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Arvind Kumar Vs. Principal Director, Process and Product Development Centre and ors.

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Court : Allahabad

Decided On : Nov-15-2002

Reported in : 2003(1)AWC601

Judge : G.P. Mathur and ;N.K. Mehrotra, JJ.

Acts : Constitution of India - Article 16

Appeal No. : C.M.W.P. No. 41268 of 1999

Appellant : Arvind Kumar

Respondent : Principal Director, Process and Product Development Centre and ors.

Advocate for Def. : S.F.A. Naqvi, Adv. and ;Vinod Swarup, S.C.

Advocate for Pet/Ap. : S.C. Budhwar and ;Sudhir Agarwal, Advs.

Disposition : Writ petition dismissed

Judgement :

G.P. Mathur, J.

1. There is a Society known as Process and Product Development Centre, which is functioning at Agra. The Society is wholly owned and managed by Government of India through the Ministry of Industries. Its object is to upgrade technological base of small scale casting and forging units. A selection was made for the post of Director (Project Development) for which the petitioner Arvind Kumar and respondent No. 4 S. K. Nitsure were applicants. After interview, etc. had been held, the respondent No. 4 was selected for the said post which has been challenged by means of present writ petition under Article 226 of the Constitution. The main prayers are that the selection and offer of appointment to respondent No. 4 may be quashed and a writ of mandamus be issued to appoint the next person in the merit list on the post of Director (Project Development).

2. The selection of respondent No. 4 has been basically challenged on the ground that he does not have the qualification and experience for the post in question. It is, therefore, necessary to set out the relevant part of the advertisement :

'Qualification and Experience.--Post Graduate degree in Metallurgical/ Mechanical/Production Engineering with specialisation in foundry or forge technology with 8 years experience in foundry and/or forging industries Or Graduate in Metallurgical/Mechanical/Product ion Engineering with 10 years experience in foundry and/or forging industry or equivalent or NIFFT advance diploma or passed Grade IIF conducted by Institute of Indian Foundrymen, Calcutta with 12 years experience in the relevant fields.

Out of the total number of years of experience in the above areas, the applicant should have served minimum 5 years at a senior level in the capacity of Joint Director/Deputy Director having a pay scale of Rs. 3,000-5,000 (Unrevised) or Rs. 3,000-4,500 (Unrevised) respectively.

4. Desirable Experiences.--The candidates applying for the post having experience in personnel/financial management, production planning, etc. at a senior level will be preferred.

5. Nature of Duties.--Selected candidates will be required to help the Principal Director in product development, production planning, production control and

arranging training programme of the sponsored candidates.'

3. Sri S. C. Budhwar, learned senior counsel for the petitioner has submitted that the advertisement clearly provided that out of total number of years of experience in the area of foundry/forging industry, the applicant should have served minimum 5 years at a senior level in the capacity of Joint Director/Deputy Director having a pay scale of Rs. 3,000-5,000 (unrevised) or Rs. 3,000-4,500 (unrevised) respectively. The respondent No. 4 had no experience of working in the capacity of Joint Director/Deputy Director and, therefore, he does not possess the requisite experience and was not qualified for the post in question. Learned counsel has laid emphasis on the words 'capacity of Joint Director/Deputy Director' and has submitted that in order to be eligible for the post in question, the candidate must have actually held the post of Joint Director/Deputy Director and if a person has not held the said post and had not worked in that capacity for at least 5 years, he was not qualified for the said post. Sri Budhwar, has also referred to several dictionaries where the meaning of the word 'capacity' has been given as position, function, relation, or the role in which one performs the act. Reference has also been made to Law Lexicon by P. Ramanathaiyar where the meaning of the word 'capacity' has been given as a position enabling one to do something.

4. Sri Vinod Swarup, who has appeared for respondent Nos. 1 to 3 has submitted that the petitioner himself does not possess the prescribed qualification and experience and, therefore, he has no right to challenge the selection or appointment of respondent No. 4. He has submitted that the petitioner is a Graduate in Metallurgical Engineering and, therefore, in order to be eligible,he should have had 10 years experience in foundry and/or forging industry or equivalent. However, the petitioner does not possess 10 years experience in foundry or forging industry and, therefore, he was not at all qualified for being considered for the post in question. Learned counsel has further submitted that the selection committee which consisted of experts in the field, after holding interview and examining the experience of the candidates had found respondent No. 4 suitable and qualified for the post and had placed him at serial No. 1 in the merit list and the matter being of a technical nature, it will not be proper for this Court to interfere with the selection made by the experts in the field of foundry and/or

forging industry.

