



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.02.2021

Pronounced on : 12.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)Nos.544 and 16816 of 2015

and

M.P. (MD)Nos.1 and 1 of 2015

W.P. (MD)No.544 of 2015:

K.Kannan

... Petitioner

vs.

1.The Chairman and Managing Director,
Bharat Heavy Electricals Limited,
BHEL House, Siri Fort,
New Delhi - 110 049.

2.The Director,
Human Resource,
Bharat Heavy Electricals Limited,
BHEL House, Siri Fort,
New Delhi - 110 049.

3.The Executive Director,
Bharat Heavy Electricals Limited,
Tiruchirappali Complex,
Trichy - 620 014.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings passed by the 2nd respondent in his proceedings NO. AA/HR/TMX:004(R) dated 05.05.2014 and quash the same as illegal and consequentially to direct the 1st respondent to prepare the panel for AGM without considering the marks awarded under the caption of suitability within a period as may be prescribed by this Honourable Court.

For Petitioner : Mr.C.Venkatesh Kumar
for M/s.Ajmal Associates

For R1 to R3 : Mr.A.V.Arun
For R4 : No Appearance in W.P. (MD)No.16816
of 2015

W.P. (MD)No.16816 of 2015:

K.Kannan

... Petitioner



vs.

1.The Chairman and Managing Director,
Bharat Heavy Electricals Limited,
BHEL House, Siri Fort,
New Delhi - 110 049.

2.The General Manager (HR-Policy),
Human Resource,
Bharat Heavy Electricals Limited,
BHEL House, Siri Fort,
New Delhi - 110 049.

3.The General Manager (HR & CC),
Human Resource and Corporate Communication,
Bharat Heavy Electricals Limited,
BHEL House, Siri Fort,
New Delhi - 110 049.

4.The Executive Director,
Bharat Heavy Electricals Limited,
Tiruchirappali Complex,
Trichy - 620 014.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 3rd respondent in his proceedings No. AA/:HR:TMX:004(C), dated 22.08.2015 and to quash the same as illegal and consequentially, to direct the 2nd respondent to retain the petitioner in 4th respondent BHEL, Trichy on promotion as an Additional General Manager within a period as that may be prescribed by this Court.

For Petitioner : Mr.C.Venkatesh Kumar
for M/s.Ajmal Associates

For R1 to R3 : Mr.A.V.Arun
For R4 : No appearance

COMMON ORDER

The petitioner namely K. Kannan had filed the writ petition in W.P. (MD) No.544 of 2015 challenging the impugned guidelines for promotion in regard to Executives up to Grade E-7 for the year 2014 and consequentially to direct the first respondent to prepare the panel for AGM without considering the marks awarded under the



caption of suitability. The petitioner has also filed another writ petition in W.P.(MD)No.16816 of 2015, challenging the impugned order, dated 22.08.2015, wherein, through the impugned order, his promotion was cancelled by the third respondent with a consequential prayer to direct the second respondent to retain the petitioner in the fourth respondent BHEL, Trichy on promotion as Additional General Manager.

2. The brief facts of the case are that the petitioner was working as Senior Deputy General Manager in BHEL, Trichy unit. Initially, he was appointed as Engineering Trainee on 06.10.1986, then promoted as Engineer (E-1), Senior Engineer (E-2), Deputy Manager (E-3), Manager (E-4), Senior Manager (E-5) and Deputy General Manager (E-6) and Senior Deputy General Manager (E-6A). The next promotional avenue from Senior Deputy General Manager (E-6A) is Additional General Manager (E-7). The respondents have issued guidelines for considering promotions for the year 2014, vide proceedings, dated 05.05.2014. It is mandatory to have one year experience as Senior Deputy General Manager (E-6A). Further, the guidelines laid down that 25% of eligible candidates shall be promoted following the inter se merit among the candidates.

