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

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Date of Decision: 18.12.2019

% LPA 246/2019 & C.M. No. 16548/2019, C.M. No. 16549/2019

BABAN SINGH

..... Appellant

Through: Mr. Sudhanshu Batra, Sr. Adv., Mr. Arvind Kr. Gupta, Mr. Gautam Choubey, Mr. Shanker Raju, Mr. Nilansh Gaur, Mr. Gautam Chaudhary, Mr. Prashant Bhardwaj and Mr. Aditya Mishra, Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Arun Bhardwaj, Mr. Rakesh Mudgal and Mr. Ashish Rai, Advs. for UOI.
Mr. Uddyam Mukherjee and Mr. Krishnayan Sen, Advs. for R-3.
Mr. Avi Singh, Mr. Tanuj Bhadava and Mr. Shashank Dixit, Advs. for R-6.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

VIPIN SANGHI, J. (ORAL)

1. We have heard learned counsels and proceed to dispose of the present appeal.

2. The appellant has preferred the present appeal to assail the judgment dated 21.02.2019, rendered by the learned Single Judge in W.P.(C.) No. 1515/2019, preferred by Santosa Kumar Pal – respondent No. 6 herein.

3. The learned Single Judge allowed the said writ petition and quashed the empanelment dated 09.01.2019, and the subsequent proceedings held in relation to the selection by the PESB i.e. respondent No.2 for the post of Director (Technical/ P&P), advertisement vide notification No. 7/37/2018-PESB in Mahanadi Coalfields Limited, a wholly owned subsidiary of Coal India Limited.

4. We may observe that the appellant was not impleaded as a party respondent in the writ proceedings. The appellant was the one empanelled by the PESB in the said selection process.

5. The respondent No. 6/ writ petitioner applied against the said advertisement as an internal candidate while serving with (SECL) – subsidiary of Coal India Limited i.e. respondent No.3. The appellant herein was also one of the 34 candidates who applied for the said post.

6. The advertisement issued by respondent No. 2 PESB prescribed the eligibility qualification as “*The applicant should be a **qualified Mining Engineer** and holder of 1st Class certificate of competency under the Indian Mines Act*” (emphasis supplied). Respondent No. 6, while filling the application, described his qualification as “*Bachelor of Science (Engineering)*” from the Regional Engineering College, Rourkela between

1981-85 in a full time Degree-Course. He did not state, admittedly, that he was a qualified (mining) engineer.

7. The applications received by PESB were processed. The Original Record has been produced before us and we find that in respect of all the applicants, PESB prepared a tabulation. In respect of some of the candidates, including respondent No.6, the remarks column stated that he was found to be ineligible and the reason for respondent No.6 not being considered qualified/ eligible was disclosed as *“The discipline in B.Sc (Engineering) qualification is not mentioned in para 5(i) of his application whereas the mandatory educational qualification prescribed for the post is “qualified mining engineer + FCC” ”*.

8. Mr. Bhardwaj, who has produced the original record, points out that apart from respondent No.6, there were four others – one senior to respondent No.6, and three of his juniors, who were similarly found to be “ineligible” for the same reason. Consequently, apart from respondent No. 6, the said four similarly situated candidates were not short listed for the interview.

9. The PESB held its meeting No. 9/2019 on 22.01.2019 at 02:30 P.M. for the purpose of selection for the post of Director (Technical/ P&P), Mahanadi Coalfields Limited. Six candidates, including the appellant herein, were interviewed in the Selection Meeting. PESB recommended the appellant for the said post. However, before the appointment letter could be issued to the appellant, respondent No. 6 preferred the aforesaid writ petition

and, apparently, for that reason the appointment letter has not been issued to the appellant till date.

10. Before the learned Single Judge, the submission of the respondent No.6 was that when he learnt that he had not been empanelled by the PESB, he had made a representation on 12.01.2019. Despite the representation, respondent No. 2 had proceeded to hold the interview on 22.01.2019. From the impugned order it appears that the writ petition was initially listed on 15.02.2019 and the same was adjourned to 20.02.2019, to enable the respondent to take instructions whether the petitioner is an Engineer in Mining. It also appears from the impugned order that respondent No. 6 filed his Degree Certificate, Marksheets as well as the letter from NIT, Rourkela to establish that he is a graduate in B.Sc. (Engineering) in the branch of Mining. It also appears that on 20.02.2019, the learned Additional Solicitor General sought time to verify the Degree of respondent No. 6. It appears that on the date of hearing, counsel for respondent No.3 i.e. Coal India Limited stated, on instructions, that Bachelor of Science (Engineering) is equivalent to Bachelor Engineering (Mining). The learned Single Judge, thus, proceeded to observe “*Accordingly, there is no other ground for non-empanelling the petitioner for the post in question.*” In this background, the direction issued by the learned Single Judge in the impugned order reads as follows:

“Accordingly, the respondent No. 2 is directed to include the name of the petitioner in the empanelment and thereafter conduct interview of the petitioner and prepare the recommendation accordingly. The exercise shall be carried out within two weeks. The empanelment dated 09.01.2019 and

subsequent proceedings thereto are hereby set aside and respondents are directed to prepare fresh panel and conduct the interview and make recommendation accordingly.”

