



2024:DHC:9212



\$~24

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

%

Date of Decision: 12th November, 2024

+ W.P.(C) 11859/2018

RAJESH KUMAR JHA

.....Petitioner

Through: Mr. Anunaya Mehta and Mr. Vidhan
Malik, Advocates.

versus

CENTRAL RAILSIDE WAREHOUSE COMPANY
LIMITED

.....Respondent

Through: Mr. K.K. Tyagi, Mr. Iftexhar Ahmad
and Ms. Garima Tyagi, Advocates.**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 laying a challenge to order dated 10.10.2017 passed by the Disciplinary Authority ('DA') whereby Petitioner has been removed from service of the Respondent/Central Railside Warehouse Company Limited and order dated 09.07.2018 by which the appeal was dismissed by Appellate Authority i.e. Board of Directors of the Respondent. Direction is sought to the Respondent to restore the employment of the Petitioner and reinstate him with all consequential benefits.

2. Case of the Petitioner as set out in the writ petition is that Respondent which is a Government of India Undertaking published an advertisement on



26.10.2013 inviting applications for appointment to various posts including 02 posts of Manager (General), for which the eligibility clause was as follows:-

“Officers working in Central / State Government / PSU /autonomous bodies with minimum 10 years of post qualification experience in relevant field in the Executive grade (E-0) of IDA pay scale of Rs. 12,600 - 32,500 and above out of which 3years should be in the IDA pay scale of Rs. 20,600 - 46,500 or equivalent with CTC of Rs. 8 Lakhs per annum working in a reputed private organization”

3. Considering himself eligible by his own reading and understanding of the advertisement, Petitioner applied for the post of Manager (General) as he possessed the experience of more than 10 years in a reputed private organisation including experience of more than 03 years with CTC of Rs.8 Lakhs per annum. The work experience disclosed by the Petitioner in the chronological order was as follows:-

“(i) M/s India Glycols at CTC starting from Rs. 8.51 Lakhs at the time of joining on 09/07/2007 to Rs. 13.89 lakhs + perks at the time of leaving on 07/08/2013;

(ii) M/s Honda Sael Cars India Ltd. with CTC of Rs. 8.40 lakhs for the period 04/09/2006 to 31/05/2007;

(iii) M/s Reliance Logistics Ltd. with starting CTC of Rs. 4.10 lakhs at the time of joining on 03/09/2004 and about Rs. 5 lakhs at the time of leaving on 01/05/2006;

(iv) M/s Hindalco Industries Ltd. with starting CTC of Rs. 0.75 + perks at the time of joining on 05/02/1997 to Rs. 1.75 Lakhs + perks at the time of leaving.”

4. Petitioner was shortlisted and a provisional call letter for interview was issued to him. After clearing the process of document verification, Petitioner appeared for the interview and was selected for appointment. Offer of appointment dated 13.03.2014 was issued and he was appointed w.e.f. 20.03.2014 on probation. Original documents pertaining to



2024:DHC:9212



Petitioner's age, qualification and work experience were again scrutinized at the time of joining as per Clause V(e) of the Offer of Appointment and no objection was raised to his experience. Petitioner successfully cleared his probation and was confirmed on the post vide Office Order dated 04.06.2015 and was granted an increment.

5. It is averred that Petitioner was legitimately expecting that he would be promoted as Deputy General Manager (E-5 Level) *albeit* later this post was advertised for appointment on direct recruitment basis. Petitioner also applied against the advertisement but was not selected. Representations were made against the process of selection and this led to the transfer of the Petitioner from Corporate Office to Field Location out of vindictiveness. Show cause notice was issued to the Petitioner on 16.11.2015 alleging that Petitioner did not possess the relevant work experience for appointment as Manager (General) and proposing termination of his services. Petitioner submitted a detailed reply dated 30.11.2015 bringing forth that issuance of show cause was an attempt to victimise the Petitioner as he was rightly appointed possessing the requisite experience.

