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

Judgment reserved on: **11.11.2021**

Judgment pronounced on: **25.03.2022**

+ **W.P.(C) 8250/2020**

PRAVEEN KUMAR

.....Petitioner

Through : Mr Sagar Saxena, Adv.

versus

DELHI METRO RAIL CORPORATION & ORS.Respondents

Through : Mr. V.S.R Krishna with Mr. V. Shashank Kumar, Advs. for R-1/DMRC

Mr. Harish Kumar Garg with Ms. Payal and Mr. Mudit Grover, Advs. for R-2, 3 & 4/UOI.

Mrs. Avnish Ahlawat with Mr. Nitesh Kumar Singh, Advs. for R-5 & R-6/GNCTD

CORAM :

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE TALWANT SINGH

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.

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**Preface:**

1. This is a writ petition directed against the order dated 17.02.2020, passed by the Central Administrative Tribunal [in short 'Tribunal'] in O.A. No.3747/2016. Uncharacteristically, although respondent no.1's action was assailed by two applicants in the Tribunal, the writ action has been preferred by only one of them.
2. The petitioner before us is aggrieved as he has not been appointed to the post of Maintainer-Electronic Mechanic; bearing postcode NE10(C) [hereafter referred to as 'subject post'].
- 2.1. Respondent no. 1, in defence of its action, has taken the stand that the petitioner does not possess the requisite qualifications for appointment to the subject post.
3. The issue, therefore, which arises for consideration in the present writ petition is: whether the petitioner possesses the requisite qualifications for appointment to the subject post?
4. Thus, before one proceeds further, it would be necessary to set out the backdrop in which the instant writ action has been instituted.

Background:

5. The petitioner avers that between 01.08.2005 and 31.07.2007, he underwent industrial training at the CRPF Industrial Training Centre, Wazirabad, Delhi; and after he had passed the test stipulated for the “Mechanic – Radio and TV” trade, he was awarded a National Trade Certificate (NTC) by the Government of India, Ministry of Labour and



Employment, National Council for Vocational Training [in short "NCVT"].

5.1. This was followed by the petitioner obtaining, in and about June 2012, a Diploma in Electronics and Communication Engineering from the Board of Technical Education, Delhi. The petitioner claims he secured first division (with distinction) while obtaining a diploma in Electronics and Communication Engineering.

6. Having obtained the aforementioned qualification, the petitioner, in the first instance, it appears, applied for the post of Technician "A" (Electronics) advertised by the Defence Research and Development Organization, Ministry of Defence, Government of India [in short 'DRDO']. Curiously, the petitioner had applied *qua* this advertisement under the Unreserved (UR) category.

6.1. According to the petitioner, the essential qualifications prescribed for the said post were :

- (i) Class X certificate or equivalent;
- (ii) Trade certificate from an Industrial Training Institute [in short "ITI"] in Electronic Mechanic or Radio & TV Mechanic.

6.2. The petitioner claims that he not only cleared the written examination but also had the documents verified, pursuant to which he participated in the interview held by DRDO. However, the petitioner has placed nothing on record to suggest what followed thereafter, that is, whether he was made an offer of appointment.

7. It is in October 2015 that respondent no.1 i.e., Delhi Metro Rail Corporation Ltd. [in short 'DMRC'] took out an advertisement [hereafter referred to as '2015 advertisement'] inviting applications for the subject post. The 2015 advertisement sought applications both for Executive and



Non-Executive posts. Insofar as the petitioner is concerned, he applied in the category of the non-executive post i.e., Maintainer-Electronic Mechanic.

7.1. Importantly, the 2015 advertisement clearly stipulated that the applicant should have undergone a course in ITI (NCVT/SCVT) and obtained a certificate in a “specific trade” listed out therein, to be considered for appointment to the subject post. The number of vacancies which were advertised, in all, *qua* the subject post, was 246; out of which 112 vacancies were allocated to UR category candidates, while 58 posts were reserved for Other Backward Classes (OBCs). Likewise, 32 posts were reserved for Schedule Caste (SC) candidates and 44 posts were reserved for Scheduled Tribe (ST) candidates. In addition, horizontal reservation was made for ex-servicemen, which consisted of 35 posts

7.2. Pertinently, this time around the petitioner applied under the OBC category, and not under the UR category, as had been done by him while applying against the post advertised by the DRDO.

