

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of decision: 10th August, 2017**

+ **W.P.(C) 8650/2015 & CM No. 18907/2015**

ANAND KUMAR Petitioner
Through: Mr. Deo Prakash Sharma, Mr. Manoj Yadav
and Mr. Umesh Gupta, Advs.

versus

THE INSTITUTE OF CHARTERED ACCOUNTANTS
OF INDIA & ANR Respondents
Through: Mr. Rakesh Aggarwal, Adv.

CORAM:-
HON'BLE MR JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

W.P.(C) 8650/2015

1. The challenge in this writ petition is to the letters dated June 19, 2015 and March 20, 2015 whereby the respondents have communicated to the petitioner that he is not fit for the post of Executive Officer in the respondent No.1-Institute and offered him the post of Assistant (Grade-I).

2. Some of the relevant facts are, on March 15, 2007, an advertisement was issued by the respondent No. 1 for appointment as Management Trainee. Pursuant thereto, the petitioner was engaged as Management Trainee on March 10, 2008. Some of the terms of appointment of engagement are reproduced as under:

“2. Your training period shall be one year from the date of joining.

3. In case, your performance during training period is not found satisfactory, the training period can be extended by a period not exceeding one year.

4. During the first six months of training period you shall be paid a consolidated amount of Rs.20000/- per month. At the conclusion of initial six months, a preliminary performance appraisal would be made and if your conduct and performance are found to be satisfactory, you would be paid an additional amount of Rs.2,500/- per month for the remaining six months making a total of Rs. 22,500/- per month. Apart from the above, you are not entitled to any other perks/allowances either in cash or kind, unless specifically permitted.

.....

9. Upon completion of one year or the period extended as aforesaid, if your performance and conduct are found to be satisfactory, you will be considered for the position of Executive Officer in the pay scale of Rs. 8500-275-13725 with total monthly emoluments of about Rs.27,000/- including allowances presently offered by the Institute. In the absence of any communication in this regard on or before the date of expiry of the said training period, it shall be presumed that your engagements stands

terminated automatically (on the expiry of one year from the date of joining or any extended period).”

3. It is the case of the petitioner that on the conclusion of six months of his engagement, his performance was found to be satisfactory and he was paid an additional amount of Rs. 2500/- per month for remaining six months, making his emoluments as Rs.22,500/-. It is the case of the petitioner that on completion of one year on April 3, 2009 and two years on April 3, 2010, the petitioner received self appraisal forms for submission to HRD, through his Reporting Officer. He submitted the same but never received any feedback. On August 2, 2010, the petitioner received an email having subject as ‘Personal Interaction with the Management Trainee’ which reflected that there will be a personal interaction via video conferencing with the Council Members. The interaction took place on the said date and time. It is his case that on August 19, 2010, he was informed verbally by Regional Head, Kanpur that the petitioner has to give a declaration in writing that he is ready to accept the offer for the post of Assistant in the pay scale of Rs.5500-175-9000/-.

4. Mr.Deo Prakash Sharma, learned counsel for the petitioner submits that the post of Assistant is of Non-Executive cadre or Clerical Grade and is much below the rank of Executive Officer. He states, the petitioner objected to the offer and asked the same in writing but the respondents refused. He made a representation on September 8, 2010. On September 27, 2010, the respondent No. 2 replied to the Email and stated that they follow certain rules and in terms of the said rules, his performance was evaluated as was done in all other cases, to which, the petitioner replied vide his Email dated October 8,

2010 and raised certain questions, which were not answered to. He states, that another email dated June 13, 2011 was received, whereby additional emoluments of Rs.2500/- were approved with effect from October 2008 till August 2010. Finally, the respondents, vide their letter dated June 19, 2015 intimated to the petitioner that he was offered the post of Assistant (Grade-I) in August, 2011 based on the evaluation of his performance and interview and till that date, the petitioner has not given his consent. He was asked to convey his acceptance within 15 days of the issue of the letter. It is noted that the petitioner filed a writ petition being W.P.(C) 5670/2014 which was disposed of on January 21, 2015, directing the respondents to pass a speaking order, treating the said writ petition as representation. The respondents issued letter dated March 5, 2015, whereby they invited the petitioner for personal interaction on March 12, 2015 in which he appeared. Thereafter, the petitioner received impugned letter dated March 20, 2015.

5. According to the learned counsel for the petitioner, the petitioner vide his letter dated March 20, 2015 under the RTI, sought the performance appraisal /confidential report for the period April 4, 2008 to March 2015. The respondents vide, their letter dated June 4, 2015 furnished the periodical review/report dated May 5, 2009 and April 7, 2010.

