

# The Professional Dilemma : Respect for the Rules or Being Human(e)? A Case Analysis

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## Abstract

This case study was about how desperate one can be to seek employment in a premier organization. The urge to move ahead from being tagged as an unemployed youth and getting recognised as “employed” was so acute that it did not deter the candidate from resorting to unfair means. Everything may be fair in love and war, but when it comes to employment in a public sector undertaking, things can really turn ugly, if the means to the end are not fair. This case study intended to create an awareness among students and professionals that integrity and sincerity are not mere virtues to be included in their resume, but are to be practiced in life. While India is growing and job opportunities are improving, we should not lose focus of the ancient values and ethics which are so deep rooted in the Indian culture and ethos.

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The year was 2010. A reputed public sector enterprise in India, M/s Bharat Manufacturers Ltd. (BML) enjoying a near-monopoly status in a niche-end technology-oriented business, was faced with a critical choice, rather a strategic decision making challenge - whether to recruit Technical Associates on the regular rolls of the company, or to hire manpower on a contract basis. Sounds quite familiar ? Well, a large number of organizations come across similar situations quite often. The trade-off between recruiting manpower on a permanent basis vis-a-vis hiring on contract basis has various pros and cons.

Considering the fact that M/s BML had a respectable order-book position, enough to sustain its Navaratna status, and a fair chance to inch towards the coveted Maharatna club, the HR think-tank decided to engage Technical Associates on the regular rolls. One of the prime considerations was that, M/s BML was gradually losing its monopolistic status. Quite a good number of Indian companies in the private sector had started to foray into M/s BML's line of business. Added to that, even M/s BML's foreign partners started to enter into joint ventures with the Indian companies. To counter the impending challenges from its business rivals, M/s BML decided to build up its own workforce, which would not only take care of its future business needs, but offset the aged workforce which was retiring in good numbers. Given the ageing manpower profile of M/s BML, this trend of retirement was to continue until the next 4 years. This well - considered decision to recruit Technical Associates

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on the permanent rolls of the company inter-alia meant that M/s BML was going to own the new recruits for the next 30-35 years.

Having so decided, the next big decision was the number game, that is, the number of persons to be inducted, the disciplines in which people were required, and the eligibility criteria. Being a public sector enterprise, M/s BML had a well laid-out recruitment policy which spelt out the qualification, age, experience, reservation criteria, health parameters, etc. The process of man power planning was carried out with utmost professional approach taking into consideration the age profile of the existing workforce, the existing work-load, firm orders available with the company, highly anticipated programs, and the projected work-load with incremental factor during the next 10 years, the need for multi-skilled workforce, automation, and of course, the financial parameters with cost-benefit analysis.

M/s BML had another professional challenge, managing the career aspirations of its existing workforce, particularly at the level of Technical Associates who are in the non-executive cadre. Being a highly technology oriented industry, having a wide array of products with high rate of technical obsolescence, M/s BML, during the period from 2005-2009 recruited Associates both in the technical as well as non-technical disciplines. The minimum educational qualification of the recruits was Diploma in Engineering for technical disciplines and Graduate in Arts /Science /Commerce with professional qualification in computer applications for the non-technical disciplines. It may also be mentioned here that the skill sets and expertise to be possessed by the Technical Associates employed by M/s BML are not readily available in the market. As has been mentioned earlier that M/s BML enjoys near monopoly market position in its range of products, it takes on an average 5 years for a new Technical Associate to acquire the requisite skills and competencies. Over a period of time, the Associates acquire higher educational qualifications in their respective disciplines, which is quite natural and is in keeping with M/s BML's HRD policy for encouraging a learning culture for its employees.

The interesting aspect, however, was that, while a majority of the new recruits acquired higher educational qualifications after joining the company and after obtaining permission from the HR Department to pursue higher education, there were a handful of candidates who were possessing the relevant higher educational qualification at the time of their joining the company.

