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

% *Date of Judgment : 18th October, 2019*

+ W.P.(C) 11076/2019

UNION OF INDIA & ORS.

..... Petitioners

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

versus

SHISHIR DUTT

..... Respondent

Through Dr. K.S. Chauhan, Mr. Ajit Kumar
Ekka, Mr. Murari Lal, Mr. R.S.M.
Kalky and Mr. S.P. Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

CAV.PET.1043/2019

1. Learned counsel enters appearance on behalf of the caveator.
2. The caveat petition is accordingly disposed of.

CM. APPL 45656/2019 (Exemption)

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

CM. APPL 45657/2019 (Addl documents)

5. The additional documents be taken on record, subject to all just exceptions.
6. The application stands disposed of.

W.P.(C) 11076/2019

7. The present writ petition is directed against an order dated 24.09.2019 passed by the Central Administrative Tribunal (the 'Tribunal') in a contempt petition wherein the respondent herein (petitioner before the Tribunal) has alleged willful disobedience of the order passed by the Tribunal in O.A. No.3030/2017.
8. Mr. Krishna, learned counsel for the petitioners submits that the Tribunal has exceeded its jurisdiction by issuing directions as contained in the impugned order. Learned counsel for the petitioners explains that the OA that was filed by the respondent challenged the Minutes of DPC conducted on 04.04.2017 for the purpose of selecting candidates for posting as a Divisional Railway Manager (DRM) in the Railway. This OA was allowed and a writ petition challenging the order of the Tribunal was also dismissed; whereupon the order passed by the Tribunal attained finality. He submits that the Tribunal had only issued directions to the petitioners herein to convene a Review DPC and treat the APAR for first part of the year 2014-15 as *non-est*. He submits that admittedly, before the contempt petition came-up for hearing, a Review DPC had already been convened in which however, the respondent was not considered fit to be posted as DRM.
9. In the impugned order, the Tribunal has taken note of certain paragraphs of the Review Selection Committee and made the following observations:

“It is not in doubt that non-selection of applicant on the earlier occasion was on the basis of the APAR of the applicant, for the first part of the year 2014-2015. That is evident from the following paragraph of the minutes of the Review Selection Committee:-

"Shri Shishir Dutt, SAG/IRSME/Southern Railway (previously working in ICF) was considered for short listing for posting as DRM in the short listing year 2016-17 1st July 2016 to 30 June 2017) by the Selection Committee (CRB, Secretary, DoP&T, MS & MRS) in their meeting held on 03.02.2017. The Committee noted that the grading in his APAR for the year 2014-15 (Part-1) had originally been given as 'Good' and 'Not Fit for DRM'. On his representation, the APAR was upgraded as 'Very Good'. However, the Committee assessed his APAR for the year 2014-15 (Part-1) as 'Good' keeping in view that none of the attributes were upgraded by the Competent Authority. The Committee did not recommend inclusion of Shri Dutt in DRM's short list for the year 2016-17 (Annexure-1)."

Once that was directed to be omitted from consideration, hardly there should be any reason for not selecting the applicant. After referring to various developments that have taken place before this Tribunal and Hon'ble Delhi High Court, the review Selection Committee proceeded as though it was undertaking his assessment for the first time and not as a Review Committee. It has chosen to assess the Management Qualities of the applicant, that too, by referring to the APAR for 2010-2011 (part 1 and part-2). By observing that various facets, were at the level of 'Good' and 'Average', they refused to recommend the name of the applicant for posting as DRM.

We are *prima facie* of the view that the Selection Committee which met on 27.08.2019 comprising of Respondents 1,3,5 and one Mr. Manoj Pande in place of Sh. S. N. Agrawal, who since retired, have clearly violated the directions issued by this Tribunal as reiterated by the Hon'ble Delhi High Court. We, therefore, direct them to explain within three weeks, as to why appropriate orders be not passed in this behalf. We, however, leave it open to them to reconsider the issue, strictly in accordance with the

orders passed in the OA as affirmed in the aforesaid Writ Petition.

Post on 18.10.2019. Order by Dasti.”

10. Learned counsel for the petitioners submits that the Tribunal had only issued a direction to convene the Review DPC. There was no direction for the respondent herein to be appointed as DRM; and thus, it was open for the Review DPC to consider the material on record, except APAR of the year 2014-15, which was declared *non-est* and take a decision as considered proper by the Review DPC.
11. The sum and substance of the arguments advance by learned counsel for the petitioners is that even if the respondent herein is aggrieved by the decision of the Review DPC, a contempt petition could not have been filed since there was no disobedience of any order of the Tribunal.
12. Learned counsel for the caveator/respondent has entered appearance. He submits that there is no infirmity in order dated 24.09.2019 which would require interference by this Court.
13. We have heard learned counsel for the parties.
14. We are of the considered view that the present writ petition is premature. The Tribunal has only directed the petitioners to explain as to why appropriate orders should not be passed in the contempt proceedings. We have no hesitation in saying that in case the explanation that has been rendered before us is rendered before the Tribunal, the Tribunal would consider the same in accordance with law and thereafter pass appropriate orders.
15. With these observations, the writ petition is disposed of.

16. Liberty, as prayed for, is granted to the petitioners to approach this Court if so advised after the Tribunal passes orders.

CM.APPL 45655/2019(stay)

17. The application also stands disposed of in view of the order passed in the writ petition.
18. A copy of the order be given Dasti to the parties under the signature of Court Master.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

OCTOBER 18, 2019

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