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Writ Petition No.33579 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.06.2024

PRONOUNCED ON : 09.07.2024

CORAM

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Petition No.33579 of 2019 &
WMP.No.34036 of 2019**

- 1.Union of India,
Rep., by Secretary to Govt.,
Ministry of Defence Production,
R.No.136, South Block,
New Delhi – 110 011.
- 2.Directorate of Ordnance (Coordination
and Services),
Rep., by Director General of Ordnance,
10-A, S K Bose Road, Kolkatta – 700 001.
- 3.Union Public Service Commission,
Rep., by its Chairman,
Dholpur House, Shahjahan Road,
New Delhi – 110 069
- 4.The Secretary (Personnel)
Department of Personnel & Training
R.No.112, North Block,
New Delhi – 110 011. ... Petitioners



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*P2- Amended as per order dated 06.12.2023 in WMP.No.28636 of 2021
in W.P.33579 of 2019*

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Vs

1.Dr.P.R.Sudhakar

2.The Registrar Rep., by
The Central Administrative Tribunal
High Court Buildings
Chennai – 600 104.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records of the second respondent pertaining to the impugned order in OA.No.1211 of 2015, dated 14.08.2019, and quash the same.

For Petitioner :Mr.N.Ramesh

For Respondent :Dr.P.R.Sudhakar (Party-in-person) for R1

R2 Tribunal

ORDER

(Order of the Court was made by Mr.K.KUMARESH BABU.,J.)

This instant Writ Petition had been filed challenging the order of the Central Administrative Tribunal wherein directions were issued pursuant to the earlier order passed by the Tribunal in O.A.No.433 of 2014.



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2.Heard Mr.N.Ramesh, learned counsel appearing for the petitioners and Dr.P.R.Sudhakar Party-in-person for the first respondent.

3.The learned Standing counsel appearing for the petitioners would submit that the first respondent herein was considered for promotion to the Grade of Additional Director General for the year 2013-14. He had been assessed as unfit for promotion, as the first respondent had not been graded 'very good' for the previous five years. Being aggrieved against the same, he had approached the Central Administrative Tribunal in O.A.No.433 of 2014. The Tribunal having held that the assessment by the DPC suffered from infirmities, had directed to convene a review DPC and consider the case of the first respondent by ignoring the APAR for the year 2010-11 and to consider other APARs for the relevant period and issued a direction to promote the first respondent/applicant. Being aggrieved against the same, the petitioners had approached this Hon'ble High Court and this Court clarified that there cannot be a positive direction and only a direction to consider the case of the first respondent for promotion, if he is otherwise found eligible. Taking note that the first respondent was also about to



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retire, had directed notional promotion with all other attendant benefits to the first respondent. Again a Review DPC was conducted in the case of the first respondent on 03.12.2014, wherein the APAR for the year 2010-11 had been ignored, but still the first respondent had not reached the zone as for the year 2008-09, his APAR was only 'good' at that point of time, he failed to reach five 'very goods' for the previous five years. Therefore, he had been denied promotion. However, the Tribunal without considering the merits of the case had concluded to hold that the petitioners had not complied with the orders of the Tribunal made in O.A.No.433 of 2014 and thereby set aside the order of rejection passed by the petitioners and directed the case of the first respondent to consider his claim for notional promotion from the due date with all consequential benefits. He would submit that the Tribunal wholly erred in failing to consider that the first respondent's APAR for the year 2008-09 was graded as 'good' which is much within the five years period and therefore, the orders of the Tribunal would have to be interfered with.



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5. Countering his arguments, Dr.P.R.Sudhakar, appearing in person had contended that the Tribunal in the earlier round of litigation had specifically held that the grading awarded for the years 2008-09 and 2010-11, cannot be held against the first respondent. The Tribunal had in clear terms held that the assessment of the DPC declaring the first respondent as unfit for the promotion to HAG Plus Grade appears to be lacking proper reasons, as the individual attributes recorded in both APARs for the year 2008-09, do not justify any such downgrading on the part of the DPC.

6. Here again, the DPC on review had again held that the grading of the year 2008-09 to be the only reason to find that the first respondent is unfit for promotion. He would contend that the specific finding of the Tribunal in O.A.No.433 of 2014, had not been set aside by this Court in the earlier round of litigation and therefore, the same cannot be put against the first respondent. Hence, he would seek this Court to dismiss the Writ Petition as being devoid of merits.



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7. We have considered the rival submissions made by the learned counsel appearing for the petitioners and party-in-person and perused the materials placed on record.

