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

% *Judgment dated: 29th August, 2016*

+ W.P.(C) 3451/2016 and C.M.No.14744/2016

EX PETTY OFFICER (ELECTRICAL RADIO) RANVIR SINGH VERMA
..... Petitioner

Through: Mr.Virender Singh Kadian, Advocate.

versus

UNION OF INDIA & ORS Respondents

Through: Mr.Jaswinder Singh, Advocate for
R1/UOI.
Mr.Devesh Singh, ASC with
Mr.Vinod Kumar Bhati, Advocate for
GNCTD/R-3 & R-4.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE I.S.MEHTA

G.S.SISTANI, J (ORAL)

1. The petitioner is aggrieved by the order dated 22nd December, 2015 passed by the Central Administrative Tribunal (*in short the 'Tribunal'*) in O.A. 877/2015. Formal notice to show cause is yet to be issued in the matter. Since the matter has been adjourned on two occasions to enable the learned Addl. Standing Counsel for GNCTD to seek instructions in the matter, we propose to decide the matter at the admission stage itself.

2. We have heard the learned counsel for the parties in detail. The petitioner is aggrieved by the decision of the respondents holding him to be

ineligible for the post of 'Asst. Sub-Inspector (Radio Technician)' as not having the requisite certification and the consequent dismissal of the OA filed by him. The petitioner was held to be ineligible on the ground that he does not possess a 'Three years diploma in Electronics/Communication from a recognised Institute' as mandated by the Recruitment Rules and the Recruitment Notice. Prior to proceeding further, we deem it appropriate to notice the experience and certification of the petitioner herein.

3. The petitioner was enrolled in the Indian Navy in the trade of 'Electrical Radio' in the branch 'Technical (Non-Art)' and has retired on 1st June, 2004 after rendering about 15 years of service. During his service in the Navy, the petitioner had successfully completed a 24 weeks course of 'Electrical Mechanic Radio II Qualifying Course' at the Electrical Training Establishment of Indian Navy at INS Valsura, Jamnagar. Even after completion of his course, he continued to work in the same post in the Indian Navy till the date of his retirement. It is also the case of the petitioner that at the time of his retirement from service, an 'Equivalent of Naval Trade Certificate' was issued by the Navy along with an Experience Certificate. Further a 'Trade Certificate' has been issued which clearly provides that, the petitioner including undergoing the aforementioned course, Electrical mechanics "*have under gone 70 weeks of professional training at Electrical Engineering School at Valsura (Jamnagar)...*". Based on the aforesaid certificates, the petitioner claims that he is eligible for the post equivalent to Civil Trade as per National Classification of Occupation (NCO) Code No.854.30 'Radio Technician (Radio Manufacturing)'.

4. In 2013, a recruitment notice was issued by the Delhi Police for inviting applications for numerous posts including for the post of 'Asst. Sub-Inspector (Radio Technician)' [*in short 'ASI (RT)'*] with a reservation of 10% for ex-servicemen. Accordingly, the petitioner applied for the post of

ASI (RT). Based upon the scrutiny of documents, an admit card for Physical Endurance and Measurement Test ('PE&MT') was issued to the petitioner. When the petitioner appeared for the PE&MT on 13.10.2014, he was not allowed to participate as he did not hold a 'Three years diploma in Electronics/ Communication from a recognised Institute' as mandated. The educational qualifications prescribed as per the recruitment notice are as under:-

“(a) Matriculation with Science and Mathematics from a recognized Board or its equivalent.

(b) Three years diploma in Electronics/Communication from a recognized Institute.

DESIRABLE:

Experience of one year in the repair and maintenance of wireless, telephone and other telecommunication equipment from a Government Department/ Public Sector Undertaking /reputed communication organization.

Or

Having passed Grade-II Proficiency Test of Radio Technician conducted/approved by the Directorate of Co-ordination Police Wireless, Ministry of Home Affairs, Government of India with three years practical experience in the Armed Forces/ Govt. Department/any other recognized commercial communication training organization.

Or

Degree in Electronics/ Communication from a recognized University /Institute or its equivalent.”

