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

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Date of Decision: 08.03.2019

% **W.P.(C) 6268/2015 & C.M. No. 11394/2015**

UNION OF INDIA AND ORS.

..... Petitioner

Through: Mr. J.K. Singh with Ms. Madhulika
Agarwal, Advs.

versus

CHANDRA KANTA

..... Respondent

Through: Dr. P.S. Nerwal with Mr. O.P.
Shemar, Advs.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A.K. CHAWLA

VIPIN SANGHI, J. (ORAL)

1. The petitioner Union of India assails the order dated 02.04.2014 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, (the Tribunal) in O.A. No. 397/2012. The Tribunal has allowed the said Original Application preferred by the respondent. The operative part of the impugned order reads as follows:

“5. On the basis of above analysis, we allow this O.A. and direct that the respondents take decision on the representation of the applicant against her ACR for the year 2007-08 within a period of six weeks from the date of receipt of a certified copy

*of this order. Thereafter, within two months they will convene a Review Selection Committee meeting to consider her case for grant of HAG from the date from which her immediate junior was granted the same. **While doing so the Selection Committee will ignore the ACR for the period 2005-2006.** In case she is found fit she will be promoted and will be entitled to benefit of pay fixation, pension fixation and payment of arrears of pension also. No costs.” (emphasis supplied)*

2. Mr. Singh, learned standing counsel for the Union of India submits that in terms of the directions issued by the Tribunal, the representation of the respondent applicant in respect of her ACR for the year 2007-08 was considered and the same has been amended to say that she is “*fit for promotion*”, as opposed to the earlier recording that she is “*not fit for promotion*”. He submits that the limited grievance that the petitioner has is with regard to the direction issued by the Tribunal, that while holding the Review Selection Committee meeting to consider the case of the respondent for grant of Higher Administrative Grade (HAG) from the date when her immediate junior was granted HAG, the Selection Committee has been directed to ignore the ACR for the period of 2005-06. He submits that the petitioner is prepared to hold the Review Selection Committee, but her ACR for the period 2005-06 should also be considered, and cannot be ignored as directed by the Tribunal.

3. The respondent, at the relevant time was an officer of the Indian Railway Accounts Service of 1977 batch. One of her juniors, namely, Sh. Raghuraman was granted HAG on 04.01.2010. She was, however, not granted the same. She sent her representation on 26.02.2010 and a reminder on 29.09.2011, i.e. a day before her superannuation on 30.09.2011. She

claimed that she had not been communicated her ACR, which came in the way of her being granted the HAG. She was able to get the ACR with the intervention of the Central Information Commissioner in December 2011. Consequently, she preferred her Original Application on 31.01.2012.

4. The respondent urged before the Tribunal that her ACR for the year 2005-06 was incomplete inasmuch, as, the remarks had been written only by the Reporting Officer, who had granted her “*Good*” and “*fit for promotion*”. Neither the Reviewing, nor the Accepting Officer had signed the said ACR form. We may observe that a perusal of the said form, which is placed on record, shows that the Reviewing Authority had graded her as “*Very Good*” and “*fit for promotion*”, though the same does not bear the signatures of the Reviewing Officer. The respondent contended that in the aforesaid light, the ACR for the period 2005-06 was *non est* in the eyes of law.

5. In their reply, the petitioner disclosed that the Selection Committee meeting was held on 26.11.2008 to consider the eligible officers for empanelment for grant of HAG. The committee took into consideration the ACRs for 5 years i.e. from March 2004 to March 2008. Thus, admittedly, the ACR for the period of 2005-06 of the respondent was taken into consideration, and had a bearing on the assessment of the respondent by the Selection Committee.

