

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WRIT PETITION (CIVIL) NO.8326/2005**

% Date of Decision : October 24, 2008

Umesh Verma Petitioner

Through : NEMO

Versus

The Chairman/Managing Director
National Thermal Power Corporation Ltd. Respondent

Through : Mr. R. R. Kumar,
Advocate

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not ? | Yes |
| 3. | Whether the judgment should be reported in the Digest ? | Yes |

SUDERSHAN KUMAR MISRA, J :

1. The petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India. He is aggrieved of the decision of the National Thermal Power Corporation Limited ("NTPC"), rejecting his candidature for the post of Assistant Engineer. On the last three occasions, when the matter was taken up, there was no appearance for the petitioner. Ultimately, judgment was reserved after hearing counsel for the respondent.

2. An advertisement was issued in Rozgar Samachar dated 18-24th December 2004. This advertisement was taken out by

the NTPC., i.e., the respondent herein, which had initiated a special drive for recruitment of Scheduled Tribe candidates. Applications were invited from Scheduled Tribe candidates for the post of Assistant Engineer in various projects of the NTPC. All the qualifications required were mentioned in that advertisement. It was also stated that candidates must have one year's experience, "in executive cadre", after attaining the qualifications prescribed. The grade and pay scale stated in the advertisement was Rs.10750-490-15750.

3. Admittedly, at that time, the petitioner was working as an Engineering Assistant with Doordarshan in the pay scale of Rs.5000-8000. Since he felt that he possessed the required qualifications and experience, he applied for the post. He alleges that before the interview started on 18.4.2005, after scrutinizing his documents, the concerned officer of NTPC informed him that the post of, "Engineering Assistant", which he was holding with Doordarshan, cannot be deemed to be a post in the "executive cadre", as was required for appointment to the post in question. The petitioner was, therefore, not permitted to sit for the interview. Thereafter, a detailed representation submitted by the petitioner in this behalf, as also a reminder to the Chairman/Managing Director of NTPC, did not elicit any response.

4. The petitioner has rested his case solely on the contention that officers, such as the petitioner, working as Engineering Assistants, carry out the same duties as those being carried out by Senior Engineering Assistants in Doordarshan. He contends

that since Senior Engineering Assistants belong to the executive cadre, therefore the petitioner should have been treated at par with Senior Engineering Assistants and be deemed to have the requisite experience in the Executive Cadre to which the said Senior Engineering Assistants belong, and that therefore, the rejection of his candidature merely because the post held by him in Doordarshan did not belong to the Executive Cadre, was bad.

5. On the other hand, the counsel for the respondent has contended that the petitioner's candidature was rejected only because he did not belong to the executive cadre, and for no other reason. The respondent has relied on an office memorandum being DPE OM No.2(48)/90-DPE(WC) dated 22.4.1991, which deals with the pay scales of unionized workmen, to show that the pay scale to which the petitioner belongs is in the non-executive cadre. The respondent has also annexed a chart showing the comparable pay scales of the Central Government and those of NTPC after the 5th Pay Commission to further substantiate its stand that the petitioner did not belong to the executive cadre. It is also contended that the requirement that the candidate must have one year's experience, "in executive cadre", meant that the candidate should have worked at a post in the executive cadre; and a candidate cannot be deemed to have fulfilled the prescribed requirement merely because he may have carried out some of the duties of a higher post belonging to the executive cadre.

6. In his petition, the petitioner also claims that by calling him for the interview, the respondent had satisfied itself of the fact that he possessed the necessary qualifications for the advertised post, and therefore, the action of the respondent in rejecting his candidature thereafter, is barred by the doctrine of 'promissory estoppel' and for that reason also, the Court may direct the respondent to appoint him to the advertised post.

7. According to ***Black's law Dictionary 6th Edition***, the term 'promissory estoppel' means -

""Promissory Estoppel. That which arises when there is a promise which promisor should reasonably expect to induce action or forbearance of a definite and substantial character on part of promisee, and which does induce such action or forbearance, and such promise is binding if injustice can be avoided only by enforcement of promise... Elements of a 'promissory estoppel' are a promise clear and unambiguous in its terms, reliance by the party to whom the promise is made, with that reliance being both reasonable and foreseeable, and injury to the party asserting the estoppel as a result of his reliance....."

In this case, the terms of the advertisement whereby interested persons were invited to apply for the post in question, included the following clause :-

"9. In case during the process of recruitment at any time it is revealed that the candidature of applicant does not fulfill the required conditions or the details furnish by them are wrong/untrue or any material information has been concealed, than his candidature will stand cancelled. Any of these short comings if became known after appointment, then his service could be terminated after appointment."

