

(2005) 04 MP CK 0073

Madhya Pradesh High Court

Case No: M.P. No"s. 2249 of 1992, 4153 of 1993, W.P. No"s. 3282, 2971 and 3786 of 1997

M.P.E.B. Officers Association and
others

APPELLANT

Vs

M.P. Electricity Board and
another

RESPONDENT

Date of Decision: April 20, 2005

Acts Referred:

- Constitution of India, 1950 - Article 14, 16
- Electricity (Supply) Act, 1948 - Section 15, 5, 59, 63, 79(c)

Citation: (2005) 4 MPLJ 507

Hon'ble Judges: A.K. Mishra, J

Bench: Single Bench

Advocate: Prem Francis, R.P. Agrawal, with Rajesh Upadhyay, S. Lal, V.S. Shrotri and Ashish Shrotri, for the Appellant; Anoop Nair, G.P. Kekre, Vinod Mehta, Government Advocate and Ashish Pathak, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Arun Mishra, J.

In these writ petitions (M. P. No. 2249/92, M. P. No. 4153/93, W. P. No. 3282/97, W. P. No. 2971/97 and W. P. No. 3786/97) common question is involved. Circular dated 1-8-1991, 15-6-1995 and the selection made pursuant thereto in the cadre of Finance and Accounts Wing has been assailed. It is also submitted that for induction into service of finance and accounts cadre prescribing of the departmental examination is unauthorised and bad in law.

Facts are being referred from WP No. 2971/97. M. P. Vidyut Karmachari Sangh has filed the petition in representative capacity for and on behalf of Class III and IV

employees. It is averred that Board has been constituted u/s 79(c) of Electricity Supply Act, 1948 (hereinafter referred to as "the Act"). There are technical and non-technical wings in the service cadre, eligibility criteria, promotional avenues differ. The non-technical side is known as Finance and Accounts Wing. Direct recruitment is provided in the Finance and Accounts cadre at the stage of Office Asstt. Grade III. Other posts have to be filled by way of promotion. Departmental examination has been prescribed for deciding eligibility for promotion from the post of Asstt. Grade I, Storekeeper to the post of Supd./Stock Verifier as provided in circular (P.1). There is no rule or regulation of provide for departmental examination for promotion to the posts in the hierarchy of Finance and Accounts Wing.

It is further averred that Board has also framed regulation, known as M. P. Electricity Board Accounts Trainees Recruitment and Appointment Regulations (P/2). Regulation 5 lays down minimum qualification for applying as a trainee. Regulation provide for direct recruitment as Accounts Officer after selection from the open market but does not provide for departmental examination for promotion to any of the posts in* Finance and Accounts cadre. Board has prescribed the minimum service required for promotion to the next higher post as per circular (P.3) dated 19-7-1990. Petitioners have emphasized that there is no circular providing for departmental examination allowing technical staff to appear in departmental examination to be appointed on promotional post otherwise to be filled up by way of promotion. Board has earlier filled the posts by promotion adhering to eligibility criteria. Action is discriminatory, violative of Articles 14 and 16 of Constitution of India. Asstt. Engineers of technical qualification have been permitted to take the departmental examination, upper age limit has been fixed as 45 years on 1-6-1997. Thus, by action of respondents, large number of employees have been adversely affected, hence, writ petition has been preferred.

In the return filed by respondents it is contended that Board's regulation provides that any class I or class II post can either be filled up by promotion or direct recruitment. Further Board vide notification dated 22-3-1982 had framed regulations called "The MPEB Accounts Training Recruitment and Appointment Regulations, 1982" (hereinafter referred to as "the Regulations of 1982") which provide for direct recruitment of personnel for appointment as Accounts Officer. Notifications (R/2) and (R/3) have been relied upon. Board has been constituted u/s 5 of the Act. Chapter VI provides for Board's Finance, Accounts and Audit. Section 59 provides that the Board shall, after taking credit for any subvention from the State Government u/s 63, carry on its operation under the Act. Board was feeling that the Finance and Accounts Wings had not come up to the expectations, it lacked efficiency and ability. The problem assumed great importance when the State Government in exercise of power vested in them under the Act took a review in August, 1990 and directed the Board that the financial management should be effectively organized, improved and strengthened. Directive was given to fill the post of Finance and Accounts Wing of the officer cadre on the basis of open

