

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: October 26, 2021

+ W.P.(C) 1632/2021

PIYUSH KUMAR SINGH

..... Petitioner

Through: Mr.Jayesh K. U. and Mr.Aviral
Kashyap, Advs.

versus

NTPC LTD.

..... Respondent

Through: Mr.Sanjoy Ghose, Sr. Adv. with
Mr.Naman Jain, Adv. for NTPC.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J (ORAL)

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

*“A. Issue a writ in the nature of certiorari thereby
setting aside/quashing order of rejection for
appointment contained in letter dated 10.11.2020
issued by the respondent.*

*B. Issue an appropriate writ/order or direction in
the nature of mandamus directing Respondent to
issue letter of appointment for the post of
Experienced Engineer.*

*C. Issue appropriate direction to respondent to give
all consequential benefits to Petitioner w.e.f. the
date of appointment of other successful candidates
on the aforesaid post.*

D. Pass any other order which this Hon'ble Court

deems fit and proper in the facts and circumstances of the present case.”

2. In the present case, the petitioner is an Electrical Engineer who had applied for the post of Experienced Engineer notified by the respondent through an advertisement dated August 06, 2019, totaling 203 posts. It is his case that the advertisement dated August 06, 2019, did not mention any requirement that the training period has to be excluded for computation of 3 years post qualification experience. Whereas a fresh notification / advertisement was issued in July 2020 for 250 posts of Experienced Engineer mentioning so. It is submitted that, unlike the previous advertisement that was published on August 06, 2019, the second advertisement published in July 2020 explicitly mentioned that for computing 3 years requisite experience, the training period has to be excluded.

‘Experience requirements’ as per the Advertisements published in the years 2019 and 2020 are reproduced hereunder:

I. Advertisement published in August 2019	II. Advertisement published in July 2020
<i>Experience Requirement: Minimum 3 Years post qualification experience in Executive and / or Supervisory cadre in relevant area.</i>	<i>Experience Requirement: Minimum 3 Years post qualification executive experience (excluding training period) in operation/ Maintenance/ erection/ Construction/ Engineering in Main Plant Thermal or Main plant Gas Power Plant. Out of 3 years, the candidates must have worked at least 2 years in power plant sites.</i>

3. Pursuant to the advertisement dated August 06, 2019, the petitioner applied for the post of an Experienced Engineer. Thereafter, the admit card was issued to appear in the online test that was scheduled on March 04, 2020. However, unlike the initial eligibility (as per the advertisement dated August 06, 2019) criteria which prescribed only 3 years post qualification experience, the admit card details an additional requirement of exclusion of training period from 3 years post qualification experience.

4. That the petitioner, based on marks obtained in the online selection test held on March 04, 2020, was shortlisted by the respondent for interview. After, clearing the interview, a call letter for verification of documents was issued to the petitioner by the respondent. However, Para 4.0 of the call letter dated April 10, 2020, contained a condition that the post qualification experience of 3 years which was required for the post shall exclude the training period, although the original notification / advertisement specified only 3 years experience for the said post and nowhere it was mentioned that the training period has to be excluded.

5. To support the above-stated arguments Mr. Jayesh, learned counsel appearing on behalf of the petitioner relied upon the following judgments wherein it was held that the rules of the game cannot be changed in the midst of the selection process.

i. K Manjusree v. State of Andhra Pradesh and Anr., (2008) 3 SCC 512;

ii. Hemani Malhotra v. High Court of Delhi, (2008) 7 SCC 11.

6. Mr. Jayesh also stated that prior to applying for the post of Experienced Engineer the petitioner has gained experience by W.P.(C) 1632/2021

working in the capacity of Assistant Engineer from November 19, 2015 to September 07, 2018 (i.e., almost 2 years & 10 months) at Chennai Radha Engineering Work(s) Pvt. Ltd. ('CREW', for short) at PTPS at Haryana. Thereafter, he has been working as a "Contract Engineer" (Electronic) at Bharat Electronics Ltd. ('BEL', for short) Bengaluru (posting in Agra) on a contract basis from February 11, 2019 till the date of application. In this regard, Mr. Jayesh contended that the petitioner is having more than 3 years of working experience as on the date of online application i.e. August 26, 2019, and hence cannot be considered ineligible in terms of required work experience.

