



2025:DHC:2880-DB



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

Reserved on: 28.03.2025
Pronounced on: 25.04.2025

+ **W.P.(C) 3963/2025 & CM APPL. 18443/2025**

GOVT OF NCT OF DELHI AND ANRPetitioners
Through: Mrs.Avnish Ahlawat, Standing
Counsel for GNCTD with
Mr.Nitesh Kumar Singh,
Ms.Laavanya Kaushik,
Ms.Aliza Alam and
Mr.Mohnish Sehrawat, Advs.

versus

ASHISH KUMAR AND ORSRespondents
Through: Ms.Kaveeta Wadia, Sr. Adv.
with Mr.Shashank Tripathi and
Ms.Chhavi Jain, Advs.
Mr.M. S. P. Patwal, SSW
(I&FC) with Mr.Ramesh
Kumar, Sr. Assistant (I&FC).

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

NAVIN CHAWLA, J.

1. This petition has been filed by the petitioners, challenging the Order dated 24.09.2024 passed by the learned Central Administrative



Tribunal, Principal Bench, New Delhi ('learned Tribunal') in Original Application (OA) No.3619/2022, allowing the said OA filed by the respondents herein with the following direction:

“34.1 In view of above detailed discussions, the OA No.3619/2022 is allowed directing the respondents to fill up the posts of Junior Engineer (Civil)/Junior Engineer (Mechanical) (post codes 11 / 1 7 & 12 / 1 7), in the Department of Irrigation and Flood Control, Government of NCT of Delhi by appointing the applicants, who have been shortlisted by DSSSB vide result notice nos. 1299 dated 25.06.2021 and 1326 dated 27.07.2021.

xxx

34.3. The common directions in both cases are that the offers of appointment shall be made within eight weeks of receipt of this order. Apart from above, we further issue the following common directions:-

34.4. The applicants shall not be entitled to any back wages. However, they are entitled for actual benefits from the date of joining. For the purpose of seniority and fixation of pay, the applicants shall be entitled to notional benefits from the date of such deemed appointment.”

FACTS OF THE CASE

2. To give a brief background in which the present petition arises, the Delhi Subordinate Services Selection Board (DSSSB) had issued an Advertisement No.02/17 on 07.08.2017, advertising 70 posts (UR-38, OBC-21, SC-04 and ST-07) including 03 posts for the PH category of Junior Engineer(JE) (Civil), and 15 posts (UR-9, OBC-5, SC-0 and ST-1) including 1 post for the PH category of JE (Mechanical).



3. The educational qualifications notified for the above posts in the Advertisement by the User Department, that is, the Irrigation & Flood Control Department of the Govt. of NCT of Delhi (I&FC) were as under:

*“Post Code:- 11/17 Junior Engineer (Civil)
Educational Qualification:- Essential:-
Diploma in Civil Engineering from a
recognized university/ Institution.
Post Code 12/17 Junior Engineer
(Mechanical) Educational Qualification:
Essential:- Diploma in Mechanical / Electrical
Engineering from a recognized university /
Institution.”*

4. It is admitted by the petitioners that on 01.09.2017, the petitioners requested the DSSSB to provide a suitable link in the online portal of the DSSSB for candidates/applicants who are having Degrees in Civil/Mechanical Engineering so that they can also apply for the above post.

5. The respondents herein, applied for the said posts and also cleared the examinations.

6. The DSSSB declared the result for Post Code 12/17 *vide* the Result Notice No.1299 dated 25.06.2021, and recommended 13 candidates for the post of JE (Mechanical). The result contained the following note of caution:

*“*Note- That as per RRs “Diploma in
Mechanical/Electrical Engineering from
recognized University/institution or
equivalent.” Further, the some of the
candidates have uploaded the
certificates/documents related to B Tech in
similar trade, which is a subjective and
technical matter therefore, at this stage,*



DSSSB has not undertaken the veracity/scrutiny of experience certificate furnished by the candidates as such user department i.e. I & FC Deptt, GNCTD is requested to ascertain the scrutiny/correctness of the same at their own level before issuing the offer of appointment to the proposed candidate. The selection is provisional and subject to the satisfaction of User department regarding experience certificate furnished by above candidates.

