



2024:DHC:6423



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 30th July, 2024

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W.P.(C) 4195/2008, CM APPL. 8178/2008 and CM APPL. 42966/2024

SUNIL DUTT

.....Petitioner

Through: Mr. P.K. Bajaj, Advocate

versus

SENIOR MANAGER HR, ASHOK HOTEL & ANR.

.....Respondents

Through: Mr. Namit Suri and Mr. Arjun Kaushal, Advocates for Mr. Saran Suri, Advocate for R-1.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking a writ of *mandamus* directing Respondent No.1/Ashok Hotel ('Hotel') to appoint the petitioner on the post of Assistant Manager (E&M).
2. Factual narrative as set out in the writ petition is that Petitioner passed the Delhi Senior School Certificate Examination of CBSE in 1992 and thereafter completed the course from National Council for Vocational Training in the trade of Electrician and is a holder of National Trade Certificate. Petitioner was appointed as Trainee Erector in a private firm on 01.04.1996 whereafter he was appointed to the post of Technician Grade-II (Lift Mechanic) in the Hotel vide appointment letter dated 16.12.1997.



Petitioner's services were confirmed after successful completion of probationary period. In 2002, Petitioner secured the certificate of diploma in Electrical Engineering after completing four courses of studies followed by Post Diploma in Refrigeration and Air Conditioning in 2006.

3. It is averred that an advertisement was published by the Hotel inviting applications for the post of Assistant Manager (E&M) and the requisite qualifications were Bachelor's Degree in Electrical/Mechanical Engineering/AMIE or 3 years diploma in Electrical/Mechanical Engineering from a recognized Institute with 3 years experience. The desirable qualification was: *“(a) in designing installations, commissioning operations and maintenance of air conditioning plants of 200-2000 ton capacity HT/LT installations, lifts, hot water, boilers, music systems, laundry equipment, swimming pool and filtration points indoor and outdoor lighting, telephone, etc.”* The pay scale was Rs.8,600-14,600 (IDA) and number of posts advertised were 06 with the maximum age limit being 30 years.

4. Being qualified and having essential experience, Petitioner avers that he submitted the application and was called for an interview. Petitioner was, however, not selected and the Hotel instead wrongly selected one Naveen Rohilla who did not have the necessary experience and was working on the post of a Peon. Challenging his non-selection, Petitioner filed this writ petition.

5. Learned counsel for the Petitioner submits that Petitioner was fully qualified and had the necessary experience for the post of Assistant Manager (E&M) and had fared well in the interview, yet he was not selected while an unqualified candidate who did not meet the educational qualifications and lacked the requisite experience, was appointed. The action of the Hotel is



wholly arbitrary, illegal and discriminatory and therefore, a direction be issued to the Hotel to appoint the Petitioner.

6. Learned counsel appearing on behalf of the Hotel *per contra* submits that there is no merit in the writ petition. Before proceeding to argue on merit, it is urged that the pleadings in the petition are confusing and contradictory inasmuch as it is not clear whether Petitioner seeks appointment to the post of Technician Grade-II (Lift Mechanic) or Assistant Manager (E&M). At multiple places, Petitioner has pleaded that he had applied for the post of Technician Grade-II (Lift Mechanic) and appeared for the interview for the said post and was not selected while references to an advertisement for the post of Assistant Manager (E&M) are made in the body of the petition as well as in the prayer clause and the final relief claimed is appointment to the post of Assistant Manager (E&M).

