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

\+ W.P.(C) 5218/2018 and CM APPL. 37049-50/2018

GOVT OF INDIA AND ANR ..... Petitioners

Through: Mr. Arun Bhardwaj, CGSC with Mr. Nikhil Bhardwaj, Ms. Gauraan and Mr. Shashwat Sharma, Advocates

versus

GUNJAN PRASAD ..... Respondent

Through: Mr. N.S. Dalal, Mr. Devesh Pratap Singh and Mr. Amit Dhankhar, Advocates

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE REKHA PALLI

O R D E R

% 11.09.2018

1. The petitioners/UOI are aggrieved by the judgment dated 28.04.2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, allowing O.A. No.1233/2014 filed by the respondent, an officer of the 1987 batch of the Indian Revenue Service, who had sought quashing of the order dated 19.02.2013 passed by the Reporting Authority, downgrading him for the year 2011-12 and the order dated 20.02.2013, passed by the Reviewing Authority confirming the grading granted to him.

2. We may note that the present petition came to be filed by the petitioners on 28.04.2015, after almost three years, reckoned from the date of passing of the impugned judgment. Accompanying the present petition is

an application for seeking condonation of delay of 995 days (CM APPL.37049/2018). In para 2 of the said application is a table showing the sequence of dates relating to manner in which the matter was dealt with by the Department from 17.04.2014, i.e., from the time when notice was issued in the O.A., till 21.03.2018, when the file was received back from the Department of Legal Affairs for onward forwarding to the counsel for drafting the petition. On perusing the said table, we find gaping holes as there is no explanation offered for the inaction on the part of the Department between 15.12.2015, the date when the file is stated to have been forwarded to the Director (Pers.) and 16.08.2016, when the file was received back from the Director (Pers.) and again, between 01.12.2016, the date when the file is stated to have been submitted for referring the matter to the DOPT and 27.07.2017, when the file was actually submitted to the DOPT. The cursory manner in which an inordinate delay of 995 days has been sought to be explained by the petitioners/UOI is found to be quite dissatisfactory and is not persuasive enough for this Court to condone the same.

3. Even otherwise, having perused the impugned judgment on merits, we are of the opinion that it does not deserve any interference. We may note that the Tribunal has observed in the penultimate para that having found that the APAR of the respondent having been recorded beyond the time prescribed by the DoPT, it had the choice of either remanding the case back to the competent authority or to declare the period between from 22.07.2011 to 17.02.2012 as “No APAR Period” in terms of the guidelines in OM dated 16.02.2009 issued by the DOPT, Ministry of Personnel, Public Grievances and Pensions (Annexure A-6). Keeping in view the fact that both, the

Reporting Officer and the Reviewing Officer in the present case had already retired and therefore, no consultation could take place with them at that belated stage, the Tribunal opined that remanding the case back to the competent authority would be an exercise in futility as even after remand, the competent authority would not have the benefit of seeing the respondent functioning during the relevant period of time. As a result, the O.A. filed by the respondent was allowed to the extent that the period reckoned from 22.07.2017 to 17.02.2012, was directed to be treated as “No APAR Period”

4. We are inclined to concur with the view expressed by the Tribunal in the given facts of the present case. In our opinion, the apprehension expressed by learned counsel for the petitioners that the impugned judgment is likely to be cited as a precedent in other matters is misplaced as the Tribunal has only examined the fact situation of the instant case and has been particularly swayed by the absence of the Reporting Officer and the Reviewing Officer, both of them having retired. As they would not be available even if the petitioners' representation were to be examined by the competent authority, the Tribunal arrived at the conclusion that it did.

5. In any event, the view expressed by the Tribunal finds support from the guidelines laid down by the DOPT in its OM dated 16.02.2009 issued on the subject of "Timely preparation and proper maintenance of ACRs". The relevant extract of the aforesaid OM is reproduced hereinbelow for ready reference:-

> *"2. As cases continue to occur where confirmation, regular promotion, appointment to sensitive posts, etc., could not be considered in time because of non-availability of ACRs for the relevant period, the matter of timely completion of ACRs was*

further reviewed in this Department and it has been found necessary to prescribe a time limit after which the Reporting/Reviewing Officer shall forfeit his right to record the ACR. It has been decided that while the time-limits prescribed in the aforesaid O.M. dated 23.9.1985 should be adhered to as far as possible, in case the ACR is not initiated by the Reporting Officer for any reason beyond 30th June of the year in which the financial year ended, he shall forfeit his right to enter any remarks in the ACR of the officer to be reported upon and he shall submit all ACRs held by him for reporting to the Reviewing Officer on the next working day. Similarly, the Reviewing Officer shall also forfeit his right to enter any remarks in the ACR beyond 31st August of the year in which the financial year ended. The Section entrusted with maintaining the ACRs shall, while forwarding the ACRs for self-appraisal with copy to the Reporting/Reviewing Officers, also annex the schedule of dates as enclosed herewith. It shall also bring to the notice of the Secretary concerned in the case of Ministry/Department and the Head of the organization in the case of attached and subordinate offices, the names of those Group A and B Reporting Officers and Group A Reviewing Officers in the month of October after receiving the completed CRs who have failed to initiate/review the ACRs even by 30th June or 31st August as the case may be. The Secretary in the Department/Head of the organization in the case of attached/subordinate offices may direct to call for the explanation of the concerned officers for not having performed the public duty of writing the ACRs within the due date and in the absence of proper justification direct that a written warning for delay in completing the ACR be placed in the ACR folder of the defaulting officer concerned.

3. In case the remarks of the Reporting officer or Reviewing Officer as the case may be have not been entered in the ACR due to the concerned officer forfeiting his right to make any entry as per the provision in para 2 above, a certificate to this effect shall be added in his ACR for the relevant period. In case both the Reporting officer and Reviewing officer had forfeited *their rights to enter any remarks, the CR format with the self appraisal given by the officer to be reported upon will be placed in his ACR dossier."*

6. Accordingly, we decline to entertain the present petition not only on the ground of gross delay in approaching the Court for relief, in the absence of a satisfactory explanation but also on merits.

7. The petition is dismissed in *limine*, alongwith the pending applications.

HIMA KOHLI, J

REKHA PALLI, J

SEPTEMBER 11, 2018
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