

Rajesh Agarwal Vs. Union of India and Ors

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Court : Delhi

Decided On : Dec-01-2014

Judge : Hima Kohli

Appellant : Rajesh Agarwal

Respondent : Union of India and Ors

Advocate for Def. : Mr. V.S.R. Krishna, Ms. Maninder Acharya, Mr. Dipak Bhattacharya, Mr. M.S.Mukherjee

Advocate for Pet/Ap. : Mr. Jawahar Raja, Ms. Sahana Manjesh

Judgement :

* s + IN THE HIGH COURT OF DELHI AT NEW DELHI W.P.(C) 3596/2014
Decided on :

01. 12.2014 IN THE MATTER OF: RAJESH AGARWAL Petitioner Through: Mr. Jawahar Raja, Advocate with Ms. Sahana Manjesh, Advocate with petitioner in person. versus UNION OF INDIA AND ORS Respondents Through: Mr. V.S.R. Krishna, Advocate for R-1 and R-2/UOI. Ms. Maninder Acharya, Senior Advocate with Mr. Dipak Bhattacharya and Mr. M.S.Mukherjee, Advocates for R-3. CORAM HON'BLE MS.JUSTICE HIMA KOHLI HIMA KOHLI, J.(Oral) 1. The petitioner, who is presently working on the post of Principal Chief Engineer, Konkan Railways Corporation Ltd., Navi Mumbai, seeks quashing of the decision/order of the respondent No.1/Ministry and the respondent No.2/DOPT of declining to appoint

him to the post of Director (Way and Works), Konkan Railways Corporation Ltd., and further, seeks directions to the respondent No.1/Ministry to appoint him to the subject post.

2. The undisputed facts of the case are that on 28.05.2013, the Public Enterprises Selection Board (in short PESB) had issued an advertisement for making an appointment to the post of Director (Ways and Work), Konkan Railway Corporation Ltd., which is a Board level appointment. On 19.06.2013, the petitioner had applied for being considered to the said post and on 29.07.2013, he was informed that he had been shortlisted and would be interviewed for the subject post on 01.08.2013. On 01.08.2013, interviews were held by the PESB and the results of the selection that were announced on the same day, revealed that the petitioner was recommended for selection to the subject post.

3. The grievance of the petitioner is that in terms of its Circular dated 13.05.2011, the PESB is required to send only one name to the Appointments Committee of the Cabinet (in short ACC) for consideration and the reserved name is required to be kept in a sealed cover with the PESB, to be disclosed only upon specific orders by the ACC and, contrary to the procedure prescribed in the said guidelines, the respondent No.3, who was the Member Engineering Railway Board, New Delhi and a part of the interview panel convened by the PESB, in an advisory capacity, had revealed the name of the reserved candidate.

4. When the matter was listed for admission on 28.5.2014, it was submitted by the counsel for the petitioner that two contrary pieces of information were received by the petitioner, the first being that the panel had been scrapped and the second being that the ACC had issued directions for opening of the sealed cover. Taking into consideration the submissions made by the counsel for the petitioner, notice was issued in the writ petition returnable on 24.07.2014.

5. On 24.07.2014, it transpired that the respondent No.1/Ministry of Railways had not taken any step to file the counter affidavit. This was despite the fact that the respondents No.1 and 2/UOI and the respondent No.3 were duly represented through counsel on the date of admission. On the said date, counsel for the respondents No.1 and 2/UOI had stated on instructions that a recommendation

was made by the ACC to the Ministry of Railways on 01.04.2014 for appointing a candidate to the aforesaid post in the reserved panel, wherein the petitioners name did not feature. Thereafter, the Ministry of Railways which is the administrative Ministry in this case, had forwarded the name of the reserved candidate to the CVC for clearance. However, learned counsel was unable to furnish the date when the file had been forwarded by the Ministry to the CVC.

6. In view of the fact that the respondents No.1 and 2/UOI had not taken a stand on the merits of the case by filing their counter affidavits, it was deemed appropriate to direct them to maintain status quo with regard to the appointment to the subject post. Now, pleadings have been completed.

