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

% Judgment delivered on: 18th April, 2011

+ **WRIT PETITION (CIVIL) NO. 7066/2003**

TARUN KUMAR

..... Petitioner

Through Mr. Mata Din, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr. Ruchir Mishra & Mr. Mukesh
Kumar Tiwari, Advocates for respondent
Nos. 1 and 2.

Ms. Bindra Rana & Ms. Meenu Sharma,
Advocates for UPSC.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J.:

In this writ petition, which was filed in the year 2003, the challenge is to the order dated 25th April, 2003 passed in O.A. No. 2967/2002. By the impugned order, the O.A. filed by the petitioner has been dismissed, inter alia, holding that the respondent-Union of India, Department of Telecommunication

now represented by MTNL was not required to convey the grading awarded to the petitioner in the Annual Confidential Reports (ACRs). The petitioner was considered for promotion to Junior Administrative Grade (JAG) for the vacancy period 1994-95, 1997-98 and was in the zone of consideration against the vacancy year 1997-98. He was not empanelled for promotion by the Department Promotion Committee (DPC) as he did not attain the benchmark of 'very good' in the relevant ACRs.

2. It is not disputed that the benchmark for promotion to JAG was 'very good'. The ACR grading of the petitioner were as under:

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	1	2	3	4
	Year	Reporting Officer	Review Officer	
I	91-92	Very Good	Very Good	
II	92-93 i) 1.4.92 to 5.10.92 ii) 6.10.92 to 31.3.93	Good Good	Not reviewed Average	Downgraded by Reviewing Officer
III	93-94	Very Good	Good	Downgraded by Reviewing Officer

IV	94-95	Very Good	Very Good	
V	95-96 i) 1.4.95 to 6.10.95 ii) 11.10.95 to 31.3.96	Very Good Very Good	Good Very Good	Downgraded by Reviewing Officer
VI	96-97 i) 1.4.96 to 18.8.96 ii) 19.8.96 to 31.3.97	Good Very Good	Not reviewed Good	Downgraded by Reviewing Officer

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3. The issue raised in the present writ petition is covered by the decision of the Supreme Court in ***Dev Dutt versus Union of India and Others***, (2008) 8 SCC 725. There is no dispute about the same. The issue raised is how and in what manner the decision in the case of ***Dev Dutt*** (supra) should be implemented.

4. Learned counsel for the petitioner has submitted that the review DPC should ignore the ACRs for the year 1992-93, 1993-94, 1.4.1995 to 6.10.1995 and 1996-97 and accordingly assess and decide whether or not the petitioner should have been promoted as JAG for the vacancy in the year 1997-98. In this connection, learned counsel for the petitioner has relied upon the order dated 27th July, 2004 passed in the Special Leave to Appeal (Civil) No. 26556/2004, ***Abhijit Ghosh Dastidar versus***

Union Of India and Others and he has referred to decision of this Court in ***J.S. Garg versus Union of India and Others, 2002 (65) DRJ 607 (FB)*** and the order passed by the Supreme Court in Civil Appeal No. 5319/2003 in the appeal filed by the Union of India.

5. In ***J.S. Garg's*** (supra) case, the principal and the main issue which was decided and considered was whether the below par grading, which were not adverse but had therein own negative consequences should be communicated and without communication whether the said gradings could be relied upon by the DPC. It was held that such grading, if not communicated, cannot be taken into consideration by the appropriate authority. Decision in the case of ***J.S. Garg*** (supra) was before the decision in the case of ***Dev Dutt*** (supra) and the Full Bench of Delhi High Court had relied upon ***U.P. Jal Nigam versus Prabhat Chandra Jain, (1996) 2 SCC 363.***

6. In Civil Appeal No. 5319/2003, the Supreme Court observed that the decision in the case of ***Dev Dutt*** (supra) had been confirmed by three Judges Bench in ***Abhijit Ghosh Dastidar*** (supra) and accordingly the appeal filed by the Union of India was dismissed.

7. The procedure which should be adopted in such cases did not come for specific consideration in the said case. The procedure has now been examined and laid down in the case of ***Union of India versus Krishna Mohan Dixit***, Writ Petition (Civil) No. 6013/2010 decided on 8th October, 2010. The order of the Supreme Court in ***Abhijit Ghosh Dastidar*** (supra) was examined by a Division Bench of this Court in ***Krishna Mohan Dixit*** (supra). The Division Bench considered the effect of the decision in ***Dev Dutt*** (supra) and the consequences thereof. The Division Bench did not agree that the grading given in the ACRs should be ignored if the said grading was not communicated though the officer concerned did not meet the required benchmark. On the other hand, after a detailed consideration, it was directed as under:

“22. In view of the aforesaid, we are of the considered view that the orders passed by the Tribunal in all these cases cannot be sustained. Thus the orders passed by the Tribunal would stand modified to the extent that the adverse ACRs which falls within the consideration zone i.e. in the relevant 5 years before the date of holding the DPC, if not communicated earlier but are below bench mark would be communicated within a period of 4 weeks from today to the incumbent officer if not communicated so far. The respondent would then be eligible to make a representation within 15 days

thereof if not made already, and that such representation would be decided by the competent authority, which, of course, would be higher in rank to the authority who gave the adverse ACR within next 2 weeks irrespective of the fact whether the Reporting Officer or the Reviewing Officer or both are available or not. In case, the ACR is upgraded, making the incumbent eligible for consideration, review DPC would be held based upon the reappraised ACRs for the relevant period within six weeks. In case, the review DPC finds the incumbent fit for promotion, the benefit thereof would be given to him from the date when he was entitled for promotion to the next post had the ACR in question would not have been considered averse to him with all consequential benefits.”

8. Following the judgment in the case of ***Krishna Mohan Dixit*** (supra), we remit the matter to the DPC for fresh consideration. With regard to the grading given in the ACRs, the directions given in paragraph 22 in the case of ***Krishna Mohan Dixit*** (supra) would equally apply and will be followed. As the matter has remained pending for a long time, it is directed that on the petitioner making a representation, the same shall be considered and decided within a period of two months thereafter and the review DPC will be convened and held within a period of one month therefrom.

The writ petition is accordingly disposed of.

SANJIV KHANNA, J.

CHIEF JUSTICE

APRIL 18, 2011
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