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**(1995) 01 DEL CK 0070**

**Delhi High Court**

**Case No:** Civil Writ Petition No. 3366 of 1994

Chandni Luthra

APPELLANT

Vs

Anil Bhandari and Others

RESPONDENT

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**Date of Decision:** Jan. 1, 1995

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (1995) 58 DLT 93

**Hon'ble Judges:** S.D. Pandit, J; P.K. Bahri, J

**Bench:** Division Bench

**Advocate:** Seita Vaidyalingam, for the Appellant; Ajay Kapoor and Meera Bhatia, for Respondents 2, 3 and 6, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

P.K. Bahri, J.

In this writ petition the challenge is to the appointment of Respondent No. 4 as Director (Marketing & Commercial), Indian Tourism and Development Corporation Limited.

2. The petitioner, who has described herself as "Senior Vice-President" functioning with the Indian Tourism and Development Corporation Limited (in short "ITDC")/ has averred that appointment of respondent No. 4 as Director in ITDC is illegal inasmuch as according to the guidelines issued by the Government of India, in case the suitable departmental candidates are available there could not be an appointment of outsider to this post. It is alleged that initially the post was circulated amongst the departmental candidates and also persons from other public undertakings and short-listed candidates including the petitioner were interviewed in July 1973 but without declaring the result of the said interview, another interview was held on March 24, 1994 and respondent No. 4 Along with other candidates including the petitioner were interviewed and a panel of candidates was constituted

which included the petitioner as well and ignoring the Government guidelines respondent No. 4 has been appointed as a Director instead of the petitioner who was the departmental candidate whose claim to the post was preferential.

3. It is also pleaded that the petitioner possessed best qualifications for being appointed to the said post whereas respondent No. 4 did not even have the minimum specified qualification of having five years experience in particular sphere as advertised. The allegations of mala fide have been also made against respondent No. 1, Chairman and Managing Director of ITDC, that he had some bias against the petitioner inasmuch as before the crucial interview was to be held he had issued letter of criticism to the petitioner to which the petitioner had sent a reply taking strong objection to issuance of such a letter by him and for placing that letter in her ACR dossier. It is alleged that respondent No. 1 ought not to have participated in the interview having issued such a letter to the petitioner and he should have refused from the said meeting of the Selection Committee. These allegations have been controverted by respondent No. 1 and also by the other respondents 2, 3 & 6.

4. Facts as have come out from the pleadings of the parties, in brief, are that Government of India has constituted the Public Enterprises Corporation Board (for short "PESB") in 1974 which is responsible making appointments to various public undertakings brought into existence by the Government of India. Respondent No. 1 is one such public undertaking. Vide Government of India letter dated September 8, 1981, the said "PESB" has been made wholly responsible for selection to all board level posts. The post in question is one of such posts and it is the PESB which had held the interviews of various candidates on two occasions for making a selection and ultimately had selected a panel of three names as follows: (i) Sh. Saleem Hamid-respondent No. 4; (ii) Ms. Nirmal Bhatnagar; and (iii) Chandni Luthra, in the aforesaid order of merit and these recommendations had been sent to high level committee of the Cabinet which had appointed respondent No. 4, who was in order of merit at number one position, to the said post. Sh. Suresh Kumar Gupta, Under Secretary in the Ministry of Civil Aviation and Tourism in his counter-affidavit has disclosed that Government of India had issued guidelines dated August 5, 1977, with regard to selection of candidates for top posts in public enterprises- Copy of the said guidelines has been annexed with the affidavit and relevant portion of the said guidelines is as follows:

"1. Selection Policy: (a) Unless markedly better candidates are available from outside, vacancies will be filled by promotions from within a Public Enterprise. For this purpose, the Public Enterprises Selection Board will assist Public Enterprises in adopting organisational structures which make such promotions possible.

(b) If internal candidates are not available preference will be given to candidates working in other Public Sector so that promising officers whose promotion opportunities are blocked in their own enterprises are given wider career opportunities.

(c) Failing availability of suitable candidates from (a) and (b) above selections would be made from other sources like Government and private sector, etc."

