

\$~160.

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

+ **W.P.(C) 8733/2019**

UNION OF INDIA AND ORS.

..... Petitioners

Through: Mr. V.S.R. Krishna, Advocate.

versus

SHRI SHISHIR DUTT AND ORS.

..... Respondents

Through: Dr. K.S. Chauhan, Mr. Ajit Kumar Ekka, Mr. Murari Lal, Mr. S.P. Singh & Mr. R.S.M. Kalky, Advocates for respondent/ Caveator.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

13.08.2019

%

Caveat No.803/2019

1. Learned counsel for the caveator has put in appearance.
2. Accordingly, the caveat stands discharged.

C.M. No. 36081/2019

3. Exemption allowed, subject to all just exceptions.
4. The application stands disposed of.

W.P.(C) 8733/2019 and C.M. Nos. 36080/2019 & 36082/2019

5. The petitioners assail the order dated 08.01.2019 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in O.A. No. 3030/2017. The Tribunal has set aside the minutes of the Departmental Promotion Committee (DPC) meeting held on 04.07.2017 insofar as they concern the respondent No.1/ applicant. The said DPC was held to consider the posting as Divisional Railway Manager (DRM). The Tribunal has further directed that a Review DPC shall be constituted to consider the case of the respondent No.1 which would treat the APAR for the first part of the year 2014-15 as *non-est* and the Tribunal has held that in case the respondent is found fit by the Review DPC, he would be entitled to consequential benefits, including seniority.

6. The narrow conspectus in which the present case falls, is that for the period from 01.04.2014 to 09.09.2014, the respondent No.1 submitted his self-appraisal report. The Reporting Officer graded him 'Good'. It is not in dispute that neither the Reviewing Officer, nor the Accepting Officer could record their assessment of the respondent No.1 on account of their retirement. The record also shows that the respondent No.1, being mindful of the fact that his superiors would retire, represented that his APAR for the said period be duly recorded. However, that was not done. When the respondent No.1 represented, the Competent Authority upgraded his APAR for the said period to 'Very Good' and also recorded the respondent No.1's fitness to man the post of DRM, in the affirmative. Pertinently, the respondent No.1 has 'Outstanding' rating in all other relevant years. The DPC which met on 04.07.2017 did not consider the respondent No.1 fit for

being posted as DRM. The upgraded APAR for the first part of 2014-15 i.e. for 01.04.2014 to 09.09.2014 also went into consideration of the DPC. Aggrieved by the aforesaid decision, the respondent No.1 preferred the Original Application.

7. The Tribunal has held that since the APAR of the respondent No.1 was not duly recorded for the first part of the year 2014-15, i.e. for the period from 01.04.2014 to 09.09.2014, the said part APAR should be ignored and the Tribunal has, therefore, declared that the same is non-est. Consequently, the Tribunal has directed that the DPC should be re-constituted to consider the respondent No.1's case for posting as DRM, while ignoring the said part APAR for the year 2014-15.

8. The submission of Mr. Krishna is that the posting as DRM is not promotion. He submits that some officers get the said posting, while others don't, and it has no bearing on the career path of the officers. At the same time, he concedes that an officer – who is assigned the said post of DRM, is entitled to be considered for promotion to the post of General Manager (Open Line), while those who do not get the said posting of DRM, do not get promotion as General Manager (Open Line) He further submits that the respondent No.1 has crossed the age of 52 years – which is the age at which the officers are appointed as DRMs. He submits that in these circumstances, the direction to hold a Review DPC is not called for.

9. He further submits that the DPC has considered the complete service record of the respondent No.1, and the assessments in the APARs are not binding on the DPC, which has to formulate its own grading to find out

whether an officer is fit for the post of DRM, or not.

10. Having heard Mr. Krishna and perused the record, including the impugned order, we are not inclined to interfere with the same. There can be no doubt about the fact that the APAR for the period from 01.04.2014 to 09.09.2014 has not been regularly recorded in the first instance, since the grading given by the Reporting Officer was neither reviewed, nor accepted by the Competent Authorities. No doubt, the Competent Authority subsequently upgraded the said APAR as 'Very Good'. However, considering the fact that the respondent No.1 was otherwise being rated as 'Outstanding' at all material times, he was justified in having a grievance with regard to the 'Very Good' grading for the aforesaid period. As noticed above, posting as DRM has a bearing on the career path of the officer, since, the said posting leads to consideration for promotion as General Manager (Open Line). Thus we reject the submission of Mr. Krishna that the non-posting as DRM has no adverse bearing on the career path of the respondent. The respondent is entitled to fair consideration for his posting as DRM and an irregular consideration of his candidature – premised on an improperly recorded APAR, cannot be trivialised by the petitioner.

11. There is no doubt that the DPC makes its own assessment about the fitness of an officer, and is not bound by the grading given in the APAR. However, it cannot be said that the APAR for the period from 01.04.2014 to 09.09.2014 did not go into consideration by the DPC while not finding the respondent 'fit' for posting as DRM. The Tribunal has only directed holding of the Review DPC while ignoring the APAR for the period from 01.04.2014 to 09.09.2014. The Review DPC would be conscious of all the

relevant aspects, including those pointed out by the petitioners.

12. In these circumstances, we are not inclined to interfere with the impugned order.

13. Dismissed.

VIPIN SANGHI, J

RAJNISH BHATNAGAR, J

AUGUST 13, 2019

B.S. Rohella