

\$~

1

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

+ **W.P.(C) 2916/2013 & CM No.5482/2013**

%

Date of decision: 23rd May, 2013

KHUSHBU SHARMA

..... Petitioner

Through : Mr. S.S. Pandey and
Mr. H.S. Tiwari, Advs.

versus

UOI & ORS

..... Respondents

Through : Mr. Ankur Chhibber, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J. (Oral)

1. The writ petitioner in the instant writ petition has earned a degree of B.Tech (Instrumentations and Control) from a recognized university and is claiming that this degree is equivalent to the degree of B.Tech. (Electronics). The writ petition has been filed because the respondents have denied equivalence and therefore refused commission to the petitioner.

2. The petitioner had applied for grant of Short Service Commission Women (Technical) – 10 course of the Indian Army as well as for (Technical)-10 as she was holding a degree of Engineering in Instrumentation and Control stream pursuant to the

advertisement which has been issued by the respondents on 28th January, 2012. The petitioner successfully undertook the written examination as well as the interview and she was also declared medically fit in the test conducted from 6th July, 2012 to 18th July, 2012.

3. The writ petition has been necessitated inasmuch as the petitioner received a letter dated 4th September, 2012 from respondent no.3 informing that her candidature had been cancelled. The petitioner was denied employment as such in the final merit list issued on 13th September, 2012. In answer to the petitioner's representation dated 21st September, 2012, the respondents vide their letter dated 25th October, 2012 informed the petitioner that since she had applied against electronics vacancies with a degree in Instrumentation and Control, her candidature stood cancelled. Claiming equivalence of the two degrees, the present writ petition has been filed seeking setting aside of the decision dated 4th September, 2012 and 13th September, 2012.

4. It is pointed out by both the parties before us that this very issue is not *res integra* and stands considered by this court in the judgment pronounced on 26th November, 2012 passed in **WP(C)No.6100/2012 Ms. Nisha vs. Union of India and Others** and a bunch of other matters. The observations of this court on the matter under consideration deserve to be considered in this judgment in extenso and read as follows:-

“28. The position which therefore emerges is that due to complete identity in the course curriculum of the degrees B.Tech. INFORMATION TECHNOLOGY and B.Tech. COMPUTER SCIENCE and the degrees B.Tech. INSTRUMENTATION AND CONTROL and B.Tech. ELECTRONIC AND INSTRUMENTATION, even the experts panel constituted by AICTE has opined equivalence and as regards B.Tech. ELECTRICAL AND ELECTRONICS and B.Tech. ELECTRICAL, though the experts have opined to the contrary, we find equivalence. The further position which emerges is that as regards males, the Indian Army treats B.Tech. ELECTRICAL AND ELECTRONIC and B.Tech. ELECTRICAL as equivalent degrees. Further position emerges that the Indian Navy and the Indian Air Force treats the two degrees as equivalent and so do all other Public Sector Undertakings. The further position which emerges is that all writ petitioners succeeded with merit, and we highlight that the young lady writ petitioners found themselves in the select list for 35 posts from amongst 11,000 candidates; we presume that the selection process was to test the knowledge in the field of ELECTRICAL ENGINEERING and the success of the lady writ petitioners holding degree in ELECTRIC AND ELECTRONIC ENGINEERING is proof of what we have held herein above that the degree course undertaken by them has subsumed within, the degree course in ELECTRIC ENGINEERING.

29. Thus, the facts of the instant case attract the law declared by the Supreme Court in its opinion in Mohammed Sujat Ali's case (supra) justifying the arm of this Court to be extended to declare that the writ petitioners were eligible; having the requisite educational qualifications for the posts advertised and accordingly we issue a mandamus to the respondents to proceed ahead with the selection process pertaining to the writ

petitioners keeping in view their merit position in the select list against the post which they had applied for.

30. We note that learned counsel for the respondents had conceded that the number of persons issued letters of appointment exceed more than three times the vacancies which were advertised and the reason is a shortage of officers in the Indian Army, and for which the young petitioners who were present in Court had drawn our attention to the newspaper report published on November 15, 2012 in the daily newspaper „The Pioneer“ that the shortage of officers in the Indian Army is 12,000; indeed learned counsel for the respondents did not refute said position; meaning thereby that the induction of the petitioners would not adversely affect the persons who have been issued letters of appointment notwithstanding many of them being lower in the merit position to the writ petitioners.

31. We have highlighted in our interim orders as also in para 7 above that commensurate to the needs of the growing industry one finds a perceptible shift from the hitherto regimented courses to interdisciplinary courses; having mixed and merges subjects. A large number of writ petitions are being filed on the subject of equivalence. Our experience in the instant writ petitions of seeking expert opinion first from the Association of the Indian Universities and then from the All Council for Technical Education has left us saddened and without any guidance. Accordingly we direct that a copy of this decision would be sent to the Secretary, Ministry of Human Resources Development with a direction that the Government of India would constitute a committee of experts in the field of technical education which would gather the course curriculum of all the technical degrees recognized by the UGC and would accord equivalence which would be displayed on the website of UGC,

AICTE and the Ministry of Human Resources Development.”

5. From the reading of the above it is apparent that this judgment applies squarely to the case of the petitioner. Even though the judgment was pronounced on 26th November, 2012 which was after the date the respondents had cancelled the candidature of the petitioner on the same reasons as in *Nisha vs. Union of India and Others* (supra). The principles laid down in this decision squarely apply to the petitioner’s case. In as much as the denial of the equivalence of degrees was held to be illegal in *Nisha vs. Union of India and Others* (supra), the court had directed the respondents to undertake a *suo motu* exercise in terms of the adjudication in the judgment dated 26th November, 2012.