7. Without prejudice to this objection, it is argued that advertisement was issued by Indian Tourism Development Corporation Ltd., a Government of India Undertaking in the Employment News on 04-10 August, 2007 and in the Times of India on 25.07.2007 as well as on the ITDC website, inviting applications for various posts including the post of Assistant Manager (E&M). Last date for receipt of application was 25.08.2007 whereas Petitioner submitted an undated application in the HR Division of the Hotel on 12.09.2007 i.e. beyond the last date, a fact concealed by the Petitioner in the writ petition. Minutes of the Selection Committee's meetings held on 17th, 18th and 19th March, 2008 would indicate that in response to the advertisement, 193 applications were received and after scrutiny based on eligibility criteria, 172 applicants were shortlisted and called for interview. 90 candidates appeared before the Selection Committee which after



considering the qualification, experience and performance of the candidates during the interview, unanimously recommended 6 candidates against the 6 posts advertised which included 3 from the General Category and 2 from OBC and 1 from ST Category. Since the Petitioner's application was received post the last date of receipt of the applications, his candidature was not considered.

8. It is argued that insofar as Naveen Rohilla/Respondent No.2 is concerned, he was selected based on his merit and after the Selection Committee was satisfied that he fulfilled the eligibility criteria of qualification and experience. It is brought forth that Naveen Rohilla possessed a B.Tech. degree in Mechanical Engineering, contrary to the stand of the Petitioner and was more qualified than the Petitioner who possessed Diploma in Engineering (Electrical), ITI (Electrical) and Post Diploma in Engineering (Refrigeration and Air Conditioning) and thus Petitioner has no reason to question the valid appointment of Respondent No.2.

9. Heard learned counsels for the parties and examined their submissions.

10. Before proceeding to examine the merit of the contentions of the Petitioner, it is relevant to note that indeed, there is complete confusion in the pleadings in the writ petition. From the relief claimed as well as from the reference to the advertisement in question, it appears that Petitioner is aggrieved by his non-appointment to the post of Assistant Manager (E&M). However, in multiple paragraphs, illustratively paragraphs 11, 12, Ground C, the averments are that Petitioner applied for the post of Technician Grade-II (Lift Mechanic) but was not selected. No plausible explanation is forthcoming from the counsel for the Petitioner for this pleading.



11. Coming to the merits of the case, it is a common ground that an advertisement was issued by ITDC for filling up various posts including the post of Assistant Manager (E&M). The last date for receipt of the applications was 25.08.2007. It is a categorical stand of the Hotel in Paragraph 5 of the reply that the Petitioner had submitted an undated application in HR Division of the Hotel on 12.09.2007 and therefore, his candidature was not considered. In response to the said averment, Petitioner has merely denied this fact and taken a plea of estoppel on the ground that his application was recommended by the Deputy GM (Examination). However, nothing has been placed on record to show that the application was recommended or to rebut the stand of the Hotel. Even otherwise, the Court finds it difficult to disbelieve the stand of the Hotel for the simple reason that as many as 193 applications were received out of which the Selection Committee shortlisted 172 applicants for interview and there was no reason for the Selection Committee to exclude the Petitioner if his application had been received before the last date. It is not the case of the Petitioner that any member of the Selection Committee or any person in the Hotel had any bias or enmity towards him. Since the candidature of the Petitioner was not considered, his application having been received beyond the last date of receipt of the applications mentioned in the advertisement, no fault can be found with the action of the Hotel in not appointing him and this is a ground enough to dismiss the writ petition.

12. In view of this, it is not necessary to go into the validity or legality of the appointment of Naveen Rohilla. However, even on this score, Petitioner has no case. Petitioner pleads and argues that the selected candidate Naveen Rohilla did not possess the requisite qualification as he was a Peon. This is



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completely belied by the stand taken by the Hotel in the reply that Naveen Rohilla has a B.Tech. Degree in Mechanical Engineering. In fact, the Hotel has filed a comparative chart of the respective qualifications of the Petitioner and Naveen Rohilla as Annexure-IV to the reply which indeed shows that Naveen Rohilla was qualified and his educational qualification was superior to those of the Petitioner. This fact is again uncontroverted.

13. In view of the aforesaid reasons, there is no merit in the writ petition and the same is dismissed along with pending applications.

JYOTI SINGH, J

JULY 30, 2024/kks