

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.331/2023

Sri Shuvam Majumder, S/O. Sri Babul Chandra Majumder, C/O. Sri Jatindra Chandra Sarkar, (aged about 27 years), Resident of Ramnagar Road No.10, P.O.-Ramnagar, P.S.-West Agartala, Sub-Division-Agartala, District-West Tripura, Pin-799002.

.....Petitioner(s).

V E R S U S

1. Oil and Natural Gas Corporation Limited, an Indian Central Public Sector Undertaking under the Ownership of Ministry of Petroleum and Natural Gas, Government of India, having its Headquarters at Green Hills, Tel Bhavan, Dehradun, Pin-248003 represented by its Chairman and CEO.

2. The General Manager (HR)-Incharge, Corporate Recruitment, ONGC, Green Hills, Tel Bhavan, Dehradun, Pin-248003.

3. The Manager (HR), ONGC, Tripura Asset, Badharghat Complex, Agartala, District-West Tripura, Pin-799014.

4. Sri Bidyut Sarkar, S/O. Manik Sarkar, Chittaranjan palli, Melaghar, Dist.-Sepahijala, Pin-799115.

.....Respondent(s).

For Petitioner(s) : Mr. Sankar Lodh, Advocate.

For Respondent(s) : Mr. S.M. Chakraborty, Sr. Advocate,
Mr. D.K. Biswas, Sr. Advocate,
Mr. Pradip Chakraborty, Advocate,
Mr. S.S. Debnath, Advocate,
Mr. Debarun Singh Kunwar, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment: **19th October, 2023.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Heard Mr. Sankar Lodh, learned counsel appearing for the petitioner. Also heard Mr. S.M. Chakraborty, learned senior counsel assisted by Mr. Pradip Chakraborty, learned counsel appearing for the respondents No.1 to

3/ONGC and Mr. D.K. Biswas, learned senior counsel assisted by Mr. S.S. Debnath, learned counsel appearing for the private respondent No.4.

2. The case of the petitioner is encapsulated in the order dated 12.09.2023 which is reproduced hereunder:

"It is the case of the petitioner that under advertisement No.2/2022 (R&P) [Annexure-3 to the writ petition] issued for recruitment of Non-Executives in ONGC, petitioner was eligible for the post of Junior Engineering Assistant (Electrical) under the category of posts at Column-C which required 3(three) years Diploma in Electrical Engineering with a valid certificate of competency as Electrical Supervisor. Annexure-1 is the Certificate of Diploma in Engineering issued in the year 2015 by the Tripura University and Annexure-2 is the Certificate of Proficiency issued by the National Apprenticeship Training Scheme, Ministry of Education, dated 09.09.2021 after the petitioner completed the Apprenticeship Training between the period from 01.09.2020 to 31.08.2021. The Selection Criteria at paragraph-O of the advertisement provides for preparation of final merit list based on the weightages assigned to various parameters, i.e. (i) Computer Based Test-85 marks; (ii) Academic Performance-10 marks; and (iii) Apprenticeship Certificate-05 marks, Total-100 marks.

Clause-(b) under paragraph-O provides as under:

"Candidates possessing a National Apprenticeship certificate issued by the NCVT in addition to a Trade Certificate or possessing a Certificate of Proficiency issued by the Ministry of HRD/Education in addition to a Diploma in Engineering shall be given additional 5 marks (wherever applicable). Candidates must note that they should possess the certificate in relevant trade issued by the respective Authority as on the last date of the online application to be eligible for award of marks for Apprenticeship Certificate."

Though petitioner was awarded 05 marks initially but later the same has been deleted upon review on a grievance raised by one of the candidates vide Annexure-J, communication dated 11.07.2023. After deletion of the 05 marks for Certificate of Proficiency obtained after graduation, petitioner has been held not entitled thereto in terms of paragraph-O(b) of advertisement No.02/2022 as per corrigendum at Annexure-K at page-87 of the counter affidavit which is the result for 2nd vacancy for the post of Junior Engineering Assistant (Electrical)-F1 Level (Conditional). In place of the petitioner against the 2nd vacancy, one Bidyut Sarkar from the General category having 70.35 marks has been offered appointment. Petitioner had got 71.10 marks as per the results published by the respondents-ONGC, HRD Section, Tripura Asset at Annexure-8. Petitioner belongs to the Scheduled Caste category.