(Emphasis Supplied)

5. The petitioner made representation highlighting the issue with a request to allow him for the PE&MT to the Recruitment Cell, Addl. Deputy Commissioner, Commissioner of Police (Delhi Police) as well as the Ministry of Home Affairs, Government of India. He also informed that the Indian Navy does not conduct a three year diploma course for Radio Technicians and thus no continuous three years diploma is awarded to ex-servicemen. The petitioner also highlighted that he had 15 years experience in the field of Radio Technician, which in fact finds mention in his Discharge Certificate, Trade Certificate and Experience Certificate. A response was received from the Addl. Dy. Commissioner of Police on 19.01.2015 informing the petitioner that since his educational qualifications were not in accordance with the required eligibility as mentioned in the recruitment notice, his application has been rejected. Resultantly, the petitioner filed an OA before the Tribunal which has been dismissed and led to the filing of the present writ petition. In accordance with an interim order of the Tribunal on 04.03.2015, the petitioner has been allowed to participate in the written test, but not allowed to complete the process of the recruitment.

6. We may note that on 10.05.2016, this Court had passed the following order:-

“This case poses a peculiar problem. The petitioner is an ex-serviceman, who has fifteen years experience in the Navy as Electrical Radio Mechanic. However, he does not have three years diploma in Electronics/Communication from a recognised institute. What he profess and has is 24 weeks Electrical Mechanic Radio-II Course. In addition, the petitioner has undergone various training courses, including total of 70 weeks of professional training at Electrical Engineering School at Valsura, Jam Nagar. He also has experience certificate as per which the petitioner is

eligible for post equivalent to civil trade as per National Classification of Occupation (NCO) Code No. 854.30.

2. As per the advertisement, the educational eligibility requirement stipulated was matriculation with science and mathematics from a recognised board/equivalent and three years diploma in Electronics/Communication from a recognised institute. The eligibility qualifications do not stipulate or require minimum experience. Experience of one year to repair and maintenance as wireless, etc. is stipulated as desirable. Certain other educational qualifications are also considered to be desirable.

3. As per the advertisement, 10% of the vacancies for the post of Assistant Sub-Inspector (Radio Technician) were reserved for ex-servicemen. It is obvious that the petitioner herein, an ex-serviceman, would have undergone the relevant courses as Radio Technician in terms of the standards and norms fixed in the Army/Navy/Air Force. The recruitment rules, therefore, with regard to ex-servicemen should be in consonance and accord with the training imparted and acquired by the ex-servicemen while in service in the Army/Navy and Air Force. This aspect has obviously missed the attention of the respondents. Appropriate authority will examine this aspect and if required and necessary, relax the rules keeping in view the aforesaid position.

4. Reference is also made by the counsel for the petitioner to the relaxation notification dated 12th February, 1986.”

(Emphasis Supplied)

7. On the said date, learned counsel for the respondents was requested to take instructions in the matter. Today, the learned counsel has handed over a communication addressed to him from the Commissioner of Police, the

relevant portion of which reads as under:-

“With reference to your letter dated 01.08.2016, on the subject cited above, I am directed to inform you that in response to the Hon’ble High Court of Delhi’s order dated 10.05.2016, the matter regarding relaxation in technical qualification in respect of 10% vacancies meant for Ex-Servicemen for the post of ASI (Radio Technician) in Delhi Police has been examined in this Hdqrs. and it has been decided to amend the relevant Recruitment Rule to the post of ASI (Radio Technician) in Delhi Police for future recruitment. In this regard, DCP/Ops. & Communication through Addl. CP/Ops. is being requested to prepare necessary draft to amend the relevant Recruitment Rule, so that the same may be sent to the Competent Authority i.e. the Hon’ble L.G., Delhi for approval.”

8. Reading of these instructions would show that the respondents have considered the matter regarding relaxation in technical qualifications prospectively and consequently, does not solve the controversy in the present petition.

9. Counsel for the petitioner submits that the experience gathered by the petitioner in 15 years service with the Indian Navy is far more than any three year diploma course which has been prescribed as per the Delhi Police (Appointment & Recruitment) Rules, 1980.

