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

+ W.P.(C) 1896/2016

SURESH KUMAR

..... Petitioner

Through Mr. Sumant Bhardwaj and Mr. Sagar Roy, Advocates.

versus

UNION OF INDIA AND ORS

..... Respondent

Through Mr. Abhay Prakash Sahay, CGSC with Ms. Priyanka Khattar, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

29.08.2017

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Suresh Kumar prays and seeks third financial upgradation under the Modified Assured Career Progression Scheme (MACP Scheme) introduced vide Office Memorandum dated 19th May, 2009.

2. Paragraph 17 of the MACP Scheme reads as under:-

“17. The financial upgradation would be on non-functional basis subject to fitness, in the hierarchy of grade pay within the PB-1. Thereafter for upgradation under the MACPS the benchmark of ‘good’ would be applicable till the grade pay of Rs.6600/- in PB-3. The benchmark will be ‘Very Good’ for financial upgradation to the grade pay of Rs.7600 and above.”

3. In the Annual Confidential Reports (ACRs) for the years 2005 to 2009, the petitioner was graded as ‘Average’. Hence, third financial upgradation has been denied, in terms of paragraph 7 of the MACP Scheme.

4. The petitioner was communicated and informed about his 'Average' ranking in the ACRs for the years 2005 to 2009.

5. The petitioner then made representation dated 24th March, 2012 for upgradation and expunction of remarks. The representation was considered and rejected vide letters dated 11th April, 2012 and 16th April, 2012, recording the following reason:-

“Average” grading was given to above mentioned official because of his lethargy and habit of cutting excuses for not completing assignments in his area of competency; in addition lack of manner, discourtesy with senior including Adjutant, Commandant cannot be judge “GOOD”, which this official exhibited. The grading given is proper as during the POR the same was agreed with by two different officers.

An 'Average' grading reflects “yet to mature” status and signals to the assessed personnel the need for improvement. A Good grading would have been an excess.”

6. The contention of the petitioner is that his entitlement to the third financial upgradation had accrued on 1st September, 2008. Below the benchmark ACRs for the years 2005 to 2009 were not communicated to him, till he had written the letter of protest. Circular/Office Memorandum dated 13th April, 2010, issued by the Department of Personnel and Training requires that below the benchmark ACR prior to the period 2008-09 reckonable for assessment of fitness in future Departmental Promotion Committee (DPC) should be communicated to the concerned employee for his representation, if any, before the DPC is to be held. Thus, in view of the delay, below the benchmark ACRs, even if

communicated, were irrelevant.

7. We have considered the said contention but do not think that interference is justified in the facts of the present case. The petitioner was not to be considered for promotion by the DPC. The petitioner's case was for grant of third financial upgradation under the MACP Scheme was on 1st September, 2008, a date prior to the OM dated 13th April, 2010. Further, below the benchmark ACRs were communicated and the petitioner had then made a representation but the grading has been maintained.

8. The petitioner has challenged award of 'Average' grading for the years 2005 to 2009, but has not been able to substantiate or make out the case for expunging or substituting the said grading. Copies of the ACRs have been enclosed with the counter affidavit to the writ petition. Petitioner during arguments did not specifically challenge and question the gradings.

9. In view of the aforesaid, we do not find any merit in the present writ petition and the same is dismissed without any order as to costs.

SANJIV KHANNA, J.

NAVIN CHAWLA, J.

AUGUST 29, 2017
NA