

(2003) 07 DEL CK 0018

In the Delhi High Court

Case No : CW 1251/95

Ashok Kumar Shrimali

APPELLANT

Vs

The Executive Director, Indian Investment Centre

RESPONDENT

Date of Decision : 22-07-2003

Acts Referred:

Investment Centre Service Rules — Rule 7

Citation : (2003) 6 AD 478 : (2003) 106 DLT 299 : (2003) 70 DRJ 511 : (2004) 1 SLJ 481

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Sujata, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

Vijender Jain, J.—This writ petition, inter alia, challenges non-grant of promotion to the post of Assistant Adviser (Economic) to the petitioner from the date when one outsider candidate joined the organisation on 20th August, 1991. It is the case of the petitioner that petitioner joined Indian Investment Centre as Junior Technical Officer on 30th December, 1982. He was eligible for promotion in 1991 when an advertisement was issued on behalf of the respondent by one advertising agency for appointment to the post of Assistant Adviser (Economic) in the pay scale of Rs.3000-100-3500-125-4500/- plus DA, CCA, HRA etc. It is contended before me that there were two posts of Assistant Adviser (Economic), one of which has been filled by a direct recruit in 1991. It is the case of the petitioner that the filling of the post by the direct recruitment by the respondent was totally illegal and not in consonance with the rules of respondent. It has been contended that Rule 7 of Service Rules of the respondent Indian Investment Centre provides method of recruitment and that Rule provides that appointment has to be made firstly by promotion, direct recruitment and failing which by deputation. Rule 7 of the Service Rules is to the following effect :-

"7. Method of Recruitment :-

(a) Recruitment to a post in the Centre may be made :

(i) by promotion;

(ii) by direct recruitment;

(iii) by deputation.

(b) The Staff Proposals Committee shall recommend to the appointing authority the method by which a vacancy shall be filled.

In making such recommendation, the Staff Proposals Committee shall keep in view the following guidelines :-

(i) All class I, class II and class III posts should ordinarily be filled by deputationists from the Government of India or by promotion, if suitable candidates are available. Only in the event of suitable candidates not being available under either of the two methods mentioned above, should direct recruitment be resorted to.

(ii) All class IV posts may ordinarily be filled by direct recruitment."

2. On the basis of aforesaid Rule, it was contended before me that the Staff Proposals Committee could only recommend direct recruitment if suitable candidates were not available i.e. filling up post by promotion or non-availability of suitable candidates for the post by deputationist from the Government of India. It was contended that although the petitioner was subsequently promoted in the year 1997 firstly on officiating basis and thereafter expiry of two years period his services have been confirmed. The case of the petitioner is that in terms of the advertisement essential qualifications which was advertised by the M/s Mantec Consultants Pvt. Ltd., for the post of Assistant Adviser (Economic) a candidate must be a graduate in Economics or Commerce with Research Experience and at least five years relevant experience and he should be up to maximum 40 years of age. It was contended that the petitioner was M.Com., LL.B. and had 9 years experience in 1991 when the post was illegally filled by the respondent by resorting to direct recruitment.

3. Nobody has been appearing on behalf of the respondent. I have adjourned the matter on 5.5.2003 and 21.7.2003 as nobody has appeared for the respondent. But still there is no appearance from the side of the respondent even today. The respondent has filed reply to the writ petition. In the reply the respondent has taken the stand that the petitioner was considered pursuant to the advertisement issued in the newspapers and the petitioner was not selected and as the petitioner has applied for the post by direct recruitment. Another plea in the reply taken by the respondent is that petitioner is not entitled to maintain this writ petition as the petitioner has availed the opportunity of competing in the selection process. The stand of the respondent in the counter affidavit is that the advertisement for the two vacant posts of Assistant Adviser (Economic) was issued by M/s Mantec Consultants Pvt. Ltd. in accordance with Rule 7 of the IIC

Service Rules and in response to the said advertisement the petitioner duly applied and his application was forwarded to the said agency for being considered for promotion to the said post. It was stated that M/s Mantec Consultants Pvt. Ltd. thereafter held the selection in which the petitioner was also duly considered but was not recommended for promotion. In the counter affidavit reliance has been placed on Rule 7 particularly the power of the Staff Proposals Committee to set up certain guidelines and recommendation for direct recruitment and on the basis of the said power of the Staff Proposals Committee it has been stated in the counter affidavit that method of appointment by promotion was not mandatory for the department to fill the post, if circumstances so demand and on the recommendation of the Staff Proposals Committee direct recruitment can be resorted to as the method for appointment. Further plea taken in the counter affidavit is that the petitioner had not taken any objection to the selection by direct recruitment prior to its recruitment and, Therefore, the petitioner is estopped from challenging the selection on the basis of direct recruitment. As a matter of fact, in this case records were necessary so as to have clear picture of the case and in this regard an order passed by this Court on 21.1.1997 to the following effect is very important :-

"Mr.G.D. Gupta to see the record and see for himself how the Departmental Promotion Committee over looked the case of the petitioner while selecting direct recruit. We should be informed on the next dated of hearing in what way the petitioner was found wanting.

