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

% ***Date of Decision: 20.08.2024***

+ **W.P.(C) 8095/2023**

GEETA SHARMA

.....Petitioner

Through: **Mr. Upamanyu Sharma, Advocate**

Versus

STEEL AUTHORITY OF INDIA AND ORS

.....Respondents

Through: **Mr. Chetan Sharma, ASG with
Ms.Pankhuri Shrivastava, Mr. Atreya
G.C., Ms. Shubhra Agarwal and
Mr.Amit Gupta, Advocates for R1.**

**Ms. Manisha Agarwal Narain, CGSC
with Mr. Chandan Deep Singh,
Mr.Sandeep Singh Somaria, Mr.
Varun Maheshwari and Mr.Akhil
Gupta, Advocates for R2.**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (O R A L)

1. The instant writ petition has been filed under Articles 226 and 227 of the Constitution of India impugning/assailing the Judgment dated 24.05.2023 passed by the Ld. Central Administrative Tribunal, New Delhi in OA No. 2556/2021 whereby the Ld. Tribunal dismissed OA No. 2556/2021 filed by the Petitioner herein.
2. The petitioner herein filed Original Application being O.A No.2556/2021 impugning/assailing the list of shortlisted candidates dated



02.11.2021 issued by Respondent No.2 for interview to the post of Director (Finance) Steel Authority of India Ltd (hereinafter referred to as “SAIL”),whereby despite being the senior most candidate, Petitioner was not shortlisted.

3. The petitioner, who was working as Director (Finance) HLL Lifecare Limited, pursuant to an advertisement dated 05.02.2021 issued by Respondent No.2 for selection to the post of Director (Finance) SAIL, preferred her application vide application dated 10.04.2021 as she fulfilled the eligibility criteria as sought in the advertisement.

4. The post of Director (Finance) in the Respondent No.1 is a Board level appointment and, therefore, is governed by the “*Guidelines Regarding Board Level Appointments in Central Public Sector Enterprises*” issued by the Govt; of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training dated 29.08.2017, whereby Para 8 Chapter 2 prescribe the guidelines titled “Board Level Appointments in CPSEs” for “*Short listing of candidates*”, spelling out the manner in which the candidates are shortlisted.

(a)	Internal Candidates	06
	[From the same CPSE or its subsidiary]	
(b)	Sectoral	02
	[From CPSEs of the same cognate group As defined by DPE]	
(c)	External	02
	[from any other CPSE]	
(d)	Central Govt./Pvt. Sector/State PSEs	02

5. The petitioner had filed application for the post of Director (Finance) through her employee HLL Lifecare Limited. PSEB vide e-mail dated



10.06.2021 prayed respondent No. 1 to provide inter se seniority of internal candidates. Vide letter dated 11.06.2021, seniority wise list of internal candidates was forwarded by respondent No. 1 to PESB. However, PESB directed respondent No. 1/SAIL combined inter se seniority list of internal candidates including the petitioner. All the internal candidates were arranged in order of seniority for shortlisting and the applications were examined and scrutinised in terms of extant guidelines and 6 senior-most eligible internal candidates, who met the requisite parameters, were shortlisted and called for interview.

6. The case of the petitioner is that she has been treated as an internal candidate by virtue of her lien in SAIL and her eligibility has been considered based on the pay scale of the post held by her in SAIL immediately before joining as Director (Finance), HLL Lifecare Limited. Hence, the criteria for determining the inter se seniority amongst sectoral and external candidates cannot be applied to the applicant, who is an internal candidate.

7. The petitioner has pleaded that she was eligible to be shortlisted as an internal as well as an external candidate & the Respondent No. 2 had to consider the Petitioner's seniority, Board level experience, and superior qualification, i.e., the Petitioner is a PhD., while drawing up the shortlist of the candidates to be called up for the interview for the post of Director (Finance), SAIL.