In the past, M/s BML had faced situations wherein candidates who joined the company against specific advertisement for induction of candidates at the level of Technical / Non-Technical Associates, that is, in the non-executive cadre, were also possessing educational qualifications, which made them eligible for the position of Executives in the company. To illustrate the matter, it may be presumed that, during the year 2005, M/s BML had advertised certain vacancies for recruitment of Technical Associates possessing educational qualification of Diploma in Mechanical Engineering to be inducted in the non-executive cadre at level TA-5. As per the same advertisement, M/s BML had also advertised certain vacancies for recruitment of Engineers possessing educational qualification of B.Tech / B.E – Mechanical Engineering in the executive cadre at the level of Junior Manager, that is, JM-2. Approximately 15 candidates possessing qualification of Diploma in Mechanical Engineering as well as Degree in Mechanical Engineering had applied against the vacancies for Technical Associates. Out of these 15 candidates, four candidates were finally selected for the position of Technical Associate at the level of TA-5 and they joined BML.

On the other hand, against the vacancies notified for executives at the level of JM-2, 10 candidates possessing Diploma in Mechanical Engineering with Degree in Mechanical Engineering had applied, out of which three candidates finally joined M/s BML as Engineers in JM-2.

Readers must be sensing what followed thereafter. Yes, we presume you have guessed it correctly. There was utter discontentment among four Technical Associates who joined at the TA-5 level. The matter was further aggravated in the case of Mr. Alok Tripathy, who joined at the level of TA-5 since he happened to be the classmate of Mr. Suresh Patil who joined M/s BML as Engineer in the JM-2 level.

Let us pause at this stage, and I would request the readers to ponder over and address the following questions:-

- (i) What went wrong on the part of M/s BML?
- (ii) With reference to your answer to (i) above, can the purported mistake be attributed entirely to M/s BML?
- (iii) What advice would you like to give to Mr. Alok Tripathy?

So, given the above mentioned situation and the experience acquired therein by M/s BML, the Talent Management Team was ultra cautious in drafting the recruitment advertisement during the year 2010 -11. They incorporated the following clause in the advertisement to fill up the vacancies :-

Interested candidates who apply for the post of Technical Associate at the level of TA-5 for which the prescribed educational qualification is Diploma in Mechanical Engineering, should not be possessing any relevant higher educational qualification like Degree in Mechanical Engineering.

Such candidates will have to give a declaration prior to joining the company stating that they do not possess any relevant higher educational qualification.

The above decision of the Talent Management Team is legitimate. The fact that M/s BML has had a bitter experience of managing employees who joined the company even though they were possessing higher educational qualification than the prescribed qualification and subsequently getting frustrated and demoralised, justifies the management's decision of restricting the entry of candidates with higher qualification at lower level positions.

However, there have been several arguments questioning the veracity of the decision to restrict candidates possessing higher educational qualification from applying against posts, which have been notified for candidates possessing lower qualification. One of the arguments against this decision was, M/s BML being a public sector enterprise is impinging upon the right to employment. This argument was further corroborated by trying to draw an analogy with the qualification parameters prescribed by the Union Public Service Commission for selection of candidates for various administrative posts like IAS, IFS, IPS, etc.

Apparently, such logic sounds reasonable, but there are settled case laws which allow the management of a company to prescribe its eligibility criteria keeping in view the organizational requirements.

The Special Bench judgement of the Hon'ble High Court of Calcutta in the case of Rina Dutta and others vs Anjali Mahato and others, while reiterating the well settled principle that candidates possessing higher qualification than that advertised, cannot ordinarily be debarred or disqualified, also laid down that it was open to the employer to make a rule providing for disqualification of candidates possessing higher qualification than the prescribed one. The Hon'ble Court further gave liberty that, in the future, the employer might specify in the rule and in the advertisement that persons with higher qualifications would not be considered eligible. The Hon'ble High Court of Calcutta in the Writ Petition No. 7554(W) of 2012 in the matter of Etilata Kaibarta vs The State of West Bengal & Ors. held that "the qualification prescribed in the advertisement inviting applications for a concerned post is all that matters." The Hon'ble Court further went on to pronounce that, "... the respondents had power to lay down the qualification in the advertisement and cancellation of appointment of a selected candidate possessing higher qualification is not barred."

