

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

+ WP(C)1127/2017

%

Reserved on : 10th February, 2017
Pronounced on: 16th March, 2017

RATNESH KUMAR

..... Petitioner

Through : Mr.Abhay Kumar and Mr.Saurabh
Mishra, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondent

Through : Mr.Alakh Kumar, Advocate for
respondents no.2 to 7

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J.

The petitioner-Ratnesh Kumar impugns the order dated 13th July, 2016 passed by the Principal bench of Central Administrative Tribunal (Tribunal, for short), dismissing OA No.3511/2014.

2. The selection and appointment of Ratnesh Kumar as Assistant (Coordination) for the upcoming steel processing unit in Bokaro Steel Plant, along with other selections, came under cloud and scanner on account of deception and for reasons noticed below.

3. The memorandum of charge dated 4th January, 2012, was issued to the petitioner, to which he submitted his reply on 11th January, 2012. An enquiry committee constituted vide office order dated 2nd February, 2012 held proceedings, recorded evidence, and submitted an inculpatory report holding the charge of misconduct of indulging in corrupt practice, was correct and proven. Charge No.1 'fraud in connection with company's business' and charge no.3 'conduct bringing disrepute to the company', it was held, were not proved. The Disciplinary Authority disagreed and issued a disagreement note dated 7th February, 2014 pertaining to charge nos.1 and 3, asserting that there was enough circumstantial evidence to establish that the petitioner was one of the beneficiaries of the deviant recruitment process, contrary to the prescribed recruitment procedure. The petitioner submitted his reply on 14th February, 2014. The Disciplinary Authority, referring to both oral and documentary evidence, passed the order dated 17th February, 2014 imposing the penalty of dismissal from service.
4. The petitioner preferred an appeal which was also dismissed vide the order of the Appellate Authority dated 25th March, 2014.
5. The petitioner had then filed OA No.3511/2014 which stands dismissed by the Tribunal vide the impugned order dated 13th July, 2016.
6. The contention of the petitioner is that this is a case of no evidence. The enquiry report and the impugned orders are perverse and predicated on surmises and conjectures. The superior officer, who was involved and responsible for the recruitment process,

conveniently did not suffer the penalty of removal or dismissal from service but was awarded a relatively minor punishment of withholding increments for one year.

7. We would first examine the argument of no evidence and perversity of the impugned order. Suffice to say that the writ court is not the appellate authority which is required to examine comparative merits, or re-appreciate the evidence.
8. The findings from the facts recorded are too glaring and startling to accept the charge of perversity and no evidence. The facts speak for themselves. A small advertisement was published under the heading "Situation Vacant" in the classified column of the Statesman, New Delhi edition on 1st December, 2007. The advertisement invited applications for four posts of Assistant (Coordination) and six posts of Attendant (Coordination) on a casual basis, which were likely to be made permanent after a period of one year. Graduates in any discipline were eligible to apply for the post of Assistant (Coordination), and matriculates with one year experience in liaising work could apply for the post of Attendant (Coordination). The advertisement did not specify the name of the public sector enterprise for which recruitment was being made. All that was stated was that the said posts were required for the upcoming steel processing unit and interested candidates should post their resumes along with a crossed demand draft for Rs. 200 drawn in favour of SAIL/Bokaro Steel Plant, payable at Bokaro City, to Box No.9389, Statesman, New Delhi on or before 15th December, 2007. It was also

stated that the reservation of posts would be as per Government guidelines.

9. The findings of the Disciplinary Authority, based on the evidence on record was that the general procedure for external recruitment was violated as the details of the recruitment process were not uploaded on the website of the Steel Authority of India Limited. There were violations of the Bokaro Steel Plant's Recruitment Manual. First, the advertisement had specified a period of 15 days for submission of applications, whereas the rule mandates that a period of four weeks should be given for submission of applications received through open advertisements. Secondly, the Employment Exchange was notified of the vacancies on 27th November, 2007 and the classified advertisement, as noticed above, was published after four days on 1st December, 2007, though as per Clause 3.4.1 it was mandatory to notify the Employment Exchange to forward names of eligible candidates, failing which on the expiry of 15 days a Non-Availability Certificate from the Employment Exchange was to be obtained before the posts were advertised in the newspaper.
10. This uncharacteristic and abnormal selection process saw the receipt of 10 applications for the 10 posts advertised in spite of the fact that the qualifications prescribed were liberal. Selection was based solely on an interview and no written test was held. 9 out of the 10 applicants were selected. On examination of the petitioner's application, it was ascertained and learnt that the same was not sent by post and was undated. The petitioner accepts that he had not sent his application by post and has submitted that he had personally

deposited the application in the Box as advertised. The petitioner has a Bachelor of Arts (Honors) degree in Political Science from B.S.A.U Muzaffarpur, and has experience in liaisoning work in private companies.

11. In our opinion, the Tribunal has rightly observed that it is not a fact in isolation which has to be looked at, but the cumulative effect of all the facts which is to be kept in mind when determining whether the charges have been proved.
12. Recruitment in Public Sector enterprises for posts of this nature, in the normal course, would have invited considerable public interest. Lack of proper publicity, transparency, and objectivity in selection is apparent and disturbing. Deception and pretence in the recruitment process is palpable and easily inferable. Recruitment for posts in the public sector enterprises is not undertaken in such manner.
13. We do not think that the penalty of dismissal is so shockingly disproportionate as to require judicial interference. Negative equality cannot be pleaded and is not a ground which would show violation of Article 14 of the Constitution. There cannot be any equality in such situations, which merit stringent action. When an appointment made is contrary to the settled norms, contrived and illegal, punishment of removal or dismissal would necessarily as a sequitor follow, unless there are compelling and extenuating grounds. No valid excuses have been established. We would not comment on the punishment imposed on the “superior” officer stated to be involved in the recruitment process, for that case is not before us.

14. In view of the aforesaid, we do not think the impugned order requires any interference. The writ petition is accordingly, dismissed. There will be no order as to costs.

-sd-

**SANJIV KHANNA
(JUDGE)**

-sd-

**CHANDER SHEKHAR
(JUDGE)**

**March 16, 2017
ssn**