

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU.

**SWP no. 95/2005**  
**CMP nos. 2022/2006 & 85/2005**

Date of Decision: **19.02.2009**

Pankaj Kumar & Ors. v. U.O.I and Ors.

**Coram:**

***MR. JUSTICE J.P.SINGH, JUDGE.***

**Appearing Counsel:**

For Petitioner(s) : M/s Surinder Kour & S.K.Shukla, Advocates.  
For Respondent(s): Mr. V.K.Magoo, ASGI.

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| i)  | Whether to be reported<br>in Press/Journal/Media: | Yes/No. |
| ii) | Whether to be reported<br>in Digest/Journal:      | Yes/No. |
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1. Petitioners have filed this writ petition questioning the selection and appointment of respondent nos. 5 to 19 as Junior Engineer Electrical and Maintenance in the Military Engineering Service made pursuant to advertisement no. CEUZ/1/2003 issued by Military Engineering Service, Chief Engineer, Udhampur Zone.
2. Petitioners & learned counsel questions the respondents & selection and appointment solely on the ground that respondent nos. 1 to 4 had not followed the laid-down criteria for selection of Junior Engineers and had erroneously given preference to respondent nos. 5 to 19 because of their possessing higher qualification of Degree in Engineering, thereby depriving the petitioners, Diploma Holders of their right to requisite consideration for selection and appointment as Junior Engineers in the Military Engineering Service.

3. Mr. V.K.Magoo, learned Assistant Solicitor General of India, justified the respondent no. 5 to 19~~to~~ selection and appointment on the ground that Selection Guidelines and Rules had been duly followed by respondent nos. 1 to 4 in making the selection and appointment of the respondents and the grievance of petitioners-Diploma Holders regarding giving weightage of additional 10 marks to the Degree Holders was misconceived as the rules governing the selection would justify allocation of 10 marks for the higher qualification of the candidates possessing Degree in Engineering.

4. Having been set ex-parte, respondent nos. 5 to 19 have not responded to the writ petition.

5. I have considered the submissions of learned counsel for the parties and gone through the selection criterion which had been followed by the respondents while making selection of respondent nos. 5 to 19.

6. The short question which falls for consideration in this petition is as to whether or not the respondents had followed any selection criteria, and if so, was it justified for the selection and appointment of respondent nos. 5 to 19 ?.

7. Recruitment Rules for the post of Junior Engineer (Civil) and Junior Engineer (Electrical & Mechanical) were notified vide SRO 78 of 30<sup>th</sup> April, 2001. **The prescribed qualification for the post of Junior Engineers (Electrical and Mechanical), in terms of the Rules is Matriculation or equivalent with three years Diploma in Electrical or Mechanical or Automobile Engineer-**

ing from a recognized Institute/ University/ Board or equivalent.

Recruitment Guidelines issued vide Military Engineering Services, Engineer-in-Chief Branch No. A/14/DG/PERS/POL dated July 02, 2003, provide, *inter alia* as follows:-

3. Recruitment of JEs: It has been decided that a common written test will be made for the post of JE B/R, JE E/M and JE (QS&C). The CE comds will nominate CE Zones in their commands to appoint a Board of Officers to conduct this written test and carry out the recruitment process. The Board of Officers will be commended by CE Zone and approve by CE Comd. Paper for the written test will be provided to the concerned CE Zone one week in advance so that he can take out number of copies as required depending on the candidates who are to be examined in his Centre. The proposed date for this examination will be 31 Aug 2003. The CE Zones nominated by CE Comd to carry out this recruitment will be intimated to Directorate General (Personnel)/EI by 15 Jul 2003. The marking procedure/marketing system to be done by the BOO is given in attached Appx 3.

Annexure-1

**MARKS TO BE GIVEN IN THE RECRUITMENT TEST**

Sr. No.	Category	Total Marks	Basic qualification (as per rules)	Experience	Physical fitness	Interview	Written Test	Typing	Short hand	Practical
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01	JE (Civil)									
02	JE (E/M)	100	10*	10**	-	15	65			
03.	JE (QS&C)									

\*Basic Diploma 30 marks, Degree in Engg. In relevant filed 10 marks.

