

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

Reserved on:18.05.2012
Pronounced on: 02.07.2012

+ **LPA 364/2012, C.M. APPL. 8775/2012**

MANOHAR SINGH Appellant

Through: Appellant in person.

versus

NTPC LTD. Respondent

Through: None.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE S.P. GARG

MR. JUSTICE S.RAVINDRA BHAT

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C.M. NO. 8775/2012 (for Exemption from filing record of Writ Petition)

Allowed, subject to just exceptions.

LPA 364/2012

1. The appellant claims to be aggrieved by the judgment and order of the learned single judge dated 10th April, 2012, in WP 7675/2007 under Article 226 of the Constitution of India.
2. The appellant joined the National Thermal Power Corporation (NTPC) on 28th January, 1982 as Supervisor Grade- II. In 1986, he agreed to work in the Safety Department, where he received various honours and

appreciations from the respondent for his performance. He was promoted as Deputy Manager (Safety) at the E-4 level in 1999, and was transferred from NTPC (Kawas) to BTPS/NTPC (Badarpur) the same year. By a memorandum, dated 23rd November, 2001, the General Manager Shri P.P. Singh, acting as the Disciplinary Authority, informed the appellant that an inquiry has been initiated against him for misconduct under Rule 25 of the NTPC Conduct Discipline & Appeal Rules, and that a charge sheet has been framed on the allegation that he had furnished false documents for claiming HRA from the respondent. By letter, dated 5th January, 2002, the appellant informed the Disciplinary Authority that as per the Modified Schedule of Delegation of Powers for Disciplinary Matters, the officer was not empowered to issue a charge sheet under Rule 25 (Major Penalty) of the NTPC Conduct Discipline & Appeal Rules and therefore, he was not bound to file any reply to the charge sheet. In his response of 12-01-2002, the Disciplinary Authority rejected this plea and granted him 3 days to file the reply. On 4-02-2002, the respondent also appointed an enquiry officer. The appellant took part in the inquiry proceedings under protest. He also requested the respondent to expedite the proceedings in view of his approaching retirement.

3. On 4-03-2003, while the inquiry was in progress, the appellant represented, to the respondent for his promotion from E-4 to the next higher grade i.e. E-5. To this, the respondent replied by memo, dated 20-03-2003, stating that he was considered by the Regional Promotion Committee (RPC) but was not recommended by them. Being aggrieved, the appellant resorted to Stage-II Grievance, on 29-03-2003. This was rejected by the respondent on 30-05-2003, and it was clarified that in fact, since the disciplinary

proceedings were pending against the appellant, recommendations of the aforesaid Regional Promotion Committee had been kept in a sealed cover and were governed by the relevant rules. On 26-08-2003, on the eve of the appellant's retirement, which was scheduled for 31-08-2003, the Deputy Manager (HR-ER & W), initiated a note proposing that the case against the appellant be closed, since he was approaching superannuation. This note was accepted on 29th August, 2003 and communicated to the appellant.

4. After the above events, the appellant filed a writ petition, i.e WP (C) No. 2077/2007, alleging, that he was not informed about the recommendations made by the Promotion Committee for 2003 which were kept in a sealed cover by the respondent. On 19th March, 2007, the Court disposed of the writ petition, directing NTPC to communicate its decision. After that, on 05-04-2007, NTPC wrote to the appellant, stating that he had not been recommended for promotion when he was considered. That decision was challenged in the latest round of litigation, through proceedings under Article 226 of the Constitution, being WP 7675/2007. The appellant urged in the writ proceedings, that NTPC ought to have followed the procedure indicated by Para 7.3.2 of the Promotion Policy (Executive) which enabled *ad-hoc* promotion in such cases; the denial of such facility to him was for *mala fide* reasons. This was rejected by the learned single judge, holding that under the policy, he could not claim such relief.

5. As far as the other aspect, with regard to the appellant's claim for unjustified denial of promotion, on the ground of improper assessment of his merit was concerned, the impugned judgment had this to say:

