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

+ W.P.(C) 6289/2016 & CM No. 25775/2016

CHAIRMAN, CENTRAL POLLUTION CONTROL BOARD

..... Petitioner

Through: Mr. Saqib, Advocate.

versus

HARIHAR PRASAD DAS & ANR

..... Respondents

Through: Mr. Sanjeev Sabharwal, Advocate for
R-2/UOI.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **08.11.2016**

The facts reveal repeated defaults on behalf of the Central Pollution Control Board. The Board had suffered exparte judgment dated 20th January, 2015 whereby O.A. No.4452/2013 filed by Harihar Prasad Das, retired Senior Law Officer was allowed with the direction that he should have been granted second financial upgradation under the Modified Assured Career Progression Scheme with effect from 01.09.2008 instead of 01.04.2011.

The tribunal allowing the OA had noticed that Annual Confidential Reports for the years 2003-2004, 2004-2005 and 2005-2006 were not

available as these had not been filled up. In these circumstances, the earlier Annual Confidential Reports for the years 1999-2000, 2000-2001 and 2002-2003 were taken into consideration by the Screening Committee. There is no explanation given why the Annual Confidential Reports for the years 2003-2004, 2004-2005 and 2005-2006 were not prepared.

As far as the Annual Confidential Reports for the years 1999-2000 till 2002-2003 are concerned, the adverse or below the bench mark grades were not communicated to the respondent. Nevertheless, the Screening Committee did not grant benefit of 2nd financial upgradation to the respondent on account of below the bench mark grading. This anomaly and lapse was not noticed and considered.

The petitioner after pronouncement of the judgment dated 20.01.2015, had filed a miscellaneous application for recall of the ex-parte decision. The application was dismissed in default and accordingly another application was filed for revival of the miscellaneous application. This was allowed on 17.08.2015 subject to payment of costs. Thereafter the aforesaid miscellaneous application was heard and disposed of vide order dated 27.08.2015 holding that the tribunal had become functus officio and could not have passed another order. The petitioner was granted permission to file

review application. This order dated 27.08.2015 was not challenged by the petitioner and a review application was filed. It is obvious that the review application has limited scope and has been rightly dismissed. Primarily, the petitioner had to challenge the order dated 27.08.2015.

Looking at the nature of controversy, the lapses noticed and another significant fact that the respondent has retired, we do not think that the impugned order requires interference. We would in the given circumstances, not accept the submission that the respondent should be given an opportunity and asked to first represent against the below the benchmark gradings from 1999-2000 till 2002-2003 and dependent upon the result, the question of grant of financial upgradation can be considered. We clarify that the tribunal had passed the order in view of the peculiar facts of the case.

Writ petition is accordingly dismissed.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

NOVEMBER 08, 2016

SSC