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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **W.P.(C) 102/2017 & CM 548/2017, 47212/2019 & 54185/2019**  
**R K AGARWAL** ..... Petitioner

Through: Petitioner in person.

versus

**UNION OF INDIA & ORS** ..... Respondents

Through: Mr. Arun Bhardwaj, CGSC with Mr.  
Gangwar & Mr. Behra, (Def. Legal).  
Mr. Ravinder Agarwal & Mr. Lekhraj  
Singh, Advs. for R-4.

**CORAM:**

**JUSTICE S.MURALIDHAR**

**JUSTICE TALWANT SINGH**

**ORDER**

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**23.12.2019**

**CM APPL No. /2019 (to be numbered) & CM APPL. 55235/2019**

1. The first application is by the Petitioner who appears in person, whereby he seeks leave to withdraw the statement made by him before the Court on 5<sup>th</sup> August, 2019 that he does not wish to send any representation on the “advice received by the Respondents from the UPSC”, as well as his further statement on that date that the Respondents “may proceed to pass orders in the matter without waiting for any further representation from the Petitioner”.

2. As it transpires, on 19<sup>th</sup> August 2019, accepting the UPSC's advice, the penalty of “withholding of 10% of the monthly pension otherwise admissible to him for a period of one year” was imposed on the Petitioner by the Respondents.

3. At the hearing on 14<sup>th</sup> October, 2019, it was submitted to the Court on behalf of the Respondents that in view of the Office Memorandum ('OM') dated 14<sup>th</sup> September, 1992 issued by the Department of the Personnel Training ('DoPT'), with a penalty having been imposed by the aforementioned order dated 19th August, 2019 (wrongly noted as the order dated 9th August, 2019 in the order of this Court), the sealed cover of the DPC proceedings in respect of the Petitioner cannot be opened.

4. In para 7 of that order dated 14<sup>th</sup> October, 2019, the Court had recorded the submission of Mr. Bhardwaj that the case of the Petitioner for notional promotion will have to be considered only at the next DPC.

5. As a result, the matter was adjourned to 26<sup>th</sup> November, 2019 to enable the Respondents to inform the Court the outcome of DPC proceedings. On 13<sup>th</sup> December, 2019, the following order was passed:

"1. The Petitioner has submitted a note pointing out that the Respondents proposed to hold the review DPC for his promotion from AEE (Civil) to EE (Civil) against the vacancy years 2013-2014 to 2016-2017, whereas, according to him, he should be considered for the vacancy years 1997-1998 to 2012-2013. He has referred to the earlier affidavits filed by the Respondents where they have stated that the proposal was to consider the Petitioner for promotion against the vacancy years 1997-1998 to 2012-2013.

2. The Respondents while holding the review DPC will keep the above aspect in consideration and consider the case of the Petitioner for promotion against the vacancy years 1997- 1998 onwards as already submitted before this Court.

**C.M. APPL.54185/2019 (to be numbered)**

3. By an order dated 26<sup>th</sup> November, 2019, this Court had directed the Respondents to complete the review DPC on or before 9<sup>th</sup> December, 2019. By the present application, further time is sought for that purpose. The application is silent on what steps were taken by the Respondents towards holding the review DPC in respect of the Petitioner's promotion. All that is stated is that in November, 2019, a proposal was sent to the Ministry of Defence and that it is "now under active consideration with the LA (Defence) and will take some time for finalisation."

4. The Court directs the LA (Defence) with whom the matter is supposed to be under "active consideration" to personally file an affidavit within one week explaining, date wise, the steps taken in the matter since the order passed by this Court on 26<sup>th</sup> November, 2019. The LA (Defence) will remain personally present in Court on the next date.

5. List on 23<sup>rd</sup> December, 2019.

6. If the DPC is held in the meanwhile and a decision taken, the LA (Defence) need not be present.

7. Learned counsel for the Respondents will ensure that a copy of this order is communicated forthwith to the LA (Def) concerned.

8. Order *dasti* under the signature of the Court Master".

6. The LA (Defence) is present in Court. Meanwhile, the Respondents have filed a fresh application being CM APPL. 55235/2019 for recalling the aforementioned orders dated 14<sup>th</sup> October, 2019 and 26<sup>th</sup> November, 2019. The short ground on which recall is sought is that with the Petitioner having accepted the penalty imposed by the order dated 19<sup>th</sup> August, 2019, the consequence is that there will be no question of holding a Review DPC,

since the sealed cover does not require to be opened. It is further submitted in the application that since the Petitioner has already superannuated, no fresh DPC can be held. Mr. Bharadwaj sates a the statement made by him as recorded in par 7 of the order dated 14<sup>th</sup> October 2019 was erroneously made and he wishes to withdraw it.

7. The Court is informed both by the counsel for Respondents as well as the Petitioner himself that all the monetary dues owed to the Petitioner have been released to him.

8. In view of the fact that the Petitioner now wishes to file an appeal against the penalty order dated 19<sup>th</sup> August, 2019, the Court, in modification of the earlier orders dated 5<sup>th</sup> August, 2019, 14<sup>th</sup> October, 2019 and 26<sup>th</sup> November, 2019, directs as under:

(i) The Petitioner is relieved of the statement made on 5<sup>th</sup> August, 2019. He is now permitted to file a statutory appeal against the order dated 19<sup>th</sup> August, 2019 and thereafter avail appropriate remedies as may be available to him in accordance with law.

(ii) If the Petitioner's appeal is filed not later than 31<sup>st</sup> December, 2019, the appeal should be positively disposed of by 28<sup>th</sup> February, 2020, and the decision on the said appeal should be communicated to the Petitioner within 15 days thereafter.

(iii) In modification of the earlier orders it is now directed that

depending on the outcome of the Petitioner's appeal, irrespective of earlier orders, further steps will be taken in accordance with law by either party.

9. The petition and all the pending applications are disposed of in the above terms.

10. Copy of the order be given *dasti* under the signatures of Court Master.

**S. MURALIDHAR, J.**

**TALWANT SINGH, J.**

**DECEMBER 23, 2019**

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