

(2010) 09 DEL CK 0278

In the Delhi High Court

Case No : Writ Petition (C) No. 5777 of 2010

Yash Pal

APPELLANT

Vs

Secretary, Public Enterprises Selection Board and Others

RESPONDENT

Date of Decision : 07-09-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Contract Act, 1872 — Section 11

Citation : (2010) 09 DEL CK 0278

Hon'ble Judges : Dipak Misra, C.J; Manmohan, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; Satya Siddiqui and S.K. Mishra for R-1, Veronica Mohan and Anjana Gosain for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—The present writ petition has been filed under Article 226 of the Constitution of India challenging the constitutional validity of the Recruitment Rules of respondent No. 1-Public Enterprises Selection Board (hereinafter referred to as "PESB") prescribing different upper age limits, namely, 57 years for external candidates and 58 years for internal candidates for Board level posts.

2. The relevant facts of the present case are that on 25th January, 2010, respondent No. 1-PESB issued a circular/advertisement seeking candidates for the post of Member (Operations) in Airports Authority. The said circular/advertisement stated as under:

Subject : Selection for the post of Member (Operations), Airports Authority of India Limited (AAI) in Schedule "B" Scale of pay.

The Public Enterprises Selection Board (PESB) is seeking qualified candidates for the post of Member (Operations), Airports Authority of India Limited (AAI) in Schedule "B" scale of pay of Rs. 25750-650-30950 (pre-revised). A copy of the job description for the post is enclosed.

2. It is requested that names of candidates seniority-wise who are found suitable for the said post as per the requirements indicated in the job description along with their up-to-date bio-data (in the prescribed form) duly endorsed may kindly forwarded to PESB 22nd March, 2010. It is also requested that advance action may be taken to keep the ACRs for the last 5 years, of those candidates ready along with their latest vigilance profile [(i) penalty imposed, if any during the last 10 years (ii) details of disciplinary action initiated/being initiated if any, etc.] to be furnished as and when the selection meeting is scheduled.

3. In case the relevant details are not received within the stipulated time, it will be assumed that there are no eligible candidates to be sponsored for the post.

AGE: On the date of occurrence of vacancy.

(i) Minimum 45 years.

(ii) Not more than 58 years for internal candidates and not more than 57 years for others.

(iii) The age of superannuation is 60 years. The minimum length of service required in the eligible scale will be one year for internal candidates, and two years for others as on the date of vacancy.

5. SUBMISSION OF APPLICATIONS

Prospective candidates from the Central Public Sector and Government officers shall send their applications, through proper channel, in the format at Annexure I.

State Public Sector Executives/Private Sector Executives shall submit their applications, in the format at Annexure II, along with.

Last date of receipt of applications in PESB is 22nd March, 2010. No application shall be entertained under any circumstances after the stipulated date. Incomplete applications are liable to be rejected.

(emphasis supplied)

3. The aforesaid circular/advertisement in turn was based on DPE OM No. 18(10)/99-GM-GL-33 dated 22nd August, 2001 and DPE OM No. 18(6)/98-GM-GL-72 dated 20th October, 2005. The DPE OM dated 20th October, 2005 reads as follows:

Cut-off age for Board level appointments in Central Public Sector Enterprises.

The undersigned is directed to refer to this Department's OM of even number dated 3.2.1999 and OM No. 18(10)/99-GM-GL-33 dated 22.8.2001 on the subject mentioned above wherein the decision of the Government that candidates for interview by PESB for Board level appointments in PSEs should not exceed 58 years of age where the age of retirement is 60 and 56 years in the cases where age of retirement is 58 years.

2. The Government has further considered the matter and, in modification to the above mentioned OMs, has decided as under:

(i) The cut-off age for external candidates for consideration for Board level posts in Public Sector Enterprises should be a minimum of three years service left (on the date of occurrence of vacancy) with reference to superannuation age applicable in the PSE against which the candidate is being considered and

(ii) For internal candidates, the residual service condition would continue to be two years.

3. All the administrative Ministries/Departments are requested to kindly take note of the above decision for guidance and necessary action.

(emphasis supplied)

4. Since the petitioner was not considered for the aforesaid post, he filed a petition being OA No. 1253/2010 before the Central Administrative Tribunal, Principal Bench, New Delhi. However, the said petition was dismissed by the Central Administrative Tribunal holding that the petitioner's application through proper channel reached the PESB after last date fixed by the PESB. The Tribunal further held that the impugned Recruitment Rules and the OM were perfectly legal and valid. In fact, the Tribunal in the impugned order has observed as under:

14. In this background of the settled position on law on classification we tested the DPE OM dated 3.2.1999 and 20.10.2005 on the classification of internal candidate and external candidate insofar as their remaining period of service on the crucial date i.e. date of vacancy. We find that the said OM passes through the 2 tests indicated by the Honourable Apex Court It is noted that 2 years for internal candidates and 3 years for external candidates of residual service are clearly intelligible which is based on rational and logical grounds and no discrimination can be attributed for the same. We also note the OM was issued by DPE and being adopted by PESB across the selection process among all Central Public Sector Enterprises, no prejudice and discrimination has been caused to the Applicant. Further, he could not demonstrate how the classification of internal and external candidates is arbitrary and irrational. Hence, we do not agree with the point raised by the Applicant on the above issue.

