

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.13991/2009**

% **Date of Decision: 17.02.2010**

Union of India through Petitioner
Chairman RITES

Through Mr.V.S.R.Krishna, Advocate.

Versus

Shri Hukum Chand Respondent
Through Nemo.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner has challenged the order dated 18th August, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in T.A No.1046/2009 titled Sh. Hukam Chand v. Chairmen & M.D., Rites Ltd and others allowing the petition of the respondent and quashing the order dated 7th March, 2008 passed by the petitioners declining to regularise the respondent as Deputy GM (Electrical) on the ground that the degree issued to him by the Indian Navy is not a recognised degree of Electrical Engineering and therefore, respondent cannot be appointed to the regular post of Deputy GM though he was

appointed earlier as Deputy GM (electrical) on contractual basis on the basis of same degree awarded by Indian Navy.

Brief facts to comprehend the disputes are that the respondent had retired as Chief Petty Officer from Indian Navy. Before retirement he had served in the electrical branch of Indian Navy since 17th July, 1967 and had successfully completed the technical courses conducted in the Naval Electrical Engineering Institute INS Valsura-Jamnagar (Gujarat). The respondent also had 15 years of practical experience and therefore, a degree equivalent to degree in electrical engineering was awarded to him. He was held to be eligible for the post where technical qualification of degree in Electrical Engineering is required or diploma in Electrical Engineering with 5 years of experience in appropriate field is the requirement. The degree was awarded by the Indian Navy in electric engineering in the same manner as graduation degrees are awarded at NDA and IMA courses in Defence.

After retirement pursuant to a public notice, the respondent applied for the post of DGM (Electrical). The degree which was issued by Indian Navy to the respondent was considered and accepted and he was appointed to the post of DGM (Electrical). The appointment of the respondent was, however, on contract.

Later on there had been revision of pay scale for the post of DGM (electrical) with effect from 1st April, 2007. However revision of the pay scale had been declined to the respondent on the ground that the degree issued by Indian Navy was not recognised as a degree equivalent to the Electrical Engineering.

The respondent had contended that as per the recruitment rules of RITES manual he had applied pursuant to notification dated 28th September, 2007 for regularisation as DGM (Electrical) and appeared for the written examination and cleared the same. The respondent had also appeared for interview, however, his result was not communicated nor his salary was revised and, therefore, he filed an original application before the Central Administrative Tribunal, Principal Bench. It was asserted by the respondent that being a Scheduled Caste candidate and having scored more than 50% marks under the relaxed standards and as he had the requisite qualification of a degree in Electrical Engineering, therefore, he was entitled to be regularised. The respondent also contended that though he was awarded only 8 marks in the interview, however, the criterion of minimum 50% marks in the interview was not disclosed before the interview nor in the recruitment rules and consequently on account of respondent scoring less than minimum 50% marks in interview, his regularisation could not be denied. The respondent relied on K.Manjusree v. State of A.P, (2008) 3 SCC 512.

The Tribunal after considering the respective contentions has held that as per the old rules minimum 50% marks in the interview could not be the criterion for regularisation as the same was not provided under the old rules and the amended rules could not be given retrospective effect. In *K.Manjusree Vs State of A.P (supra)* it was held that after the entire selection process (consisting of written examination and interview) is completed, then thereafter prescribing minimum marks in interview, would amount to changing the rules of the game after the game was played which will be clearly impermissible. The Supreme Court had relied on *P.K. Ramachandra Iyer v. Union of India*, (1984) 2 SCC 141, *Umesh Chandra Shukla v. Union of India*, (1985) 3 SCC 721 and *Durgacharan Misra v. State of Orissa*, (1987) 4 SCC 646 while holding so in *K Manjusree (supra)*.

The learned counsel for the petitioners has not challenged the decision of the Tribunal holding that on the basis of not scoring minimum 50% marks in the interview, the selection of the respondent for the regular post could be declined by the petitioners.

The Tribunal has also held that as per the certificate issued by the Navy, which has been recognised by the Ministry of Defence and as it has been treated as equivalent to a degree in Electrical Engineering by the petitioner himself in the selection proceedings dated 15th

November, 2007 while appointing the respondent on contract basis, therefore, the petitioner was estopped to contend that the qualification of the respondent is not equivalent to a degree in Electrical Engineering. In the circumstances, Tribunal set aside the impugned order dated 7th March, 2008 declining regularisation of the respondent as Deputy General Manager (Electrical). This decision of the Tribunal is challenged by the petitioner in the present writ petition.

