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

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Judgment delivered on: 18.03.2014

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W.P.(C) 2122/2012

DEVINDER SINGH

..... Petitioner

versus

INDIAN RAILWAY CATERING AND TOURISM CO.

LTD THROUGH ITS MANAGING DIRECTOR & ANR Respondents

Advocates who appeared in this case:

For the petitioner: Mr Anand Vardhan Sharma & Mr V.S. Vashudev, Advs.

For the respondents: Mr S.K. Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. Pithily put, the petitioner's grievance is that, despite, having cleared written examination and, thereafter, having been called for an interview by the respondents for the post of Assistant Manger (Tourism), he was not appointed to the said post.

1.1 What has undisputedly emerged from the record is that the petitioner secured 81.25 marks, out of a total marks of 120 in the written examination, while in the interview he secured 7 marks, out of a total marks of 40.

1.2 In view of the this position the stand taken by the respondents is that, since the petitioner failed to secure the minimum qualification marks for the interview, which was set at 45%, he was not selected for the aforementioned post.

2. It is because, this controversy arose, that, vide order dated 04.09.2013 this court had directed the respondents to file an affidavit to demonstrate as to whether the decision regarding minimum qualifying marks for the interview was made prior to the commencement of the selection process. It is not in dispute though, that in the employment notice, which is dated 28.10.2006/03.11.2006, no such criteria, either for the written examination or for the interview, was indicated.

3. Pursuant to the aforesaid order, the respondents have filed an additional affidavit. The additional affidavit has indicated that, on 11.09.2006, a decision had been taken by the respondents that the marks should be distributed in the following manner: 60% for written examination and 40% for interview. A further decision was also taken that, in so far as, the written examination was concerned, qua general category candidates qualifying marks should be fixed at 60%, whereas vis-a-vis reserved category candidates, the qualifying marks were pegged at 50%. In so far as the *interview* was concerned, it was decided that for general category candidates qualifying marks be fixed at 60% and, for reserved category, qualifying marks be fixed at 50%.

4. It appears that the respondents, based on the criteria fixed, did not get sufficient number of candidates for appointment. Accordingly, on 28.03.2007, the rigour qua qualifying marks, for *interview*, was relaxed. In so far as the general and OBC category candidates were concerned, the marks were reduced from 60% to 55%, whereas qua SC/ ST candidates the qualifying marks were reduced from 50% to 45%. The internal deliberation and documents pertaining to the aforesaid have been filed by the respondents vide an additional affidavit dated 19.11.2013, which is sworn by

Sh. Puran Chand Bihari, Deputy General Manager/ HRD for respondent no.1.

5. Learned counsel for the petitioner, however, submits that even if this situation obtained, it would not dilute the petitioner's claim in the writ petition. It is submitted that since the employment notice did not indicate the criteria, the petitioner could not have been ousted in the manner, which is sought to be done by the respondents. In support of his case, learned counsel for the petitioner has relied upon the judgment of the Supreme Court in the case of *Hemani Malhotra vs High Court of Delhi (2008) 7 SCC 11*.

6. I have heard the learned counsels for the parties and also perused the record. The position which emerges upon perusal of the record is briefly as follows:

(i) The respondents vide employment notice dated 28.10.2006/ 03.11.2006 had taken out an advertisement for filling up various posts, including 20 posts of Assistant Manager (Tourism), post code 010. Out of the said 20 posts, 3 posts, were reserved for SC category, while 1 post was reserved for ST candidates. Out of the remaining posts, 5 posts were reserved for OBC candidate and 11 posts were meant for general category candidates.

(ii) The petitioner, who at the relevant point in time was working as Systems Manager in Indian Posts, at Kurukshetra, in the State of Haryana, also applied against the said advertisement.

(iii) It may be pertinent to note that in so far as the employment notice was concerned, in respect of the posts of Assistant Manager, the qualification criteria stipulated therein was as follows: "*Masters in Tourism with minimum five years, post qualification, works experience*".

(iv) Upon perusal of the petitioner's application the respondents, admittedly, called upon the petitioner to appear for the written examination. The petitioner, appeared in the written examination on 11.02.2007, in which, as indicated above, he secured 81.25% marks out of the total of 120 marks, set in the written examination. Consequently, on 12.05.2007, the petitioner was called for an interview.

(v) The respondents declared the result on 29.05.2007. Admittedly, the respondents selected only 8 candidates against the 20 advertised post, and kept the other 12 posts vacant. In so far as the vacancies reserved for SC category candidates were concerned, none of the 3 reserved posts were filled up.

