

Unnikrishnan Cv vs Union Of India on 28 March, 2023

Author: Aravind Kumar

Bench: Aravind Kumar, Sanjay Kishan Kaul

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7188 OF 2013

UNNIKRISHNAN CV AND OTHERS

VERSUS

UNION OF INDIA AND OTHERS

JUDGMENT

Aravind Kumar, J.

1. Appellants are claiming promotion to the post of Superintendent BR Grade-I and Assistant Engineer as per Column 11 of General Reserve Engineer Force Group 'C' and Group 'D' Recruitment Rules, 1982 (hereinafter referred to as 'GREF Rules, 1982' for sake of brevity).

Short facts necessary for disposing of this appeal are crystallized as under:

Between 1977 and 1986, appellants came to be appointed to the posts of Overseers/Surveyor Draughtsman (Field and Topo) in accordance with the provisions of column No. 7 of GREF Rules, 1982. The next promotional post from Surveyor Draughtsman/Overseers is the post of Superintendent Grade- II. Petitioners were possessing ITI certificate at the time of their appointment as prescribed under Column 7 of Schedule I of GREF Rules, 1982. On being appointed they were given opportunity to pursue course in Diploma in Draughtsman Estimating and Design (DED, for short) at Government expenditure from CME Pune and were awarded Diploma certificate after completion of the course. Some of the appellants

came to be promoted to Superintendent BR II and some of them were denied. The posts held by the Appellants as on date of presentation of Writ Petition before the High Court is tabulated hereinbelow for convenience and immediate reference:

S.No Petitioner's Name Date of Appointment with initial promotion with post

1. GS159693P 23-07-1983 31-12-1993 UNNIKRISHNAN CV Surveyor Supdt BR-II Draughtsman (Fd & Topo)
2. GS160939 06-07-1984 15-04-2001 BHAGWAN DAS Surveyor Supdt- BR-II Draughtsman (Fd & Topo)
3. GS162102 21-06-1985 Not yet promoted SURJIT DAS Surveyor Draughtsman (Fd & Topo)
4. GS159880 12-10-1983 23-08-1984 KARAMJIT MALIK Surveyor Supdt BR-II Draughtsman (Fd & Topo)
5. GS162098 21.06.1985 03.03.2008 MOHINDER SINGH Surveyor Supdt BR-II Draughtsman (Fd & Topo)
6. GS159704 29-07-1983 17-12-1993 RAMNIVAS Surveyor Supdt BR-II Draughtsman (Fd & Topo)
7. GS157772L 23-08-1982 31.01-2002 BALKAR SINGH Overseer Supdt BR-II
8. GS158152F 01-09-1982 12-02-2001 BALWINDER SINGH Overseer Supdt BR-II
9. GS159017 01-11-1982 Not yet promoted ABHIMANYU SINGH Overseer
10. GS157742 19-08-1982 04-01-2000 Supdt PARAMJIT SINGH Overseer BR-II
11. GS162099 21.06.1985 06.03.2008 Supdt JASVEER SINGH Surveyor BR-II Draughtsman (Fd & Topo)
12. GS162867 16.01.1986 05.03.2008 RISHIKESH MALLIK Surveyor Supdt BR-II Draughtsman (Fd & Topo)
13. GS155226 27-12-77 Overseer 15-09-1986 RAJENDER SINGH Supdt BR-II
14. GS120857 BS NEGI 31.05-1975 16-12-1986 Overseer Supdt BR-II
15. GS155089 18-18-1977 21-10-1986 SAMUEL T Overseer Supdt BR-II

16. GS161008 02-08-1984 28-02-2008 RAJENDRAN NAIR Overseer Supdt BR-II

17. GS159881 12-10-1983 03-02-1995 SACHCHIDANAND Surveyor Supdt BR-II
SINGH Draughtsman (Fd & Topo)

18. GS156203-S, 15.12.81 S/D Man 14-09-1992 JAGBIR SINGH (Fd/Topo) Supdt
BR-II Aforesaid data would indicate that first promotional post was superintendent
BR Grade-II and most of the appellants as indicated hereinabove are serving in the
said post after having been promoted between 1993 to 2008.

