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

+ **W.P.(C) 3116/2015**

Date of Decision : 20th February, 2017

S.N. SINGH Petitioner
Through Mr. M. K. Bhardwaj , Advocate

versus

UNION OF INDIA & ORS. Respondents
Through Mr. Naresh Kaushik and Mr.
Swega Agarwal, Advocates for UPSC

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

The petitioner-S. N. Singh is a retired Principal Director from the Armed Forces Headquarter Civil Service (AFHQ Civil Service), to which post he was promoted in the year 2010-2011.

2. The petitioner had filed OA No. 3712/2011 challenging validity the letter dated 02.09.2011 rejecting his claim for promotion to the post of Director in the year 2006-2007 instead of 2007-2008 and to the post of Principal Director in the year 2009-2010, with other consequential benefits.

3. The O.A. was dismissed vide the first impugned order dated 09.10.2012. The second impugned order dated 24.12.2014, dismissed

the review application.

4. The petitioner submits that there were 3 vacancies in the grade of Director in 2006-07 as one vacancy each in the said post were released by the Defence Research & Development Organisation (DRDO)) and by the Director General Aeronautical Quality Assurance (DGAQA). The third vacancy was due to the retirement of the incumbent Director from AFHQ Civil Service.

5. It is an accepted and admitted position that the Departmental Promotion Committee (DPC) for filling up of vacancies in the years are to be held in advance. However, the DPCs for several years including the years in question were held belatedly.

6. One vacancy in the post of Director in the DGAQA Cadre was released initially for a period of three years, to be filled by an officer from AFHQ Civil Service with effect from 28.12.2006. The file noting dated 28.12.2006 also records that said vacancy was for the time being and would be manned by the Joint Secretary (Training) and Chief Administrative Officer. This noting is equally relevant and important. The reason is obvious; the post of Director in the DGAQA cadre was being release at the end of the year, on 28.12.2006. Appointment of a new incumbent from AFHQ Civil Service at that time and when the Department Promotion Committee had not been convened would have lead to difficulty. In any case, the petitioner cannot claim exclusive or statutory right to the said post for the post did not belong to his service. The release from DGAQA cadre was subject to the stipulation that for the time being the post would be manned by the Joint Secretary (Training) and Chief Administrative

Officer.

7. In view of the aforesaid factual position, we do not think that the petitioner can claim any legal right that he should have been considered for promotion to the post of Director for the year 2006-2007.

8. Learned counsel for the petitioner, however, submits that the vacancy in post of Director released/given by DRDO, for a period of one year, was included in the panel for the year 2006-2007. This is factually correct but there are differences between the release by DGAQA and DRDO. The DRDO vide their letter dated 04.10.2006 to the Ministry of Defence, Government of India had requested for reverting their officer presently posted on deputation as Director. The relevant portion of the letter dated 04.10.2006 reads as under:-

“I am approaching you in connection with posting of Shri S N Singh present on deputation with DRDO in the grade of Director. Shri Singh is reverting back on 30 Oct 2006 to the cadre. He is engaged in some of the projects relating to personnel management in a mission mode. His continuance, therefore, would be essential in the interest of organization, as these activities have got a bearing on future needs of the organization.

I would, therefore, request you to post Shri S N Singh, on his reversion to DRDO itself atleast for a period of one year. To facilitate his posting back we are releasing a post in the grade of Director (Rs.14300-18300) to your office. As his involvement in the ongoing

activities is such that he cannot be relieved even for a single day, we would request you to consider him as repatriated from the date he is promoted to be grade of Director and posted back to DRDO. We are also willing to release one more vacancy for a period till next vacancy is available in AFHQ cadre to facilitate his promotion and posting back immediately.”

Thus, the DRDO had released their vacancy much earlier in point of time. They had requested that the present Director from their cadre be repatriated immediately.

10. The vacancy at the post of Director which became available on being released by the DRDO vide letter dated 04.10.2006 cannot be equated with the vacancy which was released by DGAQA on 28.12.2006 with the specific stipulation that for time being the post of Director would be manned by the Joint Secretary (Training) and the Chief Administrative Officer.

11. This being the position we do think, that the petitioner is justified and can contend that two vacancies at the post of Director which were released by DGAQA and DRDO should be equated and treated alike.

12. The Departmental Promotion Committee meetings in the AFHQ Civil Service for the year 2004-2005, 2005-2006, 2006-2007 and 2007-2008 were held belatedly on account of seniority dispute which had become subject matter of litigation.

13. In the selected list for 2006-2007, two officers from the cadre

of Joint Director in the AFHQ Civil Service, who were senior to the petitioner were selected for the two posts of Directors in the AFHQ Civil Service cadre and DRDO service cadres. The vacancy released by DGAQA vide letter dated 28.12.2006 was not included in the proposal and also in the selected panel for the reason that the said post had been manned by the Joint Secretary (Training) and Chief Administrative Officer with effect from 02.01.2007. The authorities had decided that this post should not be filled in this year, but should be filled by the panel for the next year. The petitioner (S. N. Singh) was accordingly included in the panel list/select list for the year 2007-2008 and promoted as the Director.

14. In view of the aforesaid, the writ petition has no merit and is accordingly dismissed. There would be no order as to costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

FEBRUARY 20, 2017

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