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

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Date of Decision: 08.08.2024

+ **W.P.(C) 10424/2023 & CM APPL. 40350/2023**

UNION OF INDIA & ORS.

.....Petitioners

Through: Mr. Rajesh Gogna, CGSC with Mr. Nipun Jain, Ms. Priya Singh, Advocates and Mr. Govind Kumar, SAO-I

versus

MANOJ JOSHI

.....Respondent

Through: Mr. Padma Kumar and Mr. Gurpreet Singh, Advocates

+ **W.P.(C) 10735/2023 & CM APPL. 41624/2023**

UNION OF INDIA & ORS.

.....Petitioners

Through: Mr. Rajesh Gogna, CGSC with Mr. Nipun Jain, Ms. Priya Singh, Advocates and Mr. Govind Kumar, SAO-I

versus

PRASHANT GUPTA

....Respondent

Through: Mr. Padma Kumar and Mr. Gurpreet Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (O R A L)

1. These petitions have been preferred by the petitioner seeking setting aside of order dated 02.03.2023 passed by the learned Central Administrative Tribunal, Principal Bench, Delhi (the "Tribunal") in OA No. 3316/2019 and OA No. 3340/2019 respectively.



2. Vide impugned orders dated 02.03.2023, passed in both the OAs, the learned Tribunal has directed the petitioner to consider the case of respondents for promotion within 30 days.
3. The backfirth to file the above OAs arise from the fact that the respondents are employees of Defence Institute of Psychological Research (DIPR) as unit of Defence Research & Development Organisation (DRDO) under the Ministry of Defence. They are aggrieved of Notification dated 10.09.2018 issued by Directorate of Human Resource Development which stipulate that employees possessing M/ M.Tech degree shall be treated ineligible for promotion to the higher post of Senior Technical Assistant through limited Departmental Competitive Examination (LDCE) if they do not possess the diploma in Engineering or Bachelor's degree in science.
4. Since the relief sought in these petitions is against the impugned orders dated 02.03.2023 passed in both the OAs, which is in respect of common Notification dated 10.09.2018 issued by Directorate of Human Resource Development, therefore, both the petitions were heard together and are being disposed of by this common judgment.
5. Respondent-Manoj Joshi [in W.P.(C) No. 10424/2023], in possession of AMIE (Electronics & Communication) which is equivalent to Bachelor's Degree in Engineering but not having Diploma in Engineering, or B.Sc., was declared ineligible for promotion to the next higher post of Senior Technical Assistant, though similarly placed employees in other sister institutes under the DRDO were given promotion.
6. Respondent-Prashant Gupta [in W.P.(C) No. 10735/2023], possessing qualification of 10+2 with Physics, Chemistry & Mathematics + ITI



Certificate +BCA and M.Sc. (Information Technology), and also having acquired qualification of M.Tech in Computer Science and Engineering (Cyber Security) from Defence Institute of Advanced Technology, Pune, sponsored by DRDO, was also declared ineligible for promotion to the next higher pay post of Senior Technical Assistant.

7. Being aggrieved, the above named respondents made their representations dated 13.05.2019 before the competent authority, which was rejected vide communication dated 30.09.2019.

8. The respondents thereafter filed their respective OAs before the learned Tribunal, wherein vide interim order dated 22.11.2019, the learned Tribunal permitted the respondents to appear in the LDCE examination, however the result was subject to outcome of the OAs.

9. The learned Tribunal, vide impugned order dated 02.03.2023 observed that if an employee has acquired higher qualification of the same faculty, the same would not be detrimental to the further promotional post. Negating promotion to the one who acquired higher qualification such as B.Tech is not fair, as it would be beneficial for efficiently discharging the duty of the organization. The Tribunal directed the petitioners to consider the case of respondents for promotion, if they pass in the said selection examination.

10. The aforesaid orders dated 02.03.2003 has been challenged by the petitioners in the present petitions on various grounds, however, according to learned Counsel for the petitioners is confined to Grounds-A,B, G & H, which read as under:-

“A. Because the learned Tribunal has erred in



concluding that the qualification required is not essential or basic, on the basis of Schedule II to SRO 296 of 2000 as amended. However, SRO succinctly mentions about the required qualification. In this connection, rule 5(5) of the SRO 296/2000 clearly states that “vacancies in the lowest grade of category B shall be filled through limited departmental competitive examination from amongst departmental employees with minimum three years regular service in DRDO and possessing qualification prescribed in Schedule II.” The only qualification prescribed under Schedule II for appointment to the post of STA 'B', for posts requiring qualifications in Scientific or Technical Subjects, through LDCE is “Bachelor's degree in Science or Three years Diploma in Engineering or Technology or Computer Science, or allied subjects in the required discipline”.

B. Because the learned Tribunal has failed to appreciate that there was no desirable or any other category of qualification prescribed under Schedule II. When no other qualification is prescribed, the laid down qualification is the essential qualification required for a candidate to appear in the LDCE. In this case the candidate did not possess the required qualification laid down vide rule 5(5) of SRO 296/2000 read in conjunction with Schedule II of the SRO and hence, was not eligible for appearing in LDCE.

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G. Because, it involves a question of law as to whether the Central Administrative Tribunal, Principal Bench, New Delhi should altogether ignore the judgement passed on the same subject matter by the Hon'ble Supreme Court in Maharashtra Public Service Commission vs Sandeep Shriram Warade 2019 SCC OnLine SCC 652 decided on 03 May 2019. It is held by the Apex Court in the above case that



“The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being at par with the essential eligibility by an interpretive re- writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the Court cannot sit in judgement over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with 'law. In no case can the Court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.”