3. The contention of the petitioner is that the respondents have formulated certain guidelines in awarding marks for suitability by Departmental Promotion Committee (in short DPC) for the years 2012, 2013 and 2014 and aggrieved over the same, the petitioner has filed W.P.(MD)No.544 of 2015, challenging the said guidelines. While the writ petition was pending the petitioner was granted promotion as Additional General Manager but transfer to the promoted post to Hyderabad, vide order, dated 25.06.2015. The allegation of the petitioner is that 17 Senior Deputy General Managers were promoted as Additional General Manager, out of 17 executives 15 executives have been retained in BHEL, Trichy. The petitioner alone on promotion was transferred to Hyderabad. The contention of the petitioner is that since the petitioner has approached this Court questioning the guidelines, dated 05.05.2014, the respondents have transferred the petitioner to Hyderabad. The respondents have granted promotion and posted in a far place and such an act of transfer is punishment. The petitioner's wife is employed in Central Workshop, Southern Railway, Trichy District and the nature of work is non-transferable post. Further, the petitioner's daughters are studying in Colleges, hence the petitioner filed a writ petition in W.P.(MD)No.14162 of 2015, challenging the promotion cum transfer, dated 25.06.2015. The said Writ Petition was dismissed on 10.08.2015, with an observation directing the authority to retain the petitioner in Trichy and in case any vacancy arises in future, the petitioner may be accommodated.



4. The contention of the petitioner is that the promotion to the Additional General Manager is a time bound promotion and whenever a candidate, who have completed one year experience as Senior Deputy General Manager can be promoted as Additional General Manager by following the *inter se* merit among the candidates. Therefore, the question of availability of vacancy does not arise. The candidates who are promoted as Additional General Manager from Senior Deputy General Manager may be promoted to work in the same station because, in all these promotions designation alone will be changed. Therefore, the question of considering the petitioner to retain in BHEL, Trichy, in case any vacancy arise in future will not arise.

5. In the meanwhile, to the shock of the petitioner, the respondent cancelled the promotion, dated 25.06.2015, by the impugned order, dated 22.08.2015. Challenging the cancellation order the present Writ Petition in W.P.(MD)No.16816 of 2015 is filed. The petitioner has filed a rejoinder.

6. The respondents have filed counter affidavit for both the writ petitions. The contention of the respondents is that the petitioner was promoted from Manager E4 to Senior Manager E5 in his third attempt, which shows there is no automatic promotion from one cadre to another cadre. The promotions are considered for all the eligible candidates by the DPC, which considers all the candidates on merit based on the aggregate of marks for suitability assigned by the DPC. The marks awarded for other parameters are that the performance, qualifications and experience, while assessing the suitability. The DPC takes into account the potential of the candidates for assuming the higher responsibility. In the year 2012, 74 candidates were eligible for consideration for promotion from Senior Deputy General Manager to Assistant General Manager Grade which included the petitioner. Only 26 candidates were promoted out of which one candidate was transferred out side Trichy union based on the recommendation of the DPC. The petitioner was granted promotion as per the recommendation of the DPC. As per DPC recommendation the promotion was granted and the details regarding promotion for the earlier years are given as under:

"A) In 2012, 74 candidates of Trichy Unit were eligible for consideration for promotion from Sr DGM to AGM grade, which included the petitioner. Only 26 candidates were promoted and out of which 1 was transferred outside Trichy Unit based on the recommendation of the DPC. The Writ petitioner was not recommended for promotion by the DPC.



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B) In 2013, 67 candidates of Trichy Unit were eligible for consideration for promotion. Out of this, 21 candidates were promoted and out of which 4 were transferred outside Trichy Unit. At that time the writ petitioner was ranked 33rd in the merit list and was not recommended for promotion.

C) In 2014, 59 candidates of Trichy Unit were eligible. Out of this, 17 candidates were promoted. The writ petitioner was ranked 30th in the merit list and was not recommended for promotion.

D) In 2015, 57 candidates of Trichy Unit were eligible for consideration for promotion. Out of this, 17 candidates were promoted (including the Petitioner herein) and out of which 2 were transferred outside Trichy Unit. Further, in 2015, out of 170 candidates promoted across the organization, 20 were transferred out of their present place of Posting.

E) As regards W.P(MD) No.544 of 2015 referred by the petitioner, I submit that the same is pending for adjudication before this Hon'ble Court and respondent organization is contesting the same."

7. The respondents have also stated that based on the guidelines, the DPC is considering the candidate's merit, ability, performance, etc. and thereafter, only the promotion will be granted. However, the transfers also will be affected, since the transfer is incidence of service the petitioner cannot question the transfer.

8. Heard Mr.C.Venkatesh Kumar for M/s.Ajmal Associates, the Learned Counsel for the petitioner and Mr.A.V.Arun the Learned Counsel for the respondents and perused the records.