8. It is further averred that due to her lien she could have been shortlisted as an Internal Candidate, but the said shortlisting must have been on the basis of her present pay scale/designation/grade etc. and her pay/designation/grade could not have been frozen as on 20.08.2018 i.e the



date she left SAIL, whereas every other candidate was evaluated on the basis of his/her present position and grade. On the other hand, owing to Petitioner being considered as an internal candidate, she was not considered as an external candidate also, which is a completely arbitrary and illegal action.

9. According to petitioner, the list of shortlisted candidates notified by PSEB on 02.11.2021 for the interview to be conducted on 17.11.2021 wherein she was not included in the list neither as an internal candidate nor as an external candidate.

10. Being aggrieved, the petitioner made representations before SAIL/Respondent No. 1 & PESB/Respondent No. 2 through proper channels on 08.11.2021 & 09.11.2021 respectively. Thereafter, she also preferred O.A. No. 2556/2021 before the learned Tribunal, which could not be heard till 17.11.2021 and thus, she approached this Court by filing W.P.(C) No.12972/2021 seeking quashing of order dated 15.11.2021 and stay on the operation of the list of Shortlisted candidates selected for the interview to be conducted on 17.11.2021.

11. However, O.A. was heard on 17.11.2021 and so the aforesaid writ petition was withdrawn by the petitioner. Learned Tribunal vide order dated 17.11.2021 directed respondent No. 1 and 2 to consider petitioner's representations and held that any selection/appointment pursuant to interview held on 17.11.2021, shall be subject to outcome of O.A.

12. Vide judgment dated 24.05.2023, learned Tribunal held as under :-

"17. Having gone through the detailed arguments made by the learned counsel for the respective parties, the pleadings available on record and the material produced before us, we



are of the considered view that as per the prevailing norms, the applicant continues to maintain her lien with the Respondent No.1 – SAIL. The inter se seniority of internal candidates maintained by the Respondent No.1 - SAIL is rightfully communicated to the Respondent No.2 – PSEB, as desired by them. Accordingly, there is no mala fide on the part of Respondent Nos. 1 and 2, having followed the norms/guidelines applicable in shortlisting of internal candidates by the PSEB. We have also been informed that Respondent No.3 (Anil Kumar Tulsiani, Executive Director, SAIL), who happens to be in E-9 grade, has already been appointed as Director (Finance) in SAIL w.e.f. 20.06.2022 and has also joined the post, viz-a-viz the applicant happens to be in E-7 grade.

18. In view of the foregoing, we do not find any discrimination or any valid ground to quash the list of shortlisted candidates for interview or to direct the respondents to issue a fresh list of shortlisted candidates, including the name of the applicant as an internal candidate among them and provide relief as prayed for.”

13. The petitioner has challenged the judgment passed by the learned Tribunal on the ground that the Tribunal has failed to consider that Chapter 2, Para (B), Sub-Para 8 (ii) of the PESB Guidelines dated 29.08.2017 – which states that *an employee who holds a lien on a post in a CPSE can also be considered as an internal candidate of that enterprise, provided he/she has put in a minimum of two years of continuous service in that enterprise, on the date of acquiring lien and the period for which he/she is away from the enterprise is not more than 5 years*, is a beneficial provision/clause and



the said clause cannot be misinterpreted by the Respondents in such a manner so as to oust the Petitioner from the list of shortlisted candidates.

14. It is also pleaded that learned Tribunal has failed to consider that the Petitioner has clearly illustrated the case of a similarly situated person – Mrs. Promila Jaspal wherein Mrs. Promila Jaspal, the then Functional Director of MRPL had been shortlisted as a candidate for the post of Director (Finance) as an internal candidate, and ranked number one in the seniority list despite her last position with ONGC being – Group General Manager, ONGC. It is averred that Mrs. Promila Jaspal was selected as Director (Finance) in the aforesaid Interview, thereby, clearly showing that Mrs. Promila Jaspal was evaluated as an internal candidate in her capacity of Functional Director, MRPL and not as a Group General Manager, ONGC (i.e., the post which she last held with ONGC). This also clearly shows that the PESB, despite knowing the DOPT Guidelines and even applying the same in the manner elucidated by the petitioner, in a similar case, has proceeded to not consider the petitioner for short-listing in the instant case pertaining to the post of Director (Finance), SAIL.

