

(2012) 01 DEL CK 0128

Delhi High Court

Case No: Writ Petition (C) 341 of 2011

The Joint Secretary  
(TRG) and Chief  
Administrative Officer  
Ministry of Defence

APPELLANT

Vs

N. Srikumar and  
Others

RESPONDENT

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Date of Decision: Jan. 19, 2012

Citation: (2012) 5 AD 85 : (2012) 192 DLT 113

Hon'ble Judges: V.K. Jain, J; Badar Durrez Ahmed, J

Bench: Division Bench

Advocate: R.N. Singh, for the Appellant; Santosh Kumar for Respondent No. 1, Mr. Naresh Kaushik and Ms. Aditi Gupta, for the Respondent

Final Decision: Dismissed

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### Judgement

V.K. Jain, J.

This appeal is directed against the order of Central Administrative Tribunal, (Principal Bench) dated 05th March, 2010 passed in OA No. 579/2009, whereby the appointment of respondent No. 3 A. Krishnamoorthy as Deputy Director in Armed Forces Film and Photo Division was declared null and void and the official respondents in the OA were directed to constitute a review DPC and consider N. Srikumar, respondent No.1 before this Court (applicant in the OA), for promotion to the aforesaid post.

2. The requisite qualifications prescribed in the Recruitment Rules for the post of Deputy Director are as under:

Essential:

(i) (a) Degree or Diploma in film direction from a recognized Institution or equivalent.

(b) 7 years professional experience in film production as Film Director.

Or

(a) Degree or Diploma in Cinematography from a recognized Institution or equivalent.

(b) 8 years professional experience in Film Production including at least 6 years experience as Film Director.

Or

(a) Degree of a recognized University or equivalent

(b) 8 years experience in Film Direction

(ii) Experience in the production of training films or documentaries.

Note 1:- Qualifications are relaxable at the direction of the Union Public Service Commission, the Union Public Service Commission is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them.

Desirable

(i) Knowledge of Indian History and Culture and

(ii) Administrative experience:

3. Shri A. Krishnamoorthy, respondent No. 3 in the OA was initially appointed as Assistant Director in September, 1995, whereas N. Srikumar, applicant in OA, was initially appointed as a Photographic Officer in October, 1992 and was later promoted as Assistant Director in April, 1997. Respondent No. 3, therefore, was senior to Shri N. Srikumar, in the feeder post of Assistant Director. The applicant in the OA, possessed Diploma in Cinematography, whereas Shri A. Krishnamoorthy possessed Diploma in Film Technology (Film Processing).

4. N. Srikumar, applicant in OA No. 579/2009 first filed OA No. 643/2007, challenging the promotion of A. Krishnamoorthy as Deputy Director on the ground that he did not possess the essential qualifications prescribed in Recruitment Rules for the aforesaid post. Vide order dated 24th September, 2007 passed in OA No. 643/2007, the Tribunal directed the official respondents to refer the educational qualifications of Shri A. Krishnamoorthy to the Institute which had awarded the Diploma to him, to ascertain whether cinematography was part of his Diploma in technology or not and take appropriate decision on the basis of the outcome of the aforesaid reference. Since the official respondents, after seeking qualification from the Institute which had awarded Diploma to A. Krishnamoorthy, decided to uphold his eligibility qualification, Review Application No. 223/2007 was filed by the applicant before the Tribunal. Vide order dated 11th July, 2008, the Tribunal, while disposing of the

Review Application, directed the official respondents to pass a speaking order in the matter. Vide detailed order dated 12th December, 2008, the official respondents inter alia decided as under:

The minimum educational qualifications required for the post of Deputy Director is Degree or Diploma in Film Direction or equivalent / Degree or Diploma in Cinematography from a recognized Institution or equivalent / Degree from any University. A cumulative reading of the essential educational qualifications as laid down in the statutory rules reveals that emphasis on technical education of a specific nature is not invariably essential as the SRO allows Degree in any subject with certain work experience as fulfilling the requirement. Importantly, Shri A Krishnamoorthy has passed a Paper in Film Direction and also a Paper in Cinematography as a part of his Diploma in Film Technology. Therefore, the individual acquired adequate knowledge and skill of Film Direction as well as Cinematography in his Diploma. When the SRO lays down that educational qualification in any subject meets the requirement of eligibility, it also effectively widens the context and scope of technical qualification. Seen in this wider context, Diploma in Film Technology is one of the streams that is integral to Film Production and in no case can be seen to be removed from that of other streams like Film Direction etc. The individual's educational qualifications are seen in this context and are accordingly held to be satisfactory.

The order dated 12.12.2008 was challenged in OA No.579/2009 which came to be allowed on 5.3.2010.

5. We would like to note at the very outset that Shri A. Krishnamoorthy, whose promotion has been quashed by the Tribunal, did not appear before the Tribunal to contest the OA nor has he put appearance in this Court, despite service of notice on him. The beneficiary of the order dated 12.12.2008, therefore, has chosen to accept the order passed by the Tribunal on 5.3.2010.

6. A perusal of the Recruitment Rules for the post of Deputy Director would show that in order to be eligible for being considered for promotion to the aforesaid post, the applicant needs to possess a degree or diploma in film direction or equivalent or degree or diploma in cinematography or equivalent or degree of a recognized University or equivalent. If he has a degree or diploma in film direction, he has to have minimum 07 years' professional experience in film production as film director, in case, he has degree or diploma in cinematography, he needs to have 08 years' professional experience in film production, out of which, at least 06 years should be as film director. If he holds degree of a recognized University, he needs to have 08 years' experience in film direction. The applicant also needs to have experience in production of training films or documentaries. Unless a person fulfills one of the three prescribed educational/professional qualifications, he cannot be considered for promotion to the post of Deputy Director. Admittedly, Shri A. Krishnamoorthy does not possess a Degree or Diploma in Film Direction or Degree or Diploma in

Cinematography or degree of a recognized University. Respondent No.1 Shri N. Srikumar on the other hand admittedly, holds diploma in cinematography from a recognized Institute. The qualification, on the strength of which Shri A. Krishnamoorthy has been promoted as Deputy Director is Diploma in Film Technology and TV Production (Film Processing) awarded to him by State Board of Technical Education and Training, Tamilnadu in July, 1990, whereas Shri N. Srikumar was awarded Diploma in Film Technology (Cinematography) awarded by the same Board in April, 1983. The question which arises for consideration is whether Diploma in Film Technology and TV Production (Film Processing) can be considered to be equivalent to a Diploma in Film Technology (Cinematography). Vide its communication dated 26.2.2007 Directorate of Technical Education, Chennai stated that the aforesaid diplomas are specialized in nature and there is no discretion to compare one diploma with the other diploma. Vide letter dated 13.11.2007, the Principal of MGR Government Film & Television Institute, Chennai which appears to be the Institute which awarded the diploma to Shri A. Krishnamoorthy, informed the petitioner before this Court, inter alia stated as under:

He has not studied specialization in Cinematography. However, as part of curriculum for Diploma in Film Technology (Film Processing) students have also studied and undergone training in (1) Evolution of Indian Cinema Progress of the Film Media in India, (2) Indian Culture and Film Appreciation, (3) Elements of Screenplay Writing, Direction and Editing, (4) Elements of Film Production and Exhibition and (5) Orientation Course in Cinematography, Sound Recording and Sound Engineering and Film Processing.

