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

% *Date of Decision: December 04, 2009*

+ **W.P.(C) 6223/2008**

DR. VIJAY BAHADUR Petitioner
Through: Ms.Rekha Palli, Advocate

versus

UOI & ORS Respondents
Through: Mr.Ankur Chhibber, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

PRADEEP NANDRAJOG, J. (Oral)

1. Rule DB.
 2. The record required to be produced pursuant to the order dated 17.11.2009 has been produced in a sealed cover which has been opened and perused by us and after resealing the same under signatures of the Court Master has been returned to the respondents.
 3. The record shows that for the year 2003-04 the petitioner was graded as 'Very Good'. For the year 2004-05 the Initiating Officer recommended that petitioner be rated as 'Very Good'. The Reviewing Officer penned a note that the
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petitioner should be rated as 'Good'. The Senior Reviewing Officer recorded that the grading of the petitioner should be 'Average'. The reason for grading petitioner as average is as under:-

"I do not agree with the Reporting and Reviewing Officers. Dr.Vijay Bahadur, as a member of the Medical Board, was found wanting in correct and proper medical examination of Kosovo Contingent when some candidates were declared medically unfit while they were actually 'fit' as found by another Board reconstituted for the purpose.

His performance is graded as **Average**.

4. For the next year i.e. year 2005-06 the petitioner has been graded once again as 'Very Good'.

5. It is not in dispute that the ACR grading for the year 2004-05 downgrading the rating of the petitioner from 'Very Good' to 'Average' by the Senior Reviewing Officer was never communicated to the petitioner who was thus denied an opportunity to represent against the same.

6. What has happened is that at the DPC held on 2.7.2007, with reference to the ACR grading of the petitioner for the year 2004-05 rating him as 'Average' he has not been found fit to be promoted to the next post i.e. the post of DIG Medical.

7. We note that pursuant to DPC held in the year 2009 the petitioner earned his promotion to the post of DIG Medical.

8. The grievance of the petitioner is that since the ACR

grading, down-rating him from 'Very Good' to 'Average' for the year 2004-05 was not communicated to him, a valuable right to represent against the same has been violated.

9. As per the petitioner if his ACR grading is restored it would have an impact on the DPC proceedings held on 2.7.2007.

10. In the decision reported as 2008 (8) SCC 725 Dev Dutt Vs. UOI & Ors. it was held that a downgrading in an Annual Confidential Report though not technically adverse needs to be communicated to the person affected, more so, when the downgrading, though not adverse, would have an effect on the service career of the petitioner with reference to the benchmarks required to be achieved for purposes of promotion.

11. Needless to state, in the instant case to be promoted as DIG Medical requisite benchmark is 'Very Good'. Thus, downgrading the petitioner from the previous rating of 'Very Good' to 'Average' would certainly affect his chances of promotion.

12. We dispose of the writ petition directing that within 4 weeks from today, if petitioner were to submit a representation pertaining to his ACR grading for the year 2004-05, contents whereof have been noted by us in the present para 3, the representation would be decided within a

period of 6 weeks of receipt thereof, under communication to the petitioner. We further direct that if the representation of the petitioner results in his ACR grading been restored or enhanced to 'Good' or 'Very Good' in said eventuality a review DPC would be held as on the date 2.7.2007 and relevant ACRs of the petitioner would be considered. If petitioner is found suitable for promotion he would be granted promotion with effect from the date persons junior to him were promoted and necessary orders would then be passed by the Competent Authority pertaining to release of pay. Needless to state in the event he is found entitled to be promoted petitioner would be entitled to consequential benefits of deemed promotion from the date persons junior to him were promoted and length of service in the post of DIG Medical save and except payment of actual salary for which the Competent Authority would pass necessary orders as per the Rules applicable.

13. In case the representation of the petitioner is rejected remedy as per law can be availed by the petitioner.

14. No costs.

15. DASTI.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

DECEMBER 04, 2009
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