10. Learned counsel for the petitioner has drawn the attention of this Court to a notification dated 12th February, 1986 in support of his argument that this is a fit case where the Delhi Police should have relaxed the rules to accommodate the petitioner. He submits that as per the recruitment notice, 10% posts were reserved for ex-servicemen, i.e. 4 out of the 41 total posts were reserved for ex-servicemen, while only 2 candidates (ex-servicemen) had cleared the written exam. The notification dated 12th February, 1986 adds the following rule after Rule 6 in the Ex-servicemen (Re-employment

in Central Civil Services and Posts) Rules, 1979, which reads as under:-

“Lower Standard for Selection :- In the case of direct recruitment, if sufficient number of candidates belonging to the ex-servicemen are not available on the basis of general standard to fill all the vacancies reserved for them, candidates belonging to the category of ex-servicemen may be selected under a relaxed standard of selection to make up the deficiency in the reserved quota subject to the condition that such relaxation will not affect the level of performance by such candidates.”

11. Reliance is also placed on an Office Memorandum dated 25th February, 2014 of the Department of Personnel and Training, Government of India, wherein clause (6) reads as under:-

“6. Relaxation regarding educational qualification

...

iii. For appointment to any reserved vacancy in Group C posts to be filled partly by promotion or transfer, where the minimum educational or technical qualification prescribed for appointment prescribed for appointment by direct recruitment is higher than that prescribed for promotees or transferees, an ex-serviceman shall be deemed to satisfy the prescribed educational or technical, if he:

- (a) satisfies educational or technical qualification prescribed for direct recruitment to the post from which promotion or transfer to the post in question is allowed; and*
- (b) his identical experience of work in a similar discipline and for the same number of years in Armed Forces of the Union as prescribed for promotes or transferees.”*

12. Counsel for the petitioner has also relied upon the an Office

Memorandum dated 26th September, 2012 in support of his submission that the Ministry of Labour and Employment, Government of India, has highlighted and emphasised that ex-servicemen, by virtue of their experience and training in the Armed Forces are fully competent and equipped for performing various civilians jobs. He further submits that the said OM mandates that all Employment Officers should use the National Classification of Occupations (NCO) for registering ex-servicemen in appropriate civil trades. The relevant part of the said OM reads as under:-

“The Directorate General of Employment and Training in the Ministry of Labour have identified a number of technical trades of the Defence Forces and have equated them with the civilian occupations classified in the National Classification of Occupations.

The purpose was to provide a comparative information about the job performance of the service personnel during their engagement in the Army vis-a-vis the civilian jobs. These information have been further updated and the Directorate General of Resettlement have published a consolidated version of the Army, Navy and Air Force technical trades and comparable civilian jobs.

All Employment Officers are requested to make use of this directory for registering ex-servicemen in appropriate trades accurately for meaningful submission of ex-servicemen against reserved vacancies that have been notified to the Employment Exchanges as also against unreserved vacancies.”

(Emphasis Supplied)

13. Reliance is placed by counsel for the petitioner on the ‘Instructions for the use of Guide to Navy Trades in Employment Exchanges’, which

enunciate civil equivalent occupations against particular naval trades. As per the Instructions, ex-serviceman in 'Electrical Radio' Trade in the Navy and having minimum 9 years of service is equivalent to Asst. Sub-Inspector Police (New NCO Code 3450.20).

14. Learned counsel for the petitioner also relies upon an 'Equivalent of Naval Trade Certificate' dated 3rd June, 2015 which was issued during the pendency of the OA before the Tribunal. The said certificate states that as per the provisions notified under the National Classification of Occupation (NCO) Scheme, the petitioner herein has the requisite qualification, *inter alia*, for Asst. Sub-Inspector Police. The counsel submits that in view of the NCO Scheme the respondents were bound to hold that the petitioner had the requisite qualification. The certificate reads as under:-

“

INDIAN NAVY

EQUIVALENT OF NAVAL TRADE CERTIFICATE

This is to certify that RANVIR SINGH VERMA Rank PO ELR No.172948R of Indian Navy has requisite qualification for the following Civil Trades according to provision notified under National Classification of Occupation (NCO) scheme by the Director General of employment & Training, Ministry of Labour, Rehabilitation letter DGE&T-5/1/07-VG/OI Dated 26 Sep 2012.

