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

+ **W.P.(C) 4896/2021**

B.M. SHARMA

..... Petitioner

Through: **Mr. Ranjit Sharma, Advocate.**

versus

UNION OF INDIA & ANR.

..... Respondents

Through: **Mr. Vivekanand Mishra, Sr. Panel
Counsel for R-1.**

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **12.05.2021**

[VIA VIDEO CONFERENCING]

C.M. No. 15059/2021(for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

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3. This petition, under Article 226 of the Constitution of India, has been preferred with respect to the order dated 11th December, 2020 of Central Administrative Tribunal (CAT), Principal Bench, New Delhi in O.A. No.2021/2020 preferred by the petitioner.
4. The undisputed facts are, that the petitioner came on deputation (according to the counsel for the petitioner, in the year 2010) to the respondent no. 2 National Highways Authority of India (NHAI) as Manager (Technical). Vide Notification dated 22nd May, 2017, NHAI invited

applications from the Managers (Technical) employed in NHAI on regular basis, for consideration, for promotion to the post of Deputy General Manager (DGM) (Technical). The petitioner, though not employed with NHAI on regular basis, being merely on deputation with NHAI till then, nevertheless applied. Resultantly, the petitioner was declared as ineligible.

5. The petitioner filed the O.A., from which this petition arises, contending that NHAI, in the matter of promotions aforesaid, had discriminated against the petitioner. It was contended that one Sanjay Channa, who was also on deputation in NHAI and holding the post of Manager (Technical) and who had also applied and was also declared ineligible, was subsequently promoted.

6. CAT, in the impugned order has reasoned that the petitioner was unable to make out any case of discrimination. It was found, that NHAI had given an opportunity to all those who were declared ineligible, to make representations and which representations were considered. It was further found that Sanjay Channa aforesaid, was absorbed in NHAI on regular basis, in August, 2017 i.e. though after the Notification dated 22nd May, 2017 inviting applications as aforesaid but before the Notification dated 26th September, 2017 effecting the promotions pursuant to the Notification dated 22nd May, 2017. It was yet further found, that as distinct from Sanjay Channa aforesaid on the basis of whom the petitioner was claiming discrimination, the petitioner was absorbed on regular basis in NHAI, only on 21st February, 2018 i.e. after the promotions pursuant to the Notification dated 22nd May, 2017 had already been effected.

7. We are unable to find any perversity of law, in the reasoning aforesaid of CAT. The petitioner, who admittedly was absorbed on 21st February,

2018 i.e. much after 26th September, 2017 when promotions were effected, could not claim parity with Sanjay Channa who though as on 22nd May, 2017 was also on deputation, was absorbed in NHAI in August, 2017 i.e. before the promotions were effected.

8. We may however record, that on perusal of documents filed by the petitioner along with the petition, it is found that on consideration of representation of Sanjay Channa aforesaid, he was found to be eligible as on 7th January, 2017 i.e. before the Notification dated 22nd May, 2017 and it is obvious that the inclusion of his name in the list of ineligible candidates was an error.

9. Be that as it may, the petitioner, if at all aggrieved from his non-absorption in NHAI prior to 21st February, 2018, ought to have challenged the same and which the petitioner did not do.

10. CAT, however in the impugned order, in paragraph 7, has protected the interest of the petitioner by directing NHAI, that in case any promotions took place after 21st February, 2018 when the petitioner was absorbed and if the petitioner was not considered for that, to either state the reasons therefor or, if the petitioner, after 21st February, 2018 was wrongfully not promoted, to take the corrective steps.

11. On attention of the counsel for the petitioner being drawn to paragraph 7 of the impugned order of CAT and on being enquired, whether after 21st February, 2018 any promotions have taken place, the counsel for the petitioner, answering in the affirmative, has drawn our attention to page 138 of the file, being the Office Order dated 12th June, 2020 of promotions of Managers (Technical) to the post of DGM (Technical).

12. We have enquired from the counsel for the petitioner, that if it is so,

why the petitioner did not seek implementation/enforcement of paragraph 7 of the impugned order of CAT.

13. The counsel for the petitioner vaguely states that the petitioner made representation.

14. Even if that be so, had the respondents not acted on the said representation, the remedy of the petitioner was to approach CAT, either for implementation of paragraph 7 of the impugned order or by way of a fresh O.A., and neither of which action has been taken.

15. It thus emerges, that the remedy of the petitioner was/is, either to challenge his non-absorption earlier than 21st February, 2018, if eligible and entitled to challenge the same or to seek implementation/enforcement of paragraph 7 of the impugned order of CAT and to take remedies for grievance with respect thereto.

16. The counsel for the petitioner states that he has no instructions from the petitioner in this regard.

17. There is no need to keep the petition pending.

18. No error is found in the impugned order of CAT. Dismissed.

19. The petitioner will however have the liberty to take remedies as aforesaid, available to him in law.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

MAY 12, 2021

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