The learned counsel for the petitioner has emphatically contended that in view of the circular No.6/2001 issued by UPSC Recruitment (C&P) Section dated 26th April, 2001, the degree issued to the respondent by the Indian Navy stipulating that this is a degree in Electrical Engineering cannot be accepted. The learned counsel for the petitioner has emphatically contended that the degree issued to the respondent in 1972 could not be accepted as a degree in Electrical Engineering as its equivalence is not approved by All India Council for Technical Education. The learned counsel has raised no other plea except the equivalence of the degree issued to the respondent by the Indian Navy being not equivalent to Electrical Engineering degree. The degree issued to the respondent is as under:-

TO WHOM IT MAY CONCERN

This is to certify that HUKUM CHAND Petty Officer Electrical Power (Chief Qualified) No.056426 T has been serving in the Electrical branch of the Indian Navy since 17th July, 1967. **He has successfully completed the technical courses conducted in the Naval Electrical**

Engineering Institute INS VALSURA-JAMNAGAR (Gujarat). He is having fifteen years of practical experience in the above trade. **By virtue of above courses and experience in the Electrical Engineering he is eligible for the post where technical qualifications required are as follows:-**

1. Degree in Electrical Engineering

Or

2. Diploma in Electrical Engineer with 5 years, experience in the appropriate filed.

Vide Gazette of India Part II Section IV page 588 Ministry of Defence New Delhi-Saturday 11th November, 1972.

(C.S.Gayakawad)
Sub Lt.
Electrical Officer
Asstt.Controller Material
Planning

Circular no.6/2001 was issued by the UPSC Recruitment (C&P) Section regarding recruitment of 20 junior scientific officers (Mechanical) and Aeronautical in the Directorate General of Aeronautical Quality Assurance. The learned counsel is unable to explain as to how this circular is applicable in case of the respondent. Nothing has been produced to show that this circular was in respect of petitioner or was adopted by the petitioner. Considering the circular also it is apparent that it was only for those degrees which were issued by the Indian Navy after 2001 on the basis of work experience only without undergoing any technical courses in the Indian Air Force or Indian Navy. The circular only stipulated that such degrees will not be

considered for appointment to selection posts. The circular No.6/2001 is as under:-

No.F.26/1/99-R (C&P)
Union Public Service Commission
Recruitment (C&P) Section

New Delhi, the 26th April, 2001

Circular No.6/2001

Subject: Recruitment of 20 Junior Scientific Officers (Mechanical/Aeronautical) in the Directorate General of Aeronautical Quality Assurance, M/o.Defence clarification regarding essential qualification.

Attention is invited to R(C&P) Section Circular No.18/2000 of even number dated 20th September, 2000 on the subject cited above. Now it has been clarified by the All India Council for Technical Education that no equivalence to the Engineering and Technical degrees in various disciplines of Engineering awarded by the Indian Navy/Air Force **based on the length of service** in the Defence Services is granted by them. Hence, in future such candidates possessing the certificate of equivalence to degrees in various disciplines of Engineering awarded by the Indian Navy and the Indian Air Force may not be considered for selection posts.”

The learned counsel for the petitioner cannot dispute that on the basis of the degree issued to the respondent, he was appointed after due selection to the post of DGM (Electrical) on contract basis. This is not the case of the petitioner that the educational qualification for the post of DGM (Electrical), on contract basis and for regular post are different. The learned counsel cannot explain as to how the respondent was appointed to the post of DGM (Electrical) on contract basis on the basis of same degree. If the degree issued by Indian Navy on account of

respondent successfully completing technical courses in the Naval Electrical Engineering Institute INS Valsura-Jamnagar (Gujarat) with 15 years of practical which is stated to be a degree in electrical engineering, made the respondent eligible for the same post on contract basis then how the respondent is not eligible for the same post on regular basis.

The circular No.6/2001 which is dated 26th April, 2001 also qualifies that after 2001 All India Council for Technical Education has not been giving equivalence to the engineering and technical degrees awarded by Indian Navy/Air Force based on length of service only in defence service. The circular does not indicate that the equivalence already considered or granted prior to 2001 had been withdrawn or could be withdrawn. The circular also does not clarifies that the equivalence is not to be given to those degrees which are issued after successful completion of courses in the technical institutes of Indian Navy. The respondent had been granted a degree in electrical engineering not only on account of 15 years of practical experience or length of service but the degree in electrical engineering was granted to the respondent on successfully completing the technical courses conducted in the Naval Electrical Engineering Institute INS Valsura-Jamnagar (Gujarat).

This circular was not relied by the petitioner before the Tribunal. No reason or the ground has been given by the petitioner for not relying on the said circular before the Tribunal. Consequently the order of the Tribunal cannot be allowed to be impugned by the petitioner on the basis of the said circular. In any case even on the basis of said circular it cannot be inferred that the degree issued to the respondent is not equivalent to a degree of electrical engineering.

In the circumstances, the plea of the petitioner that the degree of electrical engineering awarded to the respondent is not equivalent to the degree in electrical engineering for his regularisation to the post of DGM (Electrical) cannot be accepted. In the circumstances, this Court does not find any such illegality or irregularity in the order of the tribunal which shall require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

The writ petition is without any merit and it is, therefore, dismissed.

ANIL KUMAR, J.

FEBRUARY 17, 2010
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MOOL CHAND GARG, J.