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

Reserved on -27.07.2018.
Date of Decision-02.08.2018.

+ W.P.(C) 7742/2018 & CM Nos.29657-58/2018

UOI AND ORS. Petitioner
Through Ms.Sangita Rai, Adv.

versus

SH.S.P. SINGH Respondent
Through None.

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

JUDGMENT

REKHA PALLI, J

1. The present writ petition impugns the order dated 07.08.2014 passed in O.A. No.2870/2012, whereby the Tribunal has allowed the OA preferred by the respondent with a direction to the petitioners to convene a review DPC for the year 2007-2008 and re-consider the case of the respondent for promotion to the post of SAG ITS Group 'A' by taking into account his upgraded ACRs for the years 2004-05 & 2005-06. The petitioners also impugned the order dated 11.07.2017 passed in R.A. No. 154/2016, whereby their review application was dismissed.

2. The brief facts of the case as noted by the Tribunal are that the respondent is an ITS (Indian Telecommunications Services), 1986 batch officer, who while working as a Deputy General Manager, was considered by the DPC held on 05-07.09.2007, for promotion to the Senior Administrative Grade (SAG) from the Junior Administrative Grade (JAG). The respondent was found unfit for promotion by the DPC on account of his not meeting the required benchmark of having 4 'very good' ACRs out of the 5 ACRs in the last five years i.e. for the years 2001-2002, 2002-2003, 2003-2004, 2004-2005 and 2005-2006. Upon the respondent learning that his junior had been promoted as SAG, while he had been declared unfit by the DPC, he first moved an application under the RTI Act and upon getting necessary information thereunder, made a representation for seeking upgradation of his ACRs as also for re-consideration of his case for promotion to SAG against the vacancy for the year 2007-2008.

3. Upon receiving the respondent's representation, the petitioner passed an order dated 22.03.2012, informing him that while his ACRs for the years 2004-2005 and 2005-2006 had been upgraded from 'Good' to 'Very Good', his request for holding a review DPC could not be acceded to, as the OM dated 13.04.2010, issued by DOP&T clearly stipulated that the upgraded ACRs would be considered only for future DPCs and not for the DPC's held prior to the issuance of the said OM.

4. Aggrieved by the refusal on the part of the petitioner to hold a review DPC, the respondent preferred the aforesaid OA before the

Tribunal, praying for a direction to the petitioner to convene a review DPC for re-considering his case for promotion to the SAG for the year 2007-2008 and in case if he was found fit, grant him retrospective promotion with all consequential benefits.

5. Upon considering the rival contentions of the parties and examining the decisions of the Apex Court in the cases of ***Dev Dutt vs. Union of India & Ors.***, (2008) 8 SCC 725 and ***Sukhdev Singh v. Union of India***, (2013) 9 SCC 566, the Tribunal vide order dated 07.08.2014, allowed the OA by observing as under:-

“5. In view of the above legal position, we cannot appreciate the stand taken by the respondents that in terms of the aforesaid O.M. dated 13.04.2010, the upgraded ACRs are applicable only for future DPCs held earlier to the issuance of the same and hence there is no scope of review DPC in your case for promotion to SAG of ITS Group-A against the vacancy year 2007-2008. On the contrary, in terms of the aforesaid judgments as well as the aforesaid OM dated 13.04.2010, the government employee should be given one opportunity to make representation against the below bench mark gradings in his ACRs, such representation has to be considered and the competent authority has to take a decision whether the gradings have to be upgraded or not. The Apex Court judgment in Dev Dutt clearly says that if his entry is upgraded the appellant shall be considered for promotion retrospectively by the Departmental Promotion Committee (DPC) within three months thereafter and if the appellant gets selected for promotion retrospectively,

he should be given higher pension with arrears of pay and interest @ 8% per annum till the date of payment.

6. In view of the above position, we dispose of this OA with a direction to the competent authority of the respondent department to convene the Review DPC for the year 2007 and to consider the case of the applicant for promotion to the post of SAG of ITS Group-A against the vacancy year 2007-2008 and to take appropriate action as ordered by the Apex Court in Dev Dutt's case (supra). The said directions shall be complied with, within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs."

6. Aggrieved by the aforesaid order dated 07.08.2014, the petitioner preferred W.P.(C) No. 1391/2016 before this Court which was dismissed as withdrawn with liberty granted to the petitioner to file a review petition before the Tribunal. The petitioner accordingly preferred R.A. No.154/2016 before the Tribunal which has been rejected vide order dated 11.07.2017, leading to the filing of the present writ petition, impugning both the aforesaid orders passed by the Tribunal.

