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

+ **W.P.(C) No.7082/2013 & CM No.15282/2013**

Date of Decision: 15th January, 2014

UOI AND ORS

..... Petitioners

Through Mr.R.V. Sinha, Adv.

versus

DAYA KRISHNA SHARMA & ORS.

..... Respondents

Through Mr.Seva Ram, Adv. with Mr.C.S.
Walia, Adv. for R-1.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J (Oral)

1. The respondents before us had assailed by way of OA No.4028/2011 the action of the petitioners in failing to communicate adverse remarks in their Annual Confidential Report for the period 1998-99 & 1999-2000 which were relied upon by them for denying promotion to them for the post of Deputy Secretary with the Government of India. A further prayer was made for inclusion of their name in the select list for the post of Deputy Secretary for the year 2003. The petition filed by the respondents was allowed by the Central Administrative Tribunal, Principal Bench, New Delhi by the order pronounced on 21st March, 2013, the operative part whereof reads as follows:

“29. In view of the position, we allow this OA.

Consequently, it shall deem that the un-communicated below bench mark ACRs of the applicant for the years 1998-1999 and 1999-2000 were not in existence at the time he was considered by Selection Committee in the year 2003 for his inclusion in the Select List of Deputy Secretaries. Therefore, the consideration of un-communicated below bench mark ACRs for the aforesaid years by the Selection Committee in the year 2003 and subsequent Annexure A-1 impugned order dated 26.07.2011 by which the Respondents have considered the representation of the Applicant but decided to retain the adverse remarks in the aforesaid ACRs are quashed and set aside. Since the respondents have stated clearly in their reply that the Selection Committee held in the year 2003 to consider the case of the applicant for inclusion of his name in the Select Year for the post of Deputy Secretary did not recommend his name only for the reason that the aforesaid ACRs were below the Bench Mark, no useful purpose will be served in directing the respondents to convene any Review Selection Committee in the matter to reconsider the case of the Applicant, particularly in view of the fact that the Applicant has already retired from service as in the case of Abhijit Ghosh Dastidars (supra). However, if the Respondents are of the view that Selection Committee did not consider all relevant aspects before it declined to include his name in the select years 2003, they may convene the Review Selection Committee to consider his case case afresh according to the procedure prescribed by the Hon'ble High Court in W.P.(C) 5042/2002 and connected cases (supra). If the Review Selection Committee find him fit for promotion, the respondents shall promote him notionally as Deputy Secretary from the date his junior has been promoted. As the applicant was later on promoted as Deputy Secretary w.e.f. 2.3.2007 except for arrears of pay for the interregnum period, he will be entitled for all other benefits enjoyed by his immediate junior during his service period. He should also be entitled for the revised pension and all other terminal benefits including arrears of pension, gratuity etc. Further, he will be entitled to have the interest for the delayed payment of terminal benefits for

which interest is otherwise payable. **Let the respondents pass appropriate orders as expeditiously as possible but in any case, within a period of two months from the date of receipt of a copy of this order.”**

(Emphasis supplied)

2. On the manner in which the respondents were to proceed in the matter, further directions were recorded in para 31 of this order which reads as follows:-

“31. Before we part with this order, we observe that Shri James Thomas and V.C. Tiwari who were the Reporting and the Reviewing Officer respectively of the Applicant for the years 1998-99 and 1999-2000 were arrayed as Respondents No.5 and 6 in this OA. The Applicant has narrated certain facts as to how both those officers have jointly harassed him who was graded as a “Very Good” or “Outstanding throughout his career and suddenly he became just only “Good” in their eyes in the year 1998-99 and further deteriorated to the position of “Average” in the next year, i.e., 1999-2000. Even though notices were issued to both those officers, now retired, but they have chosen not to file any reply. Because they have not denied the allegations made against them, we shall accept them as correct. In our considered view, the personal prejudices of the Reporting and Reviewing Officer shall not come in the way for objectively assessing the performance of a subordinate officer. In this regard it is suffice to quote from judgment of the Apex Court in Swatanter Singh Vs. State of Haryana and Others AIR 1997 SC 2105 wherein it was held as under:-

“.....It is true that in view of the settled legal position, the object of writing the Confidential Reports or Character Roll of a Government Servant and Communication of the adverse remarks is to afford an opportunity to the concerned officer to make amends to his remiss; to reform himself; to mend his conduct

and to be disciplined, to do hard work, to bring home his lapse in his integrity and character so that he corrects himself and improves the efficiency in public service. The entries, therefore, require an objective assessment of the work and conduct of a Government servant reflecting as accurately as possible his sagging inefficiency and incompetency. The defects and deficiencies brought home to the officer, are means to the end of correcting himself and to show improvement towards excellence. The confidential report, therefore would contain the assessment of the work, devotion to duty and integrity of the officer concerned.....””