Having thus decided the revised eligibility criteria for inducting Technical Associates at the level of TA-5, M/s BML released the recruitment advertisement as per their recruitment policy, which mandates the management to release open advertisement inviting applications from candidates pan -India meeting the eligibility criteria. So far, so good.

Considering the fact that M/s BML is a reputed public sector enterprise with Navaratna status, there was overwhelming response to the open advertisement inviting applications for the positions of Technical Associates. The SoP (standard operating procedure) for screening of applications, short listing candidates, issuing call letters, conducting written tests, interviewing candidates, notifying the list of provisionally selected candidates, etc. was followed meticulously. Candidates underwent pre-employment medical examination, verification of character, and antecedents and caste status, wherever applicable, previous employer's verification, etc. were completed and the finally selected candidates were issued with final offer of engagement to report for training. As per the recruitment policy of M/s BML, Technical Associates are initially engaged as Trainees for a period of one year and subject to satisfactory completion of training, they are inducted into the regular rolls of the company.

Out of the candidates who joined M/s BML as Technical Associate Trainee, one candidate, Mr. Subedar Singh, was already possessing B.Tech. in Electrical Engineering which he had acquired during the year 2007. Mr. Singh had not disclosed this fact while applying against the notification or during the course of screening of documents. He even submitted undertakings on two occasions during the selection process stating that he does not possess relevant higher educational qualification. This act on the part of Mr. Subedar Singh was in contravention to the terms and conditions of the notification released by M/s BML against which he had applied for the post of Technical Associate - TA-5.

A complaint was received by the management of M/s BML stating that Mr. Subedar Singh had acquired B.Tech. in Electrical Engineering prior to joining the company and as per the terms and conditions of the vacancy notification, he is not eligible for the post of TA - 5. The complaint was enquired into by M/s BML and it was confirmed that Mr. Subedar Singh had completed B.Tech. in Electrical Engineering during the year 2007, that is, prior to his joining the company.

Necessary administrative actions followed thereafter, and in accordance with the terms and conditions contained in the offer of engagement as well as the undertakings given by Mr. Subedar Singh, his training was terminated. Aggrieved by the decision of the management, Mr. Subedar Singh approached various forums like the Hon'ble High Court, Labour Authorities, various Ministries of the Government of India, etc. However, no relief was granted to him in view of the fact that the recruitment notification was very clear regarding the criteria of higher educational qualification vis-a-vis the qualification required for the advertised post. In spite of the same, Mr. Subedar Singh had suppressed his higher educational qualification and simultaneously submitted wrong declarations at various stages of the recruitment cycle to secure employment in M/s BML.

## Findings

This case study is a live example of how desperation to secure employment can waylay individuals and lure prospective candidates in committing an offence and compromising on ethics and values. Readers will agree that Mr. Subedar Singh is qualified enough to get appointment as an Electrical Engineer in either the manufacturing sector, service sector, hospitality industry, educational institutions, etc. since an Electrical Engineer is sought by all industries or sectors.

It is also worth sharing with the readers that Mr. Subedar Singh's father was also working with M/s BML and was thorough with the rules governing appointment of candidates possessing higher educational qualifications. It was learnt that while Mr. Subedar Singh was reluctant to apply for the post of Technical Associate by hiding his B.Tech. qualification, it was his father who insisted that he secures an employment in M/s BML as a Technical Associate and subsequently, he can try for elevation to the Executive cadre by virtue of his B.Tech qualification.

## Managerial Implications

(i) Talent acquisition and talent management are very critical HR functions for any organisation. The art of written communication plays a very crucial role when it comes to framing the eligibility criteria for a particular position. In this case, readers must have appreciated that the precision with which the talent management team had framed the terms and conditions of the recruitment advertisement helped M/s BML to justify its decision of debarring candidates possessing higher qualification from applying for jobs which required lower qualification before various forums.

(ii) Another point worth noting is that the management of M/s BML did not yield to humanitarian considerations while terminating the training of Mr. Subedar Singh. The often debated issue of whether it should be “head” or the “heart” while managing human resources is brought out very subtly in this case study.

