



2025:DHC:11489



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

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Date of decision: 17.12.2025+ W.P.(C) 5190/2017
ANIL KUMAR MITTAL

.....Petitioner

Through: Mr. Om Prakash Gupta,
Advocate alongwith petitioner
in person.

versus

NTPC. LTD.

.....Respondent

Through: Mr. Puneet Taneja, Sr.
Advocate with Mr. Sanjay
Rawat, Mr. Varun Rawat, Mr.
Amit Yadav and Mr.
Manmohan Singh, Advocates.
(through VC)**CORAM:****HON'BLE MR. JUSTICE AVNEESH JHINGAN****AVNEESH JHINGAN, J. (ORAL)**

1. This petition is filed challenging the criteria of allocating forty marks to viva-voce out of total marks of one-hundred. Further, direction is sought to promote the petitioner to the post of AGM (Grade E 7) from the date on which his juniors were promoted.
2. While issuing notice on motion on 31.05.2017, learned counsel for the petitioner confined the prayer to the Departmental Promotion Committee (for short 'DPC') held in the years 2014, 2015 and 2016 and gave up the challenge to DPCs held in the years 2011, 2012 and 2013.
3. The brief facts are that the petitioner joined the National



Thermal Power Corporation Limited (for short 'NTPC') on 22.02.1993 in E2A Grade. By the year 2007, the petitioner reached E6 Grade and was posted at Faridabad. The petitioner after being eligible was considered for promotion in the DPCs held from 2011 to 2016 but was not possessing the required minimum benchmark in the Annual Confidential Reports (for short 'ACR'). The petitioner filed representations and after serving legal notice filed this petition. The petitioner was retiring on 30.06.2017 and gratis promotion to the E7 Grade was given on 01.06.2017.

4. Learned counsel for the petitioner challenges the criteria of twenty marks kept for presentation and the twenty marks kept for interview and the argument is that both the marks were to be awarded by the interviewing committee. Learned counsel submits that strategically ACRs of the petitioner were downgraded and the grading given by the reporting officer was reduced by a minor percentage to ensure that the petitioner is not promoted. The contention is that the ACRs were not communicated. Lastly, it is argued that the petitioner was promoted to the E7 Grade vide order dated 01.06.2017 but the promotion should have been w.e.f October, 2016.

5. Per contra the promotion criteria was the merit-cum-seniority. There was no malafide or bias in downgrading the ACRs of the petitioner and there is no challenge to the ACRs. The contention is that the petitioner participated and was promoted on the same criteria which is now being challenged and that at this stage the petitioner cannot challenge the criteria.

6. Heard learned counsels for the parties at length. No other



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contention except those noted above has been pressed.

7. It is an admitted fact that the petitioner participated in the promotion proceedings from 2011 to 2016 continuously and impugned criteria existed throughout the aforesaid period. The petitioner was promoted in June, 2017 after consideration under the same criteria which is now being challenged. The law is well settled that a candidate after having participated in the promotion process under a particular criterion, on being unsuccessful cannot challenge the same.

7.1 Reliance in this regard is placed upon the decision of the Supreme Court **Union of India and Ors. Vs. N.K. Sharma AIR 2024 SC 182** which held as under:

“28.4. Challenging the basis of promotion after having participated in the process on consideration of promotion and having been declared unsuccessful thereunder, is not a valid ground to impugn the policy/method. Repeatedly, this court has held that such challenges cannot be allowed.....”

7.2 The Supreme Court in **Union of India and Ors. v. C Girija and Ors. (2019) 15 SCC 633** held as under:-

“21. There is one more aspect of the matter, which need to be noted. The applicant was well aware that under 30% LDCE quota, out of 05 vacancies, 04 are unreserved and 01 is reserved, which was circulated by Notification dated 14-10-1999. She applied against the said bifurcated vacancies and was interviewed on 8-1-2001, panel of which was declared on 9-1-2001 and promotion was made on the same day. She having participated in the selection for promotion under 30% LDCE quota and the



bifurcation of the vacancies being part of the process of selection, it was not open for her to challenge the bifurcation of vacancies into general and reserved after taking a chance to get selected. In this context, reference is made to judgment of this Court in *Ashok Kumar v. State of Bihar* [*Ashok Kumar v. State of Bihar*, (2017) 4 SCC 357 : (2017) 1 SCC (L&S) 822] . This Court after referring to several earlier judgments have laid down following in paras 13 to 18: (SCC pp. 363-64)

“13. The law on the subject has been crystallised in several decisions of this Court. In *Chandra Prakash Tiwari v. Shakuntala Shukla* [*Chandra Prakash Tiwari v. Shakuntala Shukla*, (2002) 6 SCC 127 : 2002 SCC (L&S) 830] , this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In *Union of India v. S. Vinodh Kumar* [*Union of India v. S. Vinodh Kumar*, (2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792] , this Court held that: (SCC p. 107, para 18)

‘18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same.



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(See *Munindra Kumar v. Rajiv Govil* [*Munindra Kumar v. Rajiv Govil*, (1991) 3 SCC 368 : 1991 SCC (L&S) 1052] and *Rashmi Mishra v. M.P. Public Service Commission* [*Rashmi Mishra v. M.P. Public Service Commission*, (2006) 12 SCC 724 : (2007) 2 SCC (L&S) 345] .)'

(emphasis supplied)

8. The argument challenging the downgrading of the ACRs by the superior authority by reducing the marks given by the reporting officer need not be dilated upon in the absence of challenge to the ACRs. Another aspect to be considered is that the malafide alleged in downgrading ACRs is a bald statement in absence of specific pleadings and no official who is alleged to have acted with mal intent is impleaded by name in the writ petition.

9. The argument that the promotion of the petitioner on 01.06.2017 should have been from October, 2016 is ill-founded. The order of promotion dated 01.06.2017 is not under challenge in this writ petition. Moreover, the clause 3.3(c) of the promotion policy stipulates that the promotion of the executives from Grade E6 to the Grade E7 will normally be effective from the date of issue of promotion orders. The claim of the petitioner is contrary to the promotion policy.

10. The prayer in the writ petition for seeking promotion from the date on which the juniors to the petitioner were promoted is ill founded. No junior is arrayed as a respondent and it is not the case set up that the promotion to Grade E7 is solely on the basis of seniority.



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11. No case is made out for interference in the writ jurisdiction. The petition is accordingly dismissed.

AVNEESH JHINGAN, J.

DECEMBER 17, 2025/Pa

Reportable:- Yes