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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3682/2014, CM No.7459/2014**

Date of decision: 5th May, 2016

UNION PUBLIC SERVICE COMMISSION Petitioner
Through: Mr. Naresh Kaushik with Ms. Kritika Sharma &
Ms. Megha Singh, Advts.

versus

AKSHYA KUMAR PANDA AND ORS Respondents
Through: Respondent No.1 in person.
Mr. Vikram Jetly, Adv. for R-2 to 4.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

1. The Union Public Service Commission by this writ petition impugns the order dated 20th December, 2013 passed by the Principal Bench of the Central Administrative Tribunal whereby OA No.2018/2013 filed by Akshya Kumar Panda, respondent No.1 before us, has been allowed in terms of an earlier decision of the Tribunal dated 28.4.2012 in OA No.2681/2012 titled *Sugan Singh vs. Union of India & Ors.*

2. For clarity and convenience, we would like to reproduce the findings recorded by the Tribunal and the directions given:-

“4. We have gone through our judgment dated 24.08.2013 in OA-2681/2012 and have also perused the material available on record. The operative part of the Tribunal’s order dated 24.08.2013 reads as follows:-

“9. On the basis of the above, we come to the conclusion that the DPS held on 24.10.2011 clearly erred while considering the case of the applicant. Accordingly, we allow this O.A. and quash the proceedings of the DPC in so far as they relate to the assessment of the applicant. We direct that the respondents shall convene a review DPC to consider the case of the application afresh in the light of the observations made above. In case he is found fit for promotion he will be promoted from the date his immediate junior was promoted with all consequential benefits except payment of arrears of salary. This exercise will be completed within eight weeks from the date of receipt of a certified copy of this order. No costs.”

We are convinced that the facts of this case are similar to the facts of the OA applicant in OA-2681/2012 and that this case is squarely covered by our judgment dated 24.08.2013 in OA-2681/2012. Accordingly, the applicant is also entitled to the same relief as was granted to the OA applicant in OA-2681/2012.

5. The applicant’s counsel pleaded that besides being covered by the aforesaid judgment of the Tribunal, there was an additional ground in the instant case on which he was relying. He stated that the DPC had ignore upgradation of his ACR for the period 2006-07 from ‘Good’ to ‘Very Good’ on the ground that the competent authority had not passed a speaking order giving reasons for such upgradation while deciding the representation of the applicant. However, in the instant case, the competent authority has thereafter passed a speaking

order on 05.01.2012, which has been extracted in the earlier part of this judgment. Learned Counsel for the applicant argued that this constitutes an additional ground for holding review DPC. However, we are not inclined to agree with him on this issue. The competent authority has first passed an order on 07.04.2011 by which the ACR of the applicant was upgraded to 'Very Good'. After having passed that order the competent authority had become functus officio and was not competent to pass another order on the same issue. Thus, in our opinion, the orders passed by the competent authority on 17.11.2011 and 05.01.2012 are invalid/non ext in the eyes of law.

6. Nevertheless, agreeing with the applicant that his case is squarely covered by our judgment dated 24.08.2012 in OA-2681/2012, we allow the instant O.A. in the same terms. No costs."

3. Learned counsel for the petitioner has made a very simple and pointed argument by referring to the decision of this High Court dated 2nd December, 2015 passed in WP(C) No.447/2014 titled ***Union Public Service Commission vs. Sujan Singh & Ors.*** By this decision, order of the Tribunal dated 24.8.2012 passed in OA No.2681/2012 titled ***Sujan Singh vs. Union of India & Ors.*** was set aside with an order of remand for fresh decision. The contention is that the substratum of the impugned order dated 20th December, 2013, in view of the decision of this Court in WP(C) No.447/2014 in ***Union Public Service Commission vs. Sujan Singh & Ors.,*** stands disturbed and does not exist. Once order in the Sujan Singh has been set aside, the impugned order cannot be sustained.

4. We find merit in the submission for the reason that the Tribunal

has not independently discussed the factual matrix and the legal position. In the impugned order, the Tribunal had simply relied on the Tribunal's earlier order dated 24.8.2013 in case of ***Sugan Singh (Supra)***. Facts and legal position has not been independently examined and elucidated.

5. In these circumstances, we are inclined to pass an order of remand. Respondent No.1, who appears in person, asserts that he had asked his counsel not to rely upon ***Sugan Singh's (supra)*** case for the facts of ***Sugan Singh's (supra)*** case are distinctive and do not apply to his case. In the ***Sugan Singh's (supra)*** there was upgradation of the grading in the Annual Confidential Report (ACR) with reasons, but the Departmental Promotion Committee had not agreed with the said upgradation. He submits that there are other distinctive factors. It is urged that if the initial order granting upgradation without reasons is held to be *non est*, then the second order recording reasons could have been passed, for a *non est* order does not exist in the eyes of law. It is highlighted that the reasons for upgradation were recorded by the same officer who had upgraded the ACRs on the representation of the petitioner.

6. We have reproduced above paragraphs 4 to 6 of the order passed by the Tribunal. We find there is no discussion on the contentions now raised by respondent No.1 before us. These are debatable and disputed questions of fact, and on the factual finding, the law will have to be applied. As noticed by us above, the impugned order entirely relies upon order dated 24.8.2013 passed by the Tribunal in the case of ***Sugan Singh (supra)***. In these

circumstances, we do not find that it will be appropriate and proper for us to examine the entire issue including facts for the first time. It would be appropriate if an order of remand is passed and the Tribunal is asked to decide the issue and contentions raised in OA No.2018/2013 afresh. While deciding the said OA, it will be open to the respondent No.1 herein to press the factual assertions and arguments raised before us.

7. Mr. Akshya Kumar Panda, at this stage states that most of the arguments now raised have not been stated in the OA. Respondent No.1 submits that he would move an application for amendment of the OA and plead additional facts and would modify the prayer made in the OA.

8. In view of the aforesaid position, we set aside the impugned order dated 2nd December, 2013 with an order of remand to the Tribunal to decide OA No.2018/2013 afresh. We clarify that we have not expressed any opinion on merits. Further, the observations made in the impugned order will not be treated as final and binding findings by the Tribunal.

9. The respondent No.1 has submitted that the present case should be delinked from *Sugan Singh's (supra)* case and heard independently. The Tribunal will examine the said request made by respondent No.1.

10. The respondent No.1 states that he wants an early and expeditious disposal of the O.A. Counsel for the petitioner and respondent Nos. 2 to 4 have assured the Court that they would not delay the matter and seek any adjournment. To cut short the delay,

the parties are directed to appear before the Tribunal on 24th May, 2016, when a date of hearing will be fixed.

SANJIV KHANNA, J

NAJMI WAZIRI, J

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