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

*Date of decision: 08.05.2024*

+ W.P.(C) 16645/2022, CM APPL. 52436/2022 -Int. Dir & CM  
APPL. 24316/2024 -Mod. of orders dt. 08/01/24 & 05/02/2024  
by R-6

**RAKESH CHOPRA**

..... Petitioner

Through: Mr. A.K.Behra, Sr. Adv. with  
Mr. Nitin K. Gupta, Mr. Sanchay Mehrotra,  
Advs.

versus

**UNION OF INDIA & ORS.**

..... Respondent

Through: Mr. Avnish Singh, SPC with Mr.  
Vishal Kr. Yadav, Ms. Kanchan Kumari, Mr.  
Mahindra Vikram Singh, Advs., Mr. Naveen  
Bhardwaj, DD, Sub. Ram Niwas (HQ  
DGBR).

Ms. Malvika Trivedi, Sr. Adv. with Mr.  
Pranay Ranjan, Mr. Pratap Ranjan, Advs., Ms.  
Sonu Sharma, Advs. for R-6.

**CORAM:**

**HON'BLE MS. JUSTICE REKHA PALLI**

**HON'BLE MR. JUSTICE SAURABH BANERJEE**

**REKHA PALLI, J (ORAL)**

1. The present writ petition under Article 226 of the Constitution of India seeks to assail the orders dated 01.11.2022 and 07.11.2022 passed



by the respondent nos.3 and 4. Vide the impugned orders, the petitioner's representations against the rejection of his request for forwarding his application for deputation to the post of Executive Director (ED) in the respondent no.6/corporation, have been rejected.

2. Before dealing with the rival submissions of the parties, we may note the brief factual matrix as is necessary for adjudication of the present petition.

3. The petitioner joined the respondent no. 3 as an Assistant Executive Engineer (Civil) on 31.05.1994 and was, based on his performance, promoted as Executive Engineer (Civil) on 10.05.2003, whereafter he was, on 07.03.2018, promoted to the rank of Superintending Engineer, on which post he is presently working. Upon an advertisement being issued by the respondent no.6 on 20.12.2021, inviting applications for filling up two posts of Executive Director (T/P), the petitioner, on 06.01.2022, submitted an application seeking deputation to respondent no. 6. As per the laid down Standard Operating Procedure (SOP) dated 20.04.2021, the petitioner submitted this application to his immediate superior, i.e, the Chief Engineer at HQ CE (P) Beacon, where he was then serving.

4. Learned senior counsel for the petitioner has painstakingly taken us through the various clearances which were granted to the petitioner when he had submitted his application for deputation. We find that the application dated 06.01.2022 was duly recommended by the concerned Chief Engineer who had also given him a sparability certificate clearly stating that in case the petitioner was sent on deputation, the work of the respondent nos. 3 & 4 would not suffer in any manner. However,



despite this recommendation being made and it being an admitted position that the petitioner was applying for deputation for the first time in the calendar year 2022, the respondent nos.3 & 4 chose not to accept the said request. Consequently, the respondent no.3 vide its communication dated 10.02.2022, rejected the petitioner's application for deputation on the ground that he had been detailed as an Inquiry Officer in 5 ongoing Departmental Enquiries and could not be released before finalization thereof.

5. Being aggrieved, the petitioner submitted a representation dated 15.02.2022 to the respondent nos.2 & 3, which representation was kept pending. The petitioner claims that since he was hopeful that the respondent nos. 3 & 4 would accede to his request, he, under this bona fide belief, appeared in the interview conducted by respondent no.6 for the post of ED. As per the result declared by respondent no.6 on 05.07.2022, the petitioner emerged successful in the said selection process. Immediately thereafter the petitioner submitted a representation dated 06.07.2022 to the respondent no. 2 for relieving him to enable him to join the post of ED with respondent no.6. Simultaneously, the petitioner also submitted a representation to respondent no.6 for extending the time to produce the NOC and relieving order from the respondent nos.3 & 4.

6. Though the petitioner's request for extension of joining time was acceded to by respondent no.6 by granting him time till 31.08.2022 to produce the requisite NOC, he was unable to do so as the respondent nos.3 & 4 not only declined to give him an NOC but also commenced a Court of Inquiry (CoI) against him for appearing in the interview



without getting the requisite permissions.

7. As per respondent no.6, when the petitioner was not able to join within this extended time, the post of ED, for which he had been selected was, offered to the next candidate in the waitlist panel and consequently, the vacancy against which the petitioner had applied stood filled. It appears that after making appointments against the two posts of EDs advertised on 20.12.2021, the respondent no.6 came up with yet another advertisement for filling up one more post of ED. This time, the petitioner admittedly did not apply for the said post, perhaps on account of the ongoing CoI against him. However, in October 2022 he approached this Court by way of WP(C) 14621/2022 with a prayer for quashing of order dated 10.02.2022 passed by the respondent nos.3 & 4, vide which his prayer for forwarding his application dated 06.01.2022 for deputation to respondent no.6 had been rejected. This writ petition was disposed of by this Court on 17.10.2022 with a direction to the respondent nos.3 & 4 to pass a reasoned and speaking order on the petitioner's pending representations whereby he had sought issuance of a relieving order in order to join respondent no.6 as ED.

