

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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**CWP-14845-2017 (O&M)
Date of decision:12.07.2017**

Manhar Singh Billing

....Petitioner

Versus

Union of India and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Navdeep Singh, Advocate for the petitioner.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, the petitioner has questioned the validity of the letters dated 13.06.2017 and 23.06.2017 (Annexurs P5 and P7 respectively) by which petitioner's selection to the post of Permanent Commissioned Officer in the Indian Army's Army Education Corps advertized pursuant to Annexure P1 has been rejected on the score that petitioner do not possess qualification prescribed in the notification namely Post Graduate degree-M.Sc.in Physics/Chemistry/Maths/Zoology/Botany/Geology/Nano-Science/Computer Science/Electronics/MCA. The petitioner is stated to have qualification of M.Tech in Nano-Science.

2. Learned counsel for the petitioner vehemently contended that M.Tech in Nano-Science is equivalent to M.Sc. in Nano-Science. To that extent there are communications by various universities which are produced in the present petition. Therefore, impugned communication dated

13.06.2017 and 23.06.2017 are arbitrary and liable to be set aside and further petitioner's name is required to be considered for the purpose of selection to the post of Permanent Commissioned Officer in the Indian Army's Army Education Corps

3. Crux of the matter in the present petition is whether this court can equate qualification of M.Tech in Nano-Science to that of M.Sc in Nano-Science or not? Service conditions of the post in a department or organization, it is for the department/organization to prescribe requisite qualification. Court cannot legislate law or modify the qualification prescribed for a particular post. It is not the function of the court to trench into and prescribe qualifications particularly when the matters are technical in nature.

4. Learned counsel for the petitioner relied on Supreme Court decision reported in 2010(15) SCC 596 titled as ***Jyoti K.K and others versus Kerala Public Service Commission and others*** to point out that candidate who possess higher qualification in that event his name is required to be considered for the recruitment process. In this regard, the petitioner's counsel submitted that petitioner's qualification is M.Tech in Nano-Science which is equivalent to M.Sc. in Nano-Science. Therefore, matter is covered by the Supreme Court decision titled as ***Jyoti K.K.'s case (supra)***. Perusal of the notification vide Annexure P1 it is evident and crystal clear that for the purpose of Permanent Commission in the Army Education Corps Course, one must have particular Master degree which has been prescribed. In the present case, candidate was required to possess

M.Sc. in Nano-Science and other equivalent qualifications mentioned therein and it also do not stipulate any other equivalent qualification and not M.Tech in Nano-Science. There is no ambiguity in the prescription of qualification for the post of Permanent Commissioned Officer in the Indian Army's Army Education Corps. Therefore, question of reading the requisite qualification to the extent of equating M.Sc. in Nano-Science to that of M.Tech in Nano-Science is impermissible by this court. If such a thing is done it amounts to legislating the law in respect of Permanent Commission in the Army Education Corps Course. It is the duty of the rule making authority or for the legislature to regulate the method of recruitment, prescribe qualification.

Supreme court in the case of ***Director, AIIMS versus Nikhil Tandon (Dr.)*** reported in (1996) 7 SCC 741 held that until and unless the government by general order published recognized any qualification as equivalent one cannot presume 'x' qualification is equivalent to 'y' qualification or court can equate qualification. In yet another case, viz. ***Arun Tiwari versus Zila Manasvi Shikshak Sangha*** (1998)2 SCC 332 held that it is not for the court to assess the comparative merits of qualification or direct what should be the qualifications to be prescribed to the post in question. Assuming that if this court directs the selecting and appointing authority to consider, petitioner's candidature with M.Tech in Nano-Science qualification in that event persons with aforesaid qualification and who have not applied for the post would be denied in participation. Thus, there would be violation of Article 14 and 16 of the Constitution. Moreover,

Supreme Court in the case of *Nair Service Society versus Dr. T. Beermasthan* reported in (2009)5 SCC 545 in para 48 held as under:-

“48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.”

Perusal of the Supreme Court decision and the principle laid down in the above decision is crystal clear that while deciding a matter or an issue one must examine the relevant rules of recruitment before applying any decision.

5. In view of the aforesaid decision, cited decision of *Jyoti K.K.'s case (Supra)* is distinguishable with reference to prescription of qualification for the post (Annexure P1). Therefore, petitioner has not made out a case so as to interfere with the letters dated 13.06.2017 (Annexure P-5) and dated 23.06.2017 (Annexure P-7).

6. Accordingly, CWP stands dismissed.

12.07.2017

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons
Whether Reportable:

Yes/No
Yes/No