7. It would thus be seen that Shri A. Krishnamoorthy did not pursue specialization in Cinematography though he was given orientation course in a number of subjects including cinematography. Neither the Principal of the Institute at Chennai which awarded Diploma to Shri A. Krishnamoorthy nor the Directorate of Technical Education, Chennai has certified that Diploma in Film Technology and TV Production (Film Processing) which Shri A. Krishnamoorthy possesses is equivalent to a Diploma in Film Direction or Diploma in Cinematography. In fact, no expert body or Institution has certified the Diploma in Film Technology and TV Production (Film Processing) to be equivalent to a Diploma in Film Technology (Cinematography). There is nothing on record to indicate that the order dated 12.12.2008 holding Shri A. Krishnamoorthy eligible for promotion to the post of Deputy Director has been passed by or in consultation with an expert body. Therefore, the Court does not have any expert opinion before it to show that the diploma which Shri A. Krishnamoorthy possesses is equivalent to Diploma in Film Technology (Cinematography). A perusal of order dated 12.12.2008 passed by the petitioner before this Court would show that Shri A. Krishnamoorthy has been held to be eligible on the assumption that since degree in any subject with certain work experience also fulfills the requirement, the educational qualifications of Shri A. Krishnamoorthy are to be seen in this context and since he had passed a paper in

film direction and also a paper in cinematography as a part of Diploma in Film Technology, he acquired adequate knowledge and skill of film direction as well as cinematography in his diploma. The approach adopted by the petitioner in declaring Shri A. Krishnamoorthy eligible for promotion to the post of Deputy Director, in our view, is wholly erroneous. The applicant, in order to be eligible for promotion, must necessarily possess a Diploma in Film Technology (Cinematography) or its equivalent or Diploma in Film Direction or its equivalent along with experience prescribed in the Recruitment Rules or he should hold a degree of a recognized University with 08 years" experience in Film Direction. The Recruitment Rules clearly indicate that if the person seeking promotion to the post of Deputy Director does not hold Degree but holds a Diploma, it necessarily has to be a specialized Diploma either in Film Direction or in Cinematography or a diploma equivalent to either of them. It is not in dispute that all the subjects prescribed in the syllabus for Diploma in Film Technology (Cinematography) are not common to the subject prescribed in the syllabus for Diploma in Film Technology and TV Production (Film Processing). A Diploma in Film Technology and TV Production (Film Processing) in our view cannot be said to be equivalent to Diploma in Film Technology (Cinematography) only because those who pursue a Diploma in Film Technology and TV Production (Film Processing) have also to undergo some orientation training in Cinematography as a part of their course requirements. Similarly, Diploma in Film Technology and TV Production (Film Processing) cannot be said to be equivalent to Diploma in Direction merely because Elements of Screenplay Writing, Direction and Editing constituted one of the subjects forming part of the curriculum for Diploma in Film Technology and TV Production (Film Processing). In fact, the letter dated 13.11.2007 written by Principal of MGR Government Film and Television Institute, Chennai to the petitioner clearly shows that Shri A. Krishnamoorthy did not study specialization in Cinematography though as a part of his curriculum for Diploma in Film Technology and TV Production (Film Processing) he had studied and undergone training in orientation course in Cinematography and Elements of Screenplay Writing, Direction and Editing. To take an example, if a person studies Economics as one of the subjects while pursuing BA (Pass) Course, he, in our view, cannot be said to be equivalent to a person holding a Graduate Degree in Economics (Hons.), merely because he has studied Economics as one of his subjects as a part of the curriculum of B.A.(Pass) Course. We, therefore, have no hesitation in concurring with the Tribunal, in holding that respondent No.3 Shri A. Krishnamoorthy was not eligible for promotion to the post of Deputy Director.

8. The learned Counsel for the petitioner has placed reliance on [O.P. Lather and Others etc. Vs. Satish Kumar Kakkar and Others](#), and [State of Rajasthan and Others Vs. Lata Arun](#), . In the case of O.P. Lather (supra), the qualifications prescribed for promotion was Degree or Diploma in Electrical Engineering from a recognized University or its equivalent. The appellants as well as the respondents in that case had passed Diploma in Electrical Engineering from an Institution affiliated to the