7.3. The petitioner, as required, sat for the written test and having cleared the same, was provisionally shortlisted for document verification and medical examination, *via* notice dated 29.07.2016. In the list appended to the said notice, the petitioner’s name was set down at serial number 139.

7.4. The process of document verification, according to the petitioner, was carried out on 21.09.2016. It is claimed that at this stage, the Human Resources (HR) Department of DMRC flagged an objection concerning the petitioner's qualifications. According to the petitioner, he was told that the qualification possessed by him i.e., an ITI course in the "Mechanic – Radio & TV" trade was not equivalent to an ITI course in the "Electronic Mechanic" trade, as stipulated in the 2015 advertisement, issued by the



DMRC.

7.5. The petitioner asserts that although two other candidates who were shortlisted on 29.07.2016 [i.e., one, Mr Hemant Kumar (at serial no.106) and the other, Mr Rajendra Kumar Saini (at serial no.133)] possessed similar qualifications [i.e., Mechanic – Radio & TV], they had been considered for appointment to the subject post.

8. It is in this context that the petitioner appears to have submitted to DMRC, the letter dated 26.09.2016 issued by the Government of India, Ministry of Skill Development & Entrepreneurship, Directorate General of Training. The purpose behind submitting this letter to the DMRC was to demonstrate that it was the stand of the Government of India that the trade in which the petitioner had qualified [i.e., "Mechanic – Radio and TV"] and "Electronic Mechanic", were both covered under the ITI training courses conducted under the Craftsmen Training Scheme. An attempt was made by the petitioner, by relying upon the aforementioned letter, to show that both trades i.e., "Electronic Mechanic" and "Mechanic- Radio and TV" had the same training duration i.e., two years, and were part of the same genus i.e., "Electronic group".

8.1. This aspect was also sought to be buttressed by the petitioner by relying upon a letter dated 11.08.2016, issued by the Government of NCT of Delhi (GNCTD), Department of Training & Technical Education.

8.2. Armed with the letter dated 26.09.2016 issued by the Government of India (GOI) and the letter dated 11.08.2016 issued by the GNCTD (to which reference is made hereinabove), representations were made by the petitioner on 21.09.2016 and 31.10.2016, to the effect, that he should be considered for appointment to the subject post.



8.3. Since the petitioner did not receive a response, he approached the Tribunal on 06.11.2016. As indicated above, the petitioner's action was registered as O.A.No.3747/2016 [in short 'OA'].

8.4. As noticed at the very outset, the Tribunal *via* the impugned order [i.e., order dated 17.02.2020] dismissed the petitioner's OA. It is this, which has impelled the petitioner to institute the instant petition under Article 226 of the Constitution of India.

9. In support of the petitioner's case, submissions were advanced by Mr Sagar Saxena, while on behalf of respondent no. 1/DMRC, submissions were made by Mr V.S.R. Krishna.

Submissions on behalf of the petitioner :

10. Mr Saxena emphasized that the trade qualification possessed by the petitioner i.e., "Mechanic – Radio & TV" was equivalent to "Electronic Mechanic". As noted above, in support of this plea, reliance was placed by Mr Saxena on the GOI letter dated 26.09.2016 and the GNCTD letter dated 11.08.2016.

10.1. Furthermore, Mr Saxena highlighted the fact that the petitioner was wrongly excluded from consideration for appointment to the subject post, even though two other candidates i.e., Mr Hemant Kumar and Mr Rajendra Kumar Saini who had the same qualifications as the petitioner, have been appointed to the subject post.

10.2 Mr Saxena also submitted that the allegation levelled against the petitioner by the DMRC in its counter-affidavit that the petitioner had misrepresented his qualifications while filling up the online application *qua* the subject post was untenable, as there was no other option available to the



candidate in the drop-down menu for filling up the application.

10.3. Furthermore, Mr Saxena contended that what the petitioner did, while filling up his online application, was no different from what the other two candidates [i.e., Mr Hemant Kumar and Mr Rajendra Kumar Saini], had done and therefore, this could not be trotted as a ground for denying the petitioner a chance to be considered for appointment to the subject post.

10.4. Besides this, the fact that Mr Hemant Kumar and Mr Rajendra Kumar Saini possessed a National Apprenticeship Certificate [in short 'NAC'] issued by the NCVT, would not by itself fulfil the purported lacunae in their qualification for appointment to the subject post. In other words, the submission of Mr Saxena was that the petitioner's position insofar as the attainment of requisite qualifications was concerned, was no different from that in which Mr Hemant Kumar and Mr Rajendra Kumar Saini were placed and therefore, the impugned action of DMRC (i.e., its failure to consider the petitioner for appointment to the subject post) was unsustainable in law.

