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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 17418/2004

Judgment reserved on 3rd September 2015
Judgment pronounced on 23 November 2015

DR.A.K. BELWAL Petitioner
Through : Petitioner in person.

versus

UOI AND ORS. Respondents
Through : Mr.R.V. Sinha, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J.

1. Present writ petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India seeking a direction to quash and set aside the Order dated 13.5.2004 passed in O.A.No.1603/2001 and Order dated 5.8.2004 passed in RA No.195/2004 by the Central Administrative Tribunal (hereinafter referred to as the 'Tribunal').
2. The necessary facts to be noticed as set out in the present writ petition are that the petitioner joined Indian Economic Service (IES) in the year 1971. He was promoted as Grade III Officer in the Senior Time Scale in the year 1979. During the period 1980 to 1982, the petitioner was sent by the respondents to England to complete his P.G. Diploma/D.Sc Economics. The petitioner claims that he was given promotion from Grade IV to Grade II in the year 1983. Thereafter he was remained on study leave between 1.7.1987 to 30.6.1992 to enable him to pursue Ph.d. and during this period his ACRs were not filled up despite his handing over letters of

appreciation issued by competent persons in their respective fields. The petitioner was recommended for promotion in the DPC held in the year 1995 to Grade I and he was promoted to Grade-I (JAG) from Grade III on 8.1.1996. The petitioner was forced to approach the Tribunal as his seniority had been downgraded by 132 positions in Grade III and in the list of Grade I he had been placed along with officers much junior to him. According to the petitioner he was eligible for promotion to Grade I in the year 1988 but in fact he was promoted only in the year 1994. During this period no adverse remarks were ever communicated to him.

3. The stand taken by the respondents before the Tribunal, reads as under:

“5. Respondents in their reply have justified the issuance of the aforementioned impugned orders by stating that after this Tribunal struck down the retrospective operation of Rule 13 of IES, the matter was reviewed in the year 1999-2000 and the applicant’s seniority which was adversely affected in 1986-89 was restored by review DPC while promoting from JTS (Grade IV) to STS (Grade III) of IES. According to them, prior to Tribunal’s order dated 7.1.999 in OA 1206/93 with OA 1288/93, applicant’s case for promotion from STS to JAG was considered by 7 duly constituted DPCs held on 12.3.90, 26.4.90, 26.10.90, 10.5.91, 8.4.92, 30.12.92 and 10.5.94 but he was not recommended for inclusion in the select list for promotion. But on the basis of subsequent service records, his name was recommended by the DPC held on 21.12.95. Thereafter, he was promoted to JAG vide order dated 8.1.96 and this promotion has been subsequently reviewed by order dated 22.2.2000. They have stated that no ACRs were recorded during the period the applicant was on study leave and other kinds of leave. It is further stated by them that the impugned orders have been issued by the competent authority after following due process as per instant rules and instructions on the subject and the same do not suffer from any illegality and/or infirmity. In view of this position, they would contend that the OA is devoid of merit and be dismissed.”

4. A strong grievance was made by the petitioner before this Court as also before the Tribunal that his immediate junior one, Ms.Rohini, was at Sl.No.222 while he was Sl.No.221 in Grade II list but in the revised list he has been pushed down to Sl.No.360 while Ms.Rohini is still at Sl.No.128. Petitioner further submits that both, Ms.Rohini and he, were given promotion to Grade III on a common date i.e. 12.12.1983. The petitioner claims that he has been discriminated as he has been given promotion to Grade I w.e.f. 10.5.1994 while Ms.Rohini has been given Promotion from 12.5.1988.
5. Learned counsel for the respondent has reiterated his submissions made before the Tribunal and has submitted before this Court that the petitioner has not been discriminated. The anomaly in seniority, arising out of the reservations being provided to the reserved category officers with retrospective effect, was corrected and the seniority of the petitioner has been restored at the STC level. Counsel further submits that the petitioner was not found fit for promotion from STS to JAG in DPCs, which were held on 12.3.1990, 26.4.1990, 26.10.1990, 10.5.1991, 8.4.1992, 30.12.1992 and 10.5.1994. It is only on the basis of the subsequent service record his name was recommended by the DPC held on 21.12.1995 and he was promoted to JAG vide order dated 8.1.1996. It is further contended that it is in view of this that Ms.Rohini, who was at Sl.No.222, had been given promotion earlier than the petitioner and, thus, there is no discrimination.
6. As far as marking of ACRs during study leave is concerned, learned counsel for the respondents submits that no ACR of the petitioner could be filled up as admittedly the petitioner was on study leave, which is also a kind of leave, and during this period no work was being carried out by

