

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 1846 of 2019****Reserved on 09/05/2019****Delivered on 17/06/2019**

Santosa Kumar Pal S/o Shri Unmadhab Pal Aged About 55 Years
Presently Posted As General Manager, South Eastern Coalfields Ltd.
Gevra Area, P.O. Gera Project, District Korba, Chhattisgarh.

---- Petitioner**Versus**

1. Union Of India Through The Secretary, Department Of Personnel And Training, Government Of India, Block No. 14, CGO Complex, Lodhi Road, New Delhi.
2. Public Enterprises Selection Board Through Its Secretary, Public Enterprises Bhawan, Block No. 14, CGO Complex, Lodhi Road, New Delhi.
3. Coal India Ltd Through Its Chairman-Cum-Managing Director, Coal Bhawan, New Town, Rajarhat, Kolkata, West Bengal.
4. General Manager (Personnel) Personnel Department, Executive Establishment Cell, Coal India Ltd. Coal Bhawan, New Town, Rajarhat, Kolkata, West Bengal.
5. South Eastern Coalfields Ltd. Through Its Chairman-Cum-Managing Director, Headquarter, Seepat Road, Bilaspur, District- Bilaspur, Chhattisgarh.
6. Ministry Of Coal Through Secretary, Shastri Bhavan, New Delhi, Delhi 110001
7. Ministry Of Home Affair Through Secretary North Block Central Secretariat, New Delhi, Delhi- 110001
8. Mr. Manoj Kumar Prasad General Manager, Khadia Project, Northern Coalfields Limited, P.O. Khadia Project, District- Sonbhadra, Uttar Pradesh.

----Respondents

For Petitioner	:	Mr. Harshwardhan Parganiha, Advocate along with Mr. Ayush Bhatia, Advocate
For Respondent No.1	:	Mr. B. Gopa Kumar, Asstt. S.G.
For Respondents No. 3 to 5	:	Mr. Anumeh Shrivastava, Advocate and Mr. Vivek Chopda, Advocate

Hon'ble Shri Justice P. Sam Koshy**C.A.V. ORDER**

1. The relief sought for by the petitioner in the present writ petition is for issuance of an appropriate writ for setting aside the letter of

recommendation dated 26.12.2018 and also for setting aside the subsequent proceedings drawn on the basis of the recommendation order dated 26.12.2018.

2. The facts in brief is that the advertisement was issued by the Government of India, Department of Personnel and Training, Public Enterprises Selection Board (PESB) for selection to the post of Director (Technical) in the South Eastern Coalfields Limited (SECL) vide advertisement dated 13.07.2018. The petitioner having all the qualifications, experience and the eligibility criteria for the said post had applied for the said post. However, after scrutiny of the candidature of all the applicants, when the list of the candidates, who have been found eligible for interview, was prepared, the petitioner's name did not reflect in the said list.
3. On a query, the petitioner found that his application itself was rejected and his candidature was not considered for empanelment. The grievance of the petitioner is that when the list of empaneled persons was verified by the petitioner, he found that there were three persons in the list (Annexure P/4), whose names appeared at serial No. 4 to 6 to be juniors to the petitioner. The petitioner immediately made a representation to the Coal India Limited and also got a representation forwarded from the SECL headquarter to Coal India in respect of the non-consideration of the application made by the petitioner.
4. In addition, the petitioner also made a representation to the Public Enterprises Selection Board (PESB) vide representation dated 17.12.2018 (Annexure P/7). The Coal India Limited in turn confirmed the SECL authorities that the application of the petitioner was duly

forwarded through online mode as well as through offline mode within the time limit prescribed for submission of the same. Since there was no response, the petitioner immediately filed a writ petition challenging his non-consideration by way of a writ petition before this Court registered as WPS No. 199/2019. That by the time, the writ petition came up for hearing on 11.01.2019, it was informed by the counsel for SECL that the applications have been scrutinized and the empanelment also had been done. That based on the interview conducted by the PESB, one Shri Manoj Kumar Prasad has been found selected for the said post. Since the PESB had found Shri Manoj Kumar Prasad suitable for the said post and had selected him, the petitioner withdrew the writ petition at this juncture reserving the right to challenge the subsequent developments.