7. A short affidavit has also been filed by the respondent. Mr. Sanjoy Ghose, learned Senior Counsel appearing along with Mr. Naman Jain for the respondent submitted that the present writ petition is liable to be dismissed for the following reasons:

- i. Admit Card dated February 27, 2020, mentions that prescribed Post Qualified Experience ('PQE', for short) does not include a training period.
- ii. Interview Call Letter dated April 10, 2020, indicates that prescribed experience excludes the training period.
- iii. Call letter for document verification dated May 29, 2020, indicates that prescribed experience excludes the training period.

8. Mr. Ghose submitted that a candidate, who participates in the selection without demur, taking a calculated chance to get selected, cannot be allowed to turn around and challenge the W.P.(C) 1632/2021

criteria of selection once he is declared unsuccessful, is well settled. In this regard, he has placed reliance on the following judgments:

- a. Madras Institute of Development studies and Anr. v. K. Sivasubramaniyan and Ors., (2016) 1 SCC 454;*
- b. Ashok Kumar and Anr. v. State of Bihar and Ors., (2017) 4 SCC 357;*
- c. Manish Kumar Shahi v. State of Bihar and Ors., (2010) 12 SCC 576;*
- d. Vijendra Kumar Verma v. Public Service Commission, Uttarakhand and Ors., (2011) 1 SCC 150 and;*
- e. Ramesh Chandra Shah and Ors. v. Anil Joshi and Ors., (2013) 11 SCC 309.*

9. That apart, Mr. Ghose further referred to the advertisement dated August 06, 2019, wherein it was mentioned that:

“Experience Requirement: Minimum 3 Years post qualification experience in Executive and / or Supervisory cadre in the relevant area.”

In this regard, Mr. Ghose stated that from the advertisement dated August 06, 2019, it emerges that eligible candidates were required to have not just ordinary PQE, but was required to have worked in an executive and / or supervisory category.

10. In addition, it is also submitted by Mr. Ghose that nowhere in the present writ petition, has the petitioner disclosed whether he has undergone any training period, in terms of the offer letter received from the petitioner employer CREW. Moreover, the petitioner has also not been able to specify (i) the date when he

joined CREW; (ii) the date till when his training period lasted; and (iii) the date when he was promoted to an executive / supervisory role.

11. Furthermore, it is also submitted by Mr. Ghose that in case the petitioner's contention is taken to be true, it would mean that he was appointed in an executive / supervisory role straight away after graduation, without having undergone any training. However, based on the documents submitted by the petitioner, it appears that the petitioner was appointed as a trainee initially, and was on probation for a period of 12 months, and could not have been working in an executive / supervisory role right from the beginning of his career. That apart, even after having been given several opportunities by this court, the petitioner has failed to categorically disclose how long he was on probation; how long he worked as a Trainee Engineer with CREW; and when he was confirmed as a regular employee. It is also not known whether the period spent as a trainee was regularized, or there was a subsequent confirmation as a regular employee after having completed training.

12. Mr. Jayesh in his rejoinder submissions stated the following:

i. That the petitioner clarified the date of joining and his period of service along with the duration in two organizations:

Organization Name	Designation	Duration	Pay Scale
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CREW Pvt. Ltd., Chennai	Asst. Engineer	19.11.2015 to 07.09.2018 (i.e., 2 years, 9 months)	13800
BEL, Agra	Contract Engineer	11.02.2019 to 26.08.2019 (i.e., 6 months)	23000

ii. The work experience as detailed above has been mentioned on the basis of experience documents issued by the previous organizations where the petitioner had worked / had been working. That regarding the work experience in dispute in CREW is concerned, there are two documents that have been issued by the said organization which demonstrate the experience / work profile of the petitioner.

