

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

% *Date of decision : July 20, 2015*

+ **LPA 463/2015**

RAJESH KAPOOR

..... Appellant

Represented by: Mr.Sagar Saxena, Ms.Jyoti
K.Chaudhary, Mr.Suraj
Prakash, Advs.

versus

PUBLIC ENTERPRISES SELECTION BOARD & ANR

..... Respondent

Represented by: Mr.Arun Bhardwaj, Ms.Neha
Garg, Advocates for UOI.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CM 12670/2015

Exemption allowed subject to just exceptions.

LPA 463/2015

1. Aggrieved by the order dated July 16, 2015 dismissing the writ petition filed by the appellant Rajesh Kappor seeking quashing of the advertisement dated February 05, 2015 and not short-listing Rajesh Kapoor as one of the candidates and directions to consider his candidature for the post of CMD TCIL as internal candidate, the appellant prefers the present appeal.

2. A brief exposition of facts. Telecommunication Consultants India Limited (in short TCIL) is a Government of India enterprise, incorporated

under the Indian Companies Act, the administrative control being with the Department of Telecommunication, Ministry of Communication and Information Technology where Rajesh Kapoor is presently working as Director Technology. On February 05, 2015 the respondent No.1 i.e. Public Enterprises Selection Board (in short the PESB) Department of Personnel and Training, GOI issued a circular No.6/41/2014-PESB asking the respondent No.2/ Ministry of Communication & IT to provide a seniority-wise candidature of officials with requisite qualifications who would be found suitable for the post of Chairman-cum-Managing Director, TCIL for the vacancy which was to occur on February 01, 2016. The respondent No.1 while forwarding the list of willing and eligible candidates seniority-wise did not forward the name of Rajesh Kapoor as internal candidate to the respondent No.1 for the reason Rajesh Kapoor would have completed his 58 years on January 10, 2016.

3. The learned Single Judge vide the impugned order held that the appellant would be more than 58 years of age on the date of occurrence of the vacancy i.e. February 01, 2016 and thus not eligible for being considered as a candidate for the post of Chairman & Managing Director, TCIL.

4. The circular dated February 05, 2015 provided that the date of vacancy would be February 01, 2016 for the post of Chairman & Managing Director in the pay scale of ₹80,000/- to ₹1,25,000/- (revised) and provided for the following eligibility which is the bone of contention.

“3. 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. For the reason that Rajesh Kapoor would be 58 years and 21 days on February 01, 2016 when the vacancy would actually arise on retirement of the present incumbent who retires on January 31, 2016, he has not been considered as an eligible candidate, though it is not disputed that Rajesh Kapoor would retire at the age of 58 on January 31, 2016 and not on January 9, 2016. It is trite law that in the absence of statutory rules, administrative instructions issued should be adhered and not deviated and the deviation if any would be violative of Article 14 and 16 of the Constitution of India. In the decision reported as AIR 1975 SC 984 Dr.Amarjit Singh Ahluwalia Vs. The State of Punjab and Ors the Supreme Court held:

“8. Now, it is true that clause (2)(ii) of the memorandum dated October 25, 1965 was not a statutory provision having the force of law and was merely an administrative instruction issued by the State Government in exercise of its executive power. But that does not present any difficulty, for it is now well-settled by several decisions of this Court that where no statutory rules are made regulating recruitment or conditions of service, the State Government always can in exercise of its executive power issue administrative instructions providing for recruitment and laying down conditions of service. Vide *B.N. Nagarajan v. State of Mysore* [AIR 1966 SC 1942 : (1966) 3 SCR 682 : (1967) 1 LLJ 698] and *Sant Ram Sharma v. State of Rajasthan* [AIR 1967 SC 1910 : (1968) 1 SCR 111 : (1968) 2 LLJ 830] . It was, therefore, competent to the State Government to issue clause (2)(ii) of the memorandum dated October 25, 1965 in exercise of its executive power laying down the principle to be followed in adjusting inter se seniority of the officers in the integrated service.

6. As per the Department of Personnel DPE/guidelines/II(b)/36 dated October 20, 2005 in relation to cut of age for Board level appointments in Central Public Sector Enterprises the policy provided:

“CHAPTER II
PERSONNEL POLICIES
(b)Composition of Board of Directors

36.DPE/Guidelines/II(b)/36

Cut-Off age for Board level appointments in Central Public Sector Enterprises

The undersigned is directed to refer to this Department's OM of even number dated 3.2.1999 and OM No.18(10)/99-GM-GL dated 22.8.2001 on the subject mentioned above wherein the decision of the Government that candidates for interview by PESB for Board level appointments in PSEs should not exceed 58 years of age where the age of retirement is 60 and 56 years in the cases where age of retirement is 58 years.

2. The Government has further considered the matter and, in modification to the above mentioned OMs, has decided as under:-

(i) The cut-off age for external candidates for consideration for Board level posts in Public Sector Enterprises should be a minimum of three years service left (on the date of occurrence of vacancy) with reference to superannuation age applicable in the PSE against which the candidate is being considered, and

(ii) For internal candidates, the residual service condition would continue to be two years.

3. All the administrative Ministries/Departments are requested to kindly take note of the above decision for guidance and necessary action.”

7. The learned Single Judge held that no doubt that DPE OM dated October 20, 2005 as noted above stipulates that an internal candidate should have residuary period of two years which Rajesh Kapoor has, however 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. The learned Single Judge thus erred in not reading the two together and giving a purposive interpretation to the circular dated February 05, 2015 prescribing the age of 58 years for the internal candidate read with the DPE OM dated October 20, 2005 which provided two years residual service on January 31, 2016 i.e. the date of vacancy which Rajesh Kapoor would have for the reason in the present position he would have retired only on January 31, 2016 and not on January 10, 2016 when he completed the age of 58 years.

8. From a perusal of the guidelines as noted above it is clear that the purpose of providing the age of 58 years for internal candidate and 57 years for external candidate is to provide for a minimum tenure of 2 years or 3 years as the case may be for the incumbent to work as Chairman-cum-Managing Director, TCIL, thus to give a confirmed and continuous tenure to be able to work and show results. Applying the principle of purposive construction as laid down in Heydon's case which directs that the Courts must adopt such construction which shall suppress the mischief and advance the remedy, the meaning given to the circular providing for an age of 58 is that the incumbent as an internal candidate should have a minimum of 2 years service i.e. he should be not retiring before January 31, 2016 at the age of 58 years.

9. Consequently, the appeal is allowed setting aside the impugned order. The respondent is directed to consider the case of Rajesh Kapoor as a candidate for appointment to the post of Chairman-cum-Managing Director, TCIL.

10. No costs.

CM 12669/2015 (stay)

Dismissed as infructuous.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 20, 2015
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