5. Later on, the present writ petition has been filed challenging the recommendation of the respondent No.8 for the post of Director (Technical) of SECL. The contention of the counsel for the petitioner was that the non-consideration of the application submitted by the petitioner on the part of the PESB is highly arbitrary, unjustified and without any substantial or cogent reasons. The counsel for the petitioner referring to the application that was submitted by petitioner through online mode (Annexure P/3) contended that he had filled up the form giving every details that was sought for and under no circumstances could the respondents have either held that the application submitted by the petitioner to be incomplete or incorrect or invalid.

6. Referring to the column whereby the educational/professional qualification of the candidates were to be prescribed, the petitioner submits that he had filled up the column strictly in accordance with the details available in the Degree/certificates that he had possessed. The petitioner referred to the asterisk in column No.5 wherein it has been clearly mentioned that the details of the educational qualification must be filled exactly as is given in the Degree/certificates issued by the University. The petitioner submitted that there is no difference in respect of entries that the petitioner has been made in the application, so far as the educational qualification is concerned, yet the respondents have rejected the candidature of the petitioner holding the application to be incorrect. According to the petitioner, the rejection of the candidature of the petitioner is highly unreasonable as there is nothing which could be said to be incorrect, nor can the application said to be incomplete and at the same time there is also nothing which could be said as suppression of fact.
7. The further contention of the petitioner is that as per requirement, the applications to be filled online had to be submitted to the Coal India Limited i.e. the establishment under whom the petitioner is working, who after due scrutiny of their applications were required to forward the same. According to the petitioner once when the Coal India Limited had after due scrutiny forwarded the application to the PESB, there was no further action for the PESB to further scrutinize the application and should have only assessed the suitability of the petitioner. Thus, the non-empanelment of the petitioner was bad in law and arbitrary. According to the petitioner though he may not have a right to be

selected, but he has a genuine right for consideration particularly when the claims of similarly placed persons and even the candidature of juniors to the petitioner having been accepted by the respondents and were also empanelled for interview. According to the petitioner, the decision for non-consideration of the petitioner or the rejection of the application of the petitioner is without any basis and has been done at the whims and fancy of the authorities of the PESB.

8. According to the petitioner he has a legitimate expectation of a fair consideration of his candidature for the reason that he is fully eligible, competent and has all the eligibility criteria. Secondly he has filled the application form as per the requirement of the advertisement. It was also forwarded to the PESB through proper channel and lastly the petitioner's application having reached the PESB well within time and the application was not in any manner incomplete or incorrect.
9. The contention of the petitioner further was that for a similar selection in a different subsidiary of Coal India Limited i.e. Mahanadi Coalfields, the candidature of the petitioner was rejected in the same manner, which the petitioner has questioned before the High Court of Dehli and the High Court of Delhi finally allowed the writ petition and directed the respondents to empanel the candidature of the petitioner along with other qualified candidates for consideration. Therefore the present writ petition also should be allowed and the petitioner should be granted an opportunity of consideration for the post of Director (Technical) SECL.
10. Opposing the writ petition Learned Assistant Solicitor General initially raised a preliminary objection so far as maintainability of the second writ petition for the same cause of action is concerned. According to the

Learned counsel for the Union of India the petitioner already for the same cause of action had filed writ petition I.e WPS No. 199/2019 and with wide open eyes the petitioner had withdrawn the same with liberty to challenge the subsequent development and order by way of fresh writ petition. According to the ASG, there is no change or development that has taken place subsequent to the withdrawal of the writ petition and unless an order of appointment has been issued the petitioner does not have a right for filing another writ petition and the present writ petition thus would be hit by the principle of res judicata.

11. According to the counsel for Union of India, it is a case where a large number of candidates had applied for the said post and on scrutiny of the application form that the petitioner had filled, it was found that the application was not correctly filled or it can be said that the application was wrongly filled.
12. According to the petitioner in all around 56 candidates had applied for the said post of which only 51 persons had filled their applications properly and correctly. 5 candidates had not filled their applications properly and since their application was wrongly filled up therefore their applications were rejected and one of the applicant whose application stood rejected was the petitioner.
13. Counsel for the Union of India submitted that it is not the case where Union of India has same personal bias against the petitioner nor is it a case that petitioner has been victimized or his application has been malafidely rejected. According to the counsel for Union of India since the Public Enterprises Selection Board (PSEB) has found five persons whose application was not properly filled, incorrectly filled or wrongly

filled and their candidature had been rejected, it stands established that it is not the petitioner alone who has been picked up and victimized but all those persons who had wrongly filled their applications have been declared ineligible for consideration.