BRANCH	NCO CODE	EQUIVALENT CIVIL TRADE
ELECTRICAL		
MECHANIC (RADIO)	1226.8	Asst Post Master

2144.1	<i>Junior Engineer (Electronics)</i>
3119.1	<i>Laboratory Assistant</i>
3132.60	<i>Technical Assistant</i>
3151.2	<i>Asst Fire Officer</i>
3312.1	<i>Primary School Teacher</i>
3431.2	<i>Land Revenue Inspector</i>
3441.2	<i>Sub Inspector Customs</i>
3442.1	<i>Sub Inspector Central Excise</i>
3450.2	<i>Asst Sub Inspector Police</i>
3450.2	<i>Sub Inspector CBI/IB</i>
3450.2	<i>Sub Inspector Police</i>
4131.1	<i>Store Keeper</i>
4190.4	<i>Kurk Ameen / Lekh Pal</i>
5112.44	<i>TTE</i>
5169.1	<i>Security Officer</i>

The experience in the above mentioned posts is to be counted from 03 May 89”

(Emphasis Supplied)

15. Based on the notifications, office memorandums on record which have been extracted in foregoing paragraphs, learned counsel for the petitioner prays that a direction be issued to the respondents to grant necessary relaxation and allow the petitioner to appear in the interview and medical test.

16. Learned counsel for the respondents has opposed this petition on the

ground that the petitioner is not eligible based on the existing recruitment rules. He submits that there is no infirmity in the impugned order passed by the Tribunal which would require interference by this Court in the proceedings under Article 226 of the Constitution of India.

17. Learned counsel for the respondents further submits that the Tribunal has rightly held that none of the certificates possessed by the petitioner are equivalent to the 'Three years diploma in Electronics/Communication from a recognised Institute' as prescribed by the recruitment rules as well as the recruitment notice. He concludes by saying that there cannot be any appointment *de hors* the prevalent recruitment rules and consequently, the present writ petition is liable to be dismissed.

18. We have heard the learned counsel for the parties, considered their rival submissions and carefully examined the notifications and OMs which have been placed on record and noticed by us in the foregoing paragraphs. The basic facts in this case are not in dispute. It is also not in dispute that as per the existing recruitment rules the petitioner is not eligible as he does not possess the requisite 'Three years diploma course in electronic/communication from a recognized institute.' At the same time, we may also note that the recruitment notice provides for a 10% quota for ex-servicemen. Learned counsel for the petitioner has strenuously urged before us that the petitioner has rendered about 15 years of service in the Indian Navy and that he has undergone more than 70 weeks of professional training at Electrical Engineering School at Valsura (Jamnagar). During his stint in the Indian Navy, he has handled all types of radio sets and is fully qualified in his trade as Radio Technician and holds rich experience of 15 years which is far greater than the three years diploma course stipulated by the recruitment rules. He also submits that in view of the NCO Scheme under the OM dated 26th September, 2012 the post of the petitioner has been

declared to be equivalent to the post of ASI in civil trade and accordingly, the respondents were bound to find him qualified for the same.

19. We take note of the observations of the Supreme Court in ***State of Orissa v. Mohd. Yunus and Ors.***, 1994 SCC (L&S) 795 stressing that ex-servicemen must be given relaxation owing to their service to the nation otherwise the reservation would become illusory. The relevant portion of the judgment reads as under:-

“3. ...The fixation of the general standard marks prescribed for personnel who are made to compete with youngsters after several years of service put in the defence service. The State Government and the Public Service Commission are directed to consider the desirability to fix a lesser standard than that of the general candidates as ex-servicemen have served the nation in its defence and in the process they may not come on a par with the general candidates. Therefore, some relaxation in their behalf would be necessary to meet the exigencies of coping up with the reservation given to them. Otherwise, reservation would be illusory. The State Government in consultation with the Public Service Commission would decide this issue within a period of three months from the date of the receipt of this order and thereafter consider the case of the respondent accordingly.”

