
(1996) 05 DEL CK 0078

In the Delhi High Court

Case No : Civil Writ Petition No. 807 of 1996

V.K. Sehgal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 24-05-1996

Acts Referred:

Citation : (1996) 3 AD 689 : (1996) 37 DRJ 606 : (1996) LabIC 2195

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : A.M. Singhvi, A.K. Tandon, A.K. Vali, Rajiv Nayar, Anup Sachthey and C.D. Singh, for the Appellant;

Judgement

M.K. Sharma, J.

(1) The present writ petition is directed against the alleged actions of the respondents in not calling for interview for the post of Chairman-cum-Managing Director in the subsidiary companies of Coal India Limited those persons who do not have 2 years of actual service remaining on the date of interview. The petitioner has challenged particularly the non-consideration of his case for appointment to one of the posts of Chairman-cum-Managing Director in the subsidiary companies in Coal India Limited on the ground that the petitioner did not have two years of actual service remaining on the date of the interview.

(2) The petitioner was born on 14.8.1939 and accordingly his date of retirement is 31.8.1997. On 18.10.1993 the petitioner was working as a Director (Technical) in the Mahanadi Coalfields Limited which is one of the subsidiary companies of Coal India Limited. On 13.7.1995 a message was sent by the Chief General Manager (Personnel) to the petitioner asking for his up to date bio-data in Pest format for the purpose of sending it to the appropriate authority for consideration of his particulars for appointment to the post of Chairman-cum-Managing Director. On 21.7.1995 another message was sent to the petitioner intimating him that the Ministry of Coal had requested for sending his bio-data in pest

format for consideration for appointment to the post of Chairman-cum-Managing Director of Coal India Limited subsidiaries. By the aforesaid message the petitioner was directed to send his bio-data in the format for onward transmission to the Ministry of Coal. In pursuance to the aforesaid communication the petitioner sent his bio-data in the prescribed format. However, the intimation calling for interview to the post of Chairman-cum-Managing Director was not issued to the petitioner whereas such intimation was sent to some other candidates for appearing in the interview to be held on 7.9.1995. On enquiries made by the petitioner he was informed that he had not been called for the said interview as he did not have minimum of 2 years service left over on the scheduled date of interview. Being aggrieved by the aforesaid action on the part of the respondents, the petitioner has preferred the present writ petition on the ground that the decision of the respondents in not calling the candidates who had less than 2 years of left over service on the date of the interview is arbitrary, void ab initio and illegal.

(3) The respondents 3 & 4 have filed their counter affidavit in the instant case, justifying their action in not calling the petitioner for interview. It is stated in the counter affidavit that since the petitioner had crossed the age of 56 years on 13.8.1995 he was not called for the interview to be held on 7.9.1995. In the counter affidavit filed by respondents 1 & 2 the aforesaid action in not calling the petitioner for interview has been justified on the basis of the letters issued by the Department of Personnel and Training, Ministry of Public Grievances and Pensions. Specific reference has been made to the circulars and letter dated 1.6.1992 issued under the D.O. No.23(5)EO/92(ACC) wherein it is stated that the Prime Minister had directed that the policy of placing the cut-off limit as 56 years for calling for a person for interview by the Pesb should be strictly followed. It is further stated therein that the Prime Minister had further directed that power to relax the age limit would vest only in the Appointments Committee of the Cabinet and that proposals for any relaxation in the age limit might henceforward be submitted to the Appointments Committee of the Cabinet for its approval. The respondents also relied upon another letter issued under D.O. No.27(3)-EO/84(ACC) dated 20.2.1984 issued by the Secretary of the Department of Personnel wherein it is stated that the candidates who would not have the prospect of a reasonable tenure of atleast two years in the top management post " may not be recommended for appointment to such posts.

(4) Dr. Singhvi, appearing for the petitioner submitted that the letters relied upon by the respondents to justify their action in not calling the petitioner for interview do not provide for having atleast the minimum service of 2 years from the date of interview. The aforesaid criteria followed by the respondents, as stated in their counter affidavit, according to him, is not reflected in any statutory rule nor in any administrative circular and Therefore, the action of the respondents in not calling the petitioner for interview on the alleged ground of his not having 2 years of service on the date of interview is illegal, arbitrary and discriminatory. He further submitted that the criteria of less than 2 years from

the date of interview followed by the respondents could never be related to the date of interview, which is always uncertain and if at all such a criteria is intended to be laid down the said period could be reckoned in relation to the date of advertisement or the last date for submission of the application or such criteria which can have a nexus with the object sought to be achieved. According to him, Therefore, the criteria laid down by the respondents and followed in the instant case is arbitrary, fortuitous and discriminatory. His further submission was that there is no statutory rule in support of the criteria adopted by the respondents nor is there any guideline to that effect and such restrictions cannot be laid down through internal letters without any publication of the same in accordance with law. He submitted that the petitioner was not called for the said interview held on 7.9.1995 despite the fact that the petitioner was fully qualified and eligible, which is also apparent from the messages issued by the respondents on 13.7.1995 and 21.7.1995 wherein the name of the petitioner had figured and in terms of which the petitioner submitted his bio-data for onward transmission to the Pesb for consideration and calling for interview.

(5) The learned counsel for the petitioner, in support of his submissions relied upon the decisions of the Supreme Court in *Rekha Chaturvedi Vs. University of Rajasthan & Others* reported in 1993 Suppl.3 Scc 168 and *J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc.,* .

