

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

+ **W.P.(C) No.5450/2002**

% **6th May, 2015**

SH. M. MURUGESANPetitioner

Through: Mr. Manish K. Bishnoi,
Advocate.

versus

BHARAT HEAVY ELECTRICALS LTD. & ORS.Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks the relief of quashing the appointments made by the respondent no.1/Bharat Heavy Electricals Ltd to the posts of Hindi Officer and Assistant Hindi Officer and which process was initiated by the circulars dated 20.9.2000 and 28.10.2000.

2. The case of the petitioner is that since he has the necessary qualifications of a graduation degree and a post graduation degree in Hindi subject, he had therefore applied for appointment to one of the ten posts of

Hindi Officer in terms of the aforesaid circulars. Petitioner contends that he was eminently suitable for the post but he was not appointed and others were appointed. Petitioner alleges bias of the Selection Committee in having made selection of persons only from a particular area/office. Petitioner also questions the action of the respondent no.1 in using the selection process for appointment to the posts of Hindi Officer for appointing instead of 10 Hindi Officers, 5 Hindi Officers and 10 Assistant Hindi Officers, on the ground that the posts of Assistant Hindi Officers were not advertised.

3. Therefore, two issues have to be decided by this Court as to whether petitioner has wrongly been denied appointment to the post of Hindi Officer and that whether there was any illegality in the selection process. Second issue to be decided is whether respondent no.1 could have used the selection process for appointment to the post of Hindi Officers for appointing 10 Assistant Hindi Officers.

4. So far as the first issue is concerned, law in this regard is stated by the Supreme Court in its judgment in the case of ***Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others (1990) 1 SCC 305*** wherein the Supreme Court has categorically held that courts do not sit as appellate court over the decisions of the selection committee because it is the

selection committee which scrutinizes the relevant merits of the candidates and decides whether a candidate is fit or not to be appointed to a particular post. It has been further observed in this judgment that a court has no expertise to substitute the expertise of the selection committee in scrutinizing and appointing candidates. Relevant observations in this judgment are contained in para 12 of this judgment and which para 12 reads as under:-

“12. It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the Court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the Candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the Constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction.”

5. The aforesaid proposition of law has been reiterated by the Supreme Court recently in the judgment in the case of ***B.C. Mylarappa @ Dr. Chikkamylarappa Vs. Dr. R. Venkatasubbaiah and Ors. (2008) 14 SCC 306.***

In fact, the selection committee need not give reasons unless they are bound by the rules and circulars to do so, and this has been held by the Supreme Court in the case of *National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and Others* 1992 Supp (2) SCC 481. The relevant para 7 of this judgment reads as under:-

“7. ... In the first place, it must be noted that the function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative. The High Court seems to be in error in stating that the Selection Committee ought to have given some reasons for preferring Dr. Gauri Devi as against the other candidate. The selection has been made by the assessment of relative merits of rival candidates determined in the course of the interview of candidates possessing the required eligibility. There is no rule or regulation brought to our notice requiring the Selection Committee to record reasons. In the absence of any such legal requirement the selection made without recording reasons cannot be found fault with. The High Court in support of its reasoning has, however, referred to the decision of this Court in *Union of India v. Mohan Lai Capoor*: (1973) 2 SCC 836. That decision proceeded on a statutory requirement. Regulation 5(5) which was considered in that case required the Selection Committee to record its reasons for superseding a senior member in the State Civil service. The decision in *Capoor case (supra)* was rendered on 26 September, 1973. In June, 1977, Regulation 5(5) was amended deleting the requirement of recording reasons for the supersession of senior officers of the State Civil services. The *Capoor case (supra)* cannot, therefore, be construed as an authority for the proposition that there should be reason formulation for administrative decision. Administrative authority is under no legal obligation to record reasons in support of its decision. Indeed, even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory

requirement. This principle has been stated by this Court in *R. S. Dass v. Union of India: 1986 Supp SCC 617* in which *Capoor case (supra)* was also distinguished.”

6. Therefore, at best the right of the petitioner was a right to be considered for appointment to the post of Hindi Officer and there is no dispute that the petitioner was considered but rejected, this Court cannot direct selection of the petitioner considering that selection and the merits of candidates have to be examined by the selection committee and this Court will not substitute its view for the view of the selection committee including for the reason that this Court is ill equipped to determine the suitability of the candidates which is done by the selection committee. The Selection Committee in this case consisted of two external members; one of whom was Sh. Pran Nath, Ex.Director (per), NTPC who acted as the Chairman of the Selection Committee and the other was Dr. Surajbhan who acted as the External Expert of Hindi Language and is an internationally acknowledged Linguistic and Computer Expert and had also worked as the Chairman, National Scientific and Technical Terminology Guidelines and also acted as Director and Head of Kendriya Hindi Sansthan, an organization imparting training in Hindi to foreigners all over the world. The details of the Selection Committee are as follows:-

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1.	Sh. Pran Nath	Chairman Appointment Board and former Director (Personnel) NTPC and former ED (P&A) SAIL
2.	Dr. Surajbhan	External Expert
3.	Shri A. Nageshwar	G.M. Hyderabad
4.	Sh. P.S. Kulshrestha	GM (P) Corp. Office
5.	Sh. M.C. Prasad	AGM (P) Corp. Office-SC/ST (Rep)
6.	Sh. K.B.S. Sethi	AGM (HSE) Noida Minority (Rep)

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7. In view of the aforesaid composition of the Selection Committee, the contention of the petitioner that there was bias thus cannot be accepted.

