



2024:DHC:6638-DB



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

% ***Date of decision: 28th August, 2024***

+ **W.P.(C) 11862/2024 and CM APPL. 49338/2024**

APURV AGARWAL

.....Petitioner

Through: **Mr. K.C. Aggarwal and
Ms.Sazida Bano, Advocates.**

versus

K P MAHADEVSWAMY & ORS.

.....Respondents

Through: **Advocate (appearance not
given)**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (oral)

1. The present petition has been filed on behalf of the petitioner under Articles 226 and 227 of the Constitution of India seeking the following reliefs:-

“(a) The Hon’ble Tribunal’s order dtd 31.05.2024 passed in C.P. 395 of 2024 may kindly be quashed protanto to the extent issue of notice no. 3 and 4 is declined and Ld. CAT may be directed to issue notice to Respondent no. 3 and 4 accordingly.

(b) Direct Ld. CAT to issue notice to respondent no. 2.



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(c) Direct respondent no. 1 to provide names and other details of DPC members pertaining to the sham review DPC.

(d) Direct the Ld. CAT to allow amended memo of parties to be filed after inclusion of the names of DPC members to be disclosed by Respondent No. 1 and further direct Ld. CAT to issue notices to them.”

2. Notice.

3. Learned counsel appearing on behalf of respondents accepts notice.

4. The brief facts of the case are that the petitioner joined NBCC as AGM (Engg) on 02.02.2015 and was promoted to the post of GM (Engg) w.e.f. 01.10.2018.

5. Pursuant to order dated 01.03.2024 in O.A. 2007/2022, a Review DPC was convened by NBCC, whereby Pradeep Sharma was promoted to the post of CGM (Engg.)

6. The petitioner preferred contempt petition being C.P.No. 395/2024 for holding a sham review DPC. The petitioner alleged that respondent Nos. 1, 3 and 4 acted as DPC members and respondent No. 2 acted as Co-ordinator in the proceedings and that he was denied basic information in respect of Minutes of DPC, and even the names and details of the members of DPC.

7. The petitioner is aggrieved that learned Tribunal while passing order dated 31.05.2024 in C.P.No. 395/2024 declined to issue notice to all other respondents except respondent No. 1, including those members of the DPC, whose names are not known to the petitioner. Also, learned Tribunal has assigned no reason for not issuing notice to respondent No. 2 although he is squarely responsible being HR In-Charge for coordinating, managing and



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facilitating the sham review DPC.

8. In the present petition, the petitioner has averred that the members of the review DPC, 2021 were bound to comply with the directions passed by the learned Tribunal vide order dated 01.03.2024. However, late in the night on 02.04.2024, respondent Nos. 1 to 4 issued orders pursuant-to/based-on DPC 2023-24. The petitioner is aggrieved that he was issued an ante-dated chargesheet (ante-dated to 2-days before DPC 2023-24) and he was illegally denied promotion to the post of ED (Engg) in DPC 2023-24 as a punishment for approaching the learned Tribunal. The acts of the members of review DPC, 2021 thus constitutes an act of contempt, as the sham review DPC members were also individually responsible and answerable, which amounts to willful contempt.

9. Relevantly, learned Tribunal vide order dated 01.03.2024 in O.A. 2007/2022 held as under:-

“13. There being no doubt in our mind that sealed cover procedure was the mandatory requirement in case of the person who was subject to disciplinary proceedings and/or penalty, the respondents have erred in issuing the promotion order dated 01.10.2021. Further, the APAR of the year 2020-21 could have been taken into consideration only if this APAR was complete, and it is well established that the APAR is considered to be complete only when it is communicated to the officer assessed, his reply/representation obtained and thereafter accepted. In the instant matter, there are certain observations of adverse nature which were neither communicated to the applicant nor any



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opportunity given to him to reply. Thus, this APAR could not have formed a part of the assessment record of the applicant by the DPC. On this ground too, there is a valid case for revisiting the entire issue including the proceedings of the DPC and the subsequent promotion order(s). As mentioned earlier, we are consciously refraining from commenting upon any of the other issues and contentions raised in the OA, however, giving opportunity to the applicant to raise them in appropriate proceedings, if required and should he be so inclined.

14. Against the background of what has been detailed and discussed above and on account of there being no doubt in our mind that the proceedings of the DPC and the promotion orders stand vitiated due to non adherence to the statutory provisions of Rules, the present OA is disposed of with the following specific directions:

(a) the minutes/proceedings of the DPC for the year 2020- 21 (Group A post), which is the subject of this OA, are quashed and set aside only to the extent they relate to promotion to the post of CGM(Engineering) from the post of GM (Engineering).

(b) the subsequent promotion orders dated 01.10.2021 bearing No. 50/2021 also stands quashed and set aside with respect to promotion from GM(Engineering) to CGM(Engineering) only.

(c) any other consequential order(s) with respect to promotion from the post of GM(Engineering) to CGM (Engineering) which may have been passed on the recommendations of the said DPC



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proceedings, too shall stand quashed so far as it relates only to the post of CGM(Engineering).

(d) the respondents shall convene a meeting of the Review DPC immediately and while conducting such a review, specific observations and directions contained in this order shall be given due consideration.

(e) depending upon the recommendations of the DPC, necessary promotion orders shall be reissued for the post of CGM(Engineering).

14. The directions contained herein shall be complied with expeditiously, certainly not later than a period of eight weeks from the date of receipt of a copy of this order. 15. In the facts and circumstances of the case, there shall be no order as to costs."

10. Alleging non-compliance of the aforesaid order, the petitioner preferred contempt petition which was taken up by learned Tribunal on 31.05.2024. On the said date, learned counsel appearing for NBCC pointed out that respondent No. 1-DoPT is principally not a party and also respondent No. 5 mentioned in the Memo of Parties was "*unknown members of Review DPC dated 21.03.2024*".

11. Learned Tribunal thus raised a specific query to learned counsel for the petitioner herein whether he wishes to continue contempt proceedings against respondent No. 5 i.e. *unknown members of Review DPC* dated 21.03.2024, to which his answer was in affirmative. In such circumstances, learned Tribunal observed that since respondent No. 5 is "*unknown members of DPC held on 21.03.2024*" the contempt petition was not



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maintainable and thus, no notice could be issued to respondent No.5.

12. Learned Tribunal further held that no notice was required to be issued to respondent No. 6 i.e. Secretary, Union Ministry of Housing and Urban Affairs. The Tribunal further held that since respondent Nos. 3 and 4 are members of DPC, no notice could be issued to them.

13. In such circumstances, the Tribunal issued notice to respondent No. 1 only and respondent No. 2 – Head HR Senior Executive Director, being part of respondent No. 1, was also not issued notice.

14. It is always the prerogative of the Court to consider who is a just and proper party and against whom notice is required to be issued. The Court has to consider as to in what manner the contempt proceedings are to be initiated.

15. In the present case, for alleged non-compliance of order dated 01.03.2024, the petitioner has already initiated contempt proceedings before the learned Tribunal, which are pending adjudication and this Court is informed that the same is listed for 09.09.2024. Hence, we find no reason to interfere in the proceedings pending before the learned Tribunal.

16. Finding no error in the impugned order dated 31.05.2024 passed by the learned Tribunal, the present petition and pending application are accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

AUGUST 28, 2024
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