

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR BENCH

WRIT PETITION (C) NO. 458/2009

Mr. Lige Ori,
Resident of F-Sector, Itanagar,
P.O./P.S.-Itanagar, District Papum Pare,
Arunachal Pradesh. ... Petitioner.

VERSUS

1. The Donyi Polo Ashok Hotel Corporation Ltd.,
Itanagar, Government of India undertaking.
2. Hotel Donyi Polo Ashok, Itanagar,
Represented by its Managing Director,
Itanagar, P.O./P.S.-Itanagar, District Papum Pare,
Arunachal Pradesh.
3. The General Manager,
Hotel Donyi Polo Ashok, Itanagar,
P.O./P.S.-Itanagar, District Papum Pare,
Arunachal Pradesh.
4. The Chairman Interview Board,
Represented by its Chairman Avinash Gagrani,
Itanagar, P.O./P.S.-Itanagar, District Papum Pare,
Arunachal Pradesh.
5. Mr. Manoj Kr. Singh (Accountant),
Hotel Donyi Polo Ashok, Itanagar,
P.O./P.S.-Itanagar, District Papum Pare,
Arunachal Pradesh. ... Respondents.

BEFORE
THE HON'BLE MR JUSTICE HRISHIKESH ROY

For the Petitioners : Mr. T. Gadi. ... Advocate.

For the Respondents 1 & 2 : Mr. D. Kamduk. ... Advocate.

For the Respondents 3 & 4 : Mr. P.K. Tiwari. ... Advocate.

For the Respondent No.5 : Mr. T. Pertin
Mr. A.K. Singh
Mr. S. Tapin
Mr. L. Tenzing
Mr. L. Gayti
Mr. Y. Kaku. ... Advocates.

Dates of hearing : **22.3.2011 & 23.3.2011**

Date of delivery of Judgment : **23.3.2011**

JUDGMENT AND ORDER (ORAL)

Heard T. Gadi, learned Counsel appearing for the petitioner. Mr. D. Kamduk, learned Counsel makes submissions on behalf of respondents 1 & 2. Mr. P.K. Tiwari, learned Counsel appears for respondents 3 & 4. Respondent No.5 is represented by Mr. T. Pertin, learned Counsel

2. The petitioner challenges the appointment of respondent No.5 to the post of Accountant in the *Donyi Polo Ashok Hotel*, a Public Sector Hotel (hereinafter referred to as "*the Hotel*"), in pursuant to a selection process initiated through the advertisement dated 24.10.2008. It was notified in the advertisement that recruitment is to be made through a written test of 50 marks followed by interview with 50 marks. The result of the written test held on 20.11.2008 was declared and the petitioner was shown to have been secured 100% marks in the written test, whereas the respondent No.5 secured 41 out of 50 marks. In the viva voce conducted on 24.11.2008 by a 4 Members Board, the petitioner fared poorly having secured 20½ marks and with 44½ marks, the respondent No.5 secured the highest with aggregate score of 85½ / 100 and was accordingly recommended for appointment.

3.1 The petitioner having learned through RTI that he was awarded zero by the Chairman of the Interview Board and the respondent No.5 was given 20 marks out of 20 by the same Member, questions the fairness of the selection process.

3.2 The petitioner challenges the eligibility of respondent No.5 by pointing out that he was overaged at 34 years since 28 years was the maximum age prescribed for General Category candidates.

3.3. Mr. T. Gadi, learned Counsel appearing for the petitioner relies upon the Supreme Court decisions in *Ashok Kumar Yadav vs. State of Haryana* reported in (1985) 4 SCC 417 and *Mohinder Sain Garg vs. State of Punjab* reported in (1991) 1 SCC 662 to contend that 50% marks for viva voce vis-à-vis 50% for the written test segment is impermissible as the marks in the viva voce segment can't exceed 15% of the total aggregate and oral interview should not be allowed to outweigh the performance in the written test. Mr. Gadi points out that the petitioner achieved perfect score i.e. 50 out of 50 marks in the written test and only because zero mark was given to him by the Chairman of the Interview Board, his aggregate performance was evaluated to be inferior to the respondent No.5.

4. The Donyi Polo Ashok Hotel is a joint venture of the Indian Tourism Development Corporation Ltd. (ITDC) and the Arunachal Pradesh Industrial Development Financial Corporation (hereinafter referred to as "the APIDFC") and the ITDC is a major stakeholder in the *Hotel*. The Chairman of the ITDC is also the Chairman of the *Hotel*.

5.1 According to the *Staff Recruitment Rules – 1997* (hereinafter referred to as "the Rules") as it originally stood without amendment, a 3 tiered hierarchical structure in the Accounts Section is envisaged for the *Hotel*.

5.2 At the entry level, there is Accounts Clerk-Grade-II (with qualification of graduation in Commerce with 1 year experience), to be filled up wholly through direct recruitment. They are eligible for promotion after 3 years of satisfactory service, to Accounts Clerk, Grade-I. The advertised post of Accountant which corresponds to the post of Assistant (Accounts) hereinafter referred to as "the Accountant", in *the Rules* is to be filled up through automatic elevation after 5 years of satisfactory service, from the cadre of Grade-I clerk.

5.3 Therefore the original Rules prescribed appointment to the post of Accountant only through promotion, from the cadre of Accounts Clerk-Grade-I and not by direct recruitment.

