

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

+ **W.P.(C) No.7026/2010**

% **Date of Decision: 09.08.2011**

Union of India & Ors. Petitioners

Through Mrs. Sonia Sharma, Advocate.

Versus

Hemant Kumar Sharma Respondent

Through Mr. Amit Anand, Advocate.

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 petitioner, Union of India & Ors., have challenged the order dated 12th March, 2010 passed by the Central Administrative Tribunal, Principal Bench in Original Application No.2622/2009 titled as 'Hemant Kumar Sharma v. Union of India and Ors' allowing the application of the respondent with direction to the petitioner to ignore the below bench mark uncommunicated ACRs of the respondent for the years 2006-2007 and 2007-2008 and instead to take into consideration the two earlier ACRs for the year 1999-2000 and 2000-2001 and if the ACRs of the year 1999-2000 and 2000-2001 be commensurate with the

bench mark, then, to constitute a review DPC to consider the case of the respondent for promotion to the Higher Administrative Grade (HAG) post of Chief Post Master General and if the respondent is found fit then to promote him notionally, however, holding that he would be entitled for pay of the promotional post from the date he assumes charge of the said post.

2. After considering the pleas and contentions of the parties, the Tribunal had noticed that the respondent had been overlooked in the matter of promotion as per his service record by the DPC held on 30th June, 2009 though in the ACRs of the applicant for the year 2001-2002, 2003-2004 and 2005-2006 his grading was 'very good', however, the respondent was graded 'average' for the year 2006-2007 and 'good' for the year 2007-2008, which grading was below the bench mark. It was also held that admittedly the ACRs where the grading of the respondent was below the bench mark were not communicated to him and relying on *Dev Dutt v. Union of India*, (2008) 8 SCC 725 and *Ashok Kumar Aneja v. Union of India & Ors*, O.A No.24/2007 decided on 7th May, 2008, it was held that the respondent was entitled for direction to the petitioner for the communication of his ACRs which were below the bench mark and after considering his representation and in case of upgrading of his ACR commensurating with the bench mark, then to constitute a review DPC to consider his case for promotion to the Higher

Administrative Grade (HAG) post of Chief Post Master General for the panel year 2009-2010.

3. The Tribunal, however, held that a departure had to be made in the case of the respondent for the reasons that for the period 2006-2007 his ACRs were reported by Sh.S.K.Das, who retired in the month of June, 2007 and the reviewing officer Sh.M.G.Khan for both the years of 2006-2007 and 2007-2008 had retired on superannuation in June, 2008 and consequently it was directed that his ACRs for the year 2006-2007 and 2007-2008 be not taken into consideration and that instead the earlier two ACRs for the year 1999-2000 and 2000-2001 be taken into consideration.

4. The petitioners, Union of India and Ors., challenged the order of the Tribunal contending, inter-alia, that there is no rule whereby the ACRs of 2006-2007 and 2007-2008 can be excluded and ACRs of 1999-2000 and 2000-2001 be substituted. The petitioner has relied on the decision of the Supreme Court in *K.M.Mishra v. Central Bank of India*, (2008) 9 SCC 120 holding that mere down grading of ACRs from 'very good' to 'good' does not entitle a person for the substitution of the same. The petitioner has also relied on some of the petitions pending in the Supreme Court regarding non communication of ACRs which have below bench mark grading and for exclusion of such ACRs which have

grading below bench mark and substitution of the same by other ACRs of previous years.

5. The learned counsel for the petitioner has also relied on a decision of this Court in the matter of Union of India v. Krishna Mohan Dixit, W.P(C) No.6013/2010 decided on 8th October, 2010. In the said case the Division Bench had set aside the decision of the Tribunal to ignore the adverse ACRs, which were not communicated and which were below the bench mark, and had held that the ACRs below the bench mark ought to be communicated to the concerned official, who would be entitled to make a representation against the said ACRs, seeking an upgradation, if necessary, and the department shall be entitled to consider the representation and to modify the ACRs, if required. The Division Bench had also held that if the department upgrades the ACRs pursuant to the representation made, then it would hold a review DPC which would consider all the ACRs including the reappraised ACRs for the relevant period. It was further held that if the review DPC would find the incumbent fit for promotion, then the benefit would be given to the employee from the date when he was entitled for promotion to the next post, had the ACR in question not been considered adverse to him, with all the consequential benefits. Another Division Bench of this Court by order dated 21st December, 2010 had disposed of a number of writ petitions and letters patent appeals

following the decision of the coordinate bench in the above mentioned case.

6. In the present facts and circumstances, the order of the Tribunal directing the petitioners not to consider the below bench mark un-communicated ACRs of the years 2006-2007 and 2007-2008 and instead to consider the earlier 2 ACRs for the years 1999-2000 and 2000-2001, cannot be sustained and is liable to be set aside.

7. The learned counsel for the respondent has contended that during the pendency of the writ petition, the un-communicated below bench mark ACRs of the years 2006-2007 and 2007-2008 have been communicated to the respondent, and the respondent has made representations against the said ACRs and the representations of the respondent have been rejected by order dated 8th December, 2010 and 27th January, 2011. Consequently, it cannot be held that the ACRs of the respondent for the years 2006-2007 and 2007-2008 be not considered for promotion to the HAG post of Chief Post Master General.

8. For the foregoing reasons, the writ petition is allowed and the impugned order dated 12th March, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.2622/2009, titled as 'Hemant Kumar Sharma v. Union of India &

Ors.' is set aside and the OA of the respondent is dismissed. Since the ACRs of the years 2006-2007 and 2007-2008 have already been communicated to the respondent, and the respondent has also filed his representations against the said ACRs, and the representations of the respondent have been rejected by order dated 8th December, 2010 and 27th January, 2011, the petitioner shall not be obliged entitled to hold a review DPC and consider the ACRs of the respondent for the years 1999-2000 and 2000-2001 in place of the ACRs of the years 2006-2007 and 2007-2008. The interim order dated 21st October, 2010 is vacated and the writ petition is disposed of in terms hereof. All the pending applications are also disposed of and the parties are left to bear their own costs.

ANIL KUMAR, J.

August 09, 2011
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SUDERSHAN KUMAR MISRA, J.