

\$~6 (2021)

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

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Date of decision: 23.11.2021

+ **W.P.(C) 12611/2019 & CM No.51551/2019**

VIRENDRA PRAKASH SINGH

..... Petitioner

Through: Mr Anupam Verma, Adv

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms Anjana Gosain and Ms Shalini
Nair, Advs. for R-1, 2& 4.

Mr Naresh Kaushik, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This writ petition is directed against the order dated 23.09.2019, passed by the Central Administrative Tribunal (in short “the Tribunal”) in O.A. No. 2819/2019.

1.1. To be noted, the Tribunal dismissed the petitioner’s O.A. [i.e., O.A. No. 2819/2019] on the first date itself, without calling upon the respondents to file a counter-affidavit.

1.2. Therefore, the impugned order is pivoted solely on the assertions made by the petitioner in his O.A.

2. The Tribunal noted that the petitioner, while working in the post of Director (Group-A) in the Directorate of Civil Aviation, sought promotion to the post of Deputy Director General [in short “DDG”] in respect of

vacancies which arose in 2019.

2.1. According to the petitioner, since he was placed fifth [5th] in the subject seniority list dated 10.02.2019, he should have been considered for promotion against one of the posts held by the following officers i.e., Mr Pradeep Pathak and Mr P.K. Srivastava.

2.2. The reason that the petitioner makes this submission is on account of the fact that both Mr Pradeep Pathak and Mr P.K. Srivastava stood promoted to the post of Joint Director General [in short “JDG”] on 26.08.2019, leaving their erstwhile posts at the level of DDG vacant.

2.3. The Tribunal, however, repelled this assertion of the petitioner, on the ground that the Departmental Promotion Committee [in short “DPC”] which was convened for considering eligible officers for promotion to the post of DDG was held in June 2019 i.e., before vacancies arose, on account of promotion of Mr Pradeep Pathak and Mr P.K. Srivastava, to the post of DDG.

3. Mr Naresh Kaushik, who appears on behalf of respondent no.3/UPSC, informs us that vacancies against which the petitioner made his claim, arose on 26.08.2019 and 09.09.2019, respectively.

3.1. However, Mr Anupam Verma, who appears on behalf of the petitioner, contests this position based on the observations made in the impugned order.

3.2. To our minds, it makes very little difference as it is not disputed by Mr Verma that these vacancies arose after the DPC was convened in June 2019.

4. However, what has emerged before us is that the principal reason the petitioner was not considered for promotion, concerned the amendment of the Recruitment Rules [in short “RRs”] of 2012. The 2012 RRs stood

amended on 20.06.2019.

4.1. It is Mr Verma's contention that the amended RRs would be applicable only qua vacancies which arose in 2021, and not to those which arose between 2019 and 2020.

4.2. In support of this plea, Mr Verma seeks to place reliance on the Office Memorandum (OM) dated 08.05.2017, which, according to him, superseded the earlier OM's. To buttress this stand, Mr Verma has placed reliance upon the OM dated 23.03.2018.

5. The aforementioned circumstances would demonstrate that the aspect concerning the impact of the amendment of the RRs in 2019, could not be considered by the Tribunal, as no notice was issued in the O.A., and therefore, the stand of the official respondents could not be placed before it.

5.1. We are of the view that this is an aspect which the Tribunal needs to examine, as it impacts the right of the petitioner, as claimed by him, for being considered for promotion to the post of DDG.

5.2 Both Mr Kaushik and Ms Anjana Gosain, who appears on behalf of respondent nos. 1 and 2, in effect, Directorate of Civil Aviation, cannot but accept the position, that the Tribunal had no occasion to rule on the aspect concerning the impact of the amended RRs on the petitioner's case for promotion to the aforementioned post.

6. Thus, for the foregoing reasons, we are inclined to set aside the impugned order dated 23.09.2019, and remand the matter to the Tribunal for a fresh consideration.

6.1. It is ordered accordingly.

6.2. The Tribunal will hear the matter afresh, giving both sides an opportunity to place their respective stands before it.

6.3. In order to hasten the proceedings, the pleadings filed before us may be considered by the Tribunal.

6.4. However, the Tribunal would be at liberty to issue directions for filing additional-affidavit(s), if deemed fit, keeping in mind that there has already been a delay in considering the case of the petitioner for promotion.

6.5. Parties and/or their authorised representatives are directed to appear before the Registrar of the Tribunal on 06.12.2021. The Registrar will, thereafter, place the matter before the concerned bench of the Tribunal for disposal.

6.6. Needless to add, the Tribunal will endeavour to expedite the hearing in the matter.

7. We may note that the counter-affidavit filed on behalf of respondent nos.1 and 2 was not on our record, and therefore, we had requested Ms Shalini Nair, who appears along with Ms Gosain, and is present in Court, to place before us the hard copy of the counter-affidavit.

7.1. For the purposes of good order and record, the Registry will include the said counter-affidavit as part of the court record.

7.2. Mr Verma informs us that he has received a copy of respondent nos. 1 and 2's counter-affidavit, and that he has filed a rejoinder qua the same; which is available on our record.

7.3. The statement of Mr Verma is taken on record.

8. Mr Verma says that he will place before the Tribunal, the entire record which is placed before this Court, in order to hasten the proceedings.

9. The writ petition is disposed of in the aforesaid terms. Consequently, pending application shall also stand closed.

10. The Registry is directed to transmit a copy of the order passed today to the Tribunal.

(RAJIV SHAKDHER)
JUDGE

(TALWANT SINGH)
JUDGE

NOVEMBER 23, 2021
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Click here to check corrigendum, if any