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

+ **WP(C) 1156/2017**

Date of decision: 30th August, 2017

S.K.SHAH

..... Petitioner

Through: Mr.Padma Kumar S., Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Manish Mohan, CGSC with
Ms.Manisha Saroha, Ms.Shivangi Sinha, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

The petitioner's service career has a chequered history. We need not refer to same in detail, in view of the limited controversy involved.

2. The petitioner had retired from Sashastra Seema Bal (SSB for short) as Second In Command (2IC) on 30th November, 2009.

3. The petitioner on the date of retirement was facing disciplinary proceedings in the charge sheet dated 22nd August, 2007.

4. By order dated 17th January, 2011, penalty of withholding 20% of pension for 5 years was inflicted under Rule 9 of the Central Service (Pension) Rules, 1972.

5. The penalty order was successfully challenged before the Delhi High Court in WP(C) No.8289/2014, as it was held that the misconduct, as alleged, was based upon the petitioner's misunderstanding of the provisions of the Income Tax Act and the methodology for depositing tax. Infliction of the punishment was not justified. The order of penalty was set aside and the respondents were directed to pay to the petitioner the amount due/recovered within six weeks.

6. The petitioner, thereafter, made representation that the sealed cover in respect of his promotion to the post of Commandant by the Departmental Promotional Committee, (DPC for short) held on 12th February, 2009 and 12th October, 2009 should be opened.

7. The sealed covers were opened. The petitioner had been graded 'unfit' for promotion to the rank of Commandant.

8. The contention of the petitioner is that this 'unfit' grading was based upon the adverse or below benchmark entries in the Annual Confidential Reports (ACR for short) for the years 2003-04 to 2007-08, which were never communicated.

9. The petitioner vide letter dated 23rd July, 2016 had asked for a copy of ACRs and the DPC proceedings.

10. The respondents did not respond positively and hence the petitioner has invoked writ jurisdiction of this Court.

11. The respondents in the counter affidavit have relied upon the order / memorandum dated 19th September, 2016, which was written to the petitioner inter alia, informing him that copy of ACRs cannot be provided being confidential in nature, relying on the DOPT OM no.21011/1/2010 Estt. A dated 13th April, 2010. This letter dated 19th September, 2016 states that the benchmark for promotion to the grade of Commandant was 'very good'. In the case of the petitioner, ACRs for the years 2003-04 to 2007-08 had

been considered and as the petitioner had not achieved the prescribed benchmark, the DPC had graded him as unfit.

12. The reason for declining or refusing to give copy of ACRs for 2003-04 to 2007-08 is, in fact contrary to the Office Memorandum dated 13th April, 2010 relied upon by the respondents. First paragraph of the said office memorandum reads as under:-

“The undersigned is directed to say that prior to the reporting period 2008-09, only the adverse remarks in the ACRs had to be communicated to the concerned officer for representation, if any to be considered by the competent authority. The question of treating the grading in the ACR which is below the benchmark for next promotion has been considered in this Department and it has been decided that if an employee is to be considered for promotion in a future DPC and his ACRs prior to the period 2008-09 which would be reckonable for assessment of his fitness in such future DCPs contain final grading which are below the benchmark for his next promotion, before such ACRs are placed before the DPC, the concerned employee will be given a copy of the relevant ACR for his representation, if any, within 15 days of such communication. It may be noted that only below benchmark ACR for the period relevant to promotion need be sent. There is no need to send below benchmark ACRs of other years.”

13. Learned counsel for the respondents has fairly stated that reason given in paragraph 3 of the Memorandum dated 19th

September, 2016 is unsustainable in view of the above quoted Office Memorandum dated 13th April, 2010.

14. In view of the aforesaid position, we partly allow the present writ petition with the direction to the respondents to furnish the ACRs for the years 2003-04 to 2007-08 to the petitioner. The petitioner would thereafter within three weeks make a representation for upgradation of the ACRs. In case the ACRs are upgraded, the Review DPC would be held in accordance with law. In case the ACRs are not upgraded, the petitioner would be informed. In case of an adverse order, it will be open to the petitioner to take recourse to action as per law.

15. Directing the above, writ petition is partly allowed with no order as to costs.

SANJIV KHANNA, J

NAVIN CHAWLA, J

AUGUST 30, 2017
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