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

+ **W.P.(C) 665/2016**

Date of decision: 27th January, 2016

RAJ BALA ... Petitioner
Through Mr. Raj Kumar Sherawat, Advocate.

versus

STATE OF NCT OF DELHI & ANR Respondent
Through Mr. Anuj Aggarwal, Additional
Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J.

1. The petitioner has filed the present writ petition impugning order dated 23rd May, 2014, passed by the Central Administrative Tribunal, Principal Bench, dismissing the O.A No. 4298/2012.

2. The Tribunal after elucidating on the facts has rejected the petitioner's prayer for grant of the promotion to the grade of Deputy Director of Education (PE & NI).

3. Learned counsel for the petitioner has drawn our attention to paragraph 11 of the impugned order. The said paragraph refers to the submission made by the respondents that there were procedural hurdles in holding the DPC under the extant Recruitment Rules (RRs, for short) and observes that there has been delay in examining the

recommendation of the Sixth Pay Commission for amendment of the RRs and steps in that direction were taken only when it was pointed out by the Union Public Service Commission (UPSC, for short). Accordingly, the Tribunal has expressed the hope that the respondent would take expeditious action for amending the RRs.

4. In spite of the aforesaid observations, we would hold that the Tribunal has rightly held that no relief could be granted to the petitioner. In the Annual Confidential Report (ACR) for the year 2006-2007 and 2008-09, the petitioner was graded as 'Good', which was below the benchmark of 'Very Good' required for promotion to the post of Deputy Director. On representation made by the petitioner, the ACR for the year 2006-07 was upgraded to 'Very Good', but the overall grading for the year 2008-09 as 'Good' was maintained and not upgraded. In these circumstances, the delay in holding the DPC is not relevant and is inconsequential.

5. Another contention raised is that the petitioner had made allegations of malafide against the respondent No.4, one Mr. Satpal. Paragraph 2 of the impugned order records that the petitioner had given up the said plea during the course of hearing and had restricted his prayer to quashing of order dated 20th September, 2012 refusing upgradation of the ACR for the year 2008-09 from 'Good' to 'Very Good'.

6. Tribunal did not accept the prayer for upgradation of the ACR for the year 2008-2009 after referring to the remarks of the Reporting Officer and the Reviewing Officer. Both the Reporting and Reviewing Officer having retired, the Appellate Authority had taken the decision on the basis of available documents. The Tribunal emphasized that the

supervisory officers were in the best position to assess performance of the petitioner, unless there were grounds and reasons to disbelieve their objectivity. The Tribunal has held that they were not convinced that the impugned order dated 20th September, 2012 passed by the Director of Education rejecting the prayer for upgradation suffers from the such vice, nor does the order reflects non-application of mind. We agree that the first sentence in paragraph 10 of the impugned order is a little ambiguous but the said sentence has to be read along with the findings recorded subsequently.

7. Challenge to instructions i.e. the notification dated 9th August, 1994 by the Education Department in the Delhi Gazette is misconceived. These are general instructions in the form of guidelines for conduct of DPC. The instructions envisage that the DPC shall consider ACRs of five years of the eligible candidates in the zone of consideration. It has been rightly observed by the Tribunal that the stipulation of two years of regular service in the grade of Assistant Director is only an eligibility condition mentioned in the RRs. These rules do not stipulate that ACRs for only two years would be considered. Paragraphs 7 of the impugned order, pertinently states that the general instructions cannot be struck down or faulted for prescribing benchmark of 'Very Good'. The benchmark prescribed for promotion to the entry level post of group 'A' is 'Very Good'. The post of Deputy Director of Education carries the pay scale of the lowest level in group 'A'. Further, the DPC had to follow their methodology and have made assessment in accordance with their existing instructions for assessing suitability for promotion to the post of Deputy Director.

8. We notice that the impugned order dated 23rd May, 2014 and the present writ petition was filed in January, 2015. Thereafter the writ petition had remained under office objection for about an year. Possibly, the petitioner was awaiting the result of the next DPC. We hope and trust that the respondents had taken notice of the observations made in paragraph 11 of the impugned order as well as the advice received from the UPSC on 12th July, 2013.

9. In view of the aforesaid, we do not see any reason to interfere with the impugned order. The writ petition is dismissed.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

JANUARY 27, 2016
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