14. According to the Government of India in the online application that petitioner had filled the petitioner did not describe his educational qualification properly in as much as from his application it was not evident that petitioner was a Mining Engineer. The qualification which the petitioner filled up in the online application was Bachelor of Science (Engineer). He did not mentioned his branch under which he has done his engineering so was the case of other four candidates who had also not filled up their educational qualification properly and therefore treating it to be the case of an online application that was wrongly filled, the application submitted by the petitioner was rejected from being scrutinized.
15. According to the counsel for UOI even otherwise the petitioner should not have a grievance for the reason that the person who has been found selected for the said post i.e. respondent No. 8 is a person who is otherwise senior to the petitioner and even if application of the petitioner would had been accepted even then respondent No. 8 would have had an upper hand over the claim of the petitioner on the ground of being senior in the department and therefore the petition deserves to be rejected on this ground also. It was further contention of the counsel for UOI that if the claim of the petitioner has to be accepted then all the other four candidates whose application also have been rejected on the ground of wrongly filled application would have to be considered.

16. According to the counsel for UOI it is a case where there was another candidate with the same qualification who had also filled up his form clearly mentioning his qualification that of Bachelor of Science (Engineer) but had also shown his branch of engineering i.e. (Mining) and his application was accepted by the UOI. However, since in the case of the petitioner's application as he did not mention the branch of engineering it was considered as a wrongly filled application and the same was rejected which cannot be found fault with. It was further contended that Government of India has laid down a compendium of guidelines and the entire screening and scrutiny of the application have been done in accordance with the said guidelines. Therefore, there is hardly any scope left for this Court to interfere. Moreover, it was contended by the UOI that the petitioner has not made any rebuttal to the reply that UOI has filed and in the absence of any rebuttal in denial to the pleadings made by the UOI nothing further remains to be adjudicated upon and the petition deserves to be rejected on this ground alone.
17. Having heard the counsel appearing for the parties and on perusal of records produced by the Assistant Solicitor General during the course of hearing and also the pleadings which the petitioner and the respondents have made, some of the admitted factual position as it stands is that:
 - (i) An advertisement was issued on 13.07.2018 by the Government of India, DoPT Public Enterprises Selection Board for filling up of the post of Director (Technical) in the SECL.

(ii) The qualification prescribed was that the candidates applying should be a qualified Mining Engineer and holder of First Class Competency Certificate under the Indian Minings Act. The candidate also was required to have a minimum of experience i.e. the candidate should have at least 8 years of cumulative experience during the last 10 years in mining operations or mine planning and the experience should had been of senior management level in an organization of repute.

(iii) The petitioner herein finding himself eligible to participate for the said appointment applied for the post.

(iv) The petitioner was working as a General Manager at Gevra area of SECL. According to the petitioner, he was working as a senior management level officer for the past about 10 years.

(v) Annexure P/3 with the writ petition is the application which the petitioner had filled and which was routed through proper channel. While filling the application, in the qualification column, the petitioner mentioned his qualification B.Sc.(Engineering).

(vi) After this, the petitioner had mentioned the other additional qualification that the petitioner has.

(vii) From the records that have been made available by the Assistant Solicitor General, it reveals that there were around 56 inhouse candidates who had applied for the said post, of which there have been 22 persons who were declared ineligible for the said post for various reasons and in which the name of the petitioner also was included.

(viii) Of these 22 persons who were declared ineligible, five of the candidates have been declared ineligible for the reason that they have not mentioned their discipline or branch in which they have done their engineering course, which again includes the name of the petitioner.

(ix) The petitioner as also four other persons who were declared ineligible have only mentioned that they are Engineering Graduate without disclosing the branch and discipline in which they have done their engineering. Couple of officers from this group of 5 ineligible candidates are also those who are even senior to the petitioner in the organization.

