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

+ **W.P.(C) 3999/2015**

% ***Judgment dated 7<sup>th</sup> October, 2015***

**MANJIT RAI (EMPLOYMENT NO.2371) ..... Petitioner**

**Through : Mr.S.K. Das, Adv.**

**versus**

**CHAIRMAN-CUM-MANAGING**

**DIRECTOR & ORS.**

**..... Respondents**

**Through : Mr.Soymyajit Pani, Adv. for respondent  
no.1.**

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

**G.S.SISTANI, J (ORAL)**

1. With the consent of counsel for the parties, present writ petition is set down for final hearing and disposal.
2. Present writ petition has been filed by the petitioner under Articles 226 read with Article 227 of the Constitution of India seeking a direction to set aside the order dated 23.5.2014 passed by Central Administrative Tribunal (hereinafter referred to as the "*Tribunal*"), whereby the Original Application filed by the petitioner was dismissed.
3. The necessary facts of this case, as noticed by the learned Tribunal, are that initially the petitioner joined respondent no.1 (National Building Construction Corporation Limited) as a Junior Engineer (Civil) on 11.12.1981. He was promoted as an Assistant Engineer (Civil) Grade II in the year 1985 and as a Resident Engineer in the year 1995. Thereafter he was reverted from the post of Resident Engineer to Assistant Engineer in

the year 1997 and on re-designation of the post of Resident Engineer as Deputy Project Manager, he was re-designated as Deputy Project Manager in the year 2002. The respondents, in pursuance of the PRP Scheme – 2009, promoted various Deputy Project Managers, including some of his juniors, as Project Managers, however, the petitioner herein was not promoted, which forced the petitioner to file representation to the respondents to consider him for the post of Project Manager (Civil), from the date when his juniors were promoted to the said post i.e. w.e.f. 5.3.2009.

4. As per the petition, since no action was taken on the representation of the petitioner, the petitioner filed an O.A. being No.3506/2009 before the Tribunal. The said O.A. was disposed of by the Tribunal vide order dated 18.4.2011 directing the respondents to ensure compliance of Order passed by the Delhi High Court in W.P.(C)No.1494/2011 wherein it was directed that *“if representations are given for upgradation of the ACRs, the same shall be considered by the employer in proper prospective and on such consideration if the employees become eligible, the benefit of promotion be extended, if the candidate is not otherwise unsuitable.....”*.
5. In pursuance to the aforesaid order, the respondents communicated ACRs for five years i.e. from 2003-04 to 2007-08, as per which for the years 2004-05 and 2005-06 the petitioner was awarded ‘B’ grading and for the years 2003-04, 2006-07 and 2007-08 the petitioner was awarded ‘C’ grading. The petitioner thereafter submitted a representation dated 19.5.2011 requesting the authority concerned to upgrade his ACRs for the financial years 2003-04, 2006-07 and 2007-08. For the period 2006-2007 the petitioner contended in his representation that the grading awarded was arbitrary and without due application of mind since he was never served with the complaint/memorandum by the superior authority. For the

financial year 2007-08, the petitioner contended that he was awarded 90 points out of 100 points by the Reporting Officer and the same was reduced to 62 points by the Reviewing Officer without assigning any reasons. By a speaking order dated 2.1.2012 the representation of the petitioner was again rejected, which led to the filing of the OA before the Tribunal, which was also dismissed, which forced the petitioner to knock the doors of this Court for justice.

6. Learned counsel for the petitioner has strenuously urged before this Court that the petitioner has been incorrectly given “C” grade for the years 2007-2008. Attention of this Court is also drawn to the assessment form to buttress his argument that the Reporting Officer had evaluated the petitioner at 90%. Learned counsel contends that there is no reasoning afforded whatsoever by the Reviewing Officer to assess the petitioner at 62% and also no reasoning afforded by the Accepting Authority to accord with a rating provided by the Reviewing Officer. Additionally, learned counsel submits that the speaking order is without any reasons, the same has been passed only to deprive the petitioner of his legitimate promotion and the respondents have acted in an unfair and malafide manner, which has resulted into a situation where the petitioner is working below his juniors.
7. Learned counsel for the respondents submits that as per the criteria fixed and as per the Scheme the petitioner did not possess the eligibility criteria and, thus, he could not have derived benefit of PRP Scheme. As far as the allegations of malafide are concerned, learned counsel for the respondents submits that no malafide have been alleged nor proved, thus, this ground would not be open to the petitioner. Counsel further contends that the Reviewing Officer had the opportunity to assess the petitioner for the reason that the petitioner was reporting directly to the Reviewing Officer.

Counsel contends that the evaluation contains the reason in Column no.B2, copy of which has been placed on record and which is reproduced hereinunder, and after deducting 28% “C” Grade has been accorded to the petitioner, which he has accepted:

|                                                                        |      |                                                |    |
|------------------------------------------------------------------------|------|------------------------------------------------|----|
| B.2 Less : Negative marking for non-compliance /<br>under performance. | (-%) | <table border="1"><tr><td>28</td></tr></table> | 28 |
| 28                                                                     |      |                                                |    |

8. Reliance is also placed by counsel for the respondents on the speaking order dated 2.1.2012 to show that a reasoned order was passed, operative portion of which, reads as under:

“3. ACR rating for the year 2007-08.

