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

% ***Date of decision: 9th September, 2024***

+ **W.P.(C) 888/2020 and CM APPL. 2806/2020**

UNION OF INDIA AND ORS.

.....Petitioners

Through: Mr. Rakesh Kumar, CGSC with Mr.
Sunil, Advocate for UOI.

versus

SH. SHISHIR DUTT

.....Respondent

Through: Mr. Abhishek Chauhan and Mr. Ajit
Kumar Ekka, Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (oral)

1. The present petition under Article 226 of the Constitution of India has been filed by the petitioners seeking setting aside of order dated 09.12.2019 passed by the learned Central Administrative Tribunal ('Tribunal'), New Delhi in CP No. 308/2019 in O.A. No. 100/3030/2017.
2. Notice.
3. Learned counsel appearing on behalf of the respondent accepts notice.
4. With the consent of learned counsel for the parties, the present petition is taken up for final hearing and disposal.
5. The brief background of the case is that the respondent who was working as Chief Works Engineer (Shell) in the Integral Coach Factory, Perumbur, under Indian Railway Services, had submitted his self-appraisal



for the period 01.04.2014 to 09.09.2014. However, since the Review Officer, who happens to be the General Manager had retired in November, he made representation to the Reporting Officer to process his APAR for appraisal and also sent reminder dated 29.10.2014 in respect thereof. However, he was informed that his APAR was misplaced and he was required to furnish another APAR. In such circumstances, his APAR was dealt with by the Reporting Officer who graded him as “Good”.

6. The respondent made a representation to the Competent Authority which was disposed of vide the order dated 08.02.2016 informing him that his APAR for the period 01.04.2014 to 09.09.2014 was upgraded from ‘Good’ to “Very Good” and in the Column ‘fitness for the DRM and promotion’ it was revised to “Yes”.

7. In the DPC for the year 2016-17 convened in April, 2017, in respect of respondent’s APAR, it was mentioned that his APARs for 4 years were ‘outstanding’ whereas for the 5th year, a part was initially ‘good’ but was later upgraded to ‘very good’ and thus, he was denied promotion to the post of DRM being “Unfit”.

8. In such circumstances, the respondent preferred O.A. No. 3030/2017 before the learned Tribunal on the ground that the Reviewing Authority of the respondent had retired in August, 2014 and also his APAR could have been in the hands of Accepting Authority, who was also scheduled to retire in November and therefore, his APAR went in the hands of the Reporting Officer, which was withheld for a long time and only after much pursuance, it was considered by the Reporting Officer. The respondent pleaded before the learned Tribunal that even though his APAR for the period 01.04.2014 to 09.09.2014 was upgraded from “Good” to “Very Good” and his



performance for earlier four years had been outstanding, but she was not considered for promotion. The respondent, thus, prayed the learned Tribunal to set aside the DPC convened in April, 2017 and to quash the promotion order issued to his juniors and to place him above respondents No.7 to 14 in the seniority list.

9. The stand of petitioners before the learned Tribunal was that the APAR of respondent for the period 01.04.2014 to 09.09.2014 was coming in the way of respondent and the view taken by the DPC does not call for any interference.

10. The learned Tribunal vide the order dated 08.01.2019 observed and held as under:-

“16. Even where the APAR could not be handled by the two out of the three officers, namely. Reporting, Reviewing and Accepting Officers, the safest course is to treat the period as Non-AFAR. The DPC-did not address the issue from that angle also. Quite a large number of juniors of the applicant were empanelled and were thereafter appointed as DRM.

17. In terms of emoluments and rank, the applicant cannot be made to suffer a detriment. For the service rendered by him spread over three decades, which is uniformly rated as meritorious, he cannot be rewarded with denial of a post which he is otherwise entitled to, and as regards which, he has a legitimate expectation.

19, in view of the above, we allow the OA and set aside the minutes of DPC dated 04.07.2017. insofar as it concerns the applicant. We direct that the review DPC shall be constituted to consider the case of the applicant and which, in turn, shall treat the APAR for first part of the year



2014- 15 as non est If the applicant is declared as fit by the Review DPC, he shall be entitled to the consequential benefits, including seniority. This exercise shall be done within a period of three months from the date of receipt of copy of this order. There shall be no order as to costs.”

11. The learned Tribunal thus, allowed the OA vide judgment dated 08.01.2019 by setting aside the Minutes of DPC dated 4.07.2017 thereby, directing the petitioners to hold a Review DPC wherein the first part of the APAR of the year 2014-15 to be taken as *non-est* and to explain within three weeks as to why appropriate orders be not passed.

12. The petitioners challenged the judgment dated 08.01.2019 passed by the learned Tribunal before this Court by filing W.P.(C) 8733/2019, which was dismissed vide order dated 13.08.2019.

13. Consequently, the petitioners convened Review DPC on 27.08.2019, considering the APAR of 2014-15 as *non est*, however, found respondent not fit for promotion.

