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

% Judgment delivered on: 07.07.2022

+ W.P.(C) 4505/2021

DILIP KUMAR Petitioner

versus

THE GOVT OF NCT OF DELHI & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Dinesh S. Badiar, Advocate with
Petitioner-in-person.

For the Respondent: Mrs. Avnish Ahlawat, SC GNCTD
(Services) with Mr. N.K. Singh, Mrs.
Tania Ahlawat, Mrs. Palak Rohmetra,
Ms. Lavnya Kaushik and Ms. Aliza
Alam, Advocates.

CORAM:

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

1. Petitioner challenges the impugned order dated 24.02.2021 passed in O.A./100/425/2021, whereby the Central Administrative Tribunal, Principal Bench, New Delhi, has dismissed his O.A.

2. The Department of Social Welfare, Government of NCTD

of Delhi, issued an advertisement dated 15.10.2019, inviting applications for the post of Commissioner (Persons with Disabilities), as per the provisions of Section 79 (1) of the Rights of Persons with Disabilities Act, 2016. The last date of submissions of these forms was extended till 20.11.2019. The petitioner as well as the Respondent No.4 and several other persons had applied for the said post.

3. After all the necessary formalities were carried out, respondent No.4 was selected by the Search and Selection Committee and has already been appointed as the Commissioner (Persons with Disabilities).

4. Mr. Dinesh S. Badiar, learned counsel appearing for the petitioner submits that in the present case, the petitioner is more qualified than respondent No.4 apart from being more experienced in this particular line i.e. rehabilitation of Persons with Disabilities and the allied works.

5. Mr. Badiar contends that as per the eligibility criteria required in the advertisement dated 15.10.2019, the incumbent for the purposes of the advertisement ought to have special knowledge or practical experience in respect of the matters relating to rehabilitation of persons with disabilities. He also submits that so far as the educational qualifications are concerned, though the criteria mentioned is a graduate from a recognized university but the desirable qualification would be a person having a recognized degree or diploma in social work or

law or management or human rights or rehabilitation or education for disabled persons.

6. Insofar as the experience is concerned, it is stipulated, he submits, in the advertisement that at least 20 years of experience in Group 'A' level or equivalent post is also a requirement. However, at the same time, sub clause (III) of the experience, as sought, also stipulates that the incumbent should have been working in the capacity of a senior level functionary in a registered State or National or International level voluntary organization working in the field of disability or social development.

7. Based on this, Mr. Badiar submits that the petitioner fulfills all the above requirements as stipulated in the advertisement dated 15.10.2019. He also submits that in contradistinction to his own qualification and experience, respondent No.4 neither has the required educational qualification nor has the requisite experience as stipulated in the advertisement and, therefore, the impugned order, insofar as it dismisses his Original Application, is erroneous and ought to be quashed and set aside. He also seeks appointment as Commissioner (Persons with Disabilities) in place of respondent No.4.

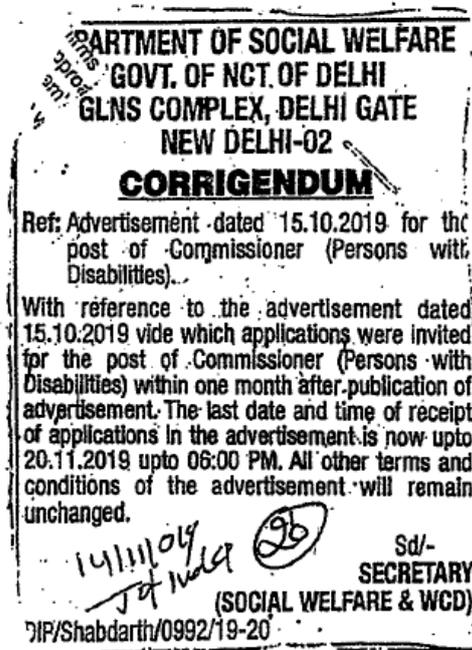
8. On the other hand, Mrs. Avnish Ahlawat, Standing counsel for the respondents submits that the case of the respondents is averred in the counter affidavit filed on behalf of respondent No.1 and also draws our attention to the counter affidavit filed on

behalf of respondent No.4. Mrs. Ahlawat also supported the view rendered by the CAT in the impugned order and submits that the selection of respondent No.4 is neither malafide nor contrary to any provisions of law and therefore submits that no interference is called for in the present case.