6. Show cause notice was not withdrawn and Petitioner approached this Court in W.P. (C) No. 11391/2015 *inter alia* praying that recruitment to the post of DGM (LOM), carried out pursuant to the advertisement dated 07.04.2015, be declared null and void and Petitioner be considered for promotion and the show cause notice be quashed. During the pendency of the writ petition, Respondent issued an order dated 08.01.2016 placing the Petitioner under suspension in contemplation of disciplinary proceedings. This was also challenged by the Petitioner in W.P. (C) No. 771/2016 and while this petition was pending, charge sheet was issued on 16.02.2016 with



03 Articles of Charge as follows:-

“i. The Petitioner did not possess the requisite work experience for the post of Manager (G) and despite that, he secured appointment to the said post to which he was not eligible, making him liable for major penalty under Rule 33 of the CRWC (Conduct, Discipline and Appeal) Rules;

ii. The Petitioner had submitted false information and a false undertaking to cover the shortfall of experience at the time of recruitment and therefore failed to maintain absolute integrity and acted in a manner unbecoming of a public servant, in contravention of Rules 4 and 5 of the CRWC (Conduct, Discipline and Appeal) Rules; and

iii. The Petitioner did not disclose his employment with BPPI (Bureau of Pharma PSUs of India) on contractual basis from 09/09/2013 to 10/02/2014 deliberately in his application form and therefore failed to maintain absolute integrity and acted in a manner unbecoming of a public servant, in contravention of Rules 4 and of the CRWC (Conduct, Discipline and Appeal) Rules.”

7. As charge sheet was issued, W.P. (C) No. 771/2016 was dismissed by the Court. Suspension of the Petitioner was extended from time to time during the pendency of the inquiry proceedings. In the inquiry, 01 prosecution witness and 01 defence witness were examined and cross-examined *albeit* Petitioner alleges that he was not given enough opportunity to cross-examine the prosecution witness. 13 documents requested by the Petitioner were allegedly not supplied despite approval of the Inquiry Officer (‘IO’). IO rendered the inquiry report concluding that Petitioner did not fulfil the eligibility criteria as per the advertisement and his appointment was illegal and also that Petitioner furnished false declaration and concealed the facts with intention to secure employment with the Respondent. IO also concluded that Petitioner had concealed the facts related to his employment with BPPI with full knowledge for the reason best known to him. Accordingly, Articles of Charge I and II were held to be proved while Article of Charge III was partially proved.



2024:DHC:9212



8. Petitioner submitted a detailed representation to the DA against the findings of the IO, however, vide order dated 10.10.2017, DA concurred with the findings of the IO and passed an order of removal of the Petitioner from the service of the Respondent with immediate effect and further directing that period during which Petitioner was suspended would be treated as period not spent on duty. The appeal was dismissed by the Appellate Authority on 18.11.2017 whereafter Petitioner filed the present writ petition.

9. Mr. Mehta, learned counsel for the Petitioner contends that the orders of the DA and the Appellate Authority are manifestly illegal and patently erroneous with complete non-application of mind. Respondent has proceeded on a patently erroneous and incorrect reading of the experience column in the advertisement to mean that work experience in a Government/Government Undertaking was compulsory for being considered for appointment. This interpretation omits to consider the subsequent part of the advertisement wherein it was stipulated '*or equivalent with CTC of Rs. 8 Lakhs per annum working in a reputed private organisation*'. A holistic reading of the advertisement shows that the equivalence relates not only to experience in the IDA pay scale of Rs.20,600-46,500/- for 03 years but to the entire experience of the candidate. Advertisement reads and must be so construed to mean allowing candidates with experience of minimum 10 years working in the Government/Government Undertaking in the IDA scale of Rs.12,600-32,500/- or above, out of which 03 years were in the IDA pay scale of Rs.20,600-46,500/- or candidates with experience of minimum 10 years in a reputed private organization out of which 03 years were with CTC of Rs. 8 Lakhs per annum. In fact, this interpretation was



2024:DHC:9212



endorsed by the prosecution witness in cross-examination in response to Question No.09.

10. It is further argued that Respondent has failed to appreciate that in case compulsory employment with Government/Government Undertaking was mandatory, advertisement should have so provided, specifically and clearly. To the contrary, in the advertisement no post was earmarked to be filled only by applicants having Government/Government Undertaking experience. It is settled law that an advertisement must read clearly and in case of ambiguity the benefit must go to a candidate and more so, in the present case where Petitioner was appointed and was working without any complaint.

