

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
AT NEW DELHI**

T.A. No. 611/2009

[W.P. (C) No. 1423/2008 of Delhi High Court]

Sub. Maj. Satyavir Singh AryaPetitioner

Versus

Union of India & OthersRespondents

For applicant : Col. (Retd.) S.R. Kalkal, Advocate.

For respondents : Sh. Anil Gautam, Advocate.

CORAM:

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

**JUDGMENT
11.08.2010**

1. Present petition received on transfer from Hon'ble Delhi High Court to this Tribunal on its formation.

2. Petitioner by this petition has prayed that by writ of mandamus respondents may be directed to stick and follow their own stand in compliance of SRO-78 dated 30.04.2001 and prayed that all ineligible appointments as a reemployment who are not possessing requisite qualifications under SRO-78 may be

quashed and declare diploma awarded by the College of Military is *ab-initio* void and violative of requirement set out in Column No. 8 and not to make any direct recruitments of JEs till the grievances of the petitioner are solved.

3. The petitioners are the Junior Commissioned Officers in the Corps of Engineers of the Army, who have been inducted directly as JCOs in the Militarised Cadre of the Military Engineer Service. In the MES 33.33% quota in subordinate posts is allocated to the personnel of Militarised Cadre, as per the existing Government policy duly promulgated by the Government of India. As per the Government of India policy, petitioner and others are appointed as Naib Subedar/Superintendent B/R Grade-II on various dates. Thereafter, petitioners superannuated after putting in 4 years on the rank of Subedar Major and retired in April, 2008. Petitioner applied for reemployment. The Government of India issued a Policy for reemployment on 30.04.2001 and 10% of the vacancies were reserved for such persons. The grievance of the petitioner is that he is holding three years diploma recognised from the University whereas against 10% quota which are sought to be filled on reemployment basis, the persons with the diploma

of 2 years obtained from the College of Military Engineering, Kirkee, Pune which is not recognised, are being appointed, therefore, they are not eligible for being reemployed. Therefore, grievance of the petitioner is since persons who are not eligible, being reemployed whereas the petitioner qualified as 3 years Diploma holder is being overlooked.

4. Reply was filed by the respondents and respondents in their reply have submitted that the Government of India, Ministry of Defence SRO No. 78 dated 30th April, 2001 and SRO No. 153 dated 02nd July, 2002, an individual of Military Engineering Service (MES) Militarised cadre Superintendent Barrack and Road (B&R) Grade-I/II and Superintendent Electrical & Mechanical (E&M) Grade I/II can apply for deputation-cum-reemployment one year prior to their date of retirement. On receipt of applications from eligible junior Commissioned Officers (JCOs) and Non-commissioned Officers (NCOs), a board of officer is detailed at Bengal Engineer Group Records, Roorkee to check the eligibility of candidates and to draw a merit list based on the laid down criteria. Thereafter, the Board proceedings are forwarded to integrated HQ of MoD (Army) Engineer-in-Chief's

Branch, New Delhi for their vetting and approval. On approval of Board proceedings, Integrated HQ of MoD (Army), Engineer-in-Chief's branch sent it back duly marked the particulars of new units where ever they are to be posted on deputation in anticipation of release of vacancies by the Ministry of Defence, Government of India. On receipt of approval they are posted as Junior Engineer (Civil) and Junior Engineer (E&M), six months prior to their date of retirement on deputation within same department by Bengal Engineer Groups Records, Roorkee. Once they complete their terms and engagement as a soldier and retire from service, they are appointed as Junior Engineer (Civil) and Junior Engineer (E&M) by respective Chief Engineer Commands based on vacancies allotted by Integrated Headquarters of MoD (Army), Engineer-in-Chief's, New Delhi who depend on Government of India, Ministry of Defence to get bulk quota allotted for each recruitment year. It is submitted that petitioners were due for retirement on various dates which have been shown in the chart and they applied for deputation-cum-reemployment one year in advance and Board scrutinised all the applications before they were submitted to Integrated HQ of MoD (Army) along with the Board proceedings. In that some people were selected and some

people could not be. A merit list was drawn as per laid down criteria. Therefore, 25 personnel of Junior Engineer (B&R) who were found top in merit list could only be given appointment letters and all remaining personnel had to retire from service on completion of their terms of engagement without reemployment.

It is further submitted that all Junior Engineer (Civil)/Junior Engineer (E&M) are eligible for deputation-cum-re-employment (DCRE) even though they have passed or obtained diploma certificate from College of Military Engineering, Pune as per Para 118 of Army Order 1967 (Annexure R-XI) as the same is issued by Indira Gandhi National Open University (IGNOU) and accepted at par. Accordingly, all Junior Commissioned Officer/Non-Commissioned Officers willing for deputation-cum-reemployment are considered in the Board proceedings. It is submitted that a format of application forms for deputation-cum-reemployment (DCRE) in Military Engineer Service (MES) for the post of Junior Engineers was revised by Integrated Headquarters of Ministry of Defence (Army), Engineer-in-Chief's Branch vide their letter dated 13th December, 2005 (Annexure R-VIII), it was circulated to all units vide Bengal Engineer Group Records, Roorkee letter dated 05th January, 2006 (Annexure-R-IX). The 10% of the total

