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

% ***Date of decision: 29th July, 2024***

\+ W.P.(C) 10350/2024 & CM APPL. 42457-58/2024

UNION PUBLIC SERVICE COMMISSION .....Petitioner

Through: Mr. R.V. Sinha, Mr. A.S. Singh, Ms.Nidhi Singh and Mr. Amit Sinha, Advocates.

versus

S.M. KESHKAMAT & ANR. .....Respondents

Through: Mr. A.K. Behera, Senior Advocate with Mr.Amarendra Pratap Singh, Advocate for R-1.

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 writ petition has been filed by the petitioner seeking quashing of order dated 08.04.2024 in O.A. No.1121/2023 passed by the learned Central Administrative Tribunal (‘Tribunal’), Principal Bench, New Delhi, whereby learned Tribunal has held that the Departmental Promotion Committee (DPC) erred in considering incomplete APAR for the year 2018-2019 by ignoring the second part APAR (27.10.2018 to 31.03.2019) finding the respondent No. 1 unfit for promotion to the post of Principal Commission Income Tax (‘PCIT’), thereby quashing the DPC held on 08.07.2022. In addition, a direction has been issued to the petitioner-Union

Public Service Commission ('UPSC') to hold a review DPC and consider the respondents' case for promotion to the post of PCIT in Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, for the vacancy year 2021, by ignoring his Part-APARs for 2018-19 and in lieu consider the APAR/ACR for the year 2014-15.

2. The brief facts of the case are that respondent No. 1 is an IRS (Income Tax) Officer of 1992 batch. The DPC proposal for the post of PCIT for the vacancy year 2021 was constituted to consider the proposal of the Department dated 08.07.2022. The DPC assessed the reckonable 05 years' APARs for respondent No. 1 for the years 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19, however, did not consider him 'fit' for the promotion to the post on the ground that he could not meet the prescribed benchmark of 'very good' in all the 05 reckonable APARs from 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19.

3. According to the petitioners, the DPC, in exercise of powers conferred on it, vide para 6.1.2 & 6.2.1(e) of DOP&T OM dated 10.04.1989, had gone through all the attributes/parameters recorded in the APAR for the period 2018-19 (01.04.2018 to 26.10.2018) and after careful and objective assessment of the APAR in question came to the conclusion that the overall grading in the said period should be 'Good'. The DPC in its meeting dated 08.07.2022 while assessing respondent No. 1 as unfit for examination gave the following reasons as have been mentioned in the minutes of DPC.

> *"The Committee noted that in the APAR for the period 2018-19 (01.04.2018 to 26.10.2018) of Shri Shyamsunder M. Keshkamat, the Reporting Officer has awarded numerical grading of 4.0 for "Quality of Output" [column*

1(a)(2) of Section 111(A)] and the numerical grading of 5.0 has been given for "Attitude to work and initiative" & "Strategic manageability innovation" respectively [column 2(a)(1) and 2(a)(3) of Section 111(A)]. The APAR for the aforesaid period has not been reviewed by the Reviewing Officer as the officer had retired. The overall numerical grading has been given by the Reporting Officer as '6.20'. The Committee having gone through the entries in the APARs for the period 2018-19 (01.04.2018 to 26.10.2018), was of the considered view that the attributes against which the officer has received a numerical grading of '4 and 5' are important qualities in the superior rank for which the panel is being prepared. Hence, the Committee decided that the overall grading in respect of Shri Shyamsunder M. Keshkamat should be taken as 'Good' only for the year 2018-19."

4. Aggrieved against the above assessment of DPC, respondent No. 1 approached learned Tribunal by filing O.A. No.1121/2023, wherein Union of India pleaded that the holding of DPC is strictly in accordance with the guidelines/instructions issued by Department of Personnel and Training vide O.M. dated 10.04.1989 as amended for time to time and that after assessing the overall grading of respondent No. 1, the decision has been taken.