11. It is urged that the CRWC Recruitment Rules, 2012 ('RRs') of the Respondent do not require that a candidate must have prior experience in a Government/Government Undertaking for being directly appointed as Manager (General) and in fact permit direct recruitment from open market which means that all persons with suitable experience even in the private sector would be eligible. Rule 6.1(b) when seen in contradistinction with Rule 6.1(d), which allows transfer of persons from Government/Government Undertaking either on deputation or on foreign service terms or on immediate absorption basis, elucidates that direct recruitment from open market need not be restricted to persons with experience in public sector. Part of the advertisement requiring experience in IDA pay scale of Rs.12,600-32,500/- or above was not in consonance with approval granted by the Board of Directors and this was confirmed by defence witness who was member of the interview panel in the selection committee. This means that portion of the advertisement which was not approved by the Board must



2024:DHC:9212



be deemed to be null and void and in the absence of this stipulation, the eligibility criteria would read as “*Officers working in Central/State Government/PSU/autonomous bodies with minimum 10 years of post qualification experience in relevant field and above out of which 3 years should be in the IDA pay scale of Rs. 20,600 - 46,500 or equivalent with CTC of Rs. 8 Lakhs per annum working in a reputed private organization*”, thus leaving no scope of doubt that candidates with experience of minimum 10 years in a reputed private organisation, out of which 03 years were with CTC of Rs. 8 Lakhs per annum, would be eligible.

12. Mr. Mehta strenuously urges that if the interpretation given by the Respondent requiring a candidate to have worked in a Government/ Government Undertaking for at least 07 years in the IDA pay scale of Rs.12,600-32,500/- by cut-off date of 30.11.2013 is accepted, it would be impossible to be fulfilled by any candidate since IDA pay scale of Rs.12,600-32,500/- was introduced by Department of Public Enterprises (‘DPE’) on 26.11.2008 and given effect from 01.01.2007 by which date candidate could have obtained a maximum of 06 years and 11 months of experience in the said scale and not the required experience of 07 years. The interpretation put forth and understood by the Petitioner was in fact Respondent’s interpretation also at the time of appointment of Petitioner and which is why he was cleared in the process of document verification both before the interview and post his joining as his experience certificates were scrutinized by the Respondent. Learned counsel highlighted that the Board of Directors in its meeting held on 28.11.2014 vide Agenda No.39.9 removed any possible ambiguity in the experience clause by categorically providing that either the experience could be in a Government/Government



2024:DHC:9212



Undertaking or it could be minimum 10 years post qualification experience in relevant field in private organization of repute out of which preceding minimum 2 years should be with CTC of Rs. 8 lakhs. Subsequently, the Board of Directors in the meeting held on 18.03.2015 vide agenda No. 40.12 further clarified that experience of 10 years could be taken either singly or in combination, in the Public or Private sector, which leaves no doubt that Petitioner's experience of more than 10 years in the private sector was compliant with the terms of the advertisement. In fact, the second phase of recruitment by the Respondent to the post of Manager (General) at the same level in the same department was conducted on the basis of this experience clause under the same RRs and officers appointed are continuing in employment with no action against them. Therefore, Article-I of the charge memo was not established and the finding of the IO on this score is erroneous.

13. It is argued that since the finding on Article-I was erroneous, there was no question of having found the Petitioner guilty of Article-II wherein it was alleged that Petitioner submitted false information and undertaking to cover the shortfall in the experience criteria at the time of recruitment and thus failed to maintain absolute integrity. *Albeit* IO has concluded that Petitioner did not take any benefit of the non-disclosure of employment with BPPI, the very conclusion that Petitioner concealed this employment is incorrect. At the time of joining itself, Petitioner disclosed all details regarding his contractual engagement with BPPI as admitted by defence witness in his re-examination on 06.02.2017. Records pertaining to BPPI are available in the files of the Respondent and cannot be belied. In any case, Petitioner was not an employee with BPPI at any time and was purely



engaged on contractual basis on consolidated monthly remuneration for a tenure of 01 year. Therefore, the finding of the IO with respect to Articles-II and III of the charge memo, against the Petitioner was incorrect.