9. Having heard the arguments and perusing the record, we are of the view that the case of the petitioner, so far as the experience is concerned, coupled with the fact that he is unable to show the extent of his experience as a senior level functionary in a registered State or national or international level voluntary organization, is not sustainable.

10. In order to appreciate the contentions of both parties, it would be necessary to extract the advertisement dated 15.10.2019, which is as under :

| DEPARTMENT OF SOCIAL WELFARE GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI GLNS COMPLEX, DELHI GATE, NEW DELHI - 110002 | |
|--|--|
| INVITATION FOR APPLICATION FOR THE POST OF COMMISSIONER (PERSONS WITH DISABILITIES) | |
| Applications are invited from eligible and interested persons for appointment as Commissioner (Persons with Disabilities) as per provisions under sub-section (1) of Section 79 of the Rights of Persons with Disabilities Act, 2016 and Rule 41 of the Delhi Persons with Disabilities Rules, 2018. | |
| Eligibility Criteria: - Any person applying for the post of State Commissioner for Persons with Disabilities must fulfill the following eligibility criteria: - | |
| (i) Has special knowledge or practical experience in respect of the matters relating to rehabilitation of Persons with Disabilities; | |
| (ii) Has not attained the age of sixty years on the 1st January of the year in which the last date for receipt of applications, as specified in the advertisement inviting applications for appointment of the State Commissioner, occurs; | |
| (iii) If in service under the Central Government or a State Government, shall seek retirement from such service before being appointed to the post; and | |
| (iv) Possesses the following educational qualifications and experience, namely: - | |
| (a) Educational qualifications: | |
| (i) Essential: Graduate from a recognized university; | |
| (ii) Desirable: recognized degree or diplomas in social work or law or management or human rights or rehabilitation or education of disabled persons. | |
| (b) Experience: at least twenty years experience in a Group 'A' level or equivalent post- | |
| (i) In Central or State Government or | |
| (ii) Public Sector Undertakings or Semi Government or Autonomous Bodies dealing with disability related matters or social sector or | |
| (iii) Works in the capacity of a senior level functionary in a registered State or national or international level voluntary organization working in the field of disability or social development: | |
| Provided that out of the total twenty years experience mentioned in this sub-clause, at least ten years of experience in the recent past had been in the field of empowerment of Persons with Disabilities. | |
| The other terms and conditions and structure of emoluments have been uploaded on the Department's website at www.socialwelfare.delhi.govt.nic.in . Interested persons are requested to send applications in the prescribed application format which is available on the departmental website www.socialwelfare.delhi.govt.nic.in | |
| The documentary proof of educational qualifications and experience must be attached along with the application. | |
| The application must reach the Secretary (SW & WCD) at the above mentioned address given within one month after publication of advertisement. | |
| Applicant must check their e-mails regularly for any intimation / information in this regard. | |
| Note: Incomplete application/received after the above mentioned date will not be accepted and will be rejected summarily. | |
| SECRETARY (SOCIAL WELFARE & WCD) | |
| DIP/Shabdarth/0830/19-20 | |



11. It is clear from the above advertisement that the person applying for the post of Commissioner (Persons with Disabilities) has to have special knowledge or experience in respect of the matters relating to the rehabilitation of persons with disabilities and should not have attained the age of 60 years on the 1st January of the year in which the last date of receipt of application is specified. So far as the education qualifications are concerned, the essential condition is that an incumbent must be a graduate from a recognized university and so far as the experience is concerned, the incumbent must have at least 20 years' experience in Group 'A' level or equivalent post in Central or State Government, Public Sector Undertaking or Semi Government or Autonomous bodies dealing with the disability relating matters or social sector or works in the capacity of a senior level functionary

in a registered State or National or International level, voluntary organization working in the same field.

12. The emphasis on the experience in the Central or State Government and other instrumentalities of at least 20 years' requirement is not far to see. It appears that the responsibilities and duties desired and expected of the Commissioner (Persons with Disabilities) are of such nature that the past experience in handling duties and responsibilities of an officer belonging to group 'A' level would be *sine qua non* for eligibility to such highly responsible and sensitive post. It appears to us that the stipulation/ criteria and the emphasis on experience of a group 'A' level officer is justified and has a reasonable nexus to the objective sought to be achieved, in that, selecting a candidate for the post of Commissioner (Persons with Disabilities).

