

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

Date of Decision: April 16, 2018

+ **W.P.(C) 2997/2016 & CM 12579/2016**
+ **W.P.(C) 4072/2016 & CM 17116/2016**
+ **W.P.(C) 4649/2016**
+ **W.P.(C) 7270/2016 & CM 29936/2016**

AJAY KUMAR SINHA
GOPAL SINGH
YAMUNA PRASAD
VP SINGH

..... Petitioners

Through: Mr. Anuj Aggarwal, Advocate

Versus

INDRAPRASTHA POWER GENERATION COMPANY
LIMITED & PRAGATI POWER CORPORATION LIMITED &
ANR

..... Respondents

Through: Mr. R.K. Vatsa and Ms. Mumari
Alka, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Petitioners in the above-captioned four petitions seek antedating of their promotion on the post of Deputy Manager (Technical). Learned

counsel for petitioners submits that *Annual Performance Appraisal Report (hereinafter referred to as 'APAR')* of petitioner-Ajay Kumar of the year 2004-05 was reviewed in the year 2015 from 'Average' to 'Good' and so, petitioner has to be promoted from the year 2008 and not from the year 2009. It is pointed out by petitioners' counsel that in case of petitioner-Gopal Singh, APARs of the years 2007-08 and 2008-09 were reviewed in the year 2015 and so, his promotion is to be given effect from October, 2010 instead of October, 2012. In case of petitioner-Yamuna Prasad, it is pointed out by petitioners' counsel that his APAR of the year 2009-10 has been upgraded in the year 2015 and so, his promotion is also to relate back from the year 2010 instead from the year 2012. Regarding petitioner-V.P.Singh, it is submitted that his APAR of the year 2003-04 has been reviewed in the year 2015 and so, his promotion has to also relate back to November, 2007 and not from the year 2008.

2. It is submitted by both the sides that the question involved in the above-captioned four petitions is identical and so, these petitions have been heard together and by this common judgment, they are being decided.

3. It is matter of record that petitioner-Ajay Kumar Representation has been decided by the Committee of Directors on 17th December, 2015 and as per minutes of aforesaid meeting (*Annexure R1/10*), upon review of petitioner's APARs, it was found to be untenable to antedate petitioner's promotion as the review of APARs was for future *Department Promotion Committee (for short 'DPC')* and of APARs of

reckonable period. It is evident from the minutes of the meeting of the Committee of Directors of respondent-Corporation (Annexure R1/10) that antedating promotion after upgradation of APARs, which have been already considered in the past DPCs, will open pandora-box and such reconsideration, in turn, will make the situation complex for the Management of respondent-Corporation. So, Representation of petitioner-Ajay Kumar has been rejected while referring to DoPT's Guidelines and earlier Resolution of the Board of Directors of respondent-Corporation. It is also matter of record that Representations of remaining three petitioners have not been considered by respondent-Corporation. In the counter-affidavit filed by respondent-Corporation in the above-captioned four petitions, the stand taken is identical, which is as under: -

“The APARs that has been reviewed and upgraded by the Moderation Committee has already been considered in the DPC for promotion to the post of Deputy Manager (T) held in the year 2012. As such as per DOPT guidelines regarding review of APAR AS well the Resolution passed by BOD of IPGCL/PPCL, the APARs of adverse ratings should be reviewed for future DPCs only (APARs of reckonable period).

The Committee deliberated on the different aspect of the representation as well as DOPT guidelines and found it not tenable to restore the seniority of DM(T)s whose date of promotion was extended due to adverse PAR ratings. Further the Committee felt that restoring the seniority after

upgradation of APARs which are already been considered in past DPCs will open a Pandora box of more such representations which in turn will make the situation complex for the Management.

Accordingly the Committee found no merit in the representations for restoration of seniority and the changed seniority list circulated as provisional seniority list for the post of AM(T)/DM(T).”

4. No rejoinder has been filed, but the stand taken by learned counsel for petitioners in these four petitions is that as per the Office Memorandum of 13th April, 2010 (*Annexure R1/9*), ACRs/APARs which are below the bench mark for the next promotion, have to be considered if an employee is to be considered for promotion in a future DPC and his ACRs/APARs for the period prior to 2008-09 would be reckonable for the assessment.