14. *Per contra*, learned counsel for the Respondent defends the penalty and the appellate orders. It is argued that RRs explicitly provide the requisite qualifications, experience, age limit, job profile of different posts and it is the prerogative of the employer to lay down the conditions of appointment. Advertisement for the first phase of recruitment to various posts including the post of Manager (General) was issued by AIMA on 26.10.2013 clearly stipulated the eligibility criteria pertaining to experience required. No doubt, Petitioner was selected and appointed w.e.f. 20.03.2014, however, later several complaints were received with regard to serious irregularities in the recruitment process for various posts and the matter was examined at the instance of Chief Vigilance Officer, whereupon it was found that 04 candidates including the Petitioner were not fulfilling the required experience criteria. 03 of them were on probation and were discharged by issuing show cause notices, however, since Petitioner had completed the probation period, departmental inquiry was initiated against him by issuing charge sheet containing 03 Articles of Charges. It is submitted that the IO found the charges to be proved and concurring with the findings, the DA imposed the penalty of removal from service on the Petitioner. The Nodal Agency responsible for recruitment was also blacklisted and major penalty proceedings were initiated against the Nodal Officer.

15. Mr. Tyagi argues that there is no ambiguity in the advertisement and it was clearly stipulated in the column relating to eligibility criteria with respect to experience that an officer working in Central/State Government/



2024:DHC:9212



PSU/Autonomous Bodies for 10 years or more will be eligible and admittedly, Petitioner's total work experience was only in private sectors and he was thus ineligible. From a plain reading of the advertisement, it is clear that the first part of the eligibility criteria required that the candidate should have worked in Central/State Government/ PSU/Autonomous Bodies for minimum of 10 years out of which 03 years should be in the higher pay scale of Rs.20,600-46,500/-. There was no exception to this criteria *albeit* alternative was provided to the later part i.e. for 03 years, which was equivalent CTC of Rs. 8 Lakhs per annum working in the private sector and Petitioner is only misreading and misconstruing the advertisement.

16. Mr. Tyagi seriously disputes the allegations of *mala fide* or vindictiveness and urges that Petitioner was not eligible for the post of DGM (LOM) as he was on probation when the vacancies were advertised and moreover, he had no right to be promoted directly from E-3 to E-5 scale. It is wrong to contend that Petitioner was denied opportunity of cross-examination as he has asked as many as 132 questions on two full dates during the process of cross-examination.

17. It is brought forth that IO has carefully assessed and analysed the evidence led before him, both oral and documentary and after detailed deliberation, come to a finding that Petitioner did not possess the requisite experience for the post of Manager (General) as per the advertisement and furnished false declaration and concealed the fact that he was not fulfilling the qualifications with an intent to secure employment with the Respondent. IO also found from the evidence that Petitioner had concealed the factum of his employment with BPPI with full knowledge and therefore, no interference is warranted in the penalty order. Last but not the least, it is



argued that this Court while exercising jurisdiction under Article 226 of the Constitution of India in judicial review cannot interfere in the inquiry proceedings, save and except, on limited parameters where there are violations of principles of natural justice, rules of inquiry or it is the case of no evidence. This Court cannot substitute its views for the findings of the IO or the DA once the prosecution has led evidence and established the charge in the inquiry proceedings. Mr. Tyagi also highlights that Petitioner was not singled out and awarded the penalty of removal from service as there were several other officers at senior level against whom action was taken and illustratively examples of Mrs. Ritu Bhatia, Mrs. Preeti Gupta and Mr. Abhishek Faujdar are cited.

