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WP.No.25385 of 2024

In the High Court of Judicature at Madras

**Reserved on :
26.9.2024**
**Delivered on :
30.9.2024**

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.25385 of 2024 &
WMP.Nos.27746 & 27747 of 2024

Bora Srinivasa Reddy, IOFS,
General Manager, Ordnance
Clothing Factory, Avadi,
Chennai-54.

...Petitioner

Vs

1.The Government of India,
Ministry of Defence,
Department of Defence
Production, rep.by its
Secretary, South Block,
New Delhi-1.

2.Public Enterprises Selection
Board, rep.by its Secretary,
Public Enterprises Bhawan,
CGO Complex, Lodhi Road,
New Delhi-3.

3.Troop Comforts Ltd., rep.
by its Director/HR,
G.T.Road, Kanpur,
Uttar Pradesh-208013.

4.Shri.Tushar Tripathi,
Director/Finance, India
Optel Ltd., Corporate HQ,
India Optel Ltd. (OFIL
Campus), Raipur,



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- Dehradun-248008.
5. Shri. Shrish Kumar,
Executive Director,
Ordnance Factory,
Trichy Ordnance Estate,
PO, Thuppaki Nagar,
Navalpattu, Tamil Nadu.
620016.
6. Shri. Sunil Date, Director
(Operations & HR),
Gliders India Ltd.,
GT Road, DRDO Kanpur,
Uttar Pradesh-208013.
7. Shri. Rajeev Sharma, GM/
Operation, Troop Comforts
Ltd., Corporate Hqrs.,
G.T. Road, Kanpur-208013.
8. Shri. Surendra Dhapodkar,
Director/Finance,
Gliders India Ltd.,
GT Road, DRDO Kanpur,
Uttar Pradesh-208013.
9. Shri. Ajay Kumar Yerpude,
Executive Director,
Ordnance Factory Muradnagar
District, Ghaziabad,
Uttar Pradesh-201206.
10. Shri. Amit Singh, General
Manager, Ordnance
Equipment Factory, No.19,
National Highway, Hazratpur,
Garhijafar, Uttar Pradesh.
283103.
11. Shri. C. Balasubramaniam,
General Manager, Gliders
India Ltd., GT Road, DRDO
Kanpur, Kanpur,



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Uttar Pradesh-208013.

12. Shri. Prabir Kumar Sarkar,
Chief General Manager,
Steel Authority of India Ltd.,
Ispat Bhawan, Lodhi Road,
New Delhi-3.

13. Dr. Ramakant Dixit,
Chief General Manager,
SPMCIL, 16th Floor,
Jawahar Vyapar Bhawan,
Janpath, New Delhi-1.

14. Shri. Kamalakanta Nayak,
Additional General Manager,
CFO, Utility Powertech Ltd.,
EOC Annexe, NTPC Ltd.,
Plot No. A-8A, Sector 24,
Noida District. UP-201301.

15. Shri. Pravin Kumar, Chief
General Manager (Services),
Rashtriya Ispat Nigam Ltd.
(RINL), Administrative Building,
Visakhapatnam Steel Plant,
Visakhapatnam, Andhra Pradesh.
530003.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records connected with the impugned order No.6/24/2021-PESB dated 14.8.2024 passed by the second respondent in so far as the 06 internal short-listed candidates are concerned, quash the same and consequently direct the second respondent to publish a fresh short-list of candidates drawn up in conformity with guidelines and in



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in accordance with law.
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For Petitioner : Mr.Ravikumar Paul, SC for
M/s.Paul & Paul

For R1 to R3 : Mr.AR.L.Sundaresan, ASG-I
assisted by
Mr.V.Chandrasekaran, SPC

For R4 to R15 : Notice sent & service awaited

ORDER

This writ petition has been filed challenging the impugned order dated 14.8.2024 passed by the second respondent and for a consequential direction to the second respondent to publish a fresh short-list of candidates in conformity with the guidelines and in accordance with law for the post of Chairman and Managing Director.

2. The case of the petitioner is as follows :

(i) The petitioner was working in the Ordnance Factory Board since 1997 and he has achieved several milestones during his tenure. Subsequently, he was transferred to the Ordnance Clothing Factory as Additional General Manager and at a later point of time, he has also got promotion as General Manager of the said factory.

(ii) On 15.4.2024, the second respondent issued a Notification calling for applications to the post of Chairman & Managing Director in



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the third respondent company. The petitioner submitted his application on 09.5.2024 by providing all the details.

(iii) Through the impugned order dated 14.8.2024, the names of 12 persons were short-listed and they were only called for interview. However, the name of the petitioner has not been added in the list. Aggrieved by that, the above writ petition has been filed before this Court.

3. Respondents 1 to 3 filed a counter affidavit, in which, they have taken a stand that the candidates are expected to provide all the particulars in the application whereas the petitioner did not provide the complete particulars with respect to his experience. According to them, the candidate is required to clearly indicate the positions held by them in detail for the last ten years by further providing the nature of duties, the name of organization, the pay scale, the period, during which, they held the post and the authority, to whom they reported.

