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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 1090/2001

11th March, 2015

SHRI. BRIJ KISHORE GUPTA

..... Petitioner

Through: Mr. K.R.Faridi and Mr. J.K.Gupta,
Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. S.K.Taneja, Sr. Adv. with Mr.
Rajesh Gupta, Adv. for R-2 to R-6.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, petitioner who is an employee of the respondent no.2/employer/National Thermal Power Corporation Limited (NTPC Ltd.), seeks the relief of being granted various promotions and these reliefs are as per prayers (a) and (b) of the writ petition and which prayers read as under:-

"PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to pass or issue:-

(a) a writ, order or directions in the nature of mandamus directing the Respondents hereto to immediately promote the Petitioner as follows:-

Post	Date
Sr. Asstt. Engineer Grade E2	w.e.f. 1.4.1994
Engineer Grade E2A	w.e.f. 1.4.1995
Sr. Engineer Grade E3	w.e.f. 1.4.1998

and allow all consequential benefits of payment of due of salary and allowances/pay fixation/increments/allowances/seniority, etc. which fell due to the Petitioner as a result of the aforesaid promotions;

(b) a writ, order or direction in the nature of mandamus directing the Respondents hereto not to make any further promotion to the Juniors or equivalent of the Petitioner in the post of E-3, Sr. Engineer till such time the Petitioner is not considered and promoted as such;”

2. I may at this stage itself note that this writ petition is only pressed with respect to the claim of promotion and other reliefs for quashing of transfer order etc are not pressed.

3. The case of the petitioner for reliefs is in two parts. Firstly the petitioner claims that he should have been promoted from E-1 to E-2 Grade not from 1.1.1995 but earlier from 1.4.1994. The second part of the relief is that further promotions from Grade E-2 to Grades E2A and E-3 should have been

granted in the relevant years 1995 and 1998 respectively but the same illegally have not been granted. Consequent promotions to further grades are also claimed. Be it noted that there are a total of 7 Grades for promotion in the respondent no.2 namely E-1, E-2, E2A, E-3, E-4, E-5 and E-6.

4. The promotion policy of the respondent no.2 is not disputed and the relevant clauses of the promotion policy for the claim of the petitioner for being promoted to the post of E2A read as under:-

“3.1 Promotion of executives to positions in next higher grades will be on the basis of merit, efficiency grade service and suitability. In view of the fact that such merit, efficiency and suitability can be meaningfully determined on the basis of assessment of performance promotion of executives to available vacancies in grades upto and including E6 will normally be made effective from standard date/dates.

(a) Meeting of the Corporate Promotion Committee for promotion of executives will be held once in a year. The eligibility of executives upto and including the grade of E6 will be determined as on 1st of April with grace period of one month i.e.those who complete the eligibility period as on 30th April will come under the some of consideration.

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4.5 The Appraisal System will be on a 5 Point Scale i.e. “Outstanding”, “Good” “Average”, “Below Average” and “Unsatisfactory”, as defined in the Appraisal formats. The final overall evaluation by the “Moderation Committee” will be taken into consideration for the purpose of aggregation and marks

will be allotted to various ratings as follows:

Rating	For promotions upto E4	For promotions from E4 to E5 and above
*Outstanding	8	10
*Good	6	8
*Average	4	6
*Below Average	2	4
*Unsatisfactory	0	0

- 5.1 The eligibility period shall be three years for promotion of executives in all grades except in the case of E2 to E2A where the eligibility period shall be one year. It is on completion of this minimum period as on the reference date, that an executive will be eligible for consideration for promotion to the next higher grade.

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- 6.1 CMD shall have the powers to constitute Corporate Promotion Committee (CPC) as considered appropriate by him, from time to time.
- 6.2 CPC will consider the suitability or otherwise of the eligible executives for promotion to the appropriate next higher grade, on the basis of their qualification, grade service, performance and potential as reflected in the Appraisal Reports, Interview (wherever applicable) and other documents, relevant records in the personal files and any other information/reports having a bearing on their suitability for assuming positions in the next higher grade.
- 6.3 In addition to the above, the CPC shall interview the eligible executives in E5 and E6 grades, with a view to ascertain their suitability for the next higher position.