“The examination of the ACR folder of the petitioner which was produced by the respondent shows that as prescribed by Rules 5.1 and 6.4 of the Promotion Policy, which is also reproduced above; the Promotion Committee for the year 2002 examined the ACRs of the petitioner for the years 1999, 2000 and 2001; whereas the Promotion Committee for the year 2003 examined the ACRs of the petitioner for the years 2000, 2001 and 2002. For the year 1999, there appear to have been two ACRs filled in. The first one is from 1st January, 1999 to 24th September, 1999. In this ACR, the reporting officer has evaluated his performance as, “average” and no final assessment has been mentioned by the Moderation Committee. Thereafter, the second ACR has been filled in for the period 25th September, 1999 to 31st December, 1999. In this ACR, the petitioner’s performance has been rated as, “good”. For the year 2000, the petitioner’s performance has been rated as, “average”. Thereafter, for the year 2001, his performance is rated as, “average”. For the year 2002, his performance has once again been rated as, “average”. The marks allotted by the Promotion Committee for the year 2002, which was looking at the ACRs of the years 1999, 2000 and 2001, are 6 for each year. In other words, the Committee was under the impression that he had been rated as, “average” for all the three years. Here, there appears to be an error inasmuch as for the year 1999, his performance has in fact, been rated as, “good” and, therefore, the Committee should have allotted him 8 marks for that year. Even then, an increase of 2 marks would only take his total from 33 to 35 which would still be far below the qualifying mark which has been set at 45 in paragraph 7.1(c) of the Policy. For the year 2003, the Performance Committee took into consideration the ACR rating of the petitioner for the years 2000, 2001 and 2002. In all these years, the petitioner was rated as, “average” and consequently, the Committee has correctly allotted 6 marks for each year in this case. It appears that before the sealed cover was opened, the petitioner was under the impression that the overall ratings in his ACR for the relevant years is in fact, “good”. This is not the case. Furthermore, even if the petitioner’s case in this respect is

taken at the highest and the ACRs in question are presumed to be, "good", even then, while considering the petitioner for promotion to the E5 level, it would make no material difference to the outcome as his total would only increase to 39 instead of 33 for the year 2002; and for the year 2003, it would become 37 instead of 31. However, in terms of the aforesaid paragraph 7.1(c), the minimum benchmark prescribed is 45 marks. It follows, therefore, that even if his performance ratings are allotted marks in the manner claimed by the petitioner, he would still not be eligible to be promoted to the E-5 level due to his failure to meet the aforesaid minimum criteria of 45 marks. He was therefore not recommended. The petitioner in this case only had a right to be considered for promotion but did not have any vested right to be recommended for promotion."

6. Dealing with the allegation that Shri. P.P. Singh's participation in the promotion committees vitiated the entire process, the impugned judgment held that:

"The petitioner further contends that the participation of the General Manager and Head of Department of the petitioner, Mr. P.P. Singh, in the deliberations of the Promotion Committees was contrary to the rules and that Mr. Singh's bias towards him is the reason for the lowering of his ratings, and the rejection of his candidature, by the Promotion Committee.

17. As already concluded in the preceding paragraphs, in fact, there has been no lowering or reduction of the petitioner's ratings awarded to him for his performance in the years in question, by the Promotion Committees. Furthermore, admittedly, the Performance Committee for the year 2002 comprised of as many as 11 officers, all of whom were party to the decision. In addition, as pointed out by counsel for the respondent at the bar, the aforesaid Mr. P.P.Singh was not the senior most officer sitting on that Committee, and, in fact, there were as many as 4 officers with the rank of General Manager, all of whom, were senior to Mr. P.P.Singh, sitting on the Committee. He has also pointed out that out of the 11 officers on the Committee, as many as 6 officers were either of the same

rank as that of Mr. P.P.Singh or senior to him. Similarly, in the Promotion Committee of 2003, there were as many as 7 officers who participated. In that view of the matter, more so, when no specific mala fides have been spelt out against the said Mr. P.P.Singh in the writ petition moved by the petitioner, it cannot be said that mere participation of Mr. P.P.Singh could have influenced even his superiors in such a manner as to result in any appreciable difference to the outcome. Consequently, the allegations of bias against the committee on the ground of participation of Mr. P.P.Singh, who was a General Manager and Head of the Department of the petitioner, fail to impress this Court.”

7. The appellant reiterated the submissions made before the learned single judge, and urged that the impugned judgment fell into error in regard to the interpretation placed on the Promotion Policy. It was urged that the writ petitioner had relied on a representation dated 13-10-2003 to the NTPC, which had alleged that the down gradation of ACRs had never been communicated to the appellant. The submission was that this was an aspect urged before the learned single judge, but never considered.

8. This Court has considered the submissions of the appellant and also gone through the records. The learned single judge went into the entire dispute in great detail, and also went through the record. We find no infirmity in regard to the interpretation of Para 7.3.2. As far as the substantive aspect goes, the Court notices that on an overview of the entire record, the single judge found that there appeared to be an error in regard to the manner of marking, adopted by the Promotion committee. However, on the admitted facts urged, and a proper application of the norms, the result, according the impugned judgment, would not have been no different.

9. This Court is of opinion that the restricted parameters of appeal, against a single judge's order, under Article 226 of the Constitution, do not admit any scope for reversal of any judgment merely because the appellate court can discern another view, contrary to the decision of the single judge. Unless the judgment appealed against discloses patent or glaring error in the appreciation of any law, or facts, the appellate court would desist from reversing the judgment appealed against.

10. In view of the above discussion, this Court finds no reason to interfere with the judgment of the learned single judge. The appeal is consequently without merit, and therefore, dismissed.

S. RAVINDRA BHAT
(JUDGE)

S.P. GARG
(JUDGE)

JULY 02, 2012