H. Because, the Hon'ble Supreme Court has held in Secretary (Health), Department of Health & F.W. and Another vs. Dr. Anita Puri and Others, 1996(6) SCC 282. that

“Admittedly, in the advertisement which was published calling for applications from the candidate for the posts of Dental Officer it was clearly stipulated that the minimum qualification for the post is B.D.S. It was also stipulated that preference should be given for higher dental



qualifications. There is also no dispute that M.D.S. is a higher qualification than the minimum qualification required for the post and Respondent I was having that degree. The question then arises is whether a person holding a M.D.S. qualification is entitled to be selected and appointed as of right by virtue of the aforesaid advertisement conferring preference for higher qualification? The answer to the aforesaid question must be in the negative. When an advertisement stipulates a particular qualification as the minimum qualification for the post and further stipulates that preference should be given for higher qualification, the only meaning it conveys is that some additional weightage has to be given to the higher qualified candidate. But by no stretch of imagination it can be construed to mean that a higher qualified person automatically is entitled to be selected and appointed.....In this view of the matter, the High Court in our considered opinion was wholly in error in holding that a M.D.S qualified person like Respondent I was entitled to be selected and appointed when the Government indicated in the advertisement that higher qualification person would get some preference.”

11. The case of the petitioners is that the respondent- Manoj has qualification of 10 + 2 ITI and BCA. Subsequently, the said respondent obtained the qualification of Degree in Engineering (Electronics and Comm. Engineering).

12. The respondent- Prashant obtained qualifications of M.Sc and also an M.Tech. Degree. However, they do not have the basic required qualification as the educational qualification required for the recruitment of Senior



Technical Assistant (STA) 'B' is "Bachelor's Degree in Science or Three Years Diploma in Engineering or Technology or Computer Science or allied subjects in the required discipline". Since the respondents do not possess the basic educational qualification prescribed in the statutory rules, their candidature were rightly rejected accordingly.

13. To the contrary, the stand of respondents is that due to the restriction imposed by the petitioners, the respondents despite being in possession of Degree in Engineering (Electronics and Comm. Engineering) and M.Sc. (IT) and M.Tech. (Computer Science & Engineering) respectively, but not having Diploma in Engineering or B.Sc., have been declared ineligible for promotion to the next higher post of Senior Technical Assistant, ignoring the fact that similarly placed employees in other sister institutes under the DRDO have been given promotion.

14. A perusal of impugned order dated 02.03.2023 shows that the learned Tribunal has placed reliance upon decision of the Hon'ble Supreme Court in **Jyoti K.K. and Ors. Vs. Kerela Public Service Commission (2010) 15 SCC 596** which reads as under:-

"8. Rule 10 (a) (ii) reads as follows:

"Notwithstanding anything contained in these rules or in the special rules, the qualifications recognised by executive orders or standing orders of government as equivalent to a qualification specified for a post in the special rules and such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post."

9. It is no doubt true, as stated by the High Court that



when a qualification has been set out under the relevant rules, the same cannot be in any manner whittled down and a different qualification cannot be adopted. The High Court is also justified in stating that the higher qualification must clearly indicate or presuppose the acquisition of the lower qualification prescribed for that post in order to attract that part of the rule to the effect that such of those higher qualifications which presuppose the acquisition of the lower qualifications prescribed for the post shall also be sufficient for the post. If a person has acquired higher qualification in the same faculty, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In this case it may not be necessary to seek far. Under the relevant rules, for the post of assistant engineer, degree in electrical engineering of Kerala University or other equivalent qualification recognised or equivalent thereto has been prescribed. For a higher post when a direct recruitment has to be held, the qualification that has to be obtained, obviously gives an indication that such qualification is definitely higher qualification than what is prescribed for the lower post, namely, the post of sub-engineer. In that view of the matter the qualification of degree in electrical engineering presupposes the acquisition of the lower qualification of diploma in that subject prescribed for the post, shall be considered to be sufficient for that post. In the event the government is of the view that only diploma holders should have applied to post of sub-engineers but not all those who possess higher qualifications, either this rule should have excluded in respect of candidates who possess higher qualifications or the position should have been made clear that degree holder shall not be eligible to apply for such post. When that position is not clear but on the other hand rules do not disqualify per se the holders of higher qualifications in the same faculty, it becomes clear that the rule could



be understood in an appropriate manner as stated above. In that view of the matter the order of the High Court cannot be sustained. In this case we are not concerned with the question whether all those who possess such qualifications could have applied or not. When statutory rules have been published and those rules are applicable, it presupposes that everyone concerned with such appointments will be aware of such rules or make himself aware of the rules before making appropriate applications. The High Court, therefore, is not justified in holding that recruitment of appellants would amount to fraud on the public.”

15. The decision in **Jyoti K.K. (Supra)** holds that if a person has acquired higher qualification in the same faculty, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In the said case, it is held that the qualification of degree in electrical engineering presupposes the acquisition of the lower qualification of diploma in that subject prescribed for the post, shall be considered to be sufficient for that post. When statutory rules have been published and those rules are applicable, it presupposes that everyone concerned with such appointments will be aware of such rules and make himself aware of such rules before making appropriate applications.

16. In the present case, the respondents have the degree in Computer Science whereas the minimum qualification prescribed by the petitioners was diploma in Computer Science. Thus, the diploma in Computer Science presupposes with the degree in the Computer Science. Therefore, we find no error or perversity in the order dated 02.03.2023 passed by the learned Tribunal.



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17. Finding no merit in these petitions, the same are accordingly dismissed along with pending applications.
18. The petitioners are directed to comply with the directions passed by the learned Tribunal within thirty days of receipt of this judgment.
19. Registry is directed to send a copy of this Judgment to petitioners/counsel for petitioners, forthwith.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

AUGUST 8, 2024
riya/r