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

+ **W.P.(C) 2113/2017**

Date of Decision : 8th March, 2017

UNION OF INDIA AND ORS. Petitioners
Through Mr. Vijay Joshi, Advocate

Versus

K.K. BHARDWAJ Respondent
Through Mr. A. K. Behera and Mr. R. K. Shukla, Advocates

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

Caveat No. 215/2017

Caveator will be heard when the application for stay is taken up for hearing.

The caveat stands disposed of.

CM No.9248/2017

Exemption allowed subject to all just exceptions.

The application stands disposed of.

W.P.(C) 2113/2017 and CM No.9247/2017 (Stay)

The Union of India and its functionaries have challenged the impugned order dated 21.11.2014 passed by the Principal Bench of the Central Administrative Tribunal, whereby O. A. No. 1189/2012 filed by K. K. Bhardwaj, the respondent before us, has been allowed.

2. Having heard the learned counsel for the petitioner, we are not

inclined to interfere with the impugned order dated 21.11.2014 on account of delay and latches in view of the issue decided.

3. The respondent had filed the said OA, impugning, below the benchmark grading of 'Average' awarded to him in the Annual Confidential Report (ACR) for the year 2005-2006.

4. The gradings awarded were to the respondent in the ACRs in the years 1991-1992 to 2007-2008 are as under:-

1991-92	:	Very Good
1992-93	:	Very Good
1993-94	:	Very Good
1994-95	:	Very Good
1995-96	:	Good
1996-97	:	Good
1997-98	:	Good (1.4.97 to 25.8.97)
1997-98	:	Very Good
1998-99	:	Good
1999-2000	:	Good
2000-01	:	Good
2001-02	:	Very Good
2002-03	:	Outstanding
2003-04	:	Good
2004-05	:	Good
2005-06	:	Average
2006-07	:	Good
2007-08	:	Good

Thus, the respondent was given grading 'Average' for the year 2005-

2006, whereas for the all other years he was given grading of ‘Good’, ‘Very Good’ and even ‘Outstanding’.

5. Below the bench mark “Average” grading relating to the year 2005-2006 was communicated to the respondent after about 5 years in December, 2011. The respondent had then made a representation, which was disposed of affirming the earlier grading, vide order dated 23.03.2012. The representation was rejected and the grading of ‘Average’ for the year 2005-06 confirmed on the basis of the comments received from the Reporting Officer and the Reviewing Officer.

6. The Tribunal in the impugned order examined the factual facets and referred to several decisions on the objects of ACRs/Annual Performance Appraisal Reports. Referring to the grading of average in the ACR of the respondent for the year 2005-06, the Tribunal felt and held that there was a long gap in communicating the said grading. There was no warning or prior notice of fall in performance to the respondent. The Tribunal observed that grading of ‘Average’ is normally given by specifying or indicating a reason. The Tribunal had directed that the ACR for the year 2005-2006, should not be considered for promotion or MACP Scheme.

7. We are attentive and concerned that the petitioners have thought to challenge the order dated 21st November, 2014 after a prolonged delay of over 2 years as this writ petition was filed on 22nd February, 2017. It is apparent that the petitioners had initially accepted the ratio and directions in the impugned order. The petitioners aver that they had sent a proposal to the Ministry of Home Affairs for implementation of the impugned order dated 21st November, 2014 on 23rd December, 2014. Another proposal was sent to the UPSC on 25th February, 2015. The UPSC returned the proposal after

nearly one year on 2nd December, 2015 requiring the petitioners to seek advice from DOPT and Ministry of Legal Affairs. Upon advice from the Ministry of Legal Affairs, this writ petition has been filed. In the meanwhile, the petitioners themselves considered and the respondent was granted second financial upgradation under the Modified Assured Career Progression Scheme. The respondent's grade pay was enhanced/upgraded to Rs.4800 from Rs.4600 with effect from 14th March, 2011.

8. The grading of 'Average' for the year 2005-06 is the odd one and an exception for in the earlier and subsequent years the grading has varied from 'Good', 'Very Good' and even 'Outstanding'.

9. In the given facts, question would arise whether we should interfere with the impugned order passed more than 2 years back keeping in view the nature of the dispute and the aforesaid factual matrix. We would exercise our discretion and not like to interfere with the impugned order in view of the delay and laches keeping in mind the nature of controversy and relief, which has been granted. The writ petition is accordingly dismissed. No costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

MARCH 08, 2017/b