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IN THE HIGH COURT OF DELHI AT NEW DELHI

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WP(C) No.4770/2010

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Date of Decision: 05.09.2011

UOI & Ors.

.... Petitioners

Through Mr.R.V.Sinha & Ms.Sangeeta Rai,
Advocates.

Versus

Dr. N.Rajagopal Acharya & Ors.

.... Respondents

Through Ms.Amita Kalkal Chaudhary, Advocate
for Mr.Naresh Kaushik, Advocate for
respondent No.29

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioners, Union of India & Ors., have challenged the order dated 3rd December, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A No.951/2005 titled as 'Dr.N.Rajagopal Acharya v. Union of India & Ors.' directing the UPSC to convene a review DPC and to re-consider the claims of respondent No.1 on the methodology laid down by the Supreme Court in Civil Appeal

No.6227/2008 decided on 22nd October, 2008 titled as 'Abhijit Ghosh Dastidar v. Union of India & Ors. Thereafter, on the basis of the results, the Tribunal further directed the petitioners to consider the claim of respondent No.1 for promotion as Professor from the date the others had been given promotion i.e. 17th September, 2004 and if found eligible to grant all the consequential benefits in law to respondent No.1.

2. The brief facts to comprehend the disputes between the parties are that respondent No.1 had challenged the order dated 17th September, 2004 and had prayed for promotion to the Specialist Grade-I in the Teaching Faculty as a Director Professor with all the consequential benefits from 17th September, 2004 i.e. from the date the others who were similarly situated had been promoted. Respondent No.1 had contended that he had voluntarily retired as a Professor of Bio Chemistry from G.B.Pant Hospital, New Delhi w.e.f. 31st January, 2005 and had approached the Tribunal to seek the quashing of order No.A-32012/1/2003-CHS-III dated 17th September, 2004, denying him promotion to the Super-time grade of the Teaching Specialist Sub-cadre of the Central Health Service (Director Professor) in the pay scale of Rs.18400-22400 plus NPA.

3. That on 31st July, 2003, respondent no.1 during his service had been directed by the then Director of G.B. Pant Hospital, New Delhi, to submit all his Annual Confidential Reports pertaining to the period from

1995 onwards. This was done for the purpose of convening a meeting of DPC for considering the promotion of Professor Level Officers to the rank of Director-Professor (SAG). That the holding of DPC was getting delayed only on account of want of Annual Confidential Reports (ACRs) of 7 Officers for the varying periods between 1996-1997 and 2001-2002. The plea of respondent No.1 was that in his case surprisingly his complete CR dossier was not available. Subsequently, respondent No.1 filed ACRs en-bloc in duplicate with the Director for due reporting and reviewing as directed pursuant to letter dated 25th July, 2003 received from the Central Health Service which was enclosed with the communication dated 31st July, 2003 received by respondent no. 1 from the then Director of G.B. Pant Hospital. Respondent No.1 also contended that he became apprehensive that the Reporting and Reviewing Officers were likely to obstruct his promotion by making his grading just as 'good' so that no communication of the same would be required to be made to respondent No.1 and yet that would deprive him of his promotion. According to respondent No.1, he came to know that the DPC had made recommendation on the basis of four "very good" entries for five years and those officers in seniority who lacked four "very good" entries had been left out. Apprehending mischief, the respondent no.1 even made a representation dated 28th February, 2004 followed by a reminder dated 25th March, 2004 to the Secretary (Health), Union of India with a copy to the Chairman, UPSC, with a request to withhold the recommendations of the DPC held in January,

2004. However, no communication was received by him regarding his representation. When the list of successful promotees was released on 17th September, 2004, respondent no.1 found that he was excluded from the list. Respondent No.1 also contended that he had learnt from a very reliable source that the DPC for promotion excluded his most recent years of ACRs i.e. 2001-02 & 2002-03 from consideration in its meeting held in January, 2004 and they only took into consideration the 5 ACRs preceding the years upto 2000-01, the requirement being four “very good” entries out of the five ACRs. In the circumstances, respondent No.1 prayed that the order dated 17th September, 2004 be set aside and a change in the recruitment process be made from “Selection” to “Non-selection” and also that all the past ACRs up to the date of DPC meeting be considered and that the respondent No.1 be promoted to the post of Director Professor w.e.f. 17th September, 2004 or from any other date deemed fit by the Court.

