

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
NAGPUR BENCH, NAGPUR**

**ORIGINAL APPLICATION NOS 616, 622 & 623/2007**

**ORIGINAL APPLICATION NO 616 OF 2007**

**DISTRICT : NAGPUR**

Shri Vilas S/o Sudhakar Moray, )  
Aged about 50 years, Occ. Service )  
R/o 206, Niyogi Bhavan )  
Abhyankar Road, )  
Nagpur. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Department of Industries, )  
Energy & Labour, )  
Mantralaya, Mumbai – 32. )  
through its Secretary )
2. The Director, )  
Industrial Safety and Health )  
Department, 5<sup>th</sup> floor, )  
Commerce Centre, Tardeo )  
Mumbai-34. )

3. Maharashtra Public Service )  
 Commission, Bank of India )  
 Building, M.G. Road, Mumbai )  
 Through its Secretary )
4. Advocate General of )  
 Maharashtra, High Court )  
 Premises, Fort, Mumbai )
5. Mohan S/o Narasayya  
 Gadappa, aged about 50 Yrs. )  
 Occ. Service, R/o Flat no.502, )  
 Charkop Minakshi C.H.S. Ltd. )  
 Plot No.111,RDP-7, Sector-6, )  
 Charkop, Kandiwali (W), )  
 Mumbai- 400 067. )...**Respondents**

Shri S.M Khan, holding for Shri P.C Marpakwar, learned advocate for the Applicant.

Smt M.A Barabde, learned Presenting Officer for the Respondents 1 to 4.

None for resp.no.5.

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**WITH**

**ORIGINAL APPLICATION NO 622 OF 2007**

**DISTRICT : NAGPUR**

Dhananjay Keshavrao Jamdar )  
 Aged 42 years, Occ. Service )

Resident of Khamla Road, )  
Nagpur. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Department of Industries, )  
Energy & Labour, )  
Mantralaya, Mumbai – 32. )  
through its Secretary )
2. The Director, )  
Industrial Safety and Health )  
Department, 5<sup>th</sup> floor, )  
Commerce Centre, Tardeo )  
Mumbai-34. )
3. Maharashtra Public Service )  
Commission, Bank of India )  
Building, M.G. Road, Mumbai )  
Through its Secretary )
4. Mohan S/o Narasayya )  
Gadappa, aged about 50 Yrs. )  
Occ. Service, R/o Flat no.502, )  
Charkop Minakshi C.H.S. Ltd. )  
Plot No.111,RDP-7, Sector-6, )  
Charkop, Kandiwali (W), )  
Mumbai- 400 067. )...**Respondents**

None for the Applicant.

Shri V.A Kulkarni, learned Presenting Officer for the Respondents 1 to 3.

None for resp.no.4.

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**WITH**

**ORIGINAL APPLICATION NO 623 OF 2007**

**DISTRICT : CHANDRAPUR**

Vinod Vitthalrao Andulkar )  
 Aged 49 years, Occ. Service, )  
 Resident of Tukum,  
 Chandrapur. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
 Department of Industries, )  
 Energy & Labour, )  
 Ministry of Labour, )  
 Mantralaya, Mumbai – 32. )  
 through its Principal Secretary )
2. The Director, )  
 Industrial Safety and Health )  
 Department, 5<sup>th</sup> floor, )  
 Commerce Centre, Tardeo )  
 Mumbai-34. )
3. Maharashtra Public Service )

Commission, Bank of India )  
Building, M.G. Road, Mumbai )  
Through its Secretary )  
4. Mohan S/o Narasayya )  
Gadappa, aged about 50 Yrs. )  
Occ. Service, R/o Flat no.502, )  
Charkop Minakshi C.H.S. Ltd. )  
Plot No.111,RDP-7, Sector-6, )  
Charkop, Kandiwali (W), )  
Mumbai- 400 067. )...**Respondents**

None for the Applicant.

Shri A.M Khadatkar, learned Presenting Officer for the Respondents 1 to 3.

None for resp.no.4.