15. The Applicant has raised a question on the cut off dates viz. relating to two cut off dates. First cut off date is the last date for the application of the candidates to reach PESB Secretary (i.e. 22.3.2010) and the second cut off date is the date of vacancy (01.9.2010) as the crucial date on the basis of which computing age; qualifying service; and remaining service before superannuation are worked out. He terms the same as arbitrary. We don't find any rationality in the argument. It is noted that the cut off dates indicated in the letter and circular of PESB is based on the DPE OMs. DPE introduced the principle of cut off date as the date of vacancy. PESB takes steps in advance to ensure that selected panel is

available on the crucial date (date of vacancy) for timely appointment. DPE guideline on the crucial date is based on sound and logical ground, which, in our opinion, cannot be termed as discriminatory, arbitrary and capricious. It is permissible to introduce such cut off dates. It is trite that the executive authority has the power to fix cut off dates which is the case in this OA. We therefore find no convincing ground for us to intervene in the matter. In this context, we place our reliance on the judgment of Honourable Apex Court in the case Government of A.P. v. N. Subbarayuddu 2008 14 SCC 702 and take extract of paragraph 5 of the said judgment which is as follows:

5. In a catena of decisions of this Court it has been held that the cut off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut off dates is within the domain of the executive authority and the Court should not normally interfere with the fixation of cut off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See State of Punjab and Others Vs. Amar Nath Goyal and Others,

16. In view of what we have discussed above, we find that DPE OM dated 3.2.1999 and 20.10.2005 and PESB letter dated 25.1.2010 are legally sustainable.

17. We also find that the Applicant was over aged as an external candidate on the date of vacancy (1.9.2010), his date of birth being 11.11.1953. As per his own averment, he was 57 years 8 months and 21 days as on 1.9.2010. Hence, we find he was not eligible to apply for the post. The decision of the Respondent No. 3 on this very ground is unquestionable and valid. In the result, we hold the letter dated 6.4.2010 issued by Respondent No. 3 as valid one. Besides, his application through proper channel reached PESB few months after the last date fixed for receipt of applications in PESB. Thus, he could not have been called for interview by the PESB.

5. Mr. Yash Pal, the petitioner in person, urged that the provision of different upper age limits namely, 57 years for external candidates and 58 years for internal candidates was irrational, arbitrary and unreasonable as the same was violative of Articles 14 and 16 of the Constitution. He submitted that age can never be an intelligible criteria for classification. According to him, age has no nexus to the object sought to be achieved. He pointed out that in United States of America, age discrimination is strictly prohibited. According to him, in United States of America, the federal Government prohibits the age discrimination under "The Age Discrimination in Employment Act, 1967".

6. Having heard Mr. Yashpal, petitioner in person, we are of the view that Right to Equality is a fundamental principle of modern democracy and of Governments based on rule of law. Right to Equality is regarded as the foremost fundamental right of an individual and it is regarded by many scholars as the starting point of

all other liberties.

7. Article 14 as enshrined in our Constitution consists of two parts. While the first part stipulates that the State shall not deny any person equality before law, second part stipulates that all citizens are entitled to equal protection of law. While the first part is based on the concept of rule of law, the second part is based on the Fourteenth Amendment to the American Constitution which gives guarantee of equal laws.

8. But all human beings are not equal in all respect and, therefore, if the same treatment is accorded to each of them, it would result in inequality. Consequently, the underlying concept of equality is not uniformity of treatment to all in all respects. Article 14 does not mean that every law must have universal application to all. In a nutshell, equals must be treated equally and unequals must be treated differently.

9. Article 14 forbids class legislation but not reasonable classification. Accordingly, the Indian Courts have evolved the test of reasonable classification namely, that the classification must be founded on intelligible differentia and the differentia must have a rational relation to the objects sought to be achieved. For instance, Section 11 of the Contract Act, 1872 states that minor cannot enter into a contract. Here classification is based on age and age has a relation to the object of the legislation that means capacity to enter into a contract.

10. Similarly, in the present case, the classification though based on age has a rational relation to the object to the Recruitment Rules that means familiarity with the working condition and the time which a new external recruit would take to become familiar with the working of the institution. Further in our opinion, the US Age Discrimination Employment Act has no relevance and it cannot be applied in the absence of such a similar Act having been adopted by Legislature. Accordingly, the present petition has no substance and is dismissed in limine.