



\$~

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

+

Date of Decision: 01.09.2023

% LPA 616/2023 and CAV 448/2023, C.M. Nos. 45250/2023,
45251/2023 & 45252/2023

RUCHIR AGRAWAL

..... Appellant

Through: Mr. Gagan Gupta and Ms. Yashi
Agrawal, Advocates.

versus

**PUBLIC ENTERPRISES SELECTION BOARD
& ORS.**

..... Respondent

Through: Ms. Manisha Agrawal Narain, CGSC
with Mr. Sandeep Singh Somaria, Ms.
Shivangi Gumber and Ms. Khushi
Mangla, Advocates for Respondent
No.1/ PESB.

Mr. S. Sirish Kumar and Mr. Nirbhay
N. Singh, Advocates for Respondent
No.2.

Mr. Vinayak Mehrotra and Mr.
Saurav Rajurkar, Advocates for
Respondent No.4.

Mr. Rohan Thawani, Mr. Pratul
Pratap Singh and Ms. S. Ambica,
Advocates for Respondent No.5.

CORAM:**HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE SANJEEV NARULA****SATISH CHANDRA SHARMA, CJ. (ORAL)**

1. The present LPA is arising out of an order dated 24.08.2023 passed by
the learned Single Judge in W.P.(C) No. 3259/2023 titled ***Ruchir Agrawal
Vs. Public Enterprises Selection Board & Ors.***

LPA 616/2023**Page 1 of 42**

Signature Not Verified

Digitally Signed
By: BHUPINDER SINGH
ROHELLA
Signing Date: 19.09.2023
12:33:32



2. The facts of the case reveal that the Appellant before this Court was serving as an employee at Indian Oil Corporation Limited (“**Respondent No. 2**” or “**IOCL**”) on the post of Chief General Manager (Corporate Finance & Treasury) which is a post below Board Level, since 21.07.2021. He filed the underlying writ petition being aggrieved by the advertisement dated 25.11.2022 issued by the Public Enterprises Selection Board (“**Respondent No. 1**” or “**PESB**”) inviting applications for the post of Director (Finance) in IOCL. The advertisement provided preference to persons who were qualified Chartered Accountants over those who were qualified Cost Accountants.

3. The facts further reveal that the Appellant started his career in the IOCL in 1994 and as stated has worked with sincerity devotion at the company. He states he has contributed in major decisions which affect the functioning of IOCL with loyalty and sincerity.

4. The Appellant who was eligible for appointment to the post of Director (Finance) came up with a case before this court *vide* the underlying writ petition, stating that the eligibility criteria for appointment of Director (Finance) prior to 19.08.2021 provided that a candidate who possess the qualification of being a Chartered Accountant or Cost Accountant or a full time MBA/PGDM Courses with good academic record from a recognized University/Institution besides holding other qualification also including experience, would be eligible to be appointed to the post of Director (Finance).

5. The Appellant contended that prior to 19.08.2021, the qualification of



Chartered Accountant and Cost Accountant were treated at par. However, an internal meeting took place on 19.08.2021 by the members of the PESB for discussing the qualifications required for appointment to the post of Director (Finance). In the said meeting the qualification criteria for the post was discussed at length and the committee arrived at a conclusion that preference would be given to Chartered Accountants over and above the Cost Accountants. The Petitioner further contended that based upon the recommendations of the PESB, an advertisement was issued on 25.11.2022, and in the qualification clause therein, it was categorically mentioned that persons who are Chartered Accounts shall be given preference for appointment to the post.

6. The Appellant further stated that after holding an internal meeting, the vacancy qua the appointment of Director (Finance) was advertised as stated earlier and the Appellant being aggrieved by the decision taken in the meeting submitted various representations and protested the alleged arbitrary and illegal decision of the PESB. However, at the same time, the Appellant preferred a writ petition before this Court challenging the advertisement and his exclusion from the shortlisted candidates from the post of Director (Finance).

7. During the pendency of the writ petition, by an interim order dated 22.03.2023, the Learned Single Judge directed the Respondents to permit the Petitioner/Appellant herein to appear in the interview process which was scheduled on 24.03.2023 for the post of Director (Finance), even though the Appellant was not shortlisted. However, the said order made it clear that the Appellant's participation in the interview was subject to the final outcome of



the writ petition. The Appellant did appear in the process of interview and the PESB was directed to keep the result of the interview in a sealed cover.

8. The learned Single Judge vide interim order dated 25.05.2023 permitted the Respondents to open the aforesaid seal cover and the result in the sealed cover revealed that the Appellant herein was not selected for the post in question. Meaning thereby, in spite of the fact that the qualifications prescribed for the post of were providing preference to the Chartered Accountant, and the Appellant was not a shortlisted candidate, on account of an interim order in his case, he was considered for merit and he was not able to find a berth in the selected list.

9. The learned Single Judge dismissed the writ petition. The operative paragraphs i.e., Paragraph Nos. 65 to 76 of the judgment passed by the learned Single Judge read as under:

“65. Having dealt with both the issues in the earlier paragraphs, it is crystal clear that the petitioner cannot be granted the relief. However, he has relied upon the decision of the Coordinate bench of this Court in Geeta Sharma v. Public Enterprises Selection Board & Anr (Supra) and vehemently argued that the said case deals with the similar issues and can be relied upon by this Court to allow the prayer sought by the petitioner. Therefore, it is pertinent to analyse whether the decision given by the Coordinate bench in the said case is binding on the cases dealing with the similar issues and if the said case be held as the settled position of law with regards to the preference given to the Chartered Accountants. In the aforesaid case, this Court interpreted a similar advertisement preferring Chartered Accountants over Cost Accountants for the post of Director (Finance) in a CPSE and held that the preference given to the Chartered Accountants cannot be read alone while ignoring the other factors. The relevant paragraphs



of the said judgment are reproduced herein:

“18. Learned counsel for the petitioner has vehemently urged that the phrase „preference would be given to Chartered Accountant” as used in the advertisement, cannot imply that all other factors, including the post on which the applicant is presently working as also his/her payscale, must be ignored. On the other hand, learned counsel for respondent nos. 1 and 3 have urged that once, sufficient number of Chartered Accountants were available in the external category, from which category only two candidates were required to be shortlisted, the respondents were justified in giving preference to the two Chartered Accountants, who have been placed at serial nos. 6 and 7, even though they are drawing lower payscale vis-à-vis the petitioner, who is admittedly not a Chartered Accountant. The short question before this Court, therefore, is as to what is the implication of the term „preference” as used in the advertisement. Does it imply that every applicant who is a Chartered Accountant will be given preference vis-à-vis a nonchartered accountant, irrespective of the post held, or the payscale drawn by the applicant?