number of vacancies released has been laid for employment under this scheme which is subject to release of vacancies for the particular recruitment year by the Government of India, Ministry of Defence. The Board proceedings for deputation-cum-reemployment (DCRE) for 85 Junior Engineers (E&M) those who were due for retirement with effect from 01st January, 2008 to 30th June, 2008 forwarded to Integrated Headquarters of Ministry of Defence (Army), Engineer-in-Chief's Branch but no Junior Engineer (E&M) has been granted deputation-cum-reemployment due to non-availability of vacancies. It is further submitted that the personnel, who have passed diploma course from College of Military Engineering, Pune are also eligible for deputation-cum-reemployment. It is pointed out that after their successful completion of diploma course, they are transferred to Militarised Cadre and performing the duties of Junior Engineer (B&R)/Junior Engineer (E&M). The personnel mentioned at Serial No. 2,5,6,11,12,16, 17 and 24 of Appendix of Bengal Engineer Group Records, Roorkee letter dated 29th December, 2007 (Annexure-R-IV) have been selected for deputation-cum-reemployment as per policy in vogue. It is also pointed out that 100% retiring personnel cannot be re-employed through this scheme as only 10%

vacancies are only permitted for this purpose. 111 Junior Engineer (Civil) and 85 Junior Engineer (E&M) who were due for retirement with effect from 01st January, 2008 to 30th June, 2008 had applied for deputation-cum-reemployment and name of all personnel considered for deputation-cum-reemployment and board proceedings was prepared as policy in vogue and forwarded to Integrated Headquarters of Ministry of Defence (Army), Engineer-in-Chief's Branch vide Bengal Engineer Group Records, Roorkee letter dated 22nd May, 2007 for their vetting and approval. And after approval, posting order of selected personnel has been issued and petitioner could not be selected.

5. The original Board proceedings for deputation-cum-reemployment placed before us and in that we have found that marking have been given in the various heads like Unit served with Command, Date of Reporting to STB(D)/date of SOS, whether willing for reemployment, Dist/State, ether DEJ or not, Honours and Award marks awarded, Medical Category, Last Five ACRs, Total Marks, Number of Red Ink Entry in entire service, Number of red ink entry in last 05 years of service, Negative Marks (-) 02 for each RI, Grand Total, Three Choices of stations

have been given. On the basis of aforesaid criteria, cases of all the candidates were considered and recommendations were accordingly made.

6. Learned counsel for the petitioner specifically raised the issue with regard to eligibility of the persons who have passed two years Diploma Course from Military Engineering College, Pune and in this connection respondents in their reply submitted that this College is recognised by the Indira Gandhi National Open University. Our attention was also invited to a document (Annexure-P-XI), which is an Army Order No. 118/67 under which there is an appendix that is copy of Government of India, Ministry of Education Office Memorandum No. F-18-22/54-T-2 dated 30th December, 1956 in which it has been clearly mentioned that the Government of India has recognised this diploma for the purposes of all recruitment for the post of Overseers-Building and Roads Class 3 Certificate of the College of Military Engineering, Kirkee for recruitment to subordinate posts concerned with Buildings and Roads. The Memorandum dated 30th December, 1956 and 09th April, 1958 which is relevant for our perusal read as under :

“Appendix A to AO 118/67

***Copy of Government of India, Ministry of Education
Office Memorandum No. F-18-22/54-T-2 Dated 30 Dec
56.***

Office Memorandum

***Subject:- Technical and Professional
Qualifications – Recognition of Overseers, Building
and Roads Class 3 Certificate of the College of
Military Engineer, Kirkee.***

The undersigned is directed to state that on the recommendations of the Board of Assessment of Technical and Professional Qualifications, Government of India have decided that the Overseers-Building and Roads Class 3 Certificate of the College of Military Engineering, Kirkee be recognised for recruitment to subordinate posts concerned with Buildings and Roads.

Appendix B to AO 118/67

***Copy of Government of India, Ministry of Education
& Scientific Research (Department of SR & TE) Office
Memorandum No. F-18-55/57-T-5 Dated 9 Apr 58.***

Office Memorandum

***Subject :- Recognition of Technical and
Professional Qualification.***

The undersigned is directed to state that on the recommendation of the Board of Assessment of Technical and Professional Qualifications, it has been decided

(a) That the Draughtsman, Estimating and Design Class 3 examination conducted by the College of Military Engineer, Kirkee should be recognised for appointment to subordinate of post of Draughtsman under the Central Government, and

(b) that the Mechanists Electrical and Mechanical Class 3 examination conducted by the College of Military Engineering Kirkee should be recognised as equivalent to a diploma 'Electrical and Mechanical' Engineering for appointment to subordinate posts under the Central Government."

7. On perusal of Office Memorandums dated 30th December, 1956 and 09th April, 1958 it shows that persons who obtained diploma from the College of Military Engineering, have been recognised for the appointment to the post of buildings and roads and other mechanical, electrical and draughtsmen in the service of Army. Therefore, so far as the qualifications part is concerned, the said two notifications make it clear that diploma obtained by the incumbents from College of Military Engineering, Kirkee, Pune has been recognised as a qualification for service of Overseers-Building and Roads and for the Mechanical and Electrical Branch and also of the Engineering in the Indian Army. They have very clearly said that Mechanists Electrical and Mechanical Class 3 examination conducted by the College of Military Engineering, Kirkee should be recognised as equivalent to a diploma of Electrical and Mechanical' Engineering for appointment to subordinate posts in the Central Government.

Therefore, contention of learned counsel for the petitioner that persons who have just two years Diploma Courses from College of Military Engineering are sought to be appointed, is illegal, is not correct. Consequently, in view of the reply filed by the respondents and facts mentioned above, it clearly transpires to us that proper selection have been done by the respondents and persons who have selected for reemployment on the basis of academic qualifications obtained from College of Military Engineering, are eligible for the appointment in the service of the Army. Consequently, we do not find any merit in the petition. Same is dismissed. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
August 11, 2010.