

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

WA.No. 1975 of 2015 () IN WP(C).26567/2015

AGAINST THE JUDGMENT IN WP(C) 26567/2015 of HIGH COURT OF KERALA
DATED 07-09-2015

APPELLANT/PETITIONER:

ANTONY CHACKO
ETTUKETIL HOUSE,
CHATHANADU, ALAPPUZHA-688001.

BY ADVS. SRI.E.K.NANDAKUMAR (SR.)
SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURRYAN THOMAS

RESPONDENTS/RESPONDENTS:

1. UNION OF INDIA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF PERSONNEL & TRAINING, MINISTRY OF PERSONNEL
PUBLIC GRIEVANCES & PENSIONS, NORTH BLOCK
NEW DELHI-110001.
2. THE SECRETARY
PUBLIC ENTERPRISES SELECTION BOARD
PUBLIC ENTERPRISES BHAVAN, BLOCK NO.14, CGO COMPLEX
LODHI ROAD, NEW DELHI-110003.

R1&2 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.A.No.1975/2015

APPELLANT'S ANNEXURES:

- ANNEXURE A1: COPY OF REPRESENTATION DT.1.10.15 SUBMITTED BY THE PETITIONER/APPELLANT BEFORE THE 1ST RESPONDENT.
- ANNEXURE A2: COPY OF NOTIFICATION DT.14.9.2015.
- ANNEXURE A3: COPY OF NOTIFICATION ISSUED BY MINISTRY OF POWER.
- ANNEXURE A4: COPY OF NOTIFICATION DT.26.6.2014 ISSUED BY THE PUBLIC ENTERPRISES SELECTION BOARD.
- ANNEXURE A5: COPY OF GUIDELINES DOWNLOADED FROM THE WEBSITE OF PUBLIC ENTERPRISES SELECTION BOARD, DATED NIL.
- ANNEXURE A6: COPY OF MINUTES OF MEETING DT.16.9.2015 OF PUBLIC ENTERPRISES SELECTION BOARD.

RESPONDENTS' ANNEXURES: NIL

TRUE COPY

P.S.TO JUDGE

dsn

P.R.RAMACHANDRA MENON & ANIL K.NARENDRA, JJ.

W.A.No.1975 OF 2015

DATED THIS THE 3rd DAY OF DECEMBER, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J.

Interference declined by the learned Single Judge to direct the concerned respondent to consider the candidature of the writ petitioner in respect of the post of Chairman-cum-Managing Director of the Indian Telephone Industries Ltd. (ITI), pursuant to Ext.P4 notification, wherein unreasonable restrictions have been put forth confining the zone of consideration only to the candidates who are currently working in the Central Government/Central Government Undertakings, ignoring the others who are working in the State/State Government Undertakings even though they are having such experience in the Central Government Undertakings/Central Government on an earlier instance, in toto, is the subject matter of challenge in this appeal.

2. The gist of the factual matrix is that, the appellant herein, who is a qualified Engineer having such other qualifications in the Management Sector was selected and appointed as an Executive, who was working in various Government undertakings at

different points of time. Out of the total span of 20 years, about 8 years was the service rendered by him in the Central Government Undertakings. By virtue of the experience gathered as above, the appellant claims to have possessed suitable skill, experience and exposure in all the relevant fields. It was accordingly, that when the post of Chairman-cum-Managing Director in ITI was notified as per Ext.P4 notification dated 8.5.2015, he put forth his candidature vide Ext.P5(2) application, projecting his profile and sought for selection and appointment accordingly.

3. However, there existed a restrictive clause in Ext.P4 notification as to the qualification for appointment, which as contained in clause II of Ext.P4 reads as:

II. Employment status:

The applicant must, on the date of application, as well as on the date of interview, be employed in a regular capacity – and not in a contractual/capacity – as one of the following:-

- (i) An officer of a Central Public Sector Enterprise (SPSE) (including a full-time functional Director in the Board of a CPSE);
- (ii) An officer of the Central Government/Armed Forces of the Union;

(iii) An officer of an All India Service.”

This, according to the learned counsel for the appellant/writ petitioner was totally alien to the service jurisprudence and was against the decision already taken by the Government/Selection Board in this regard, particularly, with regard to the identification and selection of Executives at higher levels, where scarcity is more, in so far as qualified hands are concerned. Such a situation was considered by the Government way back in the year 2008 and referring to the inadequacy or the disproportionate demand/supply ratio, Ext.P1 gazette notification was issued, whereby it was stipulated that zone of consideration should be widened to State Government Sector Undertakings as well, for selection of candidates.

