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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) No.5883/2013 & CM Nos.12958/2013 & 1053/2014**

Date of Decision: 16th April, 2014

UOI AND ORS Petitioners

Through Mr.M.K. Bhardwaj, Adv.

versus

RAJNESH JAIN Respondent

Through Respondent in person.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J (Oral)

1. By way of the instant writ petition, the petitioner has assailed the order dated 7th February, 2013 passed in OA No.1362/2012 whereby the Tribunal has accepted the present respondent's challenge to the OMs dated 18th October, 2010 and 17th January, 2012 whereby the representations relating to adverse remarks and grading in her Annual Confidential Report (ACR) for the year 2005-06 were rejected. The Tribunal accepted the respondent's challenge by its judgment dated 7th February, 2013 which is assailed before us.

2. The factual matrix in the instant case is undisputed. The respondent was working as Joint Director in the Social Statistics Division of the petitioner during the year 2005-06. A DPC was held in July, 2009

to consider the applicant and others for promotion to the Senior Administrative Grade ('SAG' hereinafter). However, the respondent was not promoted and on seeking information under the Right to Information Act, 2005, she learnt that she had not been promoted as her ACR for the year 2005-06 was below benchmark. It is undisputed that such remarks were not communicated to the petitioner till the year 2010 when she sought the information from the present petitioner.

3. It is the admitted position before us that the respondent had been consistently graded 'very good' since 2001 to 2004-05 as well as after 2005-06. There was a sudden drop in her grading to 'average' for the year 2005-06. The reporting officer also made certain adverse remarks in various columns of her Annual Confidential Report for this particular year.

4. The respondent submitted a representation dated 25th May, 2010 seeking upgradation of her ACR. This representation was rejected by the Secretary, Ministry of Statistics and Programme Implementation vide OM dated 18th October, 2010. Aggrieved thereby, the petitioner filed the petition before the Central Administrative Tribunal being OA No.3288 of 2011, seeking quashing of the same as well a direction to the present petitioner to consider her claim for promotion to the SAG grade.

5. This application was disposed of by the Central Administrative Tribunal by an order dated 13th September, 2011 issuing directions to the

present petitioners to deal with the several issues raised by the respondent afresh. The present respondent was given liberty to seek adjudication afresh if she was aggrieved by the fresh order which is passed.

6. It appears that after consideration afresh, the decision on the representation of the petitioner was conveyed to her through an office memorandum dated 17th January, 2012 which was assailed by her by way of OA No.1362 of 2012. The present petitioners contested the respondent's challenge and filed a counter affidavit defending the action taken. The respondent, inter alia, challenged the authority of the reporting officer to record her Annual Confidential Report for the reason that he was in the same grade as her. By the order dated 7th February, 2013, this ground of challenge stands rejected by the Tribunal. Inasmuch as there is no challenge by the respondent to the findings of the Tribunal, we are not required to dwell on this aspect of the matter any further.

7. We find that the respondent challenged the comments of the reporting and reviewing officer in her ACR for the period 2005-2006 on the ground of mala fide as well. The Tribunal has carefully considered the challenge by the respondent. Paras 9 & 10 of the order dated 7th February, 2013 assailed before us, usefully deserves to be extracted and read as follows:-

“9. Having heard the learned counsel for the parties and carefully perused the records, we are of the view that there is no lacuna in the respondent no.2 recording

the ACR of the applicant for the period 2005-06 as the Reporting Officer. Respondent no.1 has addressed this issue adequately while deciding the matter as per the directions of this Tribunal contained in order dated 13.09.2011 passed in OA No.3288/2011. Perusal of the decision in Sukhdeos case (supra) relied upon by the applicant, we find that the said case is not pertinent to the matter in hand as the facts in both these cases are distinguishable. However, from the record it is also clear that although the ACR of the applicant for 2005-06 was recorded in October/November, 2006, the applicant was not apprised of the contents of the ACR and did not have any opportunity to represent against the same. The entries made by the Reporting Officer against the Items, Quality of Output, Attitude to Work, Inter-personal Relations, and General Assessment are decidedly adverse and cannot be ignored just because the Reviewing Officer has observed that these are not correct while recording his views on the assessment of the officer given by the reporting officer. Moreover, in Column-I of Part-III of the ACR relating to comments on Part-II as filled out by the officer the reporting officer has recorded Yes, I agree, with reference to content of Column-5 of Part-II of the ACR, which gives details of targets achieved during April 2005 to March, 2006. It appears to be malafide to hold that the performance of the applicant is Average while agreeing with the material placed on record relating to physical/financial targets/objectives and achievements against each target as the officer reported upon has also claimed that there are no shortfalls. The applicant was only able to file her representation against the adverse remarks and grading of the ACR of 2005-06 in 2010 much after the ACR was recorded and when she learnt that the DPC had not recommended her for promotion to SAG. Even at the stage when the Competent Authority considered the representation of the applicant

against the adverse remarks, the only instance of shortfall in performance that was cited by the Reporting/Reviewing officers in their comments related to the remarks of the Additional Secretary dated 12.11.2005. Perusal of the ACR dossiers of the officer shows that her claim that she has consistently been graded as Very Good from the years 2000-01 to 2004-05 and after 2005-06 is valid and the sudden drop in performance in 2005-06 to the level of Average/Good would seem to be not possible. Here, the decision in M.A. Rajsekhar's case (supra) and numerous other rulings appear relevant as the officer recording ACRs must do so in a fair and objective manner.

10. In view of the facts and circumstances of the case, we are of the view that the remarks of the Reporting Officer smack of bias. Also, the applicant did not have timely opportunity to represent against the adverse remarks. Since the applicant has been compelled to approach this Tribunal twice over for no fault of hers, we accept this OA to the extent that the impugned order dated 18.10.2010 is set aside and the ACR for 2005-06 is directed to be treated as non est. Consequential relief, if any, will be for consideration with respondent no.1. There shall be no order as to costs.”

8. Before us, the petitioners are unable to dispute the factual narration which was placed before the Tribunal or the above findings on any legally tenable ground.

We see no reason to disagree with the view taken by the Tribunal and find no merit in this writ petition which is hereby dismissed.

9. It is to be noted that the respondent was not afforded favourable consideration by the DPC only on the ground that because her ACR for the year 2005-06 did not meet the benchmark. This was the only ground pleaded by the petitioners before the Central Administrative Tribunal. The Tribunal has held that the ACR for the year 2005-06 shall be treated as non-est. The same could not have been considered by the DPC while evaluating the respondent's fitness for the purposes of promotion when her batch mates or juniors were so considered.

It is submitted by the respondent that while denying the promotion to her several juniors have also been promoted. Given the fact that the respondent has been deprived the benefit of fair consideration by the DPC, in case she is found fit for promotion by the DPC which is to be convened now, the respondent deserves to be granted consequential benefits as well.

10. We are informed that the respondent has filed a petition seeking initiation of action under the Contempt of Courts Act against the petitioners.

11. The petitioners are given six weeks time to comply with the directions made in the order dated 7th February, 2013 of the Tribunal. As a result, the proceedings in the contempt petition shall be kept in abeyance till 30th May, 2014.

The petitioner shall place a compliance report before the Tribunal on or before the expiry before the contempt court.

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12. In view of the orders passed in the writ petition, these applications do not survive for adjudication and are dismissed.

Copy of this order be given dasti to parties.

**(GITA MITTAL)
JUDGE**

**(DEEPA SHARMA)
JUDGE**

APRIL 16, 2014

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