

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

+ **W.P.(C) No.9071/2014**

% **12th February, 2015**

SHRI DEBASISH NAYAK Petitioner
Through: Mr. Biraja Mahapatra, Advocate with
Mr. D.K. Pradhan, Advocate.

versus

DEDICATED FREIGHT CORRIDOR CORPORATION OF INDIA LTD.
(DFCCIL) Respondent

Through: Mr. J.K. Singh, Advocate.

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 Articles 226 and 227 of the Constitution of India, the petitioner challenges the action of the respondent in denying the petitioner the post of Assistant Manager (Signal and Telecommunication) and which is denied only on the ground that the petitioner was required to have three years experience of working but the petitioner's experience was alleged to be less by one day.

2. The facts of the case are that the petitioner is a physically challenged person because he is physically handicapped to the extent of 42% in the left arm. The petitioner applied for the post of Assistant Manager (Signal and Telecommunication) advertised by the respondent vide

advertisement no.5/2014 in the reserved category of physically handicapped candidates. The written test was held on 3.10.2014 and the petitioner and one other person were only two physically handicapped persons who were called for the interview. Since two posts were reserved for physically handicapped persons, petitioner was therefore almost assured for the job, however, he has been denied the appointment on the ground that the experience of the petitioner is short by one day.

3. The question is, is the experience of the petitioner short by one day? The petitioner has filed with the writ petition his appointment letter dated 25.3.2008 with the earlier employer being a government organization i.e ITI Limited and which appointment letter shows that the tenure of employment of the petitioner with ITI Limited was three years and three years commenced on 11.4.2008. Petitioner has also filed the relieving order dated 06.6.2011 issued by the erstwhile employer which shows that the contractual period of service stood completed on 10.4.2011 and the petitioner has been relieved w.e.f 9.4.2011. It may be noted that 10.4.2011 was a Sunday and therefore obviously relieving order would relieve the petitioner from 9.4.2011. Admittedly, the documents which have been referred to above and which are filed with the writ petition, were given by the petitioner at the time of interview and which documents were asked for by the respondent for being given only at the time of interview.

4. Counsel for the respondent relies upon the service certificate dated 08.7.2011 issued to the petitioner and which is filed as Annexure P-5 to the writ petition, to argue that since the date of relieving is mentioned as 9.4.2011, therefore, the service of the petitioner will be short by one day, however this argument ignores two vital aspects. First aspect is that at page 24 of the writ petition the petitioner has filed the relieving order which states that the contractual period of service will be ending on 10.4.2011 and not on 9.4.2011. Also, the second aspect is that it is an undisputed fact on record that 10.4.2011 was a Sunday and consequently the date of relieving was of 9.4.2011 but the period of service in any case will be three years not only because the relieving order/Annexure P-4 dated 6.6.2011 issued by ITI Limited shows that the contractual service is ending on 10.4.2011 and not on 9.4.2011 but also because of the fact that Sunday being not a working day, the said day will automatically be included as a working day of experience. This is all the more so in view of Section 10 of the General Clauses Act, 1897 which provides that if on a certain day within the prescribed period the office is closed, and which is the last date of the prescribed period, the requisite action can be taken on the next working day. The spirit of the provision of Section 10 of the General Clauses Act, 1897 will thus apply if not its literal language.

5. In view of the fact that action of the respondent is wholly illegal, arbitrary and beyond any acceptable reasonable logic, the same is violative of Article 14 of the Constitution of India and is accordingly struck down. The writ petition is allowed and the respondent is directed to give employment to the petitioner to the post of Assistant Manager (Signal and Telecommunication) by issuing an appointment letter in favour of the petitioner within six weeks from today, however subject to the petitioner clearing the interview as stated below. Petitioner is also entitled to costs of Rs.10,000/- for this writ petition. Costs shall be paid by the respondent to the petitioner within four weeks from today.

6. I may clarify that if in accordance with the requirement of the advertisement, petitioner has to undergo an interview, petitioner will be bound to undergo the interview process, and, the appointment letter will be issued on the petitioner clearing the interview for the post of Assistant Manager (Signal and Telecommunication). Petitioner within a period of one week from the conduct of the interview will be given the detailed marks obtained by the petitioner in the entire selection process comprising of the written test and the interview.

FEBRUARY 12, 2015

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VALMIKI J. MEHTA, J.