

\$~16

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

+ W.P.(C) 7505/2010

UNION PUBLIC SERVICE COMMISSION Petitioner

Through: Mr.Naresh Kaushik, Advocate
with Ms.Aditi Gupta, Advocate.

versus

VINAKSHI GUPTA AND ORS. Respondent

Through: Mr.R.V.Sinha, Advocate with
Mr.R.N.Singh, Advocate for R-1

Mr.B.V.Niren, Advocate with
Mr.Abhishek Goyal, Advocate
For R-2 to R-4

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

ORDER
09.11.2010

%

1. Heard learned counsel for the parties.
2. Holding it to be a case of perverse action on the part of the DPC constituted by UPSC, vide impugned judgment and order dated 6.8.2010, directions issued by the Tribunal are as under:

"On the above consideration we set aside the order dated 31.03.2010 and the impugned minutes of the DPC to the extent only that the Applicant has been overlooked for promotion. We direct that a review DPC should be convened to reconsider the case of the

WP(C)No.7505/2010

Page 1 of 5

Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

Applicant for promotion to SAG. The review DPC shall not consider the remarks and grading given by the reporting/l reviewing authority in the ACR of 205-06. If the Applicant is found 'Fit' by the DPC, she will be promoted with effect from the date of promotion of her junior and shall be eligible for back wages. These directions shall be complied with as early as possible but not later than two months from the date of receipt of a certified copy of this order. There will, however, be no order as to costs."

3. Respondent was aggrieved by the order dated 31.3.2001 since persons junior to her were promoted to the Senior Administrative Grade. She asserted that the DPC considered preceding five year ACR grading and the period was 2004-05 till 2008-09. It was her case that in all the years her ACR grading was 'Very Good'. This was the benchmark. Finding fault with the recommendations of the DPC she pleaded that for the year 2005-06 the DPC downgraded her grading to good and as a result she missed the benchmark. Placing reliance upon OM dated 8.2.2008 she asserted that where the DPC feels that the assessment is not in line with the grades in the ACR, the DPC, after giving reasons, can re-assess the ACR grading. She asserted that the DPC has recorded no reasons.

4. As per UPSC the law laid down by the Supreme Court did not oblige the DPC to record any reasons. The decisions of the Supreme Court which were relied upon were: R.S. Dass & Ors. Vs. Union of India & Ors. AIR 1987 SC 593, National Institute of Mental Health & Neuro Sciences Vs. Dr.K.Kalyana and Ors. AIR 1992 SC 1806, Anil Katiyar Vs. UOI 1997 (1) SCC 280, UPSC Vs. K.Rajaiah & Ors. 2005 (10) SCC 15, Union Public Service Commission Vs. L.P.

4

Tiwari 2006 (12) SCALE 278 and M.V. Thimmaiha & Ors. Vs. UPSC & Ors. 2008 (2) SCC 119.

5. Learned counsel for the petitioner concedes that neither decision considered the OM dated 18.2.2008 and further concedes that in view of the said OM it is mandatory for the DPC to record reasons for re-assessing the ACR grading. Conceding that the DPC has given no reasons for downgrading the ACR grading of the respondent, counsel concedes that there is an error committed by the DPC.

6. However, counsel states that the direction issued by the Tribunal cannot be sustained and need to be replaced with a direction that at the review DPC, if the ACR grading for the year in question is downgraded, reasons would be recorded.

7. The controversy pertaining to the ACR in question may be noted by us. The reporting authority has graded respondent 'Good'. The first reviewing authority has concurred. The second reviewing authority Shri T.P.Mandal has disagreed and has recorded that the officer needs to be graded 'Very Good'. The accepting authority has concurred with the report of the second reviewing authority and thus, the final grading awarded is 'Very Good'.

8. It appears that the expression: "*her performance has been 'very satisfactory' and can be graded as 'very good'*" has led the DPC to form an opinion that how could an officer whose performance is noted as 'Very Satisfactory' be graded as 'Very Good'?

9. Since the DPC is empowered to re-assess the gradings, we

⑧

render no conclusive opinion but simply note that 'Very Satisfactory' would mean 'Above Satisfactory' and may also mean 'Very Good'. Thus, who have studied in convent school, would understand and appreciate that gradings awarded at the monthly reports are:

- A. Excellent
- B. Very Satisfactory
- C. Satisfactory
- D. Fair
- E. Unsatisfactory

10. Be that as it may, at the review DPC it has to be considered that the second review authority as well as the accepting authority have graded the respondent 'Very Good'. The accepting authority has penned reasons spanning 10 lines. The same have to be considered by the DPC and should the DPC yet feel that the officer has been over-graded, reasons would have to be recorded as to why the DPC so holds. The reasons are the mandate of the OM dated 18.2.2008.

11. The writ petition is accordingly stands disposed of modifying the directions issued by the Tribunal in para 20 of the impugned decision. We substitute the directions as under:-

The review DPC shall consider the relevant ACRs of the respondent and should it be of the opinion that for the year 2005-06 the respondent has been over-graded, reason would be recorded as to why the DPC so holds. Should the DPC concur with the ACR grading and as a result respondent is promoted benefit would be granted from the date persons junior to her were promoted which

shall include back wages.

12. Necessary compliance be made within 8 weeks from today.
13. No costs.



PRADEEP NANDRAJOG, J.



SIDDHARTH MRIDUL, J.

NOVEMBER 09, 2010

rk