

Civil Writ Petition No.17974 of 2006.

**IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

...

Date of Decision: January 10, 2008

Devinder Singh Malik

... Petitioner

VERSUS

**Haryana Power Generation Corporation Limited, Panchkula
through its Managing Director and others** ... Respondents

CORAM : **HON'BLE MR.JUSTICE HEMANT GUPTA.
HON'BLE MR. JUSTICE MOHINDER PAL.**

1. Whether Reporters of Local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. R.K. Malik, Advocate,
for the petitioner.

Mr. Narender Hooda, Advocate,
for respondents Nos. 1 and 2.

Ms. Renu Bala Sharma, Advocate,
for respondents Nos. 3 and 4.

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MOHINDER PAL, J.

The petitioner was enrolled in the Indian Air Force on September 21, 1983. He was promoted to the rank of Corporal on October 01, 1988. He was further promoted to the rank of Sergeant on October 01, 1993. He remained in the Air Force

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upto September 30, 2003. The petitioner had undergone and successfully completed the prescribed training by passing the requisite examination obtaining 63 % marks for the trade of Airframe Fitter and also passed CTTB Examination (Departmental Test) obtaining 76 % marks. Indian Air Force Trade Airframe Fitter has been recognised as Diploma in `Mechanical Engineering` for recruitment to subordinate posts and services under the Central Government vide Government of India, Ministry of Education and Social Welfare (Department of Education) OM Number F-18-52/75/T-2/T-7 dated July 22, 1977. The Certificate issued to the petitioner by Mr.S.P.S. Virk, Air Commander, Air Officer Commanding, 3 BRD AF in this regard is Annexure P-1. The petitioner thus having Diploma in Mechanical Engineering and having more than ten years' experience in the appropriate field was awarded Certificate (Annexure P-2) by which he was considered eligible for the post where qualification required is Degree in Mechanical Engineering on the recommendation of Government of India, Ministry of Education and Social Welfare Letter No. F 18-19/75/T-2 dated May 26, 1977 (Annexure P-8) and Air HQ Letter No. Air HQ/18976/20/TRQ dated February 19, 1979 (Annexure P-11).

In response to the advertisement issued by the Haryana Public Service Commission (hereinafter referred to as `the Commission') for the posts of Assistant Engineers (Electrical, Mechanical and Electronics), the petitioner applied for the post of Assistant Engineer (Mechanical) against the quota reserved

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for ex-servicemen. His name was recommended by the Commission to the Haryana Government vide letter No.16/2004/12671 dated December 01, 2004 for appointment as Assistant Engineer (Mechanical) in the Haryana Power Generation Corporation Limited-respondent No.1 (hereinafter referred to as 'the Corporation'). The Corporation offered him appointment as Assistant Engineer (Mechanical) vide appointment letter dated March 30, 2005 (Annexure P-3). The petitioner joined the Corporation on April 04, 2005. On June 27, 2006, he was issued notice (Annexure P-4) by the Corporation to show cause as to why he be not removed from service on the ground that his Degree (Annexure P-2) was found to be not genuine on verification. The petitioner submitted reply (Annexure P-6) to the show cause notice averring therein that the Degree in Mechanical Engineering issued to him was authenticated, genuine and valid. However, after considering his reply, the Corporation cancelled the appointment of the petitioner and removed him from service with immediate effect vide letter dated October 17, 2006 (Annexure P-7). In this petition, filed under Article 226 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari quashing the order dated October 17, 2006 (Annexure P-7) and granting him all the consequential benefits.

In the written statement filed by the Corporation, removal of the petitioner from service was sought to be justified on the ground that the Certificate/Degree dated March 18,

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2003 (Annexure P-2), on the basis of which he was appointed on the post of Assistant Engineer (Mechanical) in the Corporation, was held to be invalid and unauthorised by the Air Force Authorities. He was removed from service after issuing show cause notice and getting his reply, which was duly considered by the competent authority and was found to be unsatisfactory. The impugned order was passed in compliance with the principles of natural justice and it was sustainable in the eyes of law.

In the written statement filed by Mr. S.C.Luthra, Air Commander, Air Officer Commanding, 3 BRD, AF, on behalf of respondents Nos. 3 and 4, it has been stated that the Air Force of India does not issue a Degree in Mechanical Engineering to an Airman going on discharge. It was admitted that the petitioner was enrolled in Indian Air Force on September 21, 1983 and was promoted to the rank of Corporal on October 02, 1988 and further promoted to the rank of Sergeant with effect from August 28, 1997. He was discharged from service on September 30, 2003 on completion of his term of engagement. It was further stated that an Airman of Airframe Fitter Trade was issued the certificate of Diploma in Mechanical Engineering at the time of discharge from service after completion of his service. The provisional certificate is issued to the retiring airman duly signed by the CO/ Stn. Cdr. / AOC and the certificate is forwarded to the individual by AFRO duly signed by AOIC, AFRO. However, in the present case, no such certificate of degree in Mechanical Engineering was issued to the petitioner. It was pleaded that Mr. H.S. Sandhu, Wing

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Commander, Chief Test Pilot 3BRD AF, who had issued the Certificate/Degree (Annexure P-2) to the petitioner on March 18, 2003, had, in fact, retired from service on February 28, 2003. The Degree issued to the petitioner was unauthorised and invalid. It was also averred that Mr. H.S. Sandhu being Chief Test Pilot was not the competent authority to sign any Certificate/Degree which was issued to the petitioner and only AOC/ Stn. Cdr /CO was authorised for the same.

