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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 3582/2015

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13th April, 2015

SH. RAJENDER KUMAR

..... Petitioner

Through

Mr.L.S.Chaudhary with Mr.Vijay
Chaudhary and Ms.Pratibha Gupta
Advocates.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through

Ms.Ferida Satarawala, Advocate for
R-1.
Mr.Sandeep Prabhakar with Mr.Amit
Kumar and Mr.Vikas Mehta,
Advocate for R-2.
Mr.Kirtiman Singh, CGSC with
Ms.Perna Shah Deo and Mr.Waize
Ali Noor, Advocates for R-3.
Mr.R.V.Sinha, Advocate for R-4.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Certain petitioners, if I can say so, insist on abusing the process of the law. The present petitioner is one such petitioner. Against the petitioner departmental enquiry is going on because the petitioner for obtaining employment had submitted a fraudulent ST certificate and hence got employment by fraudulent representation.

2. There was also initiated another departmental proceeding against the petitioner and in which an identical issue which is raised in this case of the enquiry officer being over-aged was raised, and when the petitioner on this issue filed a writ petition being W.P.(C) No.3105/2013 titled as ***Sh.Rajender Kumar Vs. M/S BSES Yamuna Power Ltd. & Anr.***, the same was decided against the petitioner on 13.5.2013 as per the judgment which reads as under:-

“ 1. No one is present for the petitioner on the second call although on the first call counsel for the petitioner urged only one point in support of the writ petition wherein prayer was made to change the Enquiry Officer. The point which was urged was that Enquiry Officer cannot be more than 70 years. Averments in this regard have been made in para 22 of the writ petition and which read as under:-

“22. That the C.V.C. circular letter No. 98/MSD/23 dated the 16th September 1999 and GI department of personal training O.M.No. 134/4/99-AVD-1 dated 7th April 2003 and O.M.No. 142/20/2008-AVD-1 dated the 27th July 2009 published under Government of India decisions under rule 14 of the Central Civil Services (Classification, control and Appeal) Rules, 1965 in Swamy's Compilation of CCS, CCA Rules where in it is mentioned that a retire Govt. Officer referred to as enquiry officer should not be more than 70 years of the age on 1st July of the year his empanelment and should be in sound health physically and mentally. This aspect was put to the deputy GM (HR) on 28.01.2013 the response to which was not in positive.”

2. I may note that the petitioner has not filed any of the circulars which are relied upon, but counsel for the respondent has brought the circular dated 16.9.1999 which provided the age of the Enquiry Officer to be 70 years. Counsel for the respondent has however brought another circular dated 25.3.2003, by which, all other earlier

circulars were superseded and which circular dated 25.3.2003 does not provide any age of the retired officer for being appointed as the Enquiry Officer. It is specifically mentioned in the circular dated 25.3.2003 that all earlier circulars on the subject stand superseded by this circular dated 25.3.2003. There is no age limit which is prescribed for Enquiry Officer in the circular dated 25.3.2003 and therefore, since any retired officer can be appointed as an Enquiry Officer, I do not find any merit in the stand of the petitioner that Enquiry Officer cannot be more than 70 years of age.

3. I may note that respondent no.1 is a private company and petitioner was an employee of the erstwhile Delhi Vidut Board (DVB) and no doubt terms and conditions of employees such as the petitioner had to be governed by the then applicable terms and conditions of the Central Government with respect to conducting enquiries, however, since there is now a circular dated 25.3.2003, which does not place any age bar but entitles all retired officers to be appointed as Enquiry Officers, there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.”

3. The same issue is once again raised by the petitioner in this petition that the Enquiry Officer cannot be more than 70 years. However, in view of the judgment dated 13.5.2013 in W.P.(C) No.3105/2013 reproduced above, the case of the petitioner has no merits. It is undisputed position that the petitioner did not challenge the judgment dated 13.5.2013 in W.P.(C) No.3105/2013, and which hence has become final.

4. It is thus clear that the petitioner is using all sorts of tactics to keep on delaying the departmental proceedings, and which were initiated quite some time back on 08.10.2013 against him i.e around 1½ years back.

5. Counsel for the petitioner argues that the Enquiry Officer is biased, however, vague and general averments of bias without substantiating the same to the satisfaction of this Court does not deserve lenient consideration from this Court, and accordingly this argument is also without any merit whatsoever and is hence rejected.

6. In view of the above, this petition being an abuse of the process of the law, I have no option especially in view of the earlier judgment binding the parties, to dismiss the present petition with costs of Rs.15,000/- to be divided equally between the appearing respondents.

APRIL 13, 2015
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VALMIKI J. MEHTA, J.