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

% ***Judgment Dated: 11th August, 2016***

+ **W.P.(C) 5802/2015**

DR. RAMAKANT SINGH

..... Petitioner

Through : Mr. R.K. Saini with Mr. Abhik Kumar,
Mr. Manish Kumar, Mr. Siddhartha
Shankar and Mr. Minal Sehgal,
Advocates

versus

UNION OF INDIA & ORS

..... Respondents

Through : Mr. Dev P. Bhardwaj, CGSC with
Ms. Ranjana, Advocate for
UOI/respondent no.1.
Mr. Naresh Kaushik with Ms. Manisha
Badoni, Advocates for
UPSC/respondent no.3.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

1. The petitioner is aggrieved by the order passed by the Central Administrative Tribunal (hereinafter referred to for short as 'the Tribunal') dated 05.09.2014 as also the order dated 24.04.2015 passed in Review Application. The OA as also the Review Application filed by the petitioner stand dismissed.
2. The pleadings in this matter are complete. With the consent of the parties, the writ petition is set down for final hearing and disposal.
3. Necessary facts which are required to be noticed for disposal of this petition, as stated in the petition, are as under.

4. The petitioner was initially appointed to the post of Project Officer in the Civil Aviation Department on 17.01.1993. He was promoted to the post of Senior Scientific Officer, known as Assistant Director (AE) on 17.03.2003. Petitioner was again promoted to the post of Deputy Director on ad hoc basis by an order dated 14.09.2010. The Recruitment Rules, known as Civil Aviation Department Class-I and Class-II post Recruitment Rules, 1969, were notified on 16.06.1969. As per the Recruitment Rules, Senior Scientific Officers were eligible to be considered for the post of Deputy Director(R&D) on completion of requisite number of years service as a Senior Scientific Officer. There was no other essential qualification prescribed for promotion. By a Notification dated 10.08.1992, the Recruitment Rules for the post of Deputy Director (R&D) were amended. On 17.03.2008, the petitioner was promoted to the post of Assistant Director on regular basis. As per the Recruitment Rules, the petitioner became eligible to be considered for promotion to the post of Deputy Director(AE) on 17.03.2008. The petitioner claims that he had fulfilled all the educational qualifications, experience and technical qualifications in the year 2008 itself. The petitioner was also the senior-most person to be considered for promotion to the post of Deputy Director(AE).
5. The grievance of the petitioner is that the respondents had not conducted any DPC for the promotion to the post of Deputy Director since 2008. In view thereof, the petitioner has been deprived of promotion on regular basis and also the delay in conducting the DPC would affect his being considered for the next promotion. The respondents, in the meanwhile, decided to fill up 07 posts of Deputy Director through direct recruitment through UPSC for which an advertisement was published in the Employment News for the week 28.08.2010 - 03.09.2010 and during this

period 07 posts have been filled up. It is also the case of the petitioner that in the year 2008, the petitioner became eligible for promotion and being the senior-most eligible person he would have been considered for promotion but the DPC was not conducted for any justifiable reason. The petitioner claims to have made a number of representations, including a representation dated 27.07.2012 to the respondents for considering him for promotion to the post of Deputy Director(AE), but no reply was received till the filing of the OA. By an order dated 23.08.2012, the respondents considered the representation of the petitioner. The petitioner was informed that a proposal for holding a DPC for regular promotion against the vacancy for the year 2009-1010 was referred to the Ministry of Civil Aviation for consideration and the same had been referred to UPSC with the approval of the competent authority. This is according to the communication dated 30.11.2010. On 20.12.2013, the UPSC recommended the petitioner for promotion against the vacancy of 2009-2010 and also observed that the petitioner became eligible on 17.03.2008. However, the petitioner instead of being promoted w.e.f. 01.01.2009, was promoted by an order dated 20.12.2013 from the date of assumption of charge. This action of the respondents is claimed to be illegal, arbitrary and liable to be quashed. The OA filed by the petitioner has been dismissed which has led to the filing of the present writ petition.