18. Heard learned counsels for the parties and examined their contentions.

19. The genesis of this writ petition lies in an advertisement issued by the Respondent on 26.10.2013 inviting applications for appointment to various posts including 02 posts of Manager (General) which is the post in question in this writ petition. Experience clause in the advertisement stipulated that *Officers working in Central / State Government / PSU /autonomous bodies with minimum 10 years of post qualification experience in relevant field in the Executive grade (E-0) of IDA pay scale of Rs. 12,600 - 32,500 and above out of which 3years should be in the IDA pay scale of Rs. 20,600 - 46,500 or equivalent with CTC of Rs. 8 Lakhs per annum working in a reputed private organization.*

20. Interpretation of the clause in the advertisement pertaining to experience criteria is the prime controversy involved in this writ petition. While Respondent claims that it was mandatory for the candidates to be eligible to be working in Central/State Government/PSU/Autonomous



2024:DHC:9212



Bodies with minimum 10 years of post qualification experience in the relevant field, Petitioner argues otherwise. Having heard the respective counsels, I am of the considered view that the stand of the Petitioner cannot be accepted and therefore no infirmity can be found with the finding of the IO on this aspect. As rightly found by the IO, there are 03 sectors of employment in our country i.e. Government, Public and Private and all 03 sectors have their own procedure for recruitment as per requirements and job profiles. The eligibility clause starts with the requirement that the officers must be working in either of the Central/State Government/PSU/Autonomous Bodies and having 10 years post qualification experience and this part of the advertisement, in my view, is open to no other interpretation, save and except, that work experience in Government/Government Undertakings was an essential and a mandatory criteria of eligibility and thus, Petitioner is not correct in urging that a candidate possessing experience purely in a private sector was eligible. To this Court, there is no ambiguity in the advertisement. The second part of the eligibility condition was a further requirement that out of the post qualification 10 years experience in Central/State Government/ PSU/Autonomous Bodies, 03 years should be in IDA pay scale of Rs.20,600-46,500/- and in the event the candidate did not have this 03 years experience, the alternative of having experience in private organization at minimum CTC of Rs. 8 Lakhs per annum could be accepted. Therefore, as rightly argued by the counsel for the Respondent, the alternative was to the second part of the eligibility criteria with respect to the pay scale being under the IDA pattern/CTC but not to the first part of the advertisement, which is where the Petitioner fails for lack of experience as his work experience admittedly was in the private sector.



21. There can be no quarrel on the legal proposition that power of judicial review of Constitutional Courts is the valuation of decision making process and not the merits of the decision. Court would not interfere with findings of fact arrived at in the departmental inquiry proceedings except in case of *mala fides* or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man can act reasonably and with objectivity could have arrived at those findings and so long as there is some evidence to support the conclusion arrived at in the inquiry proceedings, the same has to be sustained. [*Ref. Deputy General Manager (Appellate Authority) and Others v. Ajai Kumar Srivastava, (2021) 2 SCC 612; Union of India and Others v. Subrata Nath, 2022 SCC OnLine SC 1617; Indian Oil Corporation and Others v. Ajit Kumar Singh and Another, 2023 SCC OnLine SC 647; and Chatrapal v. State of Uttar Pradesh and Another, 2024 SCC OnLine SC 146*].

22. It is a settled law that it is the prerogative of the employer to lay down the eligibility conditions of appointment to the post in question, depending on the job profile and it is equally well-settled that a candidate must fulfil the eligibility criteria for selection to the post, as advertised. It is not the domain of this Court to either lay down the eligibility conditions or to substitute those prescribed by an employer. Looking at the eligibility criteria stipulated in the advertisement and the experience certificates furnished by the Petitioner as also the oral evidence led, IO has come to a categorical finding that the Petitioner did not fulfil the criteria of meeting the primary requirement of having worked in Central/State Government/PSU/ Autonomous Bodies and there is no legal infirmity in this finding pertaining to Article-I of the charge. Relevant part of the inquiry report is as under:-



“ASSESSMENT AND ANALYSIS OF EVIDENCE:

Sh. S.P.S Rathore, PW has stated in his deposition that PD1 (Including PD1 A) is copy of advertisement published in Employment News on 26.10.2013 as well as uploaded on the website namely <https://jobapply.in/cpse>. In this advertisement there were some vacancies for recruitment in a Central Public Sector Enterprise (CPSE). Among these vacancies, post of Manager (G) was also advertised. PW further stated that as per this advertisement (PD1 & PD1 A) experience required for the post of Manager (G) has been given as under:-