The said documents are:

a. Annexure P-8 dated October 09, 2018 – That is the Experience Certificate issued by CREW stating that the petitioner has worked with the PTPS site at Haryana from November 19, 2015, to September 07, 2018, in the capacity of ‘Assistant Engineer’.

b. Annexure P-7 dated October 28, 2015 – That is an offer of appointment issued by CREW stating that the petitioner has been selected for employment as ‘Graduate Engineer Trainee- Electrical’ with the initial place of

employment at PTPS site at Haryana on a monthly gross salary of ₹ 8000/-.

iii. That apart it is further submitted by Mr. Jayesh that it is inappropriate on part of the respondent to state that this court has granted repeated adjournments to furnish details about the training period undergone by the petitioner at CREW. It is affirmed that not even a single adjournment has been granted by this court asking the petitioner to furnish details of the training period undergone at CREW. The only direction was, vide order dated February 17, 2021, when BEL was directed to furnish the application form of the petitioner for the post of 'Contract Engineer'. It is submitted that the said order has been complied as the document has been brought on record on March 16, 2021.

iv. Mr. Jayesh also submitted that the nomenclature of the use of the word 'Graduate Engineer Trainee-Electrical' as contained in the offer of appointment dated October 28, 2015, cannot be construed to mean that petitioner was only a trainee and was not a proper employee of CREW. Moreover, the same offer of appointment also mentions that the petitioner has been elected for 'employment' and does not state that he was selected as a 'trainee'. It further mentions that the petitioner would be paid 'gross monthly salary' and does not state that he would be paid any kind of 'stipend' which is generally paid to a trainee.

v. In addition, Mr. Jayesh submitted that the respondent has also stated that if the petitioner was on probation for a period of twelve months he could not have been working in an executive / supervisory role right from the beginning of his career. He further submitted that even if an individual is on probation for a period of twelve months, it shall not disentitle his work experience to be counted for future jobs. The purpose of the probation period is to test the performance cum suitability of an employee in a position. If an employee's performance is found to be unsatisfactory, the employer can terminate the services of an employee without following the strict norms of removal of an employee.

13. Having heard the learned counsel for the parties, the short issue that arises for consideration is whether the petitioner has three years of experience for the post in question.

14. It is the case of the petitioner and so contended by his counsel that the advertisement specified only three years experience for the post and nowhere it was mentioned that the training period has to be excluded. In other words, it was his plea that the rules of the game cannot be changed in the midst of the selection process. It is the case of the petitioner that he worked in the capacity of Assistant Engineer from November 19, 2015, to September 07, 2018, i.e., for almost two years and ten months at CREW and thereafter, as Contract Engineer in BEL, Agra w.e.f. February 11, 2019, till the date of application.

15. In substance, it was the plea of the learned counsel for the petitioner that he worked for more than three years and has the

W.P.(C) 1632/2021

Page 9 of 13

necessary experience on the cut-off date of online application i.e., August 26, 2019, and could not have been made ineligible only on the ground that he has not completed three years of service. No doubt, that the advertisement did not stipulate that the three years experience shall not include the training period undergone but the fact remains that even the admit card dated February 27, 2020, mentions the post qualified experience does not include the training period; interview call letter dated April 10, 2020, indicates that prescribed experience excludes training period; call letter for document verification dated May 29, 2020, indicates that the prescribed experience excludes the training period. If that be so, the respondent had informed the petitioner much in advance, before the petitioner sat in written examination that the post-qualified experience does not include the training period. It is not a case where any prejudice has been caused to the petitioner. No right has accrued to the petitioner merely because he had applied for the post, in terms of the advertisement, which had stated that the post qualification experience would not include the training period. The only right he had was of consideration. Before he sat in the examination he was informed that experience shall exclude training period which stipulation was not challenged by the petitioner. In fact he sat in the examination without demur and protest. Similarly, pursuant to the interview call letter dated April 10, 2020, containing the stipulation excluding the prescribed experience not to include the training period, he participated in the interview process without challenging the stipulation and without demur and protest, cannot now contend, the advertisement having not stipulated the exclusion of training period for the purpose of

W.P.(C) 1632/2021

Page 10 of 13

three years experience, he need to be appointed. Mr. Ghose is justified in relying upon the judgment in the case of ***Madras Institute of Development studies (supra)*** wherein it was held that when a candidate consciously takes part in the selection process, he subsequently cannot turn around and question the very selection process.

