

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2019

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

AND

THE HONOURABLE MR.**JUSTICE P.T. ASHA**

**W.P. Nos.3666, 1990, 2047, 2828,
2837, 2876, 6126, 6899 of 2017**

W.P.No.3666 of 2017

- 1 Union of India
Rep by The Chairman Ordnance Factory Board
No.10-A S.K. Bose Road Kolkata 700 001
- 2 The Senior General Manager
Heavy Vehicles Factory
Avadi Chennai 54 ... petitioners

Vs

- 1 Stepan Stewart
- 2 P.Murugan
- 3 J.Neelagandan
- 4 D.Joseph Antony
- 5 K.Anantha Jothi
- 6 M.V.Mohan
- 7 B.Prem Kumar
- 8 M.Rajamani
- 9 R.Ganesan
- 10 L.Vennila
- 11 S.Velavan
- 12 Institute of Mechanical
Engineers (India) Maharashtra 410 201

13 The Central Administrative
Tribunal Rep by its Registrar Madras Bench
High Court Buildings Chennai 104

14 All India Council for Technical Education
Rep. By its Member Secretary
7th Floor Chandralok Buildings
Janpath New Delhi 110 001.

15 Union of India
Rep. By its Secretary Ministry of Human
Resource Development Department of Higher
Education Shastri Bhavan
New Delhi 110 001.

(R-14&R-15 are Suo-motu
impleaded as per order dated 06.03.2017
by K.K.S.J. & M.V.M.J in WP.Nos. 3666
1990 2047 2828 2837 and 2876 2017)

Writ Petition filed under Art.226 of the Constitution of India praying
for a Writ of Certiorari calling for the records of the 13th respondent
pertaining to the impugned common order dated in O.A. No. 1943 of
2014 dated 8.8.2016 and quash the same

For petitioners : Mr.Venkataswamy

For Respondents : Mr.Rabu Manohar, SCGSC, for AICTE

COMMON ORDER

(made by K.K.SASIDHARAN, J.)

Introductory:-

Whether the Diploma awarded by the Institute of Mechanical
Engineers in Mechanical Engineering through correspondence course
would satisfy the qualification prescribed for direct recruitment for the post
of Chargeman (Technical – Mechanical), by the Ordnance Factory Board is

the core issue that arises for consideration in the Writ Petitions filed by the Union of India, represented by the Chairman, Ordnance Factory Board, Calcutta and its unit at Avadi, Chennai.

Summary of facts:-

2. The Indian Ordnance Factories Group “C” Supervisory and Non Gazetted Cadre (Recruitment and Condition of Service Rules) 1989, as amended by SRO 66 dated 27 May 2003, on the file of the Ministry of Defence, Government of India, prescribed that for appointment to the post of Chargeman (Technical – Mechanical), the candidate must possess three years Diploma or equivalent qualification certificate in the respective field duly affiliated by AICTE.

3. The respondents 1 to 11 in the Writ Petition in W.P.No.3666 of 2017 and the respondents in the other Writ Petitions who were the applicants before the Madras Bench of the Central Administrative Tribunal (hereinafter referred to as “the respondents”), took Diploma in Mechanical Engineering, after undergoing correspondence course conducted by the Institute of Mechanical Engineering (IME, for short). It was a two years course and the study was by way of correspondence.

4. The respondents submitted application for appointment to the post of Chargeman (Mechanical) by way of limited departmental examination pursuant to the notification issued by the Heavy Vehicles Factory. Since IME was not recognized by AICTE and the medium of study was only through correspondence course, the management of the Indian Ordnance Factory rejected the applications of the respondents. The respondents challenged the proceedings dated 12 September 2013, rejecting their candidature, before the Central Administrative Tribunal. The Tribunal was pleased to allow the original applications. Feeling aggrieved, the petitioners have come up with the Writ Petitions.

Submissions:-

5. The learned counsel for the petitioners contended that the Ordnance Factory requires Chargeman (Technical – Mechanical) duly qualified. The recruitment rule for the post of Chargeman provides that the candidate must possess three years Diploma or equivalent qualification certificate in the respective field duly affiliated by AICTE. According to the learned counsel, the management is the proper authority to decide as to whether a particular qualification is equivalent. The Ordnance Factory requires Chargeman who has undergone regular Engineering Course and not those who have obtained Diploma through correspondence course.

