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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 02.07.2015

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W.P.(C) 1776/2015

RAJESH THAKUR

..... Petitioner

Through: Ms Rekha Palli, Sr. Adv. with
Mr Punam Singh and Mr Pradeep Kumar, Advs.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr Ripu Daman Bhardwaj, CGSC and
Mr T.P. Singh, Adv. for UOI

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioner has been constrained to approach this Court for the second time for relief. He seeks a direction, which in essence, amounts to consequential effect with respect to the orders of the Court made earlier in W.P.(C) No. 2458/2010 by order dated 30.09.2010.

2. The brief facts are that the petitioner had approached this Court earlier seeking upgradation of ACRs. The respondent had then relied on the order dated 12.08.2010, issued by Ministry of Home Affairs. The said order had accepted the petitioner's representation with respect to ACRs for previous years. The order dated 12.08.2010 reads as under:-

“The competent authority has found that the officer has been down-graded in points, despite of appreciation letters received by him from superiors. His final grading for the period

01.04.04 to 31.03.05, 01.11.05-31.03.06, 01.04.2006-31.03.07, 01.04.07-31.01.08 and 01.04.08 to 31.12.08 has been upgrade from “Good” to “Very Good”.

Necessary entry against the relevant period has been made in his ACR.”

3. The Court had then recorded in W.P.(C) No.2458/2010 the respondent’s statement as follows:- *“consequential steps for considering the case of the petitioner for promotion would be taken and Review Departmental Promotion Committee would be held for this purpose.”* The Court even directed the respondents to constitute the Review DPC and complete the process within three months. The respondents approached this Court yet again complaining in review proceedings that the direction to hold the DPC was not warranted. They relied upon the Office Memorandum dated 13.04.2010. The Court rejected the review petition and refused to alter the previous order, requiring the holding of DPC to give consequential effect to the upgraded ACRs by its order dated 13.05.2011 in CM No. 22170/2010 in Review Petition No. 547/2010.

4. In the background of these circumstances, the respondents have now yet again, despite the Court’s directions, obdurately indicated that promotion would not be given effect to follow the upgradation of ACRs prospectively. This was so indicated by the order dated 13.02.2013. The relevant part of which reads as follows:-

“2. In this connection, it is intimated that the proposal for review of the DOC held on 12.06.2009 for promotion of Dy. Commandant to the rank of Second-in-Command with reference to DoPT OM dated 13.04.2010 in respect of Shri Rajesh Thakur, Second-in-Command was taken up with the MHA,

where the matter has been examined in consultation of DoPT and MOL. As a result of the ibid examination, it has been perceived that the DoPT instructions dated 13.04.2010 is prospective in effect, with res.....communication of ACRs grading which amount to below bench mark for a representation from the concerned individual. Accordingly, any upgradation in the ACRs subsequent to such representation shall have prospective effect.

3. *In our case the ACRs were upgrade prior to the DPC which was held on 12.08.2010 for promotion from Dy. Commandant to 2 IC, i.e., subsequence to communication of DOPT OM dated 13.04.2010. As such the gradated ACRs are reckonable prospectively for future DPC but cannot have a retrospective effect for the DPC held on 12.10.2009.”*

5. Learned counsel for the petitioner contends that with the rejection of the Review Petition being Review Petition No.547/2010, if there was any doubt with respect to the consequential effect to be given, i.e., the date from which the promotions were to be granted to the petitioner, such doubt stood settled. It is secondly contended that the inaction of the respondents in issuing a general office instruction of memorandum about the nature of relief that an individual would be entitled in the event of upgradation of ACRs for previous year would not in any manner hinder his entitlement to such relief. The petitioner quotes in this context the decision of ***Union of India vs. Rasika Chaube***, W.P.(C) No.5453/20013, decided on 05.09.2013 by Division Bench of this Court.

6. Learned counsel for the respondent, on the other hand, submits that all that petitioner can expect is to be promoted with effect from a date subsequent to the upgradation of the ACRs and cannot, in any manner, claim

entitlement to promotional vacancies from any date prior to the date when the ACRs were directed to be upgraded. He also stated the lack of any office memorandum for this purpose.

7. In *Rasika Chaube (supra)*, this Court dealing with a similar issue observed as under:-

“6. This Court is of the opinion that having conceded to the applicant’s request for revisiting the original ACR gradings which resulted in administrative injustice to her, the further view taken by the Departmental Promotion Committee – and sought to be tenaciously argued before the Tribunal and later today before this Court – that in the absence of any DoPT instructions the said benefit would remain ineffective, is stated to be rejected. What essentially the Union seems to be urging in these proceedings is that even though it is its duty to do proper justice and is in fact so done while upgrading the ACR upon representation of the employee who deserves it, it would yet not give full effect and further benefit to the employee due to its own lack of communication/or failure to issue the necessary instructions. The palpable arbitrariness of this argument is writ large. That such an argument can even be made before the Courts much less countenanced, has to be highlighted as an example of sheer obduracy.

8. In the present case, the petitioner’s ACRs for the period 01.04.2004-31.03.2005, 1.11.2005-31.03.2006, 01.04.2006-31.03.2007, 01.04.2007-31.01.2008 and 01.04.2008-31.12.2008 were upgraded from “Good” to “Very Good”, by virtue of the order dated 12.08.2010. The respondents are duty bound to ensure that the Review DPC for the said period is duly held in

full compliance with the statement made by them and so recorded on 30.09.2010 in W.P.(C) No.2458/2010. Even otherwise, the petitioner's entitlement to be considered for promotional post on the basis of the ACRs cannot be denied as the logical consequence of upgradation mean that even if any juniors were promoted, he would be entitled to promotion at least from those dates, if not earlier. For these reasons, the writ petition is entitled to succeed. A direction is issued to the respondents to hold a Review DPC proceedings for the concerned years within six weeks from today and communicate the orders of promotion to the petitioner within the said period, after duly taking into consideration the records of the upgraded ACRs. This would mean that the petitioner's claim for promotion would be reckonable from 12.10.2009 in the light of the upgraded ACRs for all the previous years.

The writ petition is allowed in above terms.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

**JULY 02, 2015
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