7. *The selection of the above total 13 candidates (UR-08, OBC-04 and ST-01) shall be further subject to genuineness of the documents on the basis of which they have claimed to have fulfilled all the eligibility conditions as prescribed in the RRs and terms and conditions of advertisement inviting applications and subject to thorough verification of their identity with reference to their photographs, signatures/ handwriting etc. On the application form, admission certificate etc. The candidature of the candidate is liable to be cancelled by the User Department, in case, candidate is found not fulfilling all the eligibility conditions of the Recruitment Rules for the posts or for any other genuine reason. The decision of the User. Department regarding the eligibility of the candidate shall be final and binding on the candidate. The Competent Authority of the Department concerned shall issue the offer of appointment to the candidates after being satisfied about their eligibility as laid down in the recruitment rules and after verification of the correctness of the information furnished in the application form and the documents related to Educational Qualification, Age and other essential certificates.*

7. Similarly, on 27.07.2021, the DSSSB declared the result of Post Code 11/17, that is, JE (Civil), provisionally selecting 69 candidates



including 02 from the PH Category. The result contained the following note of caution:

“It is stated that most of the above candidates have uploaded higher qualification as well as different types of certificates/degree with regard to the essential qualification, however as per RRs one of the essential qualification is “Diploma in Civil Engineering from a recognized University/Institution”. Further the same is subjective and technical matter and User Department has not provided any specification in this regard. This stage DSSSB has not undertaken the veracity/scrutiny of Degree/ Diploma furnished by the candidates. As such the User Department i.e. I&F C Deptt, GNCTD is requested to ascertain the scrutiny /correctness of the same at their own level before issuing the offer of appointment to the proposed candidates. The selection is provisional and subject to the satisfaction of the User Department regarding Degree/Diploma furnished by the above candidates.”

8. The petitioners, *vide* the Order dated 24.08.2021, constituted a Committee to examine the conditions with respect to the educational qualifications and its effect on recruitment of JE (Civil) and JE (Mechanical) and to report on the following:

- “1. As to whether the condition of four (04) years Degree Course will be considered to be with higher qualification than three (3) years Diploma Course.*
- 2. To suggest the treatment of the qualification of the recommended candidates having degree in respective fields.*
- 3. Whether the candidate with four (04) years degree course will be suitable for the work and responsibility (Nature of Duties) of the post of JE (Civil/ Mechanical).”*



9. The Committee, in its Report dated 26.10.2021, *inter alia*, recommended that the suitability of the candidates who have already been qualified in the examination conducted by the DSSSB, cannot be questioned. The recommendations of the Committee are reproduced hereinunder:

“i) In the instant case examination has already been conducted by DSSSB and the list of provisionally selected candidates have already been recommended. There is hardly any relevance of examining at this stage as to whether a four (04) year degree course is considered to be higher qualification than a three (03) year diploma course. Moreover as per the general prevalent practice and perusal of the correspondence between DSSSB and I&FC Deptt in respect of the said recruitment, that is available on record, it can be construed that four (04) years Degree Course will be considered as higher qualification than three (03) years Diploma Course. Nevertheless, if the Administrative Section still desire further clarification on this issue, it is suggested that the same may be obtained from educational regulatory authority like UGC or AICTE etc, or Reputed Universities/Institutes offering such courses.

ii) The committee cannot comment on the treatment of qualification of the recommended candidates having degree in respective field other than as per point (i) above. The Administration may decide upon such treatment based upon the RRs, requisition sent to DSSSB and other correspondences which have already taken place between DSSSB and I&FC Deptt. and all that are integral part of the office record. The committee is of the opinion that such exercise should have been undertaken before the conduction of



examination and it is too late to comment on the matter.

iii) All the candidates who have been provisionally selected by DSSSB have qualified the examination conducted by DSSSB on the subject concerned as per the qualification prescribed in the Recruitment Rules for the post (refer point no. 3 “Syllabus” of Advertisement 02/17). The committee is of the view that suitability of any candidate who have already qualified in the examination conducted by DSSSB, at this stage cannot be questioned. The report of the committee is hereby submitted.”

10. The I&FC Department then sought the advice of the Services Department, GNCTD regarding appointment of the shortlisted candidates by the DSSSB with higher qualifications of Degrees in Civil and Mechanical Engineering, to the post of JE (Civil and Mechanical).