4. It has been further stated in the counter that instead of providing the experience details in the prescribed format, the petitioner filled up a sheet containing consolidated experience from 1997 to 2024, that in view of the same, it was not clear as to whether the petitioner had relevant experience of at least five years during the



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last ten years in the respective field as per Clause 4 of the Notification and that therefore, the petitioner was considered ineligible and was not short-listed for the interview.

5. The petitioner filed a reply to the counter affidavit reiterating his stand.

6. Heard the learned Senior Counsel appearing on behalf of the petitioner and the learned Additional Solicitor General-I assisted by the learned Senior Panel Counsel appearing for respondents 1 to 3.

7. The learned Senior Counsel appearing on behalf of the petitioner submitted that the petitioner had clearly mentioned his experience from 15.9.1997 to 13.5.2024 and also the responsibility that was held by him in the last five years, that even though the particulars provided by the petitioner may not be in the expected format, the petitioner, in fact, submitted all the particulars regarding his employment as required in Clause 4 of the Notification, that the hyper technicalities should not be put against the petitioner to deprive him to participate in the selection when the petitioner is otherwise fully qualified, that the second respondent was regularly collecting details regarding the candidates from the respective employer of the



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respective candidate and the second respondent could have collected the relevant details from the Ordnance Factory Board Headquarters regarding the petitioner also and that this is in view of the fact that the second respondent had collected the details regarding the pay scale and the Annual Confidential Reports (ACRs)/Annual Performance Assessment Reports (APARs) for ten years and this will clearly give the details of the positions held by the petitioner for the last ten years.

8. The learned Senior Counsel appearing on behalf of the petitioner concluded his arguments by stating that the petitioner is fully qualified and is eligible to participate in the selection whereas the second respondent is attempting to deprive the petitioner from participating in the selection on hyper technicalities.

9. In order to substantiate his submissions, the learned Senior Counsel appearing on behalf of the petitioner relied upon the following:

*"i. judgment of the Supreme Court in the case of **Dheerender Singh Paliwal Vs. Union Public Service Commission** [reported in 2017 (11) SCC 276];*

*ii. judgment of the Supreme Court in the case of **Seema Kumari Sharma Vs. State***



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of H.P. [reported in 1998 (9) SCC 128];

*iii. order passed by a learned Single Judge of this Court in the case of **M.Raja Vs. State of Tamil Nadu [reported in 2024 SCC OnLine Madras 3944]**; and*

*iv. order passed by a Division Bench of the Bombay High Court in the case of **Shaila Tanaji Patil Vs. Maharashtra Public Service Commission [reported in 2024 SCC OnLine Bombay 537]**."*

10. Per contra, the learned Additional Solicitor General-I appearing on behalf of respondents 1 to 3 submitted that recruitment to the post of Chairman & Managing Director is a selection post, for which, the selection is conducted by an Independent Body namely the Public Enterprises Selection Board (PESB), that every candidate is expected to submit all the particulars that are required in the application, that the Notification itself specifically provides that incomplete applications would be liable to be rejected, that the petitioner did not give the break-up of various posts held by him in order to satisfy the experience criterion provided under the Notification, that he only gave the consolidated details, that it is not the job of the second respondent to go and collect the details of every candidate from their respective employer, that in view of the same,



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the incomplete application of the petitioner by not providing the details with respect to experience resulted in rejection and that consequently, the name of the petitioner was not added in the list of short-listed candidates.

11. In order to substantiate his submissions, the learned Additional Solicitor General-I appearing on behalf of respondents 1 to 3 relied upon the judgment of the Apex Court in the case of ***Divya Vs. Union of India [reported in 2024 (1) SCC 448]***.

12. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned order passed by the second respondent.

13. The short issue that arises for consideration in this case is as to whether the decision taken by the second respondent to reject the application submitted by the petitioner is liable to be interfered by this Court and as to whether the name of the petitioner must also be added in the list of short-listed candidates to be considered for appointment to the post of Chairman & Managing Director.



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14. The Notification issued by the second respondent specifically provided for the eligibility that has to be satisfied by each participant in the selection. There is no serious dispute with regard to the eligibility of the petitioner under all the other heads except the head 'experience'. The Notification further provided that the applicant should possess cumulative experience/exposure for at least five years during the last ten years in Finance/Business Development/Production/Operations/Marketing/Project Management in a large organization of repute. The Notification also provided that the applicants with experience in specialized Textile/Leather/Clothing industry would have an added advantage. The application form provided for submitting various details.

15. The controversy in this case confines itself to the experience details given by the petitioner. S.No.7 in the application deals with the particulars to be provided towards fulfilling experience criterion. It reads as follows :

"7. (i) Positions held during the last ten years, upto date of uploading the vacancy circular on the PESB website."



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16. The particulars to be provided in the various columns are as follows :

Sl No	Complete designation & place of posting*	Name of the organization	Pay scale **/(pay scale entering date)	Period		Reporting to designation *	If yes, nature of duties in support of the declaration
				From	To		

* Should be exactly as per specific office order issued by the CPSE/Ministry/SPSE/Employer.