9.The petitioner submitted that the petitioner was granted zero marks for suitability. However, for the other categories the petitioner's performance, education and experience adds up to 81.43, without suitability the petitioner has obtained 81.43. Therefore, the contention of the petitioner zero marks cannot be granted for suitability. However, on perusing the marks obtained, which was submitted in the rejoinder affidavit, it is seen that the petitioner was not granted marks in the year 2012. However, the petitioner was granted mark under suitability in the year 2013 as 3 in the year



2014 as 2 in the year 2015 as 7. Therefore this Court is of the considered opinion that the respondents have taken all the factors and has granted the marks.

10. The contention of the petitioner is that perfect guidelines was given to the DPC for awarding marks. However, for suitability there is no proper guidelines. Therefore, the petitioner was not granted correct marks for the suitability. On perusing the guidelines it is seen as under:

"Suitability:

Marks to be awarded by the DPC on the basis of details mentioned in the synopsis and perusal of entries in MAP. While awarding Suitability Marks, the DPC will also keep in view the need for moderation of the MAP ratings and weightage for seniority."

The petitioner has also filed a type set including the guidelines which is as under:

"4. Suitability:

Marks should be assigned based on the average of marks by each DPC member."

The petitioner relied on the notification, where it has been stated that mark should be assigned based on the average of marks and contended that the committee members would exercise their power according to their whims and fancies. The respondents submitted the said suitability guidelines was modified in the year 2015, where marks were awarded by the DCP, on the basis of details mentioned in the synopsis and perusal of entries in MAP. May be while granting suitability marks, the committee will also keep in mind the weightage for seniority. The difference between the two guidelines are that, the petitioner has produced the guidelines issued in the year 2014, while the respondents has issued the guidelines issued in the year 2015. On the entire perusal of the guidelines, the allegation of the petitioner that whims and fancies would be exercised by the Committee cannot be accepted. The respondents have formulated the scheme and modified each and every year based on their experience in handling the promotion and transfer and has modified as to the requirement for the promotion and transfer. Especially, on perusing the guidelines issued for the year 2015, absolutely there is no element of whims and fancies for the committee.

11. Therefore, this Court is of the considered opinion that the challenge of the petitioner in Writ Petition W.P.(MD)No.544 of 2015, should fail and the Writ Petition is dismissed.



12. As far as the Writ Petition in W.P.(MD)No.16816 of 2015 is concerned, the petitioner has challenged the cancellation of promotion-cum-transfer order. The contention of the petitioner is that the transfer ought to be cancelled but the promotion cannot be cancelled. This Court is unable to accept the contention since when the promotion is along with transfer in other words it is promotion-cum-transfer and it cannot be segregated. Moreover, the petitioner has already filed a Writ Petition and this Court has passed an order that as and when vacancy arises, the respondents may consider the petitioner's promotion. Based on this direction, now the petitioner contended that for the year 2015-2016, there are some vacancies which arose due to normal retirement of incumbents and the respondent did not consider the petitioner's case.

13. It is seen that the respondents are granting promotion-cum-transfers for each year and the same will be considered by the DPC. When the vacancy arises during that year or in the mid of the year, the same will be shown as vacancies. Thereafter for each year in the month of May-June alone, the promotion-cum-transfers would be considered. As pointed out by the petitioner, those vacancy would be taken for consideration, then a circular would be issued for that year and the guidelines stated in the circular issued for each and every year for promotion-cum-transfers would be followed to grant promotion-cum-transfer. Therefore, the petitioner cannot claim as a right to promote him as and when vacancy arises, especially in the mid of the year. It is a policy decision of the respondents to conduct promotion cum transfer for each year for the vacancies arose for that year in order to follow uniformity. In the next year, the petitioner was considered and the petitioner was granted promotion, i.e., in 2016. The petitioner's case was considered and the promotion was granted and the petitioner was retained in Trichy itself. Therefore, the petitioner cannot have any grievance at all. Moreover, whenever transfer is issued, it is an incidence of service and that too whenever promotion-cum-transfers are issued the employee is bound to take such promotion-cum-transfer and cannot seek to segregate them. Therefore, the claim of the petitioner is erroneous. There is no merit in the claim of the petitioner and the writ petition is liable to be dismissed

14.Hence the Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //



/ /2022
Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-18171[F] dated 12/04/2022)

W.P. (MD)Nos.544 and 16816 of 2015
12.04.2022

MGJ(25.04.2022) 8P 2C