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**(1979) 04 MP CK 0012**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Petition No. 596 of 1978**

Surendra Mohan Arora and others

APPELLANT

Vs

Union of India and others

RESPONDENT

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**Date of Decision :** 16-04-1979

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16

**Citation :** (1979) MPLJ 707

**Hon'ble Judges :** G.P. Singh, C.J.; B.C. Verma, J

**Bench :** Division Bench

**Advocate :** N.C. Upadhyaya with M.M. Agrawal, for the Appellant; R.P. Sinha, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

B.C. Verma, J.

The petitioners are diploma holders in Mechanical Engineering. More than about a thousand vacancies of Supervisors Grade A (Technical) in the pay scale of Rs. 205-280 fell vacant in the Ordnance Factories in India in the year 1963. Besides usual advertisements inviting applications from qualified candidates, the Director General of Ordnance Factories, Calcutta, wrote to the Principals of Colleges to persuade eligible candidates to apply for recruitment to those posts. It was expressed that promising candidates could expect to be promoted as Chargemen, Grade II, within a short period. The candidates, who applied for appointment to these posts, were asked to bring with them original certificates and mark-sheets. After interview, the petitioners were appointed as Supervisors Grade B in the Ordnance Factory, Khamaria, in the scale of pay of Rs. 175-6-205-7-240 on different dates in the year 1963. It may be mentioned that at the time of interview the petitioners were not in physical possession of diploma certificates although they had passed the examination. Later, when the petitioners were awarded diploma certificates and they produced them before the authorities, they were promoted as Supervisors Grade A in 1964 and 1965 on

various dates as shown in Annexure-1 to the petition. Earlier, by letter dated 6-11-1962, the Director General Ordnance Factories, had declared that diploma-holders, who were appointed as Supervisors Grade B, would on completion of one year's satisfactory service in Ordnance Factories be promoted as Supervisors Grade A. Yet by another letter, dated 11-3-1963 (Annexure-7), the Director General made it clear that the diploma-holders would be appointed as Supervisors Grade A and those already working as Supervisors Grade B should be promoted as Supervisors Grade A if their work as Supervisors Grade B was satisfactory even though they did not complete one year's service as Supervisors Grade B. However, by letter, dated 5-6-1963 (Annexure-8), the Director General made it clear that the term "Diploma-Holder" would include only such persons who were in actual physical possession of the diploma and that such persons alone could be appointed as Supervisors Grade A or to equivalent posts if they were found suitable. Persons who had passed the diploma examination but did not actually possess the diploma certificates were outside the term "diploma-holder" and could not be appointed as Supervisors Grade A. Such persons could, however, be appointed as Supervisors Grade B in case they were otherwise found suitable. The petitioners allege that although they were found suitable, they were initially appointed as Supervisors Grade B only because at the time of interview they were not in actual physical possession of diploma certificates.

One Sahab Singh Verma, who like the petitioners, was initially appointed as Supervisor Grade B, filed a writ petition (Miscellaneous Writ No. 3427 of 1969) in the Allahabad High Court, urging that in the matter of selection and appointment of Supervisors, the Union Government had framed no rules and in the absence of any rules governing such appointment, Shri Verma was discriminated from persons equally placed inasmuch as he was selected and appointed as Supervisor Grade B, while others were appointed as Supervisors Grade A. The Allahabad High Court while allowing the writ petition by order, dated 16-2-1971, observed that the date on which actual certificate was obtained was wholly irrelevant for appointment. The qualification being only a diploma in mechanical engineering, the petitioner in that case could not be discriminated as was done. In the final analysis, the learned Judge of the Allahabad High Court observed as follows:

In the absence of any statutory binding rule, the only fair and relevant to follow is to appoint each one of the direct recruit to the posts of grade "A" from the date on which he joined service as each one of them was fully qualified for the posts in grade "A" on which each one of them was appointed.

A writ was accordingly issued. This decision was followed by the same Court in another Writ Petition No. 3268 of 1971, decided on 28-3-1972, wherein the view taken in S. S. Verma's case was reiterated.

These judgment of the Allahabad High Court prompted the petitioners, and like them many others, to press their claim for treating them as being appointed as Supervisors Grade A from the dates of their initial appointments. In the representations, the petitioners alleged that after the judgments of the Allahabad