(6) Mr. Vali appearing for the respondents, however, submitted that the Board level appointments are contractual appointments made on the basis of selection, and Therefore, the employer has a right to formulate a policy that an incumbent selected for a post has a reasonable tenure so as to ensure the stability and continuity in top level management in Public Sector Undertakings. In pursuance of the same, according to him, a uniform policy has been laid down that the persons beyond 56 years of age should not be considered by the Pseb while making selection for a Board level post. He relied upon the aforesaid circulars issued by the Ministry of Personnel, Public Grievances and Pensions, in support of his submissions and stated that in view of the aforesaid policy the petitioner was not called for interview on 7.9.1995 as he had crossed 56 years on 13.8.1995. He further submitted that the date of interview could be a relevant cut-off date and a criteria to determine the eligibility in respect of age as on that day the selection of the candidate takes place.

(7) The issue, Therefore, which arises for my consideration is as to whether the case of the petitioner for appointment to the post of Chairman-Cum-Managing Director could be ignored by the authorities on the ground that on the date of the interview i.e. on 7.9.1995 the petitioner having less than 2 years of left over service, his date of retirement being 31.8.1997.

(8) My attention has been drawn to the time schedule approved for processing of appointments in Central Public Sector Undertakings. The said schedule is provided for in the letter dated 25.7.1990 issued from the Ministry of Personnel, Public Grievances and Pensions, wherein it is stated that Pesb should initiate

action to fill the vacancies 180 days in advance of the vacancy arising and time specified for receipt of application by the Pesb is stipulated as 30 days and the time for Pesb to finalise action is prescribed as 30 days. The circulars relied upon by the respondents justifying their action in not calling the petitioner for the interview dated 202.1994 and 1.6.1992 ex facie do not lay down that the tenure of 2 years is to be reckoned or computed from the date of interview. The letter dated 1.6.1992 stipulates that the policy of placing the cut-off limit at 56 years for calling a person for interview by the Pesb should be strictly followed. It is thus apparent that the cut-off limit of 56 years has not been made specifically related to the date of interview. The bio-data of the petitioner was called for by the respondents including the Pesb in the prescribed format for considering his case for the purpose of appointment to the post of Chairman-cum-Managing Director. Apart from the aforesaid letters, my attention has also been drawn to another letter dated 2.8.1995 written by the Chief General Manager to the Ministry of Coal stating therein that the bio-data in Pesb format in respect of 8 Directors of Cil subsidiaries including that of the petitioner are being forwarded. It is pertinent to mention that by letter dated 3.8.1995 the Public Enterprises Selection Board called for the names of all eligible internal candidates seniority-wise and the names of other sectoral candidates with their up to date bio-data in Pesb format. On reading the aforesaid communications, it appears to me, that on 3.8.1995 the Pesb initiated action to fill up the vacancies in the posts of Chairman-cum-Managing Director of Cil subsidiaries. Apparently on 3.8.1995 the petitioner did not complete 56 years of age and Therefore, as on that date he had a right to be considered for appointment to the post of Chairman-cum-Managing Director provided the said date is held to be the cut-off date for the purpose of consideration for appointment.

(9) The learned counsel for the petitioner submitted before me that there is. no statutory rule and/or administrative instructions issued by the Competent Authority laying down a criteria of minimum 2 years of service in the post at the top management level from the date of the interview and that no such criteria could be laid down by letters which are in conflict with the relevant rules, which do not prescribe any such restriction. Let me now examine one of the issues raised before me namely - as to whether the date of interview could be and has in fact been decided upon to be the relevant date for fixing the cut- off date of 2 years tenure. In fact, as has been noticed earlier, none of the two circulars relied upon by the respondents lays down that the relevant cut-off date for fixing the tenure of 2 years period would be the date when the interview takes place and as such fixation of the said date by the respondents without there being any supportive legal basis for the same, appears to me to be arbitrary. In my opinion, the ratio of the decision of the Supreme Court in the case of Rekha Chaturvedi (supra.) to the effect that the date of selection could not be the criteria for considering the case of an officer is applicable to the facts of the present case. In the said case the Supreme Court has said that the contention that the required qualification of the candidates should be examined with reference to the date of

selection and not with reference to the last date To making application has only to be stated to be rejected. It is further stated that the date of selection is invariably uncertain and that the date of interview could be so manipulated as to entertain some applications and reject others leaving open a scope for malpractices and accordingly it was held that in the absence of a fixed date indicated in the advertisement/notification inviting the application with reference to which the requisite qualifications should be judged, the only certain date for the screening of the qualification will be the last date for making the applications. Therefore, the date of advertisement and/or the last date for making an application could be the crucial date for fixing the cut- off limit for computing the period of 2 years, if at all, such a criteria is validly and properly laid down.

(10) The aforesaid two circulars relied upon by the respondents do not appear to have any statutory or executive backing and is just a communication from one officer to the other without laying down any specific guidelines thereto. For the foregoing reasons, in my opinion, the cut- off date fixed by the respondents for computing availability of two years service as the date of interview cannot be said to be based on any reasonable criteria as the date of interview is always uncertain. The Pesb initiated their action for filling up the vacancies on 3.8.1995 by calling for bio data of eligible candidates including the petitioner and in the facts and circumstances of the present case, and taking the entire matter into consideration the said date could be said to be a reasonable cut-off date of having atleast two years service period for the purpose of considering the names of the eligible officers. Under the aforesaid circumstances, since on that date the petitioner was eligible to be considered and had not completed 56 years of age, I am inclined to allow this writ petition and direct the respondents to consider the case of the petitioner by holding a review selection board to find out the suitability for appointment to the said post of Chairman-cum-Managing Director. The said review selection Board shall be held within four weeks and if the petitioner is found to be suitable for such appointment he should be assigned the correct position in the panel of selected candidates and be promoted as per his position in the panel in accordance with law. The petition, Therefore, Stands allowed. There will be no order as to costs. Dasti.