5. In order to examine the contentions raised. It is necessary to take note of the qualification and experience of the petitioner and also that of respondent No. 4.

A photo copy of the Bio Data of the petitioner Arvind Kumar has been filed as Annexure-1 to the supplementary counter-affidavit of V.S. Sharma (sworn on 22.5.2000). The relevant part thereof is as under :

Name

Arvind Kumar

Educational Qualification

:

B.E. (Metallurgy) University of Roorkee, Roorkee. Marksobtained : 74.6%

Present Post Held

:

Joint Director (T) Process and Product Development Centre,Agra

Experience

:

1978-1987 : HAL, Koraput Div, Joined as Management Trainee(Tech) in July 1978 and left as Manager in December, 1987

:

1987- till date

:

St. Director, (T) Incharge, Production and TestingDivisions. Process and Product Development Centre, Agra

In the RESUME, it is mentioned as under :

On completion of training in November 1979, I joined HAL plant at Koraput in quality control division as Incharge Process Control Group. The HAL, Koraput Division, manufactures engines for MIG aircrafts from casting/forging stage to final assembly.

The quality control division is responsible for testing of engines, total manufacturing quality control, quality audit, failure Investigation and quality of incoming raw material.

The undersigned has worked at various positions in the division and became Manager in 1986, incharge metallurgical inspection wing of the quality control department, overlooking the quality control of incoming raw material as well as process control in various hot shops like Forge, Heat Treatment, Foundry, Electroplating and welding.

6. It is averred in paras 4 to 7 of the aforesaid supplementary counter-affidavit that along with his application, the petitioner has submitted a certificate issued by the Personnel Department of HAL, Koraput division in which it is clearly mentioned that the designation of the petitioner in the HAL was Manager (Laboratory) and the name of the department in which he was employed was Central Laboratory where he worked from 12th November, 1979 to 1st December, 1987. It is further averred that HAL is a very big organisation having several departments. It has got a separate department of foundry, a separatedepartment of forging and a department of central laboratory in which the goods manufactured in the foundry and forging departments are tested. The petitioner had worked in the Laboratory and consequently his experience was confined to testing of the goods manufactured in the foundry and forging departments. He had no concern with the technology pertaining to foundry or forging. The post in question is that of Director (Project Development) and the nature of job is production of goods in the foundry or forging shops which is purely technical work. Even in the present organisation,

namely, Process and Project Development Centre, he had been working as Joint Director (Testing) where the work involved was to see whether the goods produced are of proper quality or not. His present Job does not relate to the area where the goods are produced in foundry shops or forging shops.

7. A copy of the Bio Data of S.K. Nitsure, respondent No. 4 has been filed along with the counter-affidavit sworn by A. Rama Rao on 26.10.1999 and the relevant part thereof is being reproduced below :

Name of the applicant

:

Sudheer K. Nitsure

Details of Educational Qualification and Experience

:

B.E. (Met.), 1978 from University of Pune.

:

A separate sheet is attached stating details of experience

Experience

:

One and half year in Atlas Automotive Components Ltd.,Pune as Shift Engineer

:

5 years in Menon & Menon (P.) Ltd. Kolhapur asAssistant Manager

:

6 years In Ashok Iron Works Ltd., Belgaun as Manager

:

4 years as Managing Partner In a S.S.I. Unit

:

Presently engaged as consultant with 3 units.

Details of experience/responsibilities held :

(A) Menon and Menon (P.) Ltd.

Duties and responsibility.--Controlling the activities of following sections to achieveproduction targets and required quality standards with the assistance of sectional heads and supervisors.

(i) Melting shop having 6 induction furnaces and two rotory oil fired furnaces.

(ii) seven molding lines with their core-shop : ., (MWM--engine) ; Bearing Caps, Housings, Covers, Manifolds for M & M tractor and jeep division. Escorts ; Gear Box Housings for Telco, ATL, Punjab Tractors Ltd. ; Cylinder blocks for M & M jeep division and Ruston. i.e.. Greaves Ltd.

(B) Ashok Iron Works Ltd.

Duties and responsibilities.-

With assistance of a team of engineers supervisors, (i) achieve production targets, (ii) cost control. Guide process control team to achieve budgeted rejection percentage. laboratory function.

Castings Manufactured :

1. Cylinder heads and blocks of VZB, NH 220, MHC4, of Kirloskar Cummins. It was involved in initiating this activity and developed it into production stage.