2. Non-granting of promotion to Grade-I and Assistant Engineer is said to be the cause of action for filing the Writ Petition (Civil) No. 167 of 2013 wherein it was contended that as per column 11 of GREF Rules, 1982, they are entitled to be promoted to said post which has been denied by Union of India on the premise that column 11 of GREF Rules, 1982 provides that a candidate should possess “Diploma in Civil Engineering” whereas appellants were possessing “Diploma in Draughtsman Estimating and Design”. The High Court by Impugned Order rejected the prayer of the appellants on the ground that:

(i) Appellants’ claim for promotion to the post of Superintendent Grade-I is premised on two grounds, i.e., firstly the so-called equivalence declared by the AICTE in November, 2000, and secondly, the order of the Division Bench passed in Writ Petition (Civil) No. 1364 of 1998, dated 03.08.2005. As far as first contention is concerned, the High Court was of the opinion that AICTE Notification recognized the diploma in the respective filed as eligible qualification and no more. It was also held that notification in terms nowhere recognizes that the diploma accorded by the College of Military Engineering is equivalent to a degree, which is the essential qualification for holding the post of Superintendent Grade-I.

(ii) While dealing with second contention, High Court took note of the judgment dated 03.08.2005 rendered in Writ Petition (Civil) No. 1364 of 1998 which revealed that grievance of the writ petitioner therein was though he had held a two-year diploma-which was deemed sufficient by the respondents qua others similarly placed, had been denied promotion. Whereas the relevant qualification which an aspirant has to possess for the post of Superintendent Grade-I is a degree. The order of the Division Bench revealed that said Court had considered the rule to be one which prescribed that incumbent ought to have a three-year diploma, a fact situation which is entirely different from the present case.

3. Mr. Tapas Das, learned counsel appearing for the appellants has vehemently contended that juniors of appellants having Civil Engineering/Electrical and Mechanical Engineering diploma from CME, Pune have been promoted to the post of Superintendent BR Grade-II immediately after passing of diploma from CME Pune and yet Appellants have not been promoted to the higher rank till date. Contending that as per the extant rules, appellants are entitled for the promotional post they have sought for appeal being allowed and prayers sought for in the Writ Petition being granted.

3.1 Per contra Shri A.K. Sharma, learned Advocate appearing for Union of India has supported the stand taken before the High Court and by reiterating the same before this Court has contended that as per Rule 11 of the GREF Rules, 1982, appellants are not possessing requisite qualification and they are not eligible to be promoted.

3.2 After bestowing our careful and anxious consideration to the rival contentions raised at the Bar, we are of the considered view that point for our consideration which lies in the narrow compass is:

Whether the appellants are entitled to be promoted to the post of Superintendent BR, Grade-I?

3.3 The GREF Rules 1982 have been framed by the Union of India under Article 309 of the Constitution of India. Rule 2 of the aforesaid Rules stipulates that it applies to the posts specified under Column 1 of the Schedule annexed to the Rules.

The qualification prescribed under Column No. 11 of the Schedule for promotion to the post of Superintendent Building and Roads Grade-I reads as under:

SCHEDULE Name of Post Number Classification Scale of Whether Age limit for Educational of posts pay Selection direct recruits and other Post or qualification non-required for selection direct post recruits Superintendent 420 General Rs.550-Selection Between 18 and Essential:

Buildings and subject to central 20-650- 30 years Recognized Roads Grade-I variation Service 25-750 (Reliable for degree in dependent Group 'C' Government Civil on work Non- Gazetted servants upto 35 Engineering load Non- years in or Ministerial accordance with the instructions or orders issued by the Central Government).

