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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4031/2016**

Date of decision: 9th May, 2016

UNION OF INDIA & ORS Petitioners
Through: Dr. Ashwani Bharadwaj, Adv.

versus

NISHITH GOYAL & ANR Respondents
Through: Mr. Naresh Kaushik &
Ms. Joymoti Mize, Adv. for UPSC.

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

SANJIV KHANNA, J. (ORAL)

1. The Union of India and two others have filed this writ petition impugning the order dated 12th May, 2015 passed by the Principal Bench of the Central Administrative Tribunal whereby OA No.2161/2013 has been allowed with the direction that a review Departmental Promotion Committee should be constituted as the Annual Confidential Report of Nishith Goyal, the respondent herein, for the period from 1.4.2004 to 15.11.2004 has been upgraded.
2. We have heard counsel for the petitioners and find that the impugned order is just and fair. It does not require interference.
3. The respondent No.1 is a 1988 batch officer of the IRS (Customs & Central Excise) Group A Service. Departmental

Promotion Committee had considered for promotion to the post of Commissioner of Central Excise in their meetings held on the 9 and 10th of January, 2012 in respect of 23 vacancies for the year 2010-11 and 45 vacancies for the year 2011-12.

4. The respondent was selected and found fit for promotion for the year 2011-12, but was declared unfit for the vacancies for the year 2010-11. This was for the reason that the first respondent had below the benchmark grading in the ACR for the year 2004-05 for the period from 1.4.2004 to 15.11.2004. This ACR was not relevant for the vacancies in 2011-12 but was relevant for the vacancies relating to 2010-11.

5. The respondent had earlier protested against the adverse remarks given in his ACR for the period 16.11.2004 to 31.3.2005 and by order dated 11.6.2008, the adverse remark was expunged.

6. It transpires that below the benchmark grading for the period between 1.4.2004 to 15.11.2004 was not circulated and informed to the first respondent till instructions dated 13.4.2010 were issued by the Department of Personnel and Training. After the below the benchmark grading in the ACR was circulated, the first respondent made a representation; which was rejected by the Reviewing Officer vide order dated 2.8.2011. However, on a memorial/appeal, the President of India accepted the said representation. On 6.2.2012, the first respondent was informed that his overall final grading in ACR for the period from 1.4.2004 to 15.11.2004 has been upgraded to 'Very Good'.

7. It is obvious that the DPC, which had met earlier, had taken the

previous unaltered below the benchmark grading and had declared the first respondent was unfit for the vacancies related to year 2010-11. The grading of 'Very Good', which is now on record for the period 1.4.2004 to 15.11.2004, was not taken into account and considered by the said DPC.

8. The Tribunal in the aforesaid circumstances has rightly directed that the Review DPC should be held for consideration of the first respondent's case for the vacancies arising in the year 2010-11. Upgradation of the grading the ACR for the period 01.04.2004 to 15.11.2004 necessitates and mandates the said direction. The first respondent would have possibly lost his seniority as his juniors would have been promoted ahead of him. The order passed by the Tribunal is just and fair and thus requires no interference. The petition is dismissed.

SANJIV KHANNA, J

NAJMI WAZIRI, J

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