19. Having given my thoughtful consideration to this issue, I am of the opinion that, while determining what the term „preference” as used in the advertisement would mean, it would be also necessary to consider the guidelines issued by the respondent no. 1 itself for determining the inter-se seniority of the applicants in the same pay scale for purposes of shortlisting. I may, therefore, now refer to the PESB guidelines regarding Board Level Appointments in CPSEs. The relevant extract of the PESB guidelines titled as “Revision of policy of determination of inter-se seniority amongst candidates of sectoral and external category of CPSE”, reads as under:

“Revision of policy of determination of inter-se seniority amongst candidates of sectoral and external category of



CPSE

The practice in the PESB for determining inter-se seniority of the applicants in the same pay scale for the purposes of shortlisting in external and sectoral categories of CPSEs that amongst eligible candidates under each category, preference is given to number of years of working in a higher pay scale. After reviewing this practice, with effect from 31.05.2017, the following practice was adopted:

a. Preference will be given to applicants holding a higher pay-scale.

b. If pay scale of the applicants is same then –

(i) Board level applicants will be given preference over applicants who are below the Board level.

(ii) If two Board level applicants are holding the same pay scale then Chairman/CMD/MD would get preference over the Director. The inter-se seniority between two or more Chairman/CMD/MD or two or more Directors will be determined with respect to date of holding the same pay scale.

c. Similarly, if pay scale of two or more applicants is same then applicants working just below the Board (e.g. Executive Director in a schedule 'A' CPSE) would get preference over the applicants working at other levels. If two just below Board level executives are holding the same pay scale then inter-se seniority will be determined with respect to date of holding the same pay scale.

d. The inter-se seniority of below the Board level executive holding same pay scale would continue to be determined with respect to date of holding the same pay scale.

2. The policy (para c above) was put in place to give



preference to senior-most candidates in the below Board level but while implementing the provision, it has been observed that information of candidates working at ranks just below the Board is not available with the PESB as also that ranks at below Board varies from CPSEs to CPSEs. Difficulties are also being encountered in receiving timely and accurate information in this regard from CPSEs leading to delays and ambiguity in shortlisting.

3. The policy regarding determination of the inter-se seniority of the applicants for the purpose of shortlisting of executives holding the same pay scale in the sectoral/external category have now been revisited and it was decided that-

a. Preference will be given to applicants holding a higher pay-scale.

b. If pay scale of the applicants is same then –

(ii) Board level applicants will be given preference over applicants who are below the Board level.

(ii) If two Board level applicants are holding the same pay scale then Chairman/CMD/MD would get preference over the Director. The inter-se-seniority between two or more Chairman/CMD/MD or two or more Directors will be determined with respect to date of holding the same pay scale.

c. The inter-se seniority of below the Board level executive holding same pay scale would continue to be determined with respect to date of holding the same pay scale. If date of holding pay scale is same, then the inter-se seniority will be determined w.r.t. date of birth i.e. older getting preference over the younger applicant.”

20. A perusal of paragraph ‘a’ of the aforesaid guideline clearly shows that preference has to be given to the



applicants drawing a higher pay scale. Similarly, paragraph 'b (i)' of these guidelines clearly prescribes that, if pay scale of the applicants under consideration is same, then Board level applicants will be given preference over the applicants who are below the Board level. Thus, these guidelines also envisage granting of preference to applicants in certain situations. Firstly, preference is to be given to candidates having higher pay scale and, secondly, preference is to be given to board level applicants vis-à-vis applicants who are below the board level.

21. In the present case, it is undisputed that the petitioner is not only drawing the pay scale of Rs. 1,60,000/- to Rs. 2,90,000/- which is higher than the pay scale of both the other candidates in the external category, who are drawing the pay scale of Rs. 1,20,000/- to Rs. 2,80,000/-. It is also admitted that, while the petitioner is holding a Board level post of Director in a Schedule-B CPSE, the two shortlisted candidates in the external category are working as General Managers, one in the Noida Metro Rail Corporation Limited, and the other in Electronics Corporation of India Ltd. Thus, if the preference as envisaged in the guidelines, which the respondents do not deny are equally applicable for shortlisting of candidates for the post of Member (Finance) in respondent no. 2, are applied to the present case, it is evident that the petitioner was entitled to get preference not only by the virtue of her higher pay scale, but also by virtue of her holding a Board level position since August 2018.

22. In the light of this position, while candidates at serial nos. 6 & 7 of the impugned list of shortlisted candidates may be entitled to get preference on account of their qualifications, the petitioner was clearly entitled to get preference on two counts, one on account of her higher pay scale, and the other on account of her Board level position, as the other two candidates are admittedly holding the post of a General Manager in two other



CPSEs. When these aspects are cumulatively considered, the only plausible interpretation which can be given to the term 'preference would be given to Chartered Accountant' must be read to imply "an added advantage". The 'preference would be given to a Chartered Accountant' could not be read in such a manner to ignore the higher payscale and the Board level position of the petitioner, which position the other candidates do not hold. I, therefore, find merit in Mr. Mehta's submission that the question of giving preference to candidates at serial nos. 6 & 7, who are Chartered Accountants, would arise only if they were otherwise equally placed as the petitioner in all other aspects. Once, the petitioner in terms of PESB guideline, was entitled to get preference not only on account of her higher payscale, but also on account of her Board position, these two candidates could not be allowed to steal a march over her and that too, by excluding her even from the interview for the selection process.

23. In my considered view, the respondent nos. 1 and 3 have clearly misinterpreted the clause envisaging preference to be given to Chartered Accountants, as laid down in the advertisement, by ignoring all other relevant and material factors. The petitioner is a highly qualified professional who has been holding a Board level position since August 2018 in a scheduled-B CPSE, and she also holds a doctorate degree. It will indeed be a travesty of justice if she is altogether excluded even from consideration for selection for the post of Member (Finance) in respondent no. 2, and that too by giving preference over her to two 'below Board level officers' in the impugned list under the external category."

66. On perusal of the aforesaid paragraphs, it is clear that the petitioner in the aforesaid case was Director (finance) in another CPSE and was ignored despite the fact that the other selected candidates were below board level employees. While interpreting the preference clause in that case, the coordinate



bench of this Court had relied upon the internal meeting decision dated 31st January, 2018 whereby it was decided by the committee to prefer board level employees while filling up vacancies to be taken by the external and sectoral candidates.

67. At this stage, it is established that the aforesaid case relied upon by the petitioner revolves around different circumstances all together and there exist stark differences in both the cases. Firstly, the above reproduced judgment is related to vacancy for external candidates and nowhere discusses the aspect of vacancies arising for the internal candidates in the organizations. Secondly, the petitioner in the referred case was a board level employee drawing a salary similar to the grade pay of the post for which she had applied. However, in the instant case, the petitioner is a below board level employee.

68. In the instant petition, it is clear that the issue is limited to the vacant position for insiders. The petitioner applied for the said position in the internal vacancy and not the external one. Furthermore, it is placed on record that there are 7 eligible candidates above him against 6 slots allotted under internal category and there are 2 non-chartered accountant candidates senior to the petitioner. Thus, the petitioner cannot rely upon the judgment given in context of external vacancy arising in the CPSEs.

69. At last, it is pertinent to mention that even though the petitioner's plight is regarding the qualification clause of the said advertisement/JD, he still chose to apply for the vacant position but challenged the preference clause only after not getting shortlisted in the interviews.