6. It is the submission of the learned counsel for the petitioner that in terms of the offer of engagement, the period of training was of one year and extendable by another year. Thereafter, the petitioner deemed to have been confirmed on the position of the Executive Officer. It is his submission, despite satisfactory performance, the petitioner

has not been confirmed as Executive Officer. He states, that the confirmation need to be effected only on the basis of the performance report and not personal interaction with Management Trainee as has been done by the respondents. Not only this, the petitioner belonging to the Reserved Category, need to have been assessed with the relaxed standards, and finally, the impugned letters are in violation of the earlier order passed by this Court, whereby, it was directed to treat the writ petition as a representation. Unfortunately, the grounds raised in the writ petition have not been taken into consideration while issuing the same. He would rely upon the following judgments in support of his contentions:

(i) ***Rajinder Singh Chauhan and Ors. Vs. State of Haryana and Ors., 2005 (85) DRJ 139***

(ii) ***Jai Prakash Vs. School Management of ITL Public School and Ors., 222 (2015) DLT 157***

7. Mr. Rakesh Aggarwal, learned counsel for the respondents, on the other hand, has drawn my attention to the offer of engagement to contend that the submission of the learned counsel for the petitioner is fallacious inasmuch as the petitioner had to undergo training initially for a period of one year, to be extendable for another one year. On completion of training period of two years, he was to be considered for the position of Executive Officer. In other words, in terms of the offer of engagement, there is no concept of deemed confirmation on the post of Executive Officer. He clarified his submission by stating that on completion of two years, the petitioner was to be considered, on the basis of relevant material including the personal interaction for the position of the Executive Officer. Even though, his performance for the year 2009 was

satisfactory, his performance in the year 2010 can be seen from the performance review at pages 134 and 139, which speaks for itself, and shows that the petitioner's performance was far from satisfactory. According to him, the reliance placed by the learned counsel for petitioner in the cases of ***Rajinder Singh Chauhan and Ors. (supra)*** and ***Jai Prakash (supra)***, relatable to deemed confirmation, has no applicability in the facts of this case. That apart, he states, the submission of the learned counsel for the petitioner that the petitioner should have been considered on the basis of the performance review only and not with personal interaction, is not tenable, as on an earlier occasion in the year 2010, an interaction was held through video conferencing. Even before considering the writ petition as representation, the petitioner was called for an interaction. He had appeared in the same and during interaction, the petitioner was assessed on various parameters including; (1) job knowledge and skills; (2) personal attributes; and (3) communication. He states, the petitioner having appeared in the interaction process, cannot challenge the very same process. He states, the petitioner's case having been considered on several attributes, it was found that the petitioner cannot be given the position of Executive Officer. Mr. Aggarwal states that even the plea that the petitioner being a Reserved Category Candidate, and he should be assessed on the lower parameters, is also untenable as no such instructions have been pointed out by the learned counsel for the petitioner, in support of his contention. He states, that there is no violation of the order passed by this Court by calling him for personal interaction. He states, in fact, as stated above, the interaction was a process evolved by the respondents initially in the year 2010 and they have followed the same while assessing

the case of the petitioner after the order was passed by this Court. He seeks dismissal of the writ petition.

8. Having heard the learned counsel for the parties, insofar as the plea of the learned counsel for the petitioner that his service is deemed to have been confirmed as Executive Officer, is concerned, the same is not appealing for the reason that the terms of offer of engagement were very clear. The petitioner had to undergo training initially for a period of one year, which period can be extended for a further period, not exceeding one year. On completion of one year or the period extended, as aforesaid, he was only to be considered for the post of Executive Officer. The position of Executive Officer is not automatic on completion of one year or two years of training. In this regard, I agree with the submission made by Mr. Aggarwal that the petitioner is only entitled to consideration, for the position of Executive Officer and nothing more. I note that the petitioner has himself placed on record the result of the interaction held on March 12, 2015, wherein, the Council Members have concluded that the petitioner is not fit for the post of Executive Officer in the Institute. The Council Members, having assessed the petitioner on the basis of defined parameters and concluded that the petitioner has not attained the relevant benchmark for being offered the post of Executive Officer. The said assessment cannot be faulted with. Suffice to state, that, this Court, would not sit as an appellate authority and give its own assessment contrary to what has been given by the Council Members. The same would not come within the scope of judicial review. That apart, it is not the case of the petitioner that the

assessment made by the Council Members is actuated by mala fide. (Reference **2010 (7) SCALE 529 Dr. Basavaiah v. Dr. H.L. Ramesh and Ors (connected Civil Appeal)**).

9. Insofar as the judgment relied by the learned counsel for the petitioner in the case of **Rajinder Singh Chauhan and Ors. (supra)**, on which, the reliance was placed in para 12 of the said judgment, is concerned, the same has no applicability in the facts of this case, inasmuch as the same is relatable to a case of probation and extension thereof, wherein, rules provided that beyond a particular period, it is not permissible to extend probation. It was in that context, the Supreme Court held, the petitioners therein are deemed to have been confirmed and have to be treated as permanent employees. Similar is the ratio in the case of **Jai Prakash (supra)**. In the said case, this Court has relied upon the judgment of the Supreme Court in **Rajinder Singh Chauhan and Ors. (supra)**. As I have held above that the case of **Rajinder Singh Chauhan and Ors. (supra)** is not applicable to the facts of the present case, the judgment is also not appealing.

10. Insofar as the submission of the learned counsel for the petitioner that the petitioner should have been assessed with lower standards being a reserved category candidate, suffice to state, the learned counsel has not placed before me any instructions in support of his submission. In the absence of any instructions in that regard, the plea need to be rejected.

11. Insofar as the plea of the learned counsel for the petitioner that the impugned letters are in violation of the order of this Court passed in earlier petition i.e. W.P.(C)

5640/2014, is concerned, I am not in agreement with the same, moreso, when the petitioner has himself appeared in the interaction process, without any demur.

12. In view of my above discussion, I do not see any merit in the writ petition. The same is dismissed.

CM No. 18907/2015 (for direction)

13. In view of the order passed in the writ petition, the present application is dismissed as infructuous.

AUGUST 10, 2017/akb

V. KAMESWAR RAO, J