5. Learned Tribunal in light of the pleadings of the parties vide impugned order dated 08.04.2024 has held as under:

> *"The DPC erred in considering incomplete APAR of the applicant for 2018-19 and by ignoring the second Part-APAR (27.10.2018 to 31.03.2019) and finding the applicant unfit for promotion to the post of PCIT."*

6. The challenge to the impugned order dated 08.04.2024 passed by the learned Tribunal is on the ground that the learned Tribunal has acted as Appellate Authority to the decision of DPC, which is impermissible in law and that there was no allegation of bias, malafide or procedural violation on behalf of DPC.

7. During the course of hearing, learned counsel submitted that the DPC held on 08.07.2022 considered the APARs of respondent No. 1 reckonable for 5 years and his overall assessment was found unfit for examination as his APARs for the period 2018-2019 which was written in two parts as provided by respondent No. 2. The first part of APAR for the year 2018-2019 was written for the period 01.04.2018 to 26.10.2018 and second part was for the period 27.10.2018 to 31.03.2019 and recorded in its comments in the Minutes with regard to that part the APAR for the year 2018-2019 was assessed ‘good’ in totality. Thus, setting aside and quashing of order and judgment dated 08.04.2024 passed by the learned Tribunal has been sought in this petition.

8. Upon hearing learned counsel for the parties and on perusal of the impugned judgment and order dated 08.04.2024 as well as other material on record, this court finds that the learned Tribunal has observed that DPC has placed reliance upon DoPT O.M. dated 10.04.1989 while relying upon certain paras thereof but ignoring para 6.1.2 (b) stating *“If more than one CR has been written for a particular year, all the CRs for the relevant year shall be considered together as the CR for one year”*.

9. In the case of the respondent, the APAR for the year 2018-2019 was in two parts i.e. 01.04.2018 to 26.10.2018 and 27.10.2018 to 31.03.2019 but

the DPC has considered only one part of APAR i.e. 01.04.2018 to 26.10.2018, which was not even reviewed by the Reviewing Officer and second part of APAR from 27.10.2018 to 31.03.2019 was though reviewed by the Reviewing Officer but has not been taken into consideration by the DPC.

10. The proposition that an APAR in respect of a Civil Servant is required to be maintained at minimum two levels otherwise it would be incomplete and cannot be taken into consideration.

11. At the outset, it may be noted that respondent No. 3 in the said O.A. was UPSC. The learned Tribunal clearly and categorically held that the ACR of the applicant in the said O.A. for the year 2003-2004 had only been reported upon but had not been reviewed. Therefore, the said ACR was an incomplete ACR and could not have been taken into consideration for promotion for the post of Commissioner of Income Tax to Chief Commissioner of Income Tax.

12. It is not disputed that the learned Tribunal in O.A. No. 2033/2010, titled as ***Swati S. Patil Vs. UOI*** has held that ACR which had not been reviewed, cannot be taken into consideration. The challenge to this decision by the Union of India before this Court in W.P.(C) No. 4018/2011 was dismissed. Even the Special Leave Petition preferred by the Union of India, being SLP (Civil) CC No. 721/2014 : ***UOI Vs. Swati S Patil*** also stood dismissed.

13. It is trite that if an ACR/APAR has not been maintained at minimum two levels, then the said ACR/APAR is incomplete and nonest, as has recently been considered by this Court in W.P.(C) 10292/2015 titled ***UOI &***

Anr. Vs. DB Arora (2024) SCC OnLine Del 703 by one of us, namely, Girish Kathpalia, J.

14. On similar grounds, the learned Tribunal, in the impugned order, has held that ACR which had not been reviewed, could not be taken into consideration in a DPC and the ACR/APAR had to be ignored and also that the second part of the APAR, which has been reviewed, has not been taken into consideration.

15. Even if it is taken that the respondent No.1 did not challenge the APAR for the year 2018-19 (01.04.2018 to 26.10.2018) which was duly communicated to him and it was only after recommendations of the DPC, he filed a representation dated 26.08.2022, but the fact remains that the said part of APAR was not reviewed and the second part of the APAR for the period 27.10.2018 to 31.03.2019, was not considered by the DPC, even though it was reviewed.

16. In the facts of the present case, as discussed above, we find no infirmity in the directions issued by the learned Tribunal vide impugned judgment dated 08.04.2024 directing the petitioner to hold review DPC and pass a fresh order. This petition is accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

JULY 29, 2024/*uk*/r