State Board of Technical Education, Haryana which was not a recognized University. By an executive order dated 7.10.1999, the State Government clarified that three years' Diploma in Electrical Engineering, awarded by the State Board of Technical Education, Haryana, would be treated as equivalent to Diploma in Electrical Engineering from a recognized University. The clarification was necessitated by the fact that no University situated in the State of Haryana awarded Diploma in Electrical Engineering. It was held that since the rules also state that equivalent qualifications also would be considered, there was nothing wrong in the Appointing Authority issuing a clarification as to what would be the equivalent qualification for the purpose of appointments. It was, further, observed that when the Universities did not offer the Diplomas prescribed under the Rule, the Rule itself becomes meaningless and nugatory. It was noted that under the Rules, the candidates were asked to produce a certificate which was neither in existence nor awarded and that is why the Government had to issue a requisite clarification which was only supplementary to the Rules already framed by it under the proviso to Article 309 of the Constitution of India. The Court was of the view that the clarification therefore, did not have the effect of altering the Rules nor was it inconsistent therewith. It was also noted that Rules 17 & 18 also gave powers to the Government to relax the Rules. In the case before this Court, the Appointing Authority/Rule Making Authority has not issued any clarification of a general nature declaring that Diploma in Film Technology and TV Production (Film Processing) would be treated as equivalent to Diploma in Film Technology (Cinematography). This is also not the case of the petitioner that Diploma in Film Technology (Cinematography) is not awarded by any Institute. Respondent No.1, in fact, does possess this Diploma. No relaxation has been granted to Shri A. Krishnamoorthy, by the authority competent to grant relaxation in terms of Note 1 to the Rule. This judgment, therefore, does not advance the case of the petitioner in any manner.

In the case of Lata Arun (*supra*), the question before the Court was whether the respondent had the eligibility qualification for admission in General Nursing and Midwifery and Staff Nurse Course, the minimum educational qualification for which was 12th class-pass or its equivalent. The respondent possessed a Madhyama Certificate issued by Hindi Sahitya Sammelan Allahabad, which was previously recognized as equivalent to a degree but the recognition was later withdrawn. On detecting that the respondent did not have the educational qualification prescribed for the course, her admission was cancelled. She filed a Writ Petition seeking direction to the Authorities to allow her to pursue the course which she had joined and sit in examination. A learned Single Judge of the High Court disposed of the Writ Petition by leaving it for the Nursing Council to decide whether a candidate possessing Madhyama Degree should be admitted to the course or not. The Nursing Council considered the matter and decided that the respondent was not eligible for admission since she did not possess the requisite educational qualification. The decision was challenged by her by filing a Writ Petition. The High Court directed the

authorities to declare the result of the examination in which she had appeared under order of the High Court. Allowing the appeal filed by State of Rajasthan, Supreme Court *inter alia* observed as under:

xxx It is not for courts to determine whether a particular educational qualification possessed by a candidate should or should not be recognized as equivalent to the prescribed qualification in the case. That is not to say that such matters are not justifiable. In an appropriate case the court can examine whether the policy decision or the administrative order dealing with the matter is based on a fair, rational and reasonable ground; whether the decision has been taken on consideration of relevant aspects of the matter; whether exercise of the power is obtained with mala fide intention; whether the decision serves the purpose of giving proper training to the candidates admitted or it is based on irrelevant and irrational considerations or intended to benefit an individual or a group of candidates.

In the case before this Court, no policy decision has been taken by the petitioner to treat those possessing Diploma in Film Technology & TV Production (Film Processing) equivalent to those possessing Diploma in Film Technology (Cinematography) or to treat Diploma in Film Technology & TV Production (Film Processing) as one of the prescribed educational qualifications for promotion to the post of Deputy Director. In our view, the decision taken by the petitioner on 12.8.2008, which is a decision taken in the case of an individual, pursuant to the order passed by the Tribunal and is not a decision for general application, is not based on reasons which can be said to be rational or reasonable and the attempt seems to be to give benefit to an individual who was otherwise not eligible for promotion to the post.

9. For the reasons given in the preceding paragraphs, we find no merit in the Writ Petition and the same is hereby dismissed without any orders as to costs.