70. This Court vide interim order dated 25th May, 2023, allowed the petitioner to appear for the interview, but the petitioner was not selected for the further process. Therefore, it can be said that earlier, the petitioner had conveniently ignored the preference clause but decided to challenge the same after non-selection for the said post. The judicial dicta related to the similar issue is amply clear. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla, 1986 Supp SCC 285, the Hon'ble



Supreme Court has dealt with the issue in following manner:

“24. Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the district of Kanpur also. They were not responsible for the conduct of the examination.”

71. In Madan Lal v. State of J&K, (1995) 3 SCC 486, the Hon'ble Supreme Court discussed the issue of selection process challenged by the parties once they fail in getting selected for the vacant posts and held as follows:

“9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the



case of Om Prakash Shukla v. Akhilesh Kumar Shukla [1986 Supp SCC 285: 1986 SCC (L&S) 644 : AIR 1986 SC 1043] it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.”

72. On perusal of the aforesaid cases, it is amply clear that the parties cannot impugn the rules of the game where they had already chosen to take the fair chance by applying to the said vacant position. Therefore, it is crystal clear that the petitioner took a fair chance by applying for the position and has approached this Court when he failed to get appointed.

73. Therefore, in light of the application of the settled principle of law as enunciated in the above discussed cases, it is made out that the petitioner did not come to this Court with clean hands, rather only preferred the instant petition when his application was rejected by the respondents.

74. Furthermore, this Court vide interim order dated 25th May, 2023 had allowed the petitioner to appear for the interview, but the petitioner was still not selected for the said position. Therefore, the petitioner cannot be granted relief and appointed to the post as the principle of estoppel is attracted which precludes the petitioner from questioning the selection process.

CONCLUSION

75. The foregoing paragraphs clearly establishes the case in favour of the respondents. Firstly, the respondent Body has not violated the fundamental right of the petitioner by creating separate classification for better qualification. Secondly, even though the scope of issuance of mandamus under Article 226 of the Constitution of India is wide, the same cannot be issued to grant a relief not prayed by the petitioners. Thirdly, it is a well settled principle that the respondent Body being an expert committee need not be questioned on the aspects of decision



taken, rather can only be reconstituted or looked into whenever there is material irregularity with the decision or constitution of the said expert committee. At last, the judgment relied upon by the petitioner cannot be relied upon for deciding the instant case as the facts and circumstances of both the cases are materially different and the said referred judgment does not hold binding value of any nature in the present case.

76. The CPSEs are entrusted to work efficiently and generate profits for the government. For the same, the respondent Body needs to appoint better qualified candidates to run and oversee the operations of the said entities. Therefore, in view of the above said discussion on facts as well as law, this Court does not find any cogent reasons for granting relief to the petitioner.”

10. Learned Counsel for the Appellant has vehemently argued before this Court that the learned Single Judge has ignored to consider the fact that the Respondent No. 4, 5 & 6 who were junior to the Appellant, were included in the shortlist for the interview ignoring the claim of the Appellant only because the Respondent No. 4, 5 & 6 were Chartered Accountants and the Appellant was a Cost Accountant and, therefore, the inclusion of Respondent No. 4, 5 & 6 in the list dated 10.03.2023 of shortlisted candidates was bad in law.

11. Learned Counsel for the Appellant has vehemently argued before this Court that a specific relief was sought by him in the Writ Petition to do away with the qualification whereby preference was given to Chartered Accountants over Cost Accountants and the aforesaid relief has not been granted by the learned Single Judge, and, therefore, the judgment given by the learned Single Judge is bad in law.

12. Learned Counsel for the Appellant has vehemently argued before this



Court that the decision of the PESB for giving preference to Chartered Accountants over and above the cost accountants was bad in law and the internal minutes of the meeting have no binding effect and such a qualification could not have been included in the advertisement issued by the Respondents based upon the internal meeting dated 19.08.2021.

13. Learned Counsel for the Appellant has vehemently argued before this Court that the reliance placed by the learned Single Judge upon Section 288 of the Income Tax Act, 1961 is misplaced. He has vehemently argued before this Court that the definition of the term “Accountants” under Section 288 of the Income Tax Act, 1961, from 1961 till 2021, considered Chartered Accountants and Cost Accountants at par for the subject post for almost 6 decades, and, therefore, there was no justification for bringing in the impugned qualification clause. He has further stated that there was no reasonable classification done by the Respondent No.1 and heavy reliance has been placed upon the judgment delivered in the case of *Ashik Abbasi & Ors. Vs. Govt. of NCT of Delhi & Ors. ILR (1999) II Delhi 151* to support this argument.

14. He has further argued that the learned Single Judge has failed to consider applicant’s application i.e., C.M. No. 36265/2023 under Order 11 Rule 1(4) CPC dated 05.07.2023 by which the Appellant placed on record other documents showing that various entities have placed Chartered Accountants and Cost Accountants at par for the post of *inter alia* employment.

15. Learned Counsel for the Appellant further contended that the learned



Single Judge has wrongly placed reliance on *State of Mysore Vs. P. Narasinga Rao, (1968) 1 SCR 407*; *T. R. Kothandaraman and Others Vs. T. N. Water Supply & Drainage Board and Others, (1994) 6 SCC 282*; *Chhattisgarh Rural Agriculture Extension Officers Assn. Vs. State of M. P., (2004) 4 SCC 646*. He has further stated that all the aforesaid judgments have nothing to show that Chartered Accountancy is a better/higher qualification than Cost Accountant.

16. Learned Counsel has raised another ground stating that the learned Single Judge has wrongly placed reliance on *Government of W. B. Vs. Tarun K. Roy and Others, (2004) 1 SCC 347*. It has been stated that the Appellant was fulfilling all the eligibility criteria and on the contrary Respondent No.4 was not fulfilling the eligibility criteria and Respondent Nos. 5 & 6 were juniors to the Appellant. Therefore, the shortlisting of the Respondent Nos. 4, 5 and 6 was violative of Appellant's constitutional right under Article 14 and 16 of the Constitution of India.

17. Learned Counsel for the Appellant has further argued before this Court that the Respondent No. 5 & 6 were juniors to the Appellant, and they were preferred only because they were Chartered Accountants, and such a preference clause is against the settled principles of law. Reliance has been placed upon a judgment delivered in the case of *A. P. Public Service Commission Vs. Y.V.V.R. Srinivasulu and Others, (2003) 5 SCC 341*.

18. Learned Counsel has further argued before this Court that the findings arrived at by the learned Single Judge holding the Chartered Accountants are best suited persons for the post of Director (Finance) is erroneous.



19. He has further contended that the post of the Director (Finance) is to look after the financial accounts, event management of the organization and is responsible for evolving and formulating policy relating to finance and accounts as well as implementation thereof, and, therefore, a Cost Accountant can also be said to be eligible to apply for the post and in case Cost Accountants were not eligible, the advertisement would not have included Cost Accountants also as eligible to apply for the post. It has been vehemently argued that the Chartered Accountants and Cost Accountants are equally placed, and the findings arrived at by the learned Single Judge are conflicting and erroneous.