Submissions on behalf of the contesting respondent i.e., DMRC:

11. On the other hand, Mr Krishna contended that because the petitioner had misled the DMRC into believing that he possessed the qualifications prescribed in the 2015 advertisement issued *qua* the subject post, he was allowed to take the written examination. According to Mr Krishna, the petitioner's misrepresentation was discovered only at the stage when documents were verified. Mr Krishna stated that it was at this juncture, that DMRC discovered that the petitioner did not possess a trade certificate in "Electronic Mechanic"; which was the prescribed qualification.

11.1. It was emphasised by Mr Krishna that a perusal of the 2015



advertisement would show that at the level of Maintainer, the DMRC had sought persons having qualifications in specific trades such as Electrician, Fitter, Electronic Mechanic, Refrigeration and Air Conditioner Mechanic. The submission, therefore, was that there was no equivalence in the two trades i.e., "Mechanic - Radio & TV" and "Electronic Mechanic".

11.2. It was, thus, contended that since the petitioner had made a misrepresentation vis-a-vis his qualification, he was not entitled to any relief. In support of this plea, reliance was placed on the judgment of the Supreme Court rendered in *Union of India & Ors. v. M. Bhaskaran*, 1995 Suppl. (4) SCC 100.

11.3. Insofar as the appointment of Mr Hemant Kumar and Mr Rajendra Kumar Saini was concerned, it was sought to be defended by relying upon the certificates issued in their favour by NCVT. According to Mr Krishna, since NCVT had issued NACs in favour of both Mr Hemant Kumar and Mr Rajendra Kumar Saini *qua* the specific trade i.e., Electronic Mechanic, they had been properly appointed by DMRC.

11.4. In this context, Mr Krishna also relied upon a circular dated 26.08.1999, issued by GOI, Ministry of Labour, Directorate General of Employment & Training to hammer home the point that a NAC, awarded *qua* a particular trade, had more weight than an NTC awarded vis-a-vis the same trade.

11.5. It was stressed by Mr Krishna that all vacancies *advertised in 2015 qua* the subject post had been filled up, and therefore, if any relief is granted to the petitioner, it would result in disrupting the seniority list; which stood settled. The argument was that in the absence of vacancies at this stage, no relief could be granted in favour of the petitioner. In support of this plea,



reliance was placed by Mr Krishna on the judgment of the Supreme Court rendered in *Ashwani Kumar v. State of Bihar*, (1997) 2 SCC 1.

11.5(a) We must, at this juncture, also take note of the fact that in the course of the hearing, we had put a specific query to Mr Krishna as to whether any vacancies were available. We were informed that although five vacancies were available, they had arisen on account of the demise of incumbents, and were required to be filled up by persons engaged on a contractual basis, whose employment otherwise had to be regularised.

11.6. Besides this, Mr Krishna submitted that merely because the "Mechanic – Radio & TV" trade was considered for appointment to the Maintainer-Electronic Mechanic in the advertisement taken out by the DMRC on 27.01.2018 [hereafter referred to as '2018 Advertisement'], that by itself would not confer any right on the petitioner to lay claim to the vacancies that were the subject matter of the 2015 advertisement. In support of this submission, reliance was placed on the judgment rendered in *State of Rajasthan v. R. Dayal*, (1997) 10 SCC 419

Analysis and reasons:

12. Having heard the learned counsel for the parties and examined the record, what emerges is as follows :

12.1. The petitioner had applied *qua* the subject post against the 2015 advertisement, issued by DMRC.

12.2. Concededly, the petitioner had indicated in his online application form that he possessed a trade certificate in "Electronic Mechanic"; which was the qualification prescribed in the 2015 advertisement *vis-a-vis* the subject post. It was only at the stage of document verification, that it



emerged that the petitioner did not possess the prescribed qualification. Admittedly, the trade qualification that the petitioner possesses concerns "Mechanic – Radio & TV".