(Underlining by us)

3. It is admitted before us that the petitioners herein had sought extension of time by way of application bearing MA no.1894/2013 with regard to the directions made by the Tribunal in its order dated 21st March, 2013. This application was disposed of by the Central Administrative Tribunal by the order dated 30th August, 2013 which has been impugned before us. Inasmuch as the order is short, we may extract the same in extenso which reads as follows:-

“MA-1895/2013

This MA has been filed by the respondents for condonation of delay in filing the MA-1894/2013. For the reasons stated in the MA, the same is allowed.

MA-1894/2013

This MA has been filed by the respondents in OA-4028/2011 seeking extension of two months’ time to implement the order of this Tribunal dated 21.3.2013. It is seen that the time prayed for is going to expire on 7.9.2013, hence the same is allowed. However, the Respondents shall ensure that the aforesaid order of this Tribunal shall be implemented before the expiry of the extended time now granted to them.

There shall be no order as to costs.”

4. It is obvious from the said order that the Central Administrative Tribunal has accepted the prayer for extension of time to implement the order dated 21st March, 2013 and the petitioner was granted two months for the said purpose.

5. Before us, Mr.R.V. Sinha, learned counsel for the petitioners has contended that the filing of MA No.1894 of 2013 would not come in the way of the petitioners to the maintainability of a challenge to the order dated 21st March, 2013 by the Tribunal. It is submitted that the petitioners had merely sought time for taking a decision with regard to the order dated 21st March, 2013.

6. The above submissions made by learned counsel for the petitioners are not borne out from the application. In paras 5 & 6 of the application, the present petitioners have stated as follows:-

“5. That the respondents have high regards for the various courts, including this Hon’ble Tribunal, and the respondents have been implementing/complying with their directions/orders religiously and the instant judgment could not be implemented within the stipulated time due to reasons stated hereinabove.

6. That thus the respondents need extension of time for two months from the date of filing of the present MA to enable the respondents to take a final decision in the matter in view of the directions of this Hon’ble Tribunal.”

(Underlining by us)

7. It is clear from the above that the petitioners were seeking time to implement the order dated 21st March, 2013 which required them to take a decision with regard to the prayer of the respondents for being placed in the select list. In this background, it cannot be contended or held that by the order dated 30th August, 2013, the Tribunal has permitted the petitioners to examine the order dated 21st March, 2013 so as to explore the possibility of a challenge thereto. We find that the petitioners sought extension of time for abiding by the directions made by the Tribunal in the order dated 21st March, 2013 which was granted to it.

8. The view we have taken is supported by certain subsequent facts as well.

9. Mr.Seva Ram, learned counsel who represents the respondent no.1 is present in court. Learned counsel submits that he found the present writ petition listed in the cause list and is, therefore present. We are informed that the time of two months granted by the Tribunal by the order dated 30th August, 2013 has expired as noted in the order of the Tribunal itself.

10. The respondents filed a contempt petition being CP No.519/2013 in view of the failure of the petitioners to comply with the directions made on 21st March, 2013 & 30th August, 2013. In this petition, the petitioners were represented by the counsel and the following orders were

recorded on 12th December, 2013:-

“Mr.K.M. Singh has entered appearance on behalf of the respondents and seeks time to file compliance affidavit in support of the order of this Tribunal. Time is allowed as prayed for.”

(Underlining by us)

11. This order also supports the view we have taken that the petitioners have been seeking time before the Tribunal to implement the directions made in the order dated 21st March, 2013. This above order has been concealed from us.

12. Mr.R.V. Sinha, learned counsel for the petitioners has submitted that the writ petition was filed on 27th September, 2013 and was listed before court on 3rd November, 2013. The writ petition was filed after the MA No.1894 of 2013 was filed before the Tribunal seeking time to implement the order as well after the passing of the order dated 30th August, 2013. We also find that the filing of the writ petition has not been disclosed to the Tribunal which was seized of CP No.519 of 2013.

13. This writ petition is, therefore, hopelessly misconceived and dismissed with costs which are quantified at Rs.10,000/- to be paid to the respondent no.1 within four weeks.

(GITA MITTAL)
JUDGE

(DEEPA SHARMA)
JUDGE

JANUARY 15, 2014/aa