certificate, however, the same has been approved by AICTE, New Delhi from yr. 2002 onwards for award of Diploma in Electronics and Telecommunication Engineering (Radio and System) after successful completion of Class -I training. It is pertinent to mention that the technical training of TES Category persons prior to yr. 2002 and after yr 2002 is same and there has been no change in syllabus and quality of training imparted.

5. Keeping the above in view the qualification achieved by No. 14247529L Ex-Hav Rajesh Kumar Poonia prior to yr 2002 may be considered at par with the Diploma in Electronics and Telecommunication Engineering (Radio & System) provided by AICTE, New Delhi, which is issued to all TES Category persons who have successfully completed TES Class-I training yr. 2002 onwards.

6. This letter should normally have settled the issue in favour of the petitioner that qualification earned by him in the Army i.e. Diploma in Electronics and Telecommunication Engineering (Radio and System) together with training called Technician Electronics System (TES), Class-1 which is equivalent to 3 years diploma prescribed. Accordingly, the advice was in favour of the petitioner evidencing equivalency of the qualification held by him and the desired qualification under the rules for promotion to the post of Junior Engineer. What is even more significant and relevant is that in the second letter it has been recorded that technical training of TES category persons prior to the year 2002 and after the year 2002 is the same and there has been no change in syllabus and quality of training imparted. It is also stated in the said letter that the personnel of TES category prior to year 2002 were not issued with a diploma certificate. However, the same has been approved by the All India Council for Technical Education (AICTE), New Delhi, from the year 2002 onwards for award of diploma in Electronics and Telecommunication Engineering (Radio and System) after successful completion of Class-I training. It appears that the Nigam still remained dissatisfied and in doubt and persisted with its queries to the Army authorities, which has resulted in a third letter dated June 26, 2015 which twists and turns the second office letter dated August 23, 2014 reproduced above. The view presently taken, if it qualifies as a view, is that the letter dated August 23, 2014 is only perspective in nature and is not to be taken as an authority on the subject diploma. This letter has been placed on record by the Nigam in its additional affidavit at Annex R-8 and leaves the field wide open for interpretation. I am sorry to say but there is no reasoning contained in the letter with respect to the moot issue of equivalence. It is unintelligible.

7. Vague as the 1st and 3rd letters are, there appears to be sufficient weight in the 2nd letter dated August 23, 2014 which sufficiently covers the dispute affirming by well reasoned advice that the Trade Proficiency Certificate is equivalent to 3 years diploma conferred by the State Board of Technical Education, Haryana. As a matter of fact, the mother organisation which strikes the last note is the AICTE and the letter dated August 23, 2014 is only one of the

three letters which speaks of approval by AICTE, New Delhi. There appears to be no other reference point from where this Court can draw a conclusion against the petitioners and therefore in the considered view of this Court, the matter should be taken as settled by the letter dated August 23, 2014 putting an end to the controversy and thereby bringing relief to the petitioner Poonia for which he has approached this Court in proceedings under Article 226 of our Constitution.

8. There is another interesting aspect which requires to be noticed, that is, the petitioner Neta Nand Sharma (in CWP No.8379 of 2015) was promoted as Junior Engineer and further promoted as Junior Engineer-I on the strength of the same qualification which has been used to deny promotion the petitioner in the other case. His right to consideration for promotion by treating his Trade Proficiency Certificate as equivalent to 3 years diploma issued by the Haryana State Technical Education Board but his claim is not rendered academic, despite retirement meanwhile, since he approached this Court claiming further promotion as Assistant Engineer by reason of his successive promotions as Junior Engineer and Junior Engineer-I in the past. The petitioner-Neta Nand Sharma has retired from service in 2014. He claims retrospective relief in a petition presented after superannuation. His case has been kept on hold due to confusion in the matter of disputed equivalence of technical qualifications for purposes of promotion. Finally his case was rejected by the impugned order dated April 3, 2015 on the premise that he was not qualified to hold the lower promotional posts. This order was passed on directions issued by this Court in CWP No. 26405 of 2014 (Neta Nand Sharma v. Haryana Vidyut Prasaran Nigam Ltd. & ors.), decided on December 23, 2014 directing the Nigam to decide the petitioner's representation in accordance with law by passing a speaking order.

9. Having heard learned counsel for the parties and having perused the files with their help and especially the contents of the three letters from the Army to the Nigam, this Court is of the considered view that the 2nd letter dated August 23, 2014 should prevail over the 1st and 3rd letters to bring justified relief to the petitioners. The content of the 2nd letter appeals to reason while the other two set no definite boundaries to set at rest the issue of equivalence.

10. In the case of Rajesh Kumar Poonia the claim is for promotion to the next higher post while in service by treating his qualifications as equivalent to the 3 years diploma and in the case of Neta Nand Sharma he would have a right to consideration for promotion to the higher post from the due date when the vacancy occurred or his junior was promoted, as the case may be. This part of the relief would be admissible to Rajesh Kumar Poonia as well to be promoted with effect from the date when the vacancy occurred or his junior was promoted as the case may be. However, since the issues presented in this case have been decided by the process of interpretation by the Court and rights declared for the first time, therefore, both the petitioners would take their monetary benefits notionally prior to the dates of filing of the petitions. All other consequential benefits will flow from this order including right to seniority.

11. For the foregoing reasons, both the writ petitions are allowed. The impugned order in the case of Neta Nand Sharma is set aside by issuing certiorari. In Rajesh Kumar Poonia's case a writ of mandamus is issued commanding the Nigam to consider his case for promotion in terms of the order within two months from the date of receipt of certified copy of this order. In case of Neta Nand Sharma, an appropriate decision be also taken within the same period of time. No costs.