20. Learned Counsel for the Appellant has further stated that the minutes of the internal meeting dated 19.08.2021 lack appropriate approval by competent authority. It is a settled law that internal minutes of meetings are unenforceable unless approved by competent authority. Learned Counsel for the Appellant has placed reliance upon a judgment delivered in the case of ***Delhi International Airport Ltd. Vs. International Lease Finance Corpn. and Others, 2015 SCC OnLine SC 224.***

21. Learned Counsel for the Appellant has raised another ground stating that the amendment for granting preference to Chartered Accountants vis-à-vis Cost Accountants came into force only in 2021 and it is having retrospective effect on individuals who became Cost Accountant almost 20-30 years from the said date, and, therefore, deprive Cost Accountants from holding the post of Director (Finance).

22. Learned Counsel for the Appellant has further argued before this



Court that the learned Single Judge has erroneously held that recommendations of the expert committee cannot be interfered with in normal circumstances. He has contended that expert committees are subject to judicial review if they are in abrogation of certain principles of law and in the present case the report of the expert committee is certainly arbitrary and is in abrogation of settled principles of law, depriving the Cost Accountants for the post of Director (Finance) as preference has been given to Chartered Accountants over Cost Accountants.

23. Learned Counsel for the Appellant has further argued that the reliance placed by the learned Single Judge in case of ***Geeta Sharma Vs. Public Enterprises Selection Board & Anr.***, 2022 SCC Online Del 3600 is again misplaced as the said judgment was delivered on 31.10.2022 i.e., prior to the date on which the impugned list of shortlisted candidates was published by Respondent No. 1.

24. Learned Counsel for the Appellant has further argued before this Court that the learned Single Judge has erroneously held that parties cannot impugn the rules of the game, especially when they have taken a chance to participate in the process of selection. He has further contended that a Writ Petition was immediately filed in the matter challenging the preferential treatment, which was being given to Chartered Accountants, and, merely because the Appellant has participated in the process of selection, it does not mean he is estopped from challenging the same.

25. Learned Counsel for the Appellant has further argued that the findings arrived at by the learned Single Judge that the Appellant did not come with



the clean hands, is again erroneous and no material fact was suppressed by the Appellant.

26. Learned Counsel for the Appellant has lastly argued before this Court that the preferential treatment which was being given to the Chartered Accountants by Respondent Nos. 1 & 2 is arbitrary, illegal and violative of the constitutional rights guaranteed to the Appellant as the Appellant has been deprived of his legitimate right of selection only on the ground that he is a Cost Accountant and preference is being given to Chartered Accountant.

27. Heard Learned Counsel for the Parties at length, and perused the record, the matter is being disposed of at admission stage itself with the consent of the parties.

28. The undisputed facts of the case reveal that the Appellant before this Court is serving with IOCL as the Chief General Manager (Corporate Finance & Treasury) which is a post below Board Level since 21.07.2021 and is aggrieved by the advertisement issued by the PESB inviting applications for the post of Director (Finance) in the Respondent no. 2 company.

29. The Appellant is aggrieved only with the condition mentioned in the advertisement which provides that the Chartered Accounts will be given preference over the Cost Accountant.

30. The undisputed facts of the case reveal that for the post of Director (Finance) prior to 19.08.2021, the eligibility criteria provided that a candidate should be a Chartered Accountant or Cost Accountant or a full



time MBA/PGDM Courses with good academic record from a recognized University/ Institution. The relevant extract of the advertisement issued on 18.06.2021 in respect of the aforesaid post is reproduced as under:

“III. ELIGIBILITY

1. AGE: On the date of occurrence of vacancy (DOV)

<i>Age of superannuation 60 years</i>			
<i>Internal</i>		<i>Others</i>	
<i>Minimum</i>	<i>Maximum</i>	<i>Minimum</i>	<i>Maximum</i>
45	<i>2 years residual service as on the date of vacancy w.r.t. the date of superannuation.</i>	45	<i>3 years residual services as on the date of vacancy w.r.t. the date of superannuation</i>

2. EMPLOYMENT STATUS:

The applicant must, on the date of application, as well as on the date of interview, be employed in a regular capacity – and not in a contractual/ad-hoc capacity – in one of the followings: -

(a) Central Public Sector Enterprise (CPSE) (including a full-time functional Director in the Board of a CPSE);

(b) Central Government including the Armed Forces of the Union and All India Services;

*(c) State Public Sector Enterprise (SPSE) where the annual turnover is *Rs 10,000 crore or more;*

*(d) Private Sector in company where the annual turnover is *Rs 10,000 crore or more. Preference would be given to candidates from listed Companies.*



(The average audited annual turnover of three financial years preceding the calendar year in which the post is advertised shall be considered for applying the approved limits)*

3. QUALIFICATION:

(i) The applicant should be a Chartered Accountant or Cost Accountant or a full time MBA/PGDM course with good academic record from a recognized University/Institution.

(ii) Officers of Organized Group 'A' Accounts Services [i.e. Indian Audit and Accounts Service, Indian Defence Accounts Service, Indian Railway Accounts Service, Indian Civil Accounts Service, Indian P&T Accounts & Finance Service and Indian Cost Accounts Service] working in the appropriate level are exempted from these educational qualifications.

(iii) Further, applicants from the Central Govt./Armed Forces of the Union/All India Services, will also be exempted from the educational qualifications as per (i) above provided the applicants have 'the relevant experience' as mentioned in Para 4(iii) below.

In respect of applicants from Organized Group 'A' Accounts Services/Central Government/Armed Forces of the Union/All India Services, Chartered Accountant/Cost Accountant/MBA/PGDM will be a desirable educational qualification.

4. EXPERIENCE:

(i) The applicant should have at least five years of cumulative experience at a senior level during the last ten years in the area of Corporate Financial Management / Corporate Accounts in an organization of repute.

(ii) Applicants from Organized Group 'A' Accounts Services should have at least five years cumulative experience at a senior level during the last ten years in the area of Corporate Financial Management/ Corporate Accounts.

(iii) 'The relevant experience' in respect of applicants from Central Government/Armed Forces of the Union/All India Services would include at least seven years of cumulative



experience at a senior level during the last ten years in the area of Corporate Financial Management/ Corporate Accounts.

5. PAY SCALE:

(a) Central Public Sector Enterprises

Eligible Scale of Pay

- (i) Rs. 7250-8250 (IDA) Pre 01/01/1992
- (ii) Rs. 9500-11500 (IDA) Post 01/01/1992
- (iii) Rs. 20500-26500 (IDA) Post 01/01/1997
- (iv) Rs. 51300-73000 (IDA) Post 01/01/2007
- (v) Rs. 120000-280000 (IDA) Post 01.01.2017
- (vi) Rs. 18400-22400 (CDA) Pre-revised post 01.01.1996
- (vii) Rs. 37400-67000 + GP 10000 (CDA) post 01.01.2006
- (viii) Rs. 144200-218200 (Level 14) CDA post 01.01.2016

The minimum length of service required in the eligible scale will be one year for internal candidates, and two years for others as on the date of vacancy.

(b)

(i) Applicants from Central Government / All India Services should be holding a post of the level of Joint Secretary in Government of India or carrying equivalent scale of pay on the date of application.

(ii) Applicants from the Armed forces of the Union should be holding a post of the level of Major General in the Army or equivalent rank in Navy/Air Force on the date of application.