5. In his affidavit, it has been disclosed that PESB which functions as recommendatory body to advise the Government of India for the appointment of board level posts in public sector enterprises follows the consistent procedure by issuing notice inviting applications giving the essential qualifications and eligibility criteria laid down for specific posts and after applications are received, they are scrutinised and keeping in view the qualifications and experience of various candidates some candidates are short-listed for purposes of interview and after interview and scrutiny of the ACR dossiers a panel of names is finalised and sent to the Government for consideration. It is mentioned that Department of Tourism had asked the PESB on April 20, 1993, for selecting suitable candidate for the said post of director and following the guidelines and the procedure being followed earlier, a circular was issued to the Chairman and Managing Director of ITDC for recommencing the names of suitable internal candidates and on May 18, 1993, seven candidates were recommended, one of the names was of the petitioner and date for interview was fixed as July 27, 1993 and in all twelve candidates were short-listed for calling for interview on the basis of various recommendations received from other public sector undertakings. Out of the seven internal candidates, only five internal candidates including the petitioner were short-listed and an interview was held on July 27, 1993, of the short-listed candidates and PESB desired to have more candidates and directed that a press advertisement be issued inviting applications and after such advertisement was issued in the newspapers, 21 candidates were short-listed out of them ten were the same candidates including the petitioner who had been interviewed earlier and after interviewing the candidates, a panel, as mentioned above, was prepared in order of merit. So, it is pleaded that in view of the aforesaid Government of India's guidelines, Respondent No. 4 was found to be markedly better candidate although he was an outsider. It is made clear in the affidavit that in the first interview the internal candidates including the petitioner were not found so suitable so as to be appointed to the said post but the PESB kept its mind open and made an effort to have some more candidates who could be markedly better candidates, if possible, for selecting suitable candidate for the said post and Respondent No. 4 was found to be most suitable candidate for the said post who was markedly better candidate than the petitioner.

6. The allegations made by the petitioner that Respondent No. 1 had any mala fide against the petitioner were controverted. It was mentioned that the other members of the high-powered committee obviously could not have been influenced by Respondent No. 1 in making such selection. It is also pleaded that as a matter of practice Chairman and Managing Director of the particular public undertaking is co-opted as member of PESB in respect of the selection of a post pertaining to that particular public sector undertaking and in this way Respondent No. 1 was opted as member of PESB. It was also controverted that Respondent No. 4 was not fulfilling

the qualifications required for the said post. It was also asserted that the petitioner has not been designated as Senior Vice-President but is functioning only as Vice President with the 1TDC.

7. We have heard the learned Counsel for the parties in detail and we propose to dispose of the matter at the admission stage itself. The learned Counsel for the respondent has pointed out that by making a wrong submission before the Court on 10th August, 1994, the Court was persuaded to issue the show-cause notice and it is mentioned that some wrong submission regarding facts have been made before the Court. The order dated 10th August, 1994 of the Court records as follows:

"10.08.94 Present: Ms. Seita Vaidialingam for the petitioner.

CW.3366/94

It is stated by the petitioner that in response to the advertisement published on 8.9.1993, the petitioner was interviewed on 27.3.1994. There was no other advertisement for the same post again, however, there was yet another interview for the same post on 3.8.1994.

The petitioner says that she reliably learnt that respondent No. 4 was not a candidate who was interviewed at the first lot of interviews after the publication of advertisement published on 8.9.1993 in the Telegraph, Calcutta. He was interviewed in the second lot without there being any fresh advertisement.

Counsel wishes to file an additional affidavit. Let her do so. Renotify on 11.08.1994."

8. This submission made to the Court was factually incorrect because as facts have been narrated above, they clearly show that at first there was no advertisement published in the newspaper for inviting any applications from outsiders and only internal candidates were short-listed and were invited and considered and thereafter the Selection Committee thought it fit to give a wider publication to have better candidates before it in order to make proper selection and it is after the publication had been made in the newspaper that the candidates had given their applications and after short-listing the candidates, the interview was held.

9. It is not as if clandestinely the candidature of respondent No. 4 has been sponsored and included in the names of the candidates who were short-listed for interview. The petitioner has, thus, misled the Court which fact alone is sufficient to non-suit her.

10. The submission of learned Counsel for the petitioner that the Selection Committee ought to have finalised its opinion when it had interviewed the candidates in its first interview and after coming to the conclusion that no proper internal candidate was available, thereafter research should have been made for inviting the applications from outsiders and an illegality has been committed by the Selection Committee in not announcing the result when the candidates were

interviewed for the first time.