"Officers Working in Central/State Govt/PSU/Autonomous Bodies with minimum 10 years of post qualification experience in relevant field in the Executive grade (E0) of IDA pay scale of Rs. 12600-32500 and above, out of which 3 years should be in the IDA pay scale of Rs. 20600-46500 or equivalent with CTC of Rs 8 Lacs per annum working in a reputed private organization"

PW confirmed that PD2 is the Application Form for the post of Manager-(G) submitted by Sh. Rajesh Kumar Jha (CO) in response to the advertisement under reference. CO has narrated his work experience in PD2 as per detail given under:-

- a) Hindalco Industries Ltd. From Feb 1997 to July 2004 as Officer in the CTC of Rs. 2.50 lacs+perks.*
- b) Reliance Logistics Ltd. From Aug 2004 to May 2006 as IBU Coordinator in the CTC of Rs. 5.00 Lacs.*
- c) Honda Siel Cars India from Sept 2006 to May 2007 as Deputy Manager (Commercial) in CTC of Rs. 8.40 Lacs.*
- d) India Glycols Ltd. From July 2007 to Aug 2013 as Asst. General Manager- Logistics in the CTC of Rs. 13.90 Lacs.*

PW further confirmed that as per the experience mentioned by CO in PD2 he has not rendered services in Central/ State Govt./PSUs and stated that as per PD2 some declarations have been made by CO at Sr No.1 to 6 out of which declaration made at Sl. No.3 & 4 are given as under:

3. All statements made and information given by me in this application are true, complete and correct to the best of my knowledge and belief. In the event of any information or part of it being found false or incorrect before or after the exam or interview or appointment, action can be taken against me by the University and my candidature/ appointment shall automatically stand cancelled/repatriated/ terminated.

4. I further declare that I fulfill all the conditions of eligibility regarding age, educational, professional/technical qualifications' etc



prescribed for the post applied. The essential qualifications prescribed are possessed by me, the proof of which has been enclosed.

PW identified PD3 and stated that this document is an undertaking given by CO on 11.02.2014 wherein clause no. 2 provides that –

"All the information provided in the application is true to the best of my knowledge and belief. If any material suppression of facts comes to notice at any point of my application's, processing or career, I understand that I shall be liable for disciplinary action or to be terminated."

PW also furnished his-comments on PD4 and stated that it is an attestation form submitted by CO on 15.03.2014 which provides that-

"If the fact that false information has been furnished or that there has been suppression of any factual information in the Attestation Form comes to notice at any time during the service of a person, his service would be liable to be terminated."

PO produced additional prosecution document (PD 5) before PW and sought his comments on its contents. PW stated that PD5 is an offer of appointment dated 05.09.2013 to the post of Manager (Logistic & Supply Chain) as Contractual basis in Bureau of Pharma Public Sector Undertaking of India (BPPI) which has been attested by CO on 15.03.2014.

PW further stated that as per clause (iii) of this document, CO was paid consolidated remuneration of Rs. 40,000/- (Forty Thousand only) per month in addition to Rs.4000/- towards conveyance charges and reimbursement of Rs. 1000/- (One Thousand rupees) per month towards mobile phone used for official purpose. PW also confirmed that as per this document, CO was offered job in BPPI on contractual basis from 09.09.2013 to 08.09.2014. PW furnished his comments on PD6 and stated that these documents reflect the experience and remuneration earned by CO in M/S Hindalco Industries Ltd, Reliance Logistics Ltd., Honda Sael Cars India and India Glycols Ltd. PW also confirmed that the experience shown in PD5 for the post of Manager (Logistic & Supply Chain) has not mentioned in PD2. Thus there is variation in PD2 and PD5. The prosecution brief submitted by PO vide letter no. CRWC-I/RKJ-Inquiry/PO/16-17/10700 dated 09.03.2017 have been taken on record and available in inquiry report in Folder No. IV.

CROSS EXAMINATION OF PW BY CO

CO cross examined PW and introduced his defence documents through PW and DW. The cross examination of PW was conducted by CO for two full days and continued in late hours. CO raised as many as 132 questions before PW. IO had to intervene since adequate opportunity was given to



CO who had been, raising and dragging irrelevant and repetitive questions.