(c)

Applicants from State Public Sector Enterprises/ Private Sector should be working at Board level position or at least a post of the level immediately below the Board level on the date of application."



31. The aforesaid advertisement dated 18.06.2021 was for appointment of Director (Finance) in a CPSE namely Hindustan Petroleum Corporation Ltd. (“**HPCL**”). It is pertinent to note that the selection process for the Director level post is conducted by PESB which is a high-power body constituted by the Government of India which inter alia advises Government on appointment of top management position of various CPSEs including the IOCL. Respondent No.1 since its inception has been managing the selection and appointment of top management post of CPSEs and the advertisement is also issued by Respondent No.1 from time to time.

32. The facts further reveal that an internal high-power meeting took place on 19.08.2021 by the members of Respondent No. 1 PESB and it was discussed and decided in the meeting that for the post of Director (Finance) preference should be given to Chartered Accountants. The minutes of the meeting held on 19.08.2021 are reproduced as under:

**“MINUTES OF INTERNAL MEETING HELD ON
19.8.2021”**

(i) *Director (Finance) posts: -*

With reference to all the Director (Finance) posts across CPSEs, the Board was of the view that under Qualification, preference should be given to Chartered Accountant and should also be mentioned in the JD. It was also decided that while examining the applications of shortlisting for Director (Fin) posts across CPSEs, the top 3 internal candidates will be shortlisted based on seniority and experience provided they fulfil the mandatory experience. For the next lot of applicant's preference will be given for shortlisting to those with qualification of Chartered Accountant. Preference will



be given to applicants with Chartered Accountancy in respect of Sectoral/External/SPSE/ Private Sector candidates. The shortlisting of applicants form Central Governments category will be governed by ACC communication dated 1/11/2018.”

33. On the basis of the decision taken by the experts in the meeting, the board issued an advertisement dated 25.11.2022 and *vide* the aforesaid decision the qualification clause was amended in the fresh advertisement dated 25.11.2022. As per the amended qualification clause, it was categorically mentioned that “*the Applicant should be a Chartered Account or Cost Accountant and preference would be given to Chartered Accountant*”. The relevant extract of the advertisement dated 25.11.2022 is reproduced as under:

“No.: 7/69/2022-PESB
Government of India
Department of Personnel & Training
(Public Enterprises Selection Board)

Block No. 14, C.G.O Complex, Lodhi Road
New Delhi-110003
Dated: 25-11-2022

NAME OF THE CPSE	Indian Oil Corporation Ltd.
NAME OF THE POST	Director (Finance)
DATE OF VACANCY	03-10-2022
SCHEDULE OF THE CSPE	Schedule A.
SCALE OF THE POST	Rs. 180000-340000 (IDA)

I. COMPANY PROFILE

Indian Oil Corporation Limited (IOCL) was incorporated in 1964 by merging Indian Refineries Limited with Indian Oil Company under the Indian Companies Act, 1956. The main objectives of IOC are to serve the national interests in oil and related sectors in accordance and consistent with the policies of Government of India; to ensure continuous and smooth supplies



of petroleum products and to enhance country's self-sufficiency in oil refining and build expertise in laying of crude oil and petroleum product pipelines.

Indian Oil Corporation Limited (IOCL) is an integrated oil and gas major engaged in the core activities of Refining, Pipeline transportation, Marketing of petroleum, petrochemicals and natural gas, manufacturing of petrochemicals and Exploration & Production of crude petroleum and Gas. The Company is also engaged in alternate energy and has a strong R&D focus.

Indian Oil Corporation Limited (IOCL) is a schedule - 'A' Maharatna PSE in petroleum sector with the administrative jurisdiction of Ministry of Petroleum & Natural Gas.

The company employed 31254 regular employees (Executives 17929, Non-executives 13325) as on 31.03.2022.

Its Registered and Corporate Offices are at Mumbai and New Delhi respectively.

The authorised and paid up capital of the Company were Rs. 15000 crore and Rs. 9414.16 crores respectively as on 31.03.2022.

The shareholding of the Government of India in the company is 51.50% as on 31.03.2022.

II. JOB DESCRIPTION AND RESPONSIBILITIES

Director (Finance) is a member on Board of Directors and reports to Chairman and Managing Director. He/She is overall incharge of finance, accounts and funds management of the organization and is responsible for evolving and formulating policies relating to finance and accounts as well as implementation thereof.

III. ELIGIBILITY

1. AGE : On the date of occurrence of vacancy (DOV)

Age of superannuation 60 years			
Internal		Others	
Minimum	Maximum	Minimum	Maximum
45	2 years residual service as on the date of vacancy w.r.t.	45	3 years residual services as on the date of



	<i>the date of superannuation.</i>		<i>vacancy w.r.t. the date of superannuation</i>
--	--	--	--

2. EMPLOYMENT STATUS:

The applicant must, on the date of application, as well as on the date of interview, be employed in a regular capacity – and not in a contractual/ad-hoc capacity – in one of the followings:-

(a) Central Public Sector Enterprise (CPSE) (including a full-time functional Director in the Board of a CPSE);

(b) Central Government including the Armed Forces of the Union and All India Services;

*(c) State Public Sector Enterprise (SPSE) where the annual turnover is *Rs 10,000 crore or more;*

*(d) Private Sector in company where the annual turnover is *Rs 10,000 crore or more.*

Preference would be given to candidates from listed Companies.

(The average audited annual turnover of three financial years preceding the calendar year in which the post is advertised shall be considered for applying the approved limits)*

3. QUALIFICATION:

(i) The applicant should be a Chartered Accountant or Cost Accountant or a full time MBA/PGDM course with specialization in Finance with good academic record from a recognized University/Institution. Preference would be given to Chartered Accountant.

(ii) Officers of Organized Group 'A' Accounts Services [i.e. Indian Audit and Accounts Service, Indian Defence Accounts Service, Indian Railway Accounts Service, Indian Civil Accounts Service, Indian P&T Accounts & Finance Service and



Indian Cost Accounts Service] working in the appropriate level are exempted from these educational qualifications.

(iii) Further, applicants from the Central Govt./Armed Forces of the Union/All India Services, will also be exempted from the educational qualifications as per (i) above provided the applicants have 'the relevant experience' as mentioned in Para 4(iii) below.

In respect of applicants from Organized Group 'A' Accounts Services/Central Government/Armed Forces of the Union/All India Services, Chartered Accountant/Cost Accountant/MBA/PGDM will be a desirable educational qualification."

34. The undisputed facts of the case further reveal that the Appellant being aggrieved by the decision of Respondent No. 1 made several enquiries from the Institute of Cost Accountants of India (ICAI) seeking a clarification and raising concern in respect of preferential treatment being given to Chartered Accountants, however, the Appellant did submit his application for the post of Director (Finance) on 05.01.2023. The Appellant/ Petitioner before the learned Single Judge stated categorically that he is fulfilling the requisite qualification prescribed for the post of Director (Finance). The Appellant also brought to the notice of the Respondent No. 1, the judgment delivered in the case of **Geeta Sharma Vs. Public Enterprises Selection Board & Anr.**, 2022 SCC Online Del 3600 and contended that the Hon'ble High Court has taken a view that preference given to a Chartered Accountant is an added advantage, and the question of granting preference to Chartered Accountant would arise if they were otherwise equally placed as the Appellant in all other aspect.