(iii) M/s BML in terminating the training of Mr. Subedar Singh sent a strong message across the board that integrity of its employees is very important. An employee who secures employment through unfair means cannot be expected to be loyal to the organisation.

## Questions for the Readers

(i) Did the Management of M/s BML err in terminating the training of Mr. Subedar Singh ?

(ii) Is the punishment dis-proportionate to the mis-conduct ?

(iii) Did Mr. Subedar Singh's actions deny an opportunity to a genuine candidate meeting all the eligibility criteria to secure employment in a reputed public sector enterprise ?

(iv) Was there any flaw in the recruitment policy of M/s BML ?

(v) Is there any legal remedy available to Mr. Subedar Singh for his reinstatement ?

## Teaching Notes

### (1) Teaching Objectives

(i) To give an insight to students of HR discipline regarding the need and importance of carefully wording recruitment advertisements and framing the recruitment rules of an organisation.

(ii) To apprise students of HR discipline and law that the employer has the right to define the terms and conditions of employment provided they are not violating the Constitution of India or any other statutory provision.

**(2) Potential Audience :** Students either freshers or those with hands on experience of working in the field of HR, legal, or legal practitioners dealing / specializing in service matters.

**(3) Number of Teaching Sessions Required :** Ideally, it should be spread over 02 sessions of 30 minutes each. In the first session, the case is to be explained to the students. This may be followed up with home work / assignment to the students to prepare themselves with the questions at the end of the case study which can be discussed in the second session.

#### **(4) Our Analysis of Questions :**

##### **Q1. Did the Management of M/s BML err in terminating the training of Mr. Subedar Singh?**

**Ans 1.** No. The action of the management of M/s BML in terminating the training of Mr. Subedar Singh is in accordance with the terms and conditions of the advertisement for selection of candidates. As per the terms and conditions, candidates applying for the post of Technical Associate must possess Diploma in Engineering and should not have completed B.Tech. / B.E in the relevant discipline in which they have completed their Diploma in Engineering.

##### **Q2. Is the punishment dis-proportionate to the mis-conduct?**

**Ans 2.** No. Firstly, there were candidates who in accordance with the terms and conditions of the recruitment advertisement did not apply for the post of Technical Associate since they were possessing B.Tech. / B.E in the relevant branch of engineering. Secondly, when two candidates, one possessing B.Tech. / B.E and the other possessing Diploma in Engineering appear for a similar examination, the candidate possessing B.Tech. / B.E is better placed to perform well and score more marks than the Diploma holder.

##### **Q3. Did Mr. Subedar Singh's actions deny an opportunity to a genuine candidate meeting all the eligibility criteria to secure employment in a reputed Public Sector Enterprise?**

**Ans 3.** Yes. Mr. Subedar Singh, by adopting unfair and fraudulent means, denied a genuine candidate who was possessing only Diploma in Engineering from securing the job meant for candidates who were Diploma holders only.

##### **Q4. Was there any flaw in the recruitment policy of M/s BML?**

**Ans 4.** No. There are settled case laws which uphold the decision of M/s BML. It is open to the employer to make a rule providing for disqualification of candidates possessing higher qualification than the prescribed one.

##### **Q5. Is there any legal remedy available to Mr. Subedar Singh for his reinstatement?**

**Ans 5.** No. He can only plead with the management of M/s BML to provide him some sort of engagement for livelihood. In case the management is willing to give him some relief on humanitarian grounds, they engage him on contract basis through empanelled contractors in its own concern or in its subsidiaries, etc.

#### **Suggestions for Further Readings**

**(i)** Judgment in the Writ Petition – W.P. No. 7554(W) of 2012 between Etilata Kaibarta Vs. The State of West Bengal & Ors.

**(ii)** Employment Rights Act, 2008.

**(iii)** Recruitment Rules of various Companies.

**(iv)** Recruitment Advertisements of various Companies.



## Disclaimer

This case was prepared by the authors for the sole purpose of aiding classroom discussion. Cases are not intended to serve as endorsements, or sources of data, or illustrations of effective or ineffective management. Certain names and information could have been disguised to maintain confidentiality.

### About the Authors

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