Record be brought to Court on the next date of hearing."

4. On the next date of hearing, i.e. on 5.3.1997 again a request was made for adjournment on the ground that the record could not be completely gone into by the respondent. Again adjournment was taken by the respondent and thereafter the Rule was issued on 17th July, 1997. The reply which has been filed by the respondent is dated 16th July, 1996. It was after perusing the reply that the Court wanted to be satisfied about the pleas taken by the respondent in their reply affidavit vis-a-vis the record available as would be evident that inconsistent pleas have been taken by the respondent in their reply. What has been stated in the writ petition by the petitioner is that as per the recruitment rules which I have reproduced above, two vacancies of Assistant Adviser (Economic) were to be filled by promotion. Promotion as a method of appointment was not resorted to.

5. Why appointment to the said post by promotion was not made by the respondent nothing has been produced before this Court. Plea of the respondent that Staff Proposals Committee has recommended for appointment of suitable candidates in view of no other candidate in the department who was suitable not available, no material has been placed either with the reply or otherwise. Merely from bald assertion that no other suitable candidate was available action resorting to direct recruitment cannot be justified. Petitioner in 1991 had 9 years experience, he had requisite qualification as has been advertised by the

respondent. Let me deal with the argument of the respondent that petitioner has not objected to the selection made by respondent by resorting to direct recruitment. Case as set out by the petitioner in the writ petition is that in view of the advertisement which is at page 114 of the paper-book the name of the respondent was not appearing in the newspaper it was not known to the petitioner that post was advertised by respondent. The advertisement was issued by one M/s Mantec Consultants Pvt. Ltd., a private company. It was not possible for the petitioner to know that this advertisement was published on behalf of the respondent. There is logic as well as force in the argument of the petitioner that the petitioner under a bona fide belief that it was an advertisement issued for some other public sector undertaking participated in the said selection process and if he had bona fide participated in the said selection process thinking that it was an advertisement published at the behest of some other public sector undertaking, it cannot be said that the petitioner is estopped from challenging the selection which otherwise was not in accordance with the rules of the respondent. Petitioner represented at the first opportunity to the respondent when he came to know that some other person has been appointed as Assistant Adviser (Economic). There is a letter dated 12.6.1991 (which is at page 73 of the paper-book) by the petitioner stating that he was a departmental candidate and he should be considered for the post with higher weightage for selection till then no selection was made as selection was made in August, 1991. The petitioner again sent a representation on August 17, 1992. May be at that time he did not realise that both the posts were to be filled by promotion. However, petitioner sent an exhaustive representation to the respondent on 2nd September, 1992 (which is at page 81-83 of the paper-book). Thereafter, numerous representations were made by the petitioner to the respondent that injustice has been done to him as he was eligible for promotion when some direct recruit was appointed to the said post and, Therefore, he should be considered for promotion from 1991 itself and if the petitioner has represented to the respondent right from the time when the selection process has been initiated when the appointment was made and, thereafter till the filing of the writ petition, it cannot be said that the petitioner is guilty of delay and laches or that petitioner is estopped to challenge the appointment in which he himself has participated. The participation of the petitioner was not to the post under the respondent as per the understanding of petitioner. The selection was made by the private company, Therefore, participation in the said selection in 1991 cannot be a ground to non-suit the petitioner. The stand of the respondent that the post was to be filled by direct recruitment as the Staff Proposals Committee has recommended the same. No document, correspondence, minutes in support thereof has been placed on record by the respondent. As stated earlier in terms of order passed by this Court, no records have been shown to the Court. Judging from any angle, the petitioner has been denied promotion in terms of the rules of the respondent. Petitioner was eligible in terms of the qualification as stated in the advertisement issued by the respondent and that being the case the petitioner was to be promoted when an outsider was recruited by the respondent. As I have been told

that there were two vacancies and on the second vacancy the petitioner has been working since 1997 as Assistant Adviser (Economic), petitioner succeeds in this writ petition and the petitioner shall be entitled for promotion from the date when other person was appointed as Assistant Adviser (Economic) with all consequential benefits.

6. Rule is made absolute. Writ petition stands allowed.