

\$~13

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

+ **W.P.(C) 5688/2014**

BALBIR SINGH

..... Petitioner

Through: Mr. Amit Kumar, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Bhagwan Swaroop Shukla,
CGSC with Mr. Suraj Kumar,
Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

%

26.02.2019

SANJEEV NARULA, J.:

1. The Petitioner who joined General Reserve Engineering Force (GREF), BRO as Charge Mechanic [merged/re-designated as Junior Engineer (Electrical & Mechanical) - JE (E&M)] by way of the present petition under Article 226 of the Constitution of India seeks benefits (Grade, Badge, Rank & Seniority etc.) attached with the said post of JE (E & M) at par with his counterparts who are diploma holders.

2. The relevant facts that are necessary to be noted for the disposal of the present petition are as follows. The Petitioner retired from Indian Army and applied for appointment for the post of Charge Mechanic in the category of

“ex-servicemen” in GREF, BRO pursuant to the Advertisement No. 01/2007 issued by the Ministry of Shipping, Road Transport and Highways, BRO, Government of India. He was selected and was appointed on the said post w.e.f. 5th April 2008.

3. Pursuant to the recommendations made by 6th CPC, the Respondent vide letter dated 13th May 2010, merged the post of Superintendent E&M-I, Superintendent E&M-II, Charge Mechanic and Charge Electrician. The merged grade was designated as JE (E & M). However, the Petitioner was denied rank and grade of JE (E&M) on the ground that he was not a diploma holder. Aggrieved with the discriminatory action he made a representation dated 7th August 2013 and stated that he fulfills the essential qualifications for being appointed as a Charge Mechanic and should be treated at par with diploma holders. His request was considered by the Commanding Officer who gave his recommendation in favour of the Petitioner inter-alia observing as under:

“2. Since the indvl acquired essential qualifications, you are therefore requested to take up a case with appropriate authority for merger of Ch Mech into JE (E & M) to avoid legal complications at a later stage.”

4. The Competent Authority however declined his request vide letter dated 6th September 2013 holding as under:

“2. The application dated 07 Aug 2013 in respect of GS-188562M Ch/Mech Balbir Singh is returned herewith unactioned with following remarks:-

(a) As per existing rules the Diploma Holder

(Mechanical/Electrical Engineering) Supdt E&M-II, Charge Mechanic and Charge Electrician were merged and re-designated as JE(E&M). Ch/Mech Balbir Singh is not a Diploma Holder. The equivalency of Class-I Course as per DSR is only an optional qualification for appointment to the post of Charge Mechanic as given in BRO Advt No.01/2007, which cannot be treated as equivalent to Diploma, as there is no such provision exists in relevant rules.

(b) Moreover, as per revised Recruitment &Promotion Rule, the qualification required for promotion to JE(E&M) is given as 'five years regular service in respective grades possessing the educational qualification and experience as prescribed for directed recruits" i.e., three years Diploma in Engineering (Electrical or Mechanical) from recognised University or Institute. ”

5. Petitioner has filed the present petition aggrieved by the aforesaid decision as conveyed to him vide letter dated 13th September 2013.

6. The Court has heard the learned counsel for the parties at length. At the outset, the counsel for the Respondents urged that the issue raised in the present petition is pending consideration before the Hon'ble Supreme Court in S.L.P. (C) No. 4315/2015 titled as ***Union of India v. Ghanshyam Vishwakarma***.

7. In fact, taking note of the aforesaid contention, this Court *vide* order dated 14th January 2016 had adjourned the hearing, awaiting the decision of the Supreme Court in the said matter. However, today the Learned counsel for the Petitioner raised an objection and submitted that the pending Appeal

does not come in the way of the Petitioner seeking the relief as sought in the present petition.