5.4 But amendment to *the Rules* were purportedly made by decision taken in the 66th Meeting of the Board of Directors held on 24th September, 2003 at Ashok Hotel, Chanakyapuri, New Delhi, whereby amendments proposed in the 65th Board Meeting of 27th May 2003 was allegedly approved. The petitioner contends that even without a B.Com degree, he was enabled to apply for the accountant's post since as a one time measure, direct recruitment to the post of Accountant was permitted through amendment.

5.5 But the respondent No.5 contends that age limit for the post was raised from 28 years to 40 years, by the amendment approved in the 66th Board Meeting held on 24th September 2003 and therefore at 34 years, he was not disqualified under *the Rules*, for being considered for the post of Accountant.

6.1 In this case, separate counter affidavits have been filed by the hotel authorities through the Managing Director (M.D.) on behalf of respondents 1 & 2 and by the General Manager (G.M.) on behalf of respondents 3 & 4. In the counter affidavit filed on 22nd April 2010 by the M.D., it is averred that as the Appointing Authority, he appointed the respondent No.5 on the basis of recommendation made by the Selection Board. But he doesn't take responsibility for the selection.

6.2 Interestingly in the counter affidavit of the G.M. it is alleged that, the M.D. was trying to ensure selection of his favoured candidates in the post of Accountant and also in the 2 other advertised posts of Time Keeper/Typist Clerk and Page Boy/Porter. The G.M's affidavit insinuates that the writ petitioner was the chosen candidate of the M.D. for the post of Accountant and he couldn't

have performed so well without having any qualification in the field of Accountancy. Such inferences are drawn on the basis that the M.D. himself conducted the written examination by excluding the G.M. and the Departmental Head of Accounts, from the written examination process.

6.3 it is also averred in the counter affidavit that having failed to secure the appointment of the writ petitioner, the Managing Director tried to create incriminating material against the General Manager to project that the selection of respondent No.5 was unfairly made by the Members of the Interview Board, chaired by the respondent No.3.

7. Considering the divergence of views of the Managing Director and the General Manager, this Court was unable to ascertain as to whether any amendment in *the Rules* were actually made, permitting direct recruitment for the post of Accountant and enabling non Commerce degree holders to apply for the post. The Court also couldn't conclude with certainty whether the maximum age of recruitment was raised to 40 years, as was projected by the respondent No.5. Accordingly Mr. D. Kamduk, learned Counsel representing the Managing Director who is the Administrative Head and custodian of records in the *Hotel* was ordered to produce the original Resolution(s) allegedly adopted in the 65th and 66th Board Meetings. But Mr. Kamduk has expressed his inability to produce any of the amendment Resolution. Therefore a lurking doubt remains as to whether amendments were ever made in *the Rules*.

8. Considering the perfect score secured by an Economic graduate in the written examination for the post of Accountant and also considering the award of full marks to the respondent No.5 by the Chairman of the Interview Board in the viva voce segment, the selection can't be said to be fair and if the

Rules were not amended the process of selection is not consistent with the requirement of *the Rules*.

9. That apart, the interview and the written test segment had equal weightage and the viva voce marks in this selection process was inconsistent with the law laid down by the Apex Court in *Ashok Kumar Yadav (supra)* and *Mohinder Sain Garg (supra)*.

10. The respondent No.5 contends that being the most experienced and a Post Graduate degree holder in Commerce, his candidature was the best for the post of Accountant and considering his consistent performance in the written test (41/50) and in the viva voce (44½ out of 50), his selection shouldn't be disturbed.

11. But the submissions made by the G.M. (respondent No.3) and his counter affidavit shows that the M.D. had tried to influence the process to give appointment to a favoured candidate i.e. the writ petitioner. Although similar allegation against the G.M. of trying to favour the respondent No.5 has been made, upon considering the contents of the affidavit filed by respondent No.5 on 16th January 2010 and more particularly the averments made in paragraph 5 thereof, which shows that the candidate could not have met the General Manager at Itanagar on 23rd November 2008 as he had arrived for the interview only on 24th November 2008, I find no substance in the Managing Director's allegation against the General Manager.

12. Although it is possible that the respondent No.5 was the best amongst all the candidates, the process of selection is found to be vitiated as the concerned departmental heads were not involved in the written examination segment and the same was conducted entirely by the Managing Director by keeping the General Manager and the other concerned persons in the dark.

Similarly the petitioner was given zero mark by the Chairman in the viva voce whereas full marks was given to respondent No.5. The more significant deficiency however appears to be the norms that were followed for the recruitment as it couldn't be ascertained on the basis of the un-authenticated materials that, amendment of *the Rules* was actually approved in the 66th Board Meeting held at New Delhi.

13. For the foregoing, I see no justification to issue a mandamus for appointment of the petitioner to the post of Accountant as I am of the considered view that the post should be filled up through a fresh selection process. It is ordered accordingly. But considering that the respondent No.5 was an innocent victim, he may be permitted to continue in service until a regular appointment is made. Age relaxation of the respondent No.5 may also be considered, if he offers his candidature in the fresh recruitment process.

14. Having noticed that Managing Director and the General Manager of this Public Sector Undertaking are working at cross purpose, I feel that fresh selection should be preceded by notifying the norms of recruitment with the approval of the Chairman of the ITDC, who is the ex-officio Chairman of the *Hotel*. Amendments if any, in the Service Rules, be also notified with the approval of the Chairman, ITDC, for information of all concerned, so that appointment is made objectively according to the specified norms.

15. The case is disposed of with the above order without any order on cost.

JUDGE