

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

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Date of decision: 22nd October, 2018

+ W.P.(C) 7728/2015, CM Nos. 15151/2015 & 5476/2017
S.M. TANGRI

..... Petitioner

Through: Mr. Chandra Prakash, Adv.

versus

INDRAPRASTHA POWER GENERATION COMPANY LIMITED
AND ANR

..... Respondents

Through: Mr. Vinay Sabharwal, Adv. for R1, R2
& R4

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. The present petition has been filed by the petitioner with the following prayers:

“In view of the facts and submissions made herein above it is most respectfully prayed that this Hon’ble Court be graciously pleased to:

- (i) *issue a Writ, Order or direction in the nature of Quo-Warranto or any other order or direction or declaration thereby holding the absorption of the respondent No.4 Shri P.N. Sharma, as Assistant Manager (HR) with respondent No.1, as null and void; and*
- (ii) *consequently, quash the appointment of respondent No.4 as Assistant Manager (HR); and*

- (iii) *issue appropriate directions to the respondent Nos.2 to hold an enquiry against the conduct of respondent No.5 for processing the case of the respondent No.4 contrary to the rules; and*
- (iv) *award cost of the writ petition against the respondent; and*
- (v) *May also pass any further order or orders has to deemed just and proper to meet the ends of justice.”*

2. In substance, the petitioner is challenging the absorption of the respondent No.4 as Assistant Manager (HR) with the respondent No.1. It is the case of the petitioner and contended by his counsel that the respondent No.4 joined the Indraprastha Generation Company Ltd. (respondent No.1) on January 28, 2008 on deputation. At the time of joining on deputation, the respondent No.4 was MSc. LLB and MBA and has secured his permanent absorption in the company by making false statement / fraudulent misrepresentation before the Board of Directors of the Company in connivance with the respondent No.5.

3. According to him, the respondent No.4 did not have the minimum qualification nor he had undergone a written test prescribed in the Recruitment regulations for the post of Assistant Manager (HR). He states that in terms of OM dated June 20, 2007 the permanent absorption has to be made subject to a person

fulfilling the requirement under the Recruitment and Promotion regulations for the particular post.

4. He has drawn our attention to the Recruitment and Promotion regulation for the post of Assistant Manager (HR) which stipulates the method of recruitment to be 25% by promotion and 75% by direct recruitment. Short term contract in exceptional cases. According to him, even the absorption has been made giving the relaxation of the prescribed qualification and age which is also impermissible.

5. He has also drawn our attention to the note sheets procured by him through the process of RTI to contend that the CMD of the Company has in unequivocal terms stated that the case of the respondent No.4 cannot be processed for absorption. Despite such noting, in the next Board meeting, it was decided that the respondent No.4, be permanently absorbed on the post of Assistant Manager (HR) against the direct recruitment quota in respondent No.1 Company, in relaxation to prescribed qualification and age.

6. He would rely upon the judgment of the Supreme Court in the case of *Union of India (UOI) and Anr. vs. Narendra Singh*

(2008) 2 SCC 750 to contend that no person can be given any benefit, if the same is impermissible under the Rules.

7. On the other hand, Mr. Vinay Sabharwal, learned counsel appearing for the respondent No.1 states that the present petition filed by the petitioner is not bona fide, inasmuch as the respondent No.4 was the officer involved in a disciplinary action taken against the petitioner which culminated in the penalty of “censure” imposed on the petitioner. In other words, the petitioner is settling scores against the respondent No.4, who in discharge of his official duties was involved in a disciplinary action against the petitioner.

8. That apart, he states that the respondent No.4 was working as a Gazetted Officer in the office of Controller General of Accounts, Ministry of Finance, Government of India, New Delhi and had applied for deputation on the post of Assistant Manager (Vigilance) in the respondent no.1 in the year 2007. He was called for interview by a high-powered interview panel of the respondent No.1 Company. The respondent No.4 was offered the post of Assistant Manager (Vigilance) and the respondent No.4 joined the said post on January 28, 2008 with the consent of his parent department. The deputation period of respondent No.4 was also

extended from time to time by the answering respondent with the consent of the parent department of respondent No.4. As the respondent No.1 Company was not having an expert officer for handling disciplinary and vigilance matters, hence, keeping in view the expertise and excellent and outstanding performance of respondent No.4 during his tenure, the HR Department of respondent No.1 Company initiated a proposal for permanent absorption of respondent No.4 on the post of Assistant Manager (HR) as respondent No.4 was discharging the duties of Assistant Manager (Vigilance) in addition to additional charge of Assistant Manager (HR).