Mr. Sankar Lodh, learned counsel for the petitioner, submits that the additional qualification of Degree in Engineering of the petitioner has not been prescribed as a disentitlement for counting of the 05 marks

for having obtained Certificate of Proficiency under the advertisement in any of the criteria. Petitioner fulfills the minimum eligibility criteria of Diploma in Engineering and also having the Certificate of Proficiency in his favour but on a misconstrued understanding of the provisions of the Selection Criteria under paragraph-O(b), the deletion of 05 marks has resulted in ousting the petitioner from the 2nd vacancy which is being filled up through another candidate having 70.35 marks from the General category.

Mr. S.M. Chakraborty, learned senior counsel assisted by Mr. Pradip Chakraborty, learned counsel for the respondents-ONGC, has referred to the criteria under the advertisement and submitted that the deletion of 05 marks have been made for the reason that petitioner has obtained the Certificate of Proficiency after graduation or obtaining Degree in Engineering whereas the eligibility criteria required a Diploma in Engineering with Certificate of Proficiency only.

Learned counsel for the petitioner seeks to implead the candidate namely Bidyut Sarkar who has been offered appointment as per Annexure-K in the writ petition. He is permitted to do so by making necessary addition in the array of parties by tomorrow.

Let notice be issued upon the newly added respondent No.4 under ordinary process and speed post, for which requisites be filed by Friday (15.09.2023).

The matter be listed on **13.10.2023**."

3. The moot question involved in the present writ petition is whether by virtue of Clause-(b) under paragraph-O of the advertisement a candidate like the petitioner possessing a Graduate Certificate of Proficiency obtained after completing the Degree in Engineering ought to be given additional 5 marks in terms of the weightages assigned to various parameters, i.e. (i) Computer Based Test-85 marks; (ii) Academic Performance-10 marks; and (iii) Apprenticeship Certificate-05 marks, Total-100 marks under the advertisement No.2/2022 issued for recruitment of Non-Executives in ONGC across India.

4. The official respondents in their counter affidavit have besides traversing other statements made by the writ petitioner categorically answered this contention at paragraphs-8.2 to 8.6 of the counter affidavit. According to them, though inadvertently 5 marks were allotted to the petitioner on having

submitted a certificate of proficiency obtained after completing the graduation course, i.e. (Graduate Apprentice) but on examination of the issue in the light of the clarification from the Corporate Recruitment Section, Dehradun, the doubt has been cleared by the Corporate Recruitment Section on 10.04.2023 that the essential qualification for F1 level engineering discipline is 3 years Diploma in Engineering. Therefore, the additional 5 marks for certificate of proficiency should be awarded only if it was obtained after Diploma. Petitioner and the private respondent are both claimants to the second vacancy under the advertisement for the post of Junior Engineering Assistant (Electrical).

5. It is the case of the respondent No.4 as also borne from its counter affidavit that the terms of the advertisement specifically Clause-O(b) categorically prescribe 5 marks for a certificate of proficiency obtained after diploma and not after Degree in Engineering. Respondent No.4 though had obtained the certificate of proficiency as a Graduate after the Degree of Engineering but being conscious of the prescription under Clause-O(b) of the advertisement did not submit the Graduate certificate of proficiency for the purposes of computation of weightage in order to compete. As such, the respondent No.4 obtained 70.35 marks only and was at the third position. On this point, the respondent-ONGC obtained the opinion of the Corporate Recruitment Section, Dehradun and thereafter rectified the error of awarding 5 marks for the Graduate certificate of proficiency to the petitioner. As a result, petitioner's total marks came down to 66.10. That is why, respondent No.4 has been offered appointment letter by the employer.

6. Upon consideration of the pleadings on record, it appears that the petitioner has set up his case relying upon the same Clause-O(b) of the advertisement which is extracted hereunder once again:

"Candidates possessing a National Apprenticeship certificate issued by the NCVT in addition to a Trade Certificate or possessing a Certificate of Proficiency issued by the Ministry of HRD/Education in addition to a Diploma in Engineering shall be given additional 5 marks (wherever applicable). Candidates must note that they should possess the certificate in relevant trade issued by the respective Authority as on the last date of the online application to be eligible for award of marks for Apprenticeship Certificate."