11. The Services Department, GNCTD, on 24.01.2022, opined that the case appears to be similar to that of ***Puneet Sharma and Ors. v. Himachal Pradesh State Electricity Board Ltd. and Anr.***, 2021 SCC Online SC 291, and advised the I&FC Department to examine and process the matter further keeping in view the said Judgment. It was further advised that the Department will, however, have to amend the existing Recruitment Rules (RRs) for the post so that such issue does not arise in future.

12. The petitioners contend that on scrutiny of the dossiers of the recommended candidates, it was observed that 47 candidates of the JE (Civil) category and 5 candidates of the JE (Mechanical) category had the requisite educational qualification of a ‘Diploma’ in the concerned



stream of engineering as prescribed in the RRs for the said post, and the offers of appointment were issued to these candidates. The remaining 22 recommended candidates from the JE (Civil) category and 8 recommended candidates from the JE (Mechanical) category, were found having a 'Degree' in the concerned branch of engineering and therefore, the I&FC Department placed the matter before the Hon'ble Lt. Governor of Delhi for a one time relaxation in the RRs with respect to the educational qualification. However, the Hon'ble Lt. Governor did not accede to the proposal.

13. The respondents, who are possessing Civil/Mechanical Engineering Degrees, made a representation for appointment, and filed an application under the RTI Act seeking information regarding the recruitment process and, eventually, filed the above OA before the learned Tribunal.

14. The said OA has been disposed of by the learned Tribunal *vide* its Impugned Order, with the directions as have been quoted hereinabove.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS

15. The learned counsel for the petitioners submits that the learned Tribunal has failed to appreciate that in terms of the RRs for the post of JE (Civil/Mechanical) in the I&FC Department, the educational qualification prescribed is 'Diploma in Civil/Mechanical/Electrical Engineering from a recognized University/Institution'. She submits that the same eligibility condition was prescribed in the Advertisement issued by the DSSSB for the post of JE(Civil) and for



the post of JE(Mechanical). She submits that a Degree in Civil Engineering/Mechanical Engineering was, therefore, not a recognized qualification for applying to the above posts.

16. She submits that though the Committee appointed by the I&FC Department stated that as the persons with Degree were allowed to participate in the selection process, their candidature be further processed, however, this would have been a violation of the RRs as also the eligibility condition prescribed in the Advertisement and, therefore, was rightly refused by the Hon'ble Lt. Governor. In support, she places reliance on the Judgments of the Supreme Court in *Zonal Manager, Bank of India, Zonal Office, Kochi and Ors v. Aarya K. Babu & Anr.*, (2019) 8 SCC 587; *Tej Prakash Pathak & Ors. v. Rajasthan High Court & Ors.*, (2025) 2 SCC 1; and, *Jamon K.K. v. Shajimon P. & Ors. Etc.*, 2025 INSC 425.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE RESPONDENTS

17. On the other hand, the learned senior counsel for the respondents, who appears on caveat, submits that even prior to the issuance of the Advertisement, on 19.05.2017, the DSSSB had sought a clarification from the I&FC Department as to whether candidates having a higher qualifications such as a Degree in Civil Engineering, may also be considered for the above posts. By a communication dated 24.07.2017, the I&FC Department clarified that the candidates having higher qualifications, such as Degree in Civil Engineering, may also be considered for recruitment for the posts under reference.



18. She submits that even post the Advertisement, as the online link provided opened by the DSSSB for applying for the above posts was only for Diploma holder candidates, the I&FC Department, by its Letter dated 30.08.2017/01.09.2017, requested the DSSSB to provide a suitable link in the online portal for the candidates/applicants having a Degree in Civil/Mechanical Engineering so that they can also apply for the above referred posts.

19. She submits that even post the declaration of the result, the Technical Committee appointed by the I&FC Department and the Services Department, by their separate Reports, recommended that the selected Degree holders be given Offers of Appointment for the above posts.

20. She further submits that for the above posts, the I&FC Department has been appointing Degree holders on contractual basis. Further, the promotional posts of the JE(Civil/Mechanical) are the posts of Assistant Engineer (Civil/Mechanical), for which a Degree holder becomes eligible with three years of regular service as against seven years' regular service required for a Diploma holder. She submits that, therefore, an advantage is given in matters of promotions to a Degree Holder. She submits that in similar circumstances, the Supreme Court in *Puneet Sharma* (supra) has held that exclusion of Degree holders from appointment would be arbitrary and unsustainable.

