

\$~23

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

+ W.P.(C) 13199/2018 and CM APPL. 51253/2018

ECGC LTD

..... Petitioner

Through: Mr Saurabh Aggrawal, Mr V.K. Mishra and Mr Akshaya Vashisht, Advocates.

versus

NATIONAL COMMISSION FOR SCHEDULED CASTES & ANR.

..... Respondents

Through: Mr Saurav Agrawal, Mr Saket, Mr Vibhu Anshuman, Ms Akanksha Sisodia and Mr Akshay Vashishth, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
26.03.2019

%

1. The petitioner has filed the present petition impugning the order dated 16.08.2018 passed by the National Commission for Scheduled Castes (NCSC), in the proceedings initiated before it pursuant to a complaint filed by respondent no.2 (Mr Amit Kumar Baidya).
2. Respondent no.2 is an employee of the petitioner company and is, essentially, aggrieved by the denial of promotion to the post of Deputy General Manager (DGM). It is the petitioner's case that he has been victimised on account of him belonging to the SC category.
3. On 26.03.2002, the Board of Directors of the petitioner company passed a resolution to bring into effect a revised recruitment and promotion policy. Respondent no.2 participated in the selection process in terms of the

said policy and by an order dated 24.05.2004 was promoted to the post of Senior Manager. On 01.09.2008, respondent no.2 was again promoted to the post of Assistant General Manager.

4. On 07.01.2015, the Board of Directors of the petitioner company constituted a Committee for conducting interviews and selecting eligible officers for being promoted to the post of DGM. The petitioner participated in the interviews conducted by the Selection Committee, without any objection as to the selection process. On 19.01.2015, the petitioner published the list of candidates who were selected for promotion to the post of DGM as well as the list of candidates who were placed in the waiting list for promotion.

5. Aggrieved by the denial of promotion, the petitioner preferred a Writ Petition before the Bombay High Court, being Writ Petition No. 2280 of 2015, challenging the petitioner's promotion policy for selection of candidates for the vacant posts of DGM.

6. Apparently, the petitioner's ACR ratings had been downgraded by the Regional Manager, whereas, she had awarded the petitioner 'A' Grade for the financial year 2011-12. The same was reduced to 'C' Grade for the financial year 2012-13. The other officers had also downgraded the petitioner's ratings. In this regard, the petitioner made a representation. The concerned officers responded to the said email standing by the rating awarded to respondent no.2.

7. On 05.04.2016, the petitioner once again announced that interviews would be conducted on 12.04.2015 for the post of DGM for filling up the

vacancies arising during the period April 2016 to March 2017.

8. Thereafter, on 25.05.2017, respondent no.2 filed a complaint before the NCSC. In the meanwhile, the petitioner had filed its pleadings to contest the Writ Petition filed by respondent no.2 (Writ Petition No. 2280 of 2015). However, the petitioner did not pursue his Writ Petition and after filing the complaint, respondent no.2 withdrew his writ petition, which was dismissed as withdrawn by an order dated 19.07.2017.

9. After the pleadings had been completed before the NCSC, the matter was heard by NCSC on 30.11.2017. It is relevant to note that the Chairman-cum-Managing Director and ED along with other officers of the petitioner were present at the said hearing.

10. The petitioner received a letter dated 15.12.2017, indicating that the NCSC has viewed the matter seriously and had directed the Additional Secretary, Commerce Ministry, CMD, ECGC, to attend the next meeting and provide a detailed report on the matter. Subsequently, by a letter dated 29.12.2017, the CMD of the petitioner company and the Additional Secretary, Ministry of Commerce and Industry, were directed to appear before the NCSC on 07.02.2018.

11. On 26.02.2018, the Vice Chairman of the NCSC passed an order directing that copies of ACRs of other officers be produced and further directed that appreciation letter given to all the officers be also given to respondent no. 2.

12. On 23.04.2018, the CMD of the petitioner provided the necessary

documents as required by the NCSC including the relevant mark sheet and the ACRs of other officers of Kolkata Branch. A hearing was held on 16.08.2018 and an order was passed by the NCSC observing that adverse remarks and comments made in the ACR of respondent no.2 with regard to lack of inter-personal skills; weakness in communication; weakness in operations, were intentional and adversely affected respondent no.2's career. Accordingly, the petitioner was directed to take immediate and proper steps. The petitioner was further warned that on failure to do so, appropriate action would be initiated against the defaulters. The NCSC directed that respondent no.2's ACR be reviewed and further he should be considered for promotion to the next higher grade. The petitioner was also directed to file an affidavit in the matter within a period of seven days.

13. It is at once clear that the order dated 16.08.2018 is wholly without jurisdiction. It is settled law that the NCSC does not have any jurisdiction to adjudicate any service matters (see: ***All India Indian Overseas Bank SC and ST Employees Welfare Association and Ors. v. Union of India and Ors.: (1996) 6 SCC 606***). Clearly, NCSC would have no jurisdiction to interfere with the ACRs of the employees.

14. This Court is also finds that there was no reason for summoning the CMD of the petitioner or the Additional Secretary, Ministry of Commerce and Industries.

15. In view of the above, the impugned order dated 16.08.2018 is set aside and the proceedings initiated before the NCSC pursuant to the complaint filed by respondent no.2, are quashed.

16. The pending application stands disposed of.

MARCH 26, 2019
RK

VIBHU BAKHRU, J