

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 2816 of 2021

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CHAUHAN MAHMADRAFIK ABDUL LATIF
Versus

OIL AND NATURAL GAS CORPORATION LIMITED THROUGH
AUTHORIZED PERSON

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Appearance:

MR SAMIR B GOGDA(11306) for the Petitioner(s) No. 1

MS RAJVI N PATEL(9620) for the Petitioner(s) No. 1

MR DEVANG VYAS for MR RITURAJ M MEENA(3224) for the Respondent(s)
No. 1,2

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CORAM: HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 11/03/2022

ORAL ORDER

1. Heard learned Advocate Ms. Rajvi N. Patel on behalf of the petitioner and learned Senior Advocate Mr. Devang Vyas for learned Advocate Mr. Rituraj M. Meena on behalf of the respondent no. 1 and 2.

2. Rule returnable forthwith. Learned Advocate Mr. Rituraj M. Meena would waive service of rule for respondent no. 1 and 2.

3. With consent of the parties, the petition is taken up for the final hearing.

4. By way of this petition, the petitioner *inter alia* challenges his non-selection by the respondents to the post of Junior Motor Vehicle Driver

(Winch Operations) advertised by the respondents vide advertisement No. 01/2019. The petitioner as an Ex-Servicemen, as per important note for the candidates, as found in the Advertisement and more particularly, at Clause-22 was required to submit a valid Equivalency Certificate and at Clause-25 was required to submit a valid Discharge Certificate.

5. It appears that while the petitioner had submitted a valid Equivalency Certificate, according to the respondents, the equivalence was not found in the Discharge Certificate, uploaded by the petitioner, resulting in the non-consideration of the petitioner for the post-in-question.

6. Learned Advocate Ms. Patel on behalf of the petitioner would submit that as such the only ground of rejection, is that at the relevant point of time in the Discharge Certificate at Clause-52 which was with regard to the proficiency in Motor driving, more particularly, whether the person concerned held a civil driving license or badge. Furthermore, as regards the type of civil vehicle has been driven, in the portion with regard to the heavy vehicle, there was no endorsement by the Discharging Authority whereas there was a specific endorsement by the Discharging Authority at the light vehicle and motor cycle part where the Discharging Authority has mentioned 'yes'. Learned Advocate Ms. Patel would submit that while the alleged discrepancy had been brought to the notice of the

petitioner at the stage of physical verification of documents on 20.01.2021, the petitioner, immediately, had the aspect clarified by the concerned authority of the Indian Army and a rectified copy of the Discharge Service Book has been submitted to the respondents on the 27.01.2020 within 7 days.

6.1. Learned Advocate Ms. Patel would submit that the petitioner having submitted a valid Discharge Certificate and the valid Equivalency Certificate and though not required, yet the Discharge Certificate was looked into for the purpose of equivalence, and some discrepancy had been found, even the same had been rectified within a short period of 7 days. Learned Advocate Ms. Patel would submit that under such circumstances, the respondents were under an obligation to have considered the candidature of the petitioner for selection and subsequent appointment to the post in question. Learned Advocate Ms. Patel would, therefore, submit that appropriate orders may be issued against the respondents by this Court.

7. This petition is vehemently resisted by learned Senior Advocate Mr. Devang Vyas on behalf of the respondents. Learned Senior Advocate Mr. Vyas would draw the attention of this Court to the instructions referred to herein above and would submit that as per the requirement of instruction no. 25, the Ex-Servicemen candidate was required to produce a valid

Discharge Certificate and whereas while the petitioner had uploaded a Discharge Certificate, at the time of document verification, it had come to the notice of the concerned authorities that the equivalence with regard to the trade for which the petitioner had applied was not properly mentioned in the Discharge Certificate and therefore, the candidature of the petitioner had been rejected.

7.1. Learned Senior Advocate Mr. Vyas would submit that while the petitioner had submitted a document being an Equivalency Certificate issued by the competent authority, the same was required to be cross verified with the Discharge Certificate and since the Discharge Certificate did not mention the proficiency of the petitioner with regard to a heavy vehicle, the candidature of the petitioner had been rejected. Learned Senior Advocate Mr. Vyas would submit that since the respondents had acted in consonance with the instructions in the advertisement, and since it is an admitted position even according to the petitioner that there was some discrepancy in the Discharge Certificate, therefore, no fault could have been found with the respondents in non-selecting the present petitioner.

8. Heard learned Advocates for the respective parties who have not submitted anything further.

9. For the purpose of deciding this petition, the notes for the candidates in the advertisement, more particularly, note no. 22 and note no. 25 being the relevant notes, they are quoted herein below for the benefit:

“(22) Candidates who are Ex-Servicemen and whose experience of service in the Armed forces has been equated by the Government of India with an induction level qualification prescribed in this advertisement, then the said experience shall be acceptable as an induction level qualification for the said posts in this recruitment. The Ex-Servicemen candidate shall however have to produce an equivalency certificate stating that their qualification has been equated with the prescribed qualification in this advertisement falling which their candidature will not be considered.”

“(25) Ex-Servicemen candidates have to produce a valid Discharge Certificate at the time of Skill Tests/ Uploading of documents.”

10. A perusal of the instructions would reveal that the Ex-Servicemen candidates are required to give a valid Equivalency Certificate which would show the experience of the concerned Ex-Servicemen in the Armed Forces as having been equated by the Government of India with an induction level certificate prescribed in the Advertisement concerned. It is emphasized at instruction no. 22 that the Ex- Servicemen candidate shall have to produce an Equivalency Certificate stating that the qualification has been equated with the prescribed qualification in this

advertisement failing which the candidature will not be considered. Instruction no. 25 reads that the Ex-Servicemen candidate will have to produce a valid Discharge Certificate at the time of skill test/ uploading of documents.