14. The respondent preferred contempt proceedings against the petitioners for not complying the order dated 08.01.2019 by filing CP No.308/2019 in OA 3030/2017 impleading the members of the Review DPC, alleging that in the review DPC, the first part of the APAR for the year 2014-2015 was treated as ‘good’ i.e. below Bench Mark and not his revised APAR which was ‘Very Good’ and that his other APARs for four years were ‘outstanding’ and so, rejection of his name for promotion was not justified. The learned Tribunal vide order dated 24.09.2019 directed the petitioners to show cause within three weeks as to why appropriate orders be not passed.



15. The petitioners preferred W.P.(C) 11076/2019 challenging the order dated 24.09.2019 passed by the learned Tribunal, which was disposed of by this Court vide order dated 18.10.2019 being premature and directed the petitioners to approach the Tribunal.

16. In the contempt proceedings, the stand of petitioners before the learned Tribunal was that that the direction of the learned Tribunal was only to constitute a review DPC to consider the case of respondent by treating the APAR for the period 01.04.2014 to 09.09.2014 as *non est* and after due consideration, respondent was not considered 'fit' for promotion and thus, there is no violation of directions passed by the learned Tribunal.

17. The learned Tribunal vide the impugned order dated 09.12.2019 allowed respondent's contempt petition holding as under:-

"7. Strictly speaking, the declaration could have been given by the Tribunal to the effect that the applicant became fit for promotion, once the concerned APAR was declared as non est. However, out of sheer respect to the Review DPC and the law involved, as declared by the Hon'ble Supreme Court, that the Tribunal and Court could not declare a particular state of affairs which are clearly in the purview of an authority, such as DPC and Review DPC, it was directed that the matter can be considered by the Review DPC. In the context of extending the consequential benefits, we observed as under:-

"If the applicant is declared as fit by the Review DPC, he shall be entitled to the consequential benefits, including seniority".



8. *It is unfortunate that a Review DPC, which comprises of highly placed officers, has read something else into the word 'if', and that has defeated the whole purpose underlying the order in the O.A. Once the Tribunal has restricted the exercise of the Review DPC, it was expected just to examine the case without referring to the first part of the APAR of the year 2014-15. However, it has chosen to invent new reasons.*

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10. *We are of the view that the decision taken by the Review DPC is clearly violative of the orders passed in the OA, as affirmed by the Hon'ble High Court. Though one of the options is to pass order in the Contempt itself, we feel it appropriate to give another opportunity to the Review DPC to consider the case of the applicant, by excluding from its consideration the first part of the APAR for the year 2014-15; and not to take any factor, other than one, which was taken note of by the original DPC. This exercise shall be completed within two weeks from today."*

18. Being aggrieved the present petition has been preferred by the petitioners. Learned counsel for petitioners has submitted that the DPC enjoys full discretion to devise its methods and procedure for objective assessment of suitability and merit and the Courts should not interfere with the same.

19. On the other hand, learned counsel appearing on behalf of respondent has submitted that the Review Selection Committee had ignored the APAR of the respondent for the period 01.04.2014 to 09.09.2014 and however, did



not recommend his inclusion in the DRM's short list.

20. Upon hearing learned counsel for the parties and on perusal of the material placed before this Court, undisputedly, in the contempt proceedings, either the contemnor has to be exonerated or convicted recording the findings that the contemnor had wilfully violated the directions of the Court.

21. In the present case, the learned Tribunal in Para- 10 of the impugned order dated 09.12.2019 has observed that though one of the options is to pass order in the contempt itself, however, has given another opportunity to the petitioners to hold a Review DPC, by excluding from its consideration the first part of the APAR for the year 2014-2015 and has granted further two weeks time to do the needful.

22. In our considered opinion, even though the learned Tribunal did take into consideration that the order dated 08.01.2019 was not complied with by the petitioners, however, erred in granting further time to the petitioners to comply with the said order, which is impugned herein.

23. In our opinion, the Tribunal in the contempt proceedings was expected to adjudge whether there was any 'wilful disobedience' of directions passed in earlier round of litigation against the petitioner. By granting further time to comply with the directions of the Court, the learned Tribunal overlooked the fact that the petitioners had infact failed to comply the judgment dated 08.01.2019 passed by the learned Tribunal, which was affirmed by this Court vide order dated 13.08.2019 in W.P.(C) 8733/2019 and was not further assailed by the petitioners and thus, attained finality.

24. In view of the above, the directions contained in Para - 10 of order dated 09.12.2019 passed by the learned Tribunal are hereby set aside, with



liberty to the respondent herein to revive the contempt petition before the learned Tribunal, challenging non-compliance of the judgment dated 08.01.2019 passed by the learned Tribunal.

25. It is expected that the learned Tribunal shall proceed with the contempt proceedings in accordance with the law.

26. With directions, as aforesaid, the present petition is disposed of. Pending application, if any, stand disposed of as infructuous.

SURESH KUMAR KAIT, J

GIRISH KATHPALIA, J

SEPTEMBER 9, 2024

MR/r