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

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Date of Decision: September 27, 2023

+ W.P.(C) 5808/2018, CM APPL. Nos.22571 & 42849/2018

UNION OF INDIA AND ANR.

..... Petitioners

Through: Mr.Ripu Daman Bhardwaj, CGSC
with Mr.Kushagra Kumar, Advocate.

versus

YOGESH KUMAR BANGIA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO (ORAL)

1. The challenge in this writ petition is to an order dated October 26, 2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter, referred to as the 'Tribunal') in OA No.4074/2013 whereby the Tribunal has allowed the OA filed by the respondent herein by stating in paragraph 8 as under:

"8. In view of the above judgments, the respondents are directed to place the matter before a Review DPC ignoring the below benchmark ACRs of the applicant for the period 01.04.2002 to 31.03.2003, 01.04.2003 to 31.07.2003 and 04.08.2003 to 23.01.2004 for consideration of his promotion to the post of Joint Director in accordance with prevalent rules."

2. The facts as enumerated in the petition are that the respondent who was working as Joint Director of Training, ATIPI, Dehradun, was not



considered for promotion as the ACR gradings for the period 01.04.2002 to 31.03.2003, 01.04.2023 to 31.07.2003 and 04.08.2003 to 23.01.2004 were below benchmark, therefore the DPC did not approve his case. Reliance was placed by the respondent on the judgment of the Supreme Court in **Dev Dutt v. Union of India**, (2008) 8 SCC 725. The only stand taken by the petitioners before the Tribunal was as the ACR gradings prior to 2008-09 were not adverse the same were not communicated. There is no dispute the gradings were 'good', 'good' and 'average' for the above three years which are below the benchmark. The Tribunal after considering the submissions advanced by the counsel for the parties has in paragraphs 7 to 9 states as under:

"7. We have considered the rival contentions and also considered the relevant circulars of DoPT and judgment of the Hon'ble Supreme Court in Dev Dutt (supra) and Abhijit Ghosh Dastidar Vs. Union of India and Others, (2009) 16 SCC 146. The Hon'ble High Court of Delhi in WPC No. 5042/2002 and connected writs vide judgment dated 31.05.2012 (UOI & Anr. vs. V.S. Arora & Ors.) has elaborated as follows:

"24. Therefore, the position that emerges is that the decision in Abhijit Ghosh Dastidar (supra) holds the field. Now, what is it that Abhijit Ghosh Dastidar (supra) decides? It has, in the first instance, while affirming Dev Dutt (supra) concluded that 'non-communication of an ACR is violative of the constitutional rights of a government servant/employee. In the second instance, it has stated that such below benchmark ACRs ought not to be taken into consideration while the question of promotion of a particular government servant is in contemplation. Now, that leaves us with the further question as to what is to be done after we ignore/do not consider the below benchmark ACRs. In this regard, we have clear guidelines contained in



Chapter 54 of the Manual on Establishment and Administration for Central Government Offices, which have been issued by the Government of India for DPCs (G.I., Dept. of Per. & Trg., OM No.22011/5/86-Estt. (d), dated the 10th April, 1989 as amended/substituted vide Dept. of Per. & Trg., OM No. 22011/5/98-Estt. (d), dated the 6th October 2000).

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25. From the guidelines, it is clear that the DPC should consider the confidential reports for equal number of years in respect of all the employees considered for promotion subject to (c) mentioned above. The latter sub-paragraph (c) makes it clear that when one or more confidential reports have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if, in any case, even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per sub-paragraph (b) above. If this is also not possible, all the available CRs should be taken into account. We are of the view that the same would apply in the case of non-communicated below benchmark ACRs. Such ACRs would be in the same position as those CRs which have not been written or which are not available for any reason. Thus, it is clear that below benchmark ACRs, which have not been communicated cannot be considered by the DPC and the DPC is then to follow the same procedure as prescribed in paragraph 6.2.1 (c), as indicated above".

8. In view of the above judgments, the respondents are directed to place the matter before a Review DPC ignoring the below benchmark ACRs of the applicant for the period 01.04.2002 to 31.03.2003, 01.04.2003 to 31.07.2003 and 04.08.2003 to 23.01.2004 for consideration of his promotion to the post of Joint Director in accordance with prevalent rules.



9. With the aforesaid direction, the O.A. stands disposed of. No order as to costs.”

3. Suffice to state, the Tribunal has relied upon the judgment of this Court in **Union of India & Anr. v. V. S. Arora & Ors.**, W.P.(C) No.5042/2002 decided on May 31, 2012.

4. The submission of learned counsel for the petitioners is by reiterating the stand taken by the petitioners before the Tribunal. The said pleas would not be sustainable in view of the judgment of the Supreme Court in **Dev Dutt v. Union of India** (supra). That apart from the judgment in **Dev Dutt v. Union of India** (supra), we also note the entries below benchmark relate back to the years 2002-2004 i.e. twenty years back. The only direction given by the Tribunal is for considering the case of the respondent overlooking the below benchmarks ACRs of the aforesaid period.

5. In the facts of this case, we are of the view that the impugned judgment do not require any interference by this Court.

6. The petition is dismissed alongwith all pending applications.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

SEPTEMBER 27, 2023/v