4. The benefit extended as per Ext.P1 was to remain only for a period of '5 years' and even though steps were being taken to have it extended further, the matter was not finalised and still under consideration. The appellant caused to explore the steps being taken in this regard. It was accordingly that Ext.P2 communication was issued by the concerned Member of Parliament, addressing the Secretary of the Union Government.

Paragraph No.2 of the said letter is relevant, which hence is reproduced below:

“ After the expiry of the said notification, Government of India initiated action for amendment in the Resolution by allowing the Officers of the State Public Sector Undertakings and private sector candidates for appointment to the Board level posts in CPSE as non-internal candidates, along with the candidates from Central Public Sector Enterprises. This process started way back on 03.05.2013 with the meeting convened by the Cabinet Secretary on that date. Though two years have been elapsed since the expiry of earlier resolution and consequent steps for extension of the then existing rules, no decision has been taken till date. As such, the chances of so many executives from these sectors are being denied.

It is understood that the proposal in this regard has been approved by the Committee of Secretaries (COS), but has been lying with the Department of Personnel and Training (DOPT) pending implementation.

In view of the above, it is requested to kindly do the needful to expedite the process so that genuine candidates from the sectors, who possess abundant qualification, experience and vision, can also join the CPSE and thereby contribute to the nation building.”

On receipt of the said letter, it was replied by the Secretary to the Government vide Ext.P3 dated 26.5.2015 informing that the matter was being examined and that a decision will be taken at the earliest. It was in the said circumstance, that the writ petitioner offered his candidature vide Ext.P5(2) application and when he was given to understand that his candidature will not be considered because of the restrictive clause in Ext.P4, he was constrained to approach this Court by filing the Writ Petition, raising the following prayers:

- (a) declare that candidates serving State Public Sector Enterprises are also eligible to be considered for appointment to top level management posts in Central Public Sector Enterprises;
- (b) issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to include candidates serving State Public Sector Enterprises among those eligible to apply for appointment to top level management posts in Central Public Sector Enterprises;
- (c) issue a writ of mandamus or any other appropriate writ, order or direction directing the 2nd respondent to call the petitioner also for the selection process leading to appointment of the post of Chairman-cum-Managing Director, Indian Telephone Industries Limited;

- (d) pass an ad interim order directing the respondents to consider Ext.P5 application of the petitioner for the post of Chairman-cum-Managing Director, Indian Telephone Industries Limited and to call him for interview.”

5. When the Writ Petition came up for admission before the learned Single Judge, based on the available materials and admitted/undisputed pleadings, it was observed by the learned Judge that, what should be the requirement/qualification/experience/credentials was a matter for the Government/employer to consider and decide and since the stipulation as contained in Ext.P4 notification was a matter of policy, it was not open for the court to have tinkered with the same. It was accordingly that interference was declined and the Writ Petition was dismissed as per judgment dated 7.9.2015, which is under challenge in this appeal.

6. Pursuant to the proceedings in appeal, a statement came to be filed from the part of the respondents asserting in terms of the stipulation incorporated in Ext.P4, that the appellant/petitioner was not qualified to be considered and hence no interference is warranted. In the course of further

proceedings, some additional documents were filed by the appellant along with I.A.Nos.1369/2015 and 1436/2015, whereby it was brought to the notice of this Court that the version of the respondents, that the disputed stipulation in Ext.P4 was by virtue of a 'policy' decision, was not liable to be accepted in so far as the qualification prescribed at different points of time differed from each other. With reference to Annexure A3, in respect of the selection for the concerned post in NTPC, which is a Central Government Undertaking and Annexure A4 issued in relation to Coal India Limited, the learned counsel submits that the field of consideration has been thrown open for candidates from the 'private sector' undertakings as well, which by itself reveals that there is no consistency (to make it a policy) in the case put forward by the respondents. It is also pointed out that, in the case of selection for being appointed as a member of the 2nd respondent/PESB, the field of selection was shown as even from 'private sector' and it is the second respondent, with such member coming from the private sector in the Board, who insists that the qualification to be considered when it comes to the case of Chairman and Managing Director of ITI (to which post the

appellant has contested) and the field of choice require to be restricted to Central Government/Central Government Undertakings. This is nothing but a paradox, submits the learned Senior Counsel appearing on behalf of the appellant.