2. Brake drums, for M & M, TELCO, TAPE, Ashok Leyland ; Flywheels for TELCO, KCL, M & M : Drive Sheaves and spiders for DTIS elevator ; Housings, covers, oil

sumps for KCL. Addison Ltd.; Segmental motor bodies for Siemens ; Manifolds for KCL, Gear Box parts like Cases, Cowl, Housings, Centre pieces for DBGL now Greaves Ltd.

Major assignments given and fulfilled during my service :

(1) Rejection to be brought down from 26% to an average level of 8% in a span of 6 months by inducting systems and procedures.

(2) Production to be increased from 350 tonnes to 800 tonnes without addition to plant or machinery, but by reorganising the resources and planning.

(3) KCL blocks and heads to be developed, and to bring them to production stage including training of personnel as factory had no previous experience in manufacturing such critical items.

Presently engaged as consultant (on regular monthly retainership) with three S.S.I. Units and other contractual assignments. Recently in such an assignment with OMKAR foundries, Sangli, for S.G. Iron, I have developed casting of Ni-resist S.G. and Ni-resist gray of K.B.L., Kirloskarwadi.

8. The academic qualification of petitioner as well as respondent No. 4 is Graduate in Metallurgical Engineering. The first thing to be seen is whether they possessed 10 years experience in foundry and/or forging industry or equivalent.

9. The dictionary meaning of the word 'foundry' and 'forging' is as under :

Chambers Science and Technology Dictionary:

foundry

A workshop in which metal objects are made by casting inmoulds.

forging

The operation of shaping (hot) malleable metals by means ofhammers or presses. It Includes hand-hammer, steam-hammer, press and dropforging.

Oxford Advanced Learner's Encyclopedic :

foundry

Place where metal or glass is melted and moulded into articlesof particular shapes

forge

to give shape by heating it in a fire and hammering

Corpus Juris Secundum (Vol. 37) :

forging

In general, a place where anything is made, shaped, or devised; a workshop ; and specifically, an open fire place or furnace, fitted with abellows or some other appliance for obtaining a blast to urge the fire, andserving to heat metal in order that It may be hammered to form.

Webstors Third New International Dictionary :

foundry

a building or establishment where metal or glass foundingis carried on ; the act, process or art of casting metals

forging

The act of one that forms by heating and hammering.

10. The meaning of the words as given in dictionary show that foundry is essentially a workshop in which metal objects are made by casting and moulds. The actual operation in which metals are given shape by means of hammering or presses after heating them is known as forging. The experience of foundry or forging would, therefore, require the experience of working of furnaces, etc. where metal is heated and the workshop where such heated metal is given shape by hammering or by different kind of presses. This will necessarily involve the experience where the raw metal is given a different kind of shape after it is heated

so that it becomes malleable and thereafter by hammering or pressing. Unless someone is working in such workshops where the metal is heated and becomes malleable and thereafter a different kind of shape is given by hammering or pressing, he cannot possess the prescribed minimum experience.

11. So far as the petitioner Arvind Kumar. is concerned, he was Manager (Laboratory) in HAL and he was employed in the Central Laboratory. On his own showing, he worked in the Quality Control Division of HAL, which is responsible for testing of engines, total manufacturing quality control, quality audit, valuation, investigation and quality of incoming raw materials, The goods manufactured in foundry and forging are tested in laboratory and this is a stage subsequent to the production of the goods. Even in the Process and Project Development Centre, he has been working as Joint Director (Testing), A person working in a testing department has to see whether the goods produced are of specified quality or not. There are test drivers of cars and test pilots of aircrafts. They may be expert in ascertaining the performance of the cars or aircrafts regarding their speed, acceleration, manoeuvrability, breaking system, etc. but they can have no idea at all regarding the manner of production or manufacture of the car or aircraft. Since the petitioner has worked in the laboratory but not in the foundry or the workshop where after heating a particular shape is given to the metallic objects by hammering or pressing, he does not possess the requisite experience. The petitioner is, therefore, not at all qualified for the post in question. In this view of the matter, the petitioner is not entitled tochallenge the selection of respondent No. 4 unless the same has been made in gross violation of statutory rules or the respondent No. 4 is wholly unqualified for the post in question.

12. The work experience of respondent No. 4 shows that while working in Menon and Menon (P.) Ltd., he was controlling the activities in the melting shop having six induction furnaces and two rotory oil furnaces and group moulding lines with their core groups where actual manufacturing process of different kinds of mechanical parts or components of the goods produced by some of the well-known companies of India was being done. While working in Ashok Iron Works, his duties and responsibilities involved castings and manufacturing of various kinds of parts for industries. This shows that he had actual experience of foundry and forging

industry.