10.1. The petitioner has relied upon a Certificate dated 31.10.2018 issued by the officer-in-charge Demob Battery/ Artillery Depot Regime Nasik Road Camp of the Indian Army. The Certificate *inter alia* reads that the trade of the petitioner as a driver in the Indian Army is equivalent to civil trade of driver of a bus/truck. The Certificate also states that the equivalence is as per the terms of the Government of India letter dated 04.03.2013 of the Ministry of Labour and Employment and furthermore, it states that the equivalence is as per the National Council of Training in Vocational Trades (NCTVT)/ National Apprentice Certificate (NAC).

11. In the considered opinion of this Court, the certificate which has been submitted by the petitioner was the required and relevant certificate for considering the equivalency of the trade which the petitioner was proficient in in the Indian Army. Insofar as the submissions of the respondent no. 2, it does appear that the respondent no. 2 is questioning either the veracity of the certificate or questioning the equivalence which is mentioned in the certificate. The objection as noted by this Court is that in the Discharge Certificate in the Column no. 52 which also states with

regard to the proficiency, as far as the portion of heavy vehicle is concerned in the original certificate, there was no endorsement and in the later certificate, rectified by the concerned authorities, there is an endorsement of yes as far as the heavy vehicle is concerned.

12. In this regard it would required to be noted that instruction no. 22 and instruction no. 25 both operate in different spheres. To this Court it clearly appears that the equivalence of the qualification is to be looked as per the Equivalency Certificate as required by the respondents and as issued by the competent authority of the Indian Army. Once an Equivalency Certificate is submitted by the petitioner and the same had been accepted by the respondents, in the considered opinion of this Court, in sofar as the qualification criteria is considered the matter ended there. Insofar as the instruction no. 25 is concerned, the same was with regard to produce a valid Discharge Certificate and in the considered opinion of this Court, the validity of the Discharge Certificate was in context of whether the person concerned had been validly discharged from the Armed Forces or not, the said aspect could have been looked into or verified by the respondents. Instruction no. 25 does not state that the Discharge Certificate could have been looked into by the respondents for the purpose of verifying whether the equivalence which was being agitated by the petitioner was valid or not. Such a requirement or such a

power to the respondent is not found in instruction no. 25.

13. In the considered opinion of this Court the respondent authorities ought not to have considered the Discharge Certificate for the purpose of finding out whether the proficiency of the petitioner in driving a heavy vehicle was mentioned in the Discharge Certificate since such power and such requirement is not found in the instructions. Once an Equivalency Certificate had been produced by the candidate and veracity of the same having not been doubted, the respondent authorities were only required to look into whether the Discharge Certificate was valid or not. Once the valid Discharge Certificate is produced by the petitioner, the respondents could not have looked into or gone behind the instructions and looked into Discharge Certificate to find out whether the equivalence is mentioned in the Discharge Certificate or not. In any case in the considered opinion of this Court, the Discharge Certificate having been issued by the Indian Armed Forces and if there was any discrepancy, since the respondent authorities also being an organization under the Government of India, more particularly, having regard to the noble object for which a reservation had been kept in the advertisement itself for Ex-Servicemen i.e. to provide a means of livelihood for persons retiring from the Armed Forces, commensurate with their qualification and experience, the aspect of the discrepancy ought to have been sought to be clarified by

the respondents from the Armed Forces. In any case it appears that within a period of 7 days, the petitioner himself had the said aspect clarified.

14. In this view of the matter in the considered opinion of this Court, the respondents had grossly erred in considering the Discharge Certificate to oust the petitioner from the selection process, more particularly, the requirement of equivalence being looked into by the respondents in the Discharge Certificate which was not within the purview of the respondents as per the advertisement itself. Under such circumstances, more particularly, since the respondents as noted herein above being a Public Sector Undertaking under the Government of India, not taking a fair stand and trying to defend the action on their part, this Court is constrained to hold prima facie that the rejection of the petitioner is not an accident but by design. Under Such circumstances, let a copy of this order be sent to the highest authorities of the respondent organization who could consider whether any appropriate action is required to find out whether the deliberateness was bonafide or not which aspect is not before this Court.

15. In this view of the matter, the present petition stands allowed. The respondents are directed to reconsider the candidature of the petitioner for the post in question without looking in to the validity of the equivalence

as per the Discharge Certificate and if the petitioner is found qualified otherwise, the respondents shall forthwith appoint him that the date of appointment of the petitioner shall correspond to a date on which the other candidates have been appointed to the post in question or to an equivalent post as per the advertisement and whereas while the petitioner shall not be entitled to any arrears but the petitioner shall be entitled to salary as being paid to the other candidates who were appointed with regard to the selection in question for the post in question or for equivalent post. Since it prima facie appears that the exclusion of the petitioner was not by an accident and further, in any case, the respondent organization, more particularly, being a Public Sector Undertaking under the Government of India was required to act fairly, more particularly, while considering the candidature of an Ex-Servicemen candidate, which the respondents have not done, hence this is a fit case for imposition of costs. Thus, costs quantified at Rs. 50,000/- (fifty thousand) is also directed to be paid by the respondents to the present petitioner. With this directions the petition stands allowed. Rule is made absolute.

Mrs. J. J. Kedia

(NIKHIL S. KARIEL,J)