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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Order: March 22, 2018

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W.P.(C) 3768/2016

S K GUPTA

..... Petitioner

Through: In person

versus

NATIONAL INSURANCE CO LTD

..... Respondent

Through: Mr.Rajender Dhawan, Mr.B.S.Rana and
Ms.Shafali Dhawan, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. Petitioner was promoted as Assistant in respondent-*National Insurance Company Ltd. (hereinafter referred to as Company)* on 7th August, 1987 and since then, he is working as Assistant. Petitioner, who appears in person, chooses to argue himself and submits that in the year 2008, he had sought stagnation increments which was due to him in December, 2007, and also in December, 2009; December, 2011; December, 2013 and December, 2015. An inquiry is also sought by petitioner for the delay occasioned in grant of stagnation increments.

2. In response to this petition, respondent-Company has relied upon *General Insurance (Rationalization of Pay Scales and Other Conditions of*

Service of Supervisory, Clerical and Subordinate Staff) Scheme, 1974 (hereinafter referred to as the G.I. Scheme of 1974) and the second amendment made to it, in the year 2016. As per paragraph No.5 of the Second Amendment Scheme, 2016, the payment of stagnation increment is subject to work record being satisfactory. It is the case of respondent-Company that petitioner's confidential reports for the period in question were unsatisfactory and so stagnation increment was denied to him. Alongwith this counter, a Communication of 22nd July, 2011 (*Annexure R-9*) is appended which reveals that it was conveyed to petitioner that his various representations made between the year 2008 and 2011 seeking release of stagnation increment of June, 2008 and June, 2010 have been declined. The principal reason for declining stagnation increments to petitioner in this Communication is his adverse service record. After receipt of Communication (*Annexure R-9*), petitioner had purportedly made various representations and thereafter had been approaching Central Information Commission but to no avail.

3. Be that as it may. The G.I. Scheme of 1974 has not been shown nor it is placed on record. Paragraph No.5 of the Second Amendment Scheme, 2016 cannot be retrospectively applied to deny petitioner's claim which is for a prior period. It is not known whether under the G.I. Scheme of 1974, the grant of stagnation increments was to be interlinked with the performance or not. In any case, if it was to be so, still principles of natural justice require that the adverse annual confidential reports are required to be conveyed to petitioner even if he had not filled up the self-appraisal forms. It is so said as Supreme Court in *Shakti Kumar Gupta Vs. State of Jammu &*

Kashmir & Anr. AIR 2016 SC 832 has categorically declared that even if an employee does not submit self-assessment report, still records are available with the employer to record the confidential report. It is an elementary rule of service jurisprudence that unless adverse annual confidential reports are conveyed to an employee, it cannot be used against the said employee. In the instant case, the confidential reports for the years in question were never recorded. The service record of petitioner has been produced which does indicate that petitioner's performance in the year 2007 was unsatisfactory. But unless such adverse confidential report is conveyed to petitioner, it cannot be used against him.

4. In view of the aforesaid, the impugned rejection orders of 22nd July, 2011 (*Annexure R-9*); 11th April, 2012 (*Annexure R-8*); 9th January, 2014 (*Annexure R-10 colly.*) and 14th January, 2016 (*Annexure R-11*) are quashed with direction to respondent-Company to now convey the confidential reports of petitioner from the year 2007 till the year 2015 to him within a period of three weeks. Petitioner upon receiving the confidential reports for the period in question is at liberty to seek its review within a period of four weeks and if it is so done, then respondent-Company shall review the confidential reports in question in light of the representations made and thereafter convey to petitioner within four weeks the outcome of such reconsideration. Needless to say, the grant of stagnation increments is dependent upon the performance of an employee but in case, petitioner succeeds in getting his confidential reports for the period in question reviewed, then the case of petitioner for grant of stagnation increments for the period in question be considered by respondent-Company within six

weeks thereafter.

5. With aforesaid directions, this petition is disposed of.

Dasti.

(SUNIL GAUR)
JUDGE

MARCH 22, 2018
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