(Emphasis Supplied)

20. A Division Bench of this Court in the case of ***Girish Ahuja v. Kendriya Vidyalaya Sangathan and Ors.***, ILR (2009) Supp. (2) Delhi 314 was faced with the situation where the petitioner was a Physical Training Instructor with 20 years of experience in the Indian Air Force could have been denied appointment in Kendriya Vidyalaya as he did not possess a Diploma in physical education, B.P. Ed or equivalent degree. However this court came to his rescue. Relevant paragraphs read as under:-

“12. In our view, the Tribunal has also erred in law in applying the judgment of the Hon'ble Supreme Court in Basic Education Board, U.P. v. Upendra Rai and Ors. 2008 (2) SCT 49. The relevant portion of the said judgment relied upon by the Tribunal is extracted as under:

“17. The Hon'ble Supreme Court in Basic Education Board U.P. v. Upendra Rai and Ors. 2008 (2) SCT 49 has observed as under:

14. The respondent admittedly got appointment after the Circular dated 11.8.1997 and hence this Circular applies to him. Admittedly, the respondent does not possess the qualification mentioned in the said Circular. He does not either possess BTC, Hindustani Teaching Certificate, JCT or Certificate of Teaching. The D.Ed. Certificate is no longer regarded as equivalent to BTC after the circular dated 11.8.1997. This was a policy decision of the U.P. Government, and it is well settled that the Court cannot interfere with policy decisions of the Government unless it is in violation of some statutory or constitutional provision. Hence, we are of the opinion that the respondent was not entitled to be appointed as Assistant Master of the Junior Basic School in U.P.

15. Grant of equivalence and/or revocation of equivalence in an administrative decision which is in the sole discretion of the concerned authority, and the Court has nothing to do with such matters. The matter of equivalence is decided by experts appointed by the government, and the Court does

not have expertise in such matters. Hence it should exercise judicial restraint and not interfere in it.

13. In our view paragraph 15 of the above judgment of the Hon'ble Supreme Court, far from helping the case of the respondent, in fact, supports the case set up by the petitioner. The Directorate General of Employment and Training in the Labour Ministry and the Department of Personnel & Training in the Ministry of Personnel, Public Grievance & Pensions were the concerned governmental authorities having the requisite experience and expertise in the present case and the matter of equivalence was decided by the said government departments. It is the Tribunal, which has not followed the above position of law laid down by the Hon'ble Supreme Court and failed to see that it is the Kendriya Vidyalaya Sangathan which has ignored the equivalence determined by the Government of India which was duly qualified and competent to judge the said equivalence. The Kendriya Vidyalaya Sangathan, being a government organization could not have brushed aside such a determination by the Ministry of Labour. The Tribunal has totally ignored the following averments in the Counter Affidavit before it filed by the respondent:

The Kendriya Vidyalaya Sangathan follows Government of India rules and regulation in the manner of recruitment and reservation policy.

In light of the above averment, it is the respondent No. 1 which ought not to have questioned the equivalence determined by the Central Government.

14. We must not lose sight of the fact that the qualification required by the respondent themselves stated 'a Diploma in Physical Education or B.P.Ed. from Laxmi Bai College of Physical Education or equivalent qualification. The second part

of the requirement also stated that distinguished sportsmen appearing for the country could also be eligible for the appointment and for them even the condition of possessing the Diploma in Physical Education or Equivalent Education could be waived in appropriate cases.

15. We must also take note of the fact that the Tribunal has totally lost sight of the fact that in the Armed Forces the level of fitness is far higher than the civilian employment and the petitioner has no less than 20 years of experience in the Indian Air Force as a Ground Training Instructor. The Tribunal has unfortunately totally accepted the version put forward by the respondent that only 20 years of experience in the Indian Air Force as Ground Training Instructor was possessed by the petitioner. Far from being a factor against the petitioner, this was a factor which should have weighed in with the Tribunal that the petitioner was fully qualified and could and should not have been denied appointment by the respondent on the ground of his lack of qualification.

