

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

+ **W.P.(C) No.5043/2012 & CM No.19745/2012 (Stay)**

% **May 22, 2013**

DEEPAK SINGH YADAV

.....Petitioner

Through: Mr. Deepak Anand and Mr. Ghanshyam
Yadav, Advocates.

VERSUS

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Prasouk Jain for Mr. B.V. Niren,
CGSC for R-1.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed by the petitioner Mr. Deepak Singh Yadav, who had applied for the post of Junior Scientific Assistant as an OBC candidate with the respondent No.2/Central Pollution Control Board. On behalf of the petitioner, claim is laid to appointment to the subject post including by setting aside the selection of the successful candidates to respondent No.2 on the following grounds urged before me:-

- (i) The respondent No.1 has given wrong marks to the petitioner
i.e. wrongly proportionating the marks of the written test without

scaling down appropriately the interview marks. It is argued that total marks for the post were 100 of which 60 marks were for the written test and 40 marks for the interview. It is argued that the weightage/proportionality of the interview has wrongly continued to remain at 40 and the same should have been proportionally reduced once the marks of the written test were reduced from scale of 100 to the scale of 60.

(ii) The respondent No.2 was wrongly appointed because there was a requirement of having four years experience, and which experience the respondent No.2 did not have. Since the respondent No.2 was wrongly appointed, and his appointment therefore has to be quashed, thus the petitioner who was No.1 in the waiting list should be appointed.

(iii) As per the reply to RTI query given by the respondent No.1, if a person vacates the post within one year, then, the next person should be appointed as the validity of the panel is one year. Petitioner being No.1 in the waiting list and the respondent No.2's services having been terminated within one year of appointment, petitioner should be appointed.

2. The first argument urged on behalf of the petitioner is of wrong weightage being given to the interview marks by not proportionally reducing the said marks as was done to the marks of the written test. To appreciate this argument, certain facts are required to be understood. The total marks which were to be taken for the post were 100 marks of which 60 marks were for the written test and 40 marks were for the interview. The written test which was given however was not of 60 marks but was of 100 marks. Accordingly, the marks taken on a scale of 100 marks were to be reduced to the scale of 60. Petitioner received 49 marks in the written test of 100 marks and, therefore, on a weightage when taken as total of 60 marks against 100, petitioner was given 29.4 marks i.e. 49 of 100 is equal to 29.4 of 60. Petitioner has no quarrel with this. Petitioner argues that marks for the interview should also be scaled down from 40. I have really failed to understand this argument because where does arise the question of scaling down the interview marks of 40 when the total marks for interview are also 40 itself. The need felt for scaling down the marks of the written test was because weightage to the written test was 60 out of the total marks of the post at 100 and since the written test was of 100 marks and not of 60 hence there was requirement of scaling down the scale from 100 to 60. The interview marks continued to be 40 out of the total of 100 for the post and therefore there was no need of scaling down the marks of the

interview. This argument urged on behalf of the petitioner is, accordingly, misconceived and rejected.

3. The second argument urged on behalf of the petitioner is that the respondent No.2 did not have the necessary four years experience for being appointed to the post. I find that this argument is also misguided and misdirected because the respondent No.2 has filed alongwith its counter affidavit three experience certificates which were filed by the respondent No. 2 with the respondent No. 1. First certificate of experience is of M/s Vadinar Oil Terminal Limited (ESSAR company) and which was for the period from 21.3.2005 to 3.8.2007, second certificate is of Bharat Oil & Gas Corporation Ltd. of petitioner working as Assistant Plan Operations from 10.1.2009 to 6.10.2010 and the third one is of Bharat Oil & Waste Management Ltd. from 23.10.2010 to 30.04.2011. The total period of all these certificates is more than four years and therefore it is incorrect to argue that the respondent No.2 did not have the necessary four years experience. What was required as per the appointment condition was four years working experience and the respondent No.2 in view of the certificates cannot be doubted to have the necessary four years working experience.

4. The last argument urged on behalf of the petitioner was that since as per reply to RTI query the panel was valid for one year whereby if the first person who

is appointed leaves the service within one year, and as the respondent No. 2 left the services of respondent No. 1 within one year on 20.07.2012, the petitioner is entitled to be appointed. Respondent No.2 was appointed on 29.8.2011 however respondent No. 1 has stated that the services of respondent No. 2 were terminated on 15.10.2012 due to misconduct. Therefore the respondent No.2 worked for more than one year after his appointment. Respondent No. 1 has stated that respondent No.2 had sought resignation from services vide letter dated 20.7.2012, however, that resignation was not accepted and instead respondent No.2 was terminated from services on 15.10.2012. In view of the above facts, it cannot be argued that the respondent No.2 worked for less than one year. Petitioner hence cannot be appointed to the post.

5. In fact, the respondent No.1 has clarified that the factual aspect of one year period is not from the date of appointment of the employee but from one year of the date of recommendation of the list by the Selection Committee. This is done by filing the Office Memorandum of the Government of India dated 29.3.2004. This Office Memorandum makes it clear that one year period commences not from the date of employment of an employee but from one year from the date on which the Selection Committee makes the recommendations. In this case, the Selection Committee obviously would have made a recommendation much before 20.7.2012

and, therefore, even theoretically speaking if the respondent No.2 only worked till 20.7.2012 the period of one year would have been by then crossed, and thus disentitling the petitioner to be appointed.

6. In view of the above, there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.

MAY 22, 2013

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VALMIKI J. MEHTA, J.