15. Learned counsel appearing on behalf of petitioner submitted that through a press release dated 21.06.2022, petitioner came to know that Mr. Anil Kumar Tulsiani had taken charge as Director (Finance) of SAIL on 20.06.2022 which is in violation of order dated 17.11.2021 passed by the learned Tribunal whereby it has been directed that the selection in pursuance to Advertisement dated 05.02.2021 shall be subject to outcome of OA filed by the petitioner.

16. Therefore, the petitioner preferred MA No.1827/2022 on 04.07.2022 before the learned Tribunal seeking *status quo*, restraining the respondent



No.1 from taking any administrative decision in respect of respondent No.3 permitting him to discharge any function as Director (Finance) SAIL.

17. At the same time, respondent No.1 also preferred MA No.2197/2022 seeking permission to take on record order passed by Deputy Secretary, Ministry of Steel and the Chief Manager, SAIL mentioning that appointment of Mr. Anil Kumar Tulsiani is subject to outcome of OA.

18. The learned Tribunal, at the time of hearing in MA No.1827/2022 and MA No.2197/2022 on 19.07.2022, wrongly mentioned the application being MA No.3598/2021 instead of MA No.2197/2022 which was already disposed of vide order dated 15.02.2022. Taking advantage of typographical error in order dated 19.07.2022, MA No.2197/2022 filed by the respondent No.1 was got listed before Bench-II on 08.08.2022 whereby notice was issued for 19.10.2022 despite the fact that the OA preferred by the petitioner being OA No.2556/2021 was listed for 24.08.2022. The learned Tribunal vide order dated 19.07.2022 dismissed the petitioner's MA No.1827/2022 against which petitioner preferred a second writ petition before this Court which was dismissed by this Court in view of the fact that OA was pending consideration before the learned Tribunal and was listed for 24.08.2022.

19. The petitioner has alleged that at the time of hearing of second writ petition the respondent, as a dilatory tactic to delay the hearing in the OA filed by petitioner, did not disclose the fact that its application M.A. No.2197/2022 for filing additional documents listed was listed before Bench-2 of the Tribunal on 08.08.2022 and was fixed for 19.10.2022 and thus, petitioner's O.A. was bound and was, adjourned to 19.10.2022. The petitioner thereafter filed another petition being W.P.(C) No. 13688/2022, which was disposed of by this Court vide judgment dated 21.09.2022



requesting the learned Tribunal to dispose of the O.A. No. 2556/2021 filed by the petitioner on 19.10.2022 or soon thereafter. However, the O.A. got listed several times and thus, petitioner preferred fourth petition being W.P.(C) No. 6132/2023 seeking direction to learned Tribunal to finally hear and dispose of the OA, which was disposed of vide order dated 10.05.2023 with direction that the Bench which had heard the matter on 27.03.2023, shall hear the matter on 16.05.2023 and shall endeavour to conclude the arguments on the said date. However, vide the Impugned Judgment, the learned Tribunal dismissed the OA without providing and reasoning, while holding as under:-

“17. Having gone through the detailed arguments made by the learned counsel for the respective parties, the pleadings available on record and the material produced before us, we are of the considered view that as per the prevailing norms, the applicant continues to maintain her lien with the Respondent No.1 – SAIL. The inter se seniority of internal candidates maintained by the Respondent No.1 - SAIL is rightfully communicated to the Respondent No.2 – PSEB, as desired by them. Accordingly, there is no mala fide on the part of Respondent Nos. 1 and 2, having followed the norms/guidelines applicable in shortlisting of internal candidates by the PSEB. We have also been informed that Respondent No.3 (Anil Kumar Tulsiani, Executive Director, SAIL), who happens to be in E-9 grade, has already been appointed as Director (Finance) in SAIL w.e.f. 20.06.2022 and has also joined the post, viz-a-viz the applicant happens to be in E-7 grade.

