



2024:DHC:8339



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

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Date of Decision: 25th September, 2024

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W.P.(C) 8331/2010 & CM APPL. 21417/2010

AMIT KUMAR SHARMA

.....Petitioner

Through: Mr. Ghanshyam Sharma with Mr.
Amit Kumar Sharma, Advocates

versus

NTPC AND ANR

.....Respondents

Through: Mr. Puneet Taneja, Mr. Anil Kumar,
Mr. Amit Yadav and Mr. Manmohan Singh
Narula, Advocates for R-1 along with Ms. Puja
Kumari, Senior Manager, HR and Ms. Kena Shree,
DGM, HR.Mr. T.P. Singh, Senior Central Government
Counsel for R-2.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner seeking a direction to the Respondents to cancel the entire selection process relating to appointment to the post of Law Officer-E1 as also to initiate a fresh selection process and appoint the Petitioner against 01 vacancy which has remained unfilled.

2. Facts to the extent relevant and as averred in the writ petition are that Petitioner is an advocate stated to be working in a Law Firm. Respondent No.1/National Thermal Power Corporation (NTPC) published



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an Advertisement No.03/08 in June, 2008, inviting applications for appointments to various posts including the post of Law Officer-E1. Petitioner applied and a call letter dated 04.11.2008 was issued to him calling him for the screening/selection test for the post of Law Officer-E1 on 20.11.2008. Petitioner avers that the candidates had to pass through the screening test and after declaration of the result on the same day, the shortlisted candidates were to be called for interview. It is Petitioner's case that he appeared in the screening test on 20.11.2008 and was informed that this was only to shortlist the candidates. Petitioner was not shortlisted and hence not called for the interview.

3. It is averred that thereafter he received a letter dated 25.11.2008 from NTPC calling him for interview on 05.12.2008 stating that NTPC required more number of Law Officers. Petitioner appeared in the interview on 05.12.2008 and in his perception answered all the questions asked by the Interview Board correctly and should have been awarded more than 60% marks and selected. Not receiving any response about the result of the interview, Petitioner contacted the Officers in NTPC and was assured that letters for appointment to selected persons were being dispatched. Petitioner filed an application under Right to Information Act, 2005 (RTI) on 04.12.2009 seeking marks obtained by all the other candidates in the interview, in reply to which he was provided a list of total candidates who appeared in the interview, however, marks of only those candidates who had been selected were provided. In response to his second application dated 15.01.2010, Petitioner as informed by CPIO, NTPC that Interview Board had indicated marks only for those candidates who were found suitable and selected and marks were not allocated to those who were not recommended.



Finally, by letter dated 03.09.2010, CPIO informed the Petitioner that he had obtained 47 marks in the written test, but no marks were indicated by the Interview Board as he was not a selected candidate. Being aggrieved by his non-selection, Petitioner filed the present writ petition.

4. Learned counsel for the Petitioner argues that the entire selection process is vitiated as the Interview Board has not awarded marks to all candidates and therefore, it cannot be discerned today as to how many marks were allocated to the Petitioner so as to make a comparison with the selected candidates. It is urged that Petitioner had answered all questions correctly before the Interview Board and was confident that he would get over 60% marks but to the contrary, the Board has not even awarded marks to him, which is a procedure unknown to any selection process. The procedure followed in interviews is that the Interview Boards allocate marks to the candidates based on their performance and then a list is prepared in the descending order of the marks and depending on the cut-off as per the vacancies, candidates are selected for appointments. In the absence of marks being allocated to unsuccessful candidates, neither the Petitioner nor this Court will ever be able to assess the arbitrariness in the interview process.

5. Learned counsel for NTPC, on the other hand, submits that the premise on which this writ petition has been filed that 01 vacancy in the post of Law Officer-E1 is lying vacant on which Petitioner can be appointed, is flawed for the reason that the unfilled vacancy is in the OBC Category, whereas the petitioner was a candidate belonging to Unreserved Category and hence, *de hors* the merits of the case, there is no vacancy against which Petitioner can seek appointment and this is particularly important as the selection relates to the year 2008 and no relief can be granted in 2024.



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6. On merits, it is argued by Mr. Taneja that NTPC advertised for recruitment of Executives in various fields including the post of Law Officer-E1 in June, 2008. Petitioner was called upon to appear in the written test comprising of multiple choice objective questions. Candidates were informed that only shortlisted candidates from the screening test will be called for the interview, which was scheduled for 20.11.2008 and 21.11.2008. Interviews were to be conducted by NTPC Central Selection Board ('Board') comprising of experts from within and outside NTPC and Chairman of the Board was a person of eminence. Based on merit and performance of candidates during the interview, the Board collectively and unanimously recommended a Panel of selected candidates. Petitioner cleared the written test but was not shortlisted for interview held on 21.11.2008 as he was low down in the merit list of candidates who had cleared the process. Since there was a further requirement of Law Officers, NTPC decided to call for interview those candidates who had cleared the tests earlier, but were not shortlisted and Petitioner being one such candidate was called by letter dated 25.11.2008 for interview on 05.12.2008.