** Private Sector - CTC/remuneration/ emoluments drawn."

17. It is very clear from the above format prescribed in the application that an applicant is expected to give particulars individually regarding the place of posting, the name of organization, the pay scale, the period, during which, they were working and also the officer, to whom they had reported. The applicant is also expected to submit the nature of duties performed.

18. In the instant case, the petitioner had filled up this portion as follows :

Sl No	Complete designation & place of posting*	Name of the organization	Pay scale **/(pay scale entering date)	Period		Reporting to designation *	If yes, nature of duties in support of the declaration
				From	To		
1	General Manager	Defence (D/o)	Level 15 (1,82,200-2,24,100 CDA 01.1.2024	15.9.1997	13.5.2024	Director (Operations)	Looking after all the administrative wings of the then OFB Hqs. as Director at various tenures. During



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						<i>this tenure, I had the experience of interacting with the UPSC, SSC, CVC and APEX Level Officers for recruitment, DPC and promotions of Group-A IOFS & Group-B Cadres and I was looking after MM of the entire OEF Group presently TCL. Subsequently as AGM directly looking after production, MM, R&D and as GM from Sept.2023 looking after the general administration of Ordnance Clothing Factory, Avadi</i>
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19. In the reply affidavit filed by the petitioner, the petitioner gave the complete particulars of the posts that were held by him from 2015 to 2024. The petitioner should have filled up the application in the same manner since the second respondent, by going through the particulars, must be able to ascertain as to whether the petitioner possesses cumulative experience/exposure for at least five years during the last ten years in the various fields in an organization of repute and as to whether the petitioner also had the experience in some of the specialized fields to get an added advantage.



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20. Certain documents were filed along with the counter affidavit, from which, it is seen that the second respondent has been collecting details regarding the inter se seniority and the pay scale of the various applicants including the petitioner. Even in the counter affidavit, it is seen that the second respondent was looking for the ACRs/APARs for the last ten years. This would mean that apart from the information provided in the application, the second respondent is also independently verifying the particulars of the respective applicant by getting the details from the respective employer.

21. The particulars provided by the petitioner have been extracted supra. The petitioner provided a consolidated information whereas he was expected to give individual particulars of his employment in the last ten years. The petitioner also submitted a write-up on the achievements during his career and also his vision for the post applied.

22. The moot question is as to whether the candidature of the petitioner is liable to be rejected only for the reason that the petitioner did not fill up the application in a desirable format.



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23. It is now too well settled that a person, who is otherwise qualified, should not be deprived of his participation in the selection on his failure to submit/furnish particulars as is expected in the application format. The Courts must see if such failure touches upon the eligibility criterion itself or whether such failure is not fatal to the extent of rejecting the candidature of an applicant.

24. The petitioner was expected to provide the particulars of the posts held by him during the last ten years upto the date of uploading the vacancy circular in the relevant website. Instead of providing those particulars, in a serialized format, the petitioner provided all those particulars in the last column under the head 'nature of duties in support of the declaration'. Here, the petitioner gave the details of the posts held by him as the Director, OFB Headquarters and as the Additional General Manager of the Ordnance Clothing Factory, Avadi and thereafter as the General Manager from September 2023. Apart from that, the petitioner submitted a write-up along with the application where he talked about the achievements made while holding those positions. Thus, the petitioner has provided all the details required, of course, not in the expected format.



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25. The salary/pay scale of the petitioner has been independently ascertained by the second respondent from the employer and therefore, those particulars are also available with the second respondent.

26. The second respondent must look for the best candidate to be selected to the post of Chairman & Managing Director. Hence, considering the experience and achievements of the petitioner and the positions held by him, the candidature of the petitioner should not be rejected on a technical ground, which does not get into the root of the case touching upon the essential qualification. The materials placed before this Court would show that the petitioner possesses all the qualifications that are required as per the Notification. Hence, the form, under which it was presented, should not deprive the petitioner from participating in the selection. In other words, a mere procedure should not over weigh the essential qualifications possessed by the petitioner to participate in the selection. The non filling up of the application in the format that was expected should not prove fatal to the extent of depriving the petitioner even to participate in the selection. Pithily expressed, the second respondent has missed the wood for the trees.



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27. In the light of the above discussions, the writ petition is allowed and the impugned order dated 14.8.2024 passed by the second respondent is set aside. There shall be a direction to the second respondent to include the name of the petitioner in the list of short-listed candidates and proceed further with the process of selection to the post of Chairman & Managing Director in conformity with the guidelines and in accordance with law. No costs. Consequently, the connected WMPs are closed.

30.9.2024

To

- 1.The Secretary to Government
of India, Ministry of Defence,
Department of Defence
Production, South Block,
New Delhi-1.
- 2.The Secretary, Public Enterprises
Selection Board, Public Enterprises
Bhawan, CGO Complex, Lodhi Road,
New Delhi-3.
- 3.The Director/HR, Troop Comforts Ltd.,
G.T.Road, Kanpur, Uttar Pradesh-208013.

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N.ANAND VENKATESH,J

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