12.3. The 2015 advertisement distinctly adverts to the number of vacancies that arose in each discipline/trade *qua* the post of the Maintainer[NE10]. Illustratively *qua* Maintainer-Electrician [post code NE10(A)], the number of vacancies advertised were 226; while for Maintainer-Fitter [post code NE10(B)], the number of vacancies advertised was 126. Likewise, for the subject post (i.e., Maintainer-Electronic Mechanic) [post code NE10(C)], the number of vacancies advertised, as noticed above, were 246 and, lastly, for Maintainer-Refrigerator and Air Conditioner Mechanic [post code NE10(D)], the number of vacancies advertised was 36.

12.4. Therefore, the DMRC, in no uncertain terms, made its intent clear as to the discipline/trade in which it was desirous of recruiting eligible candidates. The discipline/trade in which the petitioner has obtained proficiency is concededly "Mechanic – Radio & TV". Vacancies against this discipline/trade were not advertised by DMRC. Therefore, the petitioner's submission that he should have been considered for appointment to the subject post, is a completely untenable argument.

13. The two communications on which the petitioner sought to place reliance i.e., the GOI letter dated 26.09.2016 and the GNCTD communication dated 11.08.2016, would also not help the cause of the petitioner. The reason for this is plain. A perusal of the communication dated 26.09.2016 would show that all that GOI wanted to convey is that the two trades [i.e., "Mechanic – Radio & TV" and "Electronic Mechanic"], are covered under the ITI Training Courses, which, in turn, are conducted in



consonance with the Craftsmen Training Scheme. This letter, which is addressed to the DMRC, is only indicative of the fact that the duration of the training being imparted for the aforementioned trades is the same [i.e., two years], and that both trades fall under what is described as "Electronic group". The relevant extract of the said communication is set forth below:

*"The trade "Mech. Radio & TV" and "Electronic Mechanic" both are covered under ITI training Courses under Craftsmen Training Scheme and have same duration of Training i.e. 2 years. **Both trades are covered under Electronic group of trades.** Moreover, both the certificates are recognized for the purpose of recruitment to subordinate posts and services under the Central Government." [Emphasis is ours.]*

13.1. Likewise, the communication dated 11.08.2016 issued by the GNCTD, merely states that the two trades have the same duration and fall under the family of i.e, the genus of "Electronic Mechanic and Servicers". This communication reads as follows :

"TO WHOM IT MAY CONCERN

It is certified that the trade "Radio & Television Mechanic" and "Electronics Mechanic" both have same duration of training (i.e. 4 Semester or 2 Years) and classified in the same family of Electronics Mechanic and servicers vide National Classification of Occupations-2004, Page-97 (enclosed). Same may be verified from website of National Skill Development Corporation at www.nsdcindia.org. [Emphasis is ours]

13.2. These communications, thus, clearly demonstrate that while both "Electronic Mechanic" and "Mechanic - Radio & TV" are part of the same genus, that is, "Electronics Mechanic and Sevicers", they are two different species i.e., trades. The National Classification of Occupations – 2004 code structure [in short 'NCO 2004'], appended to the GNCTD communication



dated 11.08.2016 makes this amply clear; the same is extracted hereafter :

<i>Family</i>	<i>7243</i>	<i>Electronic Mechanics and Servicers</i>
	<i>7243.10</i>	<i>Electronic Mechanic</i>
	<i>7243.20</i>	<i>Radar Mechanic</i>
	<i>7243.30</i>	<i>X-Ray Mechanic</i>
	<i>7243.40</i>	<i>Television Installation Man</i>
	<i>7243.45</i>	<i>Cable Television Installer</i>
	<i>7243.50</i>	<i>Television Service and Repairman</i>
	<i>7243.60</i>	<i>Radio Technician (Radio Manufacturing)</i>
	<i>7243.70</i>	<i>Radio Mechanic</i>
	<i>7243.75</i>	<i>Radio Craftsman, Installation</i>
	<i>7243.80</i>	<i>Radio Craftsman, Maintenance</i>
	<i>7243.90</i>	<i>Electronic Mechanics and Services, Other</i>

[Emphasis is ours.]

13.3. Thus, the argument advanced by Mr Saxena that the two trades [i.e., "Mechanic- Radio & TV" and "Electronic Mechanic"] are the same and/or interchangeable, is an argument that we are not persuaded to accept.

14. This brings us to the other limb of the argument put forth by Mr Saxena, which is that although Mr Hemant Kumar and Mr Rajendra Kumar Saini possessed the same qualifications as the petitioner, they were appointed to the subject post while the petitioner was excluded from consideration by DMRC.