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**CORAM : Shri Rajiv Agarwal (Vice-Chairman) (A)**  
**Shri J.D Kulkarni (Vice-Chairman) (J)**

**DATE : 06.07.2017**

**PER : Shri Rajiv Agarwal (Vice-Chairman)**

**ORDER**

1. Heard Shri S.M Khan, holding for Shri P.C Marpakwar, learned advocate for the Applicant in O.A 616/2007, none for the Applicants in O.A 622 &

623/2007, Mrs M.A Barabde, learned Presenting Officer for Respondents no 1 to 4 in O.A 616/2007, Shri V.A Kulkarni, learned Presenting Officer for Respondents no 1 to 3 in O.A 622/2007 and Shri A.MKhadatkar, learned Presenting Officer for Respondents no 1 to 3 in O.A no 623/2007. None for Respondent no. 5 in O.A 616/2007 and Respondent no. 4 in O.A nos 622 & 623/2007.

2. These Original Applications were heard together and are being disposed of by a common order as the issues to be decided are identical.

3. In O.A no 616/2007, the following reliefs are claimed:-

- "7(i) Set aside the advertisement dated 15.11.2007 being violative of recruitment rules;
- (ii) Set aside the recruitment rules for the post of Chief Inspector/Director being contrary to recruitment rules for the post of Joint Chief Inspector/Deputy Chief Inspector where diploma holder is not at all to permitted to apply for the posts and require the respondents to frame fresh Rules for Group 'A' posts as stated in Original Application no. 848/2002.

(iii) Grant any other relief, which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the present case."

4. In other Original Applications the reliefs sought are as follows:-

"7(A) Set aside the recruitment rules for the post of Chief Inspector/Director being contrary to recruitment rules for the post of Joint Chief Inspector/Deputy Chief Inspector where diploma holder is not at all permitted to apply for the posts and require the respondents to frame fresh Rules for Group 'A' posts as stated in Original Application no. 848/2002.

(B) Consequently quash and set aside the advertisement dated 15.11.2007 as the same is violative of fundamental rights guaranteed to the person like the applicant under the Constitution of India as also is in violation of the Draft Rules which are deliberately not finalized by the State Government."

5. It can be seen that the reliefs sought in O.A no 622 and 623/2007 are identical, while in O.A no

616/2007 the reliefs are more or less identical with the reliefs sought in other O.As.

6. It is seen that the Applicant in O.A no 616/2007 has a degree of B.E (Electrical), while other Applicants hold degree of B. Tech (Chemical Engineering). The Applicants have sought relief that the advertisement dated 15.11.2007 for the post of Director, Industrial Safety and Health may be quashed and set aside as it is issued in violation of the Recruitment Rules for the aforesaid post. However, this relief has become infructuous as the selection process has already taken place. We now proceed to examine the other reliefs sought in these Original Applications.

7. The claim of the Applicants is that the posts of Additional Director and Joint Director are lower in the hierarchy to that of Director. There are recruitment rules framed for the post of Joint Director and Director, which are not in consonance. Two main grounds are pleaded, viz.

(i) The post of Joint Director can be filled by nomination of a person holding degree in Mechanical, Electrical or Chemical Engineering. However, for the post of Director, only a person holding a degree in Mechanical or Electrical Engineering is eligible. A person holding a degree in



Chemical Engineering is not held eligible for the post of Director.

- (ii) For appointment to the post of Joint Director, a person holding Diploma in Mechanical or Electrical Engineering is not eligible, while for the post of Director, Diploma holders in these branches are held eligible.

It is the case of the Applicants that the recruitment rules for the post of Director and Joint Director are arbitrary and discriminatory. The Applicants are seeking direction to the Respondents to frame fresh recruitment rules for Group 'A' posts in the Directorate of Industrial Safety and Health

8. Learned Presenting Officers (P.O) argued in these Original Applications that the Recruitment Rules for the post of Joint Director require degree in Mechanical or Electrical or Chemical Engineering for appointment by nomination. For the post of Director, appointment can be either by promotion or by nomination. For appointment by promotion, no educational qualification has been prescribed and a person working as Joint Director and having educational qualification of B.E/B. Tech in Chemical Engineering can also be promoted as Director. However, for appointment by nomination, only a person holding a degree in

Electrical or Mechanical Engineering is held eligible. Learned P.O argued that at Joint Director's level, there is a separate post of Joint Director (Chemical). In 2007, only 9.5% Factories in Maharashtra were Chemical Factories. So, the Recruitment Rules for the post of Director envisage a person holding a degree in Mechanical or Electrical Engineering, if the post is to be filled by nomination. However, for promotion, a Chemical Engineer can also be appointed. There is no discrepancy or mismatch between the Recruitment Rules for the post of Director and Joint Director.