\*\*Experience: 02 Marks/Year, Maximum 10 Marks.

Experience should be in respective filed from reputed firm organization.

8. In terms of the Recruitment Guidelines, ten (10) marks have been earmarked for basic qualification, in terms of the rules, meaning thereby that merit of the eligible candidates had to be assessed on the basis of the percentage of marks obtained by them in Diploma in Electrical and Mechanical Engineering, which is the

basic qualification prescribed as such under the Recruitment Rules of 2001.

9. Explanation appended in Annexure-1, however, indicates that no marks were required to be given for basic Diploma whereas all candidates possessing Degree in Engineering in the relevant field had to be given 10 marks.

This explanation appearing in Annexure-1 to the guidelines is the bone of contention between the parties.

10. According to the petitioners, the explanation appearing in Annexure I of the Guidelines for selection nullifies the basic criterion prescribed in the first part of Annexure-1, in terms whereof 10 marks are earmarked for assessing merit of candidates on the basis of their merit in the basic qualification, whereas the contesting respondents supports the explanation saying that awarding of 10 marks to those possessing Degree in Engineering was justified because respondent nos. 5 to 19 were entitled to weightage at the selection on the basis of their higher qualification.

11. I do not find any justification in the explanation appearing in Annexure-1, to the Selection guidelines, in that, the explanation to the basic Criterion, according to the rules of interpretation cannot be read in such a fashion that it destroys the very spirit of the criterion itself, in terms whereof 10 marks had been earmarked for the basic qualification which in terms of the Rules is Diploma in Electric/Mechanical Engineering and not Degree in Engineering.

12. The explanation appearing in Annexure-1 providing for allocation of 10 marks to all those candidates possessing the

qualification of Degree in Engineering, is even otherwise irrational, in that, the criterion may not contemplate providing of full 10 marks to all the candidates possessing the qualification of Degree in Engineering, regardless of the percentage of marks obtained by each candidate in such examination. This is so because the basic criterion contemplates only maximum marks earmarked for assessment of merit of each candidate on the basis of his performance contemplated under various heads in the Annexure i.e. for the **BASIC QUALIFICATION, EXPERIENCE, PHYSICAL FITNESS, INTERVIEW, WRITTEN TEST ETC.**

13. This apart, the explanation treats Degree in Engineering in relevant field as basic qualification, which on the face of it is misconceived in view of the clear indication in the Recruitment Rules which prescribes Diploma in Electrical and Mechanical Engineering, as basic qualification for the post of JE (E/M).

14. Respondents have thus adopted irrational and unsustainable Criterion for making selection and consequent appointment of Junior Engineers (Electrical/Mechanical) relying upon the explanation to the Criterion for selection of Junior Engineers (E/M) appearing in Annexure-1 of the Selection guidelines, which has adversely affected the candidature of candidates like the petitioners possessing basic qualification of Diploma in Engineering.

15. For all what has been said above, the Explanation appearing in Annexure-1 of the Selection guidelines in so far as it provides for giving 0 mark to those candidates possessing Basic Diploma and 10 marks to those possessing Degree in Engineering in relevant

field, is found to be arbitrary and violative of Articles 14 and 16 of the Constitution of India.

16. This petition is, accordingly, allowed quashing the selection and appointment of respondent nos. 5 to 19 to the posts of Junior Engineer (Electrical/Mechanical) and respondent nos. 1 to 4 are, accordingly, directed to reassess the merit of the petitioners vis-à-vis the respondents assessing their merit for allocation of 10 marks on the basis of the merit obtained by them in Basic Diploma and thereafter consider appointment of those who are found entitled to selection and appointment as Junior Engineer (Electrical/Mechanical) under the rules governing their selection and appointment ignoring the explanation indicated with the Mark \*(star) in the Selection Guidelines (supra).

**( J. P. Singh)  
Judge**

**JAMMU:**  
**19.02.2009**  
*Anil Raina, Secy*