Note: This crucial date for determining the age limit shall be the closing date for receipt of applications from candidates in India (other than those in Andaman and Nicobar Islands and Lakshadweep).

In case, of appointment through the Employment Exchanges, the crucial date for determining the age limits shall be the last date upto which Employment Exchanges are asked to submit the names.

Whether age Period of Method of In case of If a Depart- Circumstances and probation recruitment recruitment by mental in which Union educational if any whether by promotion/ Promotion Public Service qualifi- direct deputation/ Committee Com-mission to cations recruitment transfer, grades exists, what is be consulted in prescribed or by pro- from which its composition making for direct motion or by promotion or recruitment recruit will deputation/ deputation or apply in the transfer and transfer to be case of percentage made promotees of the vacancies to be filled by

various methods.

Age: No 2 years Direct Promotion Group 'C' and Not applicable Qualifications, recruitment Superintendent, 'D' No. except as 10% failing Buildings and Departmental provided which by Roads, Grade II Promotion against promotion, with recognized Committee for Column II failing which Diploma in Civil considering by deputation/ Engineering with Promotion and transfer, 5 years regular Confirmation:

<p>promotion- 90% failing which from the Army on posting/ transfer and failing which by direct recruitment</p>	<p>service in the grade in General Reserve Force. Deputations/ Transfer: Officers holding analogous/ equivalent posts under the Central /State Governments or posts in the scale of Rs.425- 700 or equivalent with 3 years regular</p>	<p>Lt. Col. Superintending Engineer- Chairman Major/ Executive Engineer/ Civilians Officer, Grade- I- Member</p>
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service in the
grade and
possessing the
qualification
prescribed in
column 7.
(Period of
deputation
ordinarily not
exceeding 3
years)

For promotion to the post of Superintendent BR Grade-I, the prescribed or requisite qualification is from the candidates/employees working as Superintendent, BR Grade-II with recognized Diploma in Civil Engineering with 5 years regular service in the Grade in General Reserve Engineering Force. The officers who are on deputation/transfer and holding analogous/equivalent posts under the Central and State Governments or post in the scale of 425-700 or equivalent with 3 years regular service in Grade and possessing the qualification prescribed in column No. 7 are also entitled to be considered for being promoted as superintendent BR Grade-I.

4. The contentions which came to be raised before the High Court by the writ appellants were two-fold, namely, (i) a direction for promotion to the post of Grade-I being issued, and (ii) a direction to the Union of India to grant pay- scale of 5000-8000 with effect from 01.01.1996 in accordance with recommendation of 6th Central Pay Commission. It was also contended that Diploma is equivalent to Degree which is required for recruitment to the post of Grade-I. It is in this background the High Court vide paragraph 4 of impugned judgment has examined this argument and negated the contention of the appellants, holding that claim is without any basis and on account of appellants not possessing Degree their claim came to be rejected. However, in so far as claim with regard to the grant of pay-scale as sought for was granted and undisputedly there is no challenge by the Union of India to the second prayer granted. It is only the first prayer wherein promotion which was sought for, which has been negated has been assailed in the present appeal.