16. The reliance placed by learned counsel for the petitioner in the cases of ***K. Manjusree (supra)*** and ***Hemani Malhotra (supra)*** have no applicability in the facts of this case and are clearly distinguishable. In fact, it is the case of the petitioner that even after excluding the training period, the petitioner has three years of service. In this regard, a mention needs to be made to the documents attached by the petitioner with regard to his experience. The document on page 37 (Annexure P-7) is an appointment letter, issued by CREW dated October 28, 2015, which I reproduce as under, which stipulates that the employment of the petitioner was as a Graduate Engineer Trainee-Electrical and he was on probation for a period of 12 months from the date of joining and during that period, he was being paid a salary of ₹ 8,000/- on a consolidated basis.

“To,

28.10.2015

Mr. PIYUSH KUMAR SINGH,

Dear Mr. PIYUSH KUMAR SINGH,

Sub: Issue of Offer of Appointment-Reg.

With reference to your application and further interview had with us, you have been selected for employment as “GRADUATE ENGINEER TRAINEE-ELECTRICAL”. Your placement nature will be on All Indian Service Liability (AISL) basis. However, your initial place of employment is at our PTPS site @ HARYANA. Your Monthly Gross Salary will be Rs.8,000/- (Rupees Eight Thousand Only) with free food and bachelor accommodation at our CREW facilities.

According to this offer, you will be under probation for a period of 12 months from the date of joining. After successful completion of your probation, you may be given further employment confirmation. Your service nature is liable to be transferred for work in any area within the site or any other site I India depending upon company's requirement.

Note: This offer letter is valid up to 01(One) month to join from the date of issue."

17. The experience certificate issued by CREW dated October 09, 2018, which I reproduce as under, depicts that he has worked in the said organization between November 19, 2015, till September 07, 2018, in the capacity of Assistant Engineer.

"Date: 09.10.2018

TO WHOMSOEVER IT MAY CONCERN

This is to certify that Mr. Piyush Kumar Singh, S/o Mr. Indrajeet Singh worked in our Organization under the contract work with PTPS Site at Haryana from 19.11.2015 to 07.09.2018 in the capacity of Assistant Engineer in C and I Department as per our employment records.

Mr. Piyush Kumar Singh has resigned from the services of the Organization on his own accord.

During this period his conduct and character were found to be good.

We wish him all success in his future endeavors."

18. With regard to the services of the petitioner in BEL, Agra, there is no dispute that he was working on the date of application in the said Organization w.e.f. February 11, 2019, till the cut-off date of August 26, 2019, i.e., for a period of six months. The case of the respondent is primarily that the petitioner, being a Trainee Graduate Engineer with 12 months of probation, the said period needs to be excluded from the experience.

19. According to Mr. Ghose, the experience letter issued in 2018 is not in accordance with the appointment letter issued to the petitioner, when for 12 months he was on probation which need to

be excluded, the combined service of the petitioner in CREW would not constitute three years of post-qualification experience. It is in view of the aforesaid position, the petitioner was made ineligible.

20. Mr. Ghose submitted that it is only at the time of verification of documents, the aforesaid factum was noticed by the respondent and it was within its right to treat the petitioner as ineligible for the post in question. The above stand of the respondent need to be accepted, inasmuch as the appointment letter of the petitioner in CREW clearly stipulates the petitioner was a Trainee Graduate Engineer and put on probation for 12 months, the said period could not have been calculated for the purpose of experience, as sought for and also communicated by them in their subsequent communications to the petitioner. Similar communications would have been sent to the other candidates, who may not have appeared in the selection process for the post in question. It is not a case where the respondent has conducted arbitrarily.

21. In view of my aforesaid conclusion, this Court is of the view that the impugned action does not require any interference. The petition is dismissed. No costs.

V. KAMESWAR RAO, J

OCTOBER 26, 2021/ak