(Emphasis Supplied)

21. In another case of **Ranbir Singh v. DSSB, W.P. (C) 2316/2000** dated 18th January, 2002, it was held by this Court as under:-

“9. I have heard the learned counsel for the parties. The only short issue to be examined is whether the qualifications of the petitioner fall within the parameters of the recruitment regulations requiring the teachers training certificate. The recruitment regulations of the respondent No.2 corporation is keeping in mind the civil degree. Further what is to be appreciated is that to facilitate army personnel who retire from service and seek employment, equalisation procedure has been prescribed and recognised by the Government of India. It is pursuant to this equalisation procedure that the petitioner is

granted a certificate equating his qualifications to a Teacher Training Certificate.

10. In my considered view it is thus not open to the respondent-corporation to hold that the petitioner is not qualified. The purpose of such equalisation is that since the army personnel has been in service for number of years and in that process acquire different qualifications, equalisation certificates and degrees be issued to them. In the case of petitioner, he has been issued a equalisation certificate to a second division in High Secondary Award Certificate dated 10.2.1976 (Annexure P1) in terms of the Government of India, Department of Personnel Administrative Memorandum, a certificate equivalent to a graduation award certificate dated 17.12.1991 (Annexure P6) and certificate to the effect that his qualifications are equivalent to a primary school teacher in terms of a certificate dated 26.6.1998 (Annexure P-7). The petitioner is thus liable to be so appointed.”

22. From the foregoing discussion, it is clear that the whole purpose of the equalisation procedure propounded by the Government of India is to enable ex-servicemen to gain meaningful employment in civil trade. To this end, the list is released under the National Classification of Occupation (NCO) Scheme equating the posts in armed services with that of the civil trade. It is no gainsaying that owing to the service to the nation, ex-servicemen have been granted reservation in order to enable them to properly compete with regular candidates. If the qualifications and posts in armed forces are not equalised with their counterparts in civil trades and coupled with the necessary relaxations, the reservations extended would become illusory.

23. Two questions arise for consideration before this Court. The first

question is whether the respondents should grant relaxation to the petitioner for the post of ASI (RT). The Rule added by the notification dated 12th February, 1986 recognizes that in the case of ex-servicemen there should be a lower standard for selection. This is further highlighted in Clause (6) of the OM dated 25th February, 2014 which has also been extracted in the foregoing paragraphs. We may also notice that the Ministry of Labour and Employment in the OM of 26th September, 2012 had emphasized that ex-servicemen by virtue of their experience and training in the Armed Forces are fully competent and equipped for performing the civilian jobs and had accordingly stipulated compliance with the equalization scheme by all Employment Officers. Accordingly, we are of the view that the petitioner being an ex-serviceman with about 15 years of experience should be considered for the post of ASI (RT) and the rules should be relaxed.

24. The second question which arises for consideration is whether the rules should be relaxed without equation of the post sought and the one held in the Indian Navy. In this regard, we have already mentioned the equivalence scheme propounded by the Government of India. In the present case, we have had the benefit of examining the 'Instructions for the use of Guide to Navy Trades in Employment Exchanges', as mentioned foregoing to show that a personnel in the trade of 'Electrical Radio' with minimum 9 years of service is equivalent to the post of ASI in civil trade; whereas the petitioner has rendered more than 15 years of service in the Indian Navy and secondly, the 'Equivalent of Naval Trade Certificate' placed on record would show that for the branch of 'Electrical Mechanic (Radio)' which the petitioner has qualified, the post of ASI would be acceptable. We also find that the three judgments noted above also fully apply to the facts of the present case.

25. Resultantly, we allow the writ petition, set aside the impugned order

passed by the Tribunal and issue a writ of mandamus directing the respondents to allow the petitioner to appear in the interview and consider his case for appointment. We make it clear that this order has been passed in the peculiar facts of the present case and shall not be treated as precedent in other cases. We are also persuaded in passing the order by the fact that vacancies in the case of ex-servicemen arise every 10 years and, in case, the petitioner is not allowed to appear in the interview, he will become over-age as he is already 45 years of age. Further, the government notifications show and emphasize the need to re-employ ex-servicemen and take benefit of their rich experience.

26. Writ petition is disposed of in the above terms.

C.M.No.14744/2016

27. In view of the order passed in writ petition, the application stands dismissed being infructuous.

G.S.SISTANI, J

I.S.MEHTA, J

AUGUST 29, 2016/ 'dc'