7. After hearing both the sides, this Court finds that the judgment rendered by the learned Single Judge is not liable to be termed as wrong or unsustainable in any manner, in so far as the decision was taken by the learned Single Judge based on the materials available on record as on that date, i.e., when the matter came up for admission. It is also equally relevant to note that the prayers raised by the appellant/writ petitioner as extracted hereinbefore were only seeking for a declaration to consider the candidature for appointment to the post in question. In other words, the stipulation of qualification/requirement as given in Ext.P4 notification was not a subject matter of challenge, nor was there any prayer to have it set aside. This being the position, the matter could have been considered by the learned Single Judge only with reference to the stipulation as contained in Ext.P4 notification and with reference to the 'policy' and the right of the employer/Government to stipulate appropriate qualification

and experience for selection to the concerned post. We do not find anything wrong or arbitrary in this regard.

8. However, coming to the subsequent developments, it has now been brought to this Court from the part of the appellant that, when the 2nd respondent sticks to their version, referring to the 'policy' and the right to stipulate relevant qualification/experience, the position is not the same or similar as far as various other notifications by way of Annexures 3 and 4 are concerned. There is also a case for the appellant that the necessity to widen the zone of consideration comes, when the demand/supply ratio is less, i.e., when there is scarcity of suitable candidates. Under such circumstances, as per the guidelines issued by the 2nd respondent vide Annexure A5, the post has to be re-notified and the matter has to be referred to a 'Search and Selection Committee'. Once the matter is referred to the Search and Selection Committee, it is quite open for the Search and Selection Committee to widen the zone of consideration by inviting candidates from the private sector enterprises as well. In so far as the present case is concerned, such a course has not been pursued by the respondents, and in

spite of two different notifications issued, no suitable candidate could be identified, whereas the candidature of the appellant who was having sufficient experience in Central Government Undertaking for nearly 8 years, has been turned down, simply stating that as on the date of issuance of the notification, the appellant was not serving in any of the Central Government Undertakings, which is nothing but an arbitrary and unconscionable clause according to the appellant.

9. As mentioned already, the necessity to widen the zone of consideration was felt necessary by the Government, way back in the year 2008 itself. It was accordingly, that Ext.P1 Gazette notification was issued, which was to be valid for a period of 5 years. This, of course, was based on the policy of the Government. If the situation had undergone any change, the said notification was not necessarily to be extended further. But, there is no data as to whether there occurred any change in circumstance to have stopped the course of action, by the expiry of initial tenure under Ext.P1. This is more so, when the matter was still being considered by the Government, as replied vide Ext.P3 in response to Ext.P2. That apart, the fact remains that

the respondents could not so far identify any suitable candidate despite two different rounds of notification for the post in question, which suggests that the position which existed in the year 2008, when Ext.P1 Gazette notification was issued, continues to be the same. This Court, however, does not express anything in this regard and the observation is only to point out that the matter requires to be considered by the Government, more so, in view of the turn of events and assertion made in Ext.P3.

10. The learned Senior Counsel for the appellant submits that the appellant/writ petitioner has already moved the Government in this regard by filing Annexure-A1 representation dated 1.10.2015 produced along with I.A.No.1369/2015. It is submitted on behalf of the learned ASGI that despite issuance of different notifications, no proper candidate could be identified and the position remains as it is, adding that the selection is yet to be finalised.

In the above facts circumstances, we find it appropriate to direct the 1st respondent Government to consider Annexure-A1 representation preferred by the appellant in the light of all the

documents referred to hereinbefore and take appropriate decision in accordance with law, which shall be done at the earliest, at any rate within a period of 'three months' from the date of receipt of a copy of this judgment. Further proceedings pursuant to selection of candidate in respect of the post notified vide Ext.P4 and the subsequent notification/corrigendum notification, if any, shall depend upon the outcome of the order to be passed by the Government as aforesaid.

The appeal stands disposed of.

Sd/-

**P.R.RAMACHANDRA MENON,
JUDGE**

Sd/-

**ANIL K.NARENDRA,
JUDGE**

dsn

True copy

P.S.to Judge