

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

Date of decision: July 16, 2015

+ **W.P.(C) 6759/2015**

RAJESH KAPOOR

..... Petitioner

Through: Mr. J. R. Chaudhary, Adv.
with Mr. Sagar Saxena, Adv.
& Mr. Suraj Prakash and Ms.
Swati, Advs.

versus

PUBLIC ENTERPRISES SELECTION BOARD AND ANR.

..... Respondents

Through: Mr. Arun Bhardwaj, CGSC,
Mr. Vikas Mahajan, CGSC
for R-1 &2

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

CM No.12340/2015

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 6759/2015

1. The present petition has been filed by the petitioner inter alia challenging the advertisement/circular issued by the respondent No. 1 dated February 5, 2015 being contrary to the DPE OM dated October 20, 2005.

2. The petitioner is working as Director (Technical) in Telecommunications Consultants India Ltd (TCIL). On February 5, 2015, the respondent No. 1 published a circular requesting the respondent No. 2 to provide seniority-wise candidature of officials bearing required qualifications, who would be found suitable for the post of Chairman-cum-Managing Director, TCIL, in the pay scale of Rs. 80,000 to Rs.1,12,000/-. Based on the said circular of the respondent No.1, the respondent No. 2 vide its letter dated February 12, 2015 requested the eligible public sector enterprises, including TCIL to forward all names of all willing and eligible candidates seniority-wise who are found suitable for the said post. According to the petitioner, he being very much suitable as internal candidate for the post, applied for the said post vide his application dated March 10, 2015 through proper channel. On July 9, 2015 when a list of short listed candidates was issued for interview, his name did not feature in the said list. Being aggrieved by the aforesaid, the petitioner immediately submitted a representation to the respondent No. 1. According to the petitioner, in the said representation, the petitioner inter alia, pointed out that he clearly qualifies the age requirement prescribed by the advertisement/circular dated February 5, 2015. It is his case that the representation has not been responded to and the

respondents are going ahead with the Interview as per schedule on July 17, 2015.

3. Mr. J.R.Chaudhary, learned counsel appearing for the petitioner would submit that the advertisement/circular issued on February 2, 2015, limiting the upper age limit to 58 years for internal candidates is contrary to the DPE OM dated October 20, 2005, which inter alia, stipulate that for internal candidates the residual service shall be of 2 years. In other words, it is his case that the date of retirement of the petitioner is January 31, 2018 and the vacancy getting accrued only when the incumbent demits the office on January 31, 2016, the petitioner has two years service before his superannuation and the purported ground, on which his name has not been included in the list, of having less than two years of service is illegal. He would take support of the judgment of this Court in the case of *Anand Darbari Vs. Union of India and Anr., 84 (2000) DLT 718* to contend that once, the govt. has issued guidelines or policy, in the absence of any statutory rule governing the situation, the govt. is bound to act as per the said guideline(s). He would also rely upon the judgment of the Supreme Court in the case of *Dr.Amarjit Singh Ahluwalia Vs. The State of Punjab and Ors., AIR 1975 SC 984* to contend that even an administrative instruction would have the effect

of law and if deviated, would be violative of Article 14 & 16 of the Constitution of India.

4. On the other hand, Mr. Bhardwaj, learned counsel for the respondents has drawn my attention to clause 3 of the circular/advertisement dated February 2, 2015, which prescribes the eligibility condition with regard to age for the said post as under:

“ ELIGIBILITY

I AGE: On the date of occurrence of vacancy:-

- (i) Minimum 45 years.*
- (ii) Not more than 58 years for internal candidates and not more than 57 years for others.*
- (iii) The age of superannuation is 60 years” .*

5. According to him, the advertisement clearly stipulates that the eligibility with regard to age would be considered on the date of occurrence of vacancy, which in this case, is January 31, 2016 but, an internal candidate should not be more than 58 years of age on that day. According to him, the petitioner would be more than 58 years i.e. 58 years 21 days to be precise, as his date of birth is January 10, 1958. He would state, even if the petitioner has residual period of two years, as he is above 58 years, he does not fulfil the eligibility as is required under the circular/advertisement.

6. Having heard the learned counsel for the parties, I am in agreement with the submission of Mr. Bhardwaj inasmuch clause 3 of the circular/advertisement dated February 2, 2015 of the respondent No. 1 is clear and unequivocal that an internal candidate should not be more than 58 years of age on the date of occurrence of vacancy which is January 31, 2016. No doubt the DPE OM dated October 20, 2005 stipulates that an internal candidate should have residuary period of two years, which he has, the said clause cannot be read in isolation, overlooking Clause 3 of the circular/advertisement, which relates to the eligibility with regard to the age. A reading of both the provisions, would mean that a candidate must not be more than 58 years of age and should have two years of residual service.

7. Insofar as the judgments relied upon by the learned counsel for the petitioner are concerned, there is no dispute on the proposition that in the absence of any statutory rules, the guidelines would have the effect of law. It is not the case of the petitioner that the circular/advertisement is contrary to any statutory rule. In the absence of any statutory obligation with regard to eligibility, it must necessarily follow that the circular/advertisement need to be given effect to by harmoniously reading with the instruction issued by the DPE dated October 20, 2005. I do not see any merit in the petition.

The same is dismissed.

8. Dasti under the signatures of Court Master.

CM No.12339/2015 (interim stay)

In view of the order passed in the writ petition, the present application seeking interim stay is dismissed.

(V.KAMESWAR RAO)
JUDGE

JULY 16, 2015/akb