6. Mr. Saini, learned counsel for the petitioner submits that the promotion to the post of Deputy Director (AE) was delayed by the respondents from the year 2009 when the actual vacancy arose till 2013. He submits that on account of this delay, the petitioner is not entitled to be considered for the next promotion to the post of Director on the ground that he has not completed three years of regular service as Deputy

Director. Mr. Saini submits that the petitioner is the senior-most officer as per the seniority list dated 01.07.2014 at serial number 1, a copy of which has been placed on record, whereas persons junior to him being at serial numbers 2 to 5 stand promoted vide order dated 24.09.2015. Counsel contends that in case the petitioner is given notional promotion since the year 2009, as recommended by the UPSC, neither the seniority list will be affected, neither there would be any financial implication on the Department arises nor it is being claimed and, to the contrary, the effect would be that the petitioner would become eligible only to be considered for promotion to the post of Director against the vacancy which has arisen in the year 2015. Counsel also contends that in case notional promotion is granted to the petitioner, it would save him from the humiliation being suffered by him as persons junior to him have already been promoted.

7. By an order dated 28.04.2016 while noting the contentions of the parties, this Court had directed the respondents to file an affidavit on three aspects, which reads as under:

“6. There are three aspects which require consideration. Firstly, whether period between 14th September, 2010 till 22nd September, 2011 or till 22nd May, 2012 when the petitioner had worked in the grade of Deputy Director(Aircraft Engineering) should be counted for promotion to the post of Director. Secondly, what was the reason and justification for the delay in holding of the DPC after 2010 till 2013. Thirdly, whether the petitioner being a senior, could be considered for promotion, when his juniors were being considered.”

8. Since the controversy between the parties is so narrow and has been summed up in the order dated 28.04.2016, we deem it appropriate to reproduce the order, which reads as under:

“The petitioner vide order dated 20th December, 2013 was promoted to the post of Deputy Director against vacancies for 2009-10.

2. The contention of the petitioner is that he should have been notionally promoted to the post of the Deputy Director from the year 2009 and accordingly he would be eligible for consideration for promotion to the post of Director on completion of three years service in the grade of Deputy Director. However, as the petitioner is being treated as regularly promoted to the post of Deputy Director with effect from 20th December, 2013, he is not considered eligible for promotion to the post of Director. His juniors, namely, Hillos Biswas, Indranil Chakraborty, Suresh Kumar Singh and Amit Gupta vide office order dated 24th September, 2015 have been promoted.

3. The respondents in the counter affidavit have tried to elucidate and explain the reason why there was delay in holding of Departmental Promotion Committee (DPC) meeting for promotion to the post of Deputy Director (Aircraft Engineering). Our attention is drawn to reply to paragraphs 6 to 9 and 10 and 11 of the counter affidavit. A reading of the said paragraphs would demonstrate some justification why the petitioner could not be considered for promotion as Deputy Director (Aircraft Engineering) till 2010.

4. The petitioner was earlier a member of Research and Development Directorate, which apparently was a separate cadre. The Research and Development Directorate was closed and had merged with the Aircraft Engineering Directorate vide notification dated 30th November, 2009. Nine posts in the grade of Deputy Director (Aircraft Engineering) were created on 1st May, 2009. Subsequently, three lapsed posts were revived and, therefore, in all there were twelve vacant posts in the grade of Deputy Director (Aircraft Engineering). The Recruitment Rule for the post of Deputy Director (Aircraft Engineering) and Deputy Director (Research and Development) were different. In the former, the quota rule postulated that 75% recruitment by way of promotion and 25% was by way of direct recruitment. In the latter cadre, two-third of the recruitment was to be by way of direct recruitment and one-third by way of promotion.

5. Pursuant to the aforesaid reorganisation of cadres, litigation in form of Writ Petition No. 2764/2010 had started. Details of the said litigation and the effect thereof in holding of the DPC is not

adequately brought out and explained. Reply to paragraphs 6 to 9 would indicate that the petitioner was promoted ad hoc in the grade of Deputy Director (Aircraft Engineering) with effect from 14th September, 2010, which was extended upto 14th September, 2011. The petitioner in the meanwhile was also selected as a direct recruit, but refused to join possibly on the ground that he would lose his seniority. In these circumstances, the ad hoc appointment in the grade of Deputy Director (Aircraft Engineering) was not extended beyond 22nd September, 2011, though the petitioner had continued to work at the said grade/post till 22nd May, 2012.

6. There are three aspects, which require consideration. Firstly, whether period between 14th September, 2010 till 22nd September, 2011 or till 22nd May, 2012 when the petitioner had worked in the grade of Deputy Director (Aircraft Engineering) should be counted for promotion to the post of Director. Secondly, what was the reason and justification for the delay in holding of the DPC after 2010 till 2013. Thirdly, whether the petitioner being a senior, could be considered for promotion, when his juniors were being considered.

7. The respondents will file an additional affidavit clearly brining out and stating the grounds and reasons on the said aspects. The said affidavit will be filed within four weeks. Reply to the additional affidavit will be filed within four weeks thereafter.