35. The facts further reveal that a notification was issued on 10.03.2023



shortlisting the candidates. The details of shortlisting candidates notified vide notification dated 10.03.2023 is reproduced as under:

“

<i>Sr. No.</i>	<i>Candidate Name</i>	<i>Designation</i>
1.	<i>Mr. Chandrasekaran Shankar Tennankore</i>	<i>ED, Indian Oil Corporation Ltd.</i>
2.	<i>Mr. Saurav Mitra</i>	<i>ED, Indian Oil Corporation Ltd.</i>
3.	<i>Mr. Arvind Acharya</i>	<i>ED, Indian Oil Corporation Ltd.</i>
4.	<i>Mr. Rajeev Mohan</i>	<i>Chief General Manager, Indian Oil Corporation Ltd.</i>
5.	<i>Mr. Anuj Jain</i>	<i>Chief General Manager, Indian Oil Corporation Ltd.</i>
6.	<i>Mr. Sanjay Kumar</i>	<i>Chief General Manager, Indian Oil Corporation Ltd.</i>
7.	<i>Mr. Vinod K</i>	<i>ED, Hindustan Petroleum Corporation Ltd.</i>
8.	<i>Mr. S Balachandar</i>	<i>Chief General Manager, Hindustan Petroleum Corporation Ltd.</i>
9.	<i>Mr. Sudhanshu Kumar</i>	<i>General Manager, Electronics Corporation of India Ltd.</i>
10.	<i>Mr. S Sampath</i>	<i>Chief General</i>



		<i>Manager, GAIL (India) Ltd.</i>
11.	<i>Mr. Shubhadeep Sen</i>	<i>General Manager (Finance & Accounts) & CFO, Gujarat Urja Vikas Nigam.</i>

”

36. The Appellant categorically stated that he does not object to shortlisting of candidate at serial no. 1, 2 and 4 as they comply with all the pre-requisites as laid down in JD dated 25.11.2022, the Petitioner further stated that he was not having any objection for shortlisting of the candidates at serial nos. 7 to 11 as they were external and sectoral candidates. However, in respect of remaining candidates, namely, Anuj Jain at serial no. 5, Sanjay Kumar at serial no. 6, he raised a serious objection that they have been shortlisted only because they are Chartered Accountants ignoring the claim that the Appellant is a Cost Accountant and he is senior.

37. The learned Single Judge during the pendency of the present Writ Petition granted an interim order on 22.03.2023 and directed the Respondents to consider the Appellant also in the shortlist of candidates and to permit him to appear in the interview scheduled on 24.03.2023 for the post of Director (Finance). The order dated 22.03.2023 is reproduced as under:

*“1. Petitioner is a Cost Accountant and joined the office of Respondent No. 2/Indian Oil Corporation Limited in 1994. After earning promotions from time to time, he is currently holding the post of Chief General Manager (Corporate Finance & Treasury).
2. Respondent No. 1 published an Advertisement/Job Description inviting applications for the post of Director*



(Finance) in Respondent No. 2 Company. It is the case of the Petitioner that he fulfils all necessary pre-requisite qualifications, experience etc. prescribed in the Job Description and yet did not find place in the list of shortlisted candidates released vide Notification dated 10.03.2023. Challenge in the present writ petition is to the 'qualification' clause added in the Job Description qua the post of Director (Finance) in CPSEs whereby preference has been given to Chartered Accountants over Cost Accountants.

3. By this application, Petitioner seeks permission of the Court to appear for interview scheduled on 24.03.2023. Counsel for the Petitioner contends that if the Petitioner is not permitted to participate in the interview, petition will be rendered infructuous.

4. Issue notice.

5. Ms. Manisha Agrawal Narain, learned Central Government Standing Counsel accepts notice on behalf of Respondents No. 1 and 3.

6. Mr. S. Sirish Kumar, learned counsel accepts notice on behalf of Respondent No. 2.

7. Having heard the learned counsels for the parties and in order to balance the equities, this Court deems it appropriate at this stage to permit the Petitioner to appear in the interview scheduled on 24.03.2023 for the post of Director (Finance). It is made clear that participation of the Petitioner in the interview will be subject to final outcome of the writ petition and will not create any equity in his favour. Respondents shall permit the Petitioner for the interview, without prejudice to their rights and contentions in the present writ petition.

8. The result of the Petitioner shall be placed in a sealed cover and will not be given effect to, till the next date of hearing.

9. Application is allowed and disposed of in the aforesaid terms.

W.P.(C) 3259/2023

10. Counter affidavits be filed within a period of two weeks from today.

11. Rejoinders, if any, be filed within a period of one week thereafter.



12. The matter will be taken up for final hearing as Item No. 1 after the supplementary list on 21.04.2023.”

38. In the aforesaid order, the learned Single Judge has also observed that the outcome of the interview shall be subject to final outcome of the Writ Petition and pursuant to the interim order passed by the learned Single Judge, the Appellant did appear before this Interview Board and the recommendations were kept in sealed cover.

39. The Learned Single Judge again passed another interim order dated 25.05.2023 directing the Respondent No. 1 to open the sealed cover and declare the result of the interview. The copy of the aforesaid order is reproduced as under:

“1. Respondent No.6 has been served and appears in person. He submits that he does not want to file any response to the writ petition.

2. By an order dated 22.03.2023, this Court had permitted the Petitioner to appear in the interview scheduled on 24.03.2023 for the post of Director (Finance) in order to balance the equities. It was however made clear that participation of the Petitioner in the interview will be subject to final outcome of the writ petition and will not create any equity in his favour. It was directed that the result of the Petitioner shall be placed in a sealed cover and will not be given effect to till the next date of hearing.

3. Learned counsels for the Respondents submit that the post of Director (Finance) is an important position in the CPSE and the interim order is causing a prejudice as the appointment is on a hold and therefore they seek vacation/variation of the order so that the process can be completed and appointment can be made to the said post.

4. Learned counsel for the Petitioner, on the other hand, submits that he has no objection to the order being varied permitting the official Respondents to declare the result of the



Petitioner so that process of appointment is not stalled, however, the appointment be made subject to the outcome of the writ petition with a further direction that no equity will be created in favour of the Appointee.

5. The Court entirely agrees with the submission made by learned counsels for the parties. It is not in the interest of either party that the process of appointment is put on hold and it also cannot be overlooked that Director (Finance) is an important position in the CPSE.

6. Accordingly, order dated 22.03.2023 is varied and the official Respondents are granted permission to open the sealed cover and declare the result of the Petitioner. Needless to state that in case the Petitioner is successful, he shall be appointed without prejudice to the rights and contentions of the parties to the writ petition. However, if any other candidate is appointed, his/her appointment will be subject to the outcome of the writ petition and the Appointee shall not claim any equity on the basis of the appointment, since the question of eligibility of the Petitioner for shortlisting is subjudice before this Court.