11. The appellant preferred an application to seek leave to prefer a review petition before the learned Single Judge vide C.M. No. 11281/2019, which was rejected by the learned Single Judge on 11.03.2019. Thereafter, the appellant has preferred the present Letters Patent Appeal.

12. The submission of Mr. Sudhanshu Batra, learned senior counsel for the appellant is, and the same is also supported by Mr. Arun Bhardwaj – who represents respondent Nos. 1, 2, 4 & 5, that respondent No. 6 did not correctly describe his qualification in the application form and, therefore, he must take the consequences thereof. It is submitted that it is not relevant as to whether or not, the qualification of respondent No.6 could be considered as a Degree in (Mining) Engineering. What is of relevance is: whether the conduct of the PESB, in processing the application form on the basis of the qualification described by the applicants/ candidates, can be said to be unreasonable.

13. Mr. Singh, learned counsel for respondent No.6, however submits that respondent No.6 was prevented from appropriately describing his qualification as a (Mining) Engineer. This is for the reason that the application form stipulated that the qualification “*should be exactly as per the Degree/ Certificate issued by the University.*” He submits that so far as the private applicants were concerned, they were required to submit their educational qualification documents and certificates. However, such a requirement was not prescribed in respect of internal candidates. He

submits that Coal India Limited had verified the particulars furnished by the applicant/ respondent No.6, by stating that particulars had been scrutinized and found to be correct as per the official records. This verification also entailed a certification with regard to the “eligibility” of the candidate. He further submits that the officials of the Ministry of Coal were also associated with the selection process undertaken by the PESB, and they were aware of the fact that respondent No.6 is a (Mining) engineer. He submits that as per the policy and procedure relating to Central Public Sector Enterprises followed by the PESB, the assistance by the Ministry Representative and CMD/ MD of the PESB concerned is required to be taken, precisely for the reason that they would be aware of the qualifications and eligibility of the internal candidates. He further submits that the qualification prescribed is that of a (Mining) Engineer, which does not mean that the Engineering Degree should necessarily mention the word “*Mining*”.

14. Mr. Singh further submits that the updated forms, now issued by the PESB, take care of the shortcomings in the erstwhile form, which the respondent No. 6 was required to fill.

15. In his rejoinder, Mr. Batra, has placed reliance on a decision of this Court on ***Union Public Service Commission v. Dheerender Singh Paliwal***, 2010(119) DRJ 662 to submit that if the candidate has failed to follow the procedure prescribed, the recruiting agency is not obliged to go out of its way to find out whether the candidate is eligible, or not. Adoption of such a course would make it impossible for the body undertaking public recruitment to complete the process.

16. He also points out that respondent No. 6 had made a similar lapse while filling the application form for the post of Director (Technical) in SECL. That post had also been advertised by the PESB. His candidature was similarly rejected, and he had assailed the said rejection before the High Court of Chattisgarh at Bilaspur in WPS No. 1846/2019. The said writ petition was dismissed by a learned Single Judge of the said High Court vide decision dated 17.06.2019. He has specifically relied upon paragraphs 19 to 24 of this decision, which read as follows:

*“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.”

(emphasis supplied)

17. The aforesaid order has been accepted by respondent No. 6 and not carried in appeal.

18. Having heard the submissions of learned counsels, we find that the impugned order passed by the learned Single Judge is laconic.

19. We agree with the submission of Mr. Batra that while undertaking judicial review, it was not for this Court to get into the inquiry: as to whether or not, respondent No. 6 was a (Mining) Engineer. That scrutiny only the PESB was entitled to undertake on the basis of the information disclosed by respondent No. 6 in his application form. It was not the obligation of the PESB to go beyond the application form as submitted by any candidate, and to call for any further information or clarifications to inquire as to whether, or not, the candidate meets the eligibility norms clearly set out in the advertisement itself. The candidates/ applicants, while applying against public advertisements for recruitment to a post, are expected to carefully fill up the same, and if any candidate fails to correctly fill up the form by ignoring the eligibility criteria prescribed, or by not describing his own qualification/ experience etc. correctly, it is only the candidate to blame. Any public body, who undertakes the process of recruitment to public office against a public advertisement, cannot be saddled with the responsibility of chasing the candidate for further information. Such a procedure would make the selection process never ending, and may lead to differential treatment of candidates, which itself would become a ground to assail the selection process. So long as the recruitment agency adopts a fair, transparent, uniform and rational procedure for screening/ shortlisting and,

finally, selecting the candidates - which cannot be said to be suffering from non-application of mind or arbitrariness, the same would not be open to interference by the Court in judicial review.