The CO has cross examined PW relying on prosecution documents produced during the proceedings and his defence documents. The cross examination of PW is contained in Folder No III of the inquiry report. CO produced DD1 before PW during cross examination and asked effective date mentioned therein and it was 01.01.2007 wherein revised scales of pay for grade E0 and E2 have been mentioned. PW has clarified in his cross examination that qualification and experience has been clearly mentioned in PD1 (Employment News dated 26.10.2013). PW has also clarified in cross examination that CDA pay scale prevail in Govt. sector and CTC system prevails in Pvt. Organization. PW confirmed in cross examination that the required work experience has been spelt out in PD2 and work experience of CO has also been mentioned in PD6. It may not be possible to reflect all the questions raised by CO before PW and clarifications sought by him from PW which are placed on record for reference. CO produced defence document DD7 before DW and sought clarification on its point no. 3.7 which contain the definition of employee. CO has relied upon DD8 and DD9 in regards to his contractual employment with BPPI. CO produced DD10 before his defence witness (DW) and relied upon clause 3 and 3.1 which deal with suitability of a person for appointment to Govt. service and criteria to identify undesirable candidates for employment under Govt. During the inquiry proceedings CO has introduced DD11 to DD16 in support of his employment in CRWC.

FRAMING OF ISSUES:-

ARTICLE OF CHARGE-I

1. *Whether Sh. Rajesh Kumar Jha (CO) had' no requisite work experience for the post of Manager (General) and did not fulfill the eligibility criteria as per the advertisement.*

ARTICLE OF CHARGE-II

2. *Whether Sh. Rajesh Kumar Jha (CO) had submitted the false information & undertaking to cover up the shortfall in experience criteria at the time, of his recruitment?*

ARTICLE OF CHARGE-III

3. *Whether Sh. Rajesh Kumar Jha (CO) concealed the material facts and did not disclose about his contractual employment with Bureau of Pharma Public Sector Undertaking of India (BPPI) from 09.09.2013 to 10.02.2014.*

**FINDINGS:-****ARTICLE OF CHARGE-I**

During the course of inquiry proceedings Sh. S.P.S Rathore (PW) has stated that PD1 is copy of advertisement published in Employment News on 26.10.2013 which has also been uploaded on the website namely <https://jobapply.in/cpse>. PW confirmed that some vacancies were notified for recruitment in CPSE and among these vacancies, post of Manager (General) was also advertised. PW has further stated after going through the contents of the advertisement under reference that the experience required for the post of Manager (General) was as under:

"Officers Working in Central/State Govt/PSU/Autonomous Bodies with minimum 10 years of post qualification experience in relevant field in the Executive grade (E0) of IDA pay scale of Rs. 12600-32500 and above, out of which 3 years should be in the IDA pay scale of Rs. 20600-46500 or equivalent with CTC of Rs 8 Lacs per annum working in a reputed private organization."

PW identified that PD2 Application Form for the post of Manager-(General) wherein experience intimated by CO is as under:-

- a) Hindalco Industries Ltd. From Feb 1997 to July 2004 as Officer in the CTC of Rs. 2.50 lacs + perks.*
- b) Reliance Logistics Ltd. From Aug 2004 to May 2006 as IBU Coordinator in the CTC of Rs. 5.00 Lacs.*
- c) Honda Sael Cars India from Sept 2006 to May 2007 as Deputy Manager (Commercial) in CTC of Rs. 8.40 Lacs.*
- d) India Glycols Ltd. From July 2007 to Aug 2013 as Asst. General Manager- Logistics in the CTC of Rs. 13.90 Lacs.*

PW further stated that CO has made the following declarations at Sr. No. 3 & 4 of his application (PD2)

3. All statements made and information given by me in this application are true, complete and correct to the best of my knowledge and belief. In the event of any information or part of it being found false or incorrect before or after the exam or interview or appointment, action can be taken against me by the University and my candidature/appointment shall automatically stand cancelled/repatriated/terminated.