5. Learned counsel for petitioners submits that the Office Memorandum of 13th April, 2010 (*Annexure R1/9*) justifies the review of APARs of petitioners and since the APARs for the period in question had to be considered in the DPC held in the year 2012, therefore, as a necessary consequence of the review of APARs for the period in question, petitioners' promotion has to essentially relate back to the year when petitioners became entitled to the promotion on the posts in question. Reliance is placed by petitioners' counsel upon decision of Supreme Court in *Dev Dutt Vs. Union of India (UOI) and Ors.*, (2008) 8 SCC 725; decisions of Division Bench of this Court in *S.D. Dobhal Vs.*

UOI, 2014 SCC OnLine Del 1900 and *Rajeev Teotia Vs. Union of India*, 2014 SCC OnLine Del 2360 and Supreme Court's decision in *Prabhu Dayal Khandelwal Vs. Chairman, U.P.S.C. and Ors.*, (2015) 14 SCC 427 to submit that upon review of ACRs/ APARs, case for promotion has to be considered retrospectively by the review DPC with all consequential benefits.

6. On the contrary, stand of learned counsel for respondent-*Corporation* is that DoPT's O.M. of 13th April, 2010 (*Annexure R1/9*) has not been adopted by respondent-*Corporation* which is an autonomous body and it is evident from the minutes of the meeting of Board of Directors of respondent-*Corporation* (*Annexure R1/6* held on 20th September, 2013 that the DoPT's O.M. of 14th May, 2009 (*Annexure R1/8*) and DoPT's Circular of 19th May, 2011 have been adopted by respondent-*Corporation* and as per DoPT's O.M. of 14th May, 2009 (*Annexure R1/8*), the new system of communicating the entries in the APARs has been made applicable prospectively only, with effect from the reporting period 2008-09, which was initiated after 1st April, 2009. Thus, it is submitted on behalf of respondent-*Corporation* that no case for antedating of petitioners' promotion is made out and so, these petitions deserve dismissal.

7. Upon hearing and on perusal of office order of 12th September, 2012 (*Annexure P-1*), material on record and the decisions cited, I find that petitioners' promotion was made on the recommendations of DPC held on 8th August, 2012. Petitioners' APARs were duly considered then.

As per the minutes of the meeting of the Board of Directors of respondent-*Corporation* (*Annexure-R1/6*) held on 20th September, 2013, the APARs for the period prior to the years 2008-09 were to be reconsidered for reckonable periods only for review of their ratings. Office Memorandum of 14th May, 2009 (*Annexure-R1/8*) makes it clear that new system of communicating entries in the APARs shall be made applicable prospectively only. It is evident from Communication (*Annexure-R1/10*) that petitioner-*Ajay Kumar's* Representation has been declined as the review of APARs was to be undertaken for the future DPCs only.

8. So far as Office Memorandum of 13th April, 2010 (*Annexure-R1/9*) is concerned, the stand of respondent-*Corporation* put forth orally is that the said Office Memorandum has not been adopted by respondent-*Corporation*. To submit so, learned counsel for respondent-*Corporation* has drawn attention of this Court to Communication (*Annexure-R1/6*), which refers to DoPT's Circular of 14th May, 2009 and DoPT's another Circular of 19th May, 2011, but it does not refer to DoPT's Office Memorandum of 13th April, 2010 (*Annexure-R1/9*). The stand of respondent-*Corporation* of its being autonomous body and of not being bound by all the DoPT's Office Memorandums, does not find mention in the counter-affidavit filed by respondent-*Corporation*. So, rejection of petitioner-*Ajay Kumar's* Representation cannot be justified. Pertinently, the Representation of remaining three petitioners has not been considered by respondent-*Corporation*.

9. In the aforesaid situation, it is deemed appropriate to dispose of these four petitions with direction to respondent-*Corporation* to reconsider petitioner-*Ajay Kumar's* Representation in face of DoPT's Office Memorandum of 13th April, 2010 and to also consider its applicability aspect by a speaking order and the Representations of remaining three petitioners be also considered by passing a speaking order within a period of twelve weeks and to convey the fate of Representations to petitioners within two weeks thereafter, so that petitioners may avail of the remedies as available in law, if need be. It is made clear that if benefit of revised APARs is to be given to petitioners, then the promotion granted to petitioners is to relate back to the date when it was due, with consequential benefits, in light of decision of Division Bench of this Court in *Rajeev Teotia (supra)*.

10. With aforesaid directions, the above-captioned four petitions and the pending applications are disposed of.

(SUNIL GAUR)
JUDGE

APRIL 16, 2018

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