13. In order to appreciate the controversy in the present case, it becomes necessary to examine the documents on record. A perusal of documents filed at page No.88, which was a chart received in reply under the RTI Act and filed by the petitioner, indicates that the present Commissioner- Respondent No.4 is shown at serial No.9 and reflects his qualification and experience briefly as under :

| S. No. | Name of Applicant | Date of Birth | Educational Qualification | Experience | Receipt Dairy and Date | RCI |
|--------|----------------------|---------------|---------------------------|---------------------------------|------------------------|-----|
| 9. | Sh. Ranjan Mukherjee | 31.01.1961 | MBA, B.Sc. | 1. As Air commodore (1984-2018) | 2905 dated | |

| | | | | | | |
|--|--|--|--|---|----------|--|
| | | | | in Ministry of Defence, GOI As Addl. DG (2014-17) in Prasar Bharati 2. As Advisor in Ministry of Agriculture (2018-19) | 04.11.19 | |
|--|--|--|--|---|----------|--|

14. In the same chart, the petitioner is shown at serial No.26 and his qualification and experience is as under :

| S. No. | Name of Applicant | Date of Birth | Educational Qualification | Experience | Receipt Dairy and Date | RCI |
|--------|---|---------------|---------------------------|--|---|--------|
| 26. | Sh. Dilip Kumar (2 applications received) | 10.12.1969 | L.L.B, B.M.R | 1. Placement trainee in Blessing (April 2000-July 2000) 2. Master Trainer Programme in NIMH (20 Aug 2007-24 Aug 2007) 3. Principal in Mother Home (2000- | 5138 dated 14.11.19 & 5259 dated 20.11.19 | A05163 |

15. Reliance placed by learned counsel for Petitioner on Annexure A-11, i.e. a circular containing a warning issued by the Rehabilitation Council of India [hereinafter referred to as 'RCI'] to contend that if anyone is found serving persons with disabilities without RCI certification, they would be prosecuted before the court of Law under Section 13(3) of the RCI Act, 1992 is misplaced.

16. Insofar as the experience of the petitioner is concerned, he has relied upon a certificate certifying that he is a *bona fide* worker in the field of mentally handicapped persons. It also indicates that he is working as a school principal from 22.11.2002. However, a closer perusal of this document does not clearly indicate the requisite experience as required and stipulated by the Advertisement dated 15.10.2019 i.e. the experience related to the exposure in the field of rehabilitation of persons with disabilities. The other documents which have been filed on record show various training programs which the petitioner has attended in the past. However, these documents also do not show that petitioner has the requisite experience as required by the advertisement.

17. On a query, we have been informed that the petitioner had enrolled with the Bar Council of Delhi in the year 2012 after completing his Law. It is contended that he is not in active practice.

18. During the course of arguments, we were also taken

through Section 79(2) of The Rights of Persons with Disabilities Act, 2016 to contend that the selection of respondent No.4 is contrary to the provisions of the said Act.

19. We are of the view that petitioner has been unable to demonstrate that he possesses the required experience, which is stipulated in the said advertisement.

20. The Search and Selection Committee had invited several applications for the purposes of interview and after having invited those incumbents including the petitioner as well as respondent No.4, the Search and Selection Committee recommended a panel of three names, out of which the Competent Authority finalized the name of respondent No.4 and found him eligible for the purpose of the post of Commissioner (Persons with Disabilities).

21. The argument regarding registration with the Rehabilitation Council of India of the petitioner is irrelevant inasmuch as, this is neither the educational qualifications stipulated in the Advertisement nor relevant for the purpose of selection to the post of Commissioner (Persons with Disabilities). In fact it is only for Rehabilitation Professionals to be registered and governed by as prescribed by Rules.

22. In our view, the view taken by the respondent/ Competent Authority in holding that respondent No.4 meets the requisite qualification as required by the advertisement dated 15.10.2019 and in selecting him does not warrant any interference.

23. Respondent No.4 retired as an Air Commodore in the Indian Air Force after more than 36 years of experience.

Respondent No.4 is also stated to have been decorated with the Vishisht Seva Medal (VSM) for his services by the Indian Air Force. So far as the experience of more than 20 years in Central/ State Governments in Group 'A' services is concerned, respondent No.4 fulfils the said criteria.