competition as it was adopted in the case of Asstt. Engineers. Thereafter such incumbents should be sent to obtain the training to Bangalore, Ahmedabad, etc. Said directive was considered, matter was reviewed/Board decided to introduce a new system for selection, training and appointment of employees in Accounts and Finance section. Under the general service condition, the Board has the power to make all the appointments by way of direct recruitment, promotion or to adopt any other method of appointment, to streamline the function fully trained and able persons are selected for appointment. Regulation 5 contained in notification (R/2) has been relied upon. Selected candidate is temporarily appointed to officiate and they are on probation for a period of two years. Till confirmation their lien will remain on the earlier post held by the incumbent. By the impugned circular opportunity was given to all eligible departmental class II Officers and officers of the rank of Sections Officers and equivalent whether technical or non-technical, subject to conditions indicated therein. Promotion is not a right, no right has been taken away. It was found necessary to have additional staff fully trained and capable with the dealing of Finance and Accounts. Board can resort to recruitment from outside and from internal candidates. It was the intention of the Board to provide opportunity of career advancement to internal candidates who have desired talent, keeping the larger interest of employees internal candidates were given chance. Action did not take away any legitimate right of existing employees. It is an additional chance of appointment made available, there is no prohibition for such direct recruitment. Only 11 posts of Accounts Officer out of 162 sanctioned posts and 6 posts of Sr. Accounts Officer out of total 44 sanctioned posts are to be filled by direct recruitment from amongst inducted trainees, rest by normal promotion channel based on seniority and merit. Board is finding it difficult to fill up the vacancies arising in the cadre of Sr. Accounts Officer as the requisite number of Accounts Officer have not rendered services of five years which is the minimum services required as per regulations for promotions since they are not available as apparent from vacancies (R/5) as against 10 vacancies, there are only three qualifiers. Recruitment of officer from other wing will not stop promotion by the normal channel, therefore, submission is without merit. The posts of Sr. Accounts Officer/Accounts Officer have to be filled up both by promotion as well as recruitment/induction from amongst the existing employees. There can be a different method for promotion and selection from the existing employees. Writ petition is without merit, same deserves to be dismissed.

In WP No. 3786/97 it is submitted in addition that no syllabus has been prescribed, allocation of marks in question papers was not disclosed, process of selection was not pointed out. Sufficient time was not given to apply circular was issued on 15-6-1995, last date for receipt of the application was 30-7-1995, no publicity was given. Time scale promotes were allowed to participate. For quashing circular (P.4) dated 16-5-1997 inter alia it has been submitted that circular did not reach in time, syllabus was not prescribed, allocation of mark was not disclosed, no separate test

for two posts were held whereas cadre is different. Officers applied separately for both, but were appointed on lower post of Accounts Officer, merit list was not made known. Questions from General Knowledge paper were given, policy is vague.

In the return filed in WP No. 3786/97 it is submitted that circular was sent to all concerned up to Divisional Office level with a directive to give wide publicity. Amongst all officers and staff, eligible candidates were called for interview after model paper test. Applications were invited from all concerned, examination was conducted by leading premier financial institution IFMR, Chennai. Personal interview was conducted by panel of members of selection committee of the Board. Applications were invited as per circular dated 1-8-1991 from all the employees fulfilling the eligibility criteria. An officer on being selected was to be appointed one post higher to that he was holding. No prayer was made for extension of time to submit the application. Due time period was granted when circular was issued in 1995, eligible candidates have been made available model paper for the test. It is not necessary to issue any syllabus and subject is supposed to be known to the incumbents applying for the post. Wide publicity was made, on the test paper marks were indicated, prescribing the age limit for direct appointment cannot be said to be unreasonable, fair process has been adopted for selection which calls for no interference.