14.1. As noticed above, the DMRC, while considering the candidature of Mr Hemant Kumar and Mr Rajendra Kumar Saini for the subject post, had taken into account the fact that they had obtained the NAC from NCVT qua the prescribed trade i.e., "Electronic Mechanic".

14.2. A perusal of the NACs in both cases i.e., in the case of Mr Hemant Kumar and Mr Rajendra Kumar Saini, would show that they have



undergone a one-year training programme in “Electronics (Mechanic)” trade, *qua* which the trade test was conducted by NCVT. It is pertinent to note that both Mr Hemant Kumar and Mr Rajendra Kumar Saini also possess an NTC in "Mechanic – Radio & TV", which is also, issued by NCVT.

14.3. The DMRC, as noticed during the narration of facts concerning the instant case, relied upon a circular dated 26.08.1999 in support of its stand, that GOI gives more credence i.e., weight, to a NAC as compared to an NTC. The relevant extract from the said circular is set forth hereafter :

" In this regard Government of India has issued guidelines vide letter No.DGET – 54 (1) /71 – AP dated 19 July 1971 which is reproduced as – “Government of India has recognised the National Apprenticeship Certificate as of a higher grade, than the National Trade Certificate. The employer while fixing minimum qualifications and experience for [a] certain post may give weightage to the period of experience equal to the number of years spent by an apprentice while undergoing Apprenticeship Training after completion of training in Industrial Training Institutes.”

It is further clarified that NAC awarded for a particular trade is recognised as of higher grade than the NTC awarded in the same particular trade. (e.g. NAC awarded for Fitter trade will be of [a] higher grade than NTC awarded for Fitter trade). [Emphasis is ours]

14.4. The argument of Mr Saxena that the NAC is not the same as one possessing a qualification in the prescribed trade i.e., "Electronic Mechanic"; is a submission that is not backed by relevant material. It is quite possible that there is an overlap in the curricula curated for the two trades



i.e., "Electronic Mechanic" and "Mechanic – Radio & TV", and that the difference perhaps lies in certain portions of the course content as well as in the practical training accorded *qua* the two trades. However, the fact that DMRC has chosen to appoint Mr Hemant Kumar and Mr Rajendra Kumar Saini based on the NAC issued in their favour by NCVT, facially establishes that they were decidedly more suitable for the subject post than the petitioner.

14.5. As indicated above, this plea advanced by the petitioner cannot be examined any further as it is deficient in material particulars. The difficulty is compounded by the fact that neither Mr Hemant Kumar nor Mr Rajendra Kumar Saini was arrayed as a party, either before the Tribunal or this court.

14.6. In any event, even according to the petitioner, both Mr Hemant Kumar and Mr Rajendra Kumar Saini were placed higher in the merit list and given the fact that against the 2015 advertisement, all vacancies have been filled-up (save and except those which arose on account of the demise of incumbents, and, as per Mr Krishna's stance, had to be filled up by persons who had been engaged on contractual basis and whose employment had to be regularised), this plea of the petitioner cannot be taken any further.

15. This brings us to the last submission advanced on behalf of the petitioner, which is, that in the 2018 advertisement issued by DMRC *qua* the subject post i.e., the post of "Maintainer – Electronic Mechanic", the essential qualifications prescribed, *inter alia*, advert both to "Electronic Mechanic" and "Radio & TV."

15.1. In our view, this emanates from a misreading of the 2018 advertisement. As noticed hereinabove, the genus i.e., "Electronics Mechanic and Servicers", as per the NCO 2004, comprises several trades



including “Electronic Mechanic” and “Mechanic– Radio & TV.”

15.2. Thus, the mileage sought to be drawn by the petitioner on account of the fact that several trades including "Electronic Mechanic" and "Radio & TV" are shown as prescribed essential qualifications for the subject post, in the 2018 advertisement- for the reason given above, will not come to the aid of the petitioner.

15.3. In any event, the position which arose in 2015 was markedly different than that which emerged in 2018. Therefore, since we are, even according to the petitioner, concerned with the 2015 advertisement and not the 2018 advertisement issued by the DMRC, no advantage can accrue to the petitioner on this score.

Conclusion:

16. Thus, for the foregoing reasons, we do not find any merit in the writ petition.

17. The writ petition is, accordingly, dismissed.

18. Parties will, however, bear their own costs.

RAJIV SHAKDHER, J

TALWANT SINGH, J

MARCH 25, 2022/aj

Click here to check corrigendum, if any