The learned counsel submitted that at the relevant point of time, IME was not affiliated to AICTE and as such, the respondents were not correct in contending that the Diploma was approved by AICTE. It was further contended that the question regarding equivalence of qualification possessed by the respondents was referred to an expert committee, by the Heavy Vehicles Factory, Avadi. The Expert Committee has opined that the qualification obtained by the respondents is not equivalent. The learned counsel submitted that it is not within the province of the Tribunal to give a certificate that the qualification possessed by the respondents would meet the eligibility criteria.

6. The learned counsel for the respondents 1 to 11 contended that various proceedings issued by AICTE clearly shows that the Diploma awarded by IME is a recognized qualification. The learned counsel placed reliance on a recent judgment dated 13 August 2019 in Civil Appeal No.17922 of 2017 and contended that the Hon'ble Supreme Court has given one time exception in favour of such candidates who have enrolled up to 31 May 2013 and took Degree from IME. The learned counsel contended that the respondents have taken the Diploma by enrolling before 31 May 2013 and as such, their cases would be covered by the said judgment.

7. The learned counsel for the petitioner in W.P.No.2837 of 2017 while supporting the stand taken by the Heavy Vehicles Factory, contended that the Diploma obtained through correspondence course is not equivalent to the Diploma obtained through regular study and as such, the candidature of the respondents was rightly rejected.

Discussion:-

8. The recruitment rule framed by the Ministry of Defence, Government of India, and more particularly the amendment made in SRO 66 dated 27 May 2003, contain the essential qualification for appointment to the post of Chargeman (Technical – Mechanical). As per the recruitment rule, the applicant for recruitment to the post of Chargeman must possess three years Diploma or equivalent qualification certificate in the respective field duly affiliated by AICTE.

9. There is absolutely no dispute that the respondents have obtained the Diploma only from the Institute of Mechanical Engineers. The respondents have not undergone regular course in Engineering. They took the Diploma only through correspondence course. It is for the management to decide as to whether a Diploma obtained by a candidate would satisfy the eligibility criteria prescribed by them. The respondents took advantage

of the condition in the recruitment rule that the qualification must be from an institution affiliated by AICTE. The clarification issued by AICTE earlier indicating that the Diploma awarded by the Institute of Mechanical Engineering would be a recognized qualification is taken advantage of by the respondents.

10. The Heavy Vehicles Factory through its Joint General Manager, filed an affidavit filed before this Court and contended that the Diploma in Mechanical Engineering through distance education mode cannot be considered as a regular Mechanical Engineering course with regular classes, together with practical training in the workshops.

11. The Indian Ordnance Factory is entrusted with the unique task of supplying indigenous high quality arms, ammunition and military equipments to the armed forces. The factory comes under the direct control of the Department of Defence. The product manufactured by the Heavy Vehicles Factory must conform to international standards. The factory therefore must employ educated and experienced employees to ensure the production of high quality ammunition. The Heavy Vehicles Factory therefore made it clear that they would not recognize the qualification obtained by the candidates through Distance Education mode.

12. The question is whether the Central Administrative Tribunal was correct in its observation that the Diploma in Mechanical Engineering obtained by the respondents through distance education mode is an equivalent qualification, in view of the eligibility criteria prescribed by the Ordnance Factory and its contention that correspondence course is not a recognized mode of study for engineering.

13. The All India Council for Teacher Education is concerned only with the question as to whether the institution was affiliated to the Council. None of the notifications issued by the All India Council for Teacher Education contain any indication that the Diploma obtained through distance education mode would meet the eligibility criteria indicated in the recruitment rule. It was indicated that the candidate must have undergone regular course with practical training. We are therefore not in a position to support the view expressed by the Central Administrative Tribunal with regard to the equivalence of the qualification possessed by the respondents.