Learned counsel appearing on behalf of petitioners submitted that prescribing of departmental examination is bad in law, is not permissible, chance of promotion of incumbents working in the finance and accounts wing have been jeopardized. It has also been submitted that due opportunity was not granted to submit the application, syllabus was not prescribed, allocation of marks was not disclosed for written test and interview. No separate test for two posts were taken. General knowledge questions were also asked, policy is vague, Board cannot be given free hand to appoint chosen one.

Learned counsel appearing on behalf of respondents/Board has relied upon M.P. Electricity Board General Service (Regulations), 1952 framed u/s 79-C. He has submitted that it is open to the Board under regulation 7(ii)(a) to prescribe and hold departmental examination and/or test for various posts and make passing of such departmental examination and/or test by the candidate concerned as an additional eligibility requirement. He has submitted that method of direct recruitment is permissible under regulations called MPEB Accounts Trainees Recruitment and Appointment Regulations, 1982 which were notified on 22-3-1982 in exercise of power u/s 79(c)(k) read with section 15 of Electricity Supply Act. Regulation prescribed in para 7 holding of written examination and condition for induction into accounts cadre. He has further relied upon the directive issued by Government and has submitted that fair selection process was adopted, written examination was rightly conducted, interview was held, there is no arbitrariness, interview was held, there is no arbitrariness, no interference is called for.

The main question which has been raised at Bar is that prescribing of departmental examination is bad in law. First I advert to this submission. When regulations of 1952 framed u/s 79(c) of the Act of 1948 are considered, it is clearly provided in regulation 7(ii)(a) that Board can prescribe for departmental examination for direct appointment or promotion. Regulation 7(i) and (ii)(a) and (b) is quoted below :-

Eligibility Requirements for being considered for appointment. - (i) In order to become eligible for being considered for selection for direct appointment or promotion, it shall be essential for a candidate to possess and satisfy the requirements about the minimum educational qualifications and experience prescribed by the Board (or by any officer of the Board duly empowered by it for the purpose) for the particular category of posts, by general or special order, from time to time. In case of direct appointees, it shall also be essential to possess and satisfy the requirements about age, medical fitness, character etc. Prescribed by the Board. (ii)(a) The Board may, in addition to the above by general or special order, frame, prescribe and hold departmental examinations and/or tests for various posts and make the passing of such departmental examinations and/or tests by the candidates concerned as an additional eligibility - requirement.

(b) Such departmental examinations and/or tests shall be conducted in accordance with such rules, as may be prescribed from time to time by the Board.

Board has also framed regulations in the year 1982 u/s 79(c)(k) read with section 15 of Act of 1948. Regulation 7 of regulations of 1982 which deals with direct appointment of Accounts trainees provide for holding of examination. Regulation 7 is quoted below :-

(i) Applications from eligible candidates would be invited through advertisements in Newspapers.

(ii) Applicants satisfying the prescribed eligibility conditions would be considered.

Provided, however, that the Board will have the right to reject all applications or any of the applications without assigning any reasons,

(iii) Applicants considered eligible by the Board would be called for written examination (s), the type, nature and duration of which may be as prescribed by the Board from time to- time. The examination would, however, generally comprise of (1) Papers on Accountancy and Financial Management, Commercial Practices; (2) Psychological and Intelligence test; (3) General knowledge.

(iv) Such candidates who are declared passed in the recruitment test would be called for personal interview and such oral tests as may be

prescribed by the board from time to time.

State Government had directed MPEB to improve the finance and accounts cadre and to induct the incumbents by way of open competition and to send the trainees

to specialized center, thereafter MPEB had issued circular on 1-8-1991 with an object that before recruiting from outside, the Board has decided first to give an opportunity to Board's own personnel and to train those who exhibit the attitude necessary for developing into useful financial managers. Applications were invited from all employees and officers who possess recognize degree, circular is quoted below :-

CIRCULAR

No. 01-05/11/2586

Jabalpur, dated 1-8-1991

Sub : Selection and Training of Officers and employees for posting in Finance and Accounts Wing.