*In your said representation you had pointed out that “... thereafter reviewing officer (RO-2) vide par IV has deducted 28% for non-compliance/ under performance without giving any opportunity to defend the same in this regard and kept the overall grading from A to C which is against principle of natural justice. In view of above submission, it is quite clear that ACR has been written with biased all and intentionally spoiled my career for no fault of mine.”*

*“Since the RO-2 has exposure to the performance of the appraisee, in absence of any error on the face of ACR the rating accorded by RO-2 will be relied upon. Further, the next superior authority i.e. the Countersigning Authority has also endorsed RO2’s assessment. Therefore, in this period also the EC found no justification for changing the grading/rating.”*

*The EC guidelines No.11 states “For the purposes of eligibility of the employee to receive the benefit of the PRP Scheme 2009, the EC will first consider three years i.e., from (FY 2005-FY 2008). Only in case the employee has a “C” rating in one of the years, the Committee would consider ACR of last two years, i.e., FY 2003-FY 2005.”*

*Therefore, pursuant to EC guidelines it was found that you have received two “C” ratings in the period of 2005 to 2008 and therefore were found eligible to be extended the benefit under the said PRP scheme 2009.”*

9. We have heard learned counsel on the parties and carefully perused the order passed by the Tribunal and the documents placed on record. It would be useful to notice the ACR ratings of the petitioner herein for five years as they would be relevant for the purposes of deciding this writ petition. The ACRs of the petitioner for the years 2003-04 to 2007-2008 read as under:

|            |             |
|------------|-------------|
| “2003-2004 | ‘C’ – 69.5% |
| 2004-2005  | ‘B’ – 70%   |
| 2005-2006  | ‘B’ – 81%   |
| 2006-2007  | ‘C’ – 66.5% |
| 2007-2008  | ‘C’ – 62%”  |

10. It is also averred in the petition that the grades given in the ACRs ‘C’ stands as Good, ‘B’ stands as Very Good and ‘A’ stands as Outstanding/Excellent.
11. As per the PRP Scheme the following criteria was laid down:

*“11. For the purposes of eligibility of the employee to receive the benefit of the PRP Scheme, 2009, the EC will first consider three years i.e. from (FY 2005 – FY 2008). Only in case the employee has a “C” rating in one of the years, the Committee would consider ACR of last two years, i.e. FY 2003 – FY 2005.”*

12. In view of the aforesaid criteria, the case of the petitioner was not considered for the years 2005-06, 2006-07 and 2007-08 as the petitioner did not have at least 2 ‘B’ gradings. The ACRs of the petitioner for the preceding two years, being 2003-2004 and 2004-2005, could not be taken

into account for the reason that in the three financial years i.e. 2005 to 2008, the petitioner had two “C” gradings and not one.

13. The PRP Scheme formulated by the respondent and the criteria laid out as reproduced in paragraph 11 foregoing would show that for the purpose of eligibility and in order to receive benefit of the scheme, ACRs for three years i.e. from 2005-2008 would be considered and in case the employee has ‘C’ rating in one of the years the Committee would then be entitled to consider the ACRs for the last two years i.e. 2006 and 2007. Admittedly, the petitioner was not eligible in the years 2005-2006, 2006-07 and 2007-08 as he had two “C” gradings in the years 2006-07 and 2007-2008 and has been negatively assessed. This grading was a subject matter of challenge before the Tribunal. While disposing of the OA a direction was issued to the respondent to reassess the ACRs of the petitioner and pass a speaking order. The speaking order, which has been placed on record dated 2.1.2012 shows that the Reviewing Officer had exposure “to the performance of the petitioner” and, thus he was in a position to rate the officer and granted negative marking for either non-compliance or under performance. The next superior authority i.e. the counter signing authority has also endorsed the assessment of the Reviewing Officer.
14. In judicial review the scope is narrow. It has been repeatedly held by the Court that under Article 226 of the Constitution the court cannot sit as a Court of appeal and surely not ascribe the role of a reviewing authority for recording of the ACRs.
15. In the case of *Union of India v. A.K. Narula*, reported at (2007) 11 SCC 10, it was held that only where the process of assessment is vitiated either on the ground of *malafide* or arbitrariness, would the selection be called for interference.

16. In our view, since the scope of interference is narrow and in the ACRs for the years 2005 to 2008 the petitioner has two 'C' gradings, he cannot derive benefit of PRP scheme. We are informed that the petitioner already stands promoted in the Regular DPC, which has been held. Resultantly, we find no merit in this writ petition and the same is dismissed. No costs.

**G.S.SISTANI, J**

**SANGITA DHINGRA SEHGAL, J**

**OCTOBER 07, 2015**

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