8. Even the contention of the petitioner with regard to favoritism of candidates of the corporate office or the selection of 90% of the candidates from the corporate office is misplaced and false, and this has been correctly rebutted by the respondent in its counter affidavit by referring to the persons who have been appointed and from which zone/office they have been appointed. The details in this regard are as under:-

“Hindi Officer

Name

Md. Ahmad Khan
Smt. Durga Pande
Srinivas Joshi
H.S. Kushwala
H.S. Bagwar

Original Unit of posting

Bhopal
Corporate Office
Hardwar
Jhansi
Bhopal

Asst. Hindi Officer

Smt. Sunita Arora
Santosh Kr. Mishra
Khajebhai A Nadaf
Smt. B.M. Bharti
Smt. A. Nalini
Hemant K. Agarwal
B.J. Vasundhara

Corporate Office
Jhansi
EPD Bangalore
ISG Bangalore
EDN, Bangalore
PS-Hydro
Hydrabad”

9. In the opinion of this Court, therefore there is no bias in appointing candidates mostly of the corporate office as is the contention of the petitioner.

10. Both the contentions of the petitioner therefore of bias of the Selection Committee or bias in appointing persons from corporate office are misconceived, and hence rejected.

11. Accordingly, the first issue is decided against the petitioner because petitioner only had a right of consideration, he was duly considered but was rejected and this Court cannot substitute its views for that of the Selection Committee which is best placed to decide the suitability and merits of the candidates for appointment to a post.

12(i) So far as second issue of appointing Assistant Hindi Officers without an advertisement is concerned, the same seemed to have merits at the first blush, however, a deeper examination shows that there is no merit even in

the second issue which is urged on behalf of the petitioner. The first reason for rejecting this argument of the petitioner is that petitioner could have a grievance of candidates not having been called through the regular recruitment process or advertisement only if the petitioner was disadvantaged because he could not be considered for this process. In the subject process, the petitioner had applied, and he was considered for both the posts of Hindi Officer and Assistant Hindi Officer, but petitioner was not selected and other candidates were selected. Therefore, the technical argument of posts not having been filled up by issuing of advertisement will not help the petitioner because petitioner suffered no prejudice on this count as he was duly considered for both the posts, but was rejected, and noting that the present writ petition is not a Public Interest Litigation to question the appointment of the persons as Assistant Hindi Officers with the respondent no.1.

(ii) The second reason for deciding the second issue against the petitioner is that this Court refuses to exercise its extraordinary powers under Article 226 of the Constitution of India inasmuch as the 10 persons who were appointed as Assistant Hindi Officers (nine as general candidates and one as SC candidate) was because the respondent no.1 needed 10 Hindi Officers but only five were found suitable for appointment to the post of Hindi Officers. Therefore, looking into this as an administrative exigency, the Selection

Committee recommended 10 candidates additionally for being appointed as Assistant Hindi Officers as per the performance in the interview and other relevant factors. In fact, persons appointed as Assistant Hindi Officers had qualifications for being appointed to the higher posts of Hindi Officers but were appointed to the lower post of Assistant Hindi Officer on account of their lesser performance in the process for appointment of Hindi Officers. Therefore, since these persons were not found suitable for the posts of Hindi Officer, but since they had the necessary qualifications for being appointed to the post of Hindi Officer, they were appointed as Assistant Hindi Officers because of the administrative exigency and requirement of there not being requisite number of candidates in the Rashtra Bhasha department/Hindi Cell of the respondent no.1/employer. No *malafides* can therefore be attributed to the respondent no.1 for appointing Assistant Hindi Officers on account of existence of administrative exigencies, and much less because petitioner was very much considered both for the posts of Assistant Hindi Officer and Hindi Officer.

(iii) The third and final reason for the second issue to be decided against the petitioner is that the concerned 10 candidates who have been appointed as Assistant Hindi Officers were appointed as Assistant Hindi Officers way back in the year 2001 and today in the year 2015, when such

candidates have gone far ahead in the organizations/services with employer including by having received various promotions, this Court would loath to strike down their appointments because no other person except the petitioner questions the selection process for appointment to the post of Assistant Hindi Officer and petitioner was considered but not selected.

13. In view of the above, the second issue is decided against the petitioner.

14. Accordingly, there is no merit in the petition, and the same is therefore dismissed. No costs.

MAY 06, 2015
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VALMIKI J. MEHTA, J.