- 6.4 The CPC shall take into consideration the performance Appraisal Reports including special Performance Report, if any: for the last 3 years.

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- 6.6 The marks secured by each eligible executive from the Performance Appraisal Reports, Grade Service and marks awarded by CPC (wherever applicable) will be aggregated. Those executives who have been found suitable for promotion will be ranked in order of merit. Where aggregate of marks is the same they will be ranked in order of seniority.

- 6.7 Subject to fulfillment of the principles minimum criteria and other conditions as laid down herein and subject to other relevant rules and orders in force in the company, the CPC will recommend for approval of the Chairman and Managing Director of any delegated authority, a panel of names of eligible executives, ranked in order of merit, who are considered suitable for promotion to specific appropriate positions in the next higher grades, where the Chairman and Managing Director himself is the Chairman of the CPC, the said panel will be deemed to have been approved. The panel to approved will constitute the basis and authority for promotion of executives to the appropriate higher grade.

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- 7.1 Factors which are to be taken into account for determining suitability for promotion of an executive and the weightage therefore shall be as under:-

- a) Promotion of executives from the grades of E1 to E2, E2A to E3 and E3 to E4:

	<u>Factors</u>	<u>Maximum Marks</u>
i)	Performance	24

	Appraisal Ratings (for last 3 years	
ii)	Grade	<u>16</u>
	Service	
	Total	<u>40</u>

The marks for performance Appraisal Ratings will be as given in para 4.5.

The marks for Grade Service will be as under:-

<u>Grade Service</u>	<u>Marks</u>
3 years	10
4 years	13
5 years & above	16

The 'Qualifying Marks' for promotability will be 30 (Thirty).

b) Promotion of executives from the grade of E2 to E2A

<u>Factors</u>	<u>Maximum Marks</u>
i) Performance Appraisal Rating (for last years)	8
ii) Grade Service	4
Total	<u>12</u>

The marks for performance Appraisal Rating will be as given in para 4.5.

The marks for grade service will be as under:-

<u>Grade Service</u>	<u>Marks</u>
1 year	3
2 years & above	4

The 'Qualifying Marks' for Promotability will be 08 (Eight).” (underlining added)

5. A reading of the aforesaid clauses of the promotion policy shows that in addition to consideration of the Annual Performance Reports of the employee, the employee still has to be found suitable for promotion to the post and this is to be decided by the Corporate Promotion Committee (CPC) in view of the language of Clauses 6.2, 6.3, 6.6 and 6.7 as reproduced above. Putting it differently, there is no automatic promotion on completion of a particular number of years of service and achieving the minimum marks as per the annual reports, inasmuch as, CPC will and has also to examine other factors for suitability of promotion in terms of Clauses 6.2 and 6.3.

6. As per the counter-affidavit filed by respondent no.2, petitioner was considered each time in the relevant years for promotion from 1996, but he was not found fit /suitable and was rejected. Petitioner also very much knows about the issue of repeated rejections over different years from 1996 till 2000 when he was promoted to the post of E2A inasmuch as firstly petitioner in the writ petition has referred to promotion of persons junior to him to higher grades than the post of E2 which post petitioner is occupying, and secondly because the petitioner himself relies on the promotion policy which states that there will be considered promotion by CPC every year and therefore once the petitioner does not get promotion in a particular year in spite of his complying with the eligibility criteria petitioner is deemed to know that he is rejected. I may note

at this stage that Clause 10.1 of the Performance Appraisal System Policy for Executives and Clause 2.6.4 of the promotion policy relied upon by the petitioner nowhere requires that a candidate who has been rejected by the CPC must necessarily be informed of his rejection every year/time in which a candidate is rejected because the CPC may not have found the candidate fit/suitable for promotion.

7(i) Therefore, the right of the petitioner was only to be considered for promotion, he was considered for promotion, he was not found fit/suitable by the CPC, and petitioner never approached this Court within the limitation period after each year from 1995 for claiming promotion firstly to the Grade of E2 retrospectively from 1.4.1994 and thereafter for higher grades of E2A from 1.4.1995 onwards till the year 2001 when the present writ petition was filed. No doubt, the Limitation Act, 1963 does not apply to a writ petition, however, if a suit is barred for claiming the same relief against the defendant, the same cause of action cannot be pleaded by filing a writ petition because if that is done that would amount to circumventing the laws of the land being the Limitation Act, 1963. A court hearing a petition under Article 226 of the Constitution of India applies the principles of limitation by applying the doctrine of delay and *laches* and, delay and *laches* prevents the petitioner for getting the relief prayed for unless it is found that a representation is made by

the petitioner which is pending consideration and therefore petitioner does not rush to the Court on account of pending representation which of course is found to be a pending consideration, simultaneously also noting that it is not in every case where representation is filed, a person can approach the Court with delay because delay is condoned only when there are materials to show a pendency/consideration of representation on record and unnecessary repeated representations being made are not a ground to condone delay and *laches*.

(ii) Therefore, the claim of the petitioner for granting promotion to E-2 Grade from 1.4.1994 instead of 1.1.1995 had to be exercised by the petitioner by around 1997 or 1998 at the maximum, but the petitioner never approached this Court and therefore claim for grant of promotion to E-2 Grade from 1.4.1994 instead of 1.1.1995 is barred by the doctrine of delay and *laches*.

(iii) Petitioner's claim for further promotions to the posts of E2A, E3 etc would similarly be barred by delay and *laches*, except the claim for promotion for the post of E2A from the period of 3 years prior to filing of the writ petition in the year 2001. However even this claim to grant of promotion to E2A post cannot be entertained because admittedly petitioner was given promotion to the post of E2A in terms of the order dated 31.3.2000, but petitioner failed to join his place of transfer for many months and years, and hence the respondent no.2 was forced to cancel and withdraw this promotion

order. There exists the provision of Clause 7.4 of the Promotion Policy providing that in case the promoted officer does not join his place of posting at the promoted post within two months, the promotion order would stand withdrawn. Petitioner admittedly did not comply with the promotion order dated 31.3.2000 of joining the Talcher Unit of the respondent no.2 and therefore respondent no.2 had no option but to withdraw and cancel the promotion order. Petitioner therefore also cannot seek promotion to the post of E2A upwards in the respondent no.2 from 1998/2000.

8. Learned counsel for the petitioner has argued by placing reliance upon the averments made in CM No. 17144/2013 that petitioner has not been considered for promotion even subsequently and therefore the documents filed by the petitioner alongwith this CM to be considered, but, mere allowing consideration of documents will not mean that scope of a writ petition can be expanded for the petitioner to claim promotion from the year 2001 onwards for posts of E2A grade and upwards inasmuch as, such issues are fresh causes of action and for which petitioner had to file independent proceedings, and in any case today we are in 2015 and therefore petitioner cannot claim promotion retrospectively from the year 2001. This is all the more so because as already stated above, there is no automatic right to promotion and entitlement of which

is decided by the CPC on various factors and the right of the petitioner is only to be considered for promotion and which consideration he has been getting.

At this stage, learned senior counsel for the respondent states that the petitioner has in fact during the pendency of the writ petition got promotion to the post of E2A from 1.1.2007 and further promotion to E-3 post from 1.3.2010. These promotions have been accepted by the petitioner and that the petitioner has got benefits of the promoted post from the years 2007 and 2010.

9. In view of the above, the reliefs claimed by the petitioner cannot be granted both on merits as also on the ground of doctrine of delay and *laches* and accordingly the writ petition is dismissed, leaving the parties to bear their own costs.

MARCH 11, 2015
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VALMIKI J. MEHTA, J.