7. List for final hearing on 19.07.2023.

8. Written submissions, if any, be filed by the parties before the next date of hearing.”

40. The Respondents pursuant to the aforesaid direction of the learned Single Judge have declared the result of the Appellant and as per the same, the Appellant was not selected for the post in question. The Appellant as he was not selected in the process of interview was still aggrieved by the condition prescribed in the advertisement which granted preference to Chartered Accountants over and above the Cost Accountants.

41. The Appellant being aggrieved of not being selected for the post of Director (Finance) is challenging the policy decision by which preference has been given to Chartered Accountants over Cost Accountants in the process of selection in CPSE. It is needless to mention that the PESB,



keeping in view Part-B of Chapter-2 of Department of Personal and Training (DoPT) Guidelines dated 29.08.2017 in consultation with relevant Ministers decides the job description which includes educational qualifications keeping in view the function and requirement of the post for that Company.

42. As per the above stated guidelines, the policies related to Board Level appointments are formulated by concerned authority keeping in mind the current needs and situation. The PESB took a conscious decision and a decision of expert committee of the Government cannot be interfered with except if the decision is arbitrary or the Constitutional Committee is improper (See: *Dr Prasannanshu Vs. Selection Committee or Vice Chancellor, National Law University, Delhi & Anr., W.P.(C.) No. 5497/2020 of Delhi High Court; Dalpat Abasahed Solunke and Others Vs. Dr. BS Mahajan and Others, 1990 SCC (L&S) 80; National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and Others, AIR 1992 SC 1806 and Hanmath Ashok Vs. State of Telangana, WA No. 260/2021*).

43. The decision of the committee to give preference to Chartered Accountants over Cost Accountants has been taken by the expert committee. A Cost Accountant is a professional who is responsible for ensuring that money spent by Company is spent in well planned manner. They oversee expense reports, analyze data in respect of purchases or the incurred costs relating to goods and services received from the vendors and to make recommendation about cost-efficiency, whereas a Chartered Accountant is responsible for the financial management of a business. The job and responsibility of Chartered Accountant include management of finance and



accounts of the Company, inventory management, income tax, compliance under CARO, accounting and audit standard assurance etc. The Chartered Accountants are responsible for managing budgets, undertaking financial audits, providing financial advice, liaising with clients, individuals and business, analyzing risk, advising on tax planning and maintaining accounting records and prepare accounts information.

44. The Director (Finance) has the responsibility of overall in charge of finance, accounts and funds management of the organization and is also responsible for evolving and formulating policies relating to finance and accounts as well as implementation thereof. Therefore, the conscious decision was taken to give preference to Chartered Accountants to promote all aspects of finance, accounts and funds management of the CPSEs and also to enable CPSEs to formulate policies which optimize the well-being of their business, finance and accounts. Hence, there is rational nexus between the basis of classification and the object intended to be achieved.

45. In the considered opinion of this Court, there is no arbitrariness in the preference clause as argued by the learned counsel for the appellant/petitioner for the appointment of the Director (Finance).

46. Another important aspect is that the policy decision dated 19.08.2021 which has been brought on record by the Appellant has not been challenged by the Appellant under the relief clause. Therefore, in the considered opinion of this Court, the decision of the expert committee is not an arbitrary decision and therefore, does not warrant any interference by this Court.

47. The aim and object of the PESB is the selection and placement of



person in the post of Chairman, Managing Director or Chairman-cum-Managing Director (Level-I) and functional Director (Level-II) in CPSEs as well as in post of any other level as may be prescribed by the Government.

48. The PESB is governed by the internal guidelines and guidelines of DoPT as notified/published from time to time. It is an independent Board and came into existence on 30.08.1974. The PESB is assigned to carry out the process of selection keeping in view the DoPT's resolution dated 03.03.1987. Thus, it is the Board which is competent to revise educational qualification/qualifications for the post of Director (Finance) and the same was done on 19.08.2021 by giving preference to Chartered Accountants over Cost Accountants and the decision by PESB dated 19.08.2021 is applicable to all CPSEs.

49. The Post of Director (Finance) in IOCL was advertised on 25.11.2022. The last date for receipt of application was 16.01.2023 and the Appellant herein was a Cost Accountant. It is true that he was not shortlisted in the process of selection, however, the fact remains that he was included as a shortlisted candidate on account of an interim order passed by this Court. The shortlisting has been done by the Respondents keeping in view the eligibility prescribed for the post in question as well as DoPTs guidelines dated 29.08.2017.

50. In response to vacancy circular No. 131/2022, 41 applications were received, and 11 candidates were shortlisted for the post of Director (Finance) and the Appellant was neglected in the list of shortlisted candidates. On account of interim order passed by this Court the appellant



was allowed to appear for further process of selection i.e., for interview. The Appellant in spite of the fact that he was treated as a shortlisted candidate on account of interim order passed by this Court was not selected based upon the interview which took place, and therefore, in the considered opinion of this Court once the Appellant has not been able to prove his worth in the process of selection, he is not entitled for any relief whatsoever and the learned Single Judge was justified in dismissing the writ petition.

51. Learned Counsel for the Appellant has vehemently argued before this Court that the denial of opportunity to him and the process of selection are violative of Article 14 and 16 of the Constitution of India. In the considered of this Court, Article 16 of the Constitution of India permits reasonable classification based on intelligible differentia, and the Hon'ble Supreme Court in the case of State of *State of Mysore and Another Vs. P. Narasinga Rao*, (1968) 1 SCR 407 in paragraph 4 held as under:

“4. The relevant law on the subject is well settled. Under Article 16 of the Constitution, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office thereunder. Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Article 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows that there can be a reasonable classification of the employees for the purpose of appointment or promotion. The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. This Court in dealing with the extent of protection of Article 16(1) observed in General Manager, Southern Rly. v. Rangachari [1962 (2) SCR 586, 596] :



“Thus construed it would be clear that matters relating to employment cannot be confined only to the initial matters prior to the act of employment. The narrow construction would confine the application of Article 16(1) to the initial employment and nothing else; but that clearly is only one of the matters relating to employment. The other matters relating to employment would inevitably be the provision as to the salary and periodical increments therein, terms as to leave, as to gratuity, as to pension and as to the age of superannuation. These are all matters relating to employment and they are, and must be, deemed to be included in the expression „matters relating to employment” in Article 16(1).... This equality of opportunity need not be confused with absolute equality as such. What is guaranteed is the equality of opportunity and nothing more. Article 16(1) or (2) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. Any provision as to the qualifications for the employment or the appointment to office reasonably fixed and applicable to all citizens would certainly be consistent with the doctrine of the equality of opportunity; but in regard to employment, like other terms and conditions associated with and incidental to it, the promotion to a selection post is also included in the matters relating to employment, and even in regard to such a promotion to a selection post all that Article 16(1) guarantees is equality of opportunity to all citizens who enter service.... In this connection it may be relevant to remember that Article 16(1) and (2) really give effect to the equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15(1). The three provisions form part of the same constitutional code of guarantees and supplement each other. If that be so, there would be no difficulty in holding that the matters relating to employment must include all matters in relation to employment both prior, and subsequent, to the employment which are incidental



to the employment and form part of the terms and conditions of such employment.”