18. In view of the foregoing, we do not find any discrimination or any valid ground to quash the



list of shortlisted candidates for interview or to direct the respondents to issue a fresh list of shortlisted candidates, including the name of the applicant as an internal candidate among them and provide relief as prayed for.

19. The O.A. is thus devoid of any merit and the same is accordingly dismissed. There shall be no order as to costs.”

20. The aforesaid order passed by the learned Tribunal is assailed before this Court on the ground that the impugned judgment is an unreasoned and non-speaking judgment. The learned Tribunal failed to consider that argument of SAIL that Petitioner's pay scale will be frozen in time is biased against the Petitioner and is against the PESB Guidelines and also the law of the land. The Tribunal failed to consider that the candidate who is applying shall be in regular service on the date of application as well as on date of vacancy, and that being so the present pay scale needs to be considered for seniority purposes. The impugned order has also been challenged on the ground that PESB has followed the instructions given by SAIL and as per PESB Guidelines, internal and external categories are not mutually exclusive; whereas the petitioner had applied as an external candidate through proper channels being employed as Director (Finance), HLL Lifecare Limited, as was prescribed in the mandatory application form.

21. Learned counsel appearing on behalf of petitioner vehemently submitted that in case petitioner as per the prescribed form had declared that she was holding lien. Further submitted that the petitioner could have been shortlisted in any manner, as an internal candidate or external candidate; and



if due to her lien she could not be considered as an internal candidate, she should have been shortlisted as an external candidate, in such a manner that her present pay scale/designation and grade should have been taken into consideration, but her pay/designation/grade was frozen as on 21.08.2018. However, the guidelines nowhere state that a candidate on lien will be evaluated by freezing his/her pay scale last held.

22. The petitioner has averred that while working as Deputy General Manager, in view of her merits got appointed to the post of Director (Finance) by stealing a march over others working in the same position as her in SAIL and despite being an outstanding professional and holding a higher pay scale and board level position, she was ousted from the list of shortlisted candidates by freezing her position/grade and payscale as on 21.08.2018, while every other candidate was evaluated on the basis of their present position/grade and pay scale and candidates much junior to petitioner in terms of designation/grade/payscale were shortlisted. Despite petitioner being the senior most in the list, with highest pay scale and only candidate with board level position, however, she was categorized as candidate in E7 category. Thus, setting aside of impugned judgment dated 24.05.2023 passed by the learned Tribunal, is sought by the petitioner in the present petition.

23. Upon hearing submissions advanced by learned counsel for the parties and on perusal of impugned judgment and material placed on record, we find that the stand of respondent No.1 in counter-affidavit placed on record before the learned Tribunal was that post of Director (Finance) in respondent No.1 is a board level appointment and so this post is governed by the "Guidelines Regarding Board Level Appointments in Central Public



Sector Enterprises” issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training dated 29.08.2017 accordingly internal and external candidates both are mutually exclusive in such a way that the one falling in the category of internal candidates cannot be considered as an external candidate and vice versa. Further, respondent No.1 averred before the learned Tribunal that as per combined *inter se* seniority list of external candidates provided by respondent No.1, the petitioner was placed at Sr. No.8, as she was holding lien with respondent No.1 in E-7 Grade. Therefore, for the purpose of determining her seniority, service with respondent No.1 till the date of her release, i.e. 20.08.2018, was taken into consideration. According to respondent No.1, *inter se* seniority is determined on the basis of date of entry in the grade of one who has been promoted to the Grade earlier than the other, is considered senior. According to respondent No.1, as per policy regarding holding of lien in case of an employee who is not on deputation to another organization but merely retaining lien in the Company, would not be considered for promotion during the said period and would merely retain the option to return to the substantive scale during the period of lien.

