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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION(CIVIL) No. 5848/2016**

Date of decision: 14th March, 2017

UNION OF INDIA & ORS.

..... Petitioners

Through Mr. Kirtiman Singh, CGSC, Mr. Waize
Ali Noor & Mr. Prateek Dhanda, Advocates.

versus

REENA TANDON

..... Respondent

Through Mr. A.K. Behera & Mr. J. Tripathi,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

The Union of India and its functionaries impugn the order dated 7th September, 2015 passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) whereby OA No. 4678/2014 filed by Reena Tandon was allowed, and the order dated 31st May, 2016 whereby RA No. 40/2016 filed by the writ petitioners was dismissed.

2. The respondent is an officer of the Indian Defence Accounts Service.

3. The respondent was entitled to be considered for grant of Senior Administrative Grade of the Indian Defence Accounts Service for the vacancy year 2014-15. The Departmental Promotion Committee (DPC) in their meeting held on 17th June, 2014 declared her as unfit for promotion to the post of Senior Administrative Grade for the vacancy year 2014-15, primarily relying upon Annual Confidential Report/Annual Performance Appraisal Report (ACR/APAR) for the year 2011-12 for the period 25th April, 2011 to 30th September, 2011. The reasons recorded by the DPC

read:-

“8.3 That in the ACR/APAR for the year 2011-12 (from 25.04.2011 to 30.09.2011) in r/o Smt. Reena Tandon (Sl. No. 8), the Departmental Promotion Committee observed that the overall numerical grading of 6.24 (equivalent to Very Good) given in the ACR/APAR do not commensurate with the ‘remarks given in the ACR/APAR. Therefore, the committee decided to assess Smt. Reena Tandon as ‘Good’ for the year 2011-12.”

4. The respondent on learning that the DPC had declared her unfit and denied her promotion as Senior Administrative Grade, had made representations. She was supplied with a copy of the aforequoted minutes.

5. Thereupon, the respondent filed OA No. 4678/2014 before the Tribunal, which as noticed above, was allowed vide order dated 7th September, 2015.

6. The Tribunal *inter alia* held that the APAR for 2015-2016 was only for five months and five days out of which the respondent was on leave for a period of three months. The grading, therefore, was for a period of 2 months and five days only. Referring to the General Instructions of the DoP&T OM No. 21011/8/85-Estt.(A) dated 23rd September, 1985, the Tribunal reasoned that the Reporting Officer had not examined the work and performance of the respondent for a period of three months. Further, the Reviewing Officer had not certified or filled up the APAR. Reference was made to ***Dev Dutt versus Union of India and Others***, (2008) 8 SCC 755, to emphasise the importance and significance of below the bench mark grading and the right of the officer concerned to question and challenge such grading. The Tribunal had accordingly given the following directions:-

“6. In the wake, once there is change in the ACR of the applicant to be taken into account to consider her

promotion to SAG, her case should be reconsidered for such promotion by convening reviewing DPC within a period of 3 months from the date of receipt of a copy of this order. It goes without saying that review DPC would assess the candidature of the applicant in accordance with the extant rules and instructions on the subject and would take into consideration the ACR pertaining to the report period, immediately preceding the one, ACRs for which were taken into account by original DPC.”

7. The petitioner had challenged the order dated 7th September, 2015 in Writ Petition (C) No. 663/2016, which was disposed of vide order dated 27th January, 2016 with liberty to approach the Tribunal by way of a review application, without expressing any opinion on merits. The petitioners thereafter filed RA No. 40/2016 alongwith an application seeking condonation of delay which, as recorded above was dismissed vide order dated 31st May, 2016.

8. The petitioners place reliance upon Office Memorandum No. 21011/1/2006-Estt. (A) dated 16th January, 2006 for the purpose of computing three months of service under a reporting/reviewing officer when an employee has been on earned leave. The said OM reads as under:-

“The undersigned is directed to state that in accordance with the existing instructions of this Department, the Reporting and Reviewing Officers are required to have at least 3 months experience of supervising the work and conduct of the Govt. servant reported upon to record their assessment in the Annual Confidential Report (ACR). The question of treating the period of Earned leave availed at a time for more than 15 days by the officer to be reported upon, during the period of report has been considered in this Department. It has now been decided that where an officer has taken Earned Leave for a period of more than 15 days, the total period spent on leave can be deducted from the

total period spent on any post, for purposes of computing the period of 3 months which is relevant for writing of entries in the ACR. Leave taken for short term duration need not be treated as relevant for the purpose.”