7. It is the case of the petitioner that in December, 2009 the respondents issued a fresh advertisement in respect of posts which were not filled up against the advertisements issued on 28.10/2006/03.11.2006. Apparently, this triggered the petitioner's quest to seek information from the respondents as to why, he had not been appointed to the post of Assistant Manager (Tourism), which was advertised vide employment notice dated 28.10.2006/03.11.2006.

8. The petitioner, accordingly, took recourse to the Right to Information Act, 2005, and filed an application dated 12.03.2010, with the respondents. By a response dated 05.04.2010 the respondents intimated, broadly, to the petitioner that his candidature had been rejected on account of his inability to secure the minimum 45% marks in the interview, which was stipulated for a SC category candidate; which, admittedly is the category in which the petitioner falls.

9. Being aggrieved, the petitioner approached the Punjab & Haryana

High Court. The said writ petition was numbered as 11127/2010. However, by order dated 20.03.2012 the petitioner's writ petition was dismissed with liberty to approach the court of competent jurisdiction in view of a jurisdiction clause obtaining in the advertisement. It is in this background, that the petitioner, has filed the captioned petition.

10. Having regard to the aforesaid facts, I am of the view that no relief in the writ petition can be granted. The reason being that, this is not a case in which the criteria of, fixation of qualifying marks for the interview, was arrived at midway, that is, after the selection process had commenced. The aforementioned facts would show that respondents had fixed the criteria for the first time, on 11.09.2006, while the employment notice was issued on 28.10.2006/03.11.2006. That criteria, in fact, was tougher as a reserved category candidate had to acquire in the *interview* a minimum qualifying marks equivalent to 50%. This criteria was, however, relaxed and, on 28.03.2007, the respondents took the decision that the qualifying marks for SC/ ST candidates qua interview, should be reduced to 45%. There is no denial that the petitioner was called for interview on 12.05.2007. The record also shows that the petitioner was unable to secure the minimum qualifying marks even as per the relaxed criteria. The petitioner, in fact, secured 17.5% marks in the interview. Therefore, the petitioner's candidature was correctly rejected.

11. During the course of the argument, the counsel for the respondents had also raised another issue, which is, set out in the additional affidavit. The issue being, that the petitioner, as a matter of fact, does not meet the eligibility criteria. According to the respondents, the eligibility criteria, as set out in the employment notice, to which I have made a reference above,

required an applicant to acquire a “Masters in Tourism with minimum five years post qualification, work experience”. There is no denial that while, the petitioner has five years experience, since he has been working with Indian Posts since 1999, there is admittedly lack of “post qualification” experience of five years in the tourism industry. The petitioner, obtained his Masters degree, in December, 1996. According to the respondents the petitioner has only one year and four months, works experience, post qualification; a fact which is not disputed before me.

11.1 Mr Sharma, learned counsel for the petitioner, says that despite this situation obtaining, he was called for the written examination.

11.2 Mr Sharma is right. While there may have been a mistake, it could perhaps also be argued by the petitioner that post qualification work experience does not necessarily relate to tourism, as per criteria stipulated in the employment notice, more particularly so, as this was how, the respondents, read the eligibility criteria.

11.3 This argument, however, need not detain me because this was not a ground which the respondents have raised in their counter affidavit. This was a defence raised by the respondents for the first time, in the additional affidavit.

12. Notwithstanding the above, the first aspect of the matter would perhaps be good enough to oust the petitioner from securing relief in the present writ petition.

13. However, before I conclude I must also note that while, the results were declared as far back as on 29.05.2007, the petitioner approached a court for appropriate relief, though not the court of competent jurisdiction, only in 2010. There is an unexplained gap of nearly three years. Therefore,

in a sense, the petition also suffers from delay and latches.

14. Mr Sharma though tried to defend the delay by submitting that the petitioner sought to approach this court only when a fresh advertisement was taken out by the respondents, in December, 2009. According to me, this by itself would not supply the petitioner, a fresh cause of action.

15. In so far as the judgment in the case of *Hemani Malhotra vs High Court of Delhi* is concerned, it is quite clear that the facts of that case are not applicable to the present case. This was a case in which no criteria had been provided either in the advertisement or, prior to the stage, when the petitioners in that case, were called for the interview. As a matter of fact, the interview was deferred six times and, after, the petitioners had been called for the interview, qualifying marks were sought to be fixed by the selection committee. The Supreme Court deprecated the procedure and proceeded to set aside the decision taken by the respondents in that case. In doing so, the Supreme Court applied the principle enunciated in its own judgment, in the case of *K. Manjusree vs State of Andhra Pradesh (2008) 3 SCC 512*.

16. Thus, for the reasons given above, I find no merit in the writ petition. The writ petition is, accordingly, dismissed. Interim order dated 13.04.2012, stands vacated.

RAJIV SHAKDHER, J

MARCH 18, 2014

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