

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.10.2019

Pronounced on : 07.11.2019

CORAM

THE HONOURABLE Mr. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

W.P.No.30628 of 2019

M.Muthalif

... Petitioner

-Vs-

- 1.Union of India
Represented by the Chairman and Managing Director
National Buildings Construction Corporation Ltd.,
NBCC Bhavan, Lodi Road
New Delhi - 110 003.
- 2.The General Manager (H.R.M)
National Building Construction Corporation Ltd.,
NBCC Bhavan, Lodi Road
New Delhi - 110 003.
- 3.The Departmental Promotion Committee
(Senior Officer's Cadre),
National Building Construction Corporation Ltd.,
NBCC Bhavan, Lodi Road
New Delhi - 110 003.
- 4.The General Manager,
National Building Construction Corporation Ltd.,
E.S.I.C Hospital Campus
K.K.Nagar, Chennai - 600 078.
- 5.Shri Harilal
Additional General Manager
National Building Construction Corporation Ltd.,
E.S.I.C Hospital Campus
K.K.Nagar, Chennai - 600 078.
- 6.Shri Manas Kaviraj
General Manager (HRM)
National Building Construction Corporation Ltd.,
NBCC Bhavan, Lodi Road
New Delhi - 110 003.

7.The Registrar

Central Administrative Tribunal
City Civil Court Complex
III Floor, High Court Buildings
Chennai - 600 104.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for records relating to the impugned order dated 25th day of September 2019 on the file of the 7th respondent herein namely the Registrar, Central Administrative Tribunal, Madras Bench in O.A.No.141 of 2015 and may be pleased to quash the same as non-est in the eye of law and consequently allow the O.A.No.141 of 2015 as prayed for within a time frame that may be stipulated by this Court.

For Petitioner : Mr.K.S.Govinda Prasad

ORDER

[Order of the Court was made by N.SESHASAYEE, J.,]

The petitioner herein, formerly working as a Deputy General Manager (DGM) in the National Buildings Construction Corporation Limited (NBCC), the second respondent herein, has approached this Court for a Writ of Certiorarified Mandamus, to declare that an order made by the Central Administrative Tribunal in O.A.No.141/2015 is non-est in law. The controversy pertains to the petitioner's perceived entitlement to the next promotional post as Additional General Manager (AGM).

2. The Facts

- In 1978, the petitioner joined the second respondent-Corporation as a Junior Engineer. Over the next 28 years, he was successively promoted to the next higher promotional post, before he was posted as Deputy General Manager (DGM) in March, 2009. On 28.02.2015, he superannuated from the same post. The petitioner states that from 1995-1996 till 2013-2014, he has got good grading in his Annual Confidential Report. In 2006-2007, in particular, he was graded 'A', which as per the norms of the second respondent, would indicate that he was outstanding in his performance.
- In his career spanning 36 years, he was once punished departmentally, when his increment was withheld for a year, which, as per the Rules governing punishment, constituted only a minor punishment. This was in 2004-2005. Notwithstanding the same, he was promoted in 2006, as Project Manager and in 2009, as Deputy General

Manager. While so, the second respondent, Vide its proceedings dated 09.5.2011, transferred the petitioner from Chennai to New Delhi. Challenging the same, he approached the Central Administrative Tribunal in O.A.No.1267/2011, which though granted an Order of interim stay, but dismissed the petitioner's Application. Challenging the said order, the petitioner moved this Court in W.P.10808/2012 and it came to be dismissed on 28.08.2014. In these circumstances, the second respondent, Vide its memorandum dated 03.01.2015, has informed the petitioner that by challenging the Order of transfer without any basis, the petitioner had acted in a manner prejudicial to the interest of the Corporation, was in willful insubordination or disobedience, tantamount to misconduct under NBCC Service Conduct Rules, 1969, and he was warned to be more careful in future and not to repeat such act.