18. Given the aforesaid factual matrix as it stands, all that this court now has to see is whether the petitioner has been deliberately with any malafide intention declared ineligible and whether there has been any substantial prejudice that has been caused on account of respondent No.8 being declared selected for the post of Director (Technical) in SECL.
19. This court carefully went through the records that have been made available by the Assistant Solicitor General and found that the application of each candidates have been scrutinized by the public Enterprises Selection Board and in the course of scrutiny of the records, there was another candidate by the name of Vipin Kumar who had also the same qualification which the petitioner has, but in column 5.1 he had reflected his educational qualification as B.Sc. (Engineering) (Mining). Thus, the scrutiny committee could clearly identify the said person of being a Mining Engineer whereas, the petitioner and other

four persons who had applied had mentioned their qualification only as B.Sc. (Engineering) or B.Sc, as the case may be, without disclosing the branch or discipline in which they have undertaken the Engineering degree. The said Vipin Kumar, a person identically placed having same qualification as that of petitioner, was not declared ineligible.

20. Moreover, from the records it also reflects that it is not a case where the petitioner has been for some reasons being victimized. Rather, it is a case where a uniform treatment has been given to all similarly placed persons by the scrutiny committee while processing the applications forwarded in this regard. One should not forget that out of 56 inhouse candidates who had applied as earlier stated, there were 22 candidates who have been declared ineligible for various reasons and which includes the candidates who have not filled their qualification properly or by not providing the complete information. Now if the scrutiny committee has, in the process of shortlisting the candidates found that there are applicants who have not completely filled or not properly filled their applications, the committee had all the powers to shortlist the candidates by declaring those applicants ineligible.

21. So far as the contention of the petitioner that he had not disclosed discipline or branch in his application as the formate of the application had an asterisks to column No.5.1 which stated that the details of the qualification should be exactly as per Degree/Certificate issued by the University, this court is of the opinion that such ground raised by the petitioner would not come to his rescue for the reason that though the asterisks provide of disclosing the qualification exactly as per the Degree/Certificate, but that does not mean that the petitioner would not

disclose the branch or the discipline in which he has done his Engineering course.

22. Another aspect which cannot be lost sight of is that, the discipline and the branch in which the petitioner has done his Engineering is also reflected in his degree. Therefore, it was incumbent upon the petitioner to have disclosed the qualification and branch in which he has done his engineering. Merely referring himself to have B.Sc in Engineering would not be sufficient for the scrutiny committee to assume that the petitioner is a Mining Engineer. Under the aforesaid circumstances, if the scrutiny committee has declared all such candidates who have not disclosed the discipline or branch of their engineering ineligible, the same cannot be said to be in any manner arbitrary, vindictive or malafide. It is also not a case where the other similarly placed persons have been declared eligible.
23. It is always a settled position of law that there has to be a great amount of judicial restraints to be maintained by the courts while testing the administrative action. The courts would not sit as a court of appeal or an appellate body to review the decision taken by the administrative body. The scrutiny committee in a selection process always has freedom to lay down certain parameters/conditions while scrutinizing the application forms of all the aspirants who had applied for the post. A fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. The only exclusion is that, such decisions must not only be tested by the application of Wednesbury principle of reasonableness and the action must also be free from arbitrariness and it should not

have been affected by bias or actuated by malafides. Interfering with the administrative decisions which are otherwise not unreasonable or which prima facie does not show any arbitrariness or mala fides should not be interfered only because there is another possible view. Such an interference may lead to undue delay in the process of selection and can also have an adverse impact to the post on which the appointments have to be made because of delay that may arise.

24. There are certain inherent limitations which the courts have to exercise while exercising the power of judicial review so far as appointment and selection matters are concerned. In the instant case, the petitioner has not taken a single ground of the petitioner being victimized or action on the part of respondents in declaring the petitioner ineligible to be actuated by the malafides or any sort of bias that was there against the petitioner so far as scrutiny committee is concerned. Coupled with the aforesaid facts, it is also evident that other similarly placed persons who have also not disclosed their discipline or branch in which they have done their engineering have all been measured with the same scale and yardstick and have all been given the same treatment, that of being declared ineligible.
25. So far as judgments which have been cited by the petitioner during the course of hearing is concerned, it is found that all these judgments have been passed under entirely different factual backdrop and none of the case was relating to candidates who were declared ineligible for the reasons of the applications not being complete or applicants not providing the complete information so far as minimum eligibility criteria is concerned.

26. In view of the aforesaid facts and circumstances of the case, this court does not find any strong case made out by the petitioner calling for an interference with the selection process for the post of Director (Technical) from the advertisement dated 13.07.2018 (Annexure P/2).
27. The writ petition thus being devoid of merit deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved