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

+ W.P.(C) 447/2014

% ***Judgment dated 2<sup>st</sup> December, 2015***

UNION PUBLIC SERVICE COMMISSION ..... Petitioner

Through : Mr.Naresh Kaushik and Ms.Aditi Gupta,  
Advts.

versus

SUGAN SINGH & ORS. .... Respondents

Through : Ms.Jyoti Singh, Sr. Adv. Amicus Curiae  
for respondents.  
Mr.Amit Mahajan, CGSC, Mr.Ashutosh  
Jha and Mr.Nitya Sharma, Advts. for UOI.

**CORAM:**

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

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

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

1. Challenge in this writ petition is to the order dated 24.8.2013 passed by Central Administrative Tribunal (hereinafter referred to as the '*Tribunal*') wherein the Tribunal has held that the DPC conducted on 24.10.2011 has erred in considering the case of respondent no.1 herein, the application was allowed and DPC proceedings were quashed so far as it related to the assessment of respondent no.1 and a direction was issued to convene a review DPC to consider the case of respondent no.1 afresh in the light of the observations made by the Tribunal.
2. Learned counsel for the petitioner submits that the learned Tribunal has exceeded its jurisdiction. The Tribunal has failed to take into consideration the Office Memorandums dated 10.4.1989, 11.4.2007, 6.1.2010, 13.4.2010 and 9.5.2014, and the judgments rendered by the Supreme Court of India in the case of *U.P.S.C. V. K. Rajaiah And Ors.*,

reported at AIR 2005 SC 2853; *Union of India (UOI) And Anr. v. S.K. Goel & Ors*, reported at JT 2007 (3) SC 361; *Union of India (UOI) And Anr. v. A.K. Narula*, reported at 2007 (8) SCALE 260; *Union Public Service Commission v. Arun Kumar Sharma and Others*, reported at 2013 (14) SCALE 31.

3. Learned counsel for the petitioner contends that respondent no.1 had made a representation seeking upgradation of his ACR for the year 2008-09, which was accepted on 12.11.2010 and communicated to him on 3.2.2010. In the DPC, which was conducted, the order of upgradation was not considered favourably resultantly persons junior to respondent no.1 were promoted and respondent no.1 was ignored. Thereafter respondent no.1, after having learnt of the promotion orders, made another representation dated 25.1.2012. This representation was accepted by an order dated 27.2.2012 and respondent was again upgraded from 'Good' to 'Very Good'. Meanwhile, the request for review DPC was rejected by the Government by a detailed order dated 30.5.2012. Based on this order of rejection, respondent no.1 approached the Tribunal by filing O.A., which has been allowed with a direction of holding a review DPC.
4. While, Mr.Naresh Kaushik, learned counsel for the petitioner, has placed reliance on the order dated 30.5.2012 and the minutes of the DPC to justify the Minutes of the DPC wherein the upgradation of the respondent no.1 was not found favourable based on the upgradation order dated 12.11.2010, on the other hand, Ms.Jyoti Singh, learned senior counsel for respondent no.1 (appointed as an Amicus Curiae) submits that respondent no.1 cannot be made to suffer if a cryptic order dated 12.11.2010 was passed although in favour of respondent no.1 by which his representation was accepted and he was upgraded from 'Good' to 'Very Good'.

5. Learned counsel for the petitioner has also highlighted the fact that although the respondent had made a specific prayer in the O.A. before the Tribunal to quash the order dated 30.5.2012, the Tribunal has returned no finding. As the order has not been quashed and in the absence of any finding having been returned a direction for holding a review DPC could not have been passed and moreover, the Tribunal could not have found fault in the minutes of the DPC on the basis of the cryptic order dated 12.11.2010 having been passed by the Ministry in which there was no justification for grant of upgradation.
6. We have heard learned counsel for the parties and considered their rival submissions. The order on the basis of which the DPC did not accept the order of upgradation, reads as under:

*“No.C-31011/20/2010-Vig.  
Government of India  
Ministry of Corporate Affairs*

*5<sup>th</sup> Floor, ‘A’ Wing,  
Shastri Bhawan, Dr.R.P. Road,  
New Delhi-110115.*

*Dated the 12<sup>th</sup> November, 2010.*

**OFFICE ORDER**

*The Annual Confidential Report for the period from 01.04.2008 to 31.12.2008 of Sh. Suman Singh, (I.E.S.: 1985), formerly Director in this Ministry which was below bench mark was forwarded to Sh. Singh for his representations, if any, within 15 days vide order dated 3<sup>rd</sup> February, 2010 in pursuance of DoP&T's O.M. No.21011/1/2006-Estt.(A) (Pt.II) dated 14<sup>th</sup> May, 2009.*

2. *Taking into account the representation, submitted by Sh. Singh and also the comments of the concerned Reporting/Reviewing Officer, the Competent Authority has observed that the Officer reported upon deserves the grading of “Very Good” on account of his capability, sincerity and hard work during the said period and hence, the grading of Good is upgraded to Very Good in his ACR for the period from 01.04.2008 to 31.12.2008.*

3. *This issues with the approval of the Competent Authority.*

*Encls.:- As above.*

*(Robert C. Tully)*

*Under Secretary to the Government of India*

*(i) Sh.Sugan Singh, (I.E.S.:1985), Director (Transport), Planning Commission, Room No.359, Yojana Bhawan, Parliament Street, New Delhi-110001.*

*(ii) ACR folder/Guard file.”*

7. The office noting which gave rise to the aforesaid order reads as under:

*“This has further been discussed with Secretary and JS(A). As the purpose of motivating and reforming the officer appears to have been served and in humanitarian grounds, I have no objection to ‘X’ alone.”*

8. As per the petitioner, the order dated 12.11.2010 is a cryptic order while Senior counsel for respondent no.1 submits that the order is unhappily worded and respondent no.1 cannot be made to suffer for the same. We may also observe that respondent no.1 also cannot be blamed for the

manner in which his first representation for upgradation was dealt with by the Department. Resultantly, to meet the ends of justice, we remand the matter back to the Tribunal for the reason that there is no finding with regard to the order dated 30.5.2012. Parties shall appear before the Tribunal on 12.1.2016. Since the pleadings are complete, the parties agree not to seek any unnecessary adjournment before the Tribunal. The Tribunal would hear the matter afresh and render a decision as expeditiously as possible in the light of what has been observed by this Court.

9. The writ petition stands disposed of in view of above.

**G.S.SISTANI, J**

**SANGITA DHINGRA SEHGAL, J**

**DECEMBER 02, 2015**

msr