4. I further declare that I fulfill all the conditions of eligibility regarding age, educational, professional/technical qualifications etc prescribed for the post applied. The essential qualifications prescribed are possessed by me, the proof of which has been enclosed.



From the above, it is evident to me that the entire experience of CO was in Private sectors and he had no experience in Central/ State Govt./ PSU/ Autonomous Bodies. CO did not produce any such documents which would prove that he had requisite work experience Central/ State Govt./ PSU/ Autonomous Bodies. I am of the view that as per the advertisement published in the employment News /Web portal the "experience" mentioned for the post of Manager(G) was clear and CO had applied against this advertisement only.

Broadly there are three sectors of employment in our country namely (i) Govt. Sector (ii) Public Sector (iii) Private Sector. All the three sectors, have their own procedure for recruitment as per their requirement. Now coming to contents of the language of the experience mentioned above. The eligibility starts from "The Officers Working in Central/ State Govt./ PSU/ Autonomous Bodies with 10 years of service of post qualification experience in relevant field in the Executive grade (E0) of IDA pay scale of Rs. 12600-32500 and above".

This part of advertisement means that only those candidates who have working experience in Central/ State Govt./ PSU/ Autonomous Bodies with minimum 10 years experience in Executive grade (E0) or above pay scale, were eligible to apply. Thus this is the first and foremost requirement of experience for the post of Manager (G).

In the second part of the eligibility condition set out above that there requirement that out of aforesaid 10 years required experience, 3 years experience should be in IDA Pay Scale of 20600-46500. In the event the candidate does not have this 3 years experience then he should have worked in private organization at minimum CTC of 8.0 Lacs per annum.

Now considering his experience with eligibility conditions, the following aspects come to the light:-

i CO in his Application Form (PD2) he has not rendered services in any Central/State/PSU/Autonomous bodies

ii That CO has rendered services in Private Sectors only

iii CO has compared his CTC in a self styled manner with the pay scales as given in the advertisement which are irrational as the structure of pay & allowances are different from Govt./ PSU/ Autonomous Bodies. In fact there is no pay scale as such for various categories In the Private Sectors.

From the facts and circumstances explained above and on consideration of material and oral evidence lead by both sides, it is established that CO did not fulfill the experience for the post of Manager (General) as stipulated in the advertisement published on 26.10.2013 in Employment News (PD1 and PD1A). As he had never worked in Central/ State Govt./



PSU/ Autonomous Bodies for any duration as mandated under the advertisement. His entire work experience was in Private sectors only but merely his requirement was not enough as he did not meet the primary requirement of having worked in Central/ State Govt./ PSU/ Autonomous Bodies.”

23. Mr. Mehta, without prejudice to his argument that Petitioner fulfilled the eligibility criteria, has laboured hard to argue that assuming for the sake of argument Petitioner did not fulfil the criteria, there was no intent to give any false declaration that he fulfilled the experience criteria and at best it was Petitioner's own interpretation and understanding of the terms of the advertisement and therefore finding of the IO in Article-II of the charge that Petitioner concealed the facts and furnished false declaration to secure employment was incorrect. He also strenuously argues that Petitioner had no need to conceal his employment with BPPI and it is factually incorrect that he did not furnish documents in this regard since all the documents pertaining to employment with BPPI are available in the records of the Respondent. Moreover, Petitioner was not a regular employee with BPPI and was employed only on a fixed term contract for one year with a consolidated remuneration.

24. Once this Court has come to a conclusion that the finding in the inquiry report pertaining to Articles-I of the charge memo is correct that Petitioner does not fulfil the essential eligibility criteria for the post of Manager (General), Court need not delve any further into the remaining Articles of Charge. However, it does appear that there was no intent to deliberately conceal any facts or make a false declaration with an intent to secure employment. At best, it was an erroneous interpretation of the terms of the advertisement by the Petitioner that work experience in Government/



2024:DHC:9212



Government Undertaking was not the essential eligibility criteria, an impression which he carries till date.

25. For all the aforesaid reasons, this writ petition is dismissed in the aforesaid terms.

JYOTI SINGH, J

NOVEMBER 12, 2024
YA/shivam