We have heard Mr. R.K. Malik, Advocate, appearing for the petitioner, Mr. Narender Hooda, Advocate, appearing for respondents Nos. 1 and 2 and Ms. Renu Bala Sharma, Advocate, appearing for respondents Nos. 3 and 4 and have gone through the respective pleadings of the parties and all the documents placed on the file.

As stated above, the petitioner was enrolled in the Indian Air Force on September 21, 1983. He got two promotions, first to the rank of Corporal on October 01, 1988 and then to the rank of Sergeant on October 01, 1993. He remained in the Air Force upto September 30, 2003.

In reply dated August 11, 2006 (Annexure P-6) submitted by the petitioner to the show cause notice dated June 27, 2006 (Annexure P-4) issued to him by the the Corporation the petitioner stated as under:-

“ I have successfully completed the tenure 14 years as a Corporal since I became

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Corporal in my 05 years of service and 10 years as a Sergeant since I sworn the rank in 10 years of my total service. I have hold this rank by 10 years with Diploma in Mechanical Engineering since I have completed it in 1986 itself. Each and every document attached have an address on it so it is convenient to get it cross-checked "

Along with reply (Annexure P-6), the petitioner has attached extracts from service documents and HQ letter No.Air HQ/18976/20/TRQ dated 19.2.1979, which, so far as relevant for deciding the present controversy, are as under:-

Extract from Service Documents:

" It is certified that 678220-H Ex Sergeant Devinder Singh Malik AF/FIT has passed out from MII AF and posted to 112 HU, AF w.e.f 21.4.1986 after successful completion of his Diploma in Mechanical Engineering vide AFRO/118/A/427.

It is certified that 678220-H Sgt. Devinder Singh Malik AF/FIT is promoted to rank of Corporal substantive on 1.10.1988 vide RO/CPL/02/88 and local POR No.112HU/137/88.

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He is further promoted to rank of Sgt. w.e.f 01 Oct. 1993 vide AF/12/s/48 & AFRO/RR/497 and Local POR No.119HU/42/93."

Extract from HQ letter No.Air HQ/18976/20/TRQ dated 19.2.1979:

" Any Airman enrolled in IAF from technical branch is considered as equivalent degree in Mechanical/Electrical/Electronics if he qualifies his promotion test in time.

(i)Diploma with 14 years of experience as substantive Corporal or leading Air Craft man.

(ii)Holding Diploma with 10 years of experience as Sergeant.

(iii)Holding Diploma with 05 years of experience as Junior Warrant Officer.

(iv)Holding Diploma with 2 years of experience as Warrant Officer or Master Warrant Officer."

There is no rebuttal to the facts brought on record by the petitioner in his reply (Annexure P-6). It has been clearly stated in HQ letter No.Air HQ/18976/20/TRQ dated 19.2.1979, quoted above, that holding Diploma in Mechanical Engineering with ten years of experience as Sergeant is considered as

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equivalent to Degree in Mechanical Engineering. The petitioner become Sergeant on October 01, 1993 and exactly remained on the said post for ten years when he retired on September 30, 2003. Further more, Diploma in Mechanical Engineering with fourteen years of experience as Substantive Corporal or leading Air Craft Man has also been considered as equivalent to Degree in Mechanical Engineering. The petitioner was promoted to the rank of Substantive Corporal on October 01, 1988, after he had passed out from MATI AF and posted to 112 HU, AF w.e.f 21.4.1986 after successful completion of his Diploma in Mechanical Engineering vide AFRO/118/A/42. If we count from October 01, 1988, when the petitioner was promoted to the rank of Substantive Corporal, he had gained fifteen years of experience as Substantive Corporal on the date when he retired on September 30, 2003. To cap it all, reference to the Notification of Government of India, Ministry of Education and Social Welfare No. F 18-19/75/T-2 dated May 26, 1977 (Annexure P-8) is necessary which read as under:-

“On the recommendation of the Board of Assessment for Educational Qualifications and recommendation of Defence Director (Tech.), the Government of India have decided to recognise a Diploma in Engineering in appropriate discipline plus total ten years of technical experience in the appropriate fields

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as equivalent to Degree in Engineering. It is considered valid for the purposes of selection in Gazetted posts and services under the Central Government or State Government.”

In view of the above, it is absolutely clear that the petitioner was entitled to be issued the Degree in Mechanical Engineering as per Notification No. F 18-19/75/T-2 dated May 26, 1977 (Annexure P-8). In the written statement filed by respondents Nos. 3 and 4, it has nowhere been stated that the petitioner was not entitled to be issued the Degree in Mechanical Engineering nor Notification dated May 26, 1977 has been denied. Much stress has been laid on the point that Mr. H.S. Sandhu, Wing Commander, Chief Test Pilot 3 BRD AF, who had issued the Certificate/Degree (Annexure P-2) to the petitioner had retired from service. Once we are of the view that the petitioner was entitled to be issued the Degree in Mechanical Engineering after he had honourably retired from the service of the Air Force on September 30, 2003, we would not like to go into the details of the Certificate/Degree (Annexure P-2) in writ proceedings.

For the aforesaid reasons, this writ petition is allowed, order dated October 17, 2006 (Annexure P-7) is quashed and the Corporation is directed to take back the petitioner in service as Assistant Engineer (Mechanical) within one month from the date of receipt of a copy of this order and grant him all

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consequential benefits except arrears of salary.

**(HEMANT GUPTA)
JUDGE**

**(MOHINDER PAL)
JUDGE**

January 07, 2008.
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