13. The main attack of learned counsel of the petitioner regarding the eligibility of respondent No. 4 is that he has not worked in the capacity of Joint Director/Deputy Director having a pay scale of Rs. 3,000-5,000 (Unrevised) or Rs. 3,000-4,500 (Unrevised) respectively. The respondent No. 4 has not actually held the post of Joint Director/Deputy Director but these kinds of posts exist only in Government Departments or Public Sector Undertakings, Generally in private sector, the posts are not designated as Joint Director or Deputy Director. The question is whether the advertisement should be construed in such a technical manner, the result of which would be that the field of eligibility would be confined to persons in Government service or public sector undertakings or the underlying object of the advertisement was to select a person who was best qualified and suited for the job in question. It is averred in para 1 of the writ petition that the Development Centre was established with the assistance of United Nations Development Programme for establishing a National Centre at Agra to upgrade the technological base of small scale casting and forging units. The advertisement Itself laid emphasis on nature of duties and they were specified as under :

'Selected candidate will be required to help the Principal Director in Project Development, production planning, production control and arranging training programme of the sponsored candidates.'

14. The fact that in the advertisement, nature of duties were also specified shows that while examining the qualification and experience of the candidates, the selection committee had also to see whether the candidate selected would be able to perform the nature of duties, mentioned in the advertisement. The advertisement cannot be interpreted in a manner so as to altogether exclude those who were working in private sector and may not be having the designation of Joint Director/Deputy Director. The respondent No. 4 was getting the pay scale mentioned in the advertisement though he was not holding the designation. If a qualified and experienced person was available in the private sector who could perform the nature of duties better than a candidate holding the aforesaid post in a Government department or in a public sector undertaking, we see no reason why

the said person could not be selected for the post in question. We are, therefore, of the opinion that even though the respondent No. 4 had not worked in the capacity of Joint Director/Deputy Director, he was not unqualified for the post in question.

15. There is another important aspect of the matter which deserves consideration. In para 13 of the counter-affidavit, it is averred that the selection committee consisted of following eminent national level foundry field experts namely, (1) Adviser in the Department of Scientific and Industrial Research, Ministry of Science and Technology, Government of India, who is also expert in foundry technology-Chairman. (2) Head of Manufacturing Department, National Institute of Foundry and Forging Technology, Ranchi, (3) Industrial Adviser, Office of DC (SSI), New Delhi, (4) Additional Director of Industries,Government of U.P., (5) Governing Council Member, Representing Agra Iron Foundries, (6) Principal Director, Process and Project Development Centre, Agra.

16. As shown above, the experience for the post in question relates to technical field. The selection was made by a Committee consisting of persons who were experts in the field. In such circumstances, it will not be proper for this Court to substitute its own judgment in place of that of the expert members of the Committee and to hold that the selection of respondent No. 4 was illegal specially when no violation of any statutory rules has been shown. In University of Mysore v. Govinda Rao. AIR 1965 SC 491, it was held that Courts should be slow to interfere with the opinion expressed by the experts. It was further held that if there is no allegation of mala fides against the experts who constituted the Board, it would normally be wise and safe for the Courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the Courts generally can be.

17. In Dr. M.C. Gupta v. Dr. A.K. Gupta, (1979) 2 SCC 339, the Court after referring to the above cited authority and State of Bihar v. Dr. Ashish Kumar Mukherji, AIR 1975 SC 192, held as follows :

'When selection is made by the Commission aided and advised by experts having technical experience and high academic qualifications in the specialist field,

probing teaching/research experience in technical subjects, the Courts should be slow to interfere with the opinion expressed by the experts unless there are allegations of mala fides against them. It would normally be prudent and safe for the Courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the Courts generally can be. Undoubtedly, even such a body if it were to contravene Rules and Regulations binding upon it,the Court in exercise of extraordinary jurisdiction to enforce rule of law, may interfere in a writ petition under Article 226. Even then the Court, while enforcing the rule of law, should give due weight to the opinions expressed by the experts and also show due regard to its recommendations on which the State Government acted. If the recommendations made by the body of experts, keeping in view the relevant Rules and Regulations, manifest due consideration of all the relevant factors, the Court should be very slow to interfere with such recommendations.'

18. In view of the settled legal position, we are of the opinion that it will not be proper for this Court to interfere with the decision of the expert committee which found respondent No. 4 to be qualified for the post in question.

19. For the reasons discussed above, we do not consider it a fit case for interference. The writ petition is hereby dismissed.

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