In view of the specialist status acquired by the area of financial management, dealing with financial and banking institutions, computer oriented Commercial Accounting System and the present day complexities of financial management and control of large public utilities like the MPEB, it has now become imperative that the Finance and Account Wing is staffed with Managerial Personnel who have the aptitude and are well conversant and trained in all areas of financial operations of the Board. The State Government also has expressed the view that a qualitative improvement should be brought about in the various managerial positions in the Finance and Accounts area of the Board. Instead of recruiting qualified and trained personnel from outside, the Board has decided to first give an opportunity to the Board's own personnel and to train those who exhibit the aptitude necessary for developing into useful Financial Managers.

Applications are invited from all employees and officers who possess a recognised degree and are working in any position and in any section/wing of the Board in the rank of OA Gr. I or equivalent upwards upto the level of Sr. AO or equivalent. The eligible applicants would be put through tests and interview in order to select those who possess real aptitude and merit in the desired field. The selected candidates would be imparted intensive training for a period of six months within and outside Madhya Pradesh at Board's cost. On completion of training and passing the final appraisal test and interview, the selected candidates would be appointed in Finance and Accounts Wing in a post one rank higher than their present rank in the Board.

Officers and employees desirous of taking up this challenging selection may send their applications in the attached proforma in sealed envelops to the Additional Secretary, M. P. Electricity Board, Block No. 14, First Floor, Shakti Bhawan, Jabalpur (Pin-482 008). The words "VITTA LAKHA" should be written in bold capital letters on left hand corner of the envelop. A copy of the application may be sent through proper channel also.

The last date for receipt of applications is 15th September, 1991.

Sd/-

Secretary,

M.P. Electricity Board.

It is clear that instead of going to open competition involving outsiders, Board had decided to give opportunity to its own personnel. It was clearly stated that test and interview to be held and the incumbents would be appointed in Finance and Accounts Wing in the post one rank higher than their present rank in the Board. The application form was also sent along with the circular. In view of regulation 7(ii)(b) of 1952 and regulation 7 of 1982, in my opinion, Board is fully justified to conduct the written examination, action is as per the power given under the said regulations which have the statutory force. Action is in consonance with the regulation, holding of departmental examination cannot be said to be violative of aforesaid regulation.

Coming to the question of fair procedure, written test has been conducted by IFMR, Chennai, candidates were interviewed also, there is nothing to doubt that applications were duly invited from all the incumbents, no prayer was made to extend the time, thus, it cannot be said that under any of the circular unfair process was adopted. Marks were disclosed when test was held.

Board had instead of inviting applications from open market given chance to departmental candidates, as the persons from promotional channel were not available. The recruitment is permissible by both methods, direct recruitment and promotion in the Finance and Accounts Wing. In view of regulation 5 of regulation of 1952, it was open to the Board to prescribe the mode of recruitment, it has given chance to departmental candidates instead of calling candidates from the open market which would have hampered the chance of deserving departmental candidates, it has given first opportunity to the department personnel's having requisite experience and aptitude to stake their claim, hence, petitioners and association representing the departmental candidates were not prejudiced in any manner by the action of the Board of inviting applications from all eligible personnel working in the Board.

The submission raised that syllabus was not prescribed, reading of the above quoted circular makes it clear that requisite knowledge in the subject was the basic requirement, asking questions of general knowledge cannot be said to be impermissible.

Holding of one test for various posts cannot be said to be improper as incumbent was to be appointed one rank higher in the Finance and Accounts Wing as compared to the post held by him. The directive of the State Government was acted upon, the action of Board cannot be said to be suffering with vice of arbitrariness.

I find no merit in the writ petitions. Resultantly, writ petitions are dismissed. Parties to bear their own costs as incurred of these petitions.