24. As per the counter affidavit, filed on behalf of respondent No.4, it is clear that the respondent No.4 post retirement had been working as OSD to very senior functionary, was Additional D.G., Prasar Bharti (Doordarshan and AIR) and also had experience as Principal Commissioner, DDA during the Common Wealth Games period and in that capacity had far-ranging experience with Persons with Disabilities and special projects involved therein.

25. Moreover, this Court would not act as an Appellate Authority and substitute its own opinion, insofar as the selection for the post of Commissioner (Persons with Disabilities) is concerned. The Competent Authority as well as the experts comprising the Search and Selection Committee who are competent to decide the eligibility and suitability of an incumbent for the purposes of the post of Commissioner (Persons with Disabilities) have carried out the exercise and selected respondent No.4. The experience also, which is stipulated, has to be examined and evaluated by the Search and Selection Committee alone, since the parameters of eligibility conditions are best known to the experts.

26. The issue regarding the non-interference by the courts in matters pertaining to the recommendations given by experts comprising the Search and Selection Committees is no more *res integra*.

27. The Supreme Court in the case of ***M.V. Thimmaiah v. UPSC, (2008) 2 SCC 119*** held as under:-

21“Now, comes the question with regard to the selection of the candidates. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an Appellate Authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a court of appeal to examine the selection of the candidates nor is the business of the court to examine each candidate and record its opinion.

22. xxxxx

29. xxxxxxxxxxxxxxxxx

*30. We fail to understand how the Tribunal can sit as an Appellate Authority to call for the personal records and constitute Selection Committee to undertake this exercise. This power is not given to the Tribunal and it should be clearly understood that the assessment of the Selection Committee is not subject to appeal either before the Tribunal or by the courts. One has to give credit to the Selection Committee for making their assessment and it is not subject to appeal. Taking the overall view of ACRs of the candidates, one may be held to be very good and another may be held to be good. If this type of interference is permitted then it would virtually amount that the Tribunals and the High Courts have started sitting as Selection Committee or act as an Appellate Authority over the selection. It is not their domain, it should be clearly understood, as has been clearly held by this Court in a number of decisions. Our attention was invited to a decision of this Court in *R.S. Dass [1986 Supp SCC 617 :**

(1987) 2 ATC 628] wherein at para 28 it was held as follows:
(SCC pp. 638-39)

31... xxxxxxxxxxxxxxxx

32. Our attention was invited to a decision of this Court in *DalpatAbasahebSolunke v. Dr. B.S. Mahajan* [(1990) 1 SCC 305 : 1990 SCC (L&S) 80 : (1991) 16 ATC 528] wherein it was observed as follows: (SCC pp. 309-10, para 12)

12. ... it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinise the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. ... in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so-called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction.”

28. Learned Single Judge of this Court in the matter of ***Dr. Prasannanshu v. Selection Committee for Vice Chancellor, NLU Delhi and another*** (W.P.(C) 5497/2020 decided on 25.09.2020 held as under :-

“29. From a reading of the law as enunciated by the Supreme Court, which is a binding dictum, the inexorable conclusion that can be drawn is that it is not within the domain of the Courts, sitting in judicial review, to enter into the merits of a selection process, a task which is the prerogative of and in the expert domain of a Selection Committee, subject of course to a caveat that if there are proven allegations of malafide or violation of statutory rules, Courts can intervene. It is not the decision but only the decision-making process which is open to judicial scrutiny of the Courts.”

29. In view of the above authoritative pronouncements of the Hon'ble *Supreme* Court, the argument regarding infraction of Section 79(2) of the Rights of Persons with Disabilities Act, 2016 pales into insignificance. That apart, we are of the considered opinion that no infraction has actually occurred in the present case, warranting any interference.

30. The petitioner has failed to prove *mala fide* or serious violation of statutory rules in respect of the selection or the selection process carried out in the present case.

31. In view of the above, we do not find any reason to interfere with the order passed by the Central Administrative Tribunal, Principal Bench, New Delhi and accordingly dismiss the present petition with no order as to costs.

TUSHAR RAO GEDELA, J

SANJEEV SACHDEVA, J

JULY 7, 2022/nd