8. Therefore, at the first instance, we proceed to examine the applicability of the decision rendered by the Coordinate Bench of this Court dated 2nd September 2014 in W.P.(C) 3047/2013 (*Ghanshyam Vishwakarma v. Union of India*) which is pending challenge before the Supreme Court. The order dated 2nd September 2014 makes a reference to a decision of Guwahati High Court. Therefore it is imperative to note the factual background of the said case. Ghanshyam Vishwakarma was initially appointed with GREF, BRO, to the post of Mason on 16th April 1985. Thereafter, on completion of three years of regular service and on being selected by the DPC, he was promoted to the post of Overseer on 15th June 1990. He then filed a writ petition before the Guwahati High Court seeking directions to the Respondents to revise his pay scale as Rs. 5000-8000/- w.e.f. 1st January 1996. He claimed that he was entitled to the revised pay scale for the post of Overseer as recommended by 6th CPC and duly accepted by Government of India. The Respondents i.e. the Union of India opposed the writ petition solely on the ground that the revision of pay scale of Rs. 5000-8000/- pursuant to the recommendation of 6th CPC was accepted by the Government of India only for “diploma holders”. The recommendation for revision of pay scale for the post of “non-diploma holder” Overseer was not accepted and hence Ghanshyam Vishwakarma being a non-diploma holder was not entitled to the revised pay scale. The Guwahati High Court after examining the matter in detail directed the Respondents to revise his pay scale. The said decision was challenged by the Director General, BRO

before the Division Bench of Guwahati High Court, but rejected. Union of India then carried the matter in appeal before the Supreme Court. The said appeal was also dismissed. The issue regarding entitlement of revised pay scale has thus attained finality.

9. Later, Ghanshyam Vishwakarma filed W.P.(C) 3047/2013 before this Court complaining that although he had been granted the revised pay scale, he was still being deprived the equivalent rank and badge for the post of Junior Engineer (Civil), merely because he did not possess the qualification of diploma in engineering. This Court decided the matter in favour of Ghanshyam Vishwakarma vide order dated 2nd September 2014 inter alia holding as under:

“In the present case although the petitioner has been granted the revised pay scale, he is being deprived the equivalent rank and badge of the post of Junior Engineer (Civil) simply because he did not possess a diploma. In the light of the facts of the present case, this Court is of the view that after the merger of the said post even though the petitioner was not a diploma holder, he was still entitled to the same badge and rank because by designation and definition the post and rank did not make any distinction between Diploma holders and those without it. That which is not provided in the rules cannot be introduced without sanction otherwise it would tantamount to an arbitrary exercise. The denial of rank and badge to the petitioner is unjustified. He is now to be identified and acknowledged only by the designation given to the merged post viz. Junior Engineer (Civil) as no other designation has either been envisaged or notified. Consequently, any other classification or nomenclature would be impermissible as it would be prejudicial to the rights of the petitioner. The petitioner will also be entitled to all legally permissible benefits attached to the post of Junior

Engineer (Civil). Accordingly, we direct the respondents to grant the petitioner the same badge and rank i.e. of Junior Engineer (Civil), pursuant to the merger of the said post in terms of the recommendations made by the 6th Central Pay Commission, which was finally settled by the Government of India.”

10. As noted above, the said decision is presently pending challenge before the Supreme Court.

11. It is therefore clearly manifest that the question before the Supreme Court regarding the grant of equivalent rank and badge is in respect of an Officer, who is claiming parity with diploma holder on account of his promotion from the post of Mason to Overseer. It is rightly pointed out by the learned counsel for the Petitioner, the issue in the said case does not have any direct bearing on the facts of the present case, since the present Petitioner has been appointed to the post of Charge Mechanic as a direct recruit under the category of ex-servicemen, pursuant to the Advertisement No. 01/2007. We find merit in the submission of learned counsel for the Petitioner that this Court need not await the decision of the Supreme Court in the above mentioned S.L.P. (C) No. 4315/2015 and accordingly we now continue to decide the present petition on merits.

12. At the first instance, to appreciate the contention of the Respondents, it would be apposite to note the advertisement whereunder the Petitioner applied for the post of Charge Mechanic. The essential qualifications, required for the said post which become the subject matter of discussion in the present petition read as under:

“Post No. 03: Charge mechanic

Pay Scale: Rs. 4000-100-6000

Age between 18 to 27 years

Essential: 3 years. Diploma in Mechanical/Automobile/ Electrical Engineering or equivalent from recognized Institute or Diploma Course in Electrical, and Mechanical Engineering from College of Military Engineering Pune. OR

Ex-Serviceman who has passed Class-I Course of Vehicle Mechanic (Electrical and Mechanical Engineering) as laid down in Defence Service Regulations, Qualification Regulations for Soldiers. AND

Has to pass written and oral test in Hindi/English.”