High Court certain persons similarly placed were granted relief even though they did not take any proceedings in any Court of law. In view of the judgments of the Allahabad High Court taking the view that actual possession of diploma certificates was not necessary for appointment as Supervisor Grade A, the Director General of Ordnance Factories by letter (Annexure-11), dated 14-9-1972, directed the General Managers of all the factories that all persons, who were initially appointed as Supervisors Grade B because of their not being in possession of diploma certificates at the time of their initial appointments should be treated as Supervisors Grade A. It was made clear that the individuals affected will have their seniority as Supervisors Grade A refixed notionally from the dates of their appointments. It was, however, made clear that such notional fixation of seniority will not disturb promotion/confirmation already effected and that it will not confer any financial benefit with retrospective effect. All Ordnance Factories in India were asked to revise the seniority of the Supervisors accordingly. The petitioners allege that after the issuance of these instructions contained in Annexure-11, they expected that their seniority shall be refixed treating them as Supervisors Grade A from the date of their initial appointments. Although the Director General by his letter, dated 27-7-1976, forwarded a seniority list of Supervisors Grade A who have been assigned notional seniority from the date of their initial appointments, the petitioners were even then excluded from being considered. The petitioners continued to make representations as a result of which the Director General of Ordnance Factories directed all Ordnance and CED Equipment Factories for examining the cases of individuals with specific reference to the finding of the initial selection board and to respective diploma and asked for necessary proposals for advancing their seniority positions in the grade of Supervisor "A" or equivalent grades from the date of their initial appointments as Supervisors Grade B. This examination of cases was expected to be completed by the middle of November 1977 at the latest.

The petitioners allege that despite the clear instructions and the decisions of the Allahabad High Court, their cases were not examined and they were not treated as having been appointed initially as Supervisors Grade A. Their case, therefore, is that they have been discriminated in the matter of appointment and the orders appointing them as Supervisors Grade B offend their right under Articles 14 and 16 of the Constitution. In this petition, they pray that the respondents be directed to treat them as Supervisors Grade A from the respective dates of their initial appointments as Supervisors Grade B and to confer upon them all consequential benefits.

Having heard the counsel for the parties, we are of opinion that the contention raised by the petitioners must be given effect to. It is not disputed that no statutory rules were in existence at the relevant time for appointment to the posts of Supervisors. The advertisement and the request made to the Principals would show that the only necessary qualification was the passing of diploma course in mechanical engineering. Possession of diploma certificate could

possibly be not a qualification attached to any person. It is for the examining body to issue actual certificates to successful candidates at any future date after the declaration of the result. The successful candidates acquire the necessary qualification only when they are declared successful by the examining body. As the only qualification prescribed for appointments as Supervisors Grade A was that the candidates should hold diploma in mechanical engineering, it is obvious that the petitioners were possessed of this necessary qualification when they appeared for interview for selection to the posts of Supervisors Grade A. If, however, the authorities were not satisfied as to the qualification of the petitioners unless they produced the necessary diploma certificates, they could certainly insist for production of such certificates. At any rate, on production of such certificates, the petitioners ought to have been treated as appointed as Supervisors Grade A from the dates of their initial appointments.

It is not the case of the respondents that the petitioners were not found suitable for appointment to the posts of Supervisors Grade A. The respondents have not been able to produce before us any record demonstrating that the petitioners were not qualified to be appointed as Supervisors Grade A or at the time of interview were not found suitable for those posts. Even in the return exhibited by them, it is not said that the petitioners on being interviewed were found unsuitable for the posts of Supervisors Grade A. All that is said in the return is that they were found suitable for the posts of Supervisors B Grade. It has also not been denied that when the petitioners produced their diploma certificates, they were promoted/appointed as Supervisors Grade A from the date of production of the certificates irrespective of the dates of their initial appointments as Supervisors Grade B. It is thus obvious that the petitioners were initially appointed as Supervisors Grade B not because they were found unsuitable as Supervisors Grade A, but because at the relevant time they were not in actual physical possession of the diploma certificates. To us, there appears to be no reason why the petitioners should have been discriminated from persons equally placed but in actual physical possession of the diploma certificates when the prescribed qualification was only passing of a diploma examination in mechanical engineering.

From a perusal of the annexures filed along with the petition it appears that the authorities did take note of and sought to implement the decisions of the Allahabad High Court referred to above. As pointed out by us earlier, the Director General of Ordnance Factories vide letter, dated 14-9-1972 (Annexure-11), issued specific directions that the seniority of the persons like the petitioners should be notionally refixed as Supervisors Grade A from the dates of their initial appointments. Directions were further issued in September 1977 (Annexure-13) to examine the cases of appointment of Supervisors Grade B and to send proposals for advancing their seniority position in the Supervisors Grade A. In spite of this, the petitioners were not given their due benefit. The return discloses no reason why the petitioners who, on production of the diploma certificates, were subsequently promoted as Supervisors Grade A, were not given

the benefit as desired by the aforesaid two letters (Annexures 11 and 13).

The respondents tried to make a point that the petitioners were not entitled to any relief on account of laches in approaching this Court. This contention is without any substance. We have shown that the Director General himself, by letter dated 12-9-1977 (Annexure-13), desired that persons like the petitioners should be recommended for advancing their seniority position in Supervisors Grade A by November 1977. It was legitimate for the petitioners to have awaited action on that letter before they filed the petition. Under these circumstances, the petitioners cannot be accused of delay in approaching the Court.

The petition is allowed. The respondents are directed to treat the petitioners as having been appointed to the posts of Supervisors Grade A with effect from the respective dates of their initial appointments as Supervisors Grade B. The other relief prayed for in the petition is refused. There shall, however, be no order as to costs. The security deposit be refunded to the petitioners.