- Be that as it may, the fifth respondent herein, who is a junior to the petitioner herein, was promoted as AGM in 2009, overlooking the petitioner. The grievance of the petitioner is that he was totally kept in dark by his employer, the second respondent herein, as to why he was not considered for promotion in 2009, though his junior, the 5th respondent herein, has reached the zone of consideration for promotion, and that when the petitioner had more than satisfactory rating in his performance based on ACR, at no time, he was informed about any adverse entries in the ACR. Secondly, even the memo given by the second respondent dated 03.01.2015, referred to above, itself was issued only to deny the petitioner his just promotion, to which he was entitled to. Hence, he moved the Central Administrative Tribunal in O.A.No.141 of 2005, post his superannuation, inter alia to direct the respondents 1 to 3 herein to promote the petitioner to the Assistant General Manager (Engg.) and General Manager (Engg.), with effect from the date on which the fifth respondent has assumed charge in the said promotional post and to direct the aforesaid respondents to pay the petitioner the compensation to the tune of Rs.75 lakhs.

3. In their reply the respondents 1 to 4 have alleged :

- That the respondent was promoted as Deputy Project Manager in 1998 and as Project Manager (Civil) (PM) on 01.10.2005. In terms of the Corporation's Promotion Policy as was in force in 2006-2007, the services rendered by an employee of the Corporation in his capacity as Deputy Project Manager as well as the Project Manager would be clubbed for reckoning the eligibility for the post of DGM. Based on the same, the petitioner was considered for the promotion upon he coming into the

zone of consideration in 2006-2007 to the next promotional post as DGM. There is no specific benchmark to prescribe for further promotion and as per the Promotion Policy of NBCC, and promotion to further higher post is based on merit-cum-seniority through the process of interview, and other factors including ACR grading and experience.

- The petitioner was not promoted as he could not cross the merit-bar for the promotion to the post of AGM, as has been prescribed in the Promotion Policy by the Departmental Promotion Committee (DPC). It is exactly for this reason he was not promoted to the post of AGM. In other words, the petitioner was denied promotion on the basis of the relative merit that the one promoted had over the petitioner, and was not determined solely on ACR.
- It is also a misconception that the petitioner has entertained that the promotion is based on seniority.

4.1 Before the Tribunal, it was contended on behalf of the petitioner that he was victimised by the adverse entries in the ACR, which, as per the law laid down by the Hon'ble Supreme Court, the Corporation ought to have communicated it to him, and since it was not so communicated, it had prejudiced him. The Corporation, on its part has stuck to the defense offered in its reply statement.

4.2 The Central Administrative Tribunal, Vide its Order dated 25.09.2019, has dismissed the O.A.No.141/2015 and aggrieved by the same, the petitioner is before this Court in the present writ petition.

5. The Tribunal found merit in the submissions of the NBCC and accepted its statement that the promotion was based not exclusively on seniority or the ACR, but on a comprehensive appraisal of other factors, including the seniority of a candidates and accordingly, dismissed the application in O.A.No.141/2005.

6. This Court, heard the submissions of the learned counsel appearing for the petitioner and perused the materials placed before it.

7. Before this Court, the learned counsel for the petitioner harped on the same conception, or perhaps the misconception of the petitioner that no adverse entries in ACR and argued that it had worked on the respondents 2 and 3 to deny the petitioner the promotion he is entitled to. The learned counsel has placed reliance on the authorities in Prabhu Dayal Khandelwal Vs. Chairman, Union Public Service Commission and

Others [(2015) 14 SCC 427]; Sukhdev Singh Vs. Union of India & Others [(2013) 9 SCC 566] and K.K.Parmar and Others Vs. H.C. Of Gujarat [(2006) 5 SCC 789].

8. This Court finds it difficult to persuade itself to subscribe to the said submissions of the learned counsel. When the respondents have made a categorical statement that the promotion to a higher post is based on a comprehensive appraisal of the performance of all those who are in the zone of consideration, and that it was guided only by merit-cum-seniority, the petitioner continues to be under a pall of misconception about the criteria for further promotion. That an employee is in the zone of consideration alone is not adequate for him to aspire for promotion where the policy for promotion is designed along merit-cum-seniority. In law, there is a world of difference between merit-cum-seniority and seniority-cum-merit.

9. To conclude, this Court does not find any merit and hence the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To:

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+1cc to Mr.K.S.Govinda Prasad, Advocate SR.92917

W.P.No.30628 of 2019

VSNI (CO)
CB (09/12/2019)



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