



Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.674/2021
MA No.875/2021

This the 25th day of March, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Shri Jai Prakash Agiwal, Age 48,
S/o late Sh. PD Agiwal,
R/o U/52, H.No.55, DLF Phase III,
Gurugram (Haryana)

- Applicant

(By Advocate: Mr. Sanjeev Kr. Srivastava)

VERSUS

1. Union of India,
Through Secretary,
Ministry of Housing and Urban Affairs,
Nirman Bhawan,
C-Wing, Dr. Maulana Azad Road,
New Delhi-110011
2. NBCC (I) Limited,
Through its Chairman-cum-Managing Director,
NBCC Bhawan, Lodhi Road,
New Delhi-110003

- Respondents

(By Advocate: Mr. Rajive R. Raj)

ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:



The applicant was appointed as Assistant General Manager (AGM) (Finance) in the National Buildings Construction Corporation (NBCC) in October, 2016. The next promotion is to the post of General Manager (GM) (Finance).

2. The applicant contends that though his APARs for the successive years, ever since he joined were of high grading, he was overlooked for promotion in the years 2019 and 2020. He filed this OA, with a prayer to direct the respondents to promote him on the regular basis to the post of GM (Finance) w.e.f. 01.10.2019, the date from which he is said to be entitled to the said post. He has also prayed for consequential reliefs.

3. The applicant contends that he figured very high in the seniority list for the post of AGM and despite the fact that his APARs are of very high order, he was denied promotion. He contends that the respondents gave evasive answer to the representation made by him.

4. We heard Mr. Sanjeev Kr. Srivastava, learned counsel for the applicant and Mr. Rajive R. Raj, learned counsel for the respondents at the stage of admission.



5. It is not in dispute that the appointment to the post of GM (Finance) is through the process of selection. The applicant acquired eligibility for being considered in the year 2019 itself. The DPC constituted for this purpose, considered his case but did not recommend his name. Some of his juniors were promoted. By the time the next selection took place in the year 2020, the applicant figured at SI. No.1 in the seniority list. His case was also considered, but here again, he was not recommended by the DPC.

6. To the representation dated 20.10.2020, submitted by the applicant, the respondents gave a detailed reply on 18.11.2020. It was clearly mentioned that the DPC took into account the APARs for the last three years, and performance of the applicant in the present Grade, and in the final assessment of the DPC, he was found not fit to be promoted. They have also referred to the gradation of the APARs of the applicant. It was mentioned that the issue pertaining to his rating of the APARs for the year 2017-18, was examined by the Central Grievance Committee of the NBCC and the decision has also been conveyed to him. The applicant did not choose to challenge the order dated 18.11.2020.

7. It is fairly well settled that wherever the appointment or promotion is on the basis of the selection, the unsuccessful candidates cannot challenge the proceedings. It is in the discretion of the DPC whether or not to recommend any candidate, depending

upon its satisfaction. The occasion to interfere would arise, if only any malafides are attributed to the members of the DPC, or that any factor, which is otherwise relevant was not taken into account or when a relevant factor is omitted. None of these factors pleaded or proved in this case.



8. We do not find any merit in the OA and it is accordingly dismissed. Pending MA also stands disposed of.

There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/lg/jyoti/mbt/