

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

+ **W.P.(C) No.5497/2014**

% **12th January, 2015**

SH. SHARAD KUMAR YADAVPetitioner
Through: Mr. Gulshan Sharma, Advocate.

VERSUS

THE CHAIRMAN, FOOD CORPORATION OF INDIA Respondent
Through: Ms. Anjna Masih, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Counsel for the petitioner prays for more time for filing the rejoinder affidavit. In my opinion petitioner has already had time from 15.12.2014 to file the rejoinder affidavit and thus he need not be given further opportunity, especially in the facts of the present case which show that the petitioner not only with the main petition should have filed the application filed by him seeking appointment alongwith connected documents, it is otherwise also borne out from the record that the petitioner alongwith his application seeking appointment never gave the requisite

documents showing his practice as an Advocate for three years and instead only gave a self-serving certificate filed by the respondent as Annexure R-3 to the counter affidavit, and which the respondent has treated as not appropriate evidence to show three years experience as a practicing advocate.

2. The facts of the case are that petitioner applied for being appointed to the post of Assistant General Manager (Legal) of the respondent/Food Corporation of India in terms of the publication in the employment news dated 8th January, 2011. Petitioner was successful in qualifying the written test and therefore he was called for the personal interview. Interview was conducted on 13.5.2011. Instead of the petitioner who received higher marks, two other candidates Sh. Narender Kumar and Sh. Manoj Kumar Gupta were appointed and therefore the present writ petition has been filed seeking appointment to the post of Assistant General Manager (Legal) Category-I of the respondent.

3. It is not in dispute that petitioner received marks which were higher than Sh. Narender Kumar and Sh. Manoj Kumar Gupta, however, the respondent states that petitioner did not fulfill the eligibility criteria of having the experience required for appointment to the post of Assistant

General Manager (Legal) and which criteria was that either the candidate must have five years experience in legal work with the Central/State Government or with a Public/Private Sector Undertaking or in the alternative he must have three years practice at the bar. The eligibility criteria of three years practice at the Bar was to be certified by the candidate in a certificate which was to be supported by appropriate evidence that the candidate has appeared for three years in court cases in at least five matters per year while practicing at the Bar.

4. The case of the respondent is that petitioner only gave a self-serving certificate filed as Annexure R-3 to the counter affidavit without supporting evidence. Though the list gave 15 cases, but a reading of the certificate Annexure R-3 signed by the petitioner on 13.9.2011 shows that there is no year, mentioned of appearances in the cases numbering five each year and totaling 15. Also, with respect to 4 out of 15 cases the number of the suit is also not mentioned. Therefore, the position is that except a self-serving certificate filed by the petitioner with the respondent for appointment, appropriate evidence which was required to be given either with the application or at the time of interview was not given. This shows that at the relevant time prescribed for giving of the necessary documents i.e

either at the time of the filing of the application or at the time of interview the required documents were not given and thus a candidate cannot contend that he can file the necessary experience documents at a later stage. In a selection process valuable rights accrue in favour of the candidates and thus candidates who fail to bring the requisite documents as required to show as per the eligibility criteria, surely cannot be given appointment by the respondent.

5. Learned counsel for the petitioner argues that certificate Annexure R-3 shows that an endorsement exists in the same that the same has been verified from the original and thus it must be held that petitioner had complied with the requirement of giving appropriate evidence. In my opinion the petitioner cannot read the endorsement of verification from the original as contained in Annexure R-3 as if automatically the requisite documents were filed to show that the petitioner had appeared in five cases in each of the three years prior to his applying to the post in question because there can be no malice of any of the officers of the respondent to wrongly say that only the certificate was filed without supporting evidence. Also, the petitioner, assuming stand of the respondent to be false, could have filed his application for appointment with the supporting documents, but

petitioner has not done so. The petitioner otherwise also has not till date filed the supporting evidences of court appearances and which he would have if what the petitioner is arguing was correct.

6. There is another reason why the writ petition is liable to be dismissed and this is on account of delay and *laches*. The post in question in this case was filled up in terms of the interview conducted on 13.5.2011 i.e three years prior to filing of the writ petition. Selected candidates have already been given appointments and the available vacant post has thereafter as per the counter affidavit been advertised in the subsequent advertisement. Courts have taken the principle of limitation of three years as a good guiding factor especially considering the cases such as the present in which not only valuable rights accrue in favour of the selected candidates who otherwise would if disqualified sought another appointment in this long period of three years in fact a subsequent recruitment process has commenced in which the vacant posts of the earlier advertisement have merged meaning thereby that today no longer the post in which appointment is sought remains and in which the petitioner seeks appointment. The interview in this case was conducted on 13.5.2011 and appointments were made in the year 2011 itself. This writ petition however has been filed after a

considerable delay in August, 2014. Merely because petitioner in the year 2012 filed an RTI query and seeks to get his query replied cannot mean that whenever an RTI query is filed and response is given, cause of action will accrue inasmuch as cause of action will accrue from the date of appointment not given to the petitioner and not when response is given to an RTI query. In fact the RTI process is also of 2012 and this petition has been filed thereafter only in August, 2014.

7. Dismissed.

JANUARY 12, 2015
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VALMIKI J. MEHTA, J