The argument was stressed on behalf of the respondent that success in the SSLC examination had no relevance to the post of tracer and the tracers of the erstwhile State of Hyderabad who were allotted to the new State of Mysore were persons similarly situated and there was no justification for making a discrimination against only some of them by creating a higher pay scale for tracers who had passed the SSLC examination. It was contended for the respondent that all the tracers who were allotted to the new State of Mysore were persons who were turning out the same kind of work and discharging the same kind of duty and there was no rational basis for making two classes of tracers, one consisting of those who had passed the SSLC examination and the other consisting of those who had not. In our opinion, there is no justification for the argument put forward in favour of the respondent. It is well settled that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group; and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the statute or the rule. As we have already stated Articles 14 and 16 form part of the same constitutional code of guarantees and supplement each other. In other words, Article 16 is only an instance of the application of the general rule of equality laid down in Article 14 and it should be construed as such. Hence, there is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured, Article 16(1) does not



bar a reasonable classification of employees or reasonable tests for their selection. It is true that the selective test adopted by the Government for making two different classes will be violative of Articles 14 and 16 if there is no relevant connection between the test prescribed and the interest of public service. In other words, there must be a reasonable relation of the prescribed test to the suitability of the candidate for the post or for employment to public service as such. The provisions of Article 14 or Article 16 do not exclude the laying down of selective tests, nor do they preclude the Government from laying down qualifications for the post in question. Such qualifications need not be only technical but they can also be general qualifications relating to the suitability of the candidate for public service as such. It is therefore not right to say that in the appointment to the post of tracers the Government ought to have taken into account only the technical proficiency of the candidates in the particular craft. It is open to the Government to consider also the general educational attainments of the candidates and to give preference to candidates who have a better educational qualification besides technical proficiency of a tracer. The relevance of general education even to technical branches of public service was emphasised long ago by Macaulay as follows: "Men who have been engaged, up to one and two and twenty, in studies which have no immediate connection with the business of any profession, and the effect of which is merely to open, to invigorate, and to enrich the mind, will generally be found, in the business of every profession, superior to men who have, at eighteen or nineteen, devoted themselves to the special studies of their calling. Indeed, early superiority in literature and science generally indicates the existence of some qualities which are securities against vice industry, self-denial, a taste for pleasures not sensual, a laudable desire of honourable distinction, a still more laudable desire to obtain the approbation of friends and relations. We, therefore, think that the intellectual test about to be established will be found in practice to be also the best moral test that can be devised." (Hansard, Series, 3 CXXVIII, 754, 755)

In our opinion, therefore, higher educational qualifications



such as success in the SSLC examination are relevant considerations for fixing a higher pay scale for tracers who have passed the SSLC examination and the classification of two grades of tracers in the new Mysore State, one for matriculate tracers with a higher pay scale and the other for non-matriculate tracers with a lower pay scale is not violative of Articles 14 or 16 of the Constitution.”

52. The learned Single Judge based upon the aforesaid judgment as well as after placing reliance upon the judgment delivered in the case of ***T.R. Kothandaraman and Others v. T.N. Water Supply & Drainage Board and Others***, (1994) 6 SCC 282, has arrived at a conclusion and has rightly held that the nature of job does permit the Government to prefer better qualified persons if the job entails the work to be handled specifically by a person having specific qualification. The learned Single Judge has rightly placed reliance upon a judgment delivered in the case of ***Chhattisgarh Rural Agriculture Extension Officers Assn. v. State of M.P.***, (2004) 4 SCC 646 and ***Govt. of W.B. v. Tarun K. Roy***, (2004) 1 SCC 347.

53. In the considered opinion of this Court the Cost Accountant and Chartered Accountant are not at all similarly placed as argued by the Appellant before this Court. They are governed by two independent statutes, and it is for the employer to arrive at a conclusion in respect of qualifications for posts, keeping in view the nature of job for which the advertisement has been issued. In the present case, the experts have formed an opinion to give preference to Chartered Accountants over Cost Accountants, and, therefore, the decision taken by the Respondents cannot be treated as arbitrary or violative of the Article 14 and 16 of the Constitution of India as argued by the Appellant.



54. It is reiterated that this Court by an interim dated 22.03.2023 had permitted the Appellant to participate in the process of selection and has gone to the extent by including him in the list of shortlisted candidates and the Appellant has not been able to prove his worth in the process of selection means he has not been finally selected and, therefore, in light of the judgment delivered in the case of ***Om Prakash Shukla Vs. Akhilesh Kumar Shukla***, 1986 Supp SCC 285, ***Madan Lal and Others Vs. State of J&K and Others***, (1995) 3 SCC 486, the Appellant cannot be permitted to challenge the rules of game after the game is over. The Appellant did apply for the post in question with open eyes and he was not shortlisted in the first stage however this Court directed the Respondent No.1 to permit the Appellant to participate in the process of interview and in the process of interview, he has not been selected finally, and, therefore, as he has participated in the entire process of selection and has not been able to prove his worth, the learned Single Judge was justified in dismissing the writ petition.

55. The prescription of qualification for a particular post is the sole domain of the employer/expert bodies. The Court cannot substitute its view in place of the view taken by the expert bodies which is based upon deliberation, thorough research and with application of mind. The nature of job, the duties and responsibilities of particular qualification for a post is the sole domain of the employer/authorities who are empowered to carry out the process of selection, and, therefore, in the considered opinion of this Court, in respect of policy matters, the question of interference by a Court in exercise of its powers under Article 226 of the Constitution of India does not arise. The Hon'ble Supreme Court has time and again held that the scope of



judicial review accorded to a Court does not extend to excessively questioning the policy decisions of the Government, unless they are arbitrary, discriminatory or are based on irrelevant considerations. (See: *State of Orissa and Others v. Gopinath Dash and Others*, (2005) 13 SCC 495)

56. The Hon'ble Supreme Court has taken a similar view in the case of *Centre for Public Interest Litigation v. Union of India*, (2016) 6 SCC 408 and *State of Maharashtra and Another v. Bhagwan and Others*, (2022) 4 SCC 193.

57. The Hon'ble Supreme Court in a large number of cases has held that unless a policy decision taken by the Government is demonstrably capricious or arbitrary or if it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the same cannot be interfered with.

58. In the considered opinion of this Court, the policy decision taken by the experts, keeping in view the executive instructions issued by DoPT on the subject, does not fall within the realm of judicial interference in any manner. (See: *Krishnan Kakkanth v. Govt. of Kerala and Others*, (1997) 9 SCC 495; *Food Corpn. Of India and Others v. Bhanu Lodh and Others*, (2005) 3 SCC 618; *Govt. of Orissa v. Haraprasad Das and Others*, (1998) 1 SCC 487; *State of Orissa and Others v. Bhikari Charan Khuntia and Others*, (2003) 10 SCC 144; *Delhi Pradesh Registered Medical Practioners v. Director of Health Services Admn. Services and Others*, (1997) 11 SCC 687)

59. In the considered opinion of this Court, the learned Single Judge was



justified in dismissing the writ petition and no case for interference with the Impugned Judgment is made out in the instant appeal.

60. In view of the above, the present LPA stands dismissed.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

SEPTEMBER 01, 2023

aks