9. Learned Presenting Officer argued that the contention of the Applicants that a Diploma holder is barred from appointment to the post of Joint Director is not correct. For both the posts of Director and Joint Director, a Diploma Holder who is an Associate Member of Institute of Engineers, India in the appropriate branch of Engineering is held eligible. This contention of the Applicant is without any basis.

10. We find that all the Applicants have challenged the advertisement dated 15.11.2007 issued by Maharashtra Public Service Commission for the post of Director of Industrial Safety and Health. The selection was to be done on the basis of the existing Recruitment Rules for the post. The challenge to the advertisement has become infructuous.

The Recruitment Rules for the post of Director (Chief Inspector) are reproduced below:-

"1. Appointment to the post of Chief Inspector of Factories shall be made either:-

(a) by promotion from amongst the Deputy Chief Inspectors of Factories, or

(b) by nomination from amongst the candidates, who

- (i) if not already in the service of the Government of Bombay, are not more than 45 years of age;
- (ii) possess either a degree in Mechanical and/or Electrical Engineering of a recognized University and/or Electrical Engineering of a recognized University or Institution and are at least Associate Members of the Institute of Engineers, India, or any other equivalent Institute;
- (iii) have experience of not less than 10 years in a responsible position both in technical and managerial capacity in large manufacturing concerns and have experience of labour matter or have experience of work as Inspectors of Factories for not less than 10 years;
- (iv) have general knowledge of principle of construction of factory building including lighting, ventilation and sanitation thereof;
- (v) are conversant with occupational diseases and methods of their prevention.

Provided that the age limit may be relaxed in favour of candidates with exceptionally good qualification and/or experience."

The Recruitment Rules for the post of Joint Director (Deputy Chief Inspector of Factories, Class-I) are as follows:-

“Appointment to the post shall be made either:-

(A) by promotion from among Inspectors of Factories, who have completed five years' service as such,

OR

(B) by nomination from among candidates who-

- (i) unless already in the service of the Government of Maharashtra, are not more than 35 years of age;
- (ii) possess a degree in at least the Second Class in Mechanical and/or Electrical, or Chemical Engineering of a recognized University and thereafter
- (iii) possess experience for not less than five years in a responsible position in a reputed industrial concern in connection with design, fabrication and/or Maintenance of machinery

OR

have worked in a responsible post in the Maharashtra Factory Inspection Service for at least five years.

Provided that preference will be given to candidates who have experience as Maintenance Engineer or Safety Officer or are conversant with occupational diseases or have general knowledge of principles of construction of factory

buildings, including lighting, ventilation and sanitary facilities.”

It does appear that a degree holder in Chemical Engineering is eligible for appointment by nomination as Joint Director but not as Director. However, for appointment by promotion, even a degree holder in Chemical Engineering can be appointed as Director. The State has given the rationale for different provisions for appointment by nomination to the post of Director and Joint Director. It is stated that only about 10% of the Factories in Maharashtra are Chemical Factories, so there is a separate post of Joint Director (Chemical). However, for the post of Director, a person having degree in Mechanical or Electrical Engineering is preferred and the Recruitment Rules make such a provision looking into the nature of most of the Factories in the State. We find that it is within the power of the State to prescribe qualification for the post of Director, which should result in effective implementation of the relevant provisions of the Factories Act. It is not the case that the Chemical Engineers are totally excluded from holding the post of Director. However, we do not find it to be a fit case requiring our interference. This Tribunal cannot frame Recruitment Rules and that job is in exclusive domain of the State.

11. As regards Diploma holders, we found that the ground raised by the Applicants has no foundation. A Diploma holder who is not a Associate Member of Institute of Engineers, Indian, is not eligible to be appointed as Director as per the Recruitment Rules. Associate Membership of Institute of Engineers, India, is equivalent to a degree in Engineering. This contention of the Applicants is firmly rejected.

12. This is not a fit case requiring intervention by this Tribunal. There is no merit in these Original Applications. Original Applications are dismissed with no order as to costs.

**(J.D Kulkarni)**  
**Vice-Chairman (J)**

**(Rajiv Agarwal)**  
**Vice-Chairman (A)**

**Place : Nagpur**  
**Date : 06.07.2017**  
**Dictation taken by : A.K. Nair.**