
(2006) 09 DEL CK 0144

In the Delhi High Court

Case No : Writ Petition (Civil) No. 20052 of 2005

Shri Ravinder Singh Narwal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-09-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 226

Citation : (2006) 09 DEL CK 0144

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : Arunabh Chowdhury, for the Appellant; Sanjay Katyal and Deepak Sharma for respondent No. 1 and Neeraj Kishan Kaul Ravi Sikri, V.K. Rao, Biju Nair, Amit Kumar Singh and Enatoli Sema for respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Manju Goel, J.—The petitioner is aggrieved by his non-selection in the post of Deputy General Manager (Industrial, Public Relations & HRD) (hereinafter referred to as the `said post`) of respondent No. 2, namely, India Trade Promotion Organization. The petitioner's case is that respondent No. 2 addressed a letter to the Trade Fair Authority, Haryana where the petitioner is working as a Liaison Officer (Industries)-cum-General Manager, Haryana Bhawan, New Delhi asking for applications for filling up the aforesaid post giving therein the qualification required for the post and the petitioner finding himself fully eligible applied for the post. The eligibility criteria were as under:

- (i) Masters Degree in Arts/Science/Commerce or Degree in Engineering;
- (ii) Degree or Diploma in Industrial Relations from a recognized university/institution;
- (iii) 15 years managerial experience in administration/ personnel management;

(iv) The incumbent should be holding Class-I post or equivalent;

(v) Maximum age limit was 56 years as on the closing date of receipt of the application.

2. The petitioner alleges that since he did not receive any response to his application he made repeated enquiries from respondent No. 2 and eventually came to know that Mr. M.P. Srivastava (respondent No. 3) had been appointed to the post for a period of three years with effect from 19.1.2004. It is alleged by the petitioner that respondent No. 3 did not fulfill the eligibility requirements and, Therefore, could not be appointed to the said post of DGM in question. The petitioner then proceeds to say that an agenda note had prepared by respondent No. 2 seeking the relaxation of the age limit for respondent No. 3 and that he had been appointed in a hush hush manner and there was rampant favoritism, nepotism and corruption in his appointment. The petitioner on 25.8.2005 addressed a detailed representation to respondent No. 2 seeking an Explanation as to why his candidature had not been considered. According to the petitioner, the procedure of appointment of respondent No. 3 was a mere subterfuge to appoint and accommodate respondent No. 3 with a preconceived mind. It is alleged that the appointment of respondent No. 3 by overlooking the claim of the petitioner was violative of fundamental rights and Constitutional mandates as well as ex facie arbitrary, whimsical and illegal. The petitioner seeks a writ of certiorari asking for the records of the case pertaining to the appointment to the said post and thereafter to quash the appointment of respondent No. 3 to the said post and also a writ of mandamus to respondent Nos. 1 & 2 to consider the application of the petitioner for the appointment to the said post.

3. On behalf of respondent No. 2, the counter affidavit is filed by the Senior Manager of respondent No. 2. The petition is opposed on the grounds that the petitioner himself did not fulfill the minimum eligibility requirement for the said post with reference to prescribed education qualifications and experience, that there has been considerable delay in challenging the appointment of respondent No. 3 who has been discharging his duties in the said post for the last two years with utmost satisfaction of his superiors and in the best interest of respondent No. 2 organization, that interfering with appointment of respondent No. 3 will be highly prejudicial to the interest of respondent No. 2 organization, that the court cannot interfere with the selection made by respondent Nos. 1 & 2 and can at best review the selection process and that the allegations of favoritism, corruption and violation of constitutional rights and mandates are entirely wrong. It is further contended in the counter affidavit that the said post was created with the approval of Board of Directors in its meeting dated 5.7.2003 and according to the directions of Board of Directors a request was made to several public sector undertakings including Trade Fair Authority, Haryana to nominate and send the names of the eligible candidates for consideration for the said post. It is disclosed that there were five candidates for the post including the petitioner but only two candidates were called for interview, namely, respondent No. 3-Mr.

M.P. Srivastava, and Shri G.L. Pradhan. It is further disclosed that after an interview held on 9.1.2004, respondent No. 3 was selected. It is admitted in the counter affidavit that relaxation of age limit of 18 days was given to respondent No. 3 and for the other short listed candidate Mr. G.L. Pradhan relaxation in educational qualification was given. It was so done because none of the applicants were fulfilling the criteria laid down for the post. Coming to the petitioner's case the counter affidavit says that the petitioner did not fulfill the educational qualification inasmuch as the qualification required was Degree or Diploma in Industrial Relations which the petitioner did not admittedly possess. The petitioner, in fact, claims that he fulfill this criterion as in his course of Masters of Technology in Management Sciences of the Maharishi Dayanand University one of the papers was Labour Relations and Industrial Legislation. It is also contended by the respondents that the petitioner, in fact, sent several applications and in these applications, there were variations in respect of his experience.