6. The petitioner further stated before the Tribunal that for the year 2005-06, the Financial Commissioner, who acted as both - the Reviewing and Accepting Officer, had recorded his remarks, but had not appended his signatures and he had also not recorded his reasons for upgradation of the

“Good” remark awarded by the Reporting Officer to “Very Good”. The petitioner contended that as per the Extant Policy, the Financial Commissioner’s remarks were, therefore, liable to be ignored and the ACR for the year 2005-06 was treated as finalized at the level of the Reporting Officer.

7. While issuing the impugned direction that the ACR for the period of 2005-06 of the respondent be ignored at the time of consideration of the respondent’s case by the Reviewing Selection Committee, the Tribunal takes note of the fact that the said below-bench mark grading was communicated to the respondent only in December 2011, after intervention of the Central Information Commissioner. Thus, there was no delay in the respondent approaching the Tribunal. Moreover, the respondent had been denied the right to represent against the said adverse ACR. The Tribunal also takes note of the fact that the ACR for the year 2005-06 contains only the remarks and grading of the Reporting Officer. The Tribunal takes note of several decisions, including the decision of this Court in ***UOI and Ors. V. Swati S. Patil***, W.P.(C.) No. 4018/2011, decided on 01.04.2013, to hold that the ACR for the year 2005-06 has to be ignored for the purpose of consideration of the respondent’s case by the Reviewing Selection Committee.

8. In ***Swati S. Patil*** (supra), this Court has held as follows:

“17. In ordinary course we would have settled the question of law and referred the matter to a larger Bench, for we note a presumptive reasoning read by the Division Bench while reflecting upon the law declared by the Supreme Court in Abhijit Ghosh Dastidar’s case and on said presumptive reasoning, read an opinion expressed contrary to the view

expressed by a Division Bench in Krishna Mohan Dixit's case as to the reading of the two decisions in Dev Dutt's case (supra) and Abhijit Ghosh Dastidar's case (supra), but we do not do so for the reason as regards the facts of the instant case we find that the law applicable is as declared by the Supreme Court in Kashi Nath Kher's case (supra), which decision deals with the situation as to what should be done with incomplete ACR gradings i.e. where the ACR proforma has been filled up only by the Initiating/Recording Officer and not countersigned by the Reviewing and/or the Accepting Officer.

18. We concur with the view taken by the Tribunal that on the facts of the instant case the said ACR has to be ignored". (emphasis supplied)

9. The submission of learned counsel for the petitioner is that the reviewing/ accepting authority had, firstly, not appended his signatures while recording the grading as "Very Good", and had also not recorded the reasons for giving a different opinion than that given by the Reporting Officer. He submits that the grading given by the Reporting Officer was, therefore, liable to be treated as final.

10. We do not find any merit in the aforesaid submission of learned counsel for the petitioner. Even if we accept the submission of Mr. Singh that the recording made by the Reviewing/ Accepting Authority was liable to be ignored, the ACR of the respondent for the year 2005-06, as recorded, is incomplete. The requirements that the ACR grading should be recorded by more than one officers in the hierarchy, is to eliminate victimization, nepotism and arbitrariness, and to infuse objectivity in the process of recording the ACR. The ACR of the respondent for 2005-06 could not be considered on the basis of only the Reporting Officer's assessment.

11. In the light of the decision of this Court in *Swati S. Patil* (supra), the grading recorded by the Reporting Officer alone could not have formed the basis of the ACR grading. Such and ACR was bound to be ignored. Thus, we find that there is no merit in the petitioner's submission that the ACR for the period 2005-06 should be considered by the Reviewing Selection Committee, while assessing the case of the respondent for grant of HAG.

12. We, therefore, dismiss the petition. We direct the petitioner to proceed to hold the Reviewing Selection Committee Meeting at the earliest in terms of the directions issued by the Tribunal in the impugned order. The same should be held within the next 8 weeks, and the outcome of the same should be communicated to the respondent. Consequential orders, if any, should also be passed within 12 weeks from today.



VIPIN SANGHI, J.

A.K. CHAWLA, J.

MARCH 08, 2019

N.Khanna