4. Original application filed by respondent No.1 was contested by the petitioners, inter-alia, on the ground that the DPC was held on 9th January, 2004 for consideration of eligible officers for promotion against 27 vacancies. After examining the Character Rolls of the eligible officers, the DPC recommended 13 candidates for the vacancies belonging to period of 2002-03 and 14 candidates for vacancies of the period of 2003-04 for promotion to the Super time grade of Director Professor in the Teaching Sub cadre of CHS. The name of respondent No.1 was not

recommended for promotion. It was also contended that the representations of respondent No.1 were considered. It was further asserted that the fixation of minimum criteria of "Very Good" or better entries for promotion was neither arbitrary nor was any injustice, as alleged by respondent No.1, been done. It was also contended on behalf of the petitioners that the method of recruitment by selection (seniority-cum-merit) was not invalid and could not be set aside on the grounds canvassed by the respondent no.1.

5. The Tribunal decided the original application of the respondent by order dated 3rd December, 2009 which is impugned by the petitioners on the grounds that the DPC considered the promotion in the Super time grade of Director Professor, where the benchmark was fixed as 'very good'. As respondent No.1 was not found eligible due to downgraded ACRs, he was not recommended for promotion. Relying on 'Abhijit Ghosh Dastidar v. Union of India & Ors.(supra), and Dev Dutt v. Union of India & Ors. (2008) 8 SCC 725, the Tribunal held that the ACRs of respondent No.1 which were below the benchmark and which were not communicated to him, are to be ignored and on the basis of the available record, reconsideration is to be made and thus, the Tribunal allowed the application of respondent No.1 directing the UPSC to convene a review DPC and re-consider the case of respondent No.1.

6. The order of the Tribunal is contested by the petitioners contending, inter-alia, that the ACRs of respondent No.1 which were below the benchmark cannot be ignored and review DPC cannot be directed to reconsider the case of respondent No.1, after taking into consideration the available record and ignoring the ACRs having grading below the bench mark and which were not communicated to the respondent no.1. Learned counsel has contended that the ACRs wherein the grading was below the benchmark could, at best, be intimated to respondent No.1 with the right to make a representation and in case of upgradation of the ACRs on consideration of representations, the review DPC can be convened for considering respondent No.1 for promotion to the post of Specialist Grade-I in the Teaching Faculty as Director Professor on the basis of the revised ACRs, if any. The learned counsel for the petitioners has relied on the decision of a Division Bench of this Court reported as Union of India & Ors. v. Krishna Mohan Dixit and Ors., Manu/DE/2660/2010.

7. This Court had issued a show cause notice only to respondent No.1 by order dated 20th July, 2010. However, Mr.Naresh Kaushik, Advocate, had also appeared on behalf of the UPSC, respondent No.29. The show cause notice was again served on respondent No.1 on 1st November, 2010, however, no one had appeared on behalf of respondent No.1 on 9th November, 2010. This Court, therefore, had directed to the Registry to transmit to respondent No.1 by Electronic

means i.e. e-mail that the next date of hearing fixed is 4th January, 2011 at the e-mail address of respondent No.1, being nracharya@hotmail.com. On 4th January, 2011, no one had again appeared on behalf of respondent No.1 and the matter was adjourned at the request of learned counsel for the petitioners to file an appropriate affidavit regarding serving of notice on respondent No.1.