4. After the counter affidavit was filed, the petitioner filed an application u/s 151 CPC asking for, inter alia, a direction to the respondents to produce the file pertaining to the appointment of respondent No. 3. Along with this application, the petitioner placed on the record certain documents claiming to be copies of the file relating to the appointment to the said post. The petitioner claims that these copies will show that the respondents 1 & 2 had decided upon the name of respondent No. 3 at the very time the post was created and, Therefore, the procedure of calling for the applications from candidates was merely a cover for the favoritism adopted for the appointment of respondent No. 3.

5. At the time of arguments, four main points were thrown up for adjudication. These are:

(i) Delay and laches in bringing the petition as the petition has been filed almost two years after the impugned appointment.

(ii) The locus standi of the petitioner since the petitioner, according to the respondents, did not fulfill the criterion of educational qualification of Degree or Diploma in Industrial Relations;

(iii) No writ under Article 226 of the Constitution of India can lie against the interpretation of rules and relaxation given by respondent No. 2 for the impugned post as it was within respondents exclusive domain to take a decision of relaxation of the eligibility conditions; and

(iv) The conduct of the petitioner in filing copies of the file relating to the appointment of respondent No. 3 as one of the pages placed before the Court was not complete and thus had a tendency of misleading the court.

6. So far as the question of delay is concerned, the petitioner has sufficiently explained the same by showing how on different dates the petitioner continued to pursue his claim for the said post by making representations firstly in the

nature of reminders and subsequently in the nature of enquiries. Therefore, the petition cannot be thrown away on the ground of delay.

7. So far as the locus is concerned, admittedly the petitioner did not possess the required eligibility criterion as mentioned earlier. He did not have any Degree or Diploma in Industrial Relations. He had a Masters Degree in Management Sciences. In that course he had offered one paper in Labour Relations and Industrial Legislation. There is no finding from any authority or court saying that this would be equal to the educational qualification of Degree or Diploma in Industrial Relations. As such the petitioner does not seem to have been qualified for the post and was not entitled to challenge the appointment of respondent No. 3.

8. The petitioner, however, raised the question that the candidate selected, namely, respondent No. 3, himself did not possess all the requirements for the post inasmuch as he was not below the age of 56 years on the date of the application and, Therefore, the petitioner was similarly placed vis-a-vis the said post and can challenge the appointment of respondent No. 3. This also lead to the third point about the maintainability of the writ petition under Article 226 of the Constitution of India. The respondents' plea is that the court cannot interfere in the selection by respondent Nos. 1 & 2 and can at best examine or scrutinize the selection process. According to the petitioner the selection process is vocative of the right to equality in the public employment inasmuch as neither the petitioner nor respondent No. 3 fulfill the eligibility criteria and respondent No. 3 was considered while the petitioner's claim was rejected. In this context, the other plea of the petitioner that respondent No. 3 was selected on account of favoritism can also be looked into. In the documents submitted by the petitioner with his rejoinder, the petitioner claims, there is evidence to show that respondent Nos. 1 & 2 had already decided upon the name of respondent No. 3 before even asking for applications from candidates.

9. The documents submitted by the petitioner are three. The first is a note submitted by GM (Administration) to the Executive Director dated 10.7.2003 in which it is stated that the growth of the organization has thrown up several issues relating to the problems of the merger and the union related activities with the management and that since the senior level officers were not fully equipped to handle some of the issues on the basis of rules and regulations the services of a professional may be hired on deputation basis for industrial relations. Along with this note two draft board notes were placed at 'A' and 'B' for approval of the CMD. The next two documents are the two agenda notes. The agenda note claimed to be at 'A' reiterates the requirement for a professional. It then says that since there was no vacant post of GM/DGM in the ITPO the same will have to be created for a short period of three years. The note then proceeded to seek the approval of the Board of Directors for the creation of the post of GM/DGM for Industrial Relations and HRD. The note claimed to be at 'B' is an alternative to note 'A'. This note also begins by emphasizing the need for

professional assistance. It then proceeds to say that Shri M.P. Srivastava working in Hindustan Copper Limited as Chief Manager, Administration & Vigilance has the requisite qualification of a Diploma in Industrial Relations besides being a MA in Sociology and that since he was working at a Schedule A Central PSU in the scale of 18300-23900 he can be considered for the said post of DGM after protecting his pay. It proceed to say that, Therefore, a post for DGM be created for a short period of three years and sought the permission of Board of Directors.