13. The essential qualifications for post of Charge Mechanic makes a distinction between the candidates who apply for the post as a regular candidate from the open market and those who apply under the category and quota of “ex-servicemen”. For ex-servicemen, there is no requirement of possessing qualification of diploma in engineering. The ex-servicemen as prescribed in the advertisement are expected to have passed Class-I course of Vehicle Mechanic (Electrical and Mechanical Engineering) as laid down in Defence Service Regulations, Qualifications Regulation for soldiers and has to pass written and oral test in Hindi/English. Concededly, the Petitioner falls under the category ex-servicemen. Further, it is also admitted position that he possesses the requisite qualifications. Therefore, when the Petitioner’s application was scrutinized for the post of Charge Mechanic, he was appointed on the basis of the criteria laid down by the

advertisement and on account of the fact that he possesses the requisite qualifications. It is also noteworthy that the essential qualifications use the expression “OR” while bringing out the distinction between the candidates from open market and those coming in as Ex-servicemen. Therefore, the essential qualifications stipulated for open market candidates cannot be applied to ex-servicemen. The logic is that ex-servicemen are treated as a separate class as they come with their experience while working with the Defence Organizations. It is presumably for this reason that the qualification of diploma has not been prescribed for ex-servicemen in the terms of the advertisement. It is well settled in law that the recruitment has to be done strictly in accordance with qualifications prescribed in the advertisements.

14. It is also essential to note that Petitioner had filed W.P. (C) No. 3571 of 2013 (*Tirath Singh & Ors v. Union of India*) before this court, seeking the pay scale of JE (E&M). This court in its decision dated 04th September 2013, after taking into account the recommendations of the 6th CPC and the decision of Ghanshyam Vishwakarma (*supra*), directed the Respondents to pay the Petitioner at the revised pay scale of Rs. 5000-8000/- notionally w.e.f. 1st January 1996. Thus in terms of his pay scale the Petitioner has been placed in the designated post of JE (E & M) in the Mechanical cadre. The Respondents contention is that Petitioner is not entitled to the rank and badge of JE (E & M) on account of the order dated 10th May 2010, wherein it has been provided that personnel who do not have diploma in their specific fields will continue in their designation till the time they acquire diploma or equivalent or higher qualification. The objection for denying him the rank and

badge of JE (E & M) is thus centered around the Petitioner not possessing the qualification of diploma. This contention is misplaced. The direct recruitment by way of the advertisement discussed above, makes a distinction in the nature of qualifications prescribed for the said post. In view of the categorical distinction provided in respect of “essential qualifications” for the same post, the Respondents cannot now turn around and create a classification for awarding rank and badge only to diploma holders. Since, the Petitioner as an ex-serviceman possessed the essential qualifications for being appointed to the post of Charge Mechanic; he is entitled to all the benefits of the said post. The persons appointment on the said post through the mechanism of direct recruitment cannot be treated unequally and differentially. In our considered opinion, Petitioner cannot be denied the benefits that are being conferred to the open market candidates (diploma holders) who joined the said post under the same advertisement.

15. In view of the above, we find that there is clear discrimination made against the Petitioner in not extending the rank and badge of JE (E & M) to him. He is holding the requisite alternate essential qualifications provided for ex-servicemen. There is no question of equivalency of the qualifications as is being contended by the Respondents. Petitioner is also directly recruited personnel and is entitled to rank and badge attached to the post of Charge Mechanic now merged with the post of Junior Engineer (E & M). It is also not in dispute that he is at the same pay scale at par to other recruits who are diploma holders. Not extending the claimed rank and badge with the Petitioner would thus create an anomalous situation as the mode of entry to the said post is the same i.e. direct recruitments. In fact, this was also the argument of the Respondents for not extending the higher revised pay scale of Rs. 5000-8000/-,

which has already been turned down by Guwahati High Court and the Supreme Court. Petitioner is identified as Junior Engineer (E&M). Respondents have not shown any rules that provides for any other designation for ex-servicemen. Consequently, denial of badge and rank of JE (E & M) would amount to creating classification amongst the rank and that would be impermissible and detrimental to the rights of the Petitioner.

16. In view of the above, the writ petition is allowed and the Respondents are directed to extend the benefits including Badge, Rank, Group-B and Seniority of newly created Grade i.e. Junior Engineer (E & M) to the Petitioner at par with other direct recruits who are diploma holders.

17. Consequential orders shall be passed within a period of two weeks from date of the order.

SANJEEV NARULA, J

S.MURALIDHAR, J

FEBRUARY 26, 2019

nk