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

+ **W.P.(C) 194/2017**

Date of decision: 16th January, 2017

UNION OF INDIA & ANR.

..... Petitioners

Through: Mr. Sanjiv Kumar Saxena, Mr. R.
Mishra & Mr. Mukesh Kumar
Tiwari, Advocates

versus

VINOD KUMAR JAIN & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

The Union of India in this writ petition filed on 20.10.2016 impugns the order dated 3.7.2014 passed by the Principal Bench of the Central Administrative Tribunal in OA No.2892/2012 titled Sujata Arora & Ors. v. Union of India & Anr. and OA No. 2894/2012 titled Vinod Kumar Jain & Ors. v. Union of India & Anr.

2. There is substantial delay in filing the present writ petition. It appears that the petitioners were/are somewhat confused as to what is the exact nature of the relief granted to the respondents, vide the impugned order

dated 3.7.2014.

3. On the aspect that the respondents are covered under the Flexible Complementing Scheme ('FCS'), there is no dispute, for the petitioners accept that the respondents were granted promotion on 28.4.2008 as Scientist 'F' from Scientist 'D' under the said Scheme.

4. The respondents had filed the aforesaid OA, seeking promotion as Scientist 'F' with retrospective effect. The Tribunal, in the impugned order, disposed of the OA, after referring to their earlier decision in OA No.1926/2013, decided on 29.05.2014 titled A. Duraisamy Vs. UOI & Anr., the operative portion of which reads as under:

“36. Therefore, since now the respondents themselves have taken a policy decision in regard to antedating of in situ promotions, which O.M. dated 24.05.2013 has not been noticed by the Coordinate Benches in their judgments in the OAs mentioned above, those orders are sub silentio, in so far as the rule position prevailing as on the date, even though both these judgments had been pronounced after the OM dated 24.05.2013 had been issued, without taking notice of that. Therefore, these Coordinate Benches judgments, which are sub silentio as to the correct prevailing rule position as on date of pronouncement of the orders are not binding upon us.

37. We, therefore, direct that the case of the present applicant

Dr. A.Duraisamy should be considered by the respondents in terms of the latest OM dated 24.05.2013, and appropriate orders may be passed, making it clear that if he is found to be eligible for grant of ante-dated promotion under FCS, from the appropriate date in respect of Scientist G, the benefit of 3rd MACP to the grade of Scientist "G" already granted to him, shall be withdrawn or adjusted against any dues which may accrue to him, after such in situ FCS promotions having been antedated".

(Emphasis supplied)

5. The grievance of the petitioner is that the case of the respondents was considered by the Departmental Review Committee/Selection Committee on the date of their eligibility, but they were found unfit and, therefore, not promoted. Accordingly, the respondents are not entitled to retrospective or antedated promotion. The petitioners submits that these facts were adumbrated and adverted to in paragraph 8 of the counter affidavit before the Tribunal, but were not noticed in the impugned order dated 3rd July, 2014, which on the said aspect is sub-silentio.

6. It is not the case of the petitioners that the respondents have filed a contempt petition, claiming that the petitioners have not rightly implemented the decision. In case, any contempt petition is filed, it will be open to the petitioners to justify and explain their stand and it will be equally open to the

respondents to contest the same in accordance with law. In case the petitioners feel that their stand in paragraph 8 of the counter affidavit was not considered and, they should file an application for review, they are at liberty to do so. We clarify that if any such application for review is filed, the same will be examined as per the parameters of review. Of course, the petitioners will have to justify and explain the delay and it is equally open to the respondents to contest the review application.

7. At this stage, we are not inclined to issue notice only on the basis of assumptions and interfere with the impugned order. The writ petition is accordingly disposed of without commenting on the merits and leaving the issue open to be raised again, if required and necessary.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

JANUARY 16, 2017
Tp/NA/VKR