8. An affidavit of Mr.R.P.Sati had been filed categorically deposing that notice dated 1st November, 2010 was handed over to respondent No.1. Relying on the affidavit filed on behalf of the petitioners, it was held that respondent No.1 had been served but no one had been present on behalf of respondent No.1. The matter was not heard on 9th February, 2011 and was ordered to be listed on 15th March, 2011. Thereafter, the matter was taken up on 15th March, 2011, 24th May, 2011, 17th August, 2011 and today, however, no one has appeared on behalf of respondent No.1. In the circumstances, the matter is taken up for hearing and final disposal.

9. This has not been disputed that a Division Bench of this Court in Krishna Mohan Dixit & Ors. (supra) had held, after considering the facts and circumstances and scope of the orders of the Supreme Court in 'Abhijit Ghosh Dastidar v. Union of India & Ors. (supra), and Dev Dutt v. Union of India & Ors. (supra), that if the gradation in the ACR is below the benchmark then that ACR is not to be ignored, but such ACR,

on account of being below the benchmark, has to be communicated to the concerned employees with the right to make a representation against the below bench mark grading to the concerned authorities. On consideration of the representation, if the ACR is upgraded, then a review DPC is to be convened to re-consider the case of such an employee.

10. In Krishna Mohan Dixit & Ors. (Supra), which has been followed by other Benches of this Court as well, it was held that in view of the judgment delivered by the Supreme Court in the case of State of UP & Anr. v. Synthetics and Chemicals Ltd. and Anr. MANU/SC/0616/1991 which is also followed in Dev Dutt's case and Abhijit Ghosh Dastidar's case (Supra), all the ACRs are to be communicated to the incumbent. It was further held that wherever the ACR is below benchmark, a representation can be made by the affected person, which would then be considered by the competent authority, which intturn would not be the same authority who gave the adverse ACR, but would be by an authority above it. In case of a person who is already in service, the question of ignoring the adverse ACRs instead of giving a chance of making the representation does not arise.

11. Learned counsel for the petitioners, on instructions, also states that in view of Krishna Mohan Dixit and Ors. (Supra), the ACRs of respondent No.1 having the grading below the benchmark of 'very good'

for the relevant years, which were considered by the DPC, shall be communicated to respondent No.1. Respondent No.1 may have the liberty to make a representation against those ACRs which have grading below the benchmark, which representations, if any, would be considered in accordance with law laid down by this Court. If on consideration of the representation, the ACRs of respondent No.1 would be upgraded, then in that case a review DPC would be convened and the case of respondent No.1 would be re-considered for promotion in accordance with rules and regulations.

12. The pleas and contentions of the petitioners are not refuted by the learned counsel for respondent No.29 and no one is present on behalf of respondent No.1.

13. For the foregoing reasons and in the facts and circumstances and the law laid down by the Supreme Court and the decisions considered hereinbefore, the writ petition is allowed and the impugned order dated 3.12.2009 passed in O.A. No. 951/2005 directing the petitioners to ignore the ACRs which were below the bench mark of 'very good' is set aside. The petitioners are directed to communicate to the respondent No. 1 the ACRs which were below the bench mark of 'very good' for the relevant years, which were considered by the DPC for recommendation for promotion. On receipt of communication of the below bench mark ACRs, the respondent No. 1 shall be entitled to make representation(s)

within four weeks. On consideration of the representation(s) of the respondent No. 1 by the concerned authorities, as has been held in the judgments discussed hereinbefore, if the ACRs of the respondent No. 1 shall be upgraded, then in that case, the petitioners shall conduct review DPC of the respondent, taking into consideration the upgraded ACRs. The review DPC, in that case, if finds the respondent no.1 eligible for promotion, then it shall recommend him and notional promotion shall be given to the respondent no.1 with retiral benefits for the said post as the respondent no.1 has already taken voluntary retirement. With these directions, the writ petition is disposed of. Interim order dated 20.07.2010 is vacated and all the pending applications are also disposed of. Parties are, however, left to bear their own costs.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

September 05, 2011.

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