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

+ **W.P.(C) 3305/2016 & CM Nos.14075-76/2016**

Date of decision: 22nd April, 2016

UNION OF INDIA & ORS Petitioners

Through: Mr. Kirtiman Singh with
Mr. Waize Ali Noor, Advs.

versus

JAYARAJ NAIK Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

1. The Union of India assails order dated 1.9.2015 passed by the Principal Bench of the Central Administrative Tribunal in OA No.3003/2013.

2. The impugned order allows the aforesaid OA filed by Dr. Jayaraj Naik and quashes orders dated 22.2.2013 and 6.6.2013 and directs that the grading given in the Annual Performance Appraisal Report for the period from 8.4.2011 to 1.11.2011 was unsustainable in terms of DoP&T OMs dated 20.05.1972 and 30.01.1978.

3. It is an undisputed position that there was delay in filling up and circulation at the Annual Performance Appraisal form for the period from 8.4.2011 to 1.11.2011. As per the factual findings recorded, the said form was submitted by the respondent on 28.5.2012 and thereafter recordings were made on 31.07.2012 (wrongly mentioned in paragraph 12 as 13.7.2012) by Ms. Bindu Agnihotri, Reporting Officer who was impleaded as respondent No.3 to the OA on 31.7.2012.

4. Neither the Accepting Authority nor the Reviewing Authority had examined the said grading or observations of the Reporting Officer. The Accepting Authority had retired, and the Reviewing Authority was incompetent because she had not seen the respondent's work for a period of three months or more, as mandated.

5. Learned counsel for the petitioner submits that the respondent had delayed submission of the form. On pointed questioning, the learned counsel for the petitioner could not state the date on which the requisite form was made available to the respondent.

6. It is submitted that the finding of the Tribunal that the grading was unsustainable because it was only filled up by only one person i.e. the Reporting officer is questionable. Reliance placed on DoP&Ts OM dated 20.5.1972 is incorrect for the said OM is not applicable. The aforesaid OM as reproduced in the impugned order, reads:-

“Objectivity in confidential reports and assessment at more than one level: In order to minimize the operation of the subjective human element and of conscious or unconscious bias, the confidential report or every employee should contain the assessments of more than one office except in cases where there is only one supervisory level above the office reported upon. The confidential report should be written by the immediate superior and should be submitted by the Reporting Officer to his own superior..... ”

It is highlighted that the aforesaid quote from the OM dated 20.5.1972 is an excerpt and not the complete quotation. The petitioner had earlier received clarification in the form of communications dated 3.7.1990 and 16.7.1990 from DoP&T in some other cases.

7. In addition to the aforesaid OM, the Tribunal had also referred to OM dated 30.1.1978.

8. We would examine the contention, when raised, in an appropriate case. In the present case, we have examined the form. The Reporting Officer had recorded to the following effect *“the officer has performed well in his sphere of work. He has the capabilities of applying rules and regulations as required in the tasks at hand by and large. Attitude towards weaker sections is positive.”* Despite the aforesaid observations, the Reporting Officer gave overall grading of 5.5 in the scale of 1-10 to the respondent. The impugned order records that in the other years the respondent had received outstanding or very good grading

throughout, a fact which is not disputed and under challenge. The petitioner has conspicuously not filed a copy of the previous or subsequent appraisal forms.

9. In the aforesaid factual background, we do not find any reason to interfere with the impugned order. The writ petition is dismissed. There would be no order as to costs.

SANJIV KHANNA, J

NAJMI WAZIRI, J

APRIL 22, 2016/akz