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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 8009/2016

MANISH M. GADE

..... Petitioner

Through: Mr. Ramesh Datta, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Dev. P. Bhardwaj, CGSC with
Mr. Anubha Bhardwaj and Ms.
Chanchal Guha, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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26.11.2019

1. On 9th September, 2016, the following order was passed:

“Challenge in this writ petition is to the orders dated 25th February, 2016 passed in O.A. No.4357/2014 and 31st May, 2016 passed in Review Application No.85/2015, whereby the O.A. and the review application filed by the petitioner stand rejected by the Tribunal. The petitioner claims that he should have been promoted in the year 2010. This request of the petitioner was declined by the Tribunal on the ground that as on 01.01.2010 when the DPC was held, he was not eligible as the petitioner had not completed six years of service. The petitioner submits that though there were vacancies in the years 2011 and 2012, but DPC was held only in the year 2014 and no plausible and cogent reasons have been given by the respondents for holding the DPC after such an inordinate delay.

The prayer of the petitioner is that he should have been granted retrospective promotion. The impugned order has not addressed the issue with regard to the reasons for delay in holding the DPC by the respondents.

Issue notice to the respondents to show cause as to why the petition be not admitted. Mr.Dev P.Bhardwaj, CGSC accepts

notice on behalf of the respondents. Let reply be filed by the respondents, more particularly addressing this issue, within six weeks. Rejoinder thereto, if any, be filed by the petitioner before the next date of hearing.

List on 19th December, 2016.”

2. Thereafter on 29th March, 2019, the Court passed the following order:

“The petitioner has placed reliance on the judgment of this Court in Dr.Sahadeva Singh v. UOI, W.P. (C) No. 5549/2007, decided on 28.02.2012. He submits that the conduct of the respondent in not holding the DPCs for filling up the vacancies of the years 2011,2012 and 2013 has prejudiced the petitioner and denied him promotion from earlier date.

Counsel for the respondent submits that though the respondents have not articulated the reasons for the DPCs not being held for the aforesaid posts, on record, there is sufficient justification therefor. He wishes to produce the relevant record in this regard. Let the record be produced on the next date of hearing.

List on 30.04.2019.”

3. On the next date of hearing i.e. on 30th April, 2019, the following order was passed:

“Despite our last direction, the relevant record has not been produced in relation to the DPCs not being held to fill up the vacancies for the year 2011-13 for the post of PEG. Some record is produced relating to 2013, which also does not throw light on the issue under examination.

We grant one last opportunity to the respondents to produce the relevant record, failing which this Court shall draw adverse inference against the respondents. In case the record is not produced, the Advisor (Administration), Niti Aayog shall remain personally present in Court on the next date.

List on 26.11.2019.”

4. Today the original records have been brought to the Court. The picture that emerges is that as on 28th July 2010, there were 28 sanctioned posts of Economic Officers, of which 15 were filled up and 13 were vacant. Of the 15 filled-up posts, 10 had been filled by way of promotion, and five by direct recruits/deputation. It is seen therefore that even on 28th July, 2010, the number of promotees exceeded the 50% quota meant for them in the post.

5. It appears that there was subsequently a down-sizing which resulted in the total number of sanctioned posts of Economic Officers being reduced from 28 to 25. The 50% quota for promotees could not therefore have exceeded 13. Despite this, the Court finds that promotions continued to be made even on 16th November, 2010 of five persons, all of whom were senior to the Petitioner.

6. It is stated that it is only when the next available vacancy occurred that a DPC could be held for promoting the Petitioner and he has been promoted with effect from 2014.

7. The Court permitted the counsel for the Petitioner to inspect the record that has been brought to the Court. According to the learned counsel for the Petitioner, the stand presently taken with regard to there being no vacancies in 2010 against which the Petitioner could have been promoted and therefore the question of his being given a notional promotion from that date, is being taken for the first time by the Respondent. He disputed the record, claiming

that all the figures therein had somehow been manipulated.

8. The Court is not prepared to accept the above submission. The record speaks for itself. There is absolutely nothing to show that the record has been manipulated. The fact of the matter is that the number of Economic Officers promoted as such has far exceeded the quota for promotees, whether in 2010 or even subsequently. In the circumstances, the question of the Petitioner being given a proforma notional date of promotion with effect from 2010 when there was no vacancy available for his promotion as such, does not arise.

9. The petition is accordingly dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 26, 2019

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