Re-list on 11th August, 2016.”

9. Mr. Bhardwaj, learned counsel for the UOI submits that holding of DPC was delayed for cogent reasons and not on account of inaction on the part of the Department. He submits that firstly the disciplinary proceedings were pending against the petitioner; secondly, the respondent was contemplating amendment in the Recruitment Rules and, thirdly, there was a seniority dispute case filed by one Shri Indranil Chakraborty which was pending before the Tribunal. It is, thus, contended by Mr. Bhardwaj, learned counsel for UOI that the respondent no.1 cannot be faulted for the delay in conducting the DPC.

10. We have heard the learned counsel for the parties.
11. The basic facts of this case are not in dispute and have been detailed in the paragraphs foregoing. The case of the petitioner is that in case the DPC was held in 2009, the petitioner would have completed three years of regular service and thus, would have become eligible for being considered for the next promotion, i.e., to the post of Director. It is also the case of the petitioner that his rights cannot be affected on account of lapse on the part of the respondent no.1 in not conducting the DPC in the year 2009 itself. We have carefully examined the affidavit which has been placed on record by respondent no.1. Sub-para 4 of this affidavit which deals with the reasons for delay in holding the DPC is reproduced below:

“4....

Secondly, as regards delay in conducting DPC for promotion to the grade of Deputy Director (Aircraft Engineering), it is submitted that a disciplinary proceedings were initiated against the petitioner vide Memorandum No.C.14011/1/2008-VC dated 12/02/2009 for frequently indulging in un-authorized absence from duty which was subsequently dropped vide Memorandum dated 05.08.2010(Annexure-IV) considering the representation of the petitioner dated 18.01.2010. Consequent upon the withdrawal of charge sheet against the petitioner w.e.f. 05.08.2010, promptly a proposal for convening DPC meeting for promotion to the grade of Deputy Director (Aircraft Engineering) on regular basis for the vacancy year 2009-2010 was sent to Ministry of Civil Aviation for taking up the matter with UPSC vide this office's letter dated 30.11.2010 after fulfilling other formalities including vigilance clearance etc. Subsequently, as per the new guidelines of UPSC, Ministry of Civil Aviation got appointment with UPSC to discuss the proposal on 14.02.2011 under Single Window System. During the discussion with UPSC, they returned the proposal viewing that there is a court case filed by Shri Indranil Chakraborty, Assistant Director(Aircraft Engineering) regarding his seniority issue before the Hon'ble CAT(Principal Bench), New Delhi and this issue is required to be settled first before the proposal is

referred to them for reconsideration.

The UPSC also viewed that recruitment rules for the post of Deputy Director(Aircraft Engineering) are required to be amended/revised in compliance of Hon'ble CAT's (PB), New Delhi Order dated 01/05/2009 in O.A. No.457/2008. The proposal for convening DPC for regular promotion to the grade of Dr. Ramakant Singh for the vacancy year 2009-2010 was re-submitted to Ministry of Civil Aviation for onward submission to UPSC vide this office letter dated 21.11.2011 only after the Recruitment Rules were amended vide notification dated 15.04.2011 and the seniority dispute was resolved in the grade of Assistant Director, AE(seniority dispute was resolved only when Shri Indranil Chakraborty was recommended by UPSC for appointment to the grade of Deputy Director, Aircraft Engineering under Direct Recruitment in August, 2011 including the petitioner). Subsequently, the matter was taken up with UPSC on regular basis. It is also submitted here that holding of DPC comes under the domain of UPSC and as per their advice, further action in the matter was taken and the proposal was referred to Ministry of Civil Aviation for further action. Ministry of Civil Aviation after telephonically consultation with UPSC fixes date of meeting for discussion under Single Window System. All these facts are due to administrative reason."

12. On careful examination of this affidavit, we find that the first ground of delay in holding the DPC is that a memorandum was issued to the petitioner on 12.02.2009, which was subsequently dropped on 05.08.2010. Once the memorandum was dropped on 05.08.2010, it cannot be a justifiable reason for delay in holding the DPC. We may also add that even if the memorandum had not been dropped, that would not have been a justifiable ground for delay in holding a DPC for the reason that even in case where a charge sheet was pending, the proper procedure would be to keep the result of the DPC in the sealed cover. The second reason which has been given for the delay is on account of pendency of one case filed by Shri Indranil Chakraborty regarding his

seniority before the Tribunal. This, in our view, can also be not a reason for delay in holding the DPC as it has not been brought to our notice that the Tribunal had stayed holding of the DPC. Even otherwise, the issue of seniority was not between the petitioner and Indranil Chakraborty. Third and the only reason given for the delay is the proposal to amend the Recruitment Rules. This reason given by the respondent is also not justifiable on account of the Office Memorandum dated 08.09.1998, relating to the Frequency of Meetings, which reads as under:

“FREQUENCY OF MEETINGS

Frequency at which DPC should meet

3.1 The DPCs should be convened at regular annual intervals to draw panels which could be utilized on making promotions against the vacancies occurring during the course of a year. For this purpose it is essential for the concerned Appointing Authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like CRs, Integrity Certificates, Seniority List, etc., for placing before the DPC. DPCs could be convened every year if necessary on a fixed date, e.g., 1st April or May. The Ministries/Departments should lay down a time schedule for holding DPCs under their control and after laying down such a schedule the same should be monitored by making one of their officers responsible for keeping a watch over the various cadre authorities to ensure that they are held regularly. Holding of DPC meetings need not be delayed or postponed on the ground that Recruitment Rules for a post are being reviewed/amended. A vacancy shall be filled in accordance with the Recruitment Rules in force on the date of vacancy, unless rules made subsequently have been expressly given retrospective effect. Since amendments to Recruitment Rules normally have only prospective application, the existing vacancies should be filled as per the Recruitment Rules in force.

[Very often, action for holding DPC meeting is initiated after a vacancy has arisen. This results in undue delay in the filling up

of the vacancy causing dissatisfaction among those who are eligible for promotion. It may be ensured that regular meetings of DPC are held every year for each category of posts so that an approved select panel is available in advance for making promotions against vacancies arising over a year.]”

13. In the case of *Union of India & Ors. v. N.R. Banerjee & Ors.*, reported at 1997 (9) SCC 287, in para 6, it was held as under:

“6. D.P.Cs. should be convened every year, if necessary, on fixed date, i.e. 1st of April or May. In the middle of the para, by way of amendment brought on May 13, 1995, it postulates that very often action for holding D.P.C meeting is initiated after the vacancy has arisen. This results in undue delay in filling up of vacancies and causes dissatisfaction among those who are eligible for promotion. It may be indicated that regular meeting of D.P.C. should be held every year for each category of posts so that approved select panel is available in advance for making promotions against vacancies arising every year. Under para 3.2, the requirement of convening annual meetings of the D.P.C. should be dispensed with only after a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or no officers are due for confirmation during the year in question. It would, thus, be seen that D.P.Cs. are required to sit every year, regularly on or before 1st April or 1st May of the year to fill up the vacancies likely to arise in the year for being filled up. The required material should be collected in advance and merit list finalised by the appointing authorities and placed before the D.P.Cs for consideration. This requirement can be dispensed with only after a certificate is issued by the appointing authority that there are no vacancies to be filled by promotion, or that no officers are due for confirmation, during the year in question.”

14. Delay in holding DPCs has been a subject matter of various decisions of the Supreme Court of India. In fact, the Office Memorandum dated 08.09.1998 which has been extracted in para 12 foregoing, it has been highlighted that DPC should be convened at regular annual intervals to draw panels which could be considered for making promotions against

vacancies which occur during the course of a particular year. The OM has also highlighted that the concerned appointing authorities must initiate action in advance to fill up anticipated vacancies. Another relevant fact which has been highlighted is that DPCs need not be delayed or postponed on the ground that the Recruitment Rules for a particular post are being reviewed/amended. The Supreme Court in the case of *Union of India & Ors.*(supra) not only laid stress that DPC should be convened every year, even suggested that dates should be fixed, i.e., 1st April or 1st May each year.

15. For the reasons foregoing, we are unable to convince ourselves that the delay in holding the DPC was for any justifiable reasons. Taking into considerations the submissions made and for the reasons stated herein, the writ petition is allowed. The petitioner will be granted notional promotion from the date when the vacancy arose, i.e., in the year 2009-2010.
16. We are informed that during the pendency of this writ petition, a DPC was held in 2015. This Court while issuing notice in the matter, in CM.APPL 13301/2015 directed that any appointment made shall be subject to the outcome in this writ petition. Accordingly, the review DPC will be held within a period of three weeks from today and the petitioner will be considered for promotion in accordance with law and the rules.
17. The writ petition stands disposed of.

G.S.SISTANI, J

I.S. MEHTA, J

AUGUST 11, 2016 pst