ANALYSIS AND FINDINGS

21. We have considered the submissions made by the learned counsels for the parties.



2025:DHC:2880-DB



22. The RRs for the post of JE in the I&FC Department prescribe the 'educational and other qualifications required' as 'Diploma in Civil/Mechanical/Electrical Engineering from a recognized University/Institution'. Similarly, the Advertisement in question for the post of JE(Civil), prescribed the 'essential' educational qualification for applying as 'Diploma in Civil Engineering from a recognized University/Institution', and for the post of JE (Mechanical), as 'Diploma in Mechanical/Electrical Engineering from a recognized University/Institution'. Neither the RRs nor does the Advertisement make persons with higher educational qualification than Diploma, ineligible for the above posts. The educational qualification prescribed in the RRs and the Advertisement is the minimum/essential qualification, meaning thereby, that someone not possessing even this qualification shall not be eligible for the post in question. It does not, however, make persons having higher qualification ineligible for the posts.

23. The above understanding is also evident from the clarification issued by the I&FC Department to the DSSSB, *vide* its Letter dated 24.07.2017, even prior to the issuance of the Advertisement in question, as also from the Letter dated 30.08.2017/01.09.2017 issued by the I&FC Department to the DSSSB, calling upon it to provide a suitable link in the online portal for candidates/applicants having Degree in Civil/Mechanical Engineering to apply for the above posts.

24. Added to the above is the fact, which remains undenied, that the I&FC Department has been appointing Degree holders, though on contractual basis, for the above posts. In addition, accelerated



promotion to the posts of Assistant Engineer is granted, as per the RRs, to a Degree holder.

25. In *Puneet Sharma* (supra), the Supreme Court was considering whether a Degree in Electrical Engineering/Electrical and Electronics Engineering is technically a higher qualification than a Diploma, and whether Degree holders are eligible for appointment to the post of JE (Electrical) under the relevant RRs for the Himachal Pradesh State Electricity Board Limited. The said RRs, like in the present case, prescribed the educational qualification required as ‘*Diploma in Electrical/Electronics/Electronics and Communication/Computer Science from the recognized Institution/Board/University duly recognized by the Central or State Government*’ as the essential qualification. The Supreme Court, after considering the precedents on the issue, held that the RRs allowed the Degree holders to be also considered for the posts. In reaching the said conclusion, the Court took specific notice of the fact that the Degree holders were considered as a separate and distinct sub-quota for the promotional post by giving them an accelerated promotion and also by appointing such Degree holders on contractual basis to the post. The Court held that, therefore, the intent of the rule makers was not to exclude Degree holders from consideration for the post of JE. We may quote from the Judgment as under: -

“32. As far as the merits of the main question i.e. whether degree holders too can apply for the post of JEs, a close examination of the rules shows that a lion's share of the posts at the JE level is set apart for direct recruitment.



However, when it is at the level of the higher post i.e. Assistant Engineer which is a promotional post direct recruitment is only to the extent of 36%. Of the balance 64%, various sub-quotas have been stipulated for feeder cadres; the largest percentage being for Junior Engineers. For a long time, even on the date of the advertisement, two distinct quotas (of 5%) had been set apart for promotion of Junior Engineers holding degree qualifications in the concerned subject.

33. This Court is conscious that the issue in question is whether the minimum qualification of a diploma in electrical or electronic engineering or other prescribed qualifications includes a degree in that discipline. However, the rules have to be considered as a whole. So viewed, the two sub-quotas are:

(1) 5% enabling those diploma holders who acquire degree qualifications during service as Junior Engineers; and

(2) 5% enabling among those who hold degrees before joining as Junior Engineers.

34. The latter (2) conclusively establishes that what the rule making authority undoubtedly had in mind was that degree holders too could compete for the position of JEs as individuals holding equivalent or higher qualifications. If such interpretation were not given, there would be no meaning in the 5% sub-quota set apart for those who were degree holders before joining as Junior Engineers – in terms of the recruitment rules as existing.