7. For the purposes of the instant case, the relevant clause would read in the manner that candidates possessing a certificate of proficiency issued by the Ministry of HRD/Education in addition to a Diploma in Engineering shall be given additional 5 marks. The expression is couched in an affirmative manner indicating the intention of the employer to award additional 5 marks if the certificate of proficiency is in addition to Diploma in Engineering and not Degree in Engineering. The rationale behind such a condition appears to be that the recruitment is to be done for the post of Junior Engineering Assistant (Electrical), F1 level for which the minimum qualification is Diploma in Engineering.

8. Mr. Sankar Lodh, learned counsel for the petitioner, has accorded an interpretation of Clause-O(b) in a manner that the employer does not specify the category of National Apprenticeship Certificate issued by the NCVT in the three categories, i.e. Graduate Apprentice, Technician Apprentice and Technician (Vocational) Apprentice. As such, if a National Apprenticeship Certificate or a certificate of proficiency *per se* is submitted by a candidate like the petitioner, his certificate of proficiency cannot be excluded only for the

reason that it is a Graduate Certificate of Proficiency obtained after Degree in Engineering for the purposes of giving additional 5 marks.

9. I have given considerable thought to the rival submission of the parties and the interpretation of the relevant Clause-O(b) which is the main bone of contention in the instant case. On a plain reading of Clause-O(b) as observed hereinabove, it appears that the employer has insisted upon a certificate of proficiency or a National Apprenticeship Certificate which is in addition to a Diploma in Engineering for providing additional 5 marks keeping into mind that the recruitment is to be held for the post of Junior Engineering Assistant (Electrical) of F1 level and not a superior level of post like an Assistant Engineer (Electrical) or an Executive Engineer (Electrical) where the qualification would be Degree in Engineering. The instant recruitment is for a much junior post and though higher qualifications are not excluded like Degree in Engineering and a Graduate certificate of proficiency obtained after Degree in Engineering but the employer in its wisdom has restricted the allocation of additional 5 marks to a candidate who fulfills the minimum eligibility criteria for such post, i.e. Diploma in Engineering and a certificate of proficiency obtained after Diploma in Engineering which is nomenclatured as Technician Certificate of Proficiency. It is also evident from Annexure-2 which is the Certificate of Proficiency submitted by the petitioner that he was a Graduate Apprentice having undergone Apprenticeship Training under the Apprentices Act, 1961 and not a Technician Apprentice who has undergone Apprenticeship Training after a Diploma in Engineering. If looked at from this angle, the distinction is quite obvious.

10. It is beyond cavil that laying down of terms and conditions for recruitment to a post lies in the domain of the employer. Unless the terms and conditions are palpably irrational and arbitrary, Courts are loathe in interfering in the terms of the advertisement. In the present case, the relevant Clause-O(b) of the advertisement is not in question. It is also apparent from the counter affidavit of the respondents-ONGC that merely on the representation of the private respondent, the 5 marks earlier allotted to the petitioner on this criteria have not been deducted. The concerned wing of the ONGC has obtained the opinion of the Corporate Recruitment Section at Dehradun and since the recruitment exercise was PAN India covering about 900 posts, the recruiting cell has advised a uniform yardstick for award of additional 5 marks to candidates who possess a Technician certificate of proficiency obtained after Diploma in Engineering and not any other qualifications such as, Graduate certificate of proficiency which is obtained after Degree in Engineering. If a contrary view is taken on the interpretation of Clause-O(b), it is likely that the entire recruitment exercise conducted on a uniform yardstick of allocation of additional 5 marks for having a certificate of proficiency obtained after Diploma in Engineering would be upset. It is not a case where any candidate who has submitted the Graduate certificate of proficiency has been allotted additional 5 marks under Clause-O(b) whereas the petitioner has been discriminated.

11. Having considered the entire gamut of facts, the relevant provisions of the advertisement in question and the submissions of the parties, this Court is of the firm view that the relevant condition O(b) of the advertisement postulated allotment of additional 5 marks only if a candidate

possesses a certificate of proficiency obtained in addition to Diploma in Engineering or nomenclatured as Technician certificate of proficiency. A candidate not having this additional qualification is not ousted from the zone of consideration but allocation of additional marks has been conditioned only upon possession of this additional qualification of certificate of proficiency after Diploma in Engineering.

12. Having held so, this Court does not find any merit in the writ petition. Accordingly, it is dismissed.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

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