24. The respondent No.1 in its counter-affidavit further averred that so far as the petitioner has challenged the candidature of Dr. Ashok Kumar Panda (external candidate) working as CGM I/c (F&A), Bhilai Steel Plant since July, 2021 is without any basis as Dr. Ashok Kumar Panda possessed the necessary experience in the area of Corporation Finance Management/Corporate Accounts and, therefore, he was shortlisted. Also in respect of Mr. Mohit Malpani (internal candidate) has rightly been placed in *inter se* seniority above the petitioner as he is serving in E-8 Grade. The



petitioner, on the other hand, was released from the services of respondent No.1 w.e.f. 20.08.2018 and has been maintaining lien w.e.f. 21.08.2018. On the date of her release from respondent No.1, i.e. 21.08.2018, the petitioner was serving in E-7 Grade.

25. Similarly, stand of respondent No.2 is that the functions of the PESB is the selection and placement of personnel in the posts of Chairman, Managing Director, or Chairman-cum-Managing Director (Level-I), and functional Directors (Level-II) in Public Sector Enterprises. The applications were sorted in four categories, i.e. (a) Internal, (b) Sectoral, (c) External, and (d) Central Government / Private Sector / State Public Sector Enterprises, as per DoPT guidelines dated 29.08.2017. The 26 applications received in respect of advertisement in consideration, were arranged in order of seniority in their respective category and nine applicants were shortlisted. Since petitioner was holding lien in respondent No.1, she was treated as an internal candidate and her seniority was taken as per the seniority list provided by SAIL vide letter dated 19.07.2021.

26. Pertinently, respondents No.1 & 2, both, have relied upon Guidelines of DPE OM No. 18(2)/96-GM-GL-81 dated 16.05.2007, which read as under:-

“Internal candidate is one, who is an employee of an enterprises who has put in a minimum of 2 years of continuous service in it, on the date of occurrence of vacancy, and who does not hold a lien in any other PSE/Government. An employee, who holds a lien on a post in a CPSE can also be considered as “an internal candidate” of that enterprise provided he/she has put in a minimum of 2 years of continuous service in that enterprise, on the date of



acquiring lien and the period for which he/she is away from the enterprise is not more than 5 years.”

27. Having regard to the fact that Petitioner is holding lien with SAIL, accordingly she is to be considered as Internal candidate of respondent No.1 and could not have been considered as an External Candidate. The aforesaid guidelines make it clear that internal candidates and external candidates both are mutually exclusive but the one falling in the category of internal candidates cannot be considered as an external candidate and *vice-versa*. Having regard to the fact that Petitioner is holding lien with SAIL she was considered as Internal candidate of respondent No.1 and could not have been considered as an External Candidate, whereas the petitioner had applied as an external candidate.

28. So far as contention of petitioner that she got appointed to the post of Director (Finance) by stealing a march over others working in the same position as she was more efficient and thus deserves to be shortlisted, we find that inter-se seniority amongst internal candidate is determined on the basis of date of entry in the grade. Needless to say in case of two executives in the same grade, one who has been promoted to the grade earlier than the other is considered senior. As per inter-se seniority list of Internal Candidates, petitioner was placed at Serial No.8 and so, her seniority service has rightly been taken into account till the date of her release i.e. 20.08.2018.

29. In light of afore-noted position, we find no fault in the Impugned Shortlist dated 02.11.2021, which has been upheld by the learned Tribunal. Consequentially, the appointment of respondent No.3 Anil Kumar Tulsiani



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as Director (Finance) by respondent No.1 does not require any interference by this Court.

30. Accordingly, finding no merit in the present petition, the same is dismissed with pending applications.

SURESH KUMAR KAIT, J

GIRISH KATHPALIA, J

AUGUST 20, 2024

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Signature Not Verified

Digitally Signed
By:ROHIT KUMAR
Signing Date:28.08.2024
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