

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

228

**CWP-28147-2018 (O&M)
Date of decision: 01.02.2023**

Neeraj Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. J.S. Maanipur, Advocate for the petitioner.

Ms. Tanushree Gupta, DAG Haryana.

HARNARESH SINGH GILL, J. (ORAL)

Prayer in the petition under Article 226 of the Constitution of India is for issuance of a writ in the nature of certiorari for quashing part of order dated 08.08.2018 (Annexure P-16), whereby it is mentioned to continue with the enquiry proceedings regarding eligibility of the petitioner and to quash the enquiry proceedings pending in pursuance of the anonymous complaint dated nil and letter date 27.09.2017 (Annexure P-17) issued by respondent No.2 and further proceedings arising therefrom, being double jeopardy.

Learned counsel for the petitioner submits that the petitioner had joined the Indian Navy on 15.07.1992 and retired on 31.07.2012 from the rank of Chief Petty Officer Electrician (Power) (CHELP). The certificate of service issued on 31.07.2012 is attached as Annexure P-1. At the time of joining the Indian Navy, the petitioner was Matriculate from the Board of

School Education, Haryana with 1st Division. During service he passed B.A. in the year 2007 from the University of Delhi and Master of Business Administration Degree in the year 2011 from the Sikkim Manipal University. He has also acquired the qualification of Electrical Mechanic (Power) which is equivalent to the Diploma in Electrical Engineering in terms of instructions issued by the Director (Tech.), Government of India, Ministry of Education & Social Welfare (Department of Education Technical) on 26.05.1977 (Annexure P-2). In pursuance of instructions dated 26.05.1977, the Directorate General, Employment & Training Ministry of Labour, Government of India issued Directory of Equation of Service Trades with Civil Trades and Guide to Registration of Defence Service Applicants for employment and the Chief Petty Officer Electrician (Power) CHELP, to treat equivalent to the post of Electrical Overseer by giving NCO Code No. B-851.10 (Annexure P-3).

Learned counsel for the petitioner further submits that in pursuance of Annexure P-2 and P-3, the petitioner was issued the certificate (Annexure P-4) by the Indian Navy Equivalent of Naval Trade Certificate on 31.07.2012 vide Serial No. 13736 and he has also undergone 26 weeks training in the Electrical Training Establishment of the Indian Navy in the Rank of Electrical Mechanic (Power) EMP 1 from 08.09.1997 to 07.03.1998. As per the instructions dated 18.03.1975 (Annexure P-6) issued by the State of Haryana, the Degree and Diploma, which was recognised by the Government of India for the purpose of employment is deemed to be recognised by the Government of Haryana for appointment. Vide advertisement dated October, 2011, various posts including the post of Junior

Engineer (Electrical) were advertised. In response to the advertisement, the petitioner applied for the post of Junior Engineer (Electrical) through proper channel while in service along with 'No Objection Certificate' issued by the Indian Navy. The petitioner was called for interview before the Selection Committee constituted vide Government Notification dated 02.09.2011 and he was selected and recommended for appointment by the Selection Committee on the basis of his merit, whereupon, appointment letter dated 12.11.2012 (Annexure P-8) for the post of J.E. Electrical, was issued to the petitioner by respondent No.3-Director, BPS Govt. Medical College for Women, Khanpur Kalan. The petitioner joined on 16.11.2012 and worked with sincerity till 05.11.2014, the date of passing of termination order (Annexure P-9). The service of the petitioner was terminated on the basis of a complaint alleging therein that the petitioner is not having the requisite qualifications for the post.

Learned counsel for the petitioner still further submits that after passing of termination order, the petitioner challenged the same before this Court by way of filing CWP-23544-2014, which was allowed on 23.01.2017 (Annexure P-10) by setting aside the order of termination and the respondents were directed to issue fresh Show Cause Notice within a period of 3 months and to pass a speaking order within one month after receipt the reply of Show Cause Notice and to pay arrears of pay for the period from 05.11.2014 till reinstatement within a period of three months. Information qua Equivalent of Naval Trade Certificate submitted by the petitioner was sought by respondent No. 3 from the office of the Commander, Office-in-Charge, Release Centre, Bureau of Sailors, Sion-Trombay Road, Mankhurd,

Mumbai, vide letter dated 27.03.2017 and in response thereto, it was informed that the certificate is correct as per their office record and was issued to the petitioner at the time of his retirement and is self explanatory in its content. Vide impugned order 08.08.2018, the Director, BPS Govt. Medical College for Women, Khanpur Kalan Sonapat, held that it would be unreasonable and unjust to conclude the petitioner did not possess the requisite qualification for the post of J.E. Electrical at the time of his selection and he is eligible for the post. The petitioner was asked to appear before the inquiry officer with relevant record, vide letter dated 27.09.2017 (Annexure P-17). Thereafter, the petitioner filed the present petition and the Coordinate Bench passed the following order dated 01.11.2018:-

“ Learned counsel for the petitioner has referred to the speaking order dated 08.08.2018 (Annexure P-16), whereby the Director, BPS Government Medical College for Women, Khanpur Kalan, Sonapat had accepted the report of the Committee constituted on 17.10.2017, which verified the documents of the petitioner and observed as under:-