14. The AICTE can only say as to whether a particular course is recognized or the institution offering such course is affiliated to the council. In the light of the stand taken by the management that they would not

recognize the qualification obtained through correspondence course, it is not for the AICTE to say that the qualification is equivalent.

15. There is a subsequent development in the matter. The High Court of Punjab and Haryana at Chandigarh in its judgment dated 6 November 2012 in Civil Writ Petition No.12090 of 2009 held that the membership certificate granted by the Institute of Mechanical Engineers (India) could not be treated as equivalent to a degree in Engineering. The issue was taken up before the Hon'ble Supreme Court in C.A.No.17922 of 2017. The Hon'ble Supreme Court while confirming the order passed by the High Court, made an exception in favour of the candidates who have enrolled up to 31 May 2013 as students in the Institute of Mechanical Engineers.

The relevant paragraphs read thus:-

44. However, the fact remains that the equivalence to the Certificates awarded by the appellant was granted by the MHRD³ in consultation with AICTE² upto 31.05.2013 as is evident from Notification dated 06.12.2012 issued by the Central Government and Public Notice issued by AICTE in August, 2017. These communications also indicate that all those students who were enrolled upto 31.05.2013

would be eligible for consideration in accordance with MHRD office memorandum/ order in course. Though we have laid down that the Certificates issued by the appellant on successful completion of its bi-annual examination to its Members cannot be considered to be equivalent to a Degree, an exception needs to be made in favour of students enrolled up to 31.05.2013 and benefit in terms of the Notification dated 06.12.2012 and Public Notice as aforesaid ought to be extended to such candidates. The candidates had opted to enroll themselves so that they could appear at the examinations conducted by the appellant under a regime which was put in place by the Central Government itself and the course content as well as the curriculum were reviewed by the AICTE. However, the aforementioned Notification and Public Notice were clear that after 01.06.2013 the concerned orders granting equivalence would cease to have any effect.

45. In the circumstances we do make an exception in favour of such candidates enrolled upto 31.05.2013 and declare that the conclusions drawn in the present matter will apply after 01.06.2013. The Certificate

awarded by the appellant to such candidates enrolled upto 31.05.2013 shall be considered equivalent to a Degree in Mechanical Engineering for the purpose of employment in Central Government.

16. The respondents herein also obtained Diploma only from the Institute of Mechanical Engineers.

17. The issue raised by the petitioners must be decided taking into account the relevant recruitment rule and the stand taken by the Government that only those candidates who have obtained Diploma through regular course and practical training alone would be permitted to take part in the selection process for the post of Chargeman. This is more so on account of the fact that Chargeman (Technical – Mechanical) is a key post in the Ordnance Factory as the job is supervisory in nature. The Chargeman is expected to supervise the production activities which requires engineering skill. The issue also requires to be decided in the light of the recent judgment of the Hon'ble Supreme Court in C.A.No.17922 of 2017.

18. The parties should be given an opportunity to submit their respective case before the Tribunal for deciding the question as to whether the Diploma obtained from Institute of Mechanical Engineering through correspondence course is an equivalent qualification in the light of the educational qualification prescribed by the Heavy Vehicles Factory.

19. We are therefore of the view that the matter should be relegated to the Central Administrative Tribunal for fresh consideration.

20. The orders impugned in the respective Writ Petitions are set aside. The original applications are restored to the file of the Central Administrative Tribunal, Madras Bench.

21. We direct the Central Administrative Tribunal to give reasonable opportunity to the parties to file written response, taking into account the educational qualification prescribed by the Heavy Vehicles Factory for appointment to the post of Chargeman and the observation made by the Hon'ble Supreme Court in its judgment dated 13 August 2019 in C.A.No.17922 of 2017. The original applications were filed in the year 2014. We request the Tribunal to dispose of the matter as expeditiously as possible and preferably within a period of three months from the date of

receipt of a copy of this order.

22. Since we are remitting the matter for fresh consideration, the interim order granted by the Division Bench on 18 December 2018 would continue till the disposal of the original applications.

23. The Writ Petitions are allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

(K.K.SASIDHARAN, J.)

(P.T. ASHA, J.)

30.08.2019

Index: Yes/no
tar

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- 3 The Secretary
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