10. The petitioner says that the two notes amply show that the respondents had pre-determined the name of respondent No. 3. The respondents seriously dispute this contention by filing the photocopy of the record. The respondents' record shows that the first note of the GM (Administration) dated 10.7.2003 was put up before the ED who forwarded the same to the CMD with the following remark, "Perhaps `A" would be a better option but that too has some problems. For consideration.". The CMD in its note has then written, "Board note at `A" is approved. The services for an officer is required for public relations."

11. The respondents are alleging that the petitioner has attempted to mislead the court by withholding the comments of the ED and CMD on the note of 10.7.2003 which is available on the same page. It is then contended that the petitioner who has filed some incomplete document in order to mislead the court is not entitled to any discretionary relief. In response the petitioner has to say that the petitioner obtained the documents with the help of some officers of the respondent organization and, Therefore, has filed whatever was provided to him. My attention is drawn to the attestation on the document filed by the petitioner. Somebody has attested the same as `True Copy", may be the counsel for the petitioner or may be the petitioner himself. If the petitioner had obtained the copy of the document with the help of some officers of the respondent organization he should not have vouched the same as true copy and could have presented the same before the court saying that it had been obtained by him with the help of respondents' officers. It may be stated here that he failed to obtain these documents through an application for information under Right to Information Act.

12. Be that as it may, the above notes of the ED and CMD clearly shows that neither the ED nor CMD favored the proposal at `B" which asked for appointment of Shri M.P. Srivastava and for that purpose creation of the post of DGM. Both ED and CMD opted for note `A" which was only for creation of a post.

13. The respondents has filed the minutes of the Board meeting dated 28.3.2003 in which the proposal was considered. At item No. 13, the minutes record the approval to proposal `A". It says as under:

Item No. 13: Operation of Post of General Manager/Dy. General Manager (Industrial/Public Relations & HRD) on deputation basis for a period of three years

After detailed deliberations, the Board approved creation of a post of Deputy General Manager (Industrial/Public Relations & HRD). The selection of a

candidate for the post should be based on the Recruitment Rules approved by the competent authority, for which the Selection Committee should include an outside expert in the field. The Board also desired that internal candidate fulfilling the job requirement should be considered for selection. However, in case it is not possible to fill-up the post by an internal candidate, the same should be filled by deputation only for a limited period and strictly on repatriable basis.

14. This decision of the Board of Directors fairly establishes that the Board of Directors did not proceed to examine the candidature of respondent No. 3. The Board clearly went for a proper legal way of selecting a candidate by going through a selection based on the Recruitment Rules by the competent authority. The Board further desired that the internal candidates should be first considered and only if it is not possible to fill up the post by internal candidate the same should be filled by deputation and that too for a limited period strictly on repatriable basis. It is, Therefore, clear that the Board of Directors did not at all have the name of Shri M.P. Srivastava under contemplation when it approved the proposal for creation of a post. The plea of the petitioner that the respondents have pre-determined the name of respondent No. 3 and, Therefore, the entire process is vitiated by fraud or favoritism cannot be sustained.

15. The petitioner still says that the ultimate selection of respondent No. 3, particularly after relaxation of age, fortifies the plea of the petitioner that his selection was pre-determined. This plea cannot be agreed to. None of the five candidates who are available fulfill the criteria of eligibility. Some kind of relaxation was required to be made for the purpose of selecting a candidate for otherwise the post would have gone vacant. It is entirely within the domain of the selectors to decide which criterion could be relaxed. The selectors opted to relax the age criterion while keeping the criteria of experience and educational qualification intact. There does appear to be some rationale in doing so since it was the efficiency and competence which was more important than the age of the candidate. It is not the case of the petitioner that while respondent No. 3 was given relaxation in age he was not given any relaxation in age. In any case it was the selectors' option as to which kind of relaxation was to be granted. Moreover since Shri M.P. Srivastava was one of the candidates his candidature had to be objectively considered and he could not have been rejected on the ground that his name had cropped up at some point of time in the mind of GM (Administration) which prepared the note dated 10.7.2003.

16. The petition, Therefore, must fail. I need not go into the question about the consequence of the conduct of the petitioner in filing the incomplete document. The petitioner is accordingly dismissed with costs assessed at Rs. 5,000/-.