9. Mr. Vinay Sabharwal also stated that the views of the CVO were also taken into consideration. According to him, the respondent No.1 was of the view that it is difficult to get experienced officer especially for Vigilance Branch and recently attempt was made to recruit officers for Vigilance Branch on deputation basis, however, there was very poor response as the shortlisted officers did not turn up for interview. Noting the fact that the respondent No.4 was holding degree of MBA (Marketing) and had completed his PG Diploma in HR in 2011 and was above

the age of 30 years, relaxation in the age and qualification criteria was required from the Board if he was to be absorbed against the vacancy meant for direct recruitment, the same was granted. It is his submission that the absorption of respondent No.4 has been made in public interest by the Board of Directors by granting relaxation. Thereafter, a letter dated September 30, 2013 was written to the Controller General of Accounts, i.e., the parent office of respondent No.4 conveying the decision of the Board of Directors of respondent No.1 to permanently absorb the respondent No.4 and requested them to send their concurrence / NOC.

10. Accordingly, the parent department sent the NOC vide letter dated November 12, 2013. After receiving the NOC from the parent department of respondent No.4, the respondent No.1 Company issued a letter dated December 09, 2013 directing the respondent No.4 to settle his dues, if any, and to tender technical resignation in his parent department. It is only after directions from the respondent No.1 Company that the respondent No.4 tendered his technical resignation dated December 09, 2013 in his parent department. The parent department accepted the technical resignation of respondent No.4 vide office order dated January 02,

2014. The respondent No.4 joined the respondent No.1 Company on January 02, 2014.

11. It is the submission of Mr. Vinay Sabharwal that it is not the case of the petitioner that the absorption of the respondent No.4 is mala fide / with ulterior motives. That apart, he states that process has been in accordance with Recruitment and Promotion policy as the Board has power to relax any of the conditions of recruitment and promotion for both, internal and external candidates in the interest of the Company. He seeks the dismissal of the writ petition.

12. Having heard the learned counsel for the parties, insofar as the plea of Mr. Vinay Sabharwal that the present petition filed by the petitioner is not bona fide is concerned, suffice it to state that the plea of the petitioner is more of violation of the Recruitment and Promotion rules as noted above. From the perusal of the same, it is clear that the post of the Assistant Manager (HR) has necessarily to be filled to the extent of 25% by promotion and 75% by direct recruitment. It is only in exceptional cases; the appointment can be made on contract basis. In other words, the recruitment rule does not stipulate the appointment by way of deputation / absorption and

there is no dispute to the fact that the respondent No.4 had come on deputation in the year 2008.

13. On specific query to the learned counsel for the petitioner as to why the petitioner had not challenged the deputation of the respondent No.4 in the respondent No.1 Company in the year 2008, he could not give any satisfactory reply. Having noted the stand taken by the respondent No.1 in the counter affidavit, it is clear that the absorption of the respondent No.4 was in public interest, because of the vast experience of 6-7 years, the respondent No.4 had in working with Vigilance Department with additional charge of HR. It is also their case that despite attempts, to fill up vacancies in the Vigilance Department, the respondent No.1 could not fill the same. So, a need was felt to have an officer, who can look after the work of HR.

14. What is important in this case is that pursuant to the decision taken by the respondent No.1, the respondent No.4 has submitted his technical resignation and settled his dues with his parent department. Any order of this Court affecting the absorption of respondent No.4 would have drastic consequences, inasmuch as the respondent No.4 not only shall loose his employment in the

respondent No.1 Company, but also, not get employment in his parent department as he has technically resigned from the post and settled his dues.

15. Learned counsel for the petitioner may be justified in relying upon the judgment of the Supreme Court in *Union of India (UOI) and Anr. (supra)* that the recruitment rules need to be scrupulously followed. But on a deeper consideration of the facts, we find that the respondent No.4 is not at fault, if he has been absorbed in the respondent No.1 Company. There is also some justification given by the respondent No.1, for his absorption.

16. That apart, keeping in view, the petitioner had not challenged the deputation of the respondent no.4 with the respondent no.1 since 2008 and also this petition has been filed after almost one year of the respondent no.4 joining the respondent no.1 on absorption, in the peculiar facts and circumstances of this case, this Court is of the view that it should not exercise its extraordinary jurisdiction under Article 226 of the Constitution in favour of the petitioner by granting the relief as prayed for by him in this writ petition and unsettle a settled position. This shall not mean that the recruitment rules permit deputation / absorption of an officer.

17. This writ petition is dismissed. No costs.

CM Nos. 15151/2015 & 5476/2017

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

OCTOBER 22, 2018/aky