35. The court's opinion is fortified by the latest amendment brought about on 03.06.2020. This clarifies beyond doubt that even for the post of Junior Engineers, those individuals holding higher qualifications are eligible to compete. In the opinion of this Court, though the amending rules were brought into force prospectively, nevertheless, being clarificatory, they apply to the recruitment that is the subject matter of the present controversy. Such a position (i.e. clarificatory amendments operative retroactively, despite



their enforcement prospectively) has been held in several previous judgments of this court. ...

xxxxxx

38. It would also be relevant to notice that in the appeal, it has been specifically averred that the HPSEB has been making contractual appointments from amongst degree holders in the cadre of Junior Engineers, and that an order was issued upon the recommendation of the Screening Committee, which through its meeting held on 11.04.2018 had cleared the regularization of 28 such candidates. These degree holders are equivalent to Junior Engineers and had been working for periods ranging between 4 to 6 years. A copy of that order has been produced as Annexure P-10 in the Special Leave Petition.”

26. Applying the above principles to the facts of the present case, it is, therefore, evident that the RRs as also the Advertisement in question did not exclude Degree holders from being considered for the post of JE(Civil) and JE(Mechanical) in the I&FC Department. Merely because some doubt was created on their eligibility by the DSSSB post their selection, would not undermine their eligibility for appointment. Equally a suggestion by the Technical Committee and by the Services Department that RRs be suitably amended, can only mean that a doubt that has now been created be clarified for all times to come by such amendment. It would be a clarificatory amendment rather than a substantial amendment in the RRs. However, such amendment is not necessary for making the Degree holders eligible for the post, as they are eligible even without such amendment.



27. In view of the above, the Judgments in *Aarya K. Babu* (supra), *Tej Prakash Pathak* (supra), and in *Jamon K.K.* (supra), cannot come to the aid of the petitioners.

28. In *Aarya K. Babu* (supra), the Supreme Court was considering the case for the post of Agricultural Field Officer (Scale-1) issued under the Notification dated 17.11.2014, which read as under: -

“4-year degree (graduation) in Agriculture/Horticulture/Animal Husbandry/Veterinary/Science/Dairy Science/ Agri Engineering/Fishery Science/Pisciculture/ Agri Marketing & Co-operation/Co-operation & Banking/ Agro-Forestry.”

29. The issue before the Supreme Court was whether the qualification of BSc (Forestry) can be considered as equivalent to the Degree of BSc (Agro-Forestry) and whether any particular educational qualification made eligible subsequent to issuance of recruitment notification can be considered retrospectively in respect of the recruitment process, which has commenced prior to such additional educational qualification being treated as eligible and the process of recruitment in respect of such notification had already concluded. The Supreme Court held that it is well-established principle that it is not for the Court to read into or assume and thereby include certain qualifications which have not been included in the notification by the employer, and that is not for the Court to provide the equivalence relating to educational qualification, as it is a technical question based on proper assessment and revaluation of relevant academic standards and practical attainments of such qualifications, which are the decision



of the Government based on recommendation of an expert body. It was further held that the qualification of BSc (Forestry) cannot be held equivalent to BSc (Agro-Forestry), as was prescribed in the notification. It further held that the subsequent amendment made post the notification would not apply retrospectively. In the present case, however, there is no question of equivalence involved. It is also not denied by the respondents that the Degree in Civil/Mechanical Engineering is higher than a Diploma in Civil/Mechanical Engineering. The only question before this Court is whether there is any prohibition on a person holding a higher qualification than the one prescribed in the Advertisement, or the RRs make them ineligible for applying for the post. We do not find any such prohibition either in the RRs or in the Advertisement in question.

30. Similarly, in *Tej Prakash Pathak* (supra), the Court held that change in Recruitment Rules in the midst of recruitment process, is not permissible and the eligibility is to be determined with reference to the cut off date provided in the relevant rules and where no cut off date is provided, the date appointed in the advertisement inviting application, and where no such date is also not appointed, with reference to the last date prescribed for receipt of applications. In the present case, as we have held hereinabove, there is no change in the RRs by considering a Degree Holder as also qualified for the post when the minimum qualification prescribed is of a Diploma in the relevant engineering field.

31. In *Jamon K.K.* (supra), the advertisement specifically provided for possession of 'current lascar's licence' and further stated that the