The above clause is also an integral part of the terms and conditions of the offer. Consequently, the NTPC had reserved to itself the right to cancel an applicant's candidature once it realized that he does not possess the required qualifications. Further, it had also reserved the right to terminate his appointment in case this came to light after he had been duly appointed to that post. Under the circumstances, for this Court to accept the petitioner's contention that the respondent's decision to invite him for the interview debars it from rejecting the petitioner at any time thereafter for lack of the necessary qualifications would be against the very terms of the offer. It would result in rendering Clause 9, reproduced above, otiose. Furthermore, even if any promise was held out to the petitioner by the respondent by calling him for the interview, which I doubt, it was clearly based on a mistake of fact and therefore unenforceable. Even otherwise, it cannot be said that merely because the respondent has correctly concluded that the petitioner in fact does not possess the necessary experience and therefore cannot be considered for appointment to the post advertised, any injustice is being caused to him. In the light of the above, and particularly in view of the aforesaid clause, it cannot be said that the doctrine of promissory estoppel, as elucidated above, bars the NTPC from rejecting the petitioner's candidature at any stage once it comes to light that the petitioner in fact does not fulfill the required qualifications.

8. It is the post of Assistant Engineer which has been advertised by the respondent. Such a post requires a certain

level of skill, knowledge, efficiency and experience. The requirements for such posts are decided taking into consideration a number of factors. In addition, the persons who are likely to possess the necessary requirements are also kept in mind. All such persons, whether belonging to a particular cadre or its equivalent, suitable for the post, are generally indicated when such posts are advertised. But where no such equivalents are given, it is not open for a candidate to seek such equivalence by reading something in the advertisement which is not there. In the instant case, the experience required for the post was one year and that too, "in an executive cadre". The expression, "cadre", is ordinarily used to denote the permanent establishment of a regiment forming the nucleus for expansion at need. In ***Dr. Chakradhar Paswan Vs. State of Bihar, AIR 1988 SC 959***, the Supreme Court has held that even though officers may be member of the same service, but still it is not necessary that they belong to the same cadre. It was further held that, "In service jurisprudence, the term 'cadre' has a definite legal connotation. In the legal sense, the word 'cadre' is not synonymous with 'service'. Fundamental Rule 9(4) defines the word 'cadre' to mean the strength of a service or a part of service sanctioned as a separate unit." Similarly, in ***Director General of Health Services & Ors. Vs. Bikash Chatterjee & Ors.***, reported as ***AIR 1969 Cal 525***, the expression, "cadre" has been held to mean not a post but the strength of an establishment. In the case at hand, the posts of Engineering Assistants and Senior Engineering Assistants

with Doordarshan are not interchangeable, nor do the incumbents draw the same pay. Consequently, the post of Engineering Assistants and Senior Engineering Assistants constitute separate cadres or grades. To my mind, the expression, "in executive cadre" used in the advertisement can only mean that the candidate must have worked for at least one year as a part of the executive strength of the establishment of his previous employer. In other words, he should have held a post that belonged to the executive cadre. This requirement cannot be moulded to mean that one year's experience in any cadre, with some duties and responsibility equivalent to those in the executive cadre, would suffice. If that was the case, nothing prevented the respondent from saying so specifically in the advertisement.

9. It is an admitted fact that the petitioner was in the pay scale of Rs.5000-8000. Looking to the chart annexed by the respondent, I find that the, "executive cadre" commences in the Central Government from a pay scale of Rs.6500-10500 and in the NTPC the same commences at Rs.10700-15750. This leaves me in no doubt that the petitioner was not placed in the executive cadre in his existing employment with Doordarshan. Even in the petition, the petitioner has neither taken the plea that his cadre in Doordarshan is equivalent to that of the executive cadre, nor has he placed any document on the record to that effect. The petitioner has also not filed any rejoinder, to challenge the correctness of the documents relied on by the respondent.

10. In addition, I notice that although the petitioner has stated in para 1 of the petition that the respondent had initiated a special recruitment drive for Scheduled Castes, and that the petitioner also belongs to a Scheduled Caste; a perusal of annexure P-1, which is a copy of the advertisement issued by the respondent in Hindi, uses the expression, "Anusuchit Janjati", to denote the category, from which it intended to recruit candidates. The expression, "Anusuchit Janjati" means Scheduled Tribe and not Scheduled Caste. However, the English translation annexed by the petitioner to annexure P-1 mentions, "Scheduled Caste" candidates instead. Again, in the letter of NTPC dated 24.4.2005, which is annexed as annexure P-2 to the petition, it is clearly stated by the respondent in paragraph 4 that the advertisement, "was meant for recruitment for ST category candidates exclusively." It is therefore obvious that the petitioner who belongs to the Scheduled Caste, and not to any Scheduled Tribe could not have been considered for the post in question for that reason also.

11. Under the circumstances, there is no merit in the petition and the same is dismissed.

Sudershan Kumar Misra, J.

October 24, 2008
mb/OPN