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

+ **W.P.(C) 6734/2017**

GOPAL KRISHAN TANEJA Petitioner
Through: **Ms. Yashika Sarvaria, Adv.**

versus

INDIAN INSTITUTE OF TECHNOLOGY Respondent
Through: **Mr. Yeeshu Jain, Adv.**

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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17.08.2017

The challenge in this writ petition is to an advertisement dated 17th July, 2017 issued by the respondent calling for applications for appointment to the post of Institute Engineer on deputation basis.

It is the case of the petitioner that he was appointed in the respondent organization on 31st May, 1994 as Assistant Resident Engineer (Electrical). On 25th March, 2013, while working as Assistant Resident Engineer (Electrical) he was made officiating Institute Engineer. Even though it has not been stated so in the writ petition, it is pointed out by Mr. Yeeshu Jain, learned counsel appearing for the respondent / IIT that in the years 2014 and 2015, applications were called for making appointment to the post of Institute Engineer through deputation / absorption / contract basis. On both the occasions, the petitioner had applied and had appeared in the selection process, but was not found successful.

Learned counsel appearing for the petitioner would argue that in the

year 1996, respondent had formulated a Career Development Scheme for Group “A” Engineers which according to her stipulated the post of Institute Engineer to be filled through promotion. In this regard, she has drawn my attention to pages 24 and 25 of the paper book. In other words, it is her case that the post of Institute Engineer cannot be filled on deputation basis, which is the mode resorted by the respondent in the advertisement of 2017. She would rely upon the judgment of the Supreme Court in the case of ***Arun Kumar and Ors. v. Union of India and Ors. 2007 Vol. 5 SCC 580***, to contend that if a mode of recruitment is not recognized under the recruitment rules, the same cannot be resorted to.

Mr. Yeeshu Jain, learned counsel appearing for the respondent would submit that as per his instructions, the Career Development Scheme has been scrapped on January 1, 2006.

Having heard the learned counsel for the parties, the non-mentioning of the fact that respondent organization had called for applications for making appointment to the post of Institute Engineer through deputation / absorption / contract basis against which the petitioner had also applied, is a serious issue and a material fact which should have been stated so in the petition. Had it been mentioned, the petition would have been dismissed at the threshold. Be that as it may, the petitioner having failed to qualify for appointment to the post of Institute Engineer on two occasions in the years 2014 and 2015, surely cannot challenge the impugned advertisement *per se* on the ground that the same only prescribe deputation as the mode of appointment to the post of Institute Engineer.

It is noted that on the first occasion in the year 2014, one applicant Mr. Atul Kumar Pandey, who was found fit did not join the post. It appears

that his non-joining resulted in the issuance of an advertisement in the year 2015. In that year, none of the applicants were found fit. This has resulted in the issuance of advertisement in the year 2017.

In any case, the petitioner having taken a chance for appointment as Institute Engineer both on absorption / on contract basis cannot challenge the advertisement now. In the absence of any Rules governing the appointment to the post of Institute Engineer, the respondent would be within its right to regulate the appointment through a process as it deem fit including deputation more so when no meritorious internal candidate is available.

In so far as the reliance placed by the learned counsel for the petitioner in the case of *Arun Kumar (supra)* is concerned, there is no dispute on the proposition of law as laid down by the Hon'ble Supreme Court in the said case. In the case in hand, in the absence of any Rule governing the promotion to the post of Institute Engineer, no mandamus can be issued. The same can be filled by deputation. In the facts, no fault can be found in the impugned advertisement.

I do not see any merit in the petition. The petition is dismissed.

CM No. 28060/2017

Dismissed as infructuous.

V. KAMESWAR RAO, J

AUGUST 17, 2017/jg