7. It is further submitted that petitioner was interviewed on 05.12.2008, but was not found suitable by the Board. Keeping in view the applicable Recruitment Policy ('Policy'), the Board assigned final percentage of marks to each of the candidate found suitable basis their qualifications, experience, result of the tests, professional competence and overall personality factors, assessed during the interview and recommended a panel of names. On the basis of the panel, NTPC issued offer of appointments to the selected candidates.



8. Mr. Taneja argues that the selection procedure adopted by NTPC for appointment to the post of Law Officer-E1 is in consonance with the Policy. Clause 15.7 of the Policy provides that the Board will assign a final percentage of marks to each candidate considered suitable on the basis of standards of technical skill etc. as provided therein and recommend a panel. Clause 16.1 of the Policy provides that panel of candidates in the order of merit as recommended by the Board, on approval by the Appointing Authority will form the basis for issue of offers of appointment. Drawing the attention of the Court to the original record pertaining to selection, Mr. Taneja submits that as a uniform practice, no marks were allocated for those who were found unsuitable by the Board and in case of the Petitioner, Board found him unsuitable on the ground that his knowledge about the relevant 'Acts' was superficial and in the limited scope of judicial review, this Court cannot substitute its views for the decision taken by the Board, more so in the absence of any allegation of bias against the members of the Board and/or its composition.

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

10. It is not disputed by the Petitioner that selection to the post of Law Officer-E1 is regulated by the Recruitment policy which is placed on record by NTPC as Annexure A to additional affidavit dated 08.07.2024. Clause 15.7 of the policy provides that the Selection Board will assign a final percentage of marks to each candidate based on several factors depending on the post in question i.e. technical skill, professional competence, overall personality etc. judged by the Board during the process of interview. It is the Board which recommends a panel of names of suitable candidates in order



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of merit and Clause 6.1 provides that on approval by the Appointing Authority, offers of appointment will be issued to the selected candidates.

11. The first point that needs a mention is that the selection in question to the post of Law Officer-E1 relates to the year 2008 *albeit* no doubt this writ petition was filed in 2010 and has been pending. It is significant to note that even when the writ petition was filed, the vacancies had been filled and Petitioner was laying a claim on one unfilled vacancy. NTPC has categorically taken an objection in the affidavit that this writ petition cannot be allowed as there was no unfilled vacancy in the unreserved category to which the Petitioner belongs and the only one vacancy that remained unfilled in 2008 was in the OBC category, on which Petitioner cannot stake a claim. Therefore, in view of the fact that no vacancy was lying vacant in the unreserved category even when the petition was filed, this writ petition cannot be allowed and it be noted that Petitioner has neither challenged the appointment of any candidate in the unreserved category nor any selected candidate has been impleaded as a party to the petition.

12. Even on merits, Petitioner has no justified claim. As per the stand of NTPC, Petitioner had successfully cleared the written test but was down in the merit list as per his marks in the screening test. He was, however, called for interview when the number of Law Officers required by NTPC increased. The original record pertaining to selection, which is produced during the course of hearing, indicates that Petitioner was not recommended as a suitable candidate by the Board and the observation of the Board was '*his knowledge about the relevant Acts are superficial*'. It is a settled principle of law that in the limited scope and ambit of judicial review under Article 226 of Constitution of India, it is not for the Courts to substitute their



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decision or opinion for the decision/opinion of an Interview Board/Selection Committee in the absence of any allegation of *mala fide* against any member of the Board or a challenge to the composition or in a case where is apparent arbitrariness. In the present case, there is no challenge to the selection process on any of the recognized parameters which warrants interference in the finding of the Board that Petitioner was not suitable for the post in question. The argument of the Petitioner that the Board ought to have accorded marks to every candidate, is misconceived in the present case for the reason that the Board has uniformly adopted this procedure and wherever candidates were found unsuitable, marks have not been awarded but reasons have been indicated for unsuitability, a fact which clearly emerges from the selection record, which this Court has perused.

13. For all the aforesaid reasons, this writ petition is dismissed being devoid of merits. Pending application also stands disposed of.

JYOTI SINGH, J

SEPTEMBER 25, 2024/kks