

(2014) 01 DEL CK 0407
In the Delhi High Court
Case No : Writ Petition (C) 743 of 2014

R.K. Sharma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Citation : (2014) 01 DEL CK 0407

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Rajiv Nayar and Ms. Malvika Trivedi, Mr. Saurabh Seth and Mr. Shubham Jaiswal, for the Appellant; Sandeep Sethi and Mr. Hashmat Nabi, for R-1 and 2, Mr. A.K. Singh and Ms. Geetanjali Khanna, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Shakdher, J.

CM No. 1493/2014 (Condonation of delay in re-filing)

1. This is an application seeking condonation of delay of 10 days in re-filing the petition. For the reasons given therein the application is allowed and the delay is condoned. Application stands disposed of.

WP(C) 743/2014 & CM No. 1492/2014 (Stay)

2. This is a writ petition filed wherein broadly following reliefs are prayed for:

(i) Quash the orders dated 11.12.2013 and 12.12.2013;

(ii) Quash the advertisements dated 04.06.2012 and 29.04.2013;

(iii) Direct the respondents to finalize the decision qua recommendations for enhancement of retirement age from 58 years to 60 years;

(iv) Issue a writ of mandamus directing the respondents to implement the Public Enterprises Selection Board (PESB) guidelines relating to relaxation of age in

appointment of Chief Executive and Functional Directors in sick/loss making Public Sector Enterprises (PSE);

(v) Direct the respondents not to appoint a CMD in the National Textile Corporation (NTC), i.e., respondent no. 3, pending the adjudication of the present petition; and lastly

(vi) To allow the petitioner to continue as CMD of NTC, till the disposal of the present writ petition.

3. It is not in dispute that the petitioner superannuated, upon reaching the age of 58 years, on 30.11.2013. It is also not in dispute that on 04.07.2013 a new CMD, has been appointed. In these circumstances, in any case, the last two prayers have been rendered infructuous.

4. The petitioner, broadly, seeks the other reliefs on the ground that an advertisement had been issued on 04.06.2012 by the PESB seeking applications from qualified candidates for the post of CMD in the NTC, i.e., respondent no. 3. The prescribed pay-scale was Rs. 80,000/- -- 1,25,000/- (revised). There were other qualifications and requirements mentioned in the said advertisement.

4.1 It is the case of the petitioner that though an application for appointment as CMD was made through the proper channel for forwarding the same to PESB, the same was not forwarded to PESB.

4.2 It is important to note that as per the PESB guidelines, qua internal candidates, for whom the age of superannuation, in the usual course, is 58 years, on the date of submission of application, could not have been more than 56 years of age. I am informed that on 04.06.2012, the petitioner had attained the age of 56 years and 9 months; a fact which Mr. Nayar does not dispute.

4.3 The petitioner, however, basis his claim on the guidelines prescribed by the PESB for selection to such like posts, which empowers the respondents to relax the eligibility criteria, including the age criteria. This relaxation is intended for those Central Public Sector Enterprises (CPSEs), which are sick or have made losses.

4.4 I have been informed, a fact which is not disputed, that the respondents did not get suitable candidates, for appointment to the post of CMD, pursuant to the advertisement dated 04.06.2012, issued in that behalf. Therefore, a decision was taken by the PESB to re-advertise the post. This decision was taken on 27.02.2013. The post was re-advertised. The PESB though, made one change to the eligibility criteria; by re-advertising the post, with one scale below the eligibility pay scale.

4.5 Consequently, a second advertisement was issued on 29.04.2014. It is not disputed that the decision taken by the PESB on 27.02.2013 of inviting applications with one scale below the eligibility scale, was carried out.

4.6 It appears that pursuant to the advertisement dated 29.04.2013, a panel

was formed and, on 04.07.2013, PESB selected a candidate, which according to it, was suitable for appointment to the post of CMD in respondent no. 3.

5. It may be noted that the petitioner had approached this court earlier, by way of a writ petition being: WP(C) No. 7523/2013. The said writ petition was disposed of by an order dated 29.11.2013, as the only relief sought by the petitioner was that, his representation against the first advertisement, which was dated 15.06.2013, ought to be considered and, disposed of, by a speaking order.

6. Consequent thereto, the matter was taken up, both by the PESB as well as the concerned administrative ministry, i.e., Ministry of Textiles, Govt. of India.

6.1 By communication dated 11.12.2013, the PESB, while accepting the fact that the post was re-advertised without relaxation of cut-off age, it indicated that, the petitioner's application, had not been forwarded to it, by the Ministry of Textiles. The said communication also indicated that the incumbent to the post had been selected and, consequently, recommended by the PESB to the Ministry of Textiles for appointment as CMD, on 04.07.2013.

6.2. The Ministry of Textiles, vide communication dated 12.12.2013, observed, while dealing with the petitioner's representation dated 15.06.2013, that his representation was not forwarded to the PESB, as the petitioner did not meet the age criteria prescribed under the PESB guidelines. The representation of the petitioner was thus disposed of.

7. Mr. Nayar, learned senior counsel for the petitioner, argues in support of the petition. He submits that the respondents have violated the orders of the court dated 29.11.2013, in as much as, the petitioner's representation dated 15.06.2013, was not forwarded to the PESB. He further submits that the order passed is not a speaking order.

8. I have perused the record as well as the impugned orders passed by the PESB and the Ministry of Textiles. To be noted, the order of this court dated 29.11.2013 required respondent nos. 1 and 2, which was the Union of India and the PESB, to consider and dispose of the petitioner's representation, within one week. Both respondents deliberated on the petitioner's representation. The decision of the Ministry of Textiles is, according to me, in consonance with the PESB guidelines as, though the post of CMD was advertised for the second time, there was no relaxation in the cut-off age.

8.1 I must note here though, the submission of Mr. Nayar that, that power, ought to have been exercised.

8.2. Mr. Sethi, learned senior counsel appearing for respondent nos. 1 and 2, has argued that the power, if any under the guidelines, is an enabling power and, does not mandate that, in all cases, the respondents must relax the age criteria.

8.3 I tend to agree with Mr. Sethi. The language of the PESB Guidelines plainly confer this discretion on the respondents. The expression used is "relaxation

could be provided". The fact that the erstwhile CMD was granted two extensions which, took the petitioner beyond the eligibility age, cannot be a good enough reason, in my view, to call upon the respondents to exercise the power of relaxation in favour of the petitioner.

9. In so far as the submission of Mr. Nayar is concerned, with regard to the petitioner's representation not being forwarded to PESB, in my view, the Ministry of Textiles, appreciated the guidelines quite correctly by concluding that since the petitioner, did not meet the eligibility criteria with regard to age (as there was no relaxation brought about qua that criteria), no purpose would have been served, in forwarding the petitioner's representation to the PESB.

9.1 As indicated above, even when the first advertisement was issued, the petitioner was already over-age.

10. The prayers made in the petition really seek a mandamus from this court, for relaxation of the age criteria. In my view, such a mandamus cannot be issued by the court. Fixing an eligibility criteria, is completely within the domain of the employer, which in this case, are the respondents herein. The petition is without merit, and is, accordingly, dismissed.