the petitioner, thus, there was no person supervising the work of the petitioner, and further letters of appreciation cannot be a basis to Grade the officer. Counsel further submits that non-recording of ACR during study leave is as per the DOPT guidelines.

7. We have heard the petitioner, who is present in person, and learned counsel for the respondent and also carefully examined the impugned order passed by the Tribunal. The basic facts are not in dispute that the petitioner had joined the economic service on 6.12.1971. It is also not in dispute that between the period from 1980-1982 he was on study leave.
8. The submission made by the petitioner with regard to the submission that during the period of study leave his ACR should be filled on the basis of appreciation letter has been rightly rejected by the Tribunal. The Tribunal held as under:

“Coming to the reliefs sought by the applicant, it may be stated that we have perused the ACR dossier as well as the review DPC proceedings. After Rule 13 of IES Rules was struck down by the Tribunal vide judgment dated 7.1.99, respondent-department had held review DPC for promotion from STS to JAG on various dates between 1.2.89 and 13.12.1992. However, DPCs have not recommended the case of the applicant for inclusion in the select list for promotion from STS to JAG. The DPC which was held on 10.5.1994 however found the applicant fit for promotion and recommended his case for promotion to JAG. We do not find any irregularity or illegality in the proceedings of the review DPC. It is also noted that there has been no flagrant fluctuation in the gradings awarded to the applicant during the period under consideration which could be a ground for the applicant to demand communication in keeping with the principles of natural justice. He has been graded more or less uniformly as ‘Good’ barring the year 1992 (sic. 1982) and 1993 (sic. 1983) when he was graded as ‘Average’. In so far as his contention that the respondents be directed to take into account the period of his absence on study leave and further

give him credit for the letters of appreciation etc., which are enclosed from page 109 to 119 of the paper book, we agree with the reply of the respondents counsel that study leave by its very nature is leave and during this period no ACRs can be recoded and neither any credit or discredit can be given to the applicant for this period in keeping with the DoPT guidelines.”

9. The petitioner claims that during the period of his study leave his ACRs should have been filled up based on the letter of appreciation, which he has placed on record. The petitioner also submits that for 39 years no adverse remark was ever communicated to him. Study leave, in our view, is a kind of leave, with no superior to assess the working of an employee. Even otherwise the employee, being on leave, would not be carrying out any work.
10. The argument of the petitioner that adverse ACRs were not brought to his notice is also without any force as it is only after the decision rendered in the case of *Dev Dutt v. Union of India & Others*, reported at (2008) 8 Supreme Court Cases 725, did it become mandatory to communicate adverse remarks to an officer and prior thereto it was neither necessary nor mandatory to do so.
11. As far as the submission made by the petitioner that his junior, one, Ms. Rohini, whose name appeared at Sl.No.128 in the revised list while his name has been pushed to Sl.No.360, is concerned, the same is without any force for the reason that the petitioner was given promotion to Grade-I w.e.f. 10.5.1994 while Ms. Rohini was given promotion w.e.f. 12.5.1988. There is also no dispute that in the DPCs held between 12.3.1990 to 10.5.1994 (on seven occasions) the petitioner was not considered fit for promotion. We may add that none of the DPCs have been challenged by the petitioner. Thus, this submission of the petitioner is without any force

and is rightly rejected by the Tribunal.

12. In our view, there is no infirmity in the impugned order dated 13.5.2015 passed by the Tribunal. The present writ petition is without any merit and the same is accordingly dismissed. No cost.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

NOVEMBER 23, 2015

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