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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 29th October, 2018

+ CRL.A. 1094/2018

SAVITUR PRASAD

..... Appellant

Through: Mr. Mohit Chaudhary, Advocate
with Ms. Garima Sharma, Adv.

versus

UOI & ORS.

..... Respondents

Through: Mr. Jasmeet Singh, CGSC for
R-1.

Mr. Naresh K. Adv. for R-2 to R-4.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner, then working as Additional Controller General of Defence Accounts (Addl. CGDA) had approached the Central Administrative Tribunal (CAT) by original application (no.707/17) raising certain grievances vis-à-vis his claim for being considered for promotion to the post of Controller General of Defence Accounts (CGDA). It appears that the claim of the petitioner before the CAT was based on standing in terms of merit. His petition was resisted, *inter alia*, by a short reply (on affidavit) of the fourth respondent, he being an Under Secretary in Union Public Service Commission (UPSC). In the said affidavit, it was, *inter alia*, indicated that an

eligibility list of five officers had been furnished by the department which did not include the petitioner. On the basis of information gathered under the Right to Information Act, 2005, it was claimed by the petitioner that the eligibility list based on zone of consideration would include seven names, he being at the seventh position, this being reflected in a communication dated 28.09.2016 from the Ministry of Defence (Finance) addressed to Secretary, UPSC.

2. Based on the above, the petitioner had filed an application seeking criminal action to be initiated under Section 340 of the Code of Criminal Procedure, 1973 (Cr. PC), in his submission, offences punishable under Sections 193, 196, 199, 200 of Indian Penal Code, 1860 (IPC) having been committed. The said application was dismissed by CAT, by its order dated 11.07.2018, a challenge where to is brought by the present criminal appeal presented under Section 341 Cr. PC.

3. At the hearing, it was brought out by the counsel for the petitioner himself that his main petition – OA 707/2017 seeking reliefs in the nature of quashing of the exercise conducted by Departmental Promotion Committee (DPC) and the consequences flowing from decisions taken by it and for a review DPC to be held, was dismissed by CAT by its judgment dated 22.03.2018. Though the petitioner would make an argument questioning the correctness of some of the conclusions reached in the said decision of CAT, it was conceded that no appeal or any other remedy including in the nature of review has

been sought or pursued by the petitioner against the order dated 22.03.2018.

4. The CAT, by its order dated 11.07.2018, has observed that no finding has been reached that the submissions made in the counter affidavit were false and for this reason the prayer under Section 340 Cr. PC has been declined.

5. The grievance of the petitioner primarily is that the decision has been rendered by CAT on his application under Section 340 Cr. PC without an inquiry. The submission is devoid of substance. It is not mandatory for the concerned forum dealing with a prayer under Section 340 Cr. PC to compulsorily hold an inquiry. It can decline to take any action on such an application if it does not find it expedient to otherwise do so including for such reasons as have impelled CAT to reject the application of the petitioner.

6. In the given facts and circumstances where the claim of the petitioner for being considered for promotion to the next level was based on the principle of merit-cum-seniority, rather than he being senior to those (who were considered to be) within the zone of consideration, he having failed to persuade CAT on the main reliefs, the view taken by the CAT cannot be faulted.

7. The petition is dismissed.

R.K.GAUBA, J.

OCTOBER 29, 2018

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