20. As noticed hereinabove, just like the respondent No. 6, four other candidates did not describe their qualifications as (Mining) Engineer and, therefore, like the respondent No. 6, they too were declared as ineligible. The reason for the said declaration has also been clearly set out by the respondent PESB in the tabulation taken note of hereinabove.

21. Respondent No. 6 has placed on record the certificate issued by the Regional Engineering College, Rourkela. This certificate, inter alia, reads as follows:

“This is to certify that

Santosa Kumar Pal has passed the B.Sc. (Engineering) Part-II Final (Mining) Degree Examination of the Sambalpur University held in the month of MAY 1985 and was placed in FIRST CLASS (HONS).” (emphasis supplied)

22. Thus, it appears to us that respondent No. 6 committed a lapse while filling up the form for the post in question. In the relevant column, in which he had to describe his qualification, he described his qualification as “*Bachelor of Science (Engineering)*”, whereas, he should have described the same as “*B.Sc (Engineering) Part-II final (Mining)*” (emphasis supplied), which was the degree examination that he had passed in May, 1985 in 1st Class (Hons.). Therefore, there is no merit in the submission of respondent No. 6 that he was prevented from correctly describing his degree/ certificate

issued by the university. If he had correctly described the degree granted to him, there would have been no doubt in the mind of the PESB with regard to his (Mining) Engineering degree. The description of his qualification as “*Bachelor of Science (Engineering)*” does not convey that he had a bachelor’s degree in (Mining) Engineering.

23. The submission of learned counsel for respondent No. 6 that, being an internal candidate, his application had been verified by Coal India Limited, and that the said verification also entailed a certification with regard to his being a (Mining) Engineer, also has no merit. The application form had been filled by respondent No. 6 himself. Internal candidates were not required to provide documents, unlike those applying privately. Presumably, the Government Department / Employer where such internal candidates were serving, were expected to verify the factual disclosure made in the application by the internal candidates, and to certify the same. Respondent No. 6, as aforesaid, described his qualification as “*Bachelor of Science (Engineering)*”. The verification done by Coal India Limited is only to the effect: “*it is certified that the particulars furnished above have been scrutinized and found to be correct as per official records*”. The said verification/ certification was not expected to be in respect of the eligibility qualification, as the eligibility/ qualification falls for scrutiny by the recruiting agency i.e. the PESB. Pertinently, even in the write-up submitted by the petitioner along with his application, he does not state that he is a (Mining) Engineer.

24. Learned counsel for respondent No. 6 has also argued that the

officials of the Ministry of Coal were also associated with the selection process, and that they were aware of the fact that respondent No. 6 was a (Mining) Engineer. In our view, this submission is only to be stated, to be rejected. Merely because the officials of the Ministry of Coal were involved in the process of selection along with PESB, it does not follow that the personal knowledge of any such personnel/ officers could be brought into play while determining the eligibility of the candidates. Moreover, this is a vague allegation, and it is not even stated as to which of the officers from the Ministry of Coal were associated in the selection process with the PESB, and how they are claimed to be aware of the actual educational qualification and achievements of respondent No. 6. The PESB was not only entitled to, but was bound to, proceed on the basis of the information furnished in the applications submitted by the candidates, and could not have acted on the basis of any private or personal information in respect of any candidate, that any of its members may possess.

25. The submission that there was a shortcoming in the form filled up by respondent No. 6 also has no merit. This is for the reason that a large number of candidates filled up the same form, including the appellant, and six of them were shortlisted for interview. As noticed hereinabove, even the respondent No. 6 had the opportunity to correctly fill up the form and if he had done so, he would not have faced the situation that he presently finds himself in.

26. The observation made by the learned Single Judge, while deciding the WPS No. 1846/2019 preferred by respondent No. 6 dealing with a similar

rejection of his application by the PESB for the post of Director (Technical) in SECL, are squarely attracted in the facts of the present case. We agree with the observations made by the learned Single Judge in the said decision, which has not been appealed by the respondent No. 6.

27. For the aforesaid reason, we allow the present appeal and set aside the impugned judgment rendered by the learned Single Judge dated 21.02.2019 in W.P.(C.) No. 1515/2019. The said writ petition preferred by respondent No. 6 is, accordingly dismissed, leaving the parties to bear their respective costs. The interim order stands vacated. The respondent authorities are free to process the appointment of the appellant to the post in question.

VIPIN SANGHI, J.

SANJEEV NARULA, J.

DECEMBER 18, 2019

N.Khanna