5. In this background, the qualification as prescribed in column No. 11 of GREF Rules, 1982 when perused, would indicate that candidate who is seeking promotion to the post of Superintendent BR Grade-I has to possess “Diploma in Civil Engineering” with 5 years regular service in the grade of General Reserve Engineering Force. Whereas appellants are possessing Diploma in Draughtsman Estimating and Design (DED), which fact is not seriously disputed by them. Mr. Tapas Das, learned counsel appearing for the appellants has fairly conceded before this Court that an erroneous proposition was put forth before the High Court, namely, it was contended that Diploma is equivalent to a Degree and as such negating said contention, the High Court though justified its conclusion had erred in ignoring the consistent stand that had been taken by the Appellants, namely, Diploma in DED possessed by them is that of 2 years course and though column 11 prescribes Diploma in Civil Engineering for being promoted as Superintendent BR-Grade-I is to be treated as equivalent and this aspect was required to be considered by the High Court is an argument which looks attractive at first blush. However, on a careful perusal of the extant Rules as applicable for promotion to the post of Superintendent BR Grade-II, said contention has to be necessarily rejected for reasons more than one. Firstly, before the High Court appellants attempted to justify their claim contending “Diploma” is equivalent to a “Degree” and as such being entitled for promotion which has been negated by the High Court and rightly so. Secondly, appellants tried to justify their claim contending rule as applicable for direct recruitment would be applicable for recruitment by promotion, which has not been accepted by the High Court. In so far as the contention regarding qualification for promotion, the rule itself is explicit and clear, namely, it prescribes for promotion to Superintendent BR Grade-I only, those candidates possessing Diploma in Civil Engineering with 5 years regular service in the grade in General Reserve Engineering Force would be eligible. No doubt, said rule is silent with regard to Diploma in Civil Engineering being either 3 years or otherwise. It is an undisputed fact that appellants possess ‘Diploma in DED’ and not ‘Diploma in Civil Engineering’. It is trite law that courts would not prescribe the qualification and/or declare the equivalency of a course. Until and unless rule itself prescribes the equivalency namely, different courses being treated alike, the courts would not supplement its views or substitute its views to that of expert bodies.

6. In *Guru Nanak Dev University v. Sanjay Kumar Katwal & Anr.*,¹ this Court has reiterated that equivalence is a technical academic matter. It cannot be implied or assumed. Any decision of the academic body of the university relating to equivalence should be by a specific order or resolution,

duly published. Dealing specifically with whether a distance education course was equivalent to the degree of MA (English) of the appellant university therein, the Court held that no material had been produced before it to show that the distance education course had been recognized as such.

7. In *Zahoor Ahmad Rather & Ors. v. Sheikh Imtiyaz Ahmad & Ors* 2 , it was held that the State, as an employer, is entitled to prescribe qualifications as a condition of eligibility, after taking into consideration the nature of the job, the aptitude required for efficient discharge of duties, functionality of various qualifications, course content leading up to the acquisition of various 1 (2009) 1 SCC 610 2 (2019) 2 SCC 404 qualifications, etc. Judicial review can neither expand the ambit of the prescribed qualifications nor decide the equivalence of the prescribed qualifications with any other given qualification. Equivalence of qualification is a matter for the State, as recruiting authority, to determine.

(Emphasis supplied)

8. The diploma courses offered by College of Military Engineering, Pune, (CME) has been recognized as a course for recruitment to the post under the Central Government vide notification dated 01.02.2001, issued by Ministry of Human Resource Development (Annexure P-8). Said notification does not indicate diploma courses specified therein which are recognized by the Government of India are to be treated as equivalent. No material has been placed on record by the appellants to demonstrate that Diploma in DED is equivalent to Diploma in Civil Engineering.

9. The presumption on which the Writ Petition seems to have been presented is on the premise that appellants have been denied promotion on the ground that they possess a two year diploma not three year diploma, by completely ignoring the fact that denial of promotion is on the ground that candidates do not possess the prescribed requisite qualification namely “Diploma in Civil Engineering” and “Diploma in DED” possessed by them is not as prescribed under the Rules. It is no doubt true that eligibility for promotional post namely Superintendent BR Grade-I is not conditioned by any year wise stipulations vis-a-vis the diploma course. In that view of the matter, prayer of the appellants cannot be granted for the reasons indicated hereinabove and we do not find any fallacy in the reasons assigned by the High Court.

10. For the reasons afore-stated, we are of the considered view that the appeal is liable to be rejected and accordingly it stands rejected as being devoid of merits. Costs made easy.

.....J. (Sanjay Kishan Kaul)J. (Manoj Misra)J.
(Aravind Kumar) New Delhi, March 28, 2023