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

+ **W.P.(C) 1617/2018 & C.M. No. 6645/2018 (delay)**

UMESH DUTT SHARMA

..... Petitioner

Through: Mr. Rahul Kumar, Mr. Rohit Pandey,
Mr. Sarthak Chaturvedi and Mr. Nishant Kumar
and Mr. Prabhu Singh, Advocates.

versus

UNION OF INDIA AND ANR

..... Respondents

Through: Ms. Geetanjali Mohan, Advocate.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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20.02.2018

1. The petitioner is aggrieved by the judgment dated 06.03.2014 passed by the Central Administrative Tribunal in O.A. No. 3878/2012 filed by him for seeking quashment of a promotion of order dated 23.03.2012, passed in respect of JE Grade-II under LDCE quota and further, consider him for promotion to the subject post with all consequential benefits.
2. By the impugned order, the Tribunal dismissed the O.A. filed by the petitioner by making the following observations:-

“We have heard the learned counsel for the Applicant Shri M.K. Bhardwaj and the learned counsel for the Respondents Shri Rajinder Khatter. According to the Applicant himself, he appeared for LDCE for appointment to the post of JE-II held earlier on 16.06.2010. Though the Applicant was successful in the written test, he could not make it to the final list of selected candidates. His grievance was that that he had done Diploma in Rail Transport and Management and had an additional qualification of Diploma

in Electrical Engineering having 1st class certificate as such he was entitled to get additional 20 marks under the heading “Personality Address, leadership and Academic/Technical Qualifications in terms of RBE No.55/86. However, this Tribunal did not find any merit in his contention and dismissed OA No.2995/2010 (supra) filed by him on 24.11.2011. In the examination held on 20.12.2011 also, the Applicant cleared the written test securing 60% marks which was more than the minimum of the prescribed marks of 50 but again could not find his place in the final list of selected candidates prepared on the basis of total marks obtained both in the written examination and the service records. Therefore, he has filed this OA alleging tampering his answer sheet and not following the correct procedure. In our considered view, there is no merit in the Original Application. He is only making wild allegations without substantiating them. Admittedly, the number of posts advertised was for three for general category candidates and one SC candidate. The Applicant’s position in the merit list was below the selected candidates. Therefore, he was not selected. The Applicant has not challenged the gradings given to him in his ACRs. Instead of accepting the facts, as it is, the Applicant’s endeavor is to find fault with others.”

3. Thereafter, the petitioner filed a review application before the Tribunal in the year 2014 itself, which came to be disposed of vide order dated 12.5.2016, by simply correcting a typographical error in the name of the petitioner that had wrongly been mentioned as “Umed Dutt Sharma” instead of “Umesh Dutt Sharma”. However, the rest of the order passed on 23.3.2012 was maintained.

4. Learned counsel for the petitioner submits that the Tribunal has erred in rejecting the O.A. filed by the petitioner inasmuch as it failed to appreciate that one Sh. Virender Kumar Mishra, who was in Technician

Grade-III, was given promotion on “Very Good” remarks in the year 2008-09 whereas his ACRs were actually manipulated to show that he had received “Outstanding” remarks. Learned counsel states that the Tribunal did not take into consideration the submissions made on behalf of the petitioner that the marking system in the LDCE examination was biased and the final outcome remained dependent upon the grade given in the ACRs, thereby providing ample opportunity to manipulate the gradings.

5. Ms. Mohan, learned counsel for the respondents supports the impugned judgement and states that the Tribunal was justified in observing that having failed to lay any challenge to the gradings given in his ACRs for the years 2006-2007, 2008 and 2009, the petitioner cannot be permitted to seek quashment of the promotion order dated 23.03.2012, when after appearing in the LDCE examination, he could not make it to the final list of the selected candidates. Learned counsel clarifies that selection for the LDCE examination was based on merits and not on seniority-cum-suitability, which fact was duly taken note of by the Tribunal in para 4 of the impugned order. She states that the petitioner had participated twice in the LDCE examination and on both occasions, he could not succeed on the basis of total marks obtained in the written examination and his service record and it was a twin criteria applied by the respondents for granting promotion.

6. We see no justification for interfering with the impugned judgment when admittedly, the petitioner did not lay a challenge to the gradings of his ACRs for the relevant years, as is apparent from a perusal of the relief prayed for in the O.A. That being the position, any allegations of manipulation of his ACRs or those of some other candidates, who had been promoted, would be of no assistance to the petitioner.

7. Accordingly, the present petition is dismissed *in limine* along with the pending application.

HIMA KOHLI, J

PRATIBHA RANI, J

FEBRUARY 20, 2018

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