6. Before us, Mr. Ankur Chhiber, learned counsel representing the respondents has taken an objection to the effect that the Short Service Commission-Women (technical) – 11 April 2013 has commenced on 8th April, 2013 at the Officers’ Training Academy, Chennai for 48 weeks of training. It is contended that as per the Directorate of Military Training, Army Headquarters letter No.A/40194/IMA/GS/MT-6(B) dated 11th September, 1996, induction at the Officers Training Academy, Chennai is permissible up to three weeks from the date of the Course commencement and, therefore, late joining was permissible only up to 28th April, 2013.

7. We find, after the respondents cancelled the candidature of the petitioner, she had promptly represented to the respondents by a letter dated 21st September, 2012 wherein she had clearly stated the following:-

“2. I Khushbu Sharma (773504) had applied against online for SSCW(T)-10 course against the vacancy of “Electronics” and got qualified in the SSB interview. This was my first time I have gone through SSB Interview.

3. I applied against “Electronics” which also include “Electronics and Instrumentations” as published in Employment News dated 28 Jan 2012.

4. I have been awarded with BE “Instrumentation and Control Engineering” which has the subject same as that of “Electronics” and Instrumentation Engineering”.

5. Hence, it is requested that the matter may be reconsidered and I may be issued the joining instructions.”

8. This communication was addressed to the Additional Directorate General of Recruitment (WE/SE), AG’s Branch/Indian Head Quarter of Ministry of Defence (Army), West Block – III, R.K. Puram, New Delhi – 110 066. The respondents took more than one month to respond to this representation by their letter dated 25th October, 2012 stating as follows:-

“3. SSB was conducted based on the information furnished by you in the online application. However, on final checking of dossiers at Army Headquarters by Board of Officers for checking eligibility before preparation of final merit list, it was found that you had

applied against Electronics vacancy with degree in BE. Instrumentation and Control, which was not acceptable as per the released vacancy. Hence, your candidature was cancelled”.

9. Despite the clear direction of this court in the judgment dated 26th November, 2012 in *Nisha vs. Union of India and Others* (supra), the respondents have given no priority to settle the same. The petitioner filed this writ petition after service of advance copy on the respondents on the 2nd of May, 2012 in the Registry of this court. Therefore, as on 2nd of May, 2013, the respondents were aware of the case and claim of the petitioner. Yet they have failed to abide by the directions made by this court in the above judgment rendered on the 26th of November, 2012.

10. In the above facts and circumstances, so far as joining is concerned, the petitioner has actually approached the respondents for the same on the 21st of September, 2012 which has been wrongfully denied to her till date. So far as the reasons for delay in joining are concerned, it has to be held that no fault is attributable to the petitioner and the same clearly lies with the respondents. Therefore, the action of the respondents to say the least is not only in violative of the directions made by this court in the judgment dated 26th November, 2012 but is a conscious denial of her rightful claim.

11. So far as the directive dated 11th September, 1996 is concerned, we find that the same is merely a communication which has been addressed by the Directorate General of Military Training which is concerned with the late induction of the candidate at the National Defence Academy, Indian Military Academy and the Officers Training Academy only for the following reasons:-

- “(a) Delay in holding of examinations by the University State Board of Education/CBSE.
- (b) Delay in declaration of results by written examinations and subsequently merit list by the UPSC.
- (c) Delay in finalisation of media/review of medical board proceedings.
- (d) Shortfall in intake of cadets.”

The said directive has further stated that late induction so far as Officer Training Academy is concerned would henceforth be permitted upto a limit of three weeks. So far as Indian Military Training is concerned, the directive permits late induction by four weeks.

12. It is noteworthy that the reasons noted in this communication are not exclusive. This directive does not envisage and does not refer to the delay which is relatable directly to the fault of the respondents as in the instant case. The circumstances in which the petitioner has been prevented from joining the Officer Training Academy at Chennai are clearly attributable to the fault of the respondents who wrongly cancelled her candidature and despite her representations refused permission to her to join the course.

In this background, the directions contained in letter dated 11th September, 1996 would not apply to the present case.

13. We are informed that after 24 weeks of training there is term break for a period of three weeks. Major Mahesh Sharma submits that the term break is not available to late entries.

14. The delay which has been occasioned in the petitioner's joining the Officer Training Academy is purely for the fault of the respondents and she cannot be penalised any further for the same. Given the urgency expressed by both sides, this matter brooks no delay at all and urgent decision is necessary.

15. Be that as it may, the order cancelling the candidature of the petitioner in the instant case is illegal and liable to be set aside and quashed. The petitioner is entitled to join the training course at the Officer Training Academy, Chennai. It is so directed.

16. So far as the deficiency of the period is concerned, it is for the officers of training academy, Chennai to ensure that the petitioner is given an opportunity to make good the deficiency either from the term break or by appropriate extension at the end of the training while at the same time ensure that the career of the petitioner is not jeopardised in any manner.

17. We make it clear that this judgment is passed in the facts and circumstances of the instant case given the fault found with the respondents, the petitioner shall report to the Commandant, Officer Training Academy, Chennai on or before 29th May, 2013.

Dasti to counsel for the parties.

GITA MITTAL, J

DEEPA SHARMA, J

MAY 23, 2013
mk