8. Upon these representations dated 01.11.2022 and 07.11.2022 being rejected, this present petition has been filed wherein this Court, while issuing notice, permitted the petitioner to appear in the interview to be conducted by respondent no.6 on 08.12.2022 for the post of ED which had been advertised on 01.09.2022. Thereafter, vide orders dated 08.01.2024 and 05.02.2024, this Court directed that no final selection qua one post of ED will be made till the next date, which order is continuing as on date. Premised on this interim order, the learned senior



counsel for the petitioner has vehemently urged that the decision of the respondent nos.3 & 4 not to forward the petitioner's application for deputation to the post of ED be quashed and the respondent no.6 be directed to appoint the petitioner against this available vacancy.

9. On the other hand, learned counsel for the respondent nos.3 & 4 seeks to support the impugned order and submits that the respondents' decision not to forward the petitioner's application was justified as the petitioner was admittedly the Inquiry Officer in 5 different Departmental Enquiries. He further draws our attention to the SOP dated 20.04.2021 and submits that since the petitioner chose to appear in the interview despite his application not having been forwarded by the Headquarters, he cannot now complain that a CoI ought not to have been held against him. After some arguments, he submits that in the peculiar facts of the present case, the respondents undertake not to take any further action against the petitioner on account of his having appeared in the interview without getting the requisite approval. We take this statement on record.

10. Having considered the rival submissions of the parties and perused the record, we are of the opinion that the rejection of the petitioner's request by respondent nos.3 & 4 for forwarding his application for deputation to respondent no.6 was wholly unjustified. In our considered view, merely because the petitioner on the basis of his competence and unimpeachable integrity is assigned the additional task of conducting Departmental Enquiries, the pendency of these enquiries cannot be held against him when he wishes to apply for deputation if he otherwise meets the criteria for seeking deputation. From the perusal of



the rejection order dated 10.02.2022, we find that while there was no doubt about the petitioner's eligibility to apply for deputation, his request was rejected solely on account of his being the Inquiry Officer in 5 pending Department Enquiries. Even before us learned counsel for the respondent nos. 1 to 4 has not denied that the petitioner fulfils the laid down criteria for seeking deputation and had also been issued a categorical sparability certificate by his immediate superior i.e., the concerned Chief Engineer. No doubt no employee has an indefeasible right to seek deputation but this also does not imply that the employer should stand in the way of aspirations of a dedicated employee for career advancement on wholly arbitrary and unjustifiable grounds. We, therefore, have no hesitation in holding that the action of the respondent nos.3 & 4 in refusing to forward the petitioner's application for deputation to respondent no.6 as also denial of NOC to join respondent no.6 was arbitrary.

11. Having said so, we find that at this stage, the vacancy against which the petitioner had applied is no more available as it is the categorical stand of respondent no.6, as articulated by their learned senior counsel, Ms.Trivedi, that the vacancy against which the petitioner was selected stands allotted to the next candidate in the wait list panel prepared by respondent no.6.

12. In these circumstances, merely because by way of an interim order the petitioner was permitted to appear in the interview for a vacancy advertised on 01.09.2022, for which he never applied, we are unable to direct the respondent no.6 to consider him for appointment against that vacancy. In these circumstances, even though we have held



that the petitioner's request for NOC to join respondent no.6 was unjustifiably denied by the respondent nos.3 & 4, we cannot, at this belated stage, grant him any relief as prayed for. We may also note that the petitioner had for the first time approached the Court in October 2022 i.e., much after the vacancy against which he had been selected had been allocated to the wait listed candidate.

13. At this stage, learned senior counsel for the petitioner submits that the petitioner is already about 56 years of age and therefore as per the applicable policy, the respondent nos. 1 to 4 will not entertain any future applications of the petitioner for deputation. He, therefore, prays that taking into account the circumstances under which the present writ petition remained pending before this Court, the respondent nos.1 to 4 be directed to consider the future applications for deputation made by the petitioner regardless of his having attained the maximum age for deputation. Furthermore, under exceptional circumstances such applications have in the past been favourably considered by the respondents themselves. Learned counsel for the respondent nos.1 to 4 is not in a position to deny this averment made by the petitioner.

14. In the light of the aforesaid, we dispose of the writ petition with all pending applications by directing the respondent nos.3 & 4 to consider granting age relaxation to the petitioner for applying for deputation till 31.12.2024. We, however, make it clear that this direction for granting age relaxation to the petitioner for the purpose of forwarding his application for deputation is being issued in the peculiar facts and circumstances of this case.

15. The writ petition is, alongwith all pending applications, disposed



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of in the aforesaid terms making it clear that all other reliefs sought for in the petition are rejected. Needless to state, all interim orders stand vacated.

**(REKHA PALLI)**  
**JUDGE**

**(SAURABH BANERJEE)**  
**JUDGE**

**MAY 8, 2024**  
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