7. It transpires from a perusal of the counter affidavit filed by the respondents No.1 and 2/UOI that the PESB had recommended the name of the petitioner for appointment to the subject post. However, after considering the feedback given by the respondent No.3, the respondent No.1/Ministry decided that the panel recommended by the PESB may be scrapped and the name of the reserved panel be obtained. The said file was forwarded by the respondent No.1/Ministry to the respondent No.2/DOPT for obtaining approval of the ACC and the ACC had approved the aforesaid proposal forwarded by the Ministry to scrap the panel of the PESB and allowed the Ministry to approach the PESB for obtaining the name from the reserved panel. Subsequently, when the Ministry approached the PESB with such a request, the name of the candidate from the reserved panel, namely, Shri Rajendra Kumar, ex-IRSE, KRCL was obtained and the clearances from the CVC in respect of the said candidate were sought and received vide communication dated 12.08.2014. It is at the said stage that the matter rests today.

8. Counsel for the respondents No.1 and 2/UOI submits that the file is still with the respondent No.1/Ministry after obtaining the advice from the CVC and it has yet to be placed before the ACC with the name of the candidate from the reserved panel. He further states that the input as received in the selection process for scrapping the panel was processed and was forwarded to the ACC with a proposal that the panel recommended by the PESB be scrapped. It is urged that the present petition

is flawed inasmuch as the petitioner has failed to implead the candidate in the reserved panel as a co-respondent in the present proceedings, though he is a necessary and a proper party in the lis. He further states that if the petitioner had a grievance, he should have made a representation to the competent authority and only if such a representation would have been rejected, could he have approached the Court for relief, but in view of the fact that the selection process is still on and no name has been finalized for appointment to the subject post, the present petition is premature and ought to be rejected on the said ground.

9. Counsel for the petitioner submits that while formulating the aforesaid proposal for being placed before the ACC, the respondents No.1 and 2/UOI have been prejudiced by the views expressed by the respondent No.3 who has gone on to compare the candidature of the petitioner with that of the candidate in the reserved panel, which is impermissible. He submits that the petitioner, being the sole person recommended by the PESB, only his name should have been forwarded to the ACC for consideration without any proposal formulated by the respondent No.1/Ministry to scrap the panel recommended by the PESB and having done so, grave damage has been caused to the candidature of the petitioner.

10. Learned counsel for the petitioner also draws the attention of the Court to the Circular dated 31.03.2011 issued by the respondent No.2/DOPT with reference to fresh appointments to be made by the ACC, wherein it has been directed that the PESB shall send only one name to the Ministry for consideration and the reserved name shall be kept in a sealed cover with the PESB to be disclosed only upon orders of the ACC. He states that the aforesaid guidelines have been violated by the respondent No.1/Ministry in the course of formulating its proposal to scrap the name recommended by the PESB and the petitioner has been given to understand that the reserved name kept in the sealed cover has been disclosed to the ACC.

11. In the course of arguments, it is clear that as of now, the subject post is lying vacant and the file in question is still retained at the end of the Ministry after having been returned by the ACC upon approving the recommendations made by the Ministry for scrapping the panel of the selected candidate, as per the recommendations made by the PESB. In such circumstances, counsel for the

petitioner has been asked W.P.(C) 3596/2014 if his client would be willing to a representation to the ACC through proper channel for considering his request, when the Ministry places the file back before the ACC.

12. Counsel for the petitioner states on instructions that his client is agreeable to the aforesaid suggestion.

13. Accordingly, without prejudice to the rights and contentions of the parties, it is deemed appropriate to permit the petitioner to submit a representation in respect of his candidature to the subject post, within ten days from today. The respondent No.1/Ministry shall place the said representation in the concerned file to be forwarded to the ACC alongwith their comments through proper channel, so that the same can be taken into consideration by the ACC at the time of considering the proposal of the Ministry, for making an appointment to the subject post.

14. The petition is disposed of alongwith the pending application, while leaving the parties to bear their own costs. A copy of this order be given dasti to the counsel for the respondents No.1 and 2/UOI to make compliances. DECEMBER01 2014 rkb/mk W.P.(C) 3596/2014 (HIMA KOHLI)

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