9. The petitioners assert that the respondent was on earned leave for a period of more than fifteen days, from 28th July, 2011 till 30th September, 2011, i.e. for 65 days. She was earlier on leave varying between 1 day to 9 day, the total being a period of 21 days. This leave was not for more than fifteen days at one stretch. On this foundation, it was submitted that the respondent had worked under the supervision of the reporting officer for 94 days, i.e. three months and four days.

10. The respondent submits that this breakup of the days on which she was on earned leave was never urged and argued when OA No. 4678/2014 was decided on 7th September, 2015. This being the position, the Tribunal was justified in not accepting the contention in the Review proceedings. The scope of review being limited and circumscribed by the provisions of Order XLVII of the Code of Civil Procedure 1908, the review application was rightly dismissed.

11. It is not the case of the petitioners that the aforesaid details with regard to the breakup of leave was stated in the reply to the OA, or when arguments on the said application were heard.

12. Learned counsel for the petitioners, however, submits that these facts can now be taken into consideration by the Writ Court. To this extent, the petitioners may be correct. Nevertheless, we do not find any reason or justification to interfere with the impugned order in the facts of the present case after having examined the reason given by the DPC in their minutes dated 17th June, 2014 and the importance of the APAR for the period between 25th April, 2011 and 30th September, 2011. The respondent had joined the Indian Defence Accounts Service in the year 1996. Between

2001 to 2009, she was promoted as Assistant Controller of the Defence Accounts, Deputy Controller of the Defence Accounts, Joint Controller of the Defence Accounts and was granted Non-Functional Selection Grade of Junior Administrative Grade. The respondent had remained on leave for 21 days between 5th May, 2011 and 25th July, 2011. Thereafter, the respondent had remained on childcare leave from 28th July, 2011 till the end of the calendar year. The APAR form placed on record for the period between 25th April, 2011 till 30th September, 2011, the reporting officer with reference to this period under clause 4 relating to comments on shortfall and constraints has recorded as under:-

“The officer reported upon has not stated any shortfalls in achieving the target. The period covered under the report is about five months out of which the officer was on leave for about three months which is not adequate to comment upon the shortfalls as such.”

Thereafter, under column 11 relating to pen picture, the Reporting Officer has recorded:-

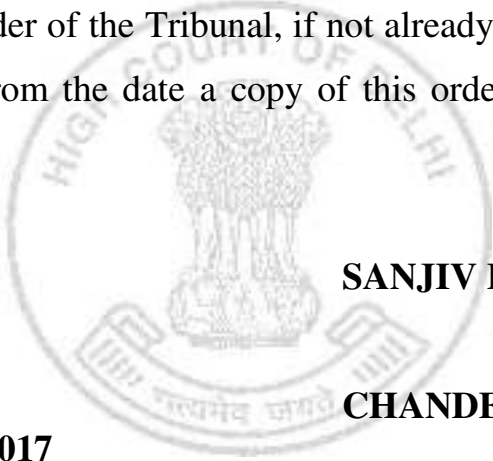
“Smt. Reena Tandon is a sober and well mannered officer. She is receptive in her approach. She is hardworking and intelligent officer as well. However, she could be groomed to be made assertive and extracting for more effective delivery system.”

Pertinently, in columns 7, 8 and 9 the Reporting Officer has given grading to the respondent under different heads. The Reviewing Officer had not filled up the APAR form.

13. When we look at and examine the APAR form for the period 25th April, 2011 till 30th September, 2011, it is apparent that the respondent was on leave for more than 86 days out of the period of 159 days. In other words, she had only worked for 73 days. In this context the Reporting Officer's comments in column No. 4 are significant. The Reporting Officer

confirmed and has accepted that he did not have the adequate opportunity to comment upon the shortfalls. The Reporting Officer for the APAR between 25th April, 2011 and 30th September, 2011, it is accepted, was not the Reporting Officer in the earlier or subsequent years. There is an element of discordance in the two notings. The fate and career of the respondent cannot be afflicted and impaired by one noting, ignoring the other. Benefit should be given to the respondent.

14. When we take the overall picture and holistic view, we do not think the order of the Tribunal dated 7th September, 2015 calls for interference. The final directions given in the said order are just, fair and appropriate in the present factual matrix. The writ petition is accordingly dismissed. Compliance of the order of the Tribunal, if not already made, will be made within three weeks from the date a copy of this order is received by the petitioners.



SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

MARCH 14, 2017
VKR