7. Ms. Rai appearing for the petitioner before us reiterates the same pleas as was raised before the Tribunal and contended that in the light of the OM No. 35034/97 dated 13.04.2010, issued by the DoP&T, the petitioner could not be faulted for declining to hold a review DPC for re-considering the case of the respondent for promotion to the SAG against the vacancy for the year 2007-2008.

She submits that the captioned OM clearly specifies that the upgradation, if any, would be applicable only for a future DPC.

8. Thus, while not disputing the position that two of the respondent's ACRs considered by the original DPC now stand upgraded and as a consequence, his service profile as considered by the original DPC stands substantially altered, learned counsel contends that the petitioner cannot hold a review DPC only because of the embargo contained in OM dated 13.04.2010. We deem it appropriate to refer to the said OM in extenso hereinbelow:-

“No. 21011/1/2010-Estt.A
Government of India
Ministry of Personnel, Public
Grievances & Pensions
Department of Personnel & Training

North Block, New Delhi
Dated the 13th April, 2010

Subject: Below Benchmark gradings in ACRs prior to the reporting period 2008-09 and objective consideration of representation by the competent authority against remarks in the APAR or for upgradation of the final grading.

The undersigned is directed to say that prior to the reporting period 2008-09, only the adverse remarks in the ACRs had to be communicated to the concerned officer for representation, if any to be considered by the competent authority. The question of treating the grading in the ACR which is below the benchmark for next promotion has been

considered in this Department and it has been decided that if an employee is to be considered for promotion in a future OPC and his ACRs prior to *the* period 2008-09 which would be reckonable for assessment of his fitness in such future DPCs contain final grading which are below the benchmark for his next promotion, before such ACRs are placed before the OPC, the concerned employee will be given a copy of the relevant ACR for his representation t if *any*, within 15 days of such communication, It may be noted that only below benchmark ACR tor the period relevant to promotion need be sent. There is no need to send below benchmark ACRs of other years.

2. As per existing instructions, representations against the remarks or for upgradation of the final grading given in the APAR (previously known as ACR) should be examined by the competent authority in consultation, if necessary, with the Reporting and the Reviewing Officer, if any. While considering the representation, the competent authority decides the matter objectively in a quasi-judicial manner on the basis of material placed before it. This would imply that the competent authority shall take into account the contentions of the officer who has represented against the particular remarks/grading in the APAR and the views of the Reporting and Reviewing officer if they are still in service on the points raised in the representation vis-a-vis the remarks/gradings given by them in the APAR. The UPSC has informed this Department that the Commission has observed that while deciding such representations, the competent authorities sometimes do not take into account the views of Reporting/Reviewing Officers if they are still in service. The Commission has further observed that in a majority of such cases, the competent authority does not give specific reasons

for upgrading the below benchmark ACR/APAR gradings at par with the benchmark for next promotion.

3, All Ministries/Departments are therefore requested to inform the competent authorities while forwarding such cases to them to decide on the representations against the remarks or for upgradation of the grading in the APAR that the decision on the representation may be taken objectively after taking into account the views of the concerned Reporting/Reviewing Officers if they are still in service and in case of upgradation of the final grading given in the APAR, specific reasons therefor may also be given in the order of the competent authority.

Sd/-
Director”

9. Having carefully examined the captioned OM, we find that the same only states that even if ACRs of any employee prior to the period 2008-2009 are found to be ‘below bench mark’, there is no requirement of giving an opportunity to the employee concerned to seek upgradation in respect of those ACRs, but the said OM does not preclude holding of a review DPC in cases where the ACRs of any employee pertaining to periods prior to 2008-09 are upgraded by the Department itself. What thus emerges from a reading of the OM is that the mandate of the DOP&T was that all employees must be given an opportunity to make representations in respect of their ‘below bench mark’ ACRs from the year 2008-2009 onwards. The said OM however, does not deal with situations similar to the one in the present

case, where ACRs for the periods prior to 2008-09, have been upgraded by the employer itself.

10. In our view, holding of a review DPC in respect of the respondent would in fact be a logical consequence of the upgradation of his ACRs. Upon perusal of the captioned OM, we are unable to find any justification on the part of the petitioner in refusing to reconsider the respondent's case by conducting a review DPC. Once the respondent's request for upgradation was acceded to by the petitioner, the injustice caused to him in the original DPC held in September, 2007, was wiped away, there is no reason as to why the respondent should not get the fruit of the said upgradation of his ACRs on reconsidering his case by conducting a review DPC with the upgraded ACRs.

11. For the aforesaid reasons, we find no infirmity in the impugned orders that are upheld. The writ petition being meritless, is accordingly dismissed.

(REKHA PALLI)
JUDGE

(HIMA KOHLI)
JUDGE

AUGUST 02, 2018
sk/da/gm