11. We hold that this contention is totally devoid of any merit. The guidelines already enumerated above make it evident that an internal candidate has to be preferred only if no outsider candidate markedly superior is available. The Selection Committee, in its wisdom and rightly so, kept its options open when they at first interviewed the short listed candidates which included the petitioner and finding that perhaps wider choice should be available with the Selection Committee, they thought it advisable to invite applications by having a wider advertisement and thereafter interviewed the candidates including the petitioner and respondent No. 4 and formulated a panel of names and the petitioner was put at No. 3 in order of merit.

12. We do not find that this procedure adopted by the Selection Committee was in violation of any statutory rules or guidelines or was arbitrary in any manner. The Selection Committee might have given preference to the internal candidate if endeavor of the Selection Committee in finding a more meritorious person for the prestigious job had proved futile. So, the Selection Committee kept its options open till they formulated the panel. It was not incumbent or necessary for the Selection Committee to have taken any definite decision when it interviewed some of the internal candidates including the petitioner. Rather, the Selection Committee kept its mind open when it thought fit of having a wider choice and even allowed the candidates already interviewed earlier to appear for interview again along with the other candidates.

13. It has been then contended by learned Counsel for the petitioner that respondent No. 4 was not fulfilling the requisite minimum qualifications. The counter affidavit of Under Secretary in the Ministry of Civil Aviation and Tourism shows that respondent No. 4 not only fulfilled the requisite minimum qualifications prescribed for the job in question but had a special experience in marketing. It is not made clear during the course of the arguments by learned Counsel for the petitioner as to how respondent No. 4 did not fulfill the requisite minimum qualifications. So, there is no merit in this contention as well,

14. It has been also urged that petitioner was a better qualified candidate and being an internal candidate, ought to have been selected. The petitioner had, in our view, no legal right to be selected to the post in question. The petitioner had only right to be considered and the Selection Committee had considered the case of the petitioner while interviewing her and had made a selection. This Court is not in a position to sit over the said judgment of the Selection Committee. The Selection Committee did not comprise of only respondent No. 1 but comprised of independent capable persons holding high posts and they were the best suited persons to make the selection,

15. It has been then urged that respondent No. 1 had played mischief inasmuch as in order to mar the career of the petitioner, he had given a letter criticising the work of the petitioner and had also suppressed A.C.R. of second part of 1992 from the consideration of the Selection Committee. It is true that respondent No. 1 had issued a letter to the petitioner commenting upon her poor work pertaining to a particular job and had directed for placing that letter in the A.C.R. Dossier of the petitioner, it has come out in the counter affidavit that such like letters had earlier also been placed in the A.C.R. Dossier of the petitioner. Those letters had not imposed any minor or major penalty and had been issued only to enable the petitioner to make improvement in her work and they had been issued by previous Chairman and Managing Director also. So, no malafide can be imputed to respondent No. 1 under whom the petitioner has been working and who, as a matter of his duties, had to look to the work of the petitioner to see whether the same is satisfactory or not, He had not made any adverse entry in the character roll of the petitioner by just placing such a letter on the A.C.R. Dossier of the petitioner. The learned Counsel for the petitioner has not been able to support her argument with reference to any rules or regulations that respondent No. 1 was not competent to issue such a letter to the petitioner with regard to her quality of work.

16. It is evident that such adverse letter had not made any impact on the Selection Committee because the petitioner has been put at No. 3 in order of merit in the panel. In case the Selection Committee had been adversely inclined towards the petitioner or respondent No. 1 was having any animus against the petitioner and had such an influence over the other members of the Selection Committee, then respondent No. 1 would have seen that the name of the petitioner was rejected in the very first interview and at least her name should not figure on the panel of three persons at all.

17. It has been explained by respondent No. 1 that ACR of the first part of the relevant year had been duly filled in by the previous Managing Director with regard to the petitioner and ACR of the later part of the year was to be filled in by respondent No. 1 and the form had been received but somehow it got misplaced and for filling the ACR another form was given to the petitioner for submission which she declined to submit and later on the original form was traced out. So, nothing turns on this allegation of the petitioner that there was any deliberate suppression of any ACR from consideration of the Selection Committee.

18. In view of the above discussion, we find that the writ petition is devoid of any merit which we hereby dismiss but we leave the parties to bear their own costs.