8. The Tribunal while considering the case of the first respondent had in categorical terms held that the grading of the year 2008-09 cannot be put against the first respondent. The Tribunal having found that the first respondent had been given ACR grading as “good” and “very good”, for the year 2008-09 and for the period from 01.04.2008 to 02.09.2008 and from 08.09.2008 to 31.03.2009, respectively had held that the grading of the year 2008-09 should be “very good”. The relevant paragraphs of the said order are extracted hereunder:-

The Reviewing Authority and the Accepting Authority have concurred with these assessment. When the assessment in the APAR given by the Reporting Officer, Reviewing Officer, Accepting Authority is “Very Good” it is not clear to us as to the basis on which the DPC had arrived at a conclusion that the individual attributes are not consistent with the grading ‘Very Good’ If any other inputs had been made available to the DPC beyond the APAR for the relevant period, the



applicant should have been given an opportunity to submit his response to those inputs. Thus we find the below benchmark grading awarded for both years i.e., 2008-09 and 2010-11 cannot be held against the applicant in the absence of clear and supporting evidence to show that all the relevant inputs had been given to the DPC enabling the DPC to come to such an assessment. The minutes of the DPC also indicate that the adverse remarks has also been not placed before the DPC. The assessment of the DPC declaring the applicant as “unfit” for promotion to HAG Plus grade appears to be lacking proper reasons as the individual attributes recorded in both the APARs for the year 2008-09 do not justify any such downgrading on the part of the DPC. It is also noted that while the DPC for HAG Grade was attended by all the members, in the DPC for HAG Plus Grade, one of the Crucial members viz. Secretary Defence Production was not present. The argument that the DPC for HAG plus Grade applied more stringent assessment of the leadership qualities etc is also not supported by the material placed before us.

17. In the light of the above position we are of the considered view that the denial of promotion to HAG Plus grade to the applicant is not justifiable and is violative of principles of natural justice. From the material made available to us and perusal of the APARS for the same period, the applicant comes out as an officer consistently



maintaining good record of service and therefore it would be unfair to deny him the promotion to the top post in the cadre by relying upon the remarks which remained unsubstantiated and the representation submitted by the applicant against the adverse remarks is also still pending disposal. Further, with the approval of the ACC, it was decided to give the applicant the additional charge of Addl. DGOF/ Member OFB in the HAG Plus grade. Denying the same to him on regular basis at the fag end of the career, particularly keeping in view the fact that the representation against the adverse remarks in the APAR for the year 2010-11 was still pending and also considering the fact that the DPC while independently assessing the officer as "Good" for the period 2008-2009, the DPC has not assigned any specific reasons supported by evidence for such down grading, in the light of the fact that the individual attributes of the applicant recorded in the two APARS pertaining the year 2008-09 reveal that the officer was not found lacking in any of the attributes. The only comment which can be taken as adverse relates to his hesitation to assume additional responsibility and to work under stress and strain, which comment is further qualified by the assessing officer himself when he records that the said assessment is based on working for about only two months and for the rest of the period in that APAR, the applicant was on leave apparently for the purpose of his daughter's



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marriage. In the absence of any supporting reasoning recorded in the DPC minutes for promotion to the post of HAG Plus Grade and also considering the fact that one of the crucial members of the DPC namely the Secretary (DP) did not participate in that DPC meeting, whereas he was present in the earlier DPC held for promotion to the post of HAG grade, we are of the considered view that the down grading given by the DPC for HAG Plus Grade from "Very Good" to "Good" is not in consonance with the facts on record and the same down grading deserves to be ignored. The grading "Very Good" for the full year 2008-09, as assessed by the DPC for promotion to HAG has to be adopted for the purpose of assessing the suitability of the applicant for promotion to HAG Plus Grade also. In so far as the APAR 2010-11 is concerned, the representation dated 08.12.2011 submitted by the applicant against the adverse remarks is apparently still pending consideration and hence the APAR for the year 2010-11 ought not to have been considered by the DPC for promotion to HAG Plus Grade.

9.This finding of the Tribunal had not been interfered with by this Court in a challenge to the said order. When this Court in the earlier round of litigation i.e., in W.P.No.14515 of 2014, had held that the positive direction given by the Tribunal cannot be countenanced, but



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had issued a direction to review the case of the first respondent and to grant them notional promotion with other attendant benefits, if he is found eligible. A reading of the said order also does not indicate that the petitioners had raised the contentions against the findings of the Tribunal which is extracted supra and all it was only aggrieved as against the positive direction issued by the Tribunal. When that being so, the review conducted by the Department Promotion Committee had again treated the period 2008-09 to be only 'good' contrary to the reasonings and findings given by the Tribunal for the year 2008-09. When that being so, we do not find any infirmity in the order passed by the Tribunal impugned before us.

10. For the foregoing reasons, we do not find any merits in the Writ Petition and the same is accordingly dismissed. Further the direction issued by the Tribunal shall be complied with by the petitioners within a period of eight (8) weeks from the date of receipt of a copy of this order. It is needless to state that the first respondent would be entitled to the consequential benefits on his notional promotion and the same shall also



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be paid within a period of eight (8) weeks thereafter. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

(D.K.K.,J.)

(K.B., J.)

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Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation:Yes/No

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To

The Central Administrative Tribunal
Rep., by its Registrar,
High Court Campus,
Chennai – 600 104.



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D.KRISHNAKUMAR., J.
and
K.KUMARESH BABU.,J.

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