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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**# **CNR No. DLHC010373842026**+ **W.P.(C) 11637/2026 and CM APPLs.53846-847/2026****UNION OF INDIA & ORS.**

.....Petitioners

Through: Mr. Kartik Bhatnagar, CGSC,
Mr. Varun Pratap Singh, GP, Ms. Astha
Prasad, Mr. Dinesh Vishwakarma,
Advocates with Mr. Atul Singh Rathore,
(ASO. Ad. VI)

versus

VIJAY KUMAR

.....Respondent

Through: Mr. Ayushya Kumar & Ms.
Natasha Goel

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE MR. JUSTICE AMIT MAHAJAN****JUDGMENT (ORAL)**% **13.08.2026****C. HARI SHANKAR, J.**

1. The respondent was promoted as Commissioner of Income Tax in 2003. In April 2014, a Departmental Promotion Committee was constituted for promotion to the grade of Principal Commissioner of Income Tax¹. In the promotion list, which was released by way of Order No.15/2015 dated 30 January 2015, the name of the respondent did not figure. This was because, while considering the case of the respondent, the petitioner also took into account the Annual

¹ "PCIT" hereinafter



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Performance Appraisal Report² of the respondent for the year 2009-2010, though the said year was declared as a 'No Report Year'.

2. This provoked the respondent to move the Central Administrative Tribunal³ by way of OA 852/2016.

3. By judgment dated 3 June 2016, the Tribunal allowed OA 852/2016 and directed that a Review DPC be conducted within 45 days and that, if the respondent was found fit, he be promoted within another 45 days.

4. As this order was not implemented, the respondent moved the Tribunal by way of CP 476/2016 for proceeding against the petitioner by way of contempt. It was only thereafter that, on 20 February 2017, the respondent was promoted as PCIT.

5. In the meanwhile, a further DPC was constituted for considering promotions from the grade of PCIT to the grade of Chief Commissioner of Income Tax⁴. Following the recommendations of the said DPC, Order No. 164/2016 was issued by the petitioner on 20 September 2016, whereby, admittedly, certain batchmates and juniors of the respondent were promoted as CCIT on *ad hoc* basis against the panel year 2016-2017.

6. On 20 February 2017, belated compliance with the directions

² "APAR" hereinafter

³ "the Tribunal", hereinafter

⁴ "the CCIT", hereinafter



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issued by the Tribunal on 3 June 2016 in OA 852/2016 took place and the respondent was promoted as CCIT with effect from 30 January 2015. Even while doing so, the promotion was treated as notional with actual benefits from the date of assuming of charge by the respondent.

7. The respondent, in these circumstances, moved the Tribunal a second time by means of OA 1360/2017, contending that he was entitled to promotion as *ad hoc* CCIT with effect from the date when his juniors were promoted. The respondent particularly cited a case of one T.P. Krishna Kumar, who was his immediate junior as PCIT and had been promoted as CCIT. The respondent sought promotion as CCIT with effect from the date of promotion of T.P. Krishna Kumar.

8. This OA has come to be allowed by the Tribunal by way of the impugned judgment dated 3 October 2024. Aggrieved thereby, the Union of India has approached this Court by means of the present writ petition.

9. We have heard Mr. Kartik Bhatnagar, learned CGSC for the petitioner and Mr. Ayushya Kumar, learned counsel for the respondent.

10. The Tribunal has, in the impugned judgment, noted the fact that, on the date of grant of retrospective promotion to the respondent as PCIT in compliance with the order dated 3 June 2016 passed by the Tribunal, the respondent was in service. The Tribunal has also observed that there was no justification for the petitioner treating the



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promotion of the respondent as notional.

11. We are inclined to agree with the view of the Tribunal.

12. The order dated 3 June 2016 of the Tribunal clearly stated that, if the respondent was found fit in the DPC, which considered his case for promotion as CCIT, he be granted promotion. There was no justification for the petitioner *suo motu* treating the promotion as notional in nature.

13. The Tribunal has further noticed that the delay in convening of the DPC and grant of promotion to the respondent as CCIT was entirely attributable to the petitioner. In such circumstances, following the judgment of the Supreme Court in ***Food Corporation of India v. S.N. Nagarkar***⁵, the Tribunal has held that the respondent was entitled to be promoted as CCIT with effect from the date of promotion of Mr. T.P. Krishna Kumar along with consequential relief.

14. We may note that the petitioner relied, before the Tribunal on FR 17(1) to contend that the respondent was not entitled to any wages for the period when he had not served as CCIT. The Tribunal has held that if the respondent could not assume the duties of the CCIT, it was attributable only to the mistake of the petitioner and has, on that ground, granted the benefits of promotion as CCIT to the respondent from the date of promotion.

15. It is an admitted position that Mr. T.P. Krishna Kumar who was

⁵ (2002) 2 SCC 475



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the respondent's junior was promoted as CCIT against the panel year 2016-2017. The respondent was, therefore, entitled to be considered for promotion as CCIT with effect from the date of promotion of Mr. T.P. Krishna Kumar.

16. Mr. Bhatnagar, learned counsel for the petitioner, submits before us that, on the date when the DPC convened for considering the case of the officers for promotion from PCIT to CCIT, the respondent had already superannuated. The Tribunal has correctly dealt with this aspect by noting that promotion was granted to Mr. T.P. Krishna Kumar with effect from 20 September 2016, on which date the respondent was very much in service. As such, the mere fact that the respondent may have superannuated thereafter cannot be a ground to deny him parity with the case of Mr. T.P. Krishna Kumar. It is obvious that the petitioner cannot seek to capitalize on its own defaults, which started from the very beginning when the petitioner considered inadmissible APARs while examining the entitlement of the respondent for promotion as CCIT.

17. Moreover, we also note that the present writ petition has been filed on 6 July 2026 against an order passed by the Tribunal on 3 October 2024. There is not a whisper of an averment in the petition to explain this delay.

18. There is also no justification for the petitioner not complying with the order of the Tribunal having left it unchallenged for almost two years. Effectively, therefore, the petitioner is in contempt of the Tribunal. There is no reason why this Court should extend the reach of



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its equitable jurisdiction under Article 226 of the Constitution to such a petitioner.

19. We, therefore, dismiss this writ petition both on delay as well as on merits and direct compliance with the order passed by the Tribunal positively within six weeks from today.

C. HARI SHANKAR, J.

AMIT MAHAJAN, J.

AUGUST 13, 2026/yg