“From the perusal of record and the report of the committee constituted on 17.10.2017 to verify the documents in view of letter received from Commander, Office-in-Charge, Release Centre, Bureau of Sailors, Sion-Trombay Road, Mankhurd, Mumbai, under the Chairmanship of Dr. Pushpender Malik, Legal Officer and Senior Accounts Officer as member, it is clear that Mr. Neeraj Kumar was promoted as POELP (Pretty Officer Electrical Power) from 07.10.2004 and he remained on this post upto 07.06.2012. POEL is equivalent to JE Electrical according to Civil Trade Equivalent (NCO Code No.2143/10) of Directors General of Employment & Training Ministry of Labour Government of India. Thereafter, Mr. Neeraj Kumar was promoted as Chief Pretty Officer Electrician (Power) w.e.f. 08.06.2012 to 31.07.2012. As per record, his experience is of POELP i.e. JE Electrical is about 7 years and 8 months and he is eligible for the post of JE Electrical.”

Find impugned order dated 08.08.2018 (Annexure P-16), a finding has been given that experience of the petitioner as POELP is about 07 years and 08 months and he was eligible for the post of JE Electrical, to which he was appointed on 12.11.2012. Despite this detailed enquiry conducted, again an enquiry is being sought to be done by the Director Medical Education and Research, Haryana vide letter dated 27.09.2017 (Annexure P-17) and the petitioner has been directed to attend his office along with the relevant record. Petitioner has given his reply dated 21.11.2017 (Annexure P-14) and the matter is still lingering on. Learned counsel ha referred to a judgment passed by the Division Bench of this Court in Surjit Kumar vs. State of Haryana and others, 2014 (1) RSJ 23 and contended that once, an enquiry has been done by the competent authority, there is no need of another enquiry.

Notice of motion for 07.03.2019.

In the meantime, further proceedings of the enquiry initiated vide order dated 27.09.2017 (Annexure P-17) shall remain stayed.”

Learned counsel for the petitioner also points out that once it was found that the certificate issued to the petitioner at the time of his retirement is equivalent to the Diploma in Electrical Engineering in terms of instructions issued by the Director (Tech.), Government of India, Ministry of Education & Social Welfare (Department of Education Technical), on 26.05.1977 (Annexure P-2). In support of his case, learned counsel for the petitioner relies upon the judgment rendered by a Division Bench of this Court in case of ‘Surjit Kumar Vs. State of Haryana and others’ 2014 (1) RSJ page 23 (Annexure P-19)

Learned State counsel while rebutting the arguments raised by the learned counsel for the petitioner, submits that the enquiry was initiated by respondent No. 2-Director, Medical Education & Research, Haryana, on a complaint received against the petitioner and the Additional Director, Medical Education & Research, Haryana, was appointed as Inquiry Officer on

22.09.2017. The petitioner is an Ex-serviceman and under what circumstances he has been appointed in General category and at the time of his appointment on the post of J.E. Electrical, he was not possessing the requisite qualification for the post.

I have heard the learned counsel for the parties and have also gone through the case file.

The petitioner was appointed on the post of J.E. Electrical on the basis of 26 weeks of leading training in the Electrical Training Establishment of the Indian Navy in the Rank of Electrical Mechanic (Power) EMP 1 from 08.09.1997 to 07.03.1998 issued by INS VALSURA Indian Navy. As per the instructions dated 18.03.1975 (Annexure P-6) issued by the State of Haryana, the Degree and Diploma, which was recognised by the Government of India for the purpose of employment is deemed to be recognised by the Government of Haryana for appointment. At the time of joint Indian Navy, the petitioner was Matriculate from the Board of School Education, Haryana with 1st Division. During service he passed B.A. in the year 2007 from the University of Delhi and Master of Business Administration Degree in the year 2011 from the Sikkim Manipal University. He has also acquired the qualification of Electrical Mechanic (Power) which is equivalent to the Diploma in Electrical Engineering in terms of instructions issued by the Director (Tech.), Government of India, Ministry of Education & Social Welfare (Department of Education Technical) on 26.05.1977 (Annexure P-2). The petitioner was appointed as J.E. Electrical after interview and scrutinising of documents but after receiving of the complaint without issuing any Show Cause Notice his service was terminated on 05.11.2014 (Annexure P-9).

Thereafter, the petitioner preferred CWP-23544-2014, which was allowed on 23.01.2017 (Annexure P-10) by setting aside the order of termination and the respondents were directed to issue fresh Show Cause Notice within a period of 3 months and to pass a speaking order within one month after receipt the reply of Show Cause Notice and to pay arrears of pay for the period from 05.11.2014 till reinstatement within a period of three months. Information qua Equivalent of Naval Trade Certificate submitted by the petitioner was sought by the respondent from the office of the Commander, Office-in-Charge, Release Centre, Bureau of Sailors, Sion-Trombay Road, Mankhurd, Mumbai, vide letter dated 27.03.2017 and as per the information received, the certificated was found to be true and correct. Since one inquiry is going on, initiation of subsequent inquiry on similar complaint cannot be initiated. Moreover, after appointment of the petitioner on the post of JE Electrical, the department cannot raise an issue that the petitioner is an ex-serviceman and cannot apply in the General Category.

In view of the above, the present petition is allowed. The part of order dated 08.08.2018 (Annexure P-16) qua continuation of enquiry proceedings is set aside.

01.02.2023

Mangal Singh

(HARNARESH SINGH GILL)

JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No