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

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Date of Decision: 2nd November, 2016

+ W.P.(C) 10202/2016 & CM No. 40317/2016

D K MUKHOPADHYAYA Petitioner
Through: Mr. Soumyajit Pani, Adv.

versus

BSES YAMUNA POWER LTD AND ORS Respondents
Through: Mr. Sandeep Prabhakar and Mr. Vikas
Mehta, Advts.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. It is the petitioner's case that he was not considered for the promotion to the post of DGM in the DPC exercise held in 2004. According to the petitioner, two persons junior to him i.e. Mr. A.K. Sharma and Mr. Tarun Bhatnagar were promoted in the DPC exercise of 2002-03; the petitioner should have been considered in the said exercise since he was eligible for consideration; the pendency of a criminal case against him, should have been addressed by adoption of the Sealed Cover procedure.

2. Nevertheless, the petitioner was promoted in the DPC exercise of 2006 to the post of DGM w.e.f. 01.01.2006 by an order dated 28.06.2007. By way of a writ petition bearing WP(C) No. 528/2008, the petitioner had

impugned the promotion of Mr. A.K. Sharma, who was junior to him but promoted above him. The said writ petition was dismissed vide order dated 05.11.2015 which recorded inter alia:

“....8. On the plea that he was not in the knowledge of his consideration in the year 2004, even though specifically pleaded by the respondent Nos.1 & 2 in their counter-affidavit, which has not been replied to by the petitioner in his rejoinder, it must be construed that the petitioner had knowledge about the DPC held on August 17, 2004. As the learned counsel for the petitioner has stated that the petitioner had no knowledge on this aspect, the petitioner at the most can have a grievance of his non-promotion in the DPC held on August 17, 2004 and nothing more, surely not against his non-promotion from the date his juniors were promoted, which aspect is hit by delay and laches. Rejecting the writ petition qua the relief as prayed for in the present petition, the only liberty that can be granted to the petitioner is, that the petitioner would be at liberty to challenge the proceedings of the DPC held on August 17, 2004, if he so advised in afresh proceedings in accordance with law.

9. The writ petition is disposed of in above terms....”

3. The learned counsel for the petitioner contends that the petitioner never knew that there was a DPC held in 2004 and that he was not considered in the same. The promotion of Mr. A.K. Sharma, who was junior to the petitioner, was impugned in the aforesaid writ petition, and the same was duly considered. An appeal against the judgement in the aforesaid writ petition was also dismissed.

4. Mr. Sandeep Prabhakar, the learned counsel for the respondents, who appears on service on advance copy of the petition, referring to the counter affidavit of the said respondents filed in WP(C) No. 528/2008, submits that the petitioner knew fully well, and at least in February 2008, that he had not

been considered for promotion in the 2004 DPC, therefore, it was always open to him to challenge his non-consideration. Yet the petitioner chose not to impugn the same.

5. On the basis of the records available, the learned counsel for the petitioner admits that the respondents' reference to 2004 DPC was not refuted to by the petitioner in his rejoinder in that writ petition.

6. The Court is of the view that insofar as the petitioner knew that he had not been considered for the 2004 DPC, it was always open to him either to amend the earlier writ petition or to file a separate writ petition impugning the same. He has come to Court after eight years and there is neither any explanation nor any justification for the delay. The petition suffers from delay and laches. The exercise now sought to be done should have been carried out twelve years ago. Besides, the petitioner has enjoyed the benefits of the promotion to the post of DGM from 2006, without any protest. He is deemed to have accepted his position and fate. He has superannuated since a decade or so. The petitioner, if aggrieved, should have agitated against his non-promotion in 2004 or immediately thereafter. Having accepted a latter promotion in 2006 and having superannuated in that promoted post, he cannot now, after a decade, seek to impugn an earlier promotion exercise.

7. The petition